

No. 24-

IN THE
Supreme Court of the United States

SULIANG BU,

Petitioner,

v.

STATE OF MISSOURI,

Respondent.

**ON PETITION FOR A WRIT OF CERTIORARI TO THE
MISSOURI COURT OF APPEALS, WESTERN DISTRICT**

PETITION FOR A WRIT OF CERTIORARI

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QUESTION PRESENTED

Petitioner, a Chinese national, appeals from his conviction for three sexual offense counts and sentence of ten years in prison.

Petitioner purported to waive his right to a jury trial. During the waiver colloquy, the trial court never determined whether Petitioner understood the jury would be chosen from a cross-section of the community, he could participate in its selection, and all jurors would have to agree beyond a reasonable doubt to convict him.

The Missouri Court of Appeals held Petitioner's waiver was nonetheless sufficiently knowing, voluntary, and intelligent to satisfy the Sixth and Fourteenth Amendments. The question presented is:

Whether, in conflict with numerous state and federal courts, including every circuit to have analyzed this issue, the Missouri Court of Appeals erred in holding that a constitutionally sufficient waiver of the right to a jury trial does not require the record to show the defendant understood all the fundamental attributes of that right, including that the jury would be chosen from a cross-section of the community, he could participate in its selection, and all jurors would have to agree beyond a reasonable doubt to convict.

RELATED CASES

- *State v. Bu*, No. 20BA-CR03646-01, Circuit Court of Boone County, Missouri. Judgment entered Aug. 8, 2023.
- *State v. Bu*, No. WD86487, Missouri Court of Appeals, Western District. Judgment entered Nov. 12, 2024.
- *State v. Bu*, No. SC100917, Supreme Court of Missouri. Judgment entered Mar. 4, 2025.

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PETITION FOR A WRIT OF CERTIORARI

Suliang Bu respectfully petitions for a writ of certiorari to review the judgment of the Missouri Court of Appeals, Western District, in this case.

OPINIONS BELOW

The final opinion of the Missouri Court of Appeals (App., *infra*, 1a-19a) is reported at 705 S.W.3d 610. The Missouri Court of Appeals' order denying rehearing or transfer to the Supreme Court of Missouri (App., *infra*, 20a-21a) is unreported. The Supreme Court of Missouri's order denying transfer from the Missouri Court of Appeals (App., *infra*, 29a-30a) is unreported. The trial court's judgment (App., *infra*, 22a-27a) is unreported.

JURISDICTION

The Missouri Court of Appeals entered its judgment on November 12, 2024 (App., *infra*, 1a). The Missouri Court of Appeals denied rehearing and transfer to the Supreme Court of Missouri on December 24, 2024 (App., *infra*, 20a). The Supreme Court of Missouri denied transfer on March 4, 2025 (App., *infra*, 29a). The jurisdiction of this Court is invoked under 28 U.S.C. § 1257(a).

CONSTITUTIONAL PROVISIONS INVOLVED

The Sixth Amendment to the United States Constitution provides in relevant part, “In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed....”

The Fourteenth Amendment to the United States Constitution provides in relevant part, “No State shall ... deprive any person of life, liberty, or property, without due process of law.”

INTRODUCTION

A waiver of a constitutional right must be intelligent, which means the defendant must have full awareness of both the nature of the right being abandoned and the consequences of the decision to abandon it.

Courts throughout the country—including every circuit to have analyzed this question—have held that the fundamental nature of the right to a jury trial the Sixth Amendment guarantees includes that the jury is chosen from a cross-section of the community, the defendant may participate in its selection, and all jurors would have to agree beyond a reasonable doubt to convict. So, these courts have held, to waive the right to a jury trial, the record must show the defendant was informed of these fundamental attributes.

Here, however, the Missouri Court of Appeals departed from this nationwide consensus and held instead that a jury trial waiver was sufficiently intelligent where the defendant was not informed of any of this. This Court should issue its writ of certiorari to clarify which approach to the Sixth Amendment is correct.

STATEMENT

A. Background and charges

Suliang Bu is a native of the People’s Republic of China who had been in the United States for nine years at the time of trial below, having received a Ph.D. in computer science from the University of Missouri (App., *infra*, 2a, 15a, 18a). He was enrolled as a post-graduate student there when, in 2020, the State of Missouri charged him in the Circuit Court of Boone County, Missouri, with three sexual offenses it alleged he committed against another Chinese-nationality student (App., *infra*, 2a).

B. Jury trial waiver and colloquy

One week before the scheduled jury trial, Mr. Bu’s counsel filed a written jury trial waiver that both he and Mr. Bu had signed (App., *infra*, 2a). A copy is in the appendix at page 40a. It said that Mr. Bu, “with a full understanding of his right to a jury trial including but not limited to requiring a unanimous verdict to convict, hereby waives his right to a jury trial and requests that the Court decide the issues of fact” (App., *infra*, 40a).

At a hearing two months later after a continuance (App., *infra*, 2a), the trial court engaged in a colloquy with Mr. Bu about the waiver. App., *infra*, 3a). A copy is included in full in the appendix at pages 31a-39a.

The trial court had appointed two Chinese-language interpreters to assist Mr. Bu in the proceedings, one an “active interpreter” responsible for interpreting simultaneously and the other a “passive interpreter” to

assist Mr. Bu in speaking with his counsel (App., *infra*, 3a). Mr. Bu then was provided a headset to listen to the two interpreters (App., *infra*, 3a).

In the colloquy with the trial court, however, Mr. Bu engaged with the trial court and gave his responses in English (App., *infra*, 32a). All of his responses to the court's questions about what he understood were in the affirmative (App., *infra*, 32a-38a). The court told him, and he stated he understood, that:

- “[Y]ou do have the absolute right to have a jury of your peers, it would be 12 people from this community, decide the issues of fact in this case”;
- “[T]hose 12 people would be called upon to decide whether you were guilty or not guilty after hearing all of the evidence and having received the instructions from the Court regarding the matters of law”;
- Mr. Bu “would have the right to jury sentencing as well if he was convicted and wanted to proceed that way”;
- “[I]f you were found guilty by that jury, because you have no prior convictions of any sort, you would have the absolute right to have the jury decide what punishment to impose upon you”;
- “[B]y waiving your right to trial by jury, there will not be 12 people sitting to decide your guilt—whether you're guilty or not guilty? All of the issues of fact will be turned over to me, the judge, to decide factually what occurred in this case”;

- “[I]nstead of having 12 people from our community decide the issue, by waiving your right to trial by jury, you’re leaving it up to me, the judge, to make that determination as to whether you’re guilty or not guilty”;
- “You are also leaving it up to me, the judge, to make a determination as to what punishment to impose if I were to find you guilty”;
- “Everything else will proceed as if a jury were here, except I will be sitting as the finder of fact, and there won’t be a jury in the courtroom. But there will be a presentation of evidence by the State. Your attorney will have the opportunity to cross-examine, that is ask questions of any witnesses offered by the State. Your attorney will also have the opportunity to put on any evidence he may wish to put on, including—and we’ll talk about this at the appropriate time—you may wish to testify in this case, or you may not wish to testify in this case. And that’s your right to make that decision as to what you do”; and
- “the Court is not going to hold it against you that you did not testify if that’s a decision that you make?”

At no point during the colloquy did the trial court ask whether Mr. Bu understood the jury would be chosen from a cross-section of the community, that he could participate in its selection, or that all jurors would have to agree beyond a reasonable doubt to convict him (App., *infra*, 31a-39a). At the end of the colloquy, the trial court found Mr. Bu “has made a knowing, voluntary, and intelligent waiver of his right to trial by jury” (App., *infra*, 39a).

C. Conviction and sentence

The case then proceeded to a three-day bench trial, after which the court found Mr. Bu guilty as charged (App., *infra*, 8a-9a). Later, at sentencing, when the court permitted Mr. Bu to make a statement, he detailed several complaints he had about his trial, including that “until now, I learned that during a jury trial, all 12 jurors have to agree that I’m guilty before I can be convicted. Before that, I thought as long as the majority of the jurors agree, then I will be convicted.” The court sentenced Mr. Bu to ten years in prison (App., *infra*, 10a).

D. Missouri Court of Appeals’ decision

Mr. Bu appealed to the Missouri Court of Appeals, Western District. He argued the trial court plainly erred in accepting his jury trial waiver because the record failed to show it was sufficiently intelligent to be valid under the Sixth and Fourteenth Amendments (App., *infra*, 11a-12a).

