

No. 1-14-1963

**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 DISTRICT

---

THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from the
	)	Circuit Court of
Plaintiff-Appellee,	)	Cook County
	)	
v.	)	No. 12 C6 60318
	)	
LADUNTA ALLEN,	)	Honorable
	)	Anna Helen Demacopoulos,
Defendant-Appellant.	)	Judge, Presiding.

---

JUSTICE HOFFMAN delivered the judgment of the court.  
Justices Hall and Delort concurred in the judgment.

**ORDER**

¶ 1 *Held:* The trial court did not err in its assessment that the defendant knowingly and voluntarily waived his fundamental right to a jury trial.

¶ 2 Following a bench trial, the defendant, Ladunta Allen, was convicted of aggravated kidnapping and sentenced to 12 years' imprisonment. On appeal, he argues that his conviction should be reversed and the matter remanded for a new trial because he did not knowingly and intelligently waive his right to a jury trial. For the reasons that follow, we affirm the judgment of the circuit court.

¶ 3 In March 2012, the defendant was charged by information with attempted first-degree murder, aggravated kidnapping, aggravated battery, aggravated domestic battery, aggravated unlawful restraint, and violating an order of protection. The charges alleged that, on February 28, 2012, the defendant attacked the victim, his estranged girlfriend, as she was walking down an alley on her way to work. During the attack, the defendant held a razor blade to the victim's neck, forced her to walk towards an abandoned building, struck her in the face, and strangled her.

¶ 4 At an October 2012, status hearing, defense counsel requested, and the trial court ordered, a behavioral clinical examination to determine the defendant's fitness to stand trial. Pursuant to the court's order, the defendant was evaluated by Brian Curran, a licensed clinical psychologist with forensic clinical services of the circuit court of Cook County. In a letter to the trial court, Dr. Curran opined that the defendant was fit to stand trial. He stated that the defendant was aware of the charges against him, understood the nature and purpose of legal proceedings, was familiar with the roles of various courtroom personnel, and was capable of assisting his attorney in preparing a defense. Dr. Curran's examination also revealed that the defendant understood the difference between a bench trial and jury trial and was aware that he decides which type of trial he wants. The defendant was also able to discuss the role of the judge, explaining that the judge was "in charge in the courtroom" and would find him "guilty or not guilty." At a fitness hearing, both parties stipulated to Dr. Curran's opinions and the trial court found the defendant fit to stand trial.

¶ 5 On May 13, 2014, just prior to the commencement of trial, the defendant appeared in court with his attorney and the following colloquy occurred:

"THE COURT: \* \* \* You are entitled to a jury trial. Do you know what a jury trial is, Mr. Allen?

THE DEFENDANT: Yes, ma'am.

THE COURT: Pardon me?

THE DEFENDANT: Yes, ma'am.

THE COURT: Do you have a jury waiver?

MR. SNEED [assistant public defender]: Yes.

THE COURT: Is it your desire to have a bench trial or jury trial, Mr. Allen?

THE DEFENDANT: Bench trial, ma'am.

THE COURT: If you can execute that jury waiver then.

Is this your signature here?

THE DEFENDANT: Yes, ma'am.

THE COURT: You understand that by signing this document you are waiving your rights to jury trial?

THE DEFENDANT: Yes, ma'am."

The defendant's signed jury waiver, dated May 13, 2014, provides as follows: "I, the undersigned, do hereby waive jury trial and submit the above entitled cause to the Court for hearing."

¶ 6 Following the bench trial, the defendant was found guilty of aggravated kidnapping, aggravated battery, aggravated domestic battery, aggravated unlawful restraint, and violation of an order of protection. Thereafter, the court ordered a presentence investigation (PSI) report and scheduled a sentencing hearing. According to the PSI report, the defendant obtained an 11th-grade education and had three prior adult convictions for battery, robbery, and violating an order of protection. At the sentencing hearing, the court merged the defendant's convictions into the

aggravated kidnapping conviction and sentenced him to 12 years' imprisonment. The court denied the defendant's posttrial motions, and this appeal followed.

¶ 7 On appeal, the defendant contends that his right to a jury trial was violated because the trial court failed to ensure that his waiver of this fundamental right was knowingly and intelligently made. Specifically, he argues that the court never explained the nature of a jury trial or the difference between a bench trial and jury trial. The defendant also claims that the court did not inquire as to whether anyone had pressured him into waiving his right to a jury trial. The defendant acknowledges that he failed to preserve his claim on appeal, but argues that the issue should be reviewed under the plain error doctrine.

