SECOND DIVISION
November 10, 2015

No. 1-13-2980

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. 13 CR 21461
	)	
NOEL NEVAREZ,	)	Honorable
	)	Sharon M. Sullivan,
Defendant-Appellant.	)	Judge Presiding.

JUSTICE SIMON delivered the judgment of the court.
Presiding Justice Pierce and Justice Neville concurred in the judgment.

O R D E R

¶ 1 *Held*: Jury waiver proper. Fines and fees order corrected.

¶ 2 Following a 2013 bench trial, defendant Noel Nevarez was convicted of the felony offense of driving on a revoked license and sentenced to one year of imprisonment with fines and fees. On appeal, defendant contends that he did not make a knowing and intelligent waiver of his right to a jury trial. He also challenges certain fines and fees and seeks credit against others. For the reasons stated below, we grant relief regarding fines and fees and otherwise affirm.

¶ 3 Defendant was cited at about 10:30 p.m. on September 15, 2012, for using an alley as a throughway. Chicago Municipal Code § 9-20-010(c) (amended Dec. 7, 2005). He was later charged with various counts of felony driving on a suspended or revoked license (625 ILCS 5/6-303 (West 2012)) for allegedly driving on or about September 15, 2012, while his privilege to drive was revoked for the offense of driving under the influence (625 ILCS 5/11-501 (West 2012)), said privilege was suspended under a summary suspension (625 ILCS 5/11-501.1 (West 2012)), and he had seven prior violations of section 6-303. The case progressed with private defense counsel through pretrial proceedings, including an unsuccessful motion to quash arrest and suppress evidence, to trial on the felony charges.

¶ 4 On the day of trial, defense counsel told the court in defendant's presence that "this is actually a non-contested trial" to preserve the appealability of the denial of the motion to quash. After a recess, defense counsel told the court that defendant had executed a jury waiver; the record includes a written jury waiver bearing defendant's signature. The court asked defendant if he understood what a jury trial was, and defendant replied "Yes." The court explained that "12 people *** would listen to the evidence, and they would decide whether you're guilty or not guilty." The court asked defendant if he understood that he has a right to a jury trial, if he wished "to give up that right" and if he had signed the jury waiver; defendant replied affirmatively to all three questions. The court accepted the jury waiver and proceeded to trial.

¶ 5 At trial, a police officer testified to seeing defendant driving a pickup truck with no other occupants "at a high rate of speed." The officer followed him and saw him turn into an alley, drive through the alley to another street without stopping, and then turn back onto the street. The officer stopped defendant for using an alley as a throughway and cited him for that offense.

When the officer asked for defendant's driver's license, he replied that it was revoked. The officer confirmed in the computerized records that his license had been revoked and arrested him for driving without a license. The State entered into evidence a certified copy of defendant's driving record reflecting the revocation, seven prior offenses of driving on a suspended or revoked license, and three offenses of driving under the influence. The court found defendant guilty of driving on a revoked license.

¶ 6 Defendant timely filed a post-trial motion challenging the sufficiency of the evidence and the denial of his motion to quash but not his jury waiver. The court denied the motion and proceeded to sentencing. Following arguments and consideration of the presentencing investigation report (PSI) by the court's Adult Probation Department, defendant was sentenced to one year of imprisonment (with 338 days of presentencing detention credit) and $459 in fines and fees with no presentencing detention credit reflected. This appeal timely followed.

¶ 7 On appeal, defendant primarily contends that he did not make a knowing and intelligent waiver of his right to a jury trial because the court did not admonish him that the court would try his case. Defendant admits that he forfeited this claim by not preserving it in his post-trial motion but argues that we can consider it as plain error. Plain error is a clear and obvious error where either (1) the evidence was closely balanced or (2) that error is so serious that it affected the fairness of the defendant's trial and challenged the integrity of the judicial process. *People v. Bannister*, 232 Ill. 2d 52, 65 (2008). The first step in plain error analysis is determining whether there is an error at all. *Id.*

¶ 8 "Every person accused of an offense shall have the right to a trial by jury unless *** understandingly waived by defendant in open court." 725 ILCS 5/103-6 (West 2012). "All

prosecutions except on a plea of guilty or guilty but mentally ill shall be tried by the court and a jury unless the defendant waives a jury trial in writing." 725 ILCS 5/115-1 (West 2012). The trial court must ensure that a defendant waives his right to a jury trial knowingly and understandingly, and a written waiver is not inherently dispositive of that issue. *Bannister*, 232 Ill. 2d at 66. The key knowledge that a defendant must understand, with its attendant consequences, is that the facts of his case will be determined not by a jury but by a judge. *Id*. at 69. That said, the determination of whether a jury waiver is valid cannot rest on any precise formula but instead depends on the facts and circumstances of each particular case, so that a trial court is not required to give any specific admonition or advice for a defendant's jury waiver to be effective. *Id*. at 66.

