

No. 1-14-2203

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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 12634
	)	
LAROYCE TATE,	)	Honorable
	)	Thaddeus L. Wilson,
Defendant-Appellant.	)	Judge Presiding.

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PRESIDING JUSTICE HOFFMAN delivered the judgment of the court.  
Justices Cunningham and Rochford concurred in the judgment.

**ORDER**

¶ 1 *Held:* The defendant’s conviction for unlawful use of a weapon by a felon was affirmed where the trial court fulfilled its obligation to ensure his waiver of his right to a jury trial was knowingly and voluntarily made.

¶ 2 Following a bench trial, the defendant, Laroyce Tate, was convicted of unlawful use of a weapon by a felon (720 ILCS 5/24-1.1(a) (West 2012)) and sentenced to 42 months’ imprisonment. On appeal, the defendant contends that his right to a jury trial was violated because the trial court failed to adequately ensure that it was knowingly and voluntarily waived. For the reasons that follow, we affirm.

¶ 3 On December 12, 2013, the defendant and his attorney appeared in court at which time defense counsel informed the court that the defendant was “seeking a bench trial date.” The parties subsequently agreed to a trial date of March 20, 2014, with the court stating, “[b]y agreement March 20th with subpoenas for bench trial.”

¶ 4 On March 20, 2014, the parties, with the defendant present, appeared in court. Although an assistant State’s Attorney informed the trial court that the case was “set for bench trial today,” she asserted that both parties were currently involved in jury trials on unrelated matters. The parties agreed to reschedule the trial for May 21, 2014, with the court stating “[b]y agreement \*\*\* with subpoenas for bench trial.”

¶ 5 On May 21, 2014, in the defendant’s presence, the assistant State’s Attorney informed the trial court that one of the State’s necessary witnesses was absent and it could not begin the trial that day. The parties agreed to reschedule the trial for May 28, 2014, with the court stating “[w]ith subpoenas for bench trial.”

¶ 6 On May 28, 2014, the defendant submitted to the trial court a written jury waiver signed by him. The parties answered ready for trial, and the following colloquy occurred:

“THE COURT: Sir, you have a right to a trial before a jury. Do you know what a jury trial is?

THE DEFENDANT: Yes, sir.

THE COURT: I have in my hand a jury waiver form. Is that your signature at the bottom?

THE DEFENDANT: Yes, sir.

THE COURT: Did you read it or was it explained to you before you signed it?

THE DEFENDANT: Yes, sir.

THE COURT: Do you understand by signing this form you're waiving your right to a trial before a jury?

THE DEFENDANT: Yes, sir.

THE COURT: And if this matter would proceed before me in what's called a bench trial. Do you understand this?

THE DEFENDANT: Yes, sir.

THE COURT: Has anyone threatened you or promised you anything to give up your right to a jury trial?

THE DEFENDANT: No.

THE COURT: Are you giving up your right to a jury trial of your own free will?

THE DEFENDANT: Yes, sir.

THE COURT: I'm sorry?

THE DEFENDANT: Yes, sir.

THE COURT: I will accept the jury waiver as knowingly and voluntarily given."

¶ 7 The case proceeded to trial where the evidence showed that, on June 19, 2013, Chicago police officers approached a residence to execute a search warrant. Near the residence, officers encountered the defendant, detained him, "conducted a name check" and released him. After obtaining keys from the individual who lived in the residence, the officers entered and began to

search it. In one bedroom, they located a shotgun, ammunition and mail addressed to the defendant at the address on the warrant.

¶ 8 After the police finished the search, and while they were outside, the defendant approached them and asked if he could speak with them in private. The defendant led the officers to the bedroom where the shotgun was found and admitted it belonged to him, and not to his brother. The police subsequently placed the defendant into custody and read him his *Miranda* rights. As the officers escorted the defendant from the bedroom, he walked past the living room where his mother and grandmother were located and told them the shotgun belonged to him, and not to his brother. The defendant was transported to the police station, where he again admitted to ownership of the shotgun and also the ammunition.

¶ 9 The State admitted a certified copy of conviction showing that the defendant had previously been convicted of robbery in case No. 05 CR 2356404.

¶ 10 The trial court found the defendant guilty of unlawful use of a weapon by a felon. Following an unsuccessful motion for new trial, the court sentenced him to 42 months' imprisonment. This appeal followed.

¶ 11 The defendant contends that his right to a jury trial was violated because the trial court failed to adequately ensure that his waiver of this right was knowingly and voluntarily made. He argues that, despite signing a written jury waiver and affirmatively responding to the court's jury waiver admonishments, the court simply took his responses at "face value" without inquiring as to whether he actually understood his right to a jury trial and the ramifications of waiving the

right. The defendant, therefore, asserts that his case must be reversed and remanded for a new trial.

¶ 12 Initially, the defendant acknowledges that he failed to preserve the claim of error for review by not raising the issue in the trial court. See *In re R.A.B.*, 197 Ill. 2d 358, 362 (2001). However, he argues that we may review the claim of error for second-prong plain error, which allows review of an unpreserved claim of error if the error is clear or obvious and “so serious that it affected the fairness of the defendant’s trial 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 determining whether there is plain error, we must first determine whether an error actually occurred, because absent error, there can be no plain error. *People v. Bannister*, 232 Ill. 2d 52, 65, 71 (2008).

