

No. 1-12-1172

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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. 10 CR 18597
	)	
PABLO ROMERO,	)	The Honorable
	)	James B. Linn,
Defendant-Appellant.	)	Judge Presiding.

PRESIDING JUSTICE ROCHFORD delivered the judgment of the court.  
Justices Hall and Lampkin concurred in the judgment.

**ORDER**

¶ 1 *Held:* Spanish-speaking defendant failed to establish his jury waiver was unknowing and involuntary where the trial court explained through an interpreter the difference between a jury trial and a bench trial multiple times, and defendant stated he wanted a bench trial and signed a written waiver of a jury trial.

¶ 2 Following a bench trial, defendant Pablo Romero was convicted of two counts of predatory criminal sexual assault of a child and two counts of aggravated criminal sexual abuse and sentenced to concurrent terms of imprisonment. On appeal, defendant, who spoke only

Spanish, contends his waiver of a jury trial was unknowingly and involuntarily made. We affirm.

¶ 4 Defendant was charged by indictment with, *inter alia*, predatory criminal sexual assault of a child and criminal sexual assault after an October 2010 incident involving the victim, an 11-year-old girl named A.S. (the victim).

¶ 5 The case was continued for trial from time to time and, in discussing possible trial dates, defense counsel indicated to the trial court that the matter should be set for a bench trial. On the day of trial, defendant was present in court with a Spanish interpreter. The trial court first admonished defendant that he was charged with the class X felony of criminal predatory sexual assault and informed defendant of the possible penalties and defendant indicated that he understood. The trial court then explained to defendant his right to a jury trial, and the following discussion took place:

"THE COURT: You have a right to a jury trial with 12 people selected from the community would hear the evidence. All 12 would have to unanimously agree to find you guilty. If you do not have a jury trial, you can have a bench trial where I will hear all the evidence myself, decide for myself whether you are guilty or innocent.

What kind of trial do you want to have, a bench or a jury trial?

THE DEFENDANT: It doesn't matter which kind of trial I have. I know I didn't do any of it so it doesn't matter.

THE COURT: Well, the government is seeking to have a trial so there is a trial that's going to take place. The question is, do you want me to hear this myself? I will be

happy to decide myself and determine whether you are guilty. Decide. Do you wish to have a jury trial where you would have 12 people decide and 12 people would have to unanimously agree that you are guilty? You can choose what kind of trial you want. The choice has to be made by you.

THE DEFENDANT: Whatever it is, I haven't done anything.

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

[DEFENSE COUNSEL]: Answer the damn question. Make a choice. We already talked about this.

THE DEFENDANT: With a judge. It's the same to me.

THE COURT: Well, if you don't tell me anything more definitive than this, I am going to get a jury brought down here, and we are going to have a trial with a jury. It appears that you do not seem - - you are not saying you don't want a jury trial. And then you say you don't care. Then we will have a trial by jury. It's all the same to me too what kind of trial we have.

THE DEFENDANT: What can I do? You are accusing me of something I didn't do.

[DEFENSE COUNSEL]: Your Honor, can I have a moment with him?"

¶ 6 When court resumed, the trial court again explained the choice of a bench or jury trial, as follows:

"[THE COURT:] Mr. Romero, I am going to ask you again. This is entirely up to you. Whatever, you decide, it's your choice to make. I would not be complimented if

you ask for a bench trial. You are looking at 6 to 30 years in the penitentiary at least 85 percent of the time. If found guilty as charged, you have to serve at least three years mandatory supervised release formerly called parole. You are not eligible for probation.

You have a right to a jury trial where 12 people would be selected from the community to decide if the State has proven you guilty beyond a reasonable doubt. All 12 members would have to find you guilty unanimously. A bench trial is where the jury will not hear the evidence. I will hear the evidence myself and decide your guilt or innocence. What kind of trial do you want to have, a jury trial or bench trial?"

Defendant asked the trial court to "say all of that again." The trial court complied and again explained the possible penalties and the difference between a bench trial and a jury trial. At the end of the explanation, the trial court inquired what kind of trial defendant wanted and defendant indicated he wanted a trial with "the Judge." The trial court asked defendant if he was "positive," and defendant answered "yes." The following exchange then took place:

"THE COURT: You understand that when you sign this piece of paper your lawyer has prepared, that means you are telling me in writing that you do not want a trial by jury.

THE DEFENDANT: So I am not pleading guilty to this?

THE COURT: No, no. You made that clear. Jury is waived."