¶ 9 Thus, this court has held that " '[a]ll the trial judge has to do, at the bare minimum, is ask the defendant if he understands he is giving up his right to have a jury decide his case and if that is something he wants to do,' " though the court should also determine that the defendant understands what a jury trial is. *People v. Marquez*, 324 Ill. App. 3d 711, 716 (2001), quoting *People v. Dockery*, 296 Ill. App. 3d 271, 277 (1998). This court has rejected the contention that a defendant's right to a bench trial was not validly waived, finding that "this argument lacks even the slightest scintilla of merit." *People v. Kiefel*, 2013 IL App (3d) 110402, ¶¶ 14, 17. In doing so, we followed the holding of our supreme court in *People v. Wallace*, 48 Ill. 2d 252 (1971), that " 'an appropriate admonition and understanding of a right to trial by jury comprehends advice and understanding of a right to trial without jury.' " *Kiefel*, 2013 IL App (3d) 110402,¶ 19, quoting *Wallace*, 48 Ill. 2d at 253. When the *Wallace* court so held, it was rejecting a contention similar to the instant contention: that a defendant's admonishment that he had the right to a jury

trial was faulty because it did not also state that he was entitled to be tried by the court. *Wallace*, 48 Ill. 2d at 253.

¶ 10 Here, defendant contends that we should hold his jury waiver invalid because the trial court did not ensure that the waiver was made knowingly and intelligently by admonishing him that the court would try his case. However, the court described a jury as 12 people who would determine the facts of defendant's case and confirmed from defendant that he understood his right to a jury trial and assented that he would not be tried by a jury. The court made clear to defendant, and defendant in turn made clear to the court, that defendant was deciding that the facts of his case would not be determined by a jury. The touchstone of a valid jury waiver is that defendant chose voluntarily and knowingly rather than relying on particular admonishments. In this regard, we note that defendant has considerable experience with the criminal justice system. We find no reason to conclude that defendant's jury waiver was not knowingly and intelligently made and thus find no error, much less plain error, here.

¶ 11 Defendant also challenges one of his fees and seeks credit against others as fines. 725 ILCS 5/110-14(a) (West 2012)($5 credit against fines per day of presentencing detention); *People v. Graves*, 235 Ill. 2d 244, 250-51 (2009)(a fee is a charge that seeks to compensate the State for any cost incurred as the result of prosecuting a defendant, so a charge labeled a fee may be a fine). The State agrees that we must correct the order assessing fines and fees but not on all points raised by defendant. The parties correctly agree that the $5 electronic citation fee is inapplicable here, as this is not a judgment of guilty in a "traffic, misdemeanor, municipal ordinance, or conservation case." 705 ILCS 105/27.3e (West 2012). The parties also correctly agree that the following $105 in charges are actually fines: $50 and $5 for the court system, $30

for the children's advocacy center, $15 for State Police operations, and $5 for drug court. 55 ILCS 5/5-1101(a), (c), (f), (f-5); 705 ILCS 105/27.3a(1.5); *People v. Alvidrez*, 2014 IL App (1st) 121740, ¶ 35; *People v. Smith*, 2014 IL App (4th) 121118, ¶¶47-54; *People v. Rogers*, 2014 IL App (4th) 121088, ¶ 31.

¶ 12 However, defendant contends that the $2 Public Defender records automation fee (PD fee) (55 ILCS 5/3-4012 (West 2012)) and $2 State's Attorney records automation fee (SA fee) (55 ILCS 5/4-2002.1(c) (West 2012)) are both fines, while the State contends that the SA fee is indeed a fee but concedes error on the PD fee because defendant was not represented by the Public Defender. In *Rogers*, we declined a State concession of error to hold that the SA fee is indeed a fee, and we have since followed *Rogers* for both the SA and PD fees. *People v. Bowen*, 2015 IL App (1st) 132046, ¶¶ 62-65, citing *Rogers*, 2014 IL App (4th) 121088, ¶ 30. Thus, only the PD fee is a fine subject to credit in this particular case because defendant was not represented by the Public Defender. The parties also dispute whether the $10 probation and court services operations fee is a fee or fine. 705 ILCS 105/27.3a(1.1) (West 2012). In *Rogers*, we held that this charge is a fee when the probation department was involved in a defendant's case and a fine when it was not involved. *Rogers*, 2014 IL App (4th) 121088, ¶¶ 36-39. Here, the probation department prepared a PSI for defendant's sentencing and we thus find that this charge is a fee. Lastly, the parties contest whether the $25 court services fee for the Sheriff is a fine or fee. 55 ILCS 5/5-1103 (West 2012). We have held it to be indeed a fee. *People v. Adair*, 406 Ill. App. 3d 133, 145 (2010). The $2 PD fee being a fine here, it and the aforesaid correctly-conceded fines result in a total of $107 in presentencing detention credit.

¶ 13 Accordingly, we vacate defendant's $5 electronic citation fee. Pursuant to Supreme Court Rule 615(b)(2) (eff. Aug. 27, 1999), we direct the clerk of the circuit court to correct the order assessing fines and fees to reflect said vacatur and $107 in presentencing detention credit. The judgment of the circuit court is otherwise affirmed.

¶ 14 Affirmed in part, vacated in part, and order corrected.