

2019 IL App (1st) 170769-U

No. 1-17-0769

Order filed May 6, 2019

First Division

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. 16 CR 17978
)	
CLARENCE LANG,)	Honorable
)	James B. Linn,
Defendant-Appellant.)	Judge, presiding.

JUSTICE PIERCE delivered the judgment of the court.
Justices Griffin and Walker concurred in the judgment.

ORDER

- ¶ 1 *Held:* We affirm defendant's conviction for possession of a stolen motor vehicle where his jury waiver was valid and the trial court adequately admonished him.
- ¶ 2 Following a bench trial, defendant Clarence Lang was convicted of possession of a stolen motor vehicle and sentenced to four years' imprisonment. On appeal, he argues the trial court erred by accepting his jury waiver without confirming that he understood the right to a jury trial and waived that right voluntarily. We affirm.

¶ 3 Defendant was charged by information with one count of possession of a stolen motor vehicle (625 ILCS 5/4-103(a)(1) (West 2016)). Defendant does not dispute the sufficiency of the trial evidence, so we recite only those facts relevant to our disposition of the issue on appeal.

¶ 4 On December 14, 2016, defendant appeared in court and received appointed counsel. Counsel asked the court “to set this [case] for a bench trial on February 2nd.” After discussing other pretrial matters, the court scheduled the trial and asked, “Is that an indicated bench by the way?” Defense counsel responded, “It’s a bench.” Defendant did not object to counsel’s request for a bench trial.

¶ 5 On February 2, 2017, defendant and counsel again appeared in court. The court observed that defendant “needs to be uncuffed” because “cuffing everybody in the lock up *** is not going to be something that is workable because people need to sign papers and jury waivers for trial.” The following colloquy occurred:

“THE COURT: *** In the meantime, are you able to sign your name with the cuff on?

THE DEFENDANT: Yes.

* * *

THE COURT: You have a right to a jury trial where 12 people would be selected from the community to hear the evidence. All 12 would have to unanimously agree you were proven guilty beyond a reasonable doubt before you could be found guilty. If you did not have a jury trial, you could have a bench trial where I would hear the evidence myself and decide myself if you’ve been proven guilty beyond a reasonable doubt or not. Do you understand what I said?

THE DEFENDANT: Yes.

THE COURT: What kind of trial do you want, bench trial or jury trial?

THE DEFENDANT: Bench.

THE COURT: Do you understand by signing the paper your lawyer has prepared, you are telling me that you do not want a jury trial? Jury is waived.”

¶ 6 The record contains defendant’s signed jury waiver, dated February 2, 2017. The form, titled “JURY WAIVER,” includes the following preprinted text: “I, the undersigned, do hereby waive jury trial and submit the above entitled cause to the Court for hearing.”

¶ 7 At trial, Naveed Khan testified that he parked his van outside his girlfriend’s apartment in Chicago on November 4, 2016. Around 1:40 a.m., he heard loud knocks coming from the street, looked out the window, and observed his van being driven away. He called the police, who recovered the van later that morning. At the police station, Khan noticed the van’s passenger’s side window was “pulled out” and “the ignition was out.” He did not give defendant permission to drive the van.

¶ 8 Chicago police officer Scott Minicci testified that he was on patrol with his partner and encountered the van around 2:55 a.m. Minicci checked the van’s license plate “via LEADS,” which revealed it had been reported stolen. The officers curbed the vehicle and arrested defendant, who was driving, along with a passenger who tried to flee the scene. Minicci examined the van and noticed “the ignition was popped open and there wasn’t any room to put a key in.” He recovered a screwdriver near the front passenger door.

¶ 9 The trial court found defendant guilty of possession of a stolen motor vehicle and denied his motion for a new trial. Defendant’s presentence investigation (PSI) report showed that,

between 2006 and 2015, he had convictions for domestic battery, possession of cannabis, resisting arrest, soliciting unlawful business, violation of an order of protection, domestic battery, criminal trespass to land, criminal trespass to a residence, attempt armed robbery, aggravated unlawful use of a weapon, and possession of a controlled substance. According to the PSI report, defendant attended two years of high school and studied for his GED at a college and online, although he had not received it. The trial court sentenced defendant to four years' imprisonment.

¶ 10 On appeal, defendant argues the trial court erred by accepting his jury waiver without confirming that he waived the right to a jury trial knowingly and voluntarily. Defendant notes that he was handcuffed when he signed the jury waiver, and did not verbally state that he understood the purpose of the form. Additionally, he submits the trial court did not ask whether he understood that during a jury trial, the State would retain the burden of proof and that he could cross-examine the State's witnesses and present his own evidence. The State maintains the admonishments were adequate and that no error occurred.

¶ 11 Defendant acknowledges that he did not contest the validity of his jury waiver at trial or challenge it in a posttrial motion, and therefore forfeited the issue on appeal. See *People v. Woods*, 214 Ill. 2d 455, 470 (2005) (to preserve an error for review, a defendant must object at trial and raise the issue again in a posttrial motion). He requests that we review his claim under the second prong of the plain error doctrine, which allows a reviewing court to address defects affecting substantial rights when "the error was so serious that it affected the fairness of the defendant's trial and challenged the integrity of the judicial process." *People v. Herron*, 215 Ill. 2d 167, 187 (2005); see also *People v. Bracey*, 213 Ill. 2d 265, 270 (2004) ("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.”). Since there can be no plain error without error, our first inquiry is whether a clear and obvious error occurred. *People v. Eppinger*, 2013 IL 114121, ¶ 19.

