

# ARKANSAS COURT OF APPEALS

DIVISION IV  
No. CACR10-1062

WAYNE ALLEN ACKERMAN  
APPELLANT

V.

STATE OF ARKANSAS  
APPELLEE

**Opinion Delivered** March 9, 2011

APPEAL FROM THE BENTON  
COUNTY CIRCUIT COURT  
[NO. CR-2009-1297-33]

HONORABLE RANDY WRIGHT,  
SPECIAL JUDGE

REVERSED AND REMANDED

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## DAVID M. GLOVER, Judge

Appellant, Wayne Ackerman, was tried by the court and found guilty of the offense of driving while intoxicated, first offense, an unclassified misdemeanor. He brings this appeal, contending that the trial court erred in failing to ensure that he waived his right to a jury trial in the manner prescribed by law. The State concedes error. We agree and reverse and remand for a new trial.

Rule 31.2 of the Arkansas Rules of Criminal Procedure provides

Should a defendant desire to waive his right to trial by jury, he may do so either (1) personally in writing or in open court, or (2) through counsel if the waiver is made in open court and in the presence of the defendant. A verbatim record of any proceedings at which a defendant waives his right to a trial by jury in person or through counsel shall be made and preserved.

In accordance with Rule 31.2, the only way that a defendant can waive his right to a jury trial is by 1) personally making an express waiver in writing or in open court, or 2) through his

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counsel if the waiver is made in open court and in the defendant's presence. Moreover, if the waiver is made in open court, the proceedings must be recorded, and a failure to raise a contemporaneous objection does not constitute a waiver of the right to make the argument on appeal. *Davis v. State*, 81 Ark. App. 17, 97 S.W.3d 921 (2003).

Here, there is no record of any kind that appellant waived his right to a trial by jury. Consequently, the trial court's failure to assure that the proper steps were taken and recorded in order to establish that appellant waived his right to a jury trial requires that we reverse and remand this case for a new trial.

Reversed and remanded.

ABRAMSON and HOOFFMAN, JJ., agree.