

No. 1-14-0614

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. 11 CR 16971
)	
RAMIREZ HIGHSMITH,)	Honorable
)	Stanley J. Sacks,
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:* We affirm defendant's conviction for burglary where his jury waiver was valid and the trial court's admonitions were not inadequate.

¶ 2 Following a bench trial, defendant Ramirez Highsmith was convicted of burglary and based on his criminal history, sentenced to a Class X term of seven years' imprisonment. On appeal, defendant contends the trial court erred by accepting his jury waiver without explaining the purpose and function of a jury and the difference between a bench trial and jury trial. We affirm.

¶ 3 Defendant and codefendant, Michael Davis, were charged with burglarizing a railroad car. On July 24, 2013, the day of trial, defendant appeared in court with his attorney and was admonished by the court as follows:¹

"THE COURT: *** You have a constitutional right to a trial by jury of 12 people on [the] charge. Do you understand ***?"

* * *

DEFENDANT: Yes, sir.

THE COURT: Since a trial like that by a jury is your constitutional right, you give up that right if you want to and have me hear the case myself, which is commonly become known as a bench trial.

Do you understand that ***?"

* * *

DEFENDANT: Yes.

THE COURT: Your [lawyer] handed up to me [a] jury waiver[] ***. Whether you are tried by me or a jury is entirely up to you. Do you understand that ***?"

* * *

DEFENDANT: Yes.

* * *

THE COURT: Mr. Highsmith, is that your signature?

DEFENDANT: Yes.

¹ The court simultaneously admonished Davis, whose responses are omitted.

THE COURT: Did you understand when [you] signed that form you were giving up in writing your constitutional right to a trial by a jury in this case?

DEFENDANT: Yes.

THE COURT: That's what you meant to do when you signed the form?

DEFENDANT: Yes, sir.

THE COURT: You understand by giving up your right to a trial by jury means I will hear the case myself. I will decide myself whether on or about the date of September 16, 2011, if you are guilty of the offense of burglary beyond a reasonable doubt. Do you understand that, Mr. Highsmith?

DEFENDANT: Yes.

* * *

THE COURT: Mr. Highsmith, you're how old?

DEFENDANT: 44.

THE COURT: You've gone how far in school?

DEFENDANT: All the way to my third year, junior year.

THE COURT: Junior year in high school you mean?

DEFENDANT: Yes.

* * *

THE COURT: Is it your free and voluntarily [*sic*] decision to give up your right to a trial by a jury, Mr. Ramirez Highsmith?

DEFENDANT: Yes.

* * *

THE COURT: You understand when the case is over, whenever that would happen to be, if I were to determine you were guilty of the offense of burglary beyond a reasonable doubt, you could not at that point then tell me you wanted to be tried by a jury. Do you understand that, Mr. Highsmith?

DEFENDANT: Yes.

* * *

THE COURT: Any questions, Mr. Highsmith?

DEFENDANT: No, sir."

¶ 4 The record includes defendant's signed jury waiver, dated July 24, 2013. The form, titled "JURY WAIVER," included the following preprinted text: "I, the undersigned, do hereby waive jury trial and submit the above entitled cause to the Court for hearing."

¶ 5 At the bench trial, a police officer testified that defendant and another individual climbed over a fence surrounding a railway yard in Chicago on September 16, 2011. The other individual used a pair of boltcutters to break into three trailers. Defendant entered two of the trailers, removed boxes and carpeting, and was subsequently arrested.

¶ 6 The court found defendant guilty of burglary and denied his motion for new trial. According to defendant's presentence investigation report and criminal history report, defendant earned his GED and had seven prior adult felony convictions. The court sentenced defendant to seven years' imprisonment.

¶ 7 On appeal, defendant contends that the trial court erred by accepting his jury waiver without explaining the purpose and function of a jury and the difference between a bench trial and jury trial. Defendant argues that the court did not ascertain whether he understood how a jury is selected or that the verdict must be unanimous. Additionally, the court did not determine

whether defendant understood that he could cross-examine the State's witnesses during a jury trial and present witnesses and evidence in his defense. Further, defendant claims that the court did not inquire whether defendant conferred with counsel before signing the waiver or whether the waiver resulted from promises or threats. Defendant also submits the waiver form did not clarify the difference between a bench trial and jury trial and suggested that signing the waiver would result in a "hearing" rather than a trial.

¶ 8 As an initial matter, the State alleges that defendant forfeited review of this issue by failing to challenge the validity of his jury waiver in the trial court. *People v. Bannister*, 232 Ill. 2d 52, 64-65 (2008) (both trial objection and written posttrial motion required to preserve challenge to allegedly erroneous admonition). 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 A defendant 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. Rather, the validity of a waiver depends on the facts and circumstances of each case, including the defendant's education and experience with the criminal justice system. *People v. Tooles*, 177 Ill. 2d 462, 469, 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. The court is not required to explain the ramifications of a jury

waiver unless there is an indication that the defendant did not understand the right to a jury trial. *People v. Steiger*, 208 Ill. App. 3d 979, 981 (1991). Whether a defendant knowingly and understandingly waived his right to a jury trial is an issue we review *de novo*. *Bracey*, 213 Ill. 2d at 270.

¶ 10 Turning to the present case, we find that defendant's jury waiver was valid. The trial court admonished defendant in the presence of counsel, explaining that he had a constitutional right to a trial by a jury of 12 people and that the judge would decide the case if defendant waived that right. The court told defendant that the choice between a jury trial and bench trial "is entirely up to you," but that if he was found guilty following a bench trial, he could not request a trial by jury. The court confirmed that defendant signed the jury waiver freely and voluntarily, with the understanding that he was waiving his right to a jury trial. *People v. Lombardi*, 305 Ill. App. 3d 33, 39-40 (1999) (signed written waiver lessens the probability that the waiver not knowingly made). Defendant indicated that he understood each admonishment and did not ask any questions when provided the opportunity. With these admonishments, the court ensured that defendant waived his right to a jury trial expressly and with the critical understanding that his case would be decided by the trial judge. *Bannister*, 232 Ill. 2d at 69 ("the pivotal knowledge that the defendant must understand—with its attendant consequences—is that the facts of the case will be determined by a judge and not a jury"); *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). We note, moreover, that defendant earned a GED and that his seven prior adult felony convictions suggest that he was familiar with the right to a jury trial. *Tooles*, 177 Ill. 2d at 471 (defendant's four prior convictions supported a presumption of familiarity with jury waivers). Under the circumstances, defendant

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knowingly, intelligently, and voluntarily waived his right to a jury trial, and the court's admonitions were not inadequate. In the absence of error, the plain error doctrine does not apply and defendant's contention remains forfeited.

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

¶ 12 Affirmed.