Fifth Circuit Court of Appeal
State of Louisiana

No. 26-KA-46

STATE OF LOUISIANA

versus

OLJUAWON NICHOLAS

ON APPEAL FROM THE TWENTY-FOURTH JUDICIAL DISTRICT COURT
PARISH OF JEFFERSON, STATE OF LOUISIANA
NO. 25-2190, DIVISION "N"
HONORABLE STEPHEN D. ENRIGHT, JR., JUDGE PRESIDING

November 04, 2026

SCOTT U. SCHLEGEL

JUDGE

Panel composed of Judges Susan M. Chehardy,
Marc E. Johnson, and Scott U. Schlegel

CONVICTION AFFIRMED; SENTENCE VACATED; REMANDED FOR RESENTENCING

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DEFENDANT/APPELLANT,
OLJUAWON NICHOLAS

In Proper Person

SCHLEGEL, J.

Defendant, Oljuawon Nicholas, appeals his conviction and sentence for possession of a firearm by a convicted felon in violation of La. R.S. 14:95.1. For the reasons that follow, we affirm his conviction, vacate his sentence, and remand for resentencing.

Procedural History

On June 16, 2025, the Jefferson Parish District Attorney filed a bill of information charging defendant with possession of a firearm by a convicted felon in violation of La. R.S. 14:95.1.[1] Defendant pled not guilty at his arraignment that same day. Trial commenced on November 4, 2025. At the conclusion of trial on that same date, the jury found defendant guilty as charged.

On November 5, 2025, defendant filed a motion for new trial, and the following day, he filed a motion for post-verdict judgment of acquittal. On November 13, 2025, the trial court denied these motions. Afterward, the trial court sentenced defendant to fifteen years imprisonment at hard labor without the benefit of parole, probation, or suspension of sentence. On December 3, 2025, the trial court denied defendant's motion to reconsider the sentence. On that same day, defendant filed a motion for appeal, which the trial court granted on December 5, 2025.

Facts

In the early morning hours of May 14, 2025, Deputy Luke Lauland with the Jefferson Parish Sheriff's Office (JPSO) was on Ames Boulevard in Marrero, Louisiana, when he conducted a traffic stop of a Nissan Altima for a temporary tag that was unreadable and lacked required information. After Deputy Lauland

[1] The bill provides that defendant was previously convicted of possession of heroin in violation of La. R.S. 40:966(C) on March 2, 2012, under Case No. 509-090, in Section "C" of the Orleans Criminal District Court. After trial commenced in the present matter, the State amended the bill of information to change the date of the offense for the prior conviction from March 2, 2012, to March 6, 2012.

activated his lights and sirens, the vehicle did not stop. It continued to the intersection of Ames and Happy Street, then turned right on East Judah Street. Deputy Lauland testified that the vehicle pulled into a grassy area in front of two apartment buildings. Defendant then opened the driver's side door and fled on foot into the alleyway between the two apartment buildings while the vehicle remained in drive. Deputy Lauland detailed that as defendant ran, he had his right hand inside his pants and held his left hand up. Deputy Lauland believed defendant was carrying a gun in his pants and ran because he did not have a legal right to possess a firearm. As Deputy Lauland chased defendant, he repeatedly commanded him to show his hands and stop, but defendant did not comply. Deputy Lauland removed his gun from his holster and attempted to point it at defendant.

Defendant ran to the left around the corner of the apartment building and Deputy Lauland testified that he lost sight of defendant for a second. The deputy hesitated at the corner because he was concerned for his safety and did not know whether defendant was waiting "with that gun." Deputy Lauland estimated that defendant ran approximately 100 feet before he was able to catch up with him and apprehend him. He explained that defendant was searched, but nothing was found on his person. The video from Deputy Lauland's body-worn camera and his police car's dash/in-car camera were played for the jury.

Other deputies arrived at the scene shortly after defendant's apprehension. Deputy Lauland and the other officers attempted to locate anything defendant may have thrown from his pants in the alleyway. The deputy explained that there was a fence behind the alleyway, and he believed it was the only place defendant could have thrown something over after he ran out of sight around the corner of the building. Deputy Lauland instructed JPSO Deputy Jose Antunez to go to the residence on the other side of the fence and search the backyard. Within five to ten minutes after defendant was apprehended, Deputy Antunez located a loaded

firearm, a Ruger, model P89, 9 mm caliber semiautomatic pistol, in the backyard. Deputy Antunez took photographs of the firearm and the residence where it was located. The deputies spoke with the homeowners, who advised they had no knowledge of the firearm and did not own any firearms.

