NOTICE
Decision filed 10/30/26. The text of this decision may be changed or corrected prior to the filing of a Petition for Rehearing or the disposition of the same.

2026 IL App (5th) 250479-U

NO. 5-25-0479

IN THE

APPELLATE COURT OF ILLINOIS

FIFTH DISTRICT

NOTICE
This order was filed under Supreme Court Rule 23 and is not precedent except in the limited circumstances allowed under Rule 23(e)(1).

THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from the
	)	Circuit Court of
Plaintiff-Appellee,	)	Madison County.
	)	
v.	)	No. 23-DV-283
	)	
BRITTANY J. RODRIGUEZ,	)	Honorable
	)	Justin Zimmerman,
Defendant-Appellant.	)	Judge, presiding.

JUSTICE SHOLAR delivered the judgment of the court.
Justices Vaughan and Bollinger concurred in the judgment.

ORDER

¶ 1 *Held*: Where the record is insufficient as to whether defendant's waiver of her right to a jury trial was valid, the court presumes the trial court acted in conformity with the law and defendant's conviction is affirmed.

¶ 2 Defendant, Brittany Rodriguez,[1] appeals her conviction for domestic battery. On appeal, defendant contends that her constitutional right to a jury trial was violated where she did not waive her right to a jury trial. For the following reasons, we affirm the judgment of the circuit court.

¶ 3 I. BACKGROUND

¶ 4 On August 21, 2023, defendant was charged in the Madison County Circuit Court with

[1]The parties' briefs spell defendant's first name as Brittany. She is charged under the name Brittney, and in *pro se* filings, defendant spells her first name Brittney. The misspelling of her name appears throughout the record including on the Notice of Appeal.

domestic battery in violation of section 12-3.2(a)(1) of the Criminal Code of 2012. 720 ILCS 5/12-3.2(a)(1) (West 2022). The information alleged that on August 10, 2023, defendant knowingly and without legal justification caused bodily harm to Darrion McFall-Hughes, an ex-boyfriend, by spraying McFall-Hughes with mace on the back of his head and neck.

¶ 5 On March 5, 2024, defendant appeared in court and waived her right to a jury trial. Two orders were filed with the clerk of the court that day. The first order noted that defendant appeared, pled not guilty, and waived her right to a jury trial. This order was signed by defendant in two locations. The first signature appeared immediately below the portion of the order stating that defendant waived her right to a jury trial. The second signature appeared at the bottom of the order.

¶ 6 The second court order entered on March 5, 2024, was titled, "Waiver of Right to a Jury Trial." This document was also signed by defendant. The waiver indicated that defendant knowingly, voluntarily, and intelligently waived her right to a jury trial after being informed of her constitutional and statutory rights to a trial. It further stated that a judge would determine defendant's guilt or innocence. The order also stated that the court addressed defendant, personally and in open court, and found that defendant "made a knowing, voluntary, and intelligent waiver of h[er] rights to a jury trial." The waiver was signed by the trial court judge.

¶ 7 Defendant proceeded to a bench trial on April 26, 2024. Prior to the presentation of evidence, the trial court confirmed that defendant was representing herself, and that defendant previously waived her right to a jury trial. The judge recounted that she and defendant had a conversation on a previous court date, and that during that conversation, defendant was advised of her rights and waived her right to a jury trial. Defendant confirmed again, on the record, that she still wished to waive a jury trial. Following the presentation of evidence, defendant was convicted and sentenced.

¶ 8 On May 22, 2024, defendant filed a motion to vacate. In her motion, defendant claimed that she had a defense of self-defense. On June 28, 2024, the trial court appointed the public defender to represent defendant. That same day, the public defender's office entered its appearance.

¶ 9 On October 17, 2024, defense counsel filed a motion to vacate defendant's conviction, alleging that defendant's waiver of counsel was not knowingly and intelligently made in that defendant had not been properly advised as to the consequences of a domestic battery conviction. Specifically, defendant complained that she had not been informed that a misdemeanor domestic battery conviction could be used to enhance a subsequent domestic battery charge to a felony.