While Mr. Bu also argued that his limited English proficiency impacted this (App., *infra*, 14a), his point was that there is no evidence in the record that he understood the fundamental attributes of a jury trial he was waiving. He pointed to state and federal decisions nationwide in which courts held that at the very least the record must show the defendant was informed that the jury is chosen from a fair cross-section of the community, he may participate in the jury’s selection, and the court would instruct the jury to presume him innocent and convict only if it unanimously concluded on the State’s burden beyond a reasonable doubt (App., *infra*, 16a). He showed that nowhere in the written waiver or the colloquy with

the trial court was he provided with any information of these fundamental attributes of the right to a jury trial (App., *infra*, 11a).

The Missouri Court of Appeals affirmed. It cited a prior Missouri decision holding a defendant need not “be informed of the ‘specific detailed consequences’ of invoking the waiver” of a jury trial (App., *infra*, 12a) (quoting *State v. Emmanuel*, 667 S.W.3d 664, 669 (Mo. Ct. App. W.D. 2023) (quoting *United States v. Ruiz*, 536 U.S. 622, 629 (2002)) (emphasis removed). It held Mr. Bu “understood he was entitled to have his guilt or innocence determined by a jury of twelve people and that by waiving that right, the decision of his guilt or innocence would be decided via bench trial,” which was sufficient (App., *infra*, 13a).

The Missouri Court of Appeals also held that because Mr. Bu had two interpreters, is highly educated, and his English proficiency was not so limited (App., *infra*, 14a-15a), and his written waiver stated he understood a jury verdict would have to be unanimous (App., *infra*, 14a n.3), he “had the necessary skillset to ask for clarification on points of law related to his waiver of jury trial” (App., *infra*, 15a). It concluded therefore that “[h]is waiver was knowing, voluntary, intelligent, and thus, constitutionally sufficient” (App., *infra*, 18a).

REASONS FOR GRANTING THE PETITION

The Missouri Court of Appeals’ decision affirming Mr. Bu’s waiver of his jury trial as sufficiently intelligent to comport with the Constitution departs from a nationwide consensus of state and federal courts—including every circuit to have decided the issue—that under this Court’s

framework from *Johnson v. Zerbst*, 304 U.S. 458, 468-69 (1938), and *Adams v. United States ex rel. McCann*, 317 U.S. 269, 278 (1942), far more information about the right Mr. Bu was waiving was required than he was given to ensure he understood the fundamental nature of the right he was giving up when he waived a jury trial.

Relying on a prior Missouri decision and not addressing most of the decisions from other jurisdictions Mr. Bu cited, the Missouri Court of Appeals held a jury trial waiver is sufficiently intelligent where the record shows the defendant “understood he was entitled to have his guilt or innocence determined by a jury of twelve people and that by waiving that right, the decision of his guilt or innocence would be decided via bench trial” (App., *infra*, 18a).

But state and federal courts nationwide have held that simply informing the defendant that he has a right to a jury of twelve people and otherwise the court would decide the case is insufficient for an intelligent waiver. Instead, recognizing that a defendant cannot intelligently waive a right without understanding the fundamental attributes of the nature of that right, they hold that at a minimum, the record must show the defendant understood the jury would be chosen from a cross-section of the community, he could participate in its selection, and all jurors would have to agree beyond a reasonable doubt to convict. The record shows Mr. Bu was never informed of any of that. In other states and federal jurisdictions, the trial court’s acceptance of Mr. Bu’s waiver would be reversed.

This Court should issue its writ of certiorari to reexamine the law of the “intelligence” element of jury

trial waivers and determine whether the consensus approach nationwide or Missouri's outlier approach is correct.

- A. This Court has held that to meet the Sixth and Fourteenth Amendments, a waiver of the right to a jury trial must be intelligent, meaning that it must be made with a full awareness of both the nature of the right being abandoned and the consequences of the decision to abandon it.**

The Sixth Amendment, incorporated to the States through the Fourteenth Amendment, guarantees criminal defendants the right to be fairly tried “by an impartial jury” and not be convicted unless and until a jury arrives at a unanimous verdict. *Ramos v. Louisiana*, 590 U.S. 83, 90-93 (2020).

Beginning in *Patton v. United States*, 281 U.S. 276, 298 (1930), however, this Court held this “confer[s] a right upon the accused which he may forego at his election.” The Court noted in *Patton* that waiving this right still required, among other things, “the express and intelligent consent of the defendant.” *Id.* at 312. Later, in *Adams v. United States ex rel. McCann*, 317 U.S. 269, 277-78 (1942), drawing on the “intelligent and competent” standard for waiver of the Sixth Amendment right to counsel announced in *Johnson v. Zerbst*, 304 U.S. 458, 468-69 (1938), the Court held that to be constitutionally sufficient, the waiver of a jury trial equally requires the defendant’s “express, intelligent consent,” which it described as “an intelligent, competent, self-protecting waiver of jury trial. . . .

In the years since, this Court clarified that an “intelligent” waiver is one “made with a full awareness of both the nature of the right being abandoned and the consequences of the decision to abandon it.” *Moran v. Burbine*, 475 U.S. 412, 421 (1986). At the same time, the basic waiver standard requires courts to “indulge every reasonable presumption *against* waiver” of fundamental constitutional rights.” *Johnson*, 304 U.S. at 464 (emphasis added).

Below (App., *infra*, 12a), the Missouri Court of Appeals quoted a prior decision of its own, *State v. Emmanuel*, 667 S.W.3d 664, 669 (Mo. Ct. App. W.D. 2023), which relied on this Court in *United States v. Ruiz*, 536 U.S. 622, 629 (2002), for the proposition that “federal law” does not “require that a defendant be informed of the ‘*specific detailed* consequences’ of invoking the waiver.” It quoted this Court in *Ruiz* as holding that “A defendant, for example, may waive … his right to a jury trial … even if the defendant does not know … who will likely serve on the jury.” *Id.* (quoting *Ruiz*, 536 U.S. at 629).

The Missouri court misused this Court’s decision in *Ruiz*, which did not decide any question related to the waiver of a jury trial. Rather, the question in *Ruiz* was “whether the Constitution requires th[e] preguilty plea disclosure of impeachment information.” 536 U.S. at 629. While discussing general standards governing waivers of constitutional rights, the Court remarked that “the law ordinarily considers a waiver knowing, intelligent, and sufficiently aware if the defendant fully understands the nature of the right and how it would likely apply *in general* in the circumstances—even though the defendant may not know the *specific detailed* consequences of invoking it.” *Id.*

(emphasis in original). The Court gave the example that “a defendant . . . may waive his right to . . . a jury trial . . . even if the defendant does not know . . . who will likely serve on the jury[.]” *Id.* at 629-30.

Ruiz does not control here in the way the Missouri Court of Appeals suggested. This case is not about “the *specific detailed consequences*” of that waiver. *Id.* at 629 (emphasis in original). Rather, this case is about ensuring whether a defendant first “fully under[stood] the nature of the right. . . .” *Id.* The Court in *Ruiz* made plain the distinction between understanding the nature of the right and the consequences of waiving it: a defendant may not know in advance “who will likely serve on the jury” because that knowledge is not encompassed in the “nature of the right.” *Id.* at 629-30. Rather, the precise makeup of a defendant’s jury is instead merely a consequence of exercising one’s right to a jury trial.

As the Court in *Ruiz* itself recognized, a “knowing, intelligent, and sufficiently aware” waiver of a constitutional right requires that “the defendant *fully understands the nature of the right. . . .*” *Id.* at 629 (emphasis added). The question here is what is the full nature of the right to a jury trial a defendant must be shown to understand before he can be deemed to have waived it intelligently.

B. The decision below holding that a waiver of the right to a jury trial is intelligent when the record does not show the defendant understood all its fundamental attributes, including that the jury would be chosen from a cross-section of the community, he could participate in its selection, and all jurors would have to agree beyond a reasonable doubt to convict, conflicts with decisions of numerous federal appellate courts and other states' courts.

This Court noted in *Adams* that “whether or not there is an intelligent, competent, self-protecting waiver of jury trial by an accused must depend upon the unique circumstances of each case.” 317 U.S. at 278. This necessarily means that there is no “rigid formula or particular form of words that a trial court must use in taking a jury waiver.” *People v. Sivongxxay*, 396 P.3d 424, 436 (Cal. 2017).

