

No. 1-14-1567

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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. 12 MC3 002465
)	
DAIVA SANDANAVICIUTE,)	Honorable
)	Kay M. Hanlon,
Defendant-Appellant.)	Judge Presiding.

JUSTICE PIERCE delivered the judgment of the court.
Presiding Justice Hyman and Justice Neville concurred in the judgment.

O R D E R

- ¶ 1 *Held:* Where defendant's jury waiver was knowingly, understandingly, and intelligently made, we affirm defendant's conviction for resisting a peace officer.
- ¶ 2 Following a bench trial, defendant Daiva Sandanaviciute was convicted of misdemeanor resisting a peace officer and sentenced to 34 days in the Cook County Department of Corrections, time served. On appeal, defendant solely contends that her conviction should be reversed and the matter remanded for a new trial where her jury waiver was not knowingly made. We affirm.

¶ 3 Defendant was charged in a three-count misdemeanor complaint with criminal trespass to real property (720 ILCS 5/21-3(a) (West 2012)), resisting a peace officer (720 ILCS 5/31-1 (West 2012)), and obstructing identification (720 ILCS 5/31-4.5 (West 2012)). The charges stemmed from a June 21, 2012, incident where defendant failed to leave a Schiller Park hotel after receiving notice to depart.

¶ 4 Defendant first appeared before the trial court in this matter on August 8, 2012. Following numerous continuances, defendant pleaded guilty to resisting a peace officer in exchange for 34 days in jail, time served, and the dismissal of the two remaining counts on August 20, 2013. Defendant subsequently filed a motion to withdraw her plea, which was granted on December 16, 2013. All three charges were reinstated.

¶ 5 On March 24, 2014, the case was set for trial. The following colloquy took place between the trial court, defense counsel, and defendant:

"THE COURT: All right. This is going to be a trial, yes?

DEFENSE COUNSEL: Yes, your Honor.

THE COURT: Bench or jury?

DEFENSE COUNSEL: She waived a jury.

THE COURT: So you understand that you're entitled to a jury trial in this matter?

DEFENDANT: I am.

THE COURT: And you know what a jury trial is?

DEFENDANT: I filed previously when I was myself, I filed for jury trial, but because I have those lawyers who misrepresented me --

THE COURT: Okay. Well, do you understand -- I'm just going to ask if you're waiving your right to a jury trial. So are you giving up your right to have a jury trial in this case?

DEFENDANT: I do understand, yes.

THE COURT: And you are giving that up?

DEFENSE COUNSEL: Yes.

THE COURT: All right. I'm going to show you a document that has your name, the charge, the case number, and today's date.

Is that your signature on that form?

DEFENDANT: Yes.

THE COURT: Okay. So we will proceed by way of a bench trial. There's pleas of not guilty entered as to all three counts, jury waived."

The record shows that a signed jury waiver was executed by defendant and filed on March 24, 2014.

¶ 6 Because defendant does not challenge the sufficiency of the evidence to sustain her conviction, a detailed discussion of the facts of this case is unnecessary. It is sufficient to note that the evidence at defendant's bench trial established that on June 21, 2012, defendant refused to leave a Schiller Park hotel after receiving several extensions to her checkout time. A staff member of the hotel called the police for assistance. When the police arrived, they told defendant to leave the premises multiple times, but she disregarded their commands and was placed under arrest. However, when the officers tried to detain her, she refused to place her hands behind her back, tensed her muscles in her arms, pulled away, and attempted to spin out of the officer's

grasp. Eventually, the officers were able to control her and placed her in the squad car. In defendant's case-in-chief, defendant testified that she was in her hotel room after checkout time. However, she stated that she did not refuse to leave the premises, and further denied that the police ever told her that she was under arrest. According to defendant, a police officer punched her on the top of her head and pushed her into the squad car. Defendant was convicted of one count of resisting a peace officer.

¶ 7 At sentencing, the State indicated that defendant had a criminal history, including a 2003 conviction for misdemeanor "resisting" and a 2007 conviction for misdemeanor retail theft. The court sentenced defendant to 34 days in the Cook County Department of Corrections, time served. Defendant subsequently filed a motion for new trial asserting that the State failed to prove her guilty beyond a reasonable doubt. On May 16, 2014, the trial court denied defendant's motion and this appeal followed.

¶ 8 On appeal, defendant's sole contention is that the trial court failed to obtain a proper waiver of her constitutional right to a jury trial. Defendant concedes that she failed to contest the validity of her jury waiver before the trial court, but argues that the matter may be reviewed under the second prong of plain error as the error impacts the fundamental integrity of the proceedings. *People v. Bracey*, 213 Ill. 2d 265, 270 (2004).