¶ 10 On December 9, 2024, the trial court[2] granted defendant's motion to vacate her conviction. That order stated that the case was to be set "for January DV docket on 1/21/25 at 1:00 p.m." On January 21, 2025, the trial court entered an order resetting the matter to April 24, 2025. The court also entered an order imposing conditions of defendant's pretrial release. The order had defendant's signature. A docket entry from January 22, 2025, indicated that the matter was set for "Jury Trials *** PRE-TRIAL ***."

¶ 11 On April 24, 2025, the trial court entered an order stating that the matter was set for a bench trial on May 30, 2025, with a final pretrial conference being set on May 20, 2025. This was a form order with various boxes and blank lines. The portion of the order that could be filled out to indicate that defendant waived her right to a jury trial was left blank. The order did not indicate whether defendant personally appeared in court. The order bore the signatures of the assistant state's attorney, the judge, and defense counsel. Defendant's signature did not appear on this order. Of

[2]We note that between the appointment of the public defender on June 28, 2024, and the December 9, 2024, court order, the responsibility of this matter was assigned to a new judge.

significance, there is no transcript of the proceedings from this court setting.

¶ 12 On May 20, 2025, the trial court held a pretrial hearing. During the hearing, the judge stated that the matter was set for a bench trial on May 30, 2025. Defense counsel confirmed that the date was accurate. Following the hearing, the court entered an order addressing the parties' pretrial motions. Pertinent to this appeal, the order reflected that the "parties appear," and although the order did not contain defendant's signature, we note that the docket entry from the same day stated that a copy of the order was provided to the defendant in court.

¶ 13 Defendant's bench trial took place on May 30, 2025. After hearing the evidence and the arguments of counsel, the trial court found defendant guilty of domestic battery. A conviction was entered, and defendant was sentenced to 12 months' probation. No posttrial motions were filed. Defendant filed a timely notice of appeal on June 10, 2025.

¶ 14 II. ANALYSIS

¶ 15 On appeal, defendant contends that her constitutional right to a jury trial and due process of law were violated, because she did not waive her right to a trial by jury. Specifically, defendant contends that the jury waiver she signed prior to her first trial no longer had any effect once her conviction was vacated. Defendant argues that she "did not sign a written jury waiver for her second bench trial, [and] was not admonished as to the consequences of waiving her right to a jury trial in open court." Consequently, defendant argues that she is entitled to a new trial pursuant to *People v. Bracey*, 213 Ill. 2d 265 (2004).

¶ 16 Citing *Foutch v. O'Bryant*, 99 Ill. 2d 389 (1984), the State contends that defendant provided an incomplete record. Under *Foutch*, an incomplete record creates a presumption that the trial court acted in conformity with the law. *Id.* at 392. *Foutch* also provides that "[a]ny doubts which may arise from the incompleteness of the record will be resolved against the appellant." *Id.*

The State also argues that the plain error doctrine does not apply, under the facts of this case, because of the incomplete record.

¶ 17 As an initial matter, we note that oral argument on this matter was held on June 8, 2026. On September 21, 2026, this court entered an order directing the parties to file affidavits within seven days, attesting whether a hearing took place on April 24, 2025. On September 28, 2026, the parties filed an agreed affidavit wherein the State indicated that it made 'reasonable and thorough attempts' to obtain further confirmation that a hearing took place, but the inquiry found that the former assistant state's attorney assigned to the case is no longer employed with the state's attorney's office. Defendant indicated that she had not received a response from trial counsel for the defendant. Accordingly, the parties "agreed to attest that further inquiries by the parties have been unsuccessful in confirming or denying the occurrence of the April 24, 2025[,] court date beyond what is noted in the record."