Deputy Lauland further explained that when the gun was located, the slide of the gun was dry. He indicated that this was significant because there was morning dew in the grass at approximately 4:30 a.m. He further explained that "from when the gun was thrown, there was some wetness on the handle and the parts that were thrown in the grass, but the slide itself was dry was the part that was not actually touched by the grass." Deputy Lauland testified that JPSO did not request DNA or fingerprint testing of the gun because they knew it was defendant's gun as there was no other possible explanation based on the timing of the events.

Deputy Lauland acknowledged on cross-examination that he did not see defendant with a gun, did not see him throw a gun, and that defendant denied the gun was his and denied that he owned a gun. Deputy Lauland testified that officers did not determine the firearm's registered owner and did not check ownership or registration, because the investigation focused on possession rather than the ownership or registration.

Deputy Antunez testified that on May 14, 2025, at approximately 4:30 a.m., he responded to Deputy Lauland's radio dispatch to assist with a foot pursuit of an individual who bailed out of a vehicle. Deputy Lauland had already apprehended defendant by the time he arrived. Deputy Antunez stated that Deputy Lauland advised that defendant threw something over a fence, so he went to the residence on the other side to look for it. Shortly thereafter, he located the firearm in the backyard, made it safe, and took photographs of the firearm and surrounding area. He testified that there was no indication the gun had been in the grass for a long time. He recalled that lights were on behind the apartments and that he did not see

anyone come out of the complex when he arrived. Deputy Antunez testified that he was equipped with a body-worn camera during the search, which was played for the jury.

Deputy Lauland also testified that a small amount of marijuana was found in the driver's side door and gabapentin was found in the glove box of the Nissan Altima. The parties stipulated prior to trial that, if called, Brian Schulz would be accepted as an expert in the field of the identification and analysis of controlled dangerous substances and would testify consistent with his report that the evidence contained gabapentin and "marijuana with a gross weight of 2.57 grams plus or minus .03 grams." Deputy Lauland testified that defendant admitted the marijuana was his and said he obtained the gabapentin from an "old lady" off of Fourth Street.

Deputy Lauland testified that after the firearm was found, he searched defendant's name through law enforcement databases and learned that defendant had a prior 2012 conviction for possession of heroin. He further learned that defendant was released from parole on April 26, 2019. He arrested defendant for possession of a firearm by a convicted felon and on misdemeanor charges related to the marijuana, gabapentin, and resisting an officer. The parties also stipulated that defendant was convicted of violating La. R.S. 40:966(C), possession of heroin on March 6, 2012, in Orleans Criminal District Court in Case No. 509-090, Section "C," and that he was released from supervision for that offense on April 26, 2019. The State entered a certified conviction packet and a letter of release from supervision for this conviction into evidence.

James Hunter, the owner of the property where officers located the gun, testified that he lived with his wife at 1520 Haydel Drive in Marrero on May 14, 2025. He estimated that at the time of the incident, he mowed the lawn approximately one week earlier. He did not recognize the firearm found in his

yard on May 14, 2025, and denied owning or possessing a firearm on that date. He also testified that he did not know the defendant.

Law and Analysis

Defendant raises one counseled assignment of error and three *pro se* assignments of error on appeal. First, defendant argues in his counseled and *pro se* assignments of error that the State failed to sufficiently prove that he was guilty of being a convicted felon in possession of a weapon. In his *pro se* assignments of error, defendant also argues that the trial court erred by allowing him to rescind his irrevocable waiver of a jury trial and that his sentence is unconstitutionally excessive.

A. Sufficiency of the Evidence

In his counseled assignment of error, defendant argues that the evidence was insufficient to support his conviction because the State failed to prove he actually or constructively possessed the firearm. He asserts that no witness testified that they saw him with a gun and the video does not show him with a gun or discarding a gun. He argues that the State presented no evidence to establish that he exercised dominion and control over the gun located in the backyard. Defendant contends the State relied on Deputy Lauland's assumption that the gun had to be his, despite the lack of scientific testing to connect the firearm to defendant.

