

No. 1-12-3288

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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. 11 CR 8772
	)	
DEVRON WILLIAMS,	)	Honorable
	)	James B. Linn,
Defendant-Appellant.	)	Judge Presiding.

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JUSTICE MASON delivered the judgment of the court.  
Presiding Justice Pucinski and Justice Lavin concurred in the judgment.

**O R D E R**

- ¶ 1 *Held:* We affirm defendant's convictions for aggravated battery with a firearm and aggravated discharge of a firearm because he knowingly and voluntarily waived his right to a jury trial for those charges even though the trial court did not explicitly mention the charges during the jury waiver proceedings or explain to the defendant that his jury waiver encompassed all of the charges.
- ¶ 2 Following a bench trial, defendant, Devron Williams, was convicted of aggravated battery with a firearm and two counts of aggravated discharge of a firearm. The trial court subsequently sentenced him to concurrent 14-year prison terms. Defendant appeals, asserting he

did not knowingly waive his right to a jury trial for the aggravated battery with a firearm and aggravated discharge of a firearm charges. For the following reasons, we affirm.

¶ 3 Based on one incident, the State charged defendant by indictment with four counts of attempted murder, one count of aggravated battery with a firearm, and two counts of aggravated discharge of a firearm. Each charge was premised on defendant's conduct in firing several shots at a vehicle occupied by Jelonza Jenkins, who was wounded, and Treek Muhammed, who was not. Defendant waived formal reading of the charges. At a July 2012 hearing, at which defendant was present, defense counsel indicated the defense was ready to set defendant's case for a bench trial. Defendant made no objection.

¶ 4 In August 2012, the parties appeared for defendant's trial. The trial court admonished defendant that he was accused of "attempt first degree murder" and advised defendant of the sentencing range for that offense. The court then instructed defendant as follows:

"You have the right to a jury trial where 12 people would be selected from the community to hear the evidence. All 12 people 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 were proven guilty beyond a reasonable doubt or not."

Afterward, the court asked defendant what type of trial he wished to have, and defendant responded, "Bench." Defendant indicated he understood that, by signing the paper his lawyer gave the trial court, defendant was stating in writing he did not want a jury trial. The court then

stated, "Jury is waived." The record contains a signed jury waiver form, but the only charge listed on that form is attempted first degree murder.

¶ 5 Following the trial court's admonishments, defendant's bench trial commenced. The evidence established that on April 3, 2011, defendant fired multiple shots at a car occupied by Jenkins and Muhammed, hitting Jenkins three times. The trial court found defendant guilty of aggravated battery with a firearm and both counts of aggravated discharge of a firearm, but not guilty of attempted murder based on a failure of proof as to defendant's specific intent.

¶ 6 Defendant filed a motion for new trial but did not include in his motion the contentions relating to the jury waiver. At an October 2012 hearing, the trial court denied defendant's motion for a new trial and proceeded to sentencing. Defendant's presentence investigation report indicated he was born in December 1992, making him 19 years old at the time he executed the jury waiver. Defendant had a prior juvenile conviction for possession of cannabis, to which he admitted his guilt. He also pleaded guilty in a 2010 case to aggravated unlawful use of a weapon and reckless discharge of a weapon and was on probation at the time he was arrested for his most recent offense. Defendant dropped out of high school during his sophomore year, was kicked out of boot camp due to a bipolar disorder, and reported that he used "PCP" daily for the past four years. The trial court sentenced defendant to 14 years in prison on each count, ordering the sentences to run concurrently. This appeal followed.

¶ 7 On appeal, defendant asserts his convictions must be reversed because he only waived his right to a jury trial for the attempted murder charge but did not knowingly or voluntarily waive his right to a jury trial on the other offenses with which he was charged. He observes his signed jury waiver lists only the charge of attempted murder, the trial court did not specifically mention aggravated discharge of a firearm or aggravated battery with a firearm during its jury waiver

admonishments, and defendant was only 19 years old and lacked education and experience at the time he executed his jury waiver.

¶ 8 A criminal defendant has a fundamental right to a trial by jury. *People v. Bannister*, 232 Ill. 2d 52, 65 (2008); U.S. Const., amends. VI, XIV; Ill. Const. 1970, art. I, §§ 8, 13. A defendant can waive this right, but his waiver must be knowingly and understandingly made in open court. *People v. Bracey*, 213 Ill. 2d 265, 269 (2004); 725 ILCS 5/103-6 (West 2012). Thus, a trial court has a duty to ensure that a defendant waives his right to a jury trial expressly and understandingly. *Bannister*, 232 Ill. 2d at 66. But the court need not provide any specific admonition or advice for a defendant to render a jury waiver effective. *Id.* In general, a jury waiver is valid if it is made by defense counsel in the defendant's presence in open court and the defendant does not object. *Bracey*, 213 Ill. 2d at 270. In addition, although a written waiver is statutorily required, the lack of a written waiver is not fatal if it can be ascertained that the defendant understandingly waived his right to a jury trial. *Id.* at 269-70. "When a defendant waives the right to a jury trial, the pivotal knowledge that the defendant must understand—with its attendant consequences—is that the facts of the case will be determined by a judge and not a jury." *Bannister*, 232 Ill. 2d at 69. A determination of the validity of a jury waiver "cannot rest on any precise formula, but rather depends on the facts and circumstances of each particular case." *Id.* at 66. Where, as here, the facts of the case are not in dispute, whether a waiver is valid is a question of law that we review *de novo*. *Id.*

