

FOURTH DIVISION  
March 31, 2016

No. 1-14-0025

**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. 13 CR 9018
	)	
RAPHAEL ROLLINS,	)	Honorable
	)	Joseph M. Claps,
Defendant-Appellant.	)	Judge Presiding.

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JUSTICE HOWSE delivered the judgment of the court.  
Justices Ellis and Cobbs concurred in the judgment.

**O R D E R**

¶ 1 **Held:** We affirm defendant's conviction for possession of heroin where his jury waiver was valid and the trial court's admonitions were not inadequate.

¶ 2 Following a bench trial, defendant Raphael Rollins was convicted of possession of heroin and sentenced to 18 months' imprisonment. On appeal, defendant contends his jury waiver was

invalid where the trial court accepted the waiver without ensuring it was knowingly and intelligently made. We affirm.

¶ 3 Defendant was charged with possession with intent to deliver more than one gram but less than 15 grams of heroin. On May 22, 2013, defendant was arraigned with defense counsel present in court. The trial court queried defendant as follows:

"THE COURT: This is a Class 1 offense, which you have a right to trial, you have a right to trial by jury. Do you understand the charge against you?

DEFENDANT: Yes.

THE COURT: Do you know what a trial by jury is?

DEFENDANT: Yeah."

¶ 4 On October 1, 2013, defendant appeared in court with defense counsel, who announced that she was tendering an executed jury waiver to the court. The following colloquy occurred:

"THE COURT: Your case is set for trial. It's your desire to waive and give up your right to trial by jury? Did you sign this document I'm holding entitled jury waiver?<sup>1</sup>

DEFENDANT: Yes.

THE COURT: Okay. Anybody make any promises or threats to you to get you to waive your right to trial by jury?

DEFENDANT: No.

THE COURT: You make that decision of your own free will?

DEFENDANT: Yes.

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<sup>1</sup> The record attributes this question to defendant rather than the court. The parties do not dispute the clerical error.

THE COURT: Jury waiver accepted."

¶ 5 At the bench trial, a police officer testified that defendant was standing by an alley on 19th Street between Pulaski and Harding in Chicago at 7:15 p.m. on April 8, 2013. On two occasions, unidentified men approached defendant and gave him money. Each time, defendant removed items from a bag in the alley and tendered them to the men. The parties stipulated that another officer recovered the bag, which contained six bags of white powder. Three bags were tested and contained 1.1 grams of heroin.

¶ 6 The court found defendant guilty only of possession of heroin and denied his motion for new trial. According to the presentence investigation report, defendant graduated from high school with grades of "B" and "C" and intended to enroll in college. At the time of trial, defendant was on probation for a federal conviction for use of a communication facility in commission of a felony. The trial court sentenced defendant to 18 months' imprisonment.

¶ 7 On appeal, defendant contends his jury waiver was invalid where the trial court asked whether he understood what a jury trial was and accepted his response without further discussion. Defendant argues the court failed to ensure the waiver was knowingly and intelligently made and did not explain the concept of a jury trial or that a judge would decide the case if defendant waived a jury. Defendant further argues the court did not confirm whether defense counsel explained these concepts, and urges that his prior conviction does not show he was familiar with jury trials. Defendant acknowledges he provided a signed jury waiver but claims it only shows that his waiver was voluntary, not knowing and intelligent.

¶ 8 As an initial matter, the State alleges, and defendant concedes, that he forfeited review of this issue. Defendant failed to challenge the trial court's admonitions through an objection at trial and a written posttrial motion. *People v. Bannister*, 232 Ill. 2d 52, 64-65 (2008) (both trial objection and written posttrial motion required for alleged errors that could have been raised during trial). Whether a defendant's fundamental right to a jury trial has been violated is a matter that may be considered under the plain error rule. *People v. Bracey*, 213 Ill. 2d 265, 270 (2004). However, the first inquiry before determining whether there was a plain error is to determine whether there was a clear and obvious error. *People v. Eppinger*, 2013 IL 114121, ¶ 19. Absent an error, there can be no plain error and defendant's forfeiture will be honored. *Id.* For the reasons that follow, we find no error.

¶ 9 An accused has a right to a jury trial unless he or she understandingly waives that right. 725 ILCS 5/103-6 (West 2012). There is no formulaic admonishment the court must provide before accepting a waiver. *Bannister*, 232 Ill. 2d at 66. The validity of a waiver depends on the facts and circumstances of each case, including defendant's education and experience with the criminal justice system. *People v. Tooles*, 177 Ill. 2d 462, 471 (1997); *People v. Frey*, 103 Ill. 2d 327, 333 (1984). The critical determination is whether a defendant waived his right to a jury trial with the understanding that his case would be decided by a judge and not a jury. *Bannister*, 232 Ill. 2d at 69. “An accused typically speaks and acts through his attorney, and a jury waiver is valid when made by defense counsel in the defendant's presence where the defendant gives no indication of any objection to the trial court hearing the case.” *People v. Liekis*, 2012 IL App (2d)

100774, ¶ 30 (citing *Frey*, 103 Ill. 2d at 332). We review this issue *de novo*. *Bannister*, 232 Ill. 2d at 66.

¶ 10 We find defendant's jury waiver valid, as the record contains no indication the waiver was not knowingly and intelligently made. At the arraignment, with defense counsel present, the court told defendant he had the right to a jury trial and asked whether he knew "what a trial by jury is." Defendant responded affirmatively. On the day of trial, defense counsel announced to the court that she was tendering an executed jury waiver. The court asked defendant whether he desired "to waive and give up your right to trial by jury." Defendant responded affirmatively and did not object when the bench trial began. *People v. Clay*, 363 Ill. App. 3d 780, 791 (2006) (honoring waiver where defendant was represented by counsel, acknowledged she understood meaning of a jury trial, and stated she was giving up that right); *People v. Lombardi*, 305 Ill. App. 3d 33, 39-40 (1999) (signed written waiver lessens probability waiver not knowingly made). Moreover, nothing in the record indicates that defendant's background or level of education prevented him from understanding that he had the right to a jury trial and would be tried by a judge if he waived that right. To the contrary, defendant was on probation for a federal conviction during the present case, graduated from high school, and intended to enroll in college. *People v. Stokes*, 281 Ill. App. 3d 972, 979 (1996) (defendant graduated from high school, attended one year of junior college, and had prior arrests). Under the circumstances, defendant knowingly and intelligently waived his right to a jury trial and the trial court's admonitions were not erroneous.

¶ 11 For all the foregoing reasons, we affirm the judgment of the trial court.

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¶ 12 Affirmed.