Defendant argues that because the State's case was circumstantial, the evidence had to exclude every reasonable hypothesis of innocence. Defendant argues the circumstances support a reasonable possibility that a resident in a second floor apartment, fearful of the police activity, threw the gun from a window, given the high-crime area, multiple responding units, and lights on at the apartments indicating some individuals were awake. Defendant contends that he explained to the deputy that his right hand was holding his belt to keep his pants on while he ran, and that he did not immediately pull over because he was afraid. He

also challenges the State's theory regarding the dew on only parts of the gun as speculative and insufficient to exclude the possibility that another person discarded the firearm. Accordingly, defendant maintains the conviction and sentence should be reversed.

In his *pro se* appellant brief, defendant generally argues that the circumstantial evidence was insufficient and recognizes that when considering the sufficiency of the evidence, appellate courts consider all evidence, including evidence the trial court may have erroneously admitted. *See State v. Hearold*, 603 So.2d 731, 734 (La. 1992). However, defendant's *pro se* arguments focus on his complaint that his attorney allowed unreliable hearsay testimony from Deputy Lauland regarding the condition of the gun when he was not the officer who located and viewed the gun. Defendant contends that Deputy Antunez, the officer who retrieved the firearm, is the only one who could have testified regarding the condition of the firearm when it was discovered, but he was never asked about his personal observations after he located the firearm. Defendant further argues that Deputy Antunez did not suggest that the firearm was dry on one side. And he claims that the State muted the audio for the portion of Deputy Antunez's body-worn camera video where he stated he could not safely secure the firearm because it was covered in moisture from the dew on the ground. Defendant contends that this audio was contradictory to Deputy Lauland's testimony and that muting the audio excluded exculpatory evidence from the jury.

The State argues that the evidence was sufficient to establish that defendant possessed the recovered firearm. According to the State, defendant fled from his vehicle because he was a convicted felon in possession of a firearm, not because of the temporary tag or the other items recovered from the vehicle. Relying on Deputy Lauland's testimony and video evidence, the State contends that defendant kept the firearm concealed in his pants while running and discarded the firearm

over Mr. Hunter's fence when Deputy Lauland briefly lost sight of him as he rounded the corner. The State further points to the location where the firearm was recovered, testimony indicating that it had been recently discarded, and Mr. Hunter's testimony that he did not own or possess the firearm.

The State also argues that defendant's alternative theories did not create a reasonable hypothesis of innocence. It asserts that defendant could have discarded the firearm during the brief period when Deputy Lauland lost sight of him and that the theory that someone else discarded the firearm was unsupported because no one else was observed in the area, and Mr. Hunter denied owning or storing the firearm. The State further maintains that defendant's claim that he was merely holding up his pants was inconsistent with Deputy Lauland's testimony. Accordingly, the State argues that the evidence was sufficient to support defendant's conviction.

In reviewing the sufficiency of the evidence, an appellate court must determine that the evidence, whether direct, circumstantial, or a mixture of both, viewed in the light most favorable to the prosecution, was sufficient to convince a rational trier of fact that all of the elements of the crime have been proven beyond a reasonable doubt. *Jackson v. Virginia*, 443 U.S. 307, 99 S.Ct. 2781, 61 L.Ed.2d 560 (1979); *State v. Martin*, 24-233 (La. App. 5 Cir. 2/26/25), 406 So.3d 702, 713-14. Under the *Jackson* standard, a review of the record for sufficiency of the evidence does not require this Court to determine whether the evidence at the trial established guilt beyond a reasonable doubt, but rather whether, upon review of the whole record, any rational trier of fact would have found guilt beyond a reasonable doubt. *State v. Gilmore*, 24-552 (La. App. 5 Cir. 8/27/25), 421 So.3d 1039, 1052. When addressing the sufficiency of the evidence, consideration must be given to the entirety of the evidence, including inadmissible evidence that was erroneously admitted, to determine whether the evidence is sufficient to support the conviction.

State v. Reed, 24-329 (La. App. 5 Cir. 4/2/25), 413 So.3d 1166, 1177, *writ denied*, 25-561 (La. 9/10/25), 415 So.3d 1277.