¶ 9 Defendant acknowledges in his opening brief that he failed to object to the validity of the jury waiver at trial or raise the issue in his posttrial motion and he therefore urges us to review his claims pursuant to the plain error doctrine. See *Bracey*, 213 Ill. 2d at 270 ("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." ). However, in his reply brief, defendant asserts that because the State failed to advance forfeiture in its brief, we should simply address the merits of his claim without engaging in a plain-error analysis. We need not resolve defendant's assertion because whether the merits of the jury waiver issue are considered due to the State's failure to argue forfeiture or because the plain-error doctrine applies, we find no error. See *People v. Piatkowski*, 225 Ill. 2d 551, 565 (2007) (the first step in plain-error analysis is to determine whether error occurred).

¶ 10 First, defendant could not have separately waived his right to a jury trial on the murder charges but not the other charges. On this point, we are guided by the decision in *People v. Kneller*, 25 Ill. App. 3d 935 (1975). There, the defendant was charged with burglary and two counts of aggravated battery. *Id.* at 936. He never moved to sever the charges but, on the day of trial, made a motion to waive jury trial as to the burglary count only, which the trial court denied. *Id.* at 937. The defendant then waived his right to a jury trial on all of the counts. *Id.* On appeal, the appellate court rejected the defendant's contention that he had been denied his constitutional right to a jury trial on the aggravated battery counts, reasoning that the defendant had no right to sever charges that were validly joined in an indictment where no prejudice was found from their joinder. *Id.* at 938. Accordingly, because the defendant had no right to separate trials on the burglary and aggravated battery charges, he "had to either elect or waive a jury trial as to the three charges together." *Id.*; see also *People v. Arndt*, 50 Ill. 2d 390, 395 (1972) (finding that where the defendant was charged with murder and involuntary manslaughter and sought to waive jury only as to the murder charge, the trial court properly refused the defendant's jury waiver because his demand for a simultaneous jury and bench trial for what amounted to the same crime lacked support in either precedent or reason).

¶ 11 In this case, defendant never moved to sever the charges or contended he had a right to separate trials on the charges. Accordingly, defendant could not have elected to waive a jury trial only on the attempted murder charges. Nonetheless, defendant contends that if his jury waiver was required to be "all-or-nothing," it was necessary for the trial court to advise him to that effect. In support of his contention, defendant relies on the *Bannister* court's statements that a trial court has a duty to ensure a defendant makes his jury waiver "expressly and understandingly" and with knowledge of the probable consequences. *Bannister*, 232 Ill. 2d at 66-68. But defendant offers no authority suggesting that such a duty required the trial court to parse out each charge he faced or instruct him that his jury waiver applied to all of his charges. We refuse to extend existing case law to reach such an unsupportable result. Like the defendant in *Bannister*, defendant here does not suggest how the trial court's mention of the less serious charges would have influenced his decision to elect a bench, rather than a jury trial. Nor does he contend that he understood that the trial of the "case" encompassed anything less than all of the offenses charged.

¶ 12 In addition, we find unpersuasive defendant's reliance on *People v. Brown*, 169 Ill. 2d 132, 157 (1996). *Brown* involved the Illinois death penalty statute, pursuant to which the defendant had the right to waive a jury for the guilt/innocence proceedings but still choose a jury for the death sentencing hearing. *Id.* at 155. The trial court failed to admonish the defendant as to his right to a jury at the sentencing hearing. *Id.* at 157-58. Under those particular circumstances, the Illinois Supreme Court found "it was incumbent upon the trial judge to admonish the defendant in order to clarify the scope of his intended jury waiver." *Id.* at 157. *Brown* has no bearing on whether a trial court must inform a defendant that his intended jury waiver will encompass all of the charges for which he has been indicted.

¶ 13 Moreover, the record in this case does not support defendant's contention that he either did not waive his right to a jury trial on the other charges or that he did so unknowingly.

Although defendant relies on his young age and inexperience with the criminal system, we note that defendant does not contest the validity of his jury waiver for attempted murder or dispute that he knew the difference between a bench and a jury trial. It is disingenuous for defendant to suggest he could somehow validly execute a jury waiver for attempted murder but could not understand that the less serious charges, which were based on the same set of facts, were encompassed in his jury waiver. Defendant has made no claim that he was unaware of the other charges he faced. In addition, defendant was represented by counsel throughout the proceedings, and he was present in July 2012 when defense counsel indicated the defense was ready to set the case—not just the attempted murder charges—for a bench trial.

¶ 13 For the reasons stated, we reject defendant's assertion that he did not validly waive his right to a jury trial on the charges of aggravated battery with a firearm and aggravated discharge of a firearm. We therefore affirm the trial court's judgment.

¶ 14 Affirmed.