¶ 7 The evidence at trial established through, *inter alia*, the testimony of the victim and her father, Tomas C., that defendant grabbed the victim, touched the victim's chest inside her clothes, put his hand inside the victim's pants, and inserted his fingers into the victim's "private part." An

assistant State's Attorney testified as to defendant's custodial statement, made with an interpreter, admitting to touching the victim inside her shirt and pants and that his finger touched the victim's vagina. Defendant testified at trial that he did not touch the victim and did not remember the events of the day in question because he was drunk. The trial court found defendant guilty of two counts of predatory criminal sexual assault of a child and two counts of aggravated criminal sexual abuse. Defendant was sentenced to two 12-year prison terms for predatory criminal sexual assault of a child, and to two 6-year terms for aggravated criminal sexual abuse. Defendant's sentences were to be served concurrently. Defendant timely appealed.

¶ 8 On appeal, defendant argues his jury waiver was not knowing and voluntary because he speaks only Spanish, had no experience with the American criminal justice system, and was indecisive when he was asked to choose either a bench trial or a jury trial. He also argues he may have been pressured into deciding to proceed with a bench trial.

¶ 9 Defendant concedes that he did not include this issue in his posttrial motion, but asks this court to consider the issue for plain error. Under the plain-error doctrine, we may review a forfeited claim of error under either of two prongs: (1) where there is clear error and the evidence is closely balanced; or (2) the error is of such a magnitude defendant is deprived of a fair and impartial trial and the integrity of the judicial process is challenged. *People v. Piatkowski*, 225 Ill. 2d 551, 565 (2007). Because of the fundamental nature of the right to a jury trial, we review defendant's claim under the second prong. *In re R.A.B.*, 197 Ill. 2d 358, 362-63 (2001); see also *People v. Bracey*, 213 Ill. 2d 265, 270 (2004). However, before there can be plain error, there

must first be error, and the burden to establish this error rests with the defendant. See *Piatkowski*, 225 Ill. 2d at 564-65.

¶ 10 The right to a trial by jury is a fundamental right guaranteed by our federal constitution (U.S. Const., amends. VI, XIV) and the Illinois Constitution of 1970 Ill. Const. 1970, art. I, § 8, § 13). See *People v. Bannister*, 232 Ill. 2d 52, 65 (2008). The legislature has codified the right that "[e]very person accused of an offense shall have the right to a trial by jury unless \* \* \* understandingly waived by defendant in open court." 725 ILCS 5/103-6 (West 2008). The legislature also has provided that "[a]ll prosecutions, except on a plea of guilty or guilty but mentally ill, shall be tried by the court and a jury unless the defendant waives a jury trial in writing." 725 ILCS 5/115-1 (West 2008). However, our supreme court has held that the failure to file a written jury waiver does not require reversal as long as the waiver was knowingly and understandingly made in open court. *In re R.A.B.*, 197 Ill 2d 358, 364 (2001).

¶ 11 The trial court has the duty to ensure a defendant waives the right to a jury trial expressly and understandingly. *Bannister*, 232 Ill. 2d at 66. "However, a trial court need not give any specific admonition or advice for a defendant to make an effective jury waiver." *Id.* The trial court is not required to explain the consequences of a jury waiver to a defendant. *People v. Stokes*, 281 Ill. App. 3d 972, 977 (1996). The preferred procedure is for the court to inform the defendant of his right to a jury trial before the defendant waives this right in writing, or in open court for the record. *Id.* Such a procedure is not constitutionally mandated. *Id.*

¶ 12 Whether a jury waiver is valid cannot be determined by application of a "precise formula;" rather, it depends on the particular facts and circumstances of each individual case.

*Bracey*, 213 Ill. 2d at 269. A defendant who challenges his jury waiver has the burden to establish the jury waiver was invalid. *Stokes*, 281 Ill. App. 3d at 977. Where, as here, the relevant facts are not in dispute, we review *de novo* the issue of whether a defendant knowingly and voluntarily waived his right to a jury trial. *People v. Thornton*, 363 Ill. App. 3d 481, 485 (2006).