Circumstantial evidence consists of proof of collateral facts and circumstances from which the existence of the main fact can be inferred according to reason and common experience. *State v. Salvant,* 24-205 (La. App. 5 Cir. 3/19/25), 411 So.3d 74, 88, *writ denied*, 25-485 (La. 9/16/25), 416 So.3d 473. When circumstantial evidence is used to prove the commission of the offense, La. R.S. 15:438 provides, "[A]ssuming every fact to be proved that the evidence tends to prove, in order to convict, it must exclude every reasonable hypothesis of innocence." *Id.*

On appeal, the reviewing court does not determine if another possible hypothesis suggested by the defendant could afford an exculpatory explanation of the events. *State v. Ford*, 24-197 (La. App. 5 Cir. 2/26/25), 406 So.3d 652, 668, *writ denied*, 25-356 (La. 5/20/25), 409 So.3d 216. Instead, the appellate court must evaluate the evidence in a light most favorable to the State and determine whether the possible alternative hypothesis is sufficiently reasonable that a rational juror could not have found proof of guilt beyond a reasonable doubt. *Id.*

The directive that the evidence be viewed in the light most favorable to the prosecution requires the reviewing court to defer to the actual trier of fact's rational credibility calls, evidence weighing, and inference drawing. *Martin*, 406 So.3d at 714. This deference to the factfinder does not permit a reviewing court to decide whether it believes a witness or whether the conviction is contrary to the weight of the evidence. *Id*. Further, a reviewing court errs by substituting its appreciation of the evidence and the credibility of witnesses for that of the factfinder and overturning a verdict on the basis of an exculpatory hypothesis of innocence presented to, and rationally rejected by, the jury. *Salvant*, 411 So.3d at 88.

The credibility of a witness is within the sound discretion of the trier of fact. *State v. Ellis*, 25-96 (La. App. 5 Cir. 10/29/25), 426 So.3d 120, 128. Additionally, the resolution of conflicting testimony rests solely with the trier of fact, who may accept or reject, in whole or in part, the testimony of any witness. *Gilmore*, 421 So.3d at 1052. Thus, in the absence of internal contradiction or irreconcilable conflicts with physical evidence, the testimony of one witness, if believed by the trier of fact, is sufficient to support a conviction. *Id*.

Defendant was convicted of possession of a firearm by a convicted felon in violation of La. R.S. 14:95.1. To support a conviction under La. R.S. 14:95.1, the State must prove beyond a reasonable doubt that defendant had: (1) possession of a firearm; (2) a prior conviction for an enumerated felony; (3) absence of the ten-year statutory period of limitation; and (4) the general intent to commit the offense. With respect to the third element, the State must prove that ten years has not elapsed since the date of completion of the punishment for the prior felony conviction. *State v. Woods*, 23-41 (La. App. 5 Cir. 11/15/23), 376 So.3d 1144, 1156, *writ denied*, 23-1615 (La. 5/29/24), 385 So.3d 700. With respect to the fourth element, general criminal intent is present whenever there is specific intent, and also when the circumstances indicate that the offender, in the ordinary course of human experience, must have adverted to the prescribed criminal consequences as reasonably certain to result from his act or failure to act. La. R.S. 14:10(2).

The element of possession includes both "actual" and "constructive" possession. *State v. Eldridge*, 23-149 (La. App. 5 Cir. 12/20/23), 378 So.3d 861, 871, *writ denied*, 24-45 (La. 9/17/24), 392 So.3d 631, and *writ denied*, 24-126 (La. 9/17/24), 392 So.3d 632. A person is in "constructive possession" if the firearm is subject to a defendant's dominion and control, even if it is only temporary in nature and/or if control is shared. *State v. Stewart*, 24-50 (La. App. 5 Cir. 10/30/24), 398 So.3d 812, 821, *writ denied*, 24-1445 (La. 2/19/25), 400 So.3d

931. A defendant's mere presence in an area where a firearm is found does not necessarily establish possession. *Id*. The State must also prove that the offender was aware that a firearm was in his presence and that the offender had the intent to possess the weapon. Guilty knowledge may be inferred from the circumstances and proved by direct or circumstantial evidence. The question of whether there is sufficient "possession" to convict is dependent upon the facts of each case. *Id.*

