

**IN THE COURT OF APPEALS
FIRST APPELLATE DISTRICT OF OHIO
HAMILTON COUNTY, OHIO**

STATE OF OHIO,	:	APPEAL NO. C-170642
Plaintiff-Appellee,	:	TRIAL NO. B-1605995
vs.	:	<i>JUDGMENT ENTRY.</i>
KERRY GRIMES,	:	
Defendant-Appellant.	:	

We consider this appeal on the accelerated calendar, and this judgment entry is not an opinion of the court. *See* Rep.Op.R. 3.1; App.R. 11.1(E); 1st Dist. Loc.R. 11.1.1.

Defendant-appellant Kerry Grimes appeals his convictions, following a bench trial, for two counts of felonious assault. The trial court sentenced Grimes to two years of community control on each count with the condition that Grimes be subject to intensive probation supervision.

In a single assignment of error, Grimes argues the trial court lacked jurisdiction to convict him when his written jury waiver was not time-stamped and made a part of the record before his trial.

R.C. 2945.05 requires that a waiver of a jury trial must be written, signed by the defendant, filed, made a part of the record, and made in open court. *State v. Lomax*, 114 Ohio St.3d 350, 2007-Ohio-4277, 872 N.E.2d 279, ¶ 9. Absent strict compliance with the requirements in R.C. 2945.05, the trial court lacks jurisdiction

to try the defendant without a jury. *State v. Pless*, 74 Ohio St.3d 333, 658 N.E.2d 766 (1996), paragraph one of the syllabus; *State v. Jackson*, 1st Dist. Hamilton No. C-160306, 2017-Ohio-917, ¶ 3-4.

“The requirement that a jury waiver form ‘be filed in said cause and made a part thereof means that the form must be time-stamped and included in the record.’ ” *State v. Thomas*, 97 Ohio St.3d 309, 2002-Ohio-6624, 779 N.E.2d 1017, ¶ 29, quoting *State v. Gipson*, 80 Ohio St.3d 626, 632, 687 N.E.2d 750 (1998). Neither R.C. 2945.05 nor the Ohio Supreme Court, however, requires that the written jury trial waiver be filed and placed in the record prior to the commencement of the bench trial. See *State v. Johnson*, 1st Dist. Hamilton Nos. C-081195 and C-081196, 2009-Ohio-6800, ¶ 79; *State v. Sanders*, 188 Ohio App.3d 452, 2010-Ohio-3433, 935 N.E.2d 905, ¶ 16 (10th Dist.); *State v. Pace*, 8th Dist. Cuyahoga No. 84996, 2005-Ohio-3586, ¶ 22.

Thus, this court has held that strict compliance with R.C. 2945.05 occurs when the waiver takes place before the trial, and that waiver is filed, time-stamped, and contained in the record. See *State v. Criswell*, 1st Dist. Hamilton Nos. C-000222, C-000229, C-000230, 2001 WL 300727, *3 (Mar. 16, 2001); *State v. Goldberg*, 1st Dist. Hamilton No. C-990677, 2000 WL 1886398, *1 (Dec. 29, 2000); *State v. Wallace*, 1st Dist. Hamilton No. C-980314, 1999 WL 1127289, *2 (Dec. 10, 1999) (holding valid a jury waiver that had been time-stamped two years after the bench trial had been held).

The record reflects that on October 4, 2017, before the start of Grimes’s bench trial, Grimes executed a written jury waiver. The trial court discussed the waiver in open court with Grimes. Grimes told the court that he understood the effect of the

waiver. The trial court then accepted the waiver. The waiver, which was dated October 4, 2017, was signed by Grimes, defense counsel, and the trial court and then placed in the case file, but it was not time-stamped until June 14, 2018, nearly eight months after Grimes's bench trial and the subsequent judgment of conviction. The state subsequently moved, pursuant to App.R. 9(E), to supplement the record on appeal to include the June 14, 2018 time-stamped jury waiver. We granted the state's motion and the waiver was made part of the record pursuant to a supplemental transcript.

Based on our precedent, we hold that the trial court had jurisdiction to try Grimes without a jury where, despite the failure to time-stamp the written jury waiver prior to trial, the record reflects that the written jury waiver was made in open court, was executed and signed by the defendant, his counsel, and the trial court prior to trial, was placed in the case file, was time-stamped after the bench trial, and was made a part of the record pursuant to App.R. 9(E). We, therefore, overrule the sole assignment of error and affirm the judgment of the trial court.

Further, a certified copy of this judgment entry shall constitute the mandate, which shall be sent to the trial court under App.R. 27. Costs shall be taxed under App.R. 24.

MOCK, P.J., MYERS and DETERS, JJ.

To the clerk:

Enter upon the journal of the court on August 24, 2018
per order of the court _____.
Presiding Judge