

No. 1-10-2519

NOTICE: This order was filed under Supreme Court Rule 23 and may not be cited as precedent by any party except in the limited circumstances allowed under Rule 23(e)(1).

IN THE
APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS,)	Appeal from the
)	Circuit Court of
Plaintiff-Appellee,)	Cook County.
)	
v.)	No. 07 CR 15299
)	
ROBERTO GARCIA,)	Honorable
)	Joseph M. Claps,
Defendant-Appellant.)	Judge Presiding.

PRESIDING JUSTICE STEELE delivered the judgment of the court.
Justices Neville and Salone concurred in the judgment.

ORDER

- ¶ 1 *Held:* Defendant's claim that he did not knowingly and understandingly waive his right to a jury trial refuted by the record; judgment entered on his convictions for aggravated battery and unlawful restraint affirmed.
- ¶ 2 Following a bench trial, defendant Roberto Garcia was found guilty of aggravated battery and unlawful restraint, then sentenced to concurrent, respective terms of 27 and 26 months' imprisonment. On appeal, he solely contends that he did not knowingly, voluntarily, and intelligently waive his constitutional right to a jury trial.
- ¶ 3 The record shows, in relevant part, that defendant was charged with two counts of kidnapping, two counts of aggravated battery, and aggravated unlawful restraint for his part in

1-10-2519

the November 11, 2006, beating and unlawful restraint of Joseph Rossi in the offices of the Garla Trucking and Excavating Company, near 39th and Halsted Streets, in Chicago. Prior to trial, the following colloquy was had in the presence of counsel:

"MR. VASQUEZ [Defense Counsel]: Your Honor, my client is before your Honor, and he will be signing a jury waiver in open court.

THE COURT: Okay. Go ahead.

Do you know what a jury waiver is? Do you know what a jury trial is?

THE DEFENDANT: Yes.

THE COURT: Is it your desire to waive or give up your right to trial by jury and have me hear this case?

THE DEFENDANT: Yes.

THE COURT: Did anybody make any promises or threats to you to get you to do that?

THE DEFENDANT: Yes.

THE COURT: Someone made a promise or threat to you? Do you understand my question?

THE DEFENDANT: Yes, I did.

THE COURT: What's the answer?

THE DEFENDANT: Yes.

THE COURT: Yes, what?

THE DEFENDANT: I am ready to take the bench trial.

THE COURT: Here is my question. In your decision to waive or give up your right to trial by jury, did anyone make a promise to you to get you to give up your right to trial by jury?

THE DEFENDANT: Nobody.

THE COURT: Did anybody make any promises or threats to you?

THE DEFENDANT: Nobody.

THE COURT: Did you make that decision to give up your right to trial by jury of your own free will?

THE DEFENDANT: Yes, I did.

THE COURT: Do you feel you have a need for an interpreter?

THE DEFENDANT: I think I can make it myself.

THE COURT: If there is anything you don't understand, will you raise your hand and tell me that?

THE DEFENDANT: Yes, I will.

The record also contains a signed jury waiver executed by defendant.

¶ 4 A bench trial ensued. At the close of evidence, the court found defendant not guilty of kidnapping, but guilty of the lesser offense of unlawful restraint, guilty of one count of aggravated battery (great bodily harm), and not guilty on the other count (deadly weapon). The court then sentenced him to concurrent terms of 27 months' imprisonment for aggravated battery and 26 months' imprisonment for unlawful restraint.

¶ 5 In this appeal from that judgment, defendant contends that he did not knowingly, voluntarily, and intelligently waive his constitutional right to a jury trial. Defendant acknowledges that he failed to preserve this issue in a posttrial motion as required. *People v. Enoch*, 122 Ill. 2d 176, 186 (1988). However, he maintains, citing *People v. Bracey*, 213 Ill. 2d

265, 270 (2004), that we should review the issue under the fundamental fairness prong of the plain error rule. Whether defendant knowingly and understandingly waived his right to a jury trial may be considered under the plain error rule; our review of that legal question is *de novo*. *Bracey*, 213 Ill. 2d at 270.

¶ 6 Defendant claims that the record does not establish that his jury waiver was knowingly, voluntarily and intelligently made because the trial court failed to ensure that he knew the difference between a bench and jury trial, and the function and purpose of a jury. The State responds that the record establishes that defendant's jury waiver was made knowingly, voluntarily and intelligently where he signed a jury waiver, was properly admonished by the trial court, was assisted by counsel, and had many years of experience with the criminal justice system.

¶ 7 The fundamental right to a trial by jury is guaranteed by the federal and state constitutions (*People v. Bannister*, 232 Ill. 2d 52, 65 (2008)), and defendant may only waive that right if he does so understandingly and in open court (725 ILCS 5/103-6 (West 2008)). It is the duty of the trial court to ensure that defendant's jury trial waiver is expressly and understandingly made (*Bannister*, 232 Ill. 2d at 66); however, there is no specific admonition or advice that must be given before an effective waiver may be made. *In re R.A.B.*, 197 Ill. 2d 358, 364 (2001). There is no precise formula for determining the validity of a jury waiver, which turns on the facts and circumstances of each particular case. *Bracey*, 213 Ill. 2d at 269.

¶ 8 Here, the record shows that defense counsel informed the court that defendant would be executing a jury waiver, that defendant did not object to that statement, and that he ultimately did sign a jury waiver, which, itself, made it less probable that his waiver was not made knowingly. *People v. Clay*, 363 Ill. App. 3d 780, 791 (2006). The court also verified, and defendant acknowledged, his understanding of a jury trial and jury waiver, that he desired to waive his right

to a jury and have the court hear his case, and that he was waiving that right of his own free will. Indeed, defendant expressly stated at one point, "I am ready to take the bench trial." Moreover, unlike in *People v. Sebag*, 110 Ill. App. 3d 821, 829 (1982), also cited by defendant, he acknowledged these matters while being represented by counsel. We thus find, under the circumstances, that defendant knowingly and understandingly waived his right to a jury trial. 725 ILCS 5/103-6 (West 2008); *Bannister*, 232 Ill. 2d at 71.

¶ 9 Defendant takes issue with this conclusion, claiming that the court did not inquire into his understanding of the meaning and implications of a jury waiver, explain the difference between a jury and bench trial, and determine whether he had conferred with counsel before signing it, unlike in *People v. Tooles*, 177 Ill. 2d 462, 469-72 (1997). We find, however, that defendant has misread *Tooles*, where the supreme court did not set forth specific admonishments or advice to be given when a defendant attempts to waive his right to a jury trial. *People v. Duncan*, 297 Ill. App. 3d 446, 450-51 (1998). To the contrary, the supreme court reaffirmed that there are no set admonitions or advice, and even the failure to execute a written waiver does not require a new trial where the facts and circumstances of the case show that defendant's waiver was otherwise understandingly made. *Duncan*, 297 Ill. App. 3d at 450 (citing *Tooles*, 177 Ill. 2d at 464). Defendant's reliance on *Tooles* is thus clearly misplaced, as is his reliance on *People v. Scott*, 186 Ill. 2d 283 (1999), where, unlike here, a jury waiver was never discussed in open court while defendant was present.

¶ 10 For the reasons stated, we conclude that defendant has failed to meet his burden of establishing an error warranting plain error review, and, accordingly, that the procedural default of his claim must be honored. *People v. Hillier*, 237 Ill. 2d 539, 545 (2010). Accordingly, we affirm the judgment of the circuit court of Cook County.

¶ 11 Affirmed.

1-10-2519