In *United States v. Freeman*, 56 F.4th 1024 (5th Cir. 2023), *cert. denied*, -- U.S. --, 144 S.Ct. 203, 217 L.Ed.2d 84 (2023), the defendant appealed his jury trial conviction for possession of a firearm by a convicted felon alleging that the evidence was insufficient to prove he possessed the firearm. Although the Government presented no direct evidence of possession, the court found that a reasonable jury could conclude that the defendant possessed the firearm. *Id*. at 1026. The court considered evidence that the defendant fled from the police by car and then on foot, that officers recovered a firearm approximately 20 feet from his flight path, that the firearm could have been thrown that distance, that its condition indicated it had not been left in the field following a major storm the previous night, and that witnesses familiar with the area testified they had never seen anyone enter the field and would not expect to find a firearm there. Based on this evidence, the court concluded that "the jury could easily infer that the firearm was only in the field for a brief time, and that [the defendant] threw it into the field before surrendering to police." *Id.*

We similarly find that the State presented sufficient evidence in the present matter for a rational jury to conclude beyond a reasonable doubt that defendant possessed the firearm. The evidence established that defendant fled from a traffic stop and ran through an alleyway with his right hand inside his pants. After defendant was apprehended, deputies immediately retraced the pursuit route. Deputy Lauland testified that the alleyway contained a single fence line on

defendant's right side where he believed an object could have been thrown. Deputy Antunez recovered a loaded firearm from the backyard on the opposite side of that fence within approximately five to ten minutes of the chase. The homeowner denied owning the firearm or knowing defendant and testified that he mowed the lawn approximately a week earlier. Deputy Lauland further testified that although there was morning dew on the grass, the slide of the firearm was dry, while the portions that had contacted the grass were wet. This testimony regarding the firearm's condition supported an inference that it had been recently placed in the backyard.

Additionally, "[a] defendant's flight and attempt to avoid apprehension are circumstances from which a trier of fact may infer a guilty conscience." *State v. Leach*, 22-194 (La. App. 5 Cir. 12/28/22), 356 So.3d 531, 543. Here, Deputy Lauland testified that he believed defendant was carrying a firearm and that defendant's decision to flee led him to believe defendant did not have the legal right to possess a firearm. Further, the possible alternative hypothesis offered by defendant, that a resident in one of the apartments threw the gun out of a second story window after observing the police activity, is not supported by the evidence and is not sufficiently reasonable that a rational juror could not have found proof of guilt beyond a reasonable doubt.

The jury obviously found the deputies' testimony to be credible and reasonably inferred that defendant discarded the firearm over the fence while fleeing. *See Salvant*, 411 So.3d at 89 ("The credibility of a witness is within the sound discretion of the trier of fact, who may accept or reject, in whole or in part, the testimony of any witness.") and ("[A] reviewing court will not re-evaluate the credibility of witnesses or re-weigh the evidence."). Viewing the evidence in the light most favorable to the State, we conclude that the evidence was sufficient for a

rational juror to find beyond a reasonable doubt that defendant possessed the firearm.

We further find that the arguments raised in defendant's *pro se* brief regarding the sufficiency of the evidence are without merit for several reasons. First, as discussed above, when addressing the sufficiency of the evidence, consideration must be given to the entirety of the evidence, including evidence alleged to be erroneously admitted, to determine whether the evidence is sufficient to support the conviction. *Hearold*, *supra*. Second, the record does not reflect that defendant objected to Deputy Lauland's testimony regarding the condition of the gun or the muting of a portion of the audio for Deputy Antunez's body-worn camera video. In order to preserve the right to seek appellate review of an alleged trial court error, the party alleging the error must state an objection contemporaneously with the occurrence of the alleged error, as well as the grounds for that objection. La. C.Cr.P. art. 841; *State v. Lane*, 20-137 (La. App. 5 Cir. 12/23/20), 309 So.3d 886, 907, *writ denied*, 21-100 (La. 4/27/21), 314 So.3d 836. As such, because defendant did not raise any contemporaneous objections to these issues, there are no rulings for this Court to review. *See State v. Bell*, 23-85 (La. App. 5 Cir. 10/31/23), 374 So.3d 986, 997.

