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2018 IL App (3d) 150670-U

Order filed July 12, 2018

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IN THE  
APPELLATE COURT OF ILLINOIS  
THIRD DISTRICT

2018

THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from the Circuit Court of the 21st Judicial Circuit, Kankakee County, Illinois,
Plaintiff-Appellee,	)	
v.	)	Appeal No. 3-15-0670
	)	Circuit No. 08-TR-21238
WALTER AARON, a/k/a Walter Welles,	)	Honorable
Defendant-Appellant.	)	Thomas W. Cunningham, Judge, Presiding.

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JUSTICE LYTTON delivered the judgment of the court.  
Justices McDade and Schmidt concurred in the judgment.

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**ORDER**

- ¶ 1 *Held:* Defendant's jury waiver was knowingly and understandingly made.
- ¶ 2 Defendant, Walter Aaron, a/k/a Walter Welles, appeals his conviction arguing that his jury waiver was invalid. We affirm.

¶ 3 **FACTS**

¶ 4 Defendant received traffic citations for driving while license suspended (625 ILCS 5/6-303 (West 2008)) and driving without valid registration (625 ILCS 5/3-701 (West 2008)). Defendant also had another pending criminal case in which he was named as Walter Welles.

¶ 5 On April 5, 2013, defendant was initially not in court when his case was called. As a result, an arrest warrant was issued. Defendant arrived later and the warrant was recalled. The following exchange then occurred:

“[DEFENSE COUNSEL]: Judge, at this time we’re going to move to orally quash the bench warrant that was issued a moment ago. My client took the Metra train, and he just got here on the River Valley bus line. We’re going to be tendering a jury waiver to the court today and asking for a bench trial date of April the 25th. He already has a court date in front of Judge Cunningham on that date and that time.

THE COURT: I don’t know if he has enough room on April 25th.

[DEFENSE COUNSEL]: Well, he’s already going to be up on that day.

THE COURT: I understand, but I’m just saying I can’t move him up. Do you know if that’s still open? Can you call down. Quash the bench warrant. And we’ll—he’s got 08-TR-21238 and 39, and that will be going to bench trial downstairs in front of Judge Cunningham. And—because he’s already got some—is it okay? Yes, it’s okay. He can do it. Great. So we got that settled. So you need to be sure you’re there April 25th. That will be at 1:30. Metra will work a little better for you then.

THE DEFENDANT: Yeah.

THE COURT: If you don't show up, they can have the trial without you. They can convict you and sentence you and you will have lost some rights; do you understand all that?

THE DEFENDANT: Yeah.

THE COURT: Thank you.”

¶ 6 That same day, defendant signed a written jury waiver and the waiver was submitted to the court. Specifically, the jury waiver stated, “I hereby waive a jury trial in the above entitled cause and consent to trial before the court.”

¶ 7 After multiple failures to appear and continuances, a bench trial was held. The court found defendant guilty of driving while license suspended, but not guilty of driving without valid registration. Defendant was sentenced to 90 days in the Jerome Combs Detention Center. Defendant filed a motion to reconsider sentence and a motion for a new trial, which were denied.

¶ 8 ANALYSIS

¶ 9 On appeal, defendant argues that his jury waiver was invalid. Specifically, defendant argues that (1) the waiver was “*de minimus* and conclusory,” (2) he did not explicitly waive a jury in open court, (3) counsel’s tendering of the written waiver was not an explicit personal waiver by defendant, and (4) the court did not admonish defendant or discuss the waiver with defendant. Because defendant signed a written waiver, did not object when his counsel presented to the court that he was filing a jury waiver, and had past interactions with the justice system, we find that defendant’s jury waiver was knowingly and understandingly made.

¶ 10 A criminal defendant has a constitutional right to a trial by jury. U.S. Const., amends. VI, XIV; Ill. Const. 1970, art. I, §§ 8, 13. However, a defendant may waive this right so long as the waiver is knowingly and understandingly waived in open court. 725 ILCS 5/103-6 (West

2012); *People v. Bracey*, 213 Ill. 2d 265, 269-70 (2004). “While it may be preferable for a trial court to advise a defendant of his right to a jury trial, the trial court is not constitutionally required to do so in order to maintain a valid waiver.” *People v. Steiger*, 208 Ill. App. 3d 979, 981 (1991). “A court need not give any specific admonishment or advice for a waiver to be effective; instead, the determination of whether a jury waiver is valid depends on the facts and circumstances of a particular case.” *People v. West*, 2017 IL App (1st) 143632, ¶ 10. Moreover, a circuit court need not “give a defendant an explanation concerning the ramifications of a jury waiver unless there is an indication that the defendant did not understand his right to a jury trial.” *Steiger*, 208 Ill. App. 3d at 981. “Generally, a jury waiver is valid if it is made by defense counsel in defendant’s presence in open court, without an objection by defendant.” *Bracey*, 213 Ill. 2d at 270.

“Although a signed jury waiver alone does not prove a defendant’s understanding, it is evidence that a waiver was knowingly made. [Citation.] Similarly, a present defendant’s silence while his or her attorney requests a bench trial provides evidence that the waiver is valid. [Citation.] Reviewing courts may also consider a defendant’s prior interactions with the justice system in determining whether a jury waiver was made knowingly.” *People v. Reed*, 2016 IL App (1st) 140498, ¶ 7.

¶ 11 Here, defense counsel stated, in court with defendant present, “We’re going to be tendering a jury waiver to the court today and asking for a bench trial date of April the 25th.” Defendant did not object. A written jury waiver was tendered which stated, “I hereby waive a jury trial in the above entitled cause and consent to trial before the court.” It was signed by defendant the same day it was tendered. Because the record is devoid of any indication that

defendant did not understand his right to a jury trial, the court was not required to explain to defendant his right to a jury or provide any admonishments. Moreover, we note that defendant had multiple prior interactions with the justice system. In fact, in one of the cases pending at the same time as this one, defendant waived his right to a jury and later decided to plead guilty. Viewing the above facts in totality, we cannot say that defendant's jury waiver was invalid.

¶ 12 In *People v. Asselborn*, 278 Ill. App. 3d 960, 962 (1996), the court said, “‘Have a seat. Jury waiver. Bench or jury?’ ” Defense counsel replied, “ ‘It will be a bench [Y]our Honor.’ ” *Id.* Defendant was present in court and did not object. *Id.* No written waiver was filed and no other conversation about the jury waiver occurred. *Id.* The waiver was held to be knowingly and understandingly made. *Id.* at 963. Likewise, in *People v. Tucker*, 183 Ill. App. 3d 333, 334 (1989), the only discussion of a jury waiver occurred on the day of trial when the court asked counsel “ ‘Jury trial?’ ” and counsel replied, “ ‘No. Bench.’ ” Since defendant was present when this occurred, the appellate court found that a valid waiver had occurred. *Id.* at 335. Like *Asselborn*, no written waiver was signed in *Tucker*. *Id.* Both of the above cases involved less waiver discussion than the instant case. Unlike this case, neither *Asselborn* or *Tucker* involved a written jury waiver. Defendant's waiver in the instant case was knowingly and understandingly made.

¶ 13 CONCLUSION

¶ 14 The judgment of the circuit court of Kankakee County is affirmed.

¶ 15 Affirmed.