Still, because a waiver of a right requires the defendant to fully understand the nature of the right, a consensus has developed among American jurisdictions that as a general rule, trial courts should “individually inform each defendant, on the record, of the fundamental attributes of a jury trial before accepting a waiver,” such as the facts “that a jury is composed of twelve members of the community, that the defendant may participate in the selection of the jurors, and the jury’s verdict must be unanimous. . . .” *Marone v. United States*, 10 F.3d 65, 67-68 (2d Cir. 1993). *See, e.g.*:

- *United States v. Igbinosun*, 528 F.3d 387, 390 n.4 (5th Cir. 2008) (following *Marone*);

- *United States v. Martin*, 704 F.2d 267, 274-75 (6th Cir. 1983) (“At a minimum, a defendant should be informed that a jury is composed of 12 members of the community, he may participate in the selection of jurors, the verdict of the jury must be unanimous, and that a judge alone will decide guilt or innocence should he waive his jury trial right”);
- *United States v. Rodriguez*, 888 F.2d 519, 527 (7th Cir. 1989) (“trial courts . . . should explain that a jury is composed of twelve members of the community, that the defendant may participate in the selection of jurors, and that the verdict of the jury is unanimous” (citation omitted));
- *United States v. Williams*, 951 F.3d 892, 900 (8th Cir. 2020) (waiver sufficient where defendant told he had “an absolute right to a trial by a jury made up of 12 people, all of whom would have to agree as to [his] guilt before [he] could be found guilty” and “knew that he could participate in the selection of jurors”);
- *United States v. Duarte-Higareda*, 113 F.3d 1000, 1002 (9th Cir. 1997) (“The district court should inform the defendant that (1) twelve members of the community compose a jury, (2) the defendant may take part in jury selection, (3) a jury verdict must be unanimous, and (4) the court alone decides guilt or innocence if the defendant waives a jury trial”);
- *United States v. Robertson*, 45 F.3d 1423, 1432 (10th Cir. 1995) (“Defendants should be informed

that (1) twelve members of the community compose a jury; (2) the defendant may take part in jury selections; (3) jury verdicts must be unanimous; and (4) the court alone decides guilt or innocence if the defendant waives a jury trial”);

- *Sivongxxay*, 396 P.3d at 436 (following *Marone* and other decisions, stating “trial courts ‘should explain that a jury is composed of twelve members of the community, that the defendant may participate in the selection of jurors, and that the verdict of the jury is unanimous’” (citation omitted));
- *State v. Ross*, 472 N.W.2d 651, 654 (Minn. 1991) (“the defendant should be told that a jury trial is composed of 12 members of the community, that the defendant may participate in the selection of the jurors, that the verdict of the jury must be unanimous, and that, if the defendant waives a jury, the judge alone will decide guilt or innocence”);
- *State v. Blann*, 90 A.3d 1253, 1253 (N.J. 2014) (requiring trial courts not to accept a jury trial waiver unless a defendant has “been advised that (1) a jury is composed of 12 members of the community, (2) a defendant may participate in the selection of jurors, (3) all 12 jurors must unanimously vote to convict in order for a conviction to be obtained, and (4) if a defendant waives a jury trial, a judge alone will decide his/her guilt or innocence” (citation omitted));
- *Rios v. State*, 665 S.W.3d 467, 479-80 n.23 (Tex. Ct. Crim. App. 2022) (following *Marone*, noting,

“A defendant is sufficiently informed to make an intelligent waiver if he was aware that a jury is composed of 12 members of the community, he may participate in the selection of the jurors, the verdict of the jury must be unanimous, and that a judge alone will decide guilt or innocence should he waive his jury trial right” (citation omitted));

- *State v. Redden*, 487 S.E.2d 318, 326 (W. Va. 1997) (“especially in a serious case, a circuit court is well advised to ascertain on the record that a defendant who wishes to waive his right to a jury trial knows that a jury is composed of the appropriate number of members of the community, that the defendant may participate in the selection of the jurors, that the verdict of the jury must be unanimous or as otherwise prescribed by law, and that a judge alone will decide guilt or innocence should the defendant waive the right to a jury trial”);
- *State v. Anderson*, 638 N.W.2d 301, 310 (Wis. 2002) (“To prove a valid jury trial waiver, the circuit court must conduct a colloquy designed to ensure that the defendant: (1) made a deliberate choice, absent threats or promises, to proceed without a jury trial; (2) was aware of the nature of a jury trial, such that it consists of a panel of 12 people that must agree on all elements of the crime charged; (3) was aware of the nature of a court trial, such that the judge will make a decision on whether or not he or she is guilty of the crime charged; and (4) had enough time to discuss this decision with his or her attorney”).

Mr. Bu cited these decisions and explained this standard to the Missouri Court of Appeals, but its decision did not mention this at all, distinguish these authorities, or explain why it believed they are wrong. Instead, it relied on a prior Missouri decision, *Emmanuel*, and held that a defendant merely being informed he “was entitled to have his guilt or innocence determined by a jury of twelve people and that by waiving that right, the decision of his guilt or innocence would be decided via bench trial” is sufficient (App., *infra*, 13a).

But merely being told that a defendant “was entitled to have his guilt or innocence determined by a jury of twelve people and that by waiving that right, the decision of his guilt or innocence would be decided via bench trial” (App., *infra*, 13a) does not give the defendant “full awareness of both the nature of the right being abandoned and the consequences of the decision to abandon it,” *Moran*, 475 U.S. at 421, and ensure he “fully understands the nature of the right.” *Ruiz*, 536 U.S. at 629.

Instead, the *Marone*-style consensus makes sense. The fundamental nature of the right to a trial by jury is far more than just being tried by twelve people and otherwise guilt or innocence being decided by a judge.

First, the Sixth Amendment right to a jury is not just a jury of twelve people, but twelve people *chosen from a fair cross-section of the community*. *Taylor v. Louisiana*, 419 U.S. 522, 530 (1975). This is because “[t]he purpose of a jury is to guard against the exercise of arbitrary power—to make available the commonsense judgment of the community as a hedge against the overzealous or mistaken prosecutor and in preference to the professional

or perhaps overconditioned or biased response of a judge,” which “is not provided if the jury pool is made up of only special segments of the populace or if large, distinctive groups are excluded from the pool.” *Id.*

Second, the Sixth Amendment guarantees that the defendant participates in selecting those twelve people, too. It guarantees the defendant’s right to be present and make peremptory challenges, *Lewis v. United States*, 146 U.S. 370, 374 (1892), which are “one of the most important of the rights secured to the accused.” *Pointer v. United States*, 151 U.S. 396, 408 (1894). This “assure[s] the parties that the jurors before whom they try the case will decide on the basis of the evidence placed before them, and not otherwise.” *Swain v. Alabama*, 380 U.S. 202, 219 (1965).

Finally, the Sixth Amendment guarantees that all twelve jurors must agree beyond a reasonable doubt in order to convict the defendant. *Ramos*, 590 U.S. at 90-93. This is because “a defendant enjoys a ‘constitutional right to demand that his liberty should not be taken from him except by the joint action of the court and the unanimous verdict of a jury of twelve persons.’” *Id.* at 92 (quoting *Thompson v. Utah*, 170 U.S. 343, 351 (1898)). And this right equally “protects the accused against conviction except upon proof beyond a reasonable doubt of every fact necessary to constitute the crime with which he is charged.” *In re Winship*, 397 U.S. 358, 364 (1970). This is because “it is critical that the moral force of the criminal law not be diluted by a standard of proof that leaves people in doubt whether innocent men are being condemned.” *Id.* Rather, “[i]t is also important in our free society that every individual going about his ordinary affairs have confidence that his government cannot adjudge him

guilty of a criminal offense without convincing a proper factfinder of his guilt with utmost certainty.” *Id.*

Here, it is undisputed that at no point in the record was Mr. Bu ever informed—or was it ever ensured he understood—these fundamental attributes of the nature of the right to a jury trial, which courts under the *Marone* standard have held is required: (1) that he would have a right to participate in the jury’s selection; (2) that he had a right to an impartial jury chosen from a fair cross-section of the county in which he was charged; or (3) that the jury would be instructed to presume his innocence unless and until the State proved its case beyond a reasonable doubt.