Further, even if defense counsel had objected, we do not find that Deputy Antunez made any comments regarding the condition of the gun during the muted portion of the video contested by defendant.[2] In addition, we do not agree that

[2] Defendant contends that Deputy Antunez "mentions his inability to safely secure the firearm because it was covered in moisture from the dew on the ground" during "the 2:43 mark through the 4:00 minute mark" of his body-worn camera video. He further contends that the State muted this comment and that it is "in direct contradiction" to Deputy Lauland's testimony that the portion of the gun that did not touch the grass was dry. However, our review of the video indicates that Deputy Antunez did not make any comments about the gun during the time period noted by defendant. During the 2:43 to 4:00 minute mark, Deputy Antunez left the yard to retrieve a camera from his police car. After he returned to the yard and photographed the gun, several other officers arrived. Deputy Antunez then picked up the gun, turned it over, and placed it back in the grass to take pictures of the serial number on the other side of the gun. At the 6:18 minute mark of the video, Deputy Antunez began manipulating the slide and handle of the gun to attempt to "make it safe," and remove ammunition and "rounds" from the gun. At the 7:07 minute mark, Deputy Antunez dropped the gun and commented that it was "wet." He did not state that he could not safely secure the gun because "it was covered in moisture from dew on the ground." Further, contrary

Deputy Lauland's testimony constituted unreliable and inadmissible hearsay as Deputy Antunez also testified at trial and was available for questioning regarding his observations regarding the condition of the gun. Hearsay is excluded because the value of the statement rests on the credibility of the out-of-court asserter, who is not subject to cross-examination and other safeguards of reliability. *State v. Bello-Urbina*, 24-8 (La. App. 5 Cir. 10/30/24), 398 So.3d 782, 794. Based on the foregoing, we find defendant's *pro se* assignment of error regarding the sufficiency and alleged inadmissibility of the evidence lacks merit.

B. Rescission of Jury Trial Waiver

Defendant next argues in his *pro se* assignments of error that the trial court erred by permitting him to rescind his irrevocable jury trial waiver and proceed to trial before a jury.

The facts relevant to this issue are as follows. On July 24, 2025, the trial court held a motion hearing during which defense counsel discussed defendant's desire to waive his right to a jury trial. At the start of the hearing, counsel indicated that before the matter was set for trial, she wanted to speak with defendant and determine his decision "relative to a Judge or Jury Trial." Counsel explained that she had a motion that defendant had reviewed that morning and she could have him sign it after the hearing on defendant's motion for a preliminary examination and motion to suppress statement.

After the trial court found probable cause for the charges and denied the motion to suppress statement, counsel asked for time to speak with defendant before the court set a trial date. Defense counsel later announced that she was providing the clerk with a motion to proceed by judge trial. She further stated that she wanted to "put on the record that I told Mr. Nicholas that I didn't think that

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to defendant's arguments, Deputy Antunez's comment that the gun was wet after he had handled it is not in direct contradiction to Deputy Lauland's testimony indicating that the top of the gun was dry when it was initially located.

was the best idea, but it is a hundred percent his choice and it's what he wanted." The motion was signed by counsel and included a section titled "Affirmation" that was signed by defendant. The Affirmation stated that defendant was waiving his right to trial by jury and that he understood this meant Judge Stephen Enright would decide his guilt or innocence in lieu of a jury of his peers. Defendant indicated in the affirmation that his attorney had explained that the waiver was irrevocable, which meant that he could not later change his mind and request that his case be heard by a jury. The judge signed a written order granting the motion to waive jury trial on that same date and set a judge trial for September 18, 2025.

Prior to the start of the trial on that date, the State advised that it had filed a motion to continue because its primary witness was unavailable. The trial court then asked defense counsel if defendant still wanted a judge trial and defense counsel responded that she thought the jury waiver could not be undone, but that she would speak with the defendant after the court heard defendant's *pro se* motions. The trial court agreed that the State would have to consent to proceed with a jury trial but noted that the State was requesting a continuance of the judge trial set that day. The State indicated that it would not agree to a rescission of the jury trial waiver.

The judge then denied the State's motion for continuance. As the judge was discussing defendant's *pro se* motions, the judge noted that defendant "had something else [he] wanted to say." The following exchange then occurred:

Defendant: Yes, sir as far as with the judge trial situation.

The Court: Yeah.

Defendant: (Indiscernible)

The Court: They need you to speak up so it can be on the record, okay.

Defendant: Yes, sir. During my preliminary examination during the last court date, okay. We were discussing the motions for the judge trial.

The Court: Yeah.

Defendant: Another motion that I was asking to submit for me. Okay. Now, when we're speaking, I asked her, I didn't know he was going to actually do the preliminary examination, but she told me what I'm going to file these if I'm going to get this done, I have to do it then like so for the signing of the for the judge trial.