¶ 12 In the instant case, the facts and circumstances demonstrate defendant's jury waiver was valid where the trial court followed the "preferred procedure" of advising defendant of his right to a jury trial (*Stokes*, 281 Ill. App. 3d at 977), before accepting his waiver of the jury in open court and in writing. Here, the trial court repeatedly explained to defendant, through an interpreter, the difference between a jury trial and bench trial, stating that in a jury trial, 12 people selected from the community would hear the evidence and would have to unanimously agree in finding defendant guilty or, in the alternative, in a bench trial, the judge would hear the evidence and decide whether defendant was guilty or innocent. In the end, defendant stated he wanted a trial before "the Judge" and answered "yes" when the court asked him if he was positive. The trial court received defendant's signed jury waiver form and, again, inquired whether defendant understood that by signing the jury waiver form, defendant was informing the court in writing that he did not want a jury trial. The record demonstrated defendant made a knowing and voluntary waiver of a jury trial. See *Bannister*, 232 Ill. 2d at 69 (a jury-waiving defendant must understand that the judge, not a jury, will be deciding his case).

¶ 13 Defendant argues, however, his jury waiver was unknowing because he is Spanish-speaking and unfamiliar with the American justice system. We disagree. The record reflects

that an interpreter was present throughout the proceedings at issue, and there is no indication defendant expressed dissatisfaction with the interpreter's abilities or assistance. Although defendant may have been unfamiliar with the American justice system, the trial court painstakingly and repeatedly explained the difference between a jury trial and a bench trial and defendant's right to have a jury hear his case. Defendant was given time to discuss the choice with trial counsel and requested an additional explanation before he made the decision to proceed with a bench trial and signed a written jury waiver form.

¶ 14 We also reject defendant's argument he was confused with regard to the content of the jury waiver form. Based upon his question to the court—whether he was pleading guilty to the charges by signing the jury waiver form—and although the record does not show the jury waiver form was translated into Spanish, the trial court admonished defendant that his signature on the jury waiver form would confirm his choice of a bench trial and would not mean he was pleading guilty to the charges.

¶ 14 We are not persuaded by defendant's reliance on *People v. Phuong*, 287 Ill. App. 3d 988 (1997). In *Phoung*, the defendant had recently arrived in the United States from China and had never experienced our legal system. The defendant signed a jury waiver form prior to trial that had been translated by a Chinese interpreter. The trial court informed the defendant that she had the right to trial by jury, or judge, without any additional explanation or elaboration. The appellate court stated: "We simply are not convinced that the mere translation of the language of the waiver form adequately conveyed its meaning to defendant." *Id.* at 996. The defendant had not been informed by the trial court "that a jury trial meant that members of the community

would serve as fact finders in her case," the defendant did not knowingly and understandingly waive her right to jury trial. *Id.* at 996.

¶ 15 Here, unlike the court in *Phuong*, the trial court specifically explained to defendant he had the right to a jury trial where 12 individuals from the community would hear evidence in order to determine whether the State had proven him guilty. Although the written jury waiver form may not have been translated into Spanish, the trial court here articulated to defendant when accepting the jury waiver, that by signing the jury waiver, defendant was informing the trial court in writing he did not want a jury trial.

¶ 16 Finally, we reject defendant's speculative claim his attorney's comment—defendant should answer "the damn question"—when the trial court inquired whether he wished to proceed with a bench or jury trial and the subsequent discussion between defendant and trial counsel—"may have pressured" defendant into choosing a bench trial. Defendant may not rely upon off-the-record discussions. *People v. Heaton*, 266 Ill. App. 3d 469, 477 (1994); see also *People v. Kunze*, 193 Ill. App. 3d 708, 725-26 (1990). Furthermore, the record does not show any pressure on defendant as to his choice of a bench trial. The trial court made it clear that the choice was to be made by defendant. Prior to trial, when the case was being set for trial, defense counsel had, on two court dates in defendant's presence, specifically stated the matter would be tried before the bench. Thus, it was made known to defendant prior to the trial date that a bench trial and not a jury trial was contemplated. After a lengthy discussion in open court on the day of trial, defendant affirmatively chose a bench trial and not a trial by jury and signed the waiver form.

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¶ 17 Based on the record, we find defendant's waiver of his right to a jury was knowing and voluntary where the trial court repeatedly advised defendant of his right to a jury trial and the nature of both a jury trial and a bench trial. See *Bannister*, 232 Ill. 2d at 69. Defendant ultimately determined and stated he wanted a trial with "the Judge". Consequently, defendant has failed to establish his jury waiver form was invalid (*Stokes*, 281 Ill. App. 3d at 977), or that the trial court erred when it accepted the jury waiver form. Having found no error, there can be no plain error, and defendant's claim must fail. See *People v. Williams*, 193 Ill. 2d 306, 349 (2000).

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

¶ 19 Affirmed.