But courts throughout the country have equally held that when there is no showing that a defendant understood these fundamental attributes of the nature of the right to a jury trial, a waiver of a jury trial is not sufficiently “intelligent” and so must be reversed. *See Duarte-Higareda*, 113 F.3d at 1002-03; *United States v. Christensen*, 18 F.3d 822, 823-26 (9th Cir. 1994); *United States v. Shorty*, 741 F.3d 961, 967 (9th Cir. 2013); *Robertson*, 45 F.3d at 1432-33; *People v. Jones*, 237 Cal. App. 5th 420, 435-37 (2018); *People v. Blancett*, 15 Cal. App. 5th 1200, 1207 (2017); *Lopez v. United States*, 615 A.2d 1140, 1147 (D.C. 1992); *State v. Ernes*, 465 P.3d 763, 769-74 (Haw. 2020); *State v. White*, 269 So.3d 1182, 1186 (La. Ct. App. 2019); *Landeros v. State*, 480 P.2d 273, 274-75 (Okla. Ct. Crim. App. 1971); *Rios*, 665 S.W.3d at 478-85.

Mr. Bu cited many of these decisions below. The Missouri Court of Appeals addressed a few of them, but it suggested they are “an attempt to show that a more searching colloquy was necessary due to [Mr. Bu’s] non-

native status" (App., *infra*, 16a). But Mr. Bu's point is and was that *regardless of English-speaking status*, courts in numerous other jurisdictions have held jury trial waivers insufficient and reversed them when there was no showing on the record that the defendant understood that the jury is composed of twelve members of the local community, the defendant may participate in the selection of those jurors, or the jury's verdict must be unanimous beyond a reasonable doubt.

The *Marone*-standard consensus is that *all criminal defendants*, both English speakers and non-English speakers, must be shown on the record to understand these fundamental attributes of the right to a jury trial before they can have been held to knowingly and intelligently waived that right.

As an example, the Missouri Court of Appeals omitted any discussion of *Christensen*, 18 F.3d at 822, except to say in a footnote that it "did not involve a non-native speaker" (App., *infra*, 16a n.4). The point in *Christensen* is that these standards apply regardless of one's ability to speak English and even apply to a native English speaker.

In *Christensen*, just as here the trial court *did* engage in a colloquy—and with a native English speaker, but the Ninth Circuit held the colloquy inadequate when it only ensured the defendant understood "that [he was] waiv[ing] the right to trial by jury and a trial in which 12 jurors have to find [him] guilty" in favor of "trial just by the Court" and *did not* tell him "(1) twelve members of the community compose a jury; (2) the defendant may take part in jury selection; (3) jury verdicts must be unanimous; and (4) the court alone decides guilt or innocence if the

defendant waives a jury trial.” *Id.* at 823, 825 (citation omitted). The trial court therefore “fail[ed] to conduct an adequate colloquy. . . .” *Id.* at 826.

Here, like the inadequate colloquy in *Christensen*, Mr. Bu, too, was never told he would have the ability to take part in jury selection or that the jury would be chosen from a fair cross-section of the community. He also was never informed that the jury would be instructed it had to presume him innocent and could only convict him if it found each element against him on the State’s burden beyond a reasonable doubt.

Even if Mr. Bu had been born in and lived his whole life in Missouri and spoke fluent English as his first and only language, rather than having lived most of his life in the People’s Republic of China—which, needless to say, does not have anything remotely like jury trials, the trial court’s colloquy here would have been just as inadequate. The fact that Mr. Bu *was not* American and English *was not* his first language only heightens this. It does not change it.

Here, there simply is no showing in the record that Mr. Bu was informed of or otherwise understood (1) that he would have a right to participate in the jury’s selection; (2) that he had a right to an impartial jury chosen from a fair cross-section of the county in which he was charged; or (3) that the jury would be instructed to presume his innocence unless and until the State proved its case beyond a reasonable doubt.

Other state and federal courts throughout the country—including every circuit to have analyzed the

question—have held that without this knowledge, as a matter of Sixth and Fourteenth Amendment law, a defendant's waiver of his right to a jury trial could not be knowing, voluntary, and intelligent. The standard must be the same in Missouri, too. But in the decision below, Missouri has departed directly from the consensus.

One of these standards is correct. Either these are fundamental attributes of the nature of a jury trial that a defendant must be shown to understand before he can intelligently have waived the right to a jury trial or they are not. This Court should issue its writ of certiorari to provide needed clarity on this important question.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

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APPENDIX

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**APPENDIX A — OPINION OF THE MISSOURI
COURT OF APPEALS FOR THE WESTERN
DISTRICT, FILED NOVEMBER 12, 2024**

IN THE MISSOURI COURT OF APPEALS
WESTERN DISTRICT

WD86487

STATE OF MISSOURI,

Respondent,

v.

SULIANG BU,

Appellant.

**Appeal from the Circuit Court of Boone County, Missouri
The Honorable Joshua C. Devine, Judge**

Before Division Three: Mark D. Pfeiffer, Presiding Judge
Thomas N. Chapman and Janet Sutton, Judges

OPINION FILED November 12, 2024

Mr. Suliang Bu (“Bu”) appeals from the judgment of criminal convictions entered by the Circuit Court of Boone County, Missouri (“trial court”), following a bench trial. Bu’s single point on appeal contends that the trial court plainly erred by accepting his waiver of a jury trial because the waiver was not knowingly, voluntarily, and intelligently given. Finding no error, plain or otherwise, we affirm the trial court’s judgment.

*Appendix A***FACTUAL AND PROCEDURAL BACKGROUND¹**

Bu is a Chinese national who came to the University of Missouri to obtain a Ph.D. in computer science. He started working in a lab on campus in the fall of 2014. In October 2019, he began performing non-consensual sex acts on a female Chinese national who was also enrolled at the university. He was charged in the trial court with felony attempted rape in the first degree, felony rape in the first degree, and misdemeanor sexual abuse in the second degree.

Prior to trial, Bu's defense counsel filed a written jury trial waiver, which was signed by both Bu and his defense counsel. Before questioning Bu about his understanding of the waiver, the trial court inquired about his English language proficiency:

[TRIAL COURT]: [Y]ou do speak English fairly well; is that right?

[BU] (in English): How do I put this? I think I can understand some of English, but if you speak very fast, there are many English idioms are lost. I will not understand what you mean.

1. "In reviewing a bench-tried case, the appellate court views the facts in the light most favorable to the judgment." *Price v. Thompson*, 616 S.W.3d 301, 305 n.2 (Mo. App. W.D. 2020) (citing *Sauvain v. Acceptance Indem. Ins. Co.*, 437 S.W.3d 296, 299 n.2 (Mo. App. W.D. 2014)).

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[TRIAL COURT]: I understand what you're telling me. And so that's why we're providing a Chinese language interpreter for you, Mr. Bu.

Bu was provided with a headset so that he could listen to the two interpreters that were present. The "active interpreter" was responsible for interpreting simultaneously, while the "passive interpreter" was available to assist Bu in speaking with defense counsel. The trial court then entered into a lengthy colloquy with Bu, confirming he understood the implications of giving up his right to have a jury determine his guilt and sentencing:

[TRIAL COURT]: [A]nybody that needs a headset now currently has a headset for interpretation purposes in the courtroom. And there were a couple of additional matters that need to be taken up procedurally before we get to evidence. The first one is what [defense counsel] just brought up, and that is the waiver of jury trial that was filed by the defendant on April 3rd of 2023. That waiver of jury trial recites, quote, [c]omes now Defendant in person and by and through counsel and with full understanding of his right to a jury trial, including but not limited to requiring a unanimous verdict to convict, hereby waives his right to a jury trial and requests that the Court decide the issues of fact, closed quote.

.....

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[TRIAL COURT]: Mr. Bu, did you, in fact sign that waiver of jury trial form that I just read into the record? (The defendant responded in English as follows:)

[BU]: Yes, Your Honor.

[TRIAL COURT]: All right. And I don't want to talk to you about any private conversations you've had with [defense counsel] because your conversations with him are, in fact, private. So don't tell me anything about what was said. But I do need to make sure that I understand that you understand your rights. And have you had an opportunity to speak with [defense counsel] regarding your right to trial by jury in this case?

[BU]: Yes. Do I need to stand up?

[TRIAL COURT]: You're fine sitting right there. I appreciate you asking, though. And do you understand, sir, that as part of this case, you do have the absolute right to have a jury of your peers, it would be 12 people from this community, decide the issues of fact in this case?

[BU]: Yes, Your Honor.

[TRIAL COURT]: And they would also decide, if you wanted a trial by jury that is, those 12 people would be called upon to decide whether

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you were guilty or not guilty after hearing all of the evidence and having received the instructions from the Court regarding the matters of law. Do you understand that?