¶ 13 The right to a jury trial is a fundamental right afforded to criminal defendants by both our federal and state constitutions. U.S. Const., amends. VI, XIV; Ill. Const. 1970, art. I, §§ 8, 13; *Bannister*, 232 Ill. 2d at 65. A defendant also has the right to waive a trial by jury. 725 ILCS 5/103-6 (West 2012). However, any such waiver must be “knowingly and understandingly made” in open court. *People v. Bracey*, 213 Ill. 2d 265, 269 (2004); see 725 ILCS 5/103-6 (West 2012) (“Every person accused of an offense shall have the right to a trial by jury unless \*\*\* understandingly waived by defendant in open court.”). It is the trial court’s duty to ensure that the defendant’s waiver is made knowingly. *Bannister*, 232 Ill. 2d at 66. However, the trial court is not required to give a specific admonition or declaration to the defendant to ensure a knowing

waiver (*id.*), and each waiver must be evaluated on a case-by-case basis rather than by an exact formula. *Bracey*, 213 Ill. 2d at 269.

¶ 14 “The crucial determination is whether the waiving defendant understood that his case would be decided by a judge and not a jury.” *People v. Reed*, 2016 IL App (1st) 140498, ¶ 7. While a written jury waiver may help show the defendant knowingly waived his right to a jury trial, it is not dispositive of a valid waiver. *Bracey*, 213 Ill. 2d at 269-70. The defendant’s silence when his counsel requests a bench trial may also demonstrate the validity of a waiver. *Reed*, 2016 IL App (1st) 140498, ¶ 7. The defendant bears the burden of establishing that his jury waiver was invalid. *Id.* Where the facts are not in dispute, as is the case here, our review proceeds *de novo*. *In re R.A.B.*, 197 Ill. 2d at 362.

¶ 15 In the present case, the circumstances show that the trial court fulfilled its duty to ensure that the defendant knowingly and voluntarily waived his right to a jury trial, and he has failed to demonstrate otherwise. During a pretrial court appearance, defense counsel requested a bench trial in the defendant’s presence, and he remained silent, never once objecting or questioning counsel’s request. At subsequent court appearances, and after the parties asserted that they were not ready to begin trial, the court stated that the defendant’s “bench” trial had been rescheduled. He again did not object or question the manner of trial. On the day of trial, the defendant submitted a signed jury waiver indicating his desire to have a bench trial. The trial court also admonished him about his right to a jury trial and the consequences of waiving the right. The court inquired as to whether his signature appeared at the bottom of the written jury waiver, whether he had been threatened or promised anything in exchange for waiving his right, and

whether his waiver was based on his own free will. The defendant responded affirmatively that it was his intention, based on his own free will, to waive his right to a jury trial and have a bench trial. He further acknowledged understanding that a bench trial meant his case would be decided by the trial court. Given these facts, the trial court clearly made the defendant aware that, by waiving his right to a jury trial, his trial would be decided by the court rather than a jury. See *Reed*, 2016 IL App (1st) 140498, ¶¶ 7-8. The defendant has, therefore, failed to demonstrate that the court failed to fulfill its duty to adequately ensure he made a knowing and voluntary waiver of his right to a jury trial.

¶ 16 Furthermore, the defendant has a criminal history dating back to 2007, including one prior felony and three misdemeanors convictions, suggesting a familiarity with the criminal justice system and the right to a jury trial. See *People v. Turner*, 375 Ill. App. 3d 1101, 1109 (2007) (finding a defendant’s criminal history consisting of two criminal convictions and multiple traffic convictions “demonstrate[d] a familiarity with the criminal justice system and, thus, a familiarity with her right to a trial by jury and with the ramifications of waiving that right”).

¶ 17 The defendant, however, compares his case to *People v. Sebag*, 110 Ill. App. 3d 821 (1982). In *Sebag*, the defendant represented himself and signed a written jury waiver. *Id.* at 828-29. The trial court’s jury waiver admonishments consisted of the following:

“THE COURT: You are entitled to have your case tried before a jury or judge.

DEFENDANT SEBAG: Judge.

THE COURT: Jury waiver. Do you understand that by waiving a jury at this time that you cannot reinstate it; do you understand that?

DEFENDANT SEBAG: Yes.” *Id.* at 829.

In finding that the defendant’s jury waiver was invalid, the appellate court found “[t]he defendant was without the benefit of counsel, and it does not appear that he was advised of the meaning of a trial by jury nor does it appear that he was familiar with criminal proceedings.” *Id.* Here, unlike in *Sebag*, the defendant had the benefit of counsel, he had a criminal background, the trial court asked him several questions concerning his right to a jury trial, and he specifically acknowledged understanding the meaning of a jury trial. For these reasons, *Sebag* is clearly distinguishable.

¶ 18 The defendant further argues that, prior to accepting his waiver, the trial court did not determine whether he truly knew the meaning of a jury trial. He asserts that the court did not ask him, *inter alia*, if he knew his right to a jury trial was constitutional in nature, that a jury consists of 12 peers or that a jury must unanimously agree that the State has proven him guilty beyond a reasonable doubt. As previously discussed, the court was not required to give a specific set of admonishments to the defendant before allowing him to waive his right to a jury trial. *Bannister*, 232 Ill. 2d at 66. Rather, the critical question is whether the defendant understood that his trial would be decided by the trial court and not a jury. *Reed*, 2016 IL App (1st) 140498, ¶ 7. The record plainly shows that the defendant understood his trial would be decided by the trial court rather than a jury, and the defendant fails to point to any hesitation or confusion on his part to demonstrate otherwise.



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¶ 19 In sum, the trial court fulfilled its duty to ensure that the defendant knowingly and voluntarily waived his right to a jury trial. As the court did not commit any error, there can be no plain error. See *Bannister*, 232 Ill. 2d at 71.

¶ 20 For the foregoing reasons, we affirm the judgment of the circuit court of Cook County.

¶ 21 Affirmed.