

No. 1-13-0019

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 JUDICIAL DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS,)	
)	Appeal from the
Plaintiff-Appellee,)	Circuit Court of
)	Cook County.
v.)	
)	No. 11 CR 5575
MARCUS McCORMICK,)	
)	The Honorable
Defendant-Appellant.)	Clayton J. Crane,
)	Judge Presiding.
)	

PRESIDING JUSTICE PALMER delivered the judgment of the court.
Justices Gordon and Taylor concurred in the judgment.

ORDER

¶ 1 *Held:* Reviewed *de novo* and pursuant to principles of plain error, defendant's jury waiver was valid.

¶ 2 Following a bench trial, defendant Marcus McCormick was convicted of aggravated criminal sexual abuse and sentenced to an 8½-year prison term. On appeal, defendant contends

that his jury waiver was invalid because the trial court's admonishments were insufficient and perfunctory, thereby violating his constitutional rights to a jury trial and to due process of law.

¶ 3 During pretrial proceedings on August 22, 2012, and on October 11, 2012, defense counsel indicated that the case would be tried by a jury. On October 16, 2012, immediately prior to the trial, the following colloquy occurred:

"THE COURT: This is Mark--we were about to select a jury in this case--this is Marcus McCormick, the case number is 11 CR 5575. It was indicated to me that there may be a change in position as to how this case is tried, whether it's tried in front of a jury or a judge.

The jury is sitting in the courtroom; therefore, I'm back in chambers, if that's agreeable with the Defense, to do this back in chambers.

[DEFENSE COUNSEL]: It's agreeable, your Honor.

THE COURT: Okay. What is the position of the parties at this point?

[DEFENSE COUNSEL]: Your Honor, after speaking to my client's mother, and after speaking with my client, he has indicated he wants to do this as a bench trial.

THE COURT: Okay. Let me go through some questions with you, Mr. McCormick.

You have a constitutional right to have this case tried by a jury--you have a constitutional right to have this case tried by a jury. A jury would be composed of 12 people, and all 12 of those people would have could be convinced beyond a reasonable doubt of your guilt in this offense, and instead, have myself, as a judge, sitting alone, decide this case.

Is that what you want done? Are you having trouble hearing me?

THE DEFENDANT: No. I want--I want to go with a bench trial.

THE COURT: Okay. How old are you?

THE DEFENDANT: 29 years old.

THE COURT: And how far did you go in school?

THE DEFENDANT: Say that again.

THE COURT: How far did you go in school?

THE DEFENDANT: To the 12th grade, sir.

THE COURT: Okay. I will indicate that, based on my observations of [defendant], over the pendency of this case, and in response to my questions today, I find that he's knowingly and voluntarily waived his right to a jury trial."

¶ 4 After a brief recess, another colloquy occurred concerning defendant's jury waiver:

THE COURT: Mr. McCormick, we're back in chambers again. I--when I did this, actually accepted the jury waiver, I forgot--I skipped a step, it was my mistake.

I'm showing you a form that's entitled--okay. I'm showing you a form that's entitled jury waiver. Is that your signature on that form? Is that your written indication to me that you're giving up your right to have a jury decide this case? Are you giving up that right for the jury?

THE DEFENDANT: Yes, sir."

¶ 5 On appeal, defendant contends that his jury waiver was invalid because the trial court's admonishments were perfunctory and inadequate, depriving him of his constitutional rights to a jury trial and due process of law. Defendant maintains that the trial court failed to explain the function and purpose of a jury and the difference between a bench trial and a jury trial. He argues that the trial court did not inquire into his understanding of the jury waiver, did not ascertain whether the waiver resulted from any promises or threats, did not determine whether he had consulted with counsel before he signed the jury waiver, and did not ensure that he understood that the choice of a jury trial or a bench trial was his choice. He argues that his criminal background does not mean that his jury waiver was knowing and intelligent. He maintains that the issue should be reviewed pursuant to plain error principles. The State responds that the issue was forfeited, agrees that it should be reviewed as plain error, and maintains that it lacks merit.

¶ 6 We decline to treat the issue regarding the validity of the jury waiver as forfeited. See *People v. Hart*, 371 Ill. App. 3d 470, 471 (2007). Instead, we will address the merits of the issue pursuant to principles of plain error. See Illinois Supreme Court Rule 615(a) (eff. Aug. 27, 1999); *People v. Bracey*, 213 Ill. 2d 265, 270 (2004); *Hart*, 371 Ill. App. 3d at 471; *People v. Ruiz*, 367 Ill. App. 3d 236, 237 (2006). *De novo* review is applicable because the jury waiver facts are not in dispute. *Bracey*, 213 Ill. 2d at 270; *Hart*, 371 Ill. App. 3d at 472.

¶ 7 Pursuant to section 103-6 of the Code of Criminal Procedure of 1963 (Code), criminal defendants have the right to a jury trial unless they understandingly waive that right in open court. 725 ILCS 5/103-6 (West 2012); *Bracey*, 213 Ill. 2d at 269; *People v. Scott*, 186 Ill. 2d 283, 285 (1999). There is no precise formula for determining the validity of a jury waiver, which instead depends on the facts and circumstances of each case. *Bracey*, 213 Ill. 2d at 269; *Hart*, 371 Ill. App. 3d at 472. For example, a written jury waiver, which is required by section 115-1 of the Code (725 ILCS 5/115-1 (West 2012)), is one way to establish the defendant's intent but it is not necessarily conclusive (*Bracey*, 213 Ill. 2d at 269-70). The trial court is not required to issue specific advice or admonitions as a prerequisite to an effective jury waiver. *Bracey*, 213 Ill. 2d at 270; see also *People v. Clay*, 363 Ill. App. 3d 780, 791 (2006); *People v. Duncan*, 297 Ill. App. 3d 446, 451 (1998).

¶ 8 In this case, the facts and circumstances show that defendant's jury waiver was valid. In defendant's presence, defense counsel stated that defendant had decided on a bench trial after they had spoken. Defendant did not object to defense counsel's statement. The trial court informed defendant that he had a constitutional right to a jury trial, that a jury would consist of

12 people who would decide whether they were convinced he had been proved guilty beyond a reasonable doubt, and that he could have a bench trial instead in which the judge alone would decide the case. When the court asked defendant if he had trouble hearing, defendant unequivocally responded, "No. I want--I want to go with a bench trial." Defendant also acknowledged that he was 29 years old, that he had gone to the 12th grade in school, and that he had executed a written jury waiver. The trial court asked defendant whether the signature was his on the form and whether that was his written indication that he wished to give up his right to have a jury decide the case, and defendant answered, "Yes, sir." The court then accepted defendant's jury waiver. These circumstances unequivocally demonstrate that defendant understandingly and knowingly waived his right to a jury trial, and we hold that defendant's jury waiver was valid. Although defendants' familiarity with the criminal justice system through their criminal backgrounds can be used to help determine the validity of jury waivers (see *People v. Bannister*, 232 Ill. 2d 52, 71 (2008) (the defendant's criminal record may be considered in evaluating the validity of his jury waiver); see also *People v. Turner*, 375 Ill. App. 3d 1101, 1108-09 (2007)), we reach our decision without regard to that factor, which defendant challenges as irrelevant.

¶ 9 Despite defendant's allegations of shortcomings in the trial court's admonishments, the validity of the jury waiver depends on the facts and circumstances of the case. Reviewed *de novo* and pursuant to principles of plain error, and having considered, and rejected, all of defendant's arguments on appeal, we hold that defendant's jury waiver was valid.

¶ 10 The judgment of the circuit court is affirmed.

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¶ 11 Affirmed.