¶ 9 Pursuant to the plain error doctrine, a reviewing court may consider an issue that was not preserved when (1) the evidence was closely balanced such that the error alone threatened to tip the scales of justice against the defendant, regardless of the seriousness of the error, or (2) the error was so serious that it affected the fairness of the proceedings, regardless of the closeness of the evidence. *People v. Piatkowski*, 225 Ill. 2d 551, 565 (2007). The first step, however, in

determining whether the plain error doctrine applies, is to establish whether any error occurred at all. *People v. Patterson*, 217 Ill. 2d 407, 444 (2005). For the reasons stated below, we find no error here and, therefore, there can be no plain error.

¶ 10 As the facts of this case are not in dispute, the question presented is a legal one which we review *de novo*. *Bracey*, 213 Ill. 2d at 270. A jury waiver must be knowingly and understandingly made to be valid (725 ILCS 5/103-6 (West 2012)), which is determined by analyzing the particular facts and circumstances of each case (*In re R.A.B.*, 197 Ill. 2d 358, 364 (2001)). A written jury waiver, while not always dispositive of a valid waiver, lessens the probability that the waiver was not knowingly made. *People v. Clay*, 363 Ill. App. 3d 780, 791 (2006). Although the trial court must insure that a jury waiver is understandingly made, there are no specific admonishments or advice required for a waiver to be effective. *People v. Tooles*, 177 Ill. 2d 462, 469 (1997). Because defendant is deemed to have acquiesced in, and is bound by, her counsel's actions (*People v. Lake*, 297 Ill. App. 3d 454, 458 (1998)), a jury waiver is considered valid where it is made by defense counsel in defendant's presence in open court and defendant does not object (*Bracey*, 213 Ill. 2d at 270).

¶ 11 Here, we find defendant's jury waiver was knowingly, voluntarily, and understandingly made. The record shows that, before trial started on March 24, 2014, the court asked if the trial was going to be before the judge or a jury. Defense counsel said that defendant "waived a jury," and a signed jury waiver form, which defendant acknowledged was signed by her, was tendered to the court. Defendant did not object to counsel's representation that she desired a bench trial. In fact, defendant was specifically asked by the trial court at that time whether she knew that she had a right to a jury trial and if she was waiving that right. Defendant responded affirmatively to

both questions. Moreover, defendant's prior exposure to the criminal justice system, through her previous convictions, belied any contention that she did not understand how the system worked. See *People v. Turner*, 375 Ill. App. 3d 1101, 1109 (2007) (stating that a familiarity with the criminal justice system adds support for a finding of a knowing jury waiver).

¶ 12 The record is devoid of any indication that defendant was interested in having a jury trial. We thus find that the record sufficiently demonstrates that defendant's jury waiver was properly obtained by the court. See *People v. Reed*, 2016 IL App (1st) 140498, ¶ 8 (the defendant's waiver of his right to a jury trial was knowing and voluntary where defense counsel indicated that he wished to proceed by way of a bench trial in defendant's presence, defendant confirmed he wanted a bench trial, a signed jury waiver was submitted to the court, and defendant had an extensive criminal history); *People v. Asselborn*, 278 Ill. App. 3d 960, 962-63 (the defendant knowingly and understandingly waived his right to a jury trial where defense counsel told the court the defendant would be proceeding with a bench trial in the defendant's presence, and the defendant failed to object to the representations made by counsel); *People v. George*, 263 Ill. App. 3d 968, 971-72 (the defendant knowingly waived his right to a jury trial where his attorney represented in open court that the defendant wanted a bench trial, and the defendant knowingly participated in the bench trial without protest or demand for a jury trial).

¶ 13 In reaching this conclusion, we find unpersuasive defendant's contention that her jury waiver was not knowingly and understandingly made because she was a foreign national and nonnative English speaker, and her in-court conduct was unusual. In so arguing, defendant points to several pretrial hearings in order to show defendant's misunderstanding of our criminal justice system. In particular, on August 8, 2012, the trial court cleared the courtroom and a sheriff

ordered defendant to leave the podium when she insisted that the charges against her were false. On November 19, 2012, after the court advised defendant that her failure to appear could result in sentencing *in absentia*, defendant responded "I have -- I have another question. I had a microscope. What happened if I don't get --." On August, 19, 2013, defense counsel informed the trial court that defendant intended to plead guilty, but then told the court he was confused because defendant was "shaking her head." Defendant then professed her innocence and the court continued the matter.

