



The right of trial by jury shall be and remain inviolate, except in criminal cases wherein punishment for the offense charged is by fine only, not exceeding One Thousand Five Hundred Dollars (\$1,500.00). Okla. Const. art. II, § 19. The crime of Domestic Abuse – Assault and Battery is punishable by imprisonment in the county jail for not more than one (1) year, or by a fine not exceeding Five Thousand Dollars (\$5,000.00), or by both such fine and imprisonment. 21 O.S.2011, § 644(C). Appellant was thus entitled to a jury trial.

An accused may waive his constitutional right to a jury trial, but only if there is a clear showing that such waiver was competently, knowingly and intelligently given. *Valega v. City of Oklahoma City*, 1988 OK CR 101, ¶ 5, 755 P.2d 118, 119. A valid waiver of a jury trial requires the consent of the accused, the prosecutor and the trial judge. *Id.* A record showing an intelligent, competent and knowing waiver of a jury trial is mandatory and anything less is not a waiver. *Id.*

Both the State and Appellant agree that the record in this case is silent and does not reflect Appellant's waiver of his right to a jury trial. The Judgment and Sentence in this case states that Appellant has "[b]een found guilty by Judge after waiver of jury trial", but this appeal record does not contain Appellant's waiver of his right to a jury trial. Therefore, Appellant's Judgment and Sentence must be reversed and remanded for a new trial.

Appellant's other propositions of error in this appeal are rendered moot by the decision on his first proposition and need not be addressed.

## **DECISION**

The Judgment and Sentence of the District Court of LeFlore County in Case No. CM-2015-298 is **REVERSED** and **REMANDED** for a new trial. Pursuant to Rule 3.15, *Rules of the Oklahoma Court of Criminal Appeals*, Title 22, Ch.18, App. (2017), the **MANDATE** is **ORDERED** issued upon the filing of this decision.

AN APPEAL FROM THE DISTRICT COURT OF LEFLORE COUNTY  
THE HONORABLE JENNIFER H. MCBEE, SPECIAL JUDGE

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**OPINION BY:** LEWIS, V.P.J.  
LUMPKIN, P.J.: Concurs  
A. JOHNSON, J.: Not Participating  
HUDSON, J.: Concurs

RC/F

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