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Minn. Stat. § 480A.08, subd. 3 (2008).*

**STATE OF MINNESOTA
IN COURT OF APPEALS
A08-0165**

State of Minnesota,
Respondent,

vs.

Andre Jaqae Wheeler,
Appellant.

**Filed April 21, 2009
Reversed and remanded
Klaphake, Judge**

Hennepin County District Court
File No. 27-CR-07030239

Lori Swanson, Attorney General, 1800 Bremer Tower, 445 Minnesota Street, St. Paul, MN 55101-2134; and

Michael O. Freeman, Hennepin County Attorney, Thomas A. Weist, Assistant County Attorney, C-2000 Government Center, 300 South Sixth Street, Minneapolis, MN 55487 (for respondent)

Lawrence Hammerling, Chief Appellate Public Defender, Suzanne M. Senecal-Hill, Assistant State Public Defender, 540 Fairview Avenue North, Suite 300, St. Paul, MN 55104 (for appellant)

Considered and decided by Klaphake, Presiding Judge; Peterson, Judge; and Bjorkman, Judge.

UNPUBLISHED OPINION

KLAPHAKE, Judge

Appellant Andre Jaqae Wheeler was convicted by a jury of possession of a firearm by an ineligible person in violation of Minn. Stat. § 624.713, subd. 1(b) (2006). Appellant claims the district court erred by (1) failing to have him personally waive his right to a jury trial orally or in writing with respect to the element of being an ineligible person and accepting only defense counsel's statement that appellant would so stipulate, and (2) permitting introduction of *Spreigl* evidence of a prior similar conviction. Because failure to obtain appellant's personal waiver of his fundamental right to a jury trial was a violation of Minn. R. Civ. P. 26.01, subd. 1(2)(a), we reverse and remand for further proceedings.

DECISION

Appellant argues that the district court erred here by failing to obtain his personal waiver of the element of being an ineligible person and instead merely accepting defense counsel's stipulation. We agree.

The United States and Minnesota Constitutions each guarantee the right to a jury trial in a criminal case. U.S. Const. amend. VI; Minn. Const. art. I, § 6; *see also* Minn. R. Crim. P. 26.01, subd. 1. A defendant may waive a jury trial if, after instruction by the district court and an opportunity to consult with defense counsel, the defendant personally waives the right "in writing or orally upon the record in open court." Minn. R. Crim. P. 26.01, subd. 1(2)(a). A defendant must make an oral or written waiver based on the above procedure, in order to legally stipulate to an element of an offense, *State v.*

Wright, 679 N.W.2d 186, 191 (Minn. App. 2004), *review denied* (Minn. June 29, 2004), or to stipulate that the defendant has prior qualifying convictions to establish a felony-level offense. *State v. Hinton*, 702 N.W.2d 278, 281-82 (Minn. App. 2005), *review denied* (Minn. Oct. 26, 2005). This waiver cannot be delegated to defendant's counsel. *Wright*, 679 N.W.2d at 191. In the present case, it is undisputed that appellant never personally waived his right or consented to the stipulation either orally or in writing.

In *State v. Antrim*, ___ N.W.2d ___, 2009 WL 910947 (Minn. App. Apr. 7, 2009), this court reiterated that district courts and prosecutors must strictly comply with the waiver requirements of Minn. R. Crim. P. 26.01. *Id.* at ___, 2009 WL 910947 at *2-3. We cited *State v. Knoll*, 739 N.W.2d 919, 921-22 (Minn. App. 2007), in which we reversed and remanded a conviction where the record did not reflect a waiver of rights as required by Minn. R. Crim. P. 26.01, subd. 3. In *Antrim*, we concluded that the rights listed in Minn. R. Crim. P. 26.01, are *fundamental*, and that the defendant's waiver must be “personal, explicit, and in accordance with rule 26.01.” ___ N.W.2d at ___, 2009 WL 910947 at *3 (quoting *State v. Halseth*, 653 N.W.2d 782, 786 (Minn. App. 2002)). The right to a jury trial on every element of a charged offense is guaranteed in the state and federal constitutions and is a fundamental right that requires personal waiver in writing or orally on the record. Because Minn. R. Crim. P. 26.01, subd. 1(2)(a) requires that a defendant personally waive on the record or in writing the right to a jury trial on the issue of guilt, even if the issue of guilt pertains only to a single element of the charged offense, and such a waiver was not obtained here, appellant's conviction must be reversed.

Appellant also contends the district court abused its discretion by allowing the prosecutor, over defense counsel's objection, to introduce as *Spreigl* evidence, appellant's prior conviction of a similar crime in 2005. We decline to address this issue in light of our decision above.

DECISION

Because the district court did not obtain a valid personal waiver from appellant with respect to his right to a jury trial as required by Minn. R. Civ. P. 26.01, subd. 1(2)(a), his conviction is reversed, and the case is remanded for further proceedings.

Reversed and remanded.