

No. 1-11-0881

**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).

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IN THE  
APPELLATE COURT OF ILLINOIS  
FIRST JUDICIAL DISTRICT

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THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from the
	)	Circuit Court of
Plaintiff-Appellee,	)	Cook County.
	)	
v.	)	No. 09 CR 13046
	)	
WILLIAM PRINCE,	)	The Honorable
	)	Luciano Panici,
Defendant-Appellant.	)	Judge Presiding.

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JUSTICE PALMER delivered the judgment of the court.  
Justices Garcia and Lampkin concurred in the judgment.

**ORDER**

- ¶ 1 *Held:* Reviewed *de novo* and pursuant to principles of plain error, defendant's jury waiver was valid.
- ¶ 2 Following a bench trial, defendant William Prince was found guilty of one count of unlawful use of a weapon by a felon and six counts of aggravated unlawful use of a weapon and

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sentenced to a 10-year prison term for unlawful use of a weapon by a felon. On appeal, defendant contends that his jury waiver was invalid because the trial court's admonishments were insufficient.

¶ 3 Immediately prior to trial on January 27, 2011, defense counsel stated that defendant was executing a jury waiver and gave the executed jury waiver to the court. The following colloquy then occurred:

"THE COURT: All right. Mr. Prince, I have a document entitled jury waiver. Is that your signature on that document?

[DEFENDANT]: Yes, sir.

THE COURT: Did you understand you are giving up [your] right to trial by jury when you signed this?

[DEFENDANT]: Yes, sir, Your Honor.

THE COURT: That's what you want you [*sic*]? Don't want a jury and for me to hear the evidence?

[DEFENDANT]: Yes, I do.

THE COURT: Let the record reflect a knowingly [*sic*] and intelligently [*sic*] waiver of right to trial by jury. And, duly executed and made part of the court record."

¶ 4 On appeal, defendant contends first that the trial court conducted only a cursory and incomplete inquiry into his preference for a bench or a jury trial. Defendant argues that his jury waiver was invalid because the trial court did not conduct any meaningful inquiry and did not admonish defendant about the differences between a jury trial and a bench trial. Defendant

argues further that the court did not elicit an understanding from him that he was relinquishing a fundamental constitutional right, that he knew the differences between a jury trial and a bench trial or that he understood that the waiver was irrevocable. Defendant stresses that the court never admonished him that a jury consisted of 12 community members who would decide the facts of the case as well as his guilt or lack of guilt, that he could participate in the selection of the jurors, and that their verdict was required to be unanimous. Defendant argues that he executed the jury waiver form without defense counsel's assistance, without admonitions from the court, and without any indication that he had read it or that he understood the right that he was waiving. Defendant maintains that the trial court's failure to explain the meaning of trial by jury and the implications of waiving it violated his constitutional rights to a jury trial and to due process of law, and that the matter should be reviewed *de novo* and pursuant to principles of plain error because it involves a fundamental right.

¶ 5 The State responds that defendant forfeited the issue by failing to assert it in the circuit court, but the State stresses that it recognizes that plain error principles are applicable. The State further responds that defendant's jury waiver was knowing and voluntary.

¶ 6 We decline to treat the issue regarding the validity of the jury waivers as waived. See *People v. Hart*, 371 Ill. App. 3d 470, 471 (2007). Instead, we will address the merits of the issue pursuant to principles of plain error. See Supreme Court Rule 615(a) (eff. Aug. 27, 1999); *People v. Bracey*, 213 Ill. 2d 265, 270 (2004); *Hart*, 371 Ill. App. 3d at 471; *People v. Ruiz*, 367 Ill. App. 3d 236, 237 (2006).

¶ 7 A *de novo* review is applicable where the facts are not in dispute. *Bracey*, 213 Ill. 2d at

270; *Hart*, 371 Ill. App. 3d at 472. Here, the parties dispute, for example, whether defendant's criminal background familiarized him with a jury trial and its waiver. However, we shall apply *de novo* review since the other facts relevant to this appeal are undisputed. Further, we do not find it necessary to consider defendant's criminal background in this case.