¶ 8 Under the plain error doctrine, a reviewing court may consider an issue that was not preserved in two circumstances: (1) where the evidence was closely balanced such that the error alone threatened to tip the scales of justice against the defendant, regardless of the seriousness of the error, or (2) where the error was so serious it affected the fairness of the proceedings and challenged the integrity of the judicial process, regardless of the closeness of the evidence. *People v. Piatkowski*, 225 Ill. 2d 551, 565 (2007). Before considering the defendant's claim under either prong, we must first determine whether an error has occurred. *People v. Eppinger*, 2013 IL 114121, ¶ 19.

¶ 9 Both our federal and state constitutions guarantee a criminal defendant's right to a jury trial. U.S. Const., amends. VI, XIV; Ill. Const. 1970, art. I, §§ 8, 13. A defendant may waive this right, but in order for him to validly do so, he must make the jury waiver knowingly and voluntarily in open court. *People v. Bannister*, 232 Ill. 2d 52, 65-66 (2008). Courts are not required to communicate "any set admonition or advice" before accepting a waiver. *Id.* at 66. Consequently, whether a defendant's jury waiver is made knowingly and understandingly

"depends on the facts and circumstances of each particular case." *Id.* The pivotal concept that the jury-waiving defendant must understand is that the judge, not a jury, will determine the facts of his case. *Id.* at 69. "Although a signed jury waiver alone does not prove a defendant's understanding, it is evidence that a waiver was knowingly made." *People v. Reed*, 2016 IL App (1st) 140498, ¶ 7. Likewise, a defendant's silence while his attorney requests a bench trial provides evidence that the waiver is valid. *Id.* Reviewing courts may also consider a defendant's prior interactions with the criminal justice system in determining whether a jury waiver was made knowingly. *Bannister*, 232 Ill. 2d at 71. We review whether a defendant knowingly and voluntarily waived his right to a jury trial *de novo*. *People v. Bracey*, 213 Ill. 2d 265, 270 (2004).

¶ 10 In this case, the particular facts and circumstances support the finding that the defendant knowingly and voluntarily waived his right to a jury trial. The record shows that the defendant was present in court with his attorney when the trial court stated that the matter was set for a bench trial. The court admonished the defendant that he had a right to a jury trial and questioned him about whether he knew what a jury trial is, whether he wished to waive his right, whether he signed a jury waiver, and whether he wanted a bench trial. The defendant answered in the affirmative to each question and at no time did he object or ask questions. The defendant also submitted a signed jury waiver, and confirmed that he understood that by signing the document, he was waiving his right to a jury trial. We also note that the defendant had a history with the criminal court system—namely, three prior convictions—which suggests that he was familiar with the right to a jury trial and the consequences of waiving that right. *People v. Tooles*, 177 Ill. 2d 462, 471 (1997) (the defendant's four prior convictions supported a presumption of familiarity with jury waivers). Finally, the defendant's behavioral clinical examination revealed that he was

fit to stand trial, understood the difference between a bench trial and jury trial, was familiar with the role of courtroom personnel, and was aware that the judge would find him "guilty or not guilty." Accordingly, under these facts and circumstances, we find that the defendant knowingly and voluntarily waived his right to a jury trial.

¶ 11 In reaching this conclusion, we find *People v. Sebag*, 110 Ill. App. 3d 821 (1982), cited by the defendant, inapposite. In *Sebag*, the defendant was not represented by counsel, had no familiarity with criminal proceedings, and was not advised of the meaning of a jury trial. *Id.* at 829. Unlike the defendant in *Sebag*, the defendant in this case had the benefit of counsel when he waived his right to a jury trial, was familiar with criminal proceedings, and understood the difference between a bench trial and jury trial.

¶ 12 In sum, after considering the defendant's colloquy with the trial court, his familiarity with the criminal justice system, and the behavioral clinical examination finding him fit to stand trial, we hold that the trial court did not err in finding the defendant knowingly and voluntarily waived his right to a jury trial. In the absence of error, the plain error doctrine does not apply and the defendant's forfeiture is not excused.

¶ 13 For the foregoing reasons, the circuit court did not err by accepting the defendant's jury waiver, and we affirm the judgment of the circuit court.

¶ 14 Affirmed.