2015 IL App (1st) 131633-U

SIXTH DIVISION
MARCH 31, 2015

No. 1-13-1633

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. 12 C4 40246
	)	
DEAN MORELLI,	)	Honorable
	)	Noreen Valeria Love,
Defendant-Appellant.	)	Judge Presiding.

JUSTICE HALL delivered the judgment of the court.
Presiding Justice HOFFMAN and Justice LAMPKIN concurred in the judgment.

O R D E R

¶ 1 *Held*: Judgment entered on defendant's conviction for burglary, theft, and driving with a revoked license affirmed over his claim that his jury waiver was invalid; fines and fees order modified.

¶ 2 Following a bench trial, defendant Dean Morelli was found guilty of burglary, theft, and driving with a suspended license, then sentenced to concurrent terms of six years' imprisonment for burglary, and three years on each of his remaining convictions. On appeal, defendant

contends that his right to a jury trial was violated because his waiver of that right was not made knowingly, voluntarily, and intelligently. He also seeks modifications in the fines and fees order.

¶ 3 The record shows that defendant was charged with burglary, theft, and driving with a revoked license in connection with an incident that occurred in Melrose Park, Illinois, on May 2, 2011. At trial, Patrick Rolke testified that he was in his home about noon that day when a stranger, later identified as defendant, knocked on his door. Rolke ignored him, but when he left for work a few minutes later, he discovered defendant inside his garage removing his leaf blower. He also noticed that his snow blower was outside his garage, a few feet from a station wagon that was parked in his driveway.

¶ 4 After an altercation, defendant stated that he knew a village official and called the police. Melrose Park police officer Vito Migliore arrived to see defendant and Rolke next to a car in the alley behind Rolke's garage. Officer Migliore observed that the handle on the garage door was broken and some of the paneling had been dented. When he arrested defendant, he discovered that defendant's driver's license had been revoked. Defendant told the officer he had a valid driver's license in the car, but the only thing officer Migliore found in the car was a medical pillow in the driver's seat, which defendant said he needed if he were going to drive.

¶ 5 The record shows that defendant was present in court for the status hearings before trial where the trial court announced that a bench trial was indicated and that a date had been set for a bench trial. On the trial date, defense counsel informed the court, in defendant's presence, that defendant was executing a jury waiver in open court. The trial court asked defendant if his signature appeared on the jury waiver, whether he understood the implications of signing a jury waiver, and if he knew what a jury trial entailed. Defendant responded affirmatively to each

question, and the proceedings continued as a bench trial, without objection. At its conclusion, the court found defendant guilty of burglary, theft, and driving with a revoked license.

¶ 6 In this appeal from that judgment, defendant first contends that the trial court violated his constitutional right to a jury trial because it accepted his jury waiver without ensuring that his waiver was made knowingly, voluntarily, and intelligently. The State responds that the colloquy that took place between the trial court and defendant at the time he tendered his waiver, the execution and tender of the signed waiver, and defendant's extensive experience with the court system were sufficient to show that his waiver was constitutionally valid.

¶ 7 The right to a jury trial is a fundamental right guaranteed by both the federal and Illinois constitutions. U.S. Const., amends. VI, XIV; Ill. Const. 1970 art. I, § 8, 13; *People v. Bannister*, 232 Ill. 2d 52, 65 (2008). In Illinois, a criminal defendant may waive a jury trial if done so knowingly and voluntarily in open court. *People v. Smith*, 106 Ill. 2d 327, 334. No specific admonishments or advice are required, and the determination of whether defendant has knowingly and voluntarily waived his right to a jury trial turns on the specific facts and circumstances of each case. *People v. Lake*, 297 Ill. App. 3d 454, 459 (1998), and cases cited therein. We review the question of whether defendant voluntarily waived his right to a jury trial *de novo*. *People v. Bracey*, 213 Ill. 2d 265, 270 (2004).

¶ 8 The record in this case shows that at several status hearings before trial, the trial court announced that a bench trial was indicated and that a trial date had been set. These statements were made in the presence of defendant and his counsel, neither of whom objected or stated otherwise. At the commencement of the trial, the court asked if there was a jury waiver and defense counsel responded that defendant was executing a jury waiver, which counsel tendered

to the court. The trial court then asked defendant if he understood the implications of the waiver and what a jury trial entailed. Defendant acknowledged his signature on the waiver, responded that he understood the effect of the waiver, and that he was familiar with a jury trial. These facts clearly indicate a valid jury waiver. *Lake*, 297 Ill. App. 3d at 460-61.

¶ 9 Notwithstanding, defendant contends that his waiver was not made knowingly, voluntarily, and intelligently because the trial court failed to verify that he knew he was entitled to a jury trial, explain to him that he had a choice between a bench trial and jury trial, or ensure that he knew that this was his decision to make, and not his counsel's. In support of his argument, defendant relies on *People v. Sebag*, 110 Ill. App. 3d 821, 828-29 (1982) and *People v. Ruiz*, 367 Ill. App. 3d 236, 237-39 (2006), where jury waivers were found inadequate. The supreme court has held, however, that there are no specific admonishments that the trial court must make in accepting a jury waiver and that each case must be judged on its own circumstances. *People v. Tooles*, 177 Ill. 2d 462, 469 (1997).

¶ 10 Here, defense counsel stated at the outset of the trial that defendant was executing a jury waiver in open court, and the court engaged defendant in a brief conversation regarding the implications of the waiver. Defendant acknowledged his understanding of the nature of a jury trial and that he was relinquishing his right to one. Although a signed jury waiver is not dispositive (*Sebag*, 110 Ill. App. 3d at 829), it lessens the likelihood that the waiver was not made knowingly (*People v. Dockery*, 296 Ill. App. 3d 271, 276 (1998)). Furthermore, when a defendant is present in court when the waiver is made, his failure to object is deemed to be acquiescence. *Id.*

¶ 11 In this case, the facts and circumstances set forth in the record belie defendant's claim and establish that his waiver was made with knowledge and understanding. *Tooles*, 177 Ill. 2d at 471. This conclusion is further supported by the record of defendant's prior experience with the criminal justice system resulting in more than 20 convictions, from which we may presume his familiarity with the right to a trial by jury. *Id*.

¶ 12 Defendant next challenges the calculation and assessment of certain pecuniary penalties levied by the court. The imposition of court-ordered fines and fees raises a question of statutory interpretation, which we review *de novo*. *People v. Price*, 375 Ill. App. 3d 684, 697 (2007).

¶ 13 Defendant first contends, the State concedes, and we agree, that the trial court miscalculated the total amount of fees as $634, where the total amount should be $624. Defendant also contends, the State concedes, and we agree that he is entitled to a $5 per day presentence custody credit for the 75 days he spent in pretrial custody to offset a $10 Mental Health Court fine, a $5 Youth Diversion/Peer Court fine, a $5 Drug Court fine, and a $30 Children's Advocacy Center fine. Pursuant to our authority under Supreme Court Rule 615(a), (Ill. S. Ct. R. 615(a) (eff. Jan. 1, 1967)), we order the clerk of the court to modify defendant's fines and fees order to reflect an outstanding balance of $574, reflecting the $10 correction and $50 offset.

¶ 14 For the reasons stated, we affirm the judgment of the circuit court of Cook County and order the mittimus corrected.

¶ 15 Affirmed, fines and fees order modified.