¶ 8 Pursuant to section 103-6 of the Code of Criminal Procedure of 1963 (Code), criminal defendants have the right to a jury trial unless they understandingly waive that right in open court. 725 ILCS 5/103-6 (West 2010); *Bracey*, 213 Ill. 2d at 269; *People v. Scott*, 186 Ill. 2d 283, 284 (1999). There is no precise formula for determining the validity of a jury waiver, which instead depends on the facts and circumstances of each case. *Bracey*, 213 Ill. 2d at 269; *In re R.A.B.*, 197 Ill. 2d 358, 364 (2001); *Hart*, 371 Ill. App. 3d at 472. For example, a written jury waiver, which is required by section 115-1 of the Code (725 ILCS 5/115-1 (West 2010)), is one way to establish the defendant's intent, but it is not necessarily conclusive (*Bracey*, 213 Ill. 2d at 269-70). The trial court is not required to issue specific advice or admonitions as a prerequisite to an effective jury waiver. *People v. Bannister*, 232 Ill. 2d 52, 66 (2008); *People v. Tooles*, 177 Ill. 2d 462, 469 (1997); *Bracey*, 213 Ill. 2d at 270; *In re R.A.B.*, 197 Ill. 2d at 364.

¶ 9 In this case, the facts and circumstances show that defendant's jury waiver was valid. On the day of the trial, defendant executed a written jury waiver. The trial court asked defendant whether he had signed the jury waiver, and defendant indicated that he had. The court then asked defendant if he understood that, by signing that form, he was instructing the court that he wished to give up his right to a jury trial. Defendant acknowledged in open court that he did understand. The court also asked defendant if he wanted the trial judge to hear the case, and defendant

indicated that he did. The court then accepted defendant's jury waiver. Under the circumstances, the record unequivocally demonstrates that defendant understandingly, knowingly and voluntarily waived his right to a jury trial. We reach this conclusion regardless of the facts defendant has challenged—the State's arguments concerning defendant's silent acquiescence to counsel's references to a bench trial during pretrial proceedings and the State's referral to his extensive criminal background. We note however that these factors have been used to help determine the validity of jury waivers. See *Bannister*, 232 Ill. 2d at 71 (the defendant's criminal record may be considered in evaluating the validity of his jury waiver); *People v. Medina*, 221 Ill. 2d 394, 406 (2006) (a jury waiver by defense counsel in the defendant's presence in open court also may be valid); *Bracey*, 213 Ill. 2d at 270; *People v. Turner*, 375 Ill. App. 3d 1101, 1109 (2007).

¶ 10 The cases cited by defendant can be distinguished. For example, in *Scott*, 186 Ill. 2d at 284-86, the defendant was never present in open court when a jury waiver was discussed. In *People v. Phuong*, 287 Ill. App. 3d 988, 994-96 (1997), the defendant was a Chinese immigrant who understood only rudimentary English, was unable to testify in English at trial and testified at trial through a Chinese language interpreter. In the present case, defendant was not a foreigner and understood and spoke the English language. In *People v. Sebag*, 110 Ill. App. 3d 821, 829 (1982), the defendant was not represented by counsel when he waived his right to a jury trial and had not been arraigned on the public indecency charge. In *People v. Miller*, 55 Ill. App. 3d 1047, 1051 (1977), the defendant was not represented by counsel and the trial court's inquiry consisted of only one question. Defendant argues that he is similar to the *pro se* defendants in *Sebag* and

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*Miller* because the record does not show that defense counsel explained his right to a jury trial.

The cases cited by defendant are factually distinguishable, and we hold that defendant's jury waiver was valid. We have considered, and rejected, defendant's arguments on appeal.

¶ 11 The judgment of the circuit court is affirmed.

¶ 12 Affirmed.