The Court: Yeah.

Defendant: Okay, and the preliminary examination. I would have told her, and I didn't want to do the judge trial, but she explained to me, told me that I had to do it within this time.

The Court: Yeah.

Defendant: Or I wouldn't be able to do it.

The Court: That's true. She gave you good advice in that regard. That was right. That was good advice. That's what the law provides. That's why. So, let me just ask you this, sir, what are you saying that you feel as though your election or your agreement, even though, if it was in compliance with the law, we feel, though, given the time in which you made your decision, you felt like you were pressured into making that decision.

Defendant: Yes, sir.

The Court: Okay, and then, based on that, the Court's going to allow your request for a judge trial to be withdrawn, and we just set this for a jury trial on another date. All right.

Defendant: Okay.

Afterward, counsel clarified, "So, judge, now officially the judge trial is off the table?" The court confirmed and later set the jury trial for November 3, 2025.

In his *pro se* brief, defendant argues that his July 24, 2025 waiver of a jury trial was knowing and intelligent and became irrevocable once entered and set for the initial trial date. He contends that when the case was called for trial on September 18, 2025, the court lacked authority to permit withdrawal of that waiver. He contends that appointed counsel, not defendant, first raised rescinding the waiver. Defendant further alleges that counsel pressured or misled him during a recess into withdrawing the waiver by suggesting counsel was unprepared, and defendant would be blamed for wasting judicial resources. He argues the court did not inquire into the nature and cause of the pressure. He concludes that once a properly requested waiver is invoked it may not be rescinded, that no exceptions apply, and that allowing withdrawal was invalid and requires reversal of the conviction and sentence.

The State responds that defendant failed to preserve the issue for appellate review because he did not contemporaneously object to the trial court's decision to allow him to withdraw his jury trial waiver or to proceed with a jury trial. The State emphasizes that the record reflects defendant himself requested to withdraw the waiver after telling the trial court that he had felt pressured into waiving his right to a jury trial. The State contends that the claim was not properly preserved for appeal and that no relief is warranted.

Both the Sixth Amendment to the United States Constitution and La. Const. Art. I, § 17(A) guarantee an accused the right to a trial by jury in felony and certain misdemeanor cases. La. Const. Art. I, § 17(A) provides in pertinent part: "Except in capital cases, a defendant may knowingly and intelligently waive his right to a trial by jury but no later than forty-five days prior to the trial date and the waiver shall be irrevocable." La. C.Cr.P. art. 780 similarly provides in pertinent part as follows:

> A. A defendant charged with an offense other than one punishable by death may knowingly and intelligently waive a trial by jury and elect to be tried by the judge.
>
> * * *
>
> D. A waiver of trial by jury is irrevocable and cannot be withdrawn by the defendant.

As explained above, La. C.Cr.P. art. 841 provides that "[a]n irregularity or error cannot be availed of after verdict unless it was objected to at the time of occurrence." This requirement serves the fundamental purpose of allowing the trial court the opportunity to rule on and prevent or cure error. *State v. Herrod*, 412 So.2d 564, 566 (La. 1982).

While a jury trial waiver is irrevocable, because defendant did not object to the rescission of his jury waiver, we find that he may not now challenge his conviction on these grounds. Further, it is evident from defendant's direct discussion with the trial court judge that he personally wanted to withdraw his waiver and proceed to trial before a jury. Because defendant affirmatively sought and obtained the very relief he requested in the trial court, namely, withdrawal of his jury trial waiver, defendant should not now be permitted to resort on appeal to an error that he instigated in the trial court.

In addition, "there is no explicit or implicit federal or state constitutional right to demand trial before a judge sitting alone." *State v. Bazile,* 12-2243 (La. 5/7/13), 144 So.3d 719, 729. And the Louisiana legislature did not render a jury waiver irrevocable to protect rights of defendants in criminal cases. Rather, in 2010, the legislature, after approval by voters, amended La. Const. Art. I, § 17 to set time limitations and to provide that a criminal defendant's jury trial waiver is irrevocable in an effort to prevent abusive practices by defendants in criminal cases who waive jury trials in order to disrupt trial schedules. *Id*. at 732. Thus, defendant should not have the opportunity of gambling on a favorable verdict from

a jury trial and then resort on appeal to an error that could have been corrected in the trial court.