[BU]: Yes, Your Honor.

[TRIAL COURT]: All right. And [defense counsel], am I correct that this defendant has no prior convictions of any sort?

[DEFENSE COUNSEL]: As far as I know, Judge, no, he has no convictions.

[TRIAL COURT]: And what I'm getting at is Defendant would have the right to jury sentencing as well if he was convicted and wanted to proceed that way?

[DEFENSE COUNSEL]: Yes, he would, but I'd also waive that as well.

[TRIAL COURT]: Understood. So one of the things that you would be entitled to, Mr. Bu, is with respect to a trial by jury is if you were found guilty by that jury, because you have no prior convictions of any sort, you would have the absolute right to have the jury decide what punishment to impose upon you. And of course, that's if you were found guilty by the jury. If you're found not guilty, we don't make it to that step. But do you understand that right?

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[BU]: Yes, Your Honor.

[TRIAL COURT]: All right. And do you understand that by waiving your right to trial by jury, there will not be 12 people sitting to decide your guilt—whether you're guilty or not guilty? All of the issues of fact will be turned over to me, the judge, to decide factually what occurred in this case.

[BU]: Yes, Your Honor.

[TRIAL COURT]: In other words, instead of having 12 people from our community decide the issue, by waiving your right to trial by jury, you're leaving it up to me, the judge, to make that determination as to whether you're guilty or not guilty. Do you understand that?

[BU]: Yes, Your Honor.

[TRIAL COURT]: You are also leaving it up to me, the judge, to make a determination as to what punishment to impose if I were to find you guilty. Do you understand that?

[BU]: Yes, Your Honor.

....

[TRIAL COURT]: And in terms of how this trial will proceed, if you want to waive your

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right to trial by jury—and I know you've already filed the form, but I'm going to ask you about that momentarily. Everything else will proceed as if a jury were here, except I will be sitting as the finder of fact, and there won't be a jury in the courtroom. But there will be a presentation of evidence by the State. Your attorney will have the opportunity to cross-examine, that is ask questions of any witnesses offered by the State. Your attorney will also have the opportunity to put on any evidence he may wish to put on, including—and we'll talk about this at the appropriate time—you may wish to testify in this case, or you may not wish to testify in this case. And that's your right to make that decision as to what you do. And when we get to that point, I will ask you some questions about that. But do you understand the process of what will occur here today and over the course of the next couple of days that we are scheduled to be together for this bench trial?

[BU]: (No response.)

[TRIAL COURT]: Do you understand the process?

[BU]: I just know I need to appear in court and when someone asks me questions, I need to give them a answer.

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[TRIAL COURT]: All right. And you understand that you have the right not to testify should you so choose?

[BU]: Yes, Your Honor.

[TRIAL COURT]: And you understand the Court is not going to hold it against you that you did not testify if that's a decision that you make?

[BU]: Yes, Your Honor.

....

[TRIAL COURT]: All right. Mr. Bu, I have inquired of you regarding your decision to waive trial by jury. I have the form in front of me, and it is signed by you waiving trial by jury. Is that your decision? Do you wish to waive trial by jury and proceed with a bench trial today?

[BU]: Yes, Your Honor.

[TRIAL COURT]: All right. And the Court will find that Defendant has made a knowing, voluntary, and intelligent waiver of his right to trial by jury. We will proceed with the bench trial.

During the three-day bench trial, which commenced on June 21, 2023, Bu demonstrated he could understand much of what was being said without the benefit of

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interpretation, opting at times to take off his headset to listen to the proceedings. The trial court took notice and issued the following remarks at two separate points during the trial:

[TRIAL COURT]: Mr. Bu, I have noticed that you've had the headphones for interpretation around your neck throughout the prior witness. You can use those as you see fit. You don't have to wear them if you don't want. I know you understand English fairly well, so it's just up to you. We're going to continue to provide the interpretation because we do have the alleged victim that is sitting in the back room there. And also, we've called the interpreters in to do all of that. But you just use the interpretation as you need it, sir. Okay?

....

Mr. Bu, I know that you have been sometimes using headphones, sometimes not. We have the interpreters available to you. If you need them at any point -- I see your headphones are not on -- you could put them on and interpretation will be provided. It's up to you as to what you want to do. I see that you've got them around your neck right now. But if you want to put your headphones on, we'll have interpretation provided for you. Okay?

At the close of evidence, the trial court found Bu guilty of all charged offenses. Bu filed a Motion for New Trial or

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Judgement of Acquittal with the assistance of his defense counsel. Neither filing included a claim of error related to his jury trial waiver. A sentencing hearing took place on August 8, 2023, during which the trial court denied the Motion for New Trial and permitted Bu to make a statement. Bu pleaded for leniency and expressed through the interpreter that he “studied really hard for seven years to receive [his] doctorate” and that he wanted to use his knowledge “to benefit the entire humanity.” Bu elaborated that, while he was awaiting trial, he published “one highquality journal paper and three conference papers” related to helping people with hearing damage. He stated that he was researching an algorithm that, if proved, would possibly be the biggest breakthrough in the last thirty years of the field.

The trial court issued a judgment sentencing Bu to a total of ten years’ imprisonment. Bu now appeals, asserting that the trial court plainly erred by accepting his waiver because it was not knowingly, voluntarily, and intelligently given.

STANDARD OF REVIEW

Bu acknowledges that his claim is not preserved and requests plain error review under Rule 30.20.² Rule 30.20 provides, in pertinent part, “[w]hether briefed or not, plain errors affecting substantial rights may be considered in the discretion of the court when the court finds that

2. All rule references are to MISSOURI COURT RULES - STATE 2023.

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manifest injustice or miscarriage of justice has resulted therefrom.” “Under plain error review, we must determine whether the alleged error is ‘evident, obvious, and clear error’ [and] ‘facially establishes substantial grounds for believing that manifest injustice or a miscarriage of justice’ has occurred.” *State v. Ratliff*, 622 S.W.3d 736, 745-46 (Mo. App. W.D. 2021) (quoting *State v. Campbell*, 600 S.W.3d 780, 788-89 (Mo. App. W.D. 2020)). “[T]he defendant bears the burden of demonstrating manifest injustice.” *State v. Brandoles*, 601 S.W.3d 519, 526 (Mo. banc 2020) (quoting *State v. Oates*, 540 S.W.3d 858, 863 (Mo. banc 2018)).

ANALYSIS

In his sole point on appeal, Bu argues his waiver of the right to jury trial was not voluntarily, knowingly, and intelligently given because the trial court did not instruct him on certain aspects of the right, to wit:

[T]hat potential jurors for his case would be chosen from a fair cross-section of Boone County, that he would have a right to participate in the selection of the jury, that the trial court would instruct the jury to presume him innocent and convict only if it concluded on the State’s burden beyond a reasonable doubt that he was guilty, or that the jury would have to make a unanimous decision in order to convict him.

“The constitutions of the United States and Missouri both guarantee a defendant in a criminal case the right

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to a jury trial.” *State v. Hilbert*, 663 S.W.3d 462, 466 (Mo. banc 2023) (citing U.S. CONST. amends. VI, XIV; Mo. CONST. art. I, §§ 18(a), 22(a)). Pursuant to Rule 27.01, a criminal defendant “may, with the assent of the court, waive a trial by jury and submit the trial of any criminal case to the court.” The waiver must be “voluntarily, knowingly and intelligently made.” *State v. Sharp*, 533 S.W.2d 601, 605 (Mo. banc 1976).

The waiver of a trial by jury is considered knowing, voluntary, and intelligent if a defendant “fully understands the nature of the right and how it would likely apply *in general* in the circumstances.” *State v. Emmanuel*, 667 S.W.3d 664, 669 (Mo. App. W.D. 2023) (emphasis added) (quoting *United States v. Ruiz*, 536 U.S. 622, 629, 122 S. Ct. 2450, 153 L. Ed. 2d 586 (2002)). “The best practice for a trial court is to question the defendant personally, on the record, to ensure that the defendant understands the right, understands what is lost in the waiver, has discussed the issue with defense counsel, and voluntarily intends to waive the right.” *Hilbert*, 663 S.W.3d at 466 (quoting *Baxter*, 204 S.W.3d 650, 655 (Mo. banc 2006)).

