

FIRST DISTRICT COURT OF APPEAL
STATE OF FLORIDA

No. 1D2025-1997

DERRICK LAMAR WALKER,

Appellant,

v.

STATE OF FLORIDA,

Appellee.

On appeal from the County Court for Alachua County.
Kristine J. Van Vorst, Judge.

October 14, 2026

PER CURIAM.

Derrick Lamar Walker appeals his conviction for trespass on property other than a structure or conveyance, in violation of section 810.09(1)(a)1., Florida Statutes (2024). He argues that the trial court's denial of his motion for judgment of acquittal must be reversed because the State's evidence was insufficient to support the conviction and that his oral waiver of his right to a jury trial was invalid. Finding no error, we affirm.

The trial court correctly denied the judgment of acquittal based on the trial testimony of the operations manager of the property in question and the Gainesville Police Department officer who notified Walker directly that he could not return to the property. The evidence at trial showed that Walker returned to the property twice after being warned against entering the

property by the police officer at the request of the operations manager of the property.

Addressing Walker's challenge to the validity of his oral waiver of his right to a jury trial, we find no error in the trial court's granting Walker his request for a bench trial. We also find that any error was invited error by Walker.

The right to a jury trial is a constitutional right that can be waived in writing or by oral waiver "after a proper colloquy with the trial court." *Torres v. State*, 43 So. 3d 831, 833 (Fla. 1st DCA 2010). As this court held, "mere failure to object to a bench trial does not constitute a valid waiver of the right to trial by jury, even where the defendant remains silent following counsel's oral waiver purportedly on behalf of the defendant." *Id.* (quoting *Sansom v. State*, 642 So. 2d 631, 632 (Fla. 1st DCA 1994)).

But the record does not show a mere failure to object to a nonjury trial by Walker. He represented himself after a valid *Faretta** hearing, during which he inquired if he could request a bench trial. Included in the trial court's colloquy about Walker's knowing, intelligent, and voluntary waiver of his right to counsel was the court's discussion of the differences between a jury trial and a bench trial. During two subsequent pre-trial hearings, the court inquired if Walker continued to request a bench trial. And Walker confirmed that was his request.

Unlike in *Sansom v. State*, this record is not a case of Walker's silence after defense counsel's oral waiver of a jury trial on his behalf. Walker's personal request to discharge counsel and represent himself was granted, and he does not challenge the court's allowing him to proceed pro se. He personally requested and confirmed on the record under oath during two subsequent hearings that he desired a bench trial. The court's colloquy during the *Faretta* hearing pertaining to Walker's self-representation was sufficient as a colloquy supporting his voluntary, intelligent, and knowing oral waiver of a jury trial as well. See *Westberry v. State*, 239 So. 3d 186, 189 (Fla. 3d DCA 2018) (finding valid oral waiver of right to jury trial; stipulation by counsel to bench trial, court's

* *Faretta v. California*, 422 U.S. 806 (1975).

colloquy on counsel's advice, and the defendant's responses that he understood his right to a trial by jury constituted knowing, voluntary, and intelligent waiver); *Zinnerman v. State*, 985 So. 2d 672, 673–74 (Fla. 2d DCA 2008) (en banc) (finding valid oral waiver of jury trial during pretrial hearing by the defendant after he personally requested and repeated twice after court's discussion of its factfinder role in bench trial).

Furthermore, even if the trial court's colloquy of Walker regarding his waiver of his right to a jury trial had been erroneous, such error was invited. Walker represented himself at trial but is represented by counsel on appeal. "Under the invited-error doctrine, a party may not make or invite error at trial and then take advantage of the error on appeal." *Czubak v. State*, 570 So. 2d 925, 928 (Fla. 1990). Walker's representation by counsel on appeal does not avoid application of the invited error doctrine to his self-representation at trial.

As we have held, counsel may not "sandbag [a] trial judge by requesting and approving [something] they know ... will result in automatic reversal, if given." *Anderson v. State*, 93 So. 3d 1201, 1206 (Fla. 1st DCA 2012) (en banc) (alteration in original) (citations omitted). Here, the trial court explained to Walker before approving his request to represent himself, that Walker would be held to the same standard as an attorney after his waiver of defense counsel and decision to proceed pro se. And the invited-error doctrine applies even to invited fundamental error. *Johnson v. State*, 133 So. 3d 602, 604 (Fla. 1st DCA 2014) *disapproved on other grounds*, *State v. Tuttle*, 177 So. 3d 1246, 1253 (Fla. 2015).

The record on appeal demonstrates that any error in the trial court's colloquy regarding Walker's request for a bench trial and waiver of his right to a jury trial was invited. And the record establishes that Walker's self-representation and his repeated confirmations that he wanted a bench trial, not a jury trial, resulted from his knowing, intelligent, and voluntary waiver of his rights.

AFFIRMED.

ROBERTS, BILBREY, and NORDBY, JJ., concur.

***Not final until disposition of any timely and
authorized motion under Fla. R. App. P. 9.330 or
9.331.***

Jessica J. Yeary, Public Defender, and Jasmine Dixon, Assistant
Public Defender, Tallahassee, for Appellant.

James Uthmeier, Attorney General, and Amanda A. Uwaibi,
Assistant Attorney General, Tallahassee, for Appellee.