Accordingly, this assignment of error lacks merit.

Error Patent Review

Finally, we pretermit review of defendant's final *pro se* assignment of error regarding his alleged excessive sentence based on the findings of our error patent review regarding the twenty-four-hour delay mandated by La. C.Cr.P. art. 873.[3]

At the time the trial court sentenced defendant, La. C.Cr.P. art. 873 required a twenty-four-hour delay in sentencing after the denial of a motion for new trial or in arrest of judgment, unless the defendant expressly waives the delay. *State v. Key*, 23-167 (La. App. 5 Cir. 12/27/23), 379 So.3d 96, 125.[4] Although Article 873 does not explicitly require a twenty-four-hour delay in sentencing after a motion for a post-verdict judgment of acquittal has been denied, this Court has applied the twenty-four-hour delay in Article 873 to motions for post-verdict judgment of acquittal. *State v. Perez-Espinosa*, 19-601 (La. App. 5 Cir. 9/22/20), 302 So.3d 598, 603.

When the defendant challenges the sentence imposed and the imposed sentence is not mandatory, the failure to observe the twenty-four-hour delay mandated by law cannot be considered harmless error. *State v. Granado-Gonzalez*, 23-387 (La. App. 5 Cir. 7/3/24), 392 So.3d 909, 918, *writ denied*, 24-905 (La. 11/20/24), 396 So.3d 66. Generally, when a defendant challenges a non-mandatory sentence and the delay is not waived, the defendant's sentence must be vacated and the matter remanded for resentencing. *Id.* The Louisiana Supreme Court stated in *State v. Kisack,* 16-797 (La. 10/18/17), 236 So.3d 1201, 1205-06*,*

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[3] The record was reviewed for errors patent according to La. C.Cr.P. art. 920; *State v. Oliveaux*, 312 So.2d 337 (La. 1975); and *State v. Weiland*, 556 So.2d 175 (La. App. 5 Cir. 1990).

[4] In 2026, the Louisiana legislature amended Article 873 to remove the twenty-four-hour delay for sentencing after a motion for new trial or in arrest of judgment is overruled. *See* 2026 La. Acts No. 634, §1.

cert. denied, 583 U.S. 1160, 138 S.Ct. 1175, 200 L.Ed.2d 322 (2018), that a defendant's pronouncement of his readiness for sentencing may operate as an express waiver of the twenty-four-hour sentencing delay, but a defendant's mere participation in the sentencing hearing is insufficient to constitute an express waiver as required by La. C.Cr.P. art. 873. *See also State v. Johnson*, 25-8 (La. App. 5 Cir. 10/29/25), 426 So.3d 166, 172; *State v. Loggins*, 23-519 (La. App. 5 Cir. 10/30/24), 397 So.3d 1265, 1288.

In the present matter, defendant did not expressly waive the mandatory statutory sentencing delay. Immediately after the trial court denied defendant's post-trial motions, defense counsel stated, "Please note our objection, Judge," and the court then imposed defendant's sentence. Thus, the record contains no indication that defendant expressly waived sentencing delays after his motions were denied. Defendant's sentence in this case was not mandatory and he challenges the sentence imposed. Therefore, we vacate the sentence imposed and remand the matter to the trial court for resentencing.

Decree

For the foregoing reasons, we affirm defendant's conviction, vacate his sentence, and remand for resentencing.

CONVICTION AFFIRMED; SENTENCE VACATED; REMANDED FOR RESENTENCING

SUSAN M. CHEHARDY
CHIEF JUDGE

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NOTICE OF JUDGMENT AND CERTIFICATE OF DELIVERY

I CERTIFY THAT A COPY OF THE OPINION IN THE BELOW-NUMBERED MATTER HAS BEEN DELIVERED IN ACCORDANCE WITH **UNIFORM RULES - COURT OF APPEAL, RULE 2-16.4 AND 2-16.5** THIS DAY **NOVEMBER 4, 2026** TO THE TRIAL JUDGE, CLERK OF COURT, COUNSEL OF RECORD AND ALL PARTIES NOT REPRESENTED BY COUNSEL, AS LISTED BELOW:

Curtis B. Pursell

CURTIS B. PURSELL
CLERK OF COURT

26-KA-46

E-NOTIFIED
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THOMAS J. BUTLER (APPELLEE)
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