Notably, neither Missouri nor federal law require that a defendant be informed of the “*specific detailed* consequences” of invoking the waiver. *Emmanuel*, 667 S.W.3d at 670 (internal quotation marks omitted) (quoting *Ruiz*, 536 U.S. at 629). “A defendant, for example, may waive . . . his right to a jury trial . . . even if the defendant does not know . . . who will likely serve on the jury.” *Id.* (alteration in original) (quoting *Ruiz*, 536 U.S. at 629-30).

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In *State v. Emmanuel*, we applied these principles to reject a claim that a defendant’s (“Emmanuel”) waiver was not knowing or voluntary because the trial court did not explain the specific consequence that the jury would have to reach a unanimous verdict. *See generally id.* In making this determination, we emphasized that Emmanuel fully understood the nature of the right to trial by jury and how it would *generally* apply to his circumstances, as evidenced by a series of confirmations by Emmanuel during the colloquy:

[T]he [trial] court repeatedly explained that Emmanuel had a right to have a jury decide his guilt or innocence, and each time Emmanuel affirmed his understanding of that right. He confirmed that he had spoken with counsel about the decision to proceed with a bench trial. And Emmanuel affirmed his understanding that the decision of whether to proceed with a jury or a bench trial was his alone to make. He then confirmed his desire to have his case tried by the court rather than a jury.

Id. at 670-71.

Similarly, the trial court in this case repeatedly asked Bu if he understood that his right to have twelve people decide his guilt or innocence, and Bu repeatedly confirmed that understanding by answering “yes” in English to every question posed. Bu also confirmed his understanding that, by waiving that right, the trial court would become the

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trier of fact and would determine his guilt; that he had spoken with defense counsel about his decision; and that he wished to proceed to bench trial. Consistent with our ruling in *Emmanuel*, we conclude that Bu's waiver was knowingly, voluntarily, and intelligently given.³

Bu nonetheless argues that the trial court had an obligation to explain the specific consequences of the waiver due to his unfamiliarity with the American legal system and his "limited English proficiency." But, Missouri law does not require that a defendant be proficient in the English language nor the intricacies of America's jury trial system in order to waive a defendant's right to trial by jury. Our "sole focus must be upon whether the record establishes a defendant's waiver was knowing, voluntary, and intelligent and, therefore, constitutionally sufficient." *Hilbert*, 663 S.W.3d at 466 n.6.

Nothing in the record indicates that the language barrier prevented Bu from knowingly, voluntarily, and intelligently entering into the waiver. Bu was provided not one, but two certified interpreters to assist in

3. If anything, the trial court's acceptance of the waiver in this case has *more* support in the record than we found in *Emmanuel* because the unanimity issue *was actually addressed* in Bu's written waiver and colloquy. The written waiver explicitly stated that a unanimous verdict was required to convict. And though the trial court was not obligated to inquire about whether Bu understood the specific consequence of unanimity, it read the waiver into the record, and Bu affirmed his understanding of the same.

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his communications with the trial court and defense counsel. Further, Bu demonstrated more than a “limited proficiency” in English throughout the trial. His testimony on direct examination was primarily given in English. And though he opted to testify through an interpreter on his cross examination and redirect examination, there were still instances where he spoke English, including instances where he interjected to correct the interpreter’s word choice. The trial court remarked more than once that Bu was clearly understanding the proceedings without relying on simultaneous interpretation because his headset was off.

The record is also bereft of any indication that Bu’s cultural background prevented him from understanding the basic tenets of American jurisprudence raised in the waiver and colloquy. Bu had been in the United States for at least nine years at the time of trial. He obtained a Ph.D. in computer science from an American university and published scholarly articles (in English) on complex topics in the field of hearing automation. He clearly had the necessary skillset to ask for clarification on points of law related to his waiver of jury trial, and yet, he raised no concerns during the colloquy, the entirety of the trial, or in his Motion for New Trial. Instead, he waited until *after* he was convicted and *after* his Motion for New Trial was denied to claim that his waiver was insufficient. Though he may now regret his decision to waive a jury trial, his disappointment with the trial court’s verdict in retrospect is not cause for reversal. *State v. Britt*, 286 S.W.3d 859, 864

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(Mo. App. S.D. 2009) (“Simply because a result that was insistently invited, namely, a verdict by a court without a jury, disappointed the hopes of the accused, ought not to be sufficient for rejecting it.”)

Bu cites many out-of-jurisdiction cases in an attempt to show that a more searching colloquy was necessary due to his non-native status. This precedent is unavailing. In addition to being non-binding authority, all but one case is distinguishable on the grounds that a written waiver was not executed, that the waiver was not given in open court, or that an interpreter was not provided. *See Rios v. State*, 665 S.W.3d 467, 482 (Tex. Crim. App. 2022) (no jury waiver executed); *United States v. Duarte-Higareda*, 113 F.3d 1000, 1002 (9th Cir. 1997) (no colloquy regarding the waiver); *United States v. Robertson*, 45 F.3d 1423, 1433 (10th Cir. 1995) (no colloquy regarding the waiver); *Lopez v. United States*, 615 A.2d 1140, 1146-47 (D.C. 1992) (no meaningful colloquy because it was unclear whether the defendant’s single response, “yes,” was responding to the trial court’s sole question regarding waiver or a different question); *Landeros v. State*, 1971 OK CR 34, 480 P.2d 273, 275 (Okla. Crim. App. 1971) (no interpreter provided).⁴

Bu argues that the present facts are “strikingly similar” to the non-binding case of *State v. Ernes*, 147 Hawai’i 316, 465 P.3d 763 (2020), but even if we indulge this analysis, significant discrepancies from

4. Bu also cites to *United States v. Christensen*, 18 F.3d 822, 822 (9th Cir. 1994), which did not involve a non-native speaker.

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Bu's circumstances are present. In *Ernes*, the Supreme Court of Hawaii ("Ernes court") determined a district court's colloquy was insufficient to establish a valid waiver for a high-school-educated defendant, who was provided a Chuukese interpreter, based on Hawaiian precedent dictating a heightened level of inquiry due to the defendant's limited English proficiency. *Id.* at 326. The *Ernes* court determined that the district court's questions were insufficient because they invited only "yes" or "no" responses rather than engaging the defendant with open-ended questions that would have required him to elucidate on his understanding of the right waived. *Id.* at 326-27.

Unlike the defendant in *Ernes*, Bu did *not* have a limited English proficiency. He frequently chose not to utilize the interpreter services offered because he was understanding the proceedings *in English*. Further, Missouri precedent does not require a separate method of questioning individuals who have a limited English proficiency.⁵ As discussed at length herein, the waiver

5. Bu argues that Missouri courts have recognized a defendant's language and cultural barrier as a significant factor in assessing the validity of a jury trial waiver in *State v. Flores-Martinez*, 654 S.W.3d 402 (Mo. App. S.D. 2022). But *Flores-Martinez* did not reach the question of whether the contents of a waiver were knowing and voluntary. *Id.* at 410. The issue presented was whether a personal waiver was issued at all. *Id.* The sole record in *Flores-Martinez* was a defendant's presence at the bench when the circuit court made "notations in the docket sheet" that the case was set for bench trial and the defense counsel's acknowledgement that the case was set for bench trial in a motion for continuance.

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of a trial by jury is considered knowing, voluntary, and intelligent in Missouri if a defendant “fully understands the nature of the right and how it would likely apply *in general* in the circumstances.” *Emmanuel*, 667 S.W.3d at 669.

The circumstances in this case establish that Bu, *who was provided two certified interpreters and holds a Ph.D. in computer science from the University of Missouri*, understood he was entitled to have his guilt or innocence determined by a jury of twelve people and that by waiving that right, the decision of his guilt or innocence would be decided via bench trial. Bu confirmed that he had time to discuss this issue with counsel, that he understood the terms of his written jury trial waiver, and that he wished to proceed with a bench trial. His waiver was knowing, voluntary, intelligent, and thus, constitutionally sufficient. Under these circumstances, Bu fails to demonstrate that the trial court committed any error, plain or otherwise, let alone that he suffered any manifest injustice in the proceedings below.

Point denied.

Id. The Southern District noted the defendant’s “unfamiliarity with a legal system” and “difficulty with the English language” as “facts unique to this case,” but its discussion of those facts was limited to finding that “justice require[d]” a *sua sponte* review to determine if a personal waiver was given. As established, the trial court in this case received a written waiver signed by Bu and made a lengthy colloquy that ensured Bu fully understood the nature of the right relinquished. Accordingly, *Flores-Martinez* does not alter our analysis.

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CONCLUSION

The trial court's judgment is affirmed.