¶ 14 On August 20, 2013, the date that defendant pled guilty, the trial court asked defendant if she knew what a jury trial was and she responded, "I understand, yeah. I filed before documents for a jury trial for other cases for people." After the court admonished defendant of the consequences of signing a jury waiver and pleading guilty, the court asked defendant if she understood. Defendant replied, "I do not know that signing a jury trial waiver, I give a right to be a witness. I--I do not--I do not know that." Defense counsel then assured the court that he had explained defendant's constitutional rights to her, and the following colloquy occurred between defense counsel and defendant:

"DEFENSE COUNSEL: [Defendant], do you understand you have a constitutional right to have 12 people sit and listen--

DEFENDANT: I know --I know--

DEFENSE COUNSEL: Yes or no? Just--

DEFENDANT: --there is a lot of unconstitutional things in United States."

During this hearing the court also asked defendant if she had ever been treated for mental health problems, to which she responded negatively.

¶ 15 However, as defendant acknowledges in her brief, upon further questioning by defense counsel and the trial court on August 20, 2013, defendant stated that she understood pleading guilty would waive her right to a jury trial, that she understood what a jury trial is, and that she wanted to relinquish that right. Moreover, during the same hearing, defendant indicated that she understood the trial court when it told her:

"And it will either be a jury trial where 12 people will decide whether you're guilty or innocent, and you and your lawyer will have a say-so in who is selected to be those 12 people, and those 12 people will have to unanimously agree what means [sic] to your guilt before you can be found guilty, and they'll have to unanimously agree that they believe that the evidence is there beyond a reasonable doubt to prove you guilty before you can be found guilty. Or you can have me decide those same things."

Defendant also acknowledged in court her previously signed jury waiver. The record therefore shows defendant was clearly apprised of and understood the ramifications of a jury waiver.

¶ 16 It is significant to note that not once during the entire time this matter was before the trial court did anyone request an interpreter for defendant. In fact, the trial court noted her excellent grasp of the English language when it stated at a hearing on August 19, 2013:

"You've done very well so far. The only reason I would know it's not your first language [is] because you have a slight accent, but otherwise I've understood every single word you've said and you've articulated your feelings very well I think."

Furthermore, defendant competently testified at trial without an interpreter and won a motion, which she initially drafted *pro se*, allowing her to withdraw her guilty plea, making this case distinguishable from *People v. Phuong*, 287 Ill. App. 3d 988 (1997), relied on by defendant. In

Phuong, this court held that the defendant, a Chinese immigrant who required an interpreter, did not knowingly and understandingly waive her right to a jury trial where the mere translation of the language of the jury waiver form she signed was insufficient to show she understood its meaning. *Id.* at 995-96. Taking the record here in its entirety, we find that defendant understood her right to a jury trial when she executed a jury waiver on March 24, 2014, and proceeded to a bench trial.

¶ 17 Nevertheless, relying on *People v. Sebag*, 110 Ill. App. 3d 821 (1982), and *People v. Miller*, 55 Ill. App. 3d 1047 (1977), defendant maintains that reversible error occurred where the trial court in this case never informed defendant that the right to a jury trial meant that 12 impartial citizens would hear the evidence presented at the trial and render the ultimate decision in her case. In *Sebag*, the record did not adequately establish the defendant's waiver of his right to a jury trial where the trial court failed to advise the defendant of the meaning of a jury trial, he lacked representation by counsel, he was unfamiliar with criminal proceedings, and there were ambiguities related to the admonishments and the charged offense. *Sebag*, 110 Ill. App. 3d at 829. In *Miller*, the trial court never made any inquiries concerning whether the defendant, who was not represented by counsel, had any knowledge of his right to a jury trial. *Miller*, 55 Ill. App. 3d at 1051-52. The court only asked the defendant if he wanted to waive his right to a jury trial, and when the defendant answered affirmatively, the trial started. *Id.*

¶ 18 Here, however, not only had the court previously explained the ramifications of a jury waiver to defendant, but defendant was represented by counsel and affirmed, under questioning by the court, that, as her counsel stated, she was waiving her right to a jury. Therefore, unlike in *Sebag* and *Miller*, the record shows defendant was represented by counsel, signed a jury waiver

form and was familiar with the criminal justice system as she had a prior conviction for the same offense charged in this case as well as a misdemeanor retail theft conviction.

¶ 19 Based on this record, we reject defendant's claim that her jury waiver was invalid due to insufficient admonishments. The trial court was not required to render any specific admonishments (*Tooles*, 177 Ill. 2d at 469), and the record demonstrates that defendant's jury waiver was knowingly, voluntarily, and intelligently made. Thus, the court did not err in accepting defendant's jury waiver. Because defendant has failed to establish error in connection with her jury waiver, she cannot take advantage of plain error to overcome her forfeiture of this issue.

¶ 20 For the foregoing reasons, we affirm the judgment of the circuit court.

¶ 21 Affirmed.