¶ 18 "The right to a trial by jury is a fundamental right guaranteed by our federal and state constitutions." *Bracey*, 213 Ill. 2d at 269. A defendant may waive the right to a jury trial, but the waiver must be knowingly and understandably made. *Id*.; See 725 ILCS 5/103-6 (West 2002) ("Every person accused of an offense shall have the right to a trial by jury unless *** understandably waived by defendant in open court[.]") Section 115-1 of the Code of Criminal Procedure of 1963 (725 ILCS 5/115-1 (West 2024)) provides that "[a]ll prosecutions except on a plea of guilty or guilty but mentally ill shall be tried by the court and a jury unless the defendant waives a jury trial in writing." *Id*. Adherence to this provision, however, while recommended, "is not always dispositive of a valid waiver." *Bracey,* 213 Ill. 2d at 270-71. The lack of a written waiver is not fatal "if it can be ascertained that the defendant understandably waived his right to a jury trial." *Id.* at 271. A determination of whether a jury waiver is valid does not rest on any precise

formula but depends on the facts and circumstances of each particular case. *People v. Frey*, 103 Ill. 2d 327, 332 (1984).

¶ 19 As noted, defendant contends that she is entitled to a new trial based upon the Illinois Supreme Court's decision in *Bracey*. In *Bracey*, the defendant waived his right to a jury trial and, following a bench trial, was convicted of aggravated battery. *Bracey*, 213 Ill. 2d at 267. After the trial concluded and defendant was convicted, the trial court learned that defendant wanted to testify. *Id.* Defense counsel admitted that he had not spoken with the defendant about whether he wanted to testify. *Id.* The judge acknowledged that he had not made his own inquiry into whether the defendant wanted to testify. *Id.* at 267-68. For this reason, defendant was granted a new trial, and the matter was set for a second bench trial. *Id.* at 268. Defendant was convicted again. *Id.* On appeal, the defendant argued, for the first time, that his jury trial waiver prior to the first trial did not apply to his second trial. *Id.* In a split decision, the appellate court affirmed the defendant's conviction. *Id.*

¶ 20 The *Bracey* court found that the written waiver and admonishments given prior to the first bench trial were no longer in effect after defendant was granted a new trial and reversed the defendant's conviction. *Id.* at 271.

¶ 21 The *Bracey c*ourt found it "clear from the record" that the trial court "assumed that retrial would also be a bench trial." *Id.* at 272. In support of its conclusion, the *Bracey* court noted that (1) nothing in the record indicated that the defendant was ever advised that the new trial could be decided by a jury, (2) nothing in the record demonstrated that defendant appeared in court after his first trial but before the second bench trial, (3) defense counsel made no statement in the defendant's presence that the defendant was again choosing a bench trial, and (4) the defendant's silent acquiescence to a second bench trial was not sufficient to support a finding that the defendant

again knowingly and voluntarily relinquished his fundamental right to a jury trial. *Id.* at 272-73.

¶ 22 As noted above, the State argues that, in the absence of a transcript (or its equivalent) from the April 24, 2025, court setting, the record before this court is not sufficiently complete to allow this court to reverse defendant's conviction. It is on this basis that the State distinguishes *Bracey*: the *Bracey* court was not faced with an incomplete record. By contrast, the State argues, this court does not have a complete record of what occurred in the trial court on April 24, 2025. We agree with the State.

¶ 23 As stated by the Illinois Supreme Court:

> "[A]n appellant has the burden to present a sufficiently complete record of the proceedings at trial to support a claim of error, and in the absence of such a record on appeal, it will be presumed that the order entered by the trial court was in conformity with law and had a sufficient factual basis. Any doubts which may arise from the incompleteness of the record will be resolved against the appellant." *Foutch*, 99 Ill. 2d at 391-92.

¶ 24 In support of its argument that defendant failed to provide a complete record, the State's brief notes that the record on appeal in this matter only contains (1) the transcript from the first trial; (2) the transcript from the pretrial conference held on May 20, 2025; and (3) the transcript from the second trial. The State notes the absence of transcripts from all proceedings from the first trial until the May 20, 2025, pretrial, including "the two hearings that were held subsequent to the trial court's granting of defendant's motion to vacate judgment."