¶ 12 The right to a jury trial is a fundamental right guaranteed by the federal and state constitutions. U.S. Const., amends. VI, XIV; Ill. Const. 1970, art. I, §§ 8, 13; see also *People v. Bannister*, 232 Ill. 2d 52, 65 (2008). Although the right to a jury trial is fundamental, a defendant remains free to waive that right. *Bracey*, 213 Ill. 2d at 269. However, to be valid, the defendant’s waiver “must be knowingly and understandingly made.” *Id.*; 725 ILCS 5/103-6 (West 2016) (“[e]very person accused of an offense shall have the right to a trial by jury unless *** understandingly waived by defendant in open court”).

¶ 13 Because there is no formulaic admonishment that a trial court must provide before accepting a jury waiver, the validity of a waiver depends on the facts and circumstances of each case. *Bannister*, 232 Ill. 2d at 66. A written waiver, as required by section 115-1 of the Code of Criminal Procedure of 1963 (725 ILCS 5/115-1 (West 2016)), is one way of establishing a defendant’s intent, although not dispositive of a valid waiver. *Bracey*, 213 Ill. 2d at 269-70. Additionally, a reviewing court can consider a defendant’s silence when his attorney requests a bench trial, and his “prior interactions with the justice system.” *People v. Reed*, 2016 IL App (1st) 140498, ¶ 7. A defendant’s level of education is also relevant. See *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 “the facts of the case will be determined by a judge and not a jury.” *Bannister*, 232 Ill. 2d at 69. When, as here, the facts are undisputed, the validity of a jury waiver is a question of law and our review is *de novo*. *Id.* at 66.

¶ 14 The record shows that, on December 14, 2014, defendant appeared in court with counsel, who twice requested the case be set for a bench trial. On the date of trial, February 2, 2017, defendant again appeared with counsel and the court admonished him regarding the right to a jury trial, “where 12 people would be selected from the community to hear the evidence” and “would have to unanimously agree you were proven guilty beyond a reasonable doubt.” The court further explained that, “[i]f you did not have a jury trial, you could have a bench trial where I would hear the evidence myself and decide myself if you’ve been proven guilty beyond a reasonable doubt or not.” The court asked defendant whether he understood the foregoing, and defendant responded affirmatively. Then, the court asked whether defendant wanted a “bench or jury trial,” and defendant stated, “[b]ench.” Finally, the court asked whether defendant understood that, by signing the jury waiver, “you are telling me that you do not want a jury trial?” Defendant did not reply, but his signed jury waiver stated he “hereby waive[s] jury trial and submit[s] the above entitled cause to the Court for hearing.”

¶ 15 Based on this record, we find that defendant’s jury waiver was valid. Defendant did not object while defense counsel requested a bench trial in open court. See *Reed*, 2016 IL App (1st) 140498, ¶ 8 (finding valid waiver where “[d]efense counsel indicated that he wished to proceed by way of bench trial multiple times in defendant’s presence” and “[d]efendant did not object or ask any questions at any point”). Moreover, defendant stated that he understood the trial court’s admonishments, which conveyed the critical distinction between a jury trial and bench trial, and affirmed that he wanted a bench trial. See *People v. Clay*, 363 Ill. App. 3d 780, 791 (2006) (honoring a jury waiver where the defendant had counsel, acknowledged she understood the meaning of a jury trial, and stated she was giving up that right). Defendant’s signed jury waiver

corroborates that he acted knowingly, as does his high school education, participation in GED programs, and background with the criminal justice system. *People v. Tooles*, 177 Ill. 2d 462, 471 (1997) (defendant's four prior convictions supported a presumption of familiarity with jury waivers); *Reed*, 2016 IL App (1st) 140498, ¶ 7 (“a signed jury waiver *** is evidence that a waiver was knowingly made”). These circumstances, taken together, show that defendant waived his right to a jury trial with “the pivotal knowledge *** that the facts of the case w[ould] be determined by a judge and not a jury.” *Bannister*, 232 Ill. 2d at 69.

¶ 16 Notwithstanding, defendant posits that his jury waiver is invalid because the trial court did not specify that, in a jury trial, the State would retain the burden of proof, he could cross-examine its witnesses, and present his own evidence. Additionally, defendant observes the court did not ask whether the jury waiver resulted from “any threats or promises,” and claims this omission was “particularly significant” because he signed the waiver while handcuffed. We disagree. As noted, there is no “specific admonition or advice for a defendant to make an effective jury waiver,” and “whether a jury waiver is valid cannot rest on any precise formula, but rather depends on the facts and circumstances of each particular case.” *Id.* at 66. Here, defendant was present when counsel requested a bench trial several weeks before trial, and on the date of trial, defendant tendered his jury waiver in the presence of counsel and after being admonished by the trial court. Although defendant apparently was handcuffed when he signed the jury waiver, this alone does not establish that his signed waiver was involuntarily obtained. Defendant did not register any verbal or physical response indicative of coercion. As such, we see nothing in the record that would support a finding that defendant's jury waiver was not voluntarily made. These circumstances refute the notion that defendant waived his right to a jury

trial unknowingly or unwillingly. Consequently, the trial court did not fail “to ensure that *** defendant waived his right to a jury trial expressly and understandingly.” (Internal quotation marks omitted.) *People v. Maxey*, 2018 IL App (1st) 130698-B, ¶ 107. Because no error occurred, plain error analysis is unmerited and defendant’s forfeiture of the jury waiver issue will be honored.

¶ 17 For the foregoing reasons, the judgment of the trial court is affirmed.

¶ 18 Affirmed.