/s/ Mark D. Pfeiffer
Mark D. Pfeiffer, Presiding Judge

Thomas N. Chapman and Janet Sutton, Judges, concur.

**APPENDIX B — ORDER OF THE MISSOURI
COURT OF APPEALS, WESTERN DISTRICT,
DATED DECEMBER 24, 2024**

Missouri Court of Appeals
WESTERN DISTRICT
1300 OAK STREET

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WD86487

IMPORTANT NOTICE

To All Attorneys/Parties of Record

STATE OF MISSOURI,

Respondent,

vs.

SULIANG BU,

Appellant.

December 24, 2024

Please be advised that Appellant's motion for
rehearing is OVERRULED and application for

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transfer to Supreme Court pursuant to Rule 83.02 is
DENIED.

/s/ Kimberly Boeding
Kimberly K. Boeding
Clerk

**APPENDIX C — JUDGMENT OF THE 13TH
JUDICIAL CIRCUIT COURT, BOONE COUNTY
MISSOURI, DATED AUGUST 8, 2023**

**IN THE 13TH JUDICIAL CIRCUIT COURT,
BOONE COUNTY MISSOURI**

Judge or Division :
JOSHUA CALVIN DEVINE (59895)
DIV4

Case Number : 20BA-CR03646-01
 Change of Venue from

Offense Cycle No : ET003006

State Of Missouri vs.

Defendant: SULIANG BU (@265426)
2409 Northampton Dr.
Columbia, Mo 65201

Alias: SULIANG BU

Assistant Prosecuting Attorney/MO Bar No:
JUSTIN TYLOR OWENS (71109)

Defense Attorney/MO Bar No :
JAMES L RUTTER (28482)

DOB : 09-Oct-1987 SSN :
SEX : M

Pre-Sentence Assessment Report Ordered

Appeal Bond Set Date :
Amount :

*Appendix C***Judgment**

	Charge #	Charge Date	Charge Code	Charge Description
Original Charge:	1	04-Oct-2019	566.030-001Y2 01311.2	Acry- Rape Or Attempted Rape - 1st Degree (Felony Unclassified RSMo: 566.030)

Disposition: 23-Jun-2023

Tried/Court-Guilty

Order Date: 08-Aug-2023**Sentence or SIS :**

Incarceration DOC

Length : 5 Years**Start Date :**

08-Aug-2023

Text : Count 1 - Defendant sentenced to 5 Years Doc.

Defendant given Credit for Time Served.

Conc/Cons : CONSECUTIVE TO COUNT 2 BUT

CONCURRENT WITH COUNT 3

Appendix C

	Charge #	Charge Date	Charge Code	Charge Description
Original Charge:	2	23-Oct-2019	566.030-001Y2 01311.2	Acry-Rape Or Attempted Rape - 1st Degree (Felony Unclassified RSMo: 566.030)

Disposition: 23-Jun-2023

Tried/Court-Guilty

Order Date: 08-Aug-2023**Sentence or SIS :**

Incarceration DOC

Length : 5 Years**Start Date :**

08-Aug-2023

Text : Count 2 - Defendant sentenced to 5 Years Doc.

Defendant given Credit for Time Served

Conc/Cons : CONSECUTIVE TO COUNT 1 BUT

CONCURRENT TO COUNT 3

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	Charge #	Charge Date	Charge Code	Charge Description
Original Charge:	3	28-Oct-2019	566.101-003Y2 01311.0	Sexual Abuse - 2nd Degree (Misdemeanor A RSMo: 566.101)

Disposition: 23-Jun-2023 **Tried/Court-Guilty**
Order Date: 08-Aug-2023 Sentence or SIS :

Incarceration Jail

Length : 1 Year **Start Date :**
08-Aug-2023

Text : Count 3 - Defendant sentenced to 1 Years Jail.
Defendant given Credit for Time Served.

Conc/Cons : CONCURRENT TO COUNTS 1 & 2

The court informed the defendant of verdict/finding, asks the defendant whether (s)he has anything to say why judgment should not be pronounced, and finds that no sufficient cause to the contrary has been shown or appears to the court.

The Court orders:

Pursuant to section **558.031.2, RSMo**, Defendant shall receive credit of _____ days toward the service of Defendant's sentence for time spent in prison, jail, or custody after the offense occurred and before conviction.

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The clerk to deliver a certified copy of the judgment and commitment to the sheriff.

The sheriff to authorize one additional officer/guard to transport defendant to Department of Corrections.

The Defendant to register as a sex offender with the chief law enforcement official of the county or city not within a county in which (s)he resides within three (3) business days of adjudication, release from incarceration, or placement on probation.

That Judgment entered in favor of the State of Missouri and against the defendant for the sum of **\$10.00** for the Crime Victims Compensation fund. Judgment is **Not Satisfied**.

The Court further orders:

08-Aug-2023 Judgment CVC \$10 - Other

08-Aug-2023 Defendant Sentenced

State by Boresi.

Defendant in person in custody and by Rutter.

Certified Interpreter Tingting Qin appears in person and the Court administers the Oath of Interpretation to said interpreter.

Parties heard regarding Defendant's Motion for New Trial or Judgment of Acquittal filed 7-14-23. After due consideration, said motion is denied.

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Parties heard regarding disposition of Defendant's expired passport and of the cash bond posted by Defendant on or about 9-15-2020. For the reasons set forth on the record, Defendant's expired passport, which was being by the Clerk's Office, is ordered returned to Attorney Rutter today's date. As to the cash bond, Attorney Rutter shall speak with his client and shall file a memorandum with the Court by no later than 9-7-23 advising the Court of how the same should be returned.

Sentencing hearing held on the record.

Sentencing Assessment Report received, filed, and considered.

Defendant adduces evidence and rests.

Punishment fixed as follows:

Count 1: 5 years MoDOC (consecutive to Count 2, but concurrent with Count 3);

Count 2: 5 years MoDOC (consecutive to Count 1, but concurrent with Count 3); and

Count 3: 1 year BCJ (concurrent to Counts 1 and 2).

Allocution, Judgment and Sentence.

Sheriff authorized one deputy to deliver Defendant to Department of Corrections.

Defendant given credit for time served.

Civil judgment in accordance with law.

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Defendant advised of rights under Supreme Court Rule 29.15 and inquiry conducted as to assistance of counsel.

Court finds no probable cause that defendant has not been effectively represented by counsel.

Attorney Rutter is granted leave to withdraw.

As to any post-conviction proceedings, the Court finds that Due Process requires the appointment of counsel, and the Boone County Public Defender is appointed to determine eligibility.

JCD/IV (JB)

**So Ordered on: 20BA-CR03646-01 ST V SULIANG BU
(CB) (CONF) (INT)**

08-08-2023 JOSHUA DEVINE DIV IV
Date Judge

I certify that the above is a true copy of the original Judgment and Sentence of the court in the above cause, as it appears on record in my office.

Issued on: 08-08-2023 /S/ J. BRADY
Date Clerk

**APPENDIX D — DENIAL OF TRANSFER
OF THE SUPREME COURT OF MISSOURI,
DATED MARCH 4, 2025**

IN THE SUPREME COURT OF MISSOURI

SC100917
WD86487

January Session, 2025

STATE OF MISSOURI,

Respondent,

vs. (TRANSFER)

SULIANG BU,

Appellant.

Now at this day, on consideration of the Appellant's application to transfer the above-entitled cause from the Missouri Court of Appeals, Western District, it is ordered that the said application be, and the same is hereby denied.

STATE OF MISSOURI-Sct.

I, Betsy Ledgerwood, Clerk of the Supreme Court of the State of Missouri, certify that the foregoing is a full, true and complete transcript of the judgment of said Supreme Court, entered of record at the January Session, 2025, and on the 4th day of March, 2025, in the above-entitled cause.

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Given under my hand and seal of
said Court, at the City of Jefferson,
this 4th day of March, 2025.

/s/_____, Clerk

/s/_____, Deputy Clerk

**APPENDIX E — EXCERPTS OF TRIAL
TRANSCRIPT, DATED JUNE 21-23, 2023**

IN THE MISSOURI COURT OF APPEALS
WESTERN DISTRICT

****UNREDACTED VERSION****
WD No. 86487

STATE OF MISSOURI,

Respondent,

v.

SULIANG BU,

Appellant.