¶ 25 In response to the State's brief, defendant filed a motion to supplement the record with a letter from the Court Reporting Supervisor for Madison County. With regard to the January 21, 2025, the January 22, 2025, and the April 24, 2025, settings, the letter indicated that there were no court reporters present on those dates and that there were no recordings for those dates. This court granted defendant leave to supplement the record, and the letter was made a part of the record on appeal.

¶ 26 Although the absence of a court reporter and a transcript is not ideal, Illinois Supreme Court Rule 323 (eff. July 1, 2017) contemplates this problem and offers solutions. Rule 323 governs the contents and the preparation of a report of proceedings. It also provides a procedure for the parties to follow if there is no verbatim transcript available. First, an appellant could obtain a bystander's report. An appellant can prepare a proposed report upon the "best available sources, including recollection." Ill. S. Ct. R. 323(c) (eff. July 1, 2017). That subsection provides that a proposed bystander's report must be served on all parties within 28 days after the notice of appeal is filed and allows any other party to "serve proposed amendments or an alternative proposed report." *Id.* Thereafter, the proposed report or reports are submitted to the trial court for settlement and approval. *Id.* Ultimately the trial court certifies and files the report. *Id.*

¶ 27 The second alternative to a verbatim transcript is an agreed statement of facts, which allows the parties to stipulate to an agreed statement of facts material to the controversy. Ill. S. Ct. R. 323(d) (eff. July 1, 2017). An agreed statement of facts must be filed within the time for filing a report of proceedings. *Id.*

¶ 28 The rule also allows for motions for an extension of time. Ill. S. Ct. R. 323(e) (eff. July 1, 2017). Those motions "shall be supported by an affidavit showing the necessity for extension" and further allows that "motions made after expiration of the original or extended time shall be further supported by a showing of reasonable excuse for failure to file the motion earlier." *Id*. In the case before us, neither a bystanders report nor an agreed statement of facts was filed.

¶ 29 We are mindful of the fact that a trial court must ensure that defendant's jury waiver is "made 'expressly and understandably.' " *People v. Morales*, 2025 IL App (1st) 231317, ¶ 20 (quoting *People v. Smith*, 106 Ill. 2d 327, 334 (1985)). We are also mindful of the fact that "a valid waiver of trial by jury cannot be presumed from a silent record." *Id.* (citing *Boykin v. Alabama*,

395 U.S. 238, 243 (1969)). However, because "Illinois courts focus on the trial record to determine a defendant's understanding regarding waiver of the right to trial by jury" (*id.* ¶ 19), it is critical that a defendant provide a reviewing court with a record sufficient to support her claim of error. Indeed, it is the defendant's burden to do so. *Foutch*, 99 Ill. 2d at 391.

¶ 30 A trial court has " 'the duty of ensuring that a defendant's waiver of his right to a jury trial' " is expressly and understandably made. (Emphasis in original.) *Morales*, 2025 IL App (1st) 231317, ¶ 21 (quoting *Smith*, 106 Ill. 2d at 334). It is not just the judges, but also defense attorneys and prosecutors who "must remain vigilant in ensuring that waivers comply with the United States and Illinois Constitutions as well as state law." *Id.*

¶ 31 As noted above, however, the record on appeal does not contain a transcript of proceedings, a bystander's report, or an agreed statement of facts for the April 24, 2025, court date. In the absence of a complete record, this court can only speculate as to what occurred on April 24, 2025. Perhaps, as defendant contends, the trial court and both counsels assumed, as did the trial court in *Bracey*, that the second trial would be a bench trial. Alternatively, perhaps the trial court heard defendant affirmatively and knowingly waive her right to a jury trial. The only thing that is certain from the record is that something occurred that caused the matter to be set for a bench trial. In the absence of a complete record, this court has no choice but to presume that the order entered by the trial court setting this matter for a bench trial was in conformity with the law. *Foutch*, 99 Ill. 2d at 392. Accordingly, and because of the doubts which arise from the incompleteness of the record, this matter must be resolved against defendant. *Id.*

¶ 32 III. CONCLUSION

¶ 33 For the foregoing reasons, the judgment of the trial court is affirmed.

¶ 34 Affirmed.