2016 IL App (1st) 141753-U

FIFTH DIVISION
September 16, 2016

No. 1-14-1753

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. 13 CR 10533
	)	
AARON JONES,	)	Honorable
	)	Evelyn B. Clay,
Defendant-Appellant.	)	Judge Presiding.

JUSTICE LAMPKIN delivered the judgment of the court.
Justices Reyes and Burke concurred in the judgment.

O R D E R

¶ 1 *Held:* Defendant's conviction for resisting or obstructing a peace officer is affirmed over defendant's contention that he did not knowingly and voluntarily waive his right to a jury trial.

¶ 2 Following a bench trial, defendant Aaron Jones, was convicted of resisting or obstructing a peace officer and sentenced to one year's imprisonment. On appeal, defendant contends that his conviction must be reversed and the case remanded for a new trial because the trial court failed

to ensure that his waiver of his right to a jury trial was knowingly and voluntarily made. We affirm.

¶ 3 Defendant was arrested on May 9, 2013, and subsequently charged by indictment with four counts of aggravated battery, two counts of disarming a peace officer and two counts of resisting or obstructing a peace officer.

¶ 4 Prior to trial, on November 12, 2013, in defendant's presence, the following colloquy took place between defense counsel and the court:

> "THE COURT: Defendant files answer to discovery. Now we're in the trial posture, is that correct?
>
> [DEFENSE COUNSEL]: That is correct, Your Honor, we are seeking a bench trial."

¶ 5 On February 25, 2014, in defendant's presence, defense counsel and the State agreed on a date for the bench trial and the court stated:

> "THE COURT: By agreement, 3-25 for [defendant]. With subpoenas for bench trial."

¶ 6 On the date of trial, March 25, 2014, the court received defendant's signed written jury waiver. The court then admonished defendant as follows:

> "THE COURT: *** Mr. Jones, you have a right to have a jury trial, if you so chose. Do you know what kind of trial that is? Do you know what kind of trial that is?
>
> THE DEFENDANT: Yes.

THE COURT: You have a right to have a jury trial, sir. Are you waiving your right to have a jury trial?

THE DEFENDANT: Yes.

THE COURT: The court accepts your oral and your written waivers of your right to have a jury trial."

The case then proceeded to a bench trial.

¶ 7 The evidence adduced at trial showed that about 12:40 a.m. on May 9, 2013, Chicago police officers Joseph DeRosa and Samuel Soto were on patrol in uniform and a marked police car near the area of 300 South Cicero Avenue. There, the officers observed defendant urinating on the wall of a gas station. The officers drove into the parking lot of the gas station and, while seated in the police car, shined a spotlight on defendant. Defendant approached the police car while waving his arms, clenching his fist and making a punching motion with one of his hands. When defendant neared the hood of the police car, the officers exited the car. Defendant again made a punching motion and lunged towards Officer DeRosa. Defendant struck the officer on the left shoulder and grabbed the officer's vest. Officer DeRosa and defendant then began to struggle.

¶ 8 During the struggle, defendant reached for Officer DeRosa's holster and attempted to remove the officer's gun. Defendant was able to disengage the locking mechanism on the holster but was not able to remove the gun from the holster. At that point, Officer Soto grabbed defendant and they began to struggle. Defendant reached for Officer Soto's utility belt and removed the officer's expandable baton. Eventually, the officers subdued defendant and placed him in custody.

¶ 9 Officer DeRosa testified that as a result of the incident he had some swelling to his right hand. The State introduced into evidence a surveillance video showing the events at the gas station. The video was published in open court.

¶ 10 The court found defendant guilty of two counts of resisting or obstructing a peace officer and not guilty of the remaining counts. Defendant filed a motion to reconsider, arguing in part that the State did not prove beyond a reasonable doubt that he caused an injury to Officer Soto. The court agreed, and granted defendant's motion, finding defendant not guilty as to that count of resisting or obstructing a peace officer.

¶ 11 At sentencing, the State argued in aggravation that defendant had spent time in the Illinois Department of Corrections for a variety of crimes, primarily drug-related offenses, and pointed out that his most recent conviction was in 2009. Defense counsel in mitigation argued that, although defendant had been convicted three times for various drug offenses, his presentence investigation report (PSI) showed that he did not have a history of violence in his criminal background and therefore this offense was not likely to reoccur. Defendant's PSI shows that in 1988 he pled not guilty to possession of a controlled substance, waived his right to a jury trial, and, after a bench trial, was found guilty of the offense. The PSI also shows that defendant pled guilty and waived his right to a jury trial on four other occasions. The court sentenced defendant to one year's imprisonment.

¶ 12 On