IN THE CIRCUIT COURT OF
BOONE COUNTY, MISSOURI
THIRTEENTH JUDICIAL CIRCUIT, DIVISION 4
Honorable Joshua C. Devine, Judge

Case No. 20BA-CR03646-01

STATE OF MISSOURI,

Plaintiff,

v.

SULIANG BU,

Defendant.

**RECORD ON APPEAL - TRANSCRIPT
VOLUME 1 OF 1
JUNE 21-23, 2023**

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* * *

[60]THE COURT: Thank you very much.

And so anybody that needs a headset now currently has a headset for interpretation purposes in the courtroom.

And there were a couple of additional matters that need to be taken up procedurally before we get to evidence. The first one is what Mr. Rutter just brought up, and that is the waiver of jury trial that was filed by the defendant on April 3rd of 2023. That waiver of jury trial recites, quote, Comes now Defendant in person and by and through counsel and with full understanding of his right to a jury trial, including but not limited to requiring a unanimous verdict to convict, hereby waives his right to a jury trial and requests that the Court decide the issues of fact, closed quote.

That waiver of jury trial is signed by the defendant, Mr. Bu, and also by his attorney, Mr. Rutter.

Mr. Bu, did you, in fact sign that waiver of jury trial form that I just read into the record?

(The defendant responded in English as follows:)

THE DEFENDANT: Yes, Your Honor.

THE COURT: All right. And I don't want to talk to you about any private conversations you've had with Mr. Rutter [61]because your conversations with him are, in fact, private. So don't tell me anything about what was

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said. But I do need to make sure that I understand that you understand your rights. And have you had an opportunity to speak with Mr. Rutter regarding your right to trial by jury in this case?

THE DEFENDANT: Yes. Do I need to stand up?

THE COURT: You're fine sitting right there. I appreciate you asking, though.

And do you understand, sir, that as part of this case, you do have the absolute right to have a jury of your peers, it would be 12 people from this community, decide the issues of fact in this case?

THE DEFENDANT: Yes, Your Honor.

THE COURT: And they would also decide, if you wanted a trial by jury that is, those 12 people would be called upon to decide whether you were guilty or not guilty after hearing all of the evidence and having received the instructions from the Court regarding the matters of law. Do you understand that?

THE DEFENDANT: Yes, Your Honor.

THE COURT: All right. And Mr. Rutter, am I correct that this defendant has no prior convictions of any sort?

MR. RUTTER: As far as I know, Judge, no, he has no convictions.

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THE COURT: And what I'm getting at is Defendant would have the right to jury sentencing as well if he was convicted and [62]wanted to proceed that way?

MR. RUTTER: Yes, he would, but I'd also waive that as well.

THE COURT: Understood. So one of the things that you would be entitled to, Mr. Bu, is with respect to a trial by jury is if you were found guilty by that jury, because you have no prior convictions of any sort, you would have the absolute right to have the jury decide what punishment to impose upon you. And of course, that's if you were found guilty by the jury. If you're found not guilty, we don't make it to that step. But do you understand that right?

THE DEFENDANT: Yes, Your Honor.

THE COURT: All right. And do you understand that by waiving your right to trial by jury, there will not be 12 people sitting to decide your guilt -- whether you're guilty or not guilty? All of the issues of fact will be turned over to me, the judge, to decide factually what occurred in this case.

THE DEFENDANT: Yes, Your Honor.

THE COURT: In other words, instead of having 12 people from our community decide the issue, by waiving your right to trial by jury, you're leaving it up to me, the judge, to make that determination as to whether you're guilty or not guilty. Do you understand that?

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THE DEFENDANT: Yes, Your Honor.

THE COURT: You are also leaving it up to me, the judge, [63]to make a determination as to what punishment to impose if I were to find you guilty. Do you understand that?

THE DEFENDANT: Yes, Your Honor.

THE COURT: All right. And we are proceeding on the Indictment that was filed on February 5 of 2021, Ms. Boresi?

MS. BORESI: We are, Your Honor.

THE COURT: All right. And the charge set forth in Count I is the felony of attempted rape in the first degree, Ms. Boresi. That's an unclassified felony; is that correct?

MS. BORESI: That's correct, Your Honor.

THE COURT: What is the range of punishment?

MS. BORESI: A life sentence or a term of years not less than five.

THE COURT: All right. And I wanted to clarify that with Ms. Boresi so I announced it correctly to you. But, Mr. Bu, you've been charged in Count I of the Indictment with the felony of attempted rape in the first degree. It's an unclassified felony. That carries with it the punishment range of up to lifetime imprisonment, but no less than a

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term of years of five years. Do you understand that charge and that range of punishment, sir?

THE DEFENDANT: Yes, Your Honor.

THE COURT: In Count II, you were charged with the felony -- the unclassified felony of rape in the first degree. It is the same range of punishment as was previously discussed. [64] Do you understand that charge as well as that range of punishment?

THE DEFENDANT: Yes, Your Honor.

THE COURT: In Count III, you were charged with the class A misdemeanor of sexual abuse in the second degree. That charge is punishable by up to one year in the county jail. Do you understand that charge as well as that range of punishment?

THE DEFENDANT: Yes, Your Honor.

THE COURT: All right. And do you also understand that if you were convicted of any one of these charges, that that would come with a supervision requirement that would follow you around for a minimum period of time, but perhaps for your whole life in terms of you being required to register with the proper authorities under Missouri law?

THE DEFENDANT: Yes, Your Honor.

THE COURT: And also perhaps federal law?

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THE DEFENDANT: Yes, Your Honor.

THE COURT: All right. And in terms of how this trial will proceed, if you want to waive your right to trial by jury -- and I know you've already filed the form, but I'm going to ask you about that momentarily. Everything else will proceed as if a jury were here, except I will be sitting as the finder of fact, and there won't be a jury in the courtroom. But there will be a presentation of evidence by the State. Your attorney will have the opportunity to cross-examine, that is ask questions of any [65]witnesses offered by the State. Your attorney will also have the opportunity to put on any evidence he may wish to put on, including -- and we'll talk about this at the appropriate time -- you may wish to testify in this case, or you may not wish to testify in this case. And that's your right to make that decision as to what you do. And when we get to that point, I will ask you some questions about that. But do you understand the process of what will occur here today and over the course of the next couple of days that we are scheduled to be together for this bench trial?

THE DEFENDANT: (No response.)

THE COURT: Do you understand the process?

THE DEFENDANT: I just know I need to appear in court and when someone asks me questions, I need to give them a answer.

THE COURT: All right. And you understand that you have the right not to testify should you so choose?

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THE DEFENDANT: Yes, Your Honor.

THE COURT: And you understand the Court is not going to hold it against you that you did not testify if that's a decision that you make?

THE DEFENDANT: Yes, Your Honor.

THE COURT: All right. And we're going to cover your right to testify at a later point here, but I wanted to generally discuss that with you.

Ms. Boresi, I'm not going to have you ask any questions [66]directly of Mr. Bu. I don't believe that's appropriate. But are there any questions that you would like me to convey to Mr. Bu as part of this inquiry regarding his right to trial by jury and his waiver of same?

MS. BORESI: No, Your Honor.

THE COURT: Mr. Rutter, are there any topics that you want me to cover in that regard?

MR. RUTTER: No, Judge.

THE COURT: All right. Mr. Bu, I have inquired of you regarding your decision to waive trial by jury. I have the form in front of me, and it is signed by you waiving trial by jury. Is that your decision? Do you wish to waive trial by jury and proceed with a bench trial today?

THE DEFENDANT: Yes, Your Honor.

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THE COURT: All right. And the Court will find that Defendant has made a knowing, voluntary, and intelligent waiver of his right to trial by jury. We will proceed with the bench trial.

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**APPENDIX F — WAIVER OF JURY TRIAL IN
THE CIRCUIT COURT OF BOONE COUNTY,
MISSOURI, FILED APRIL 3, 2023**

IN THE CIRCUIT COURT OF
BOONE COUNTY, MISSOURI

Case No: 20BA-CR03646-01

STATE OF MISSOURI,

Plaintiff,

SULIANG BU,

Defendant.

WAIVER OF JURY TRIAL

COMES NOW Defendant in person and by and through counsel and with full understanding of his right to a jury trial including but not limited to requiring a unanimous verdict to convict, hereby waives his right to a jury trial and requests that the Court decide the issues of fact.

Respectfully submitted,

/s/ Suliang Bu
Suliang Bu

/s/ James L. Rutter
James L. Rutter #28482
Attorney at Law
201 W. Broadway, Ste. 3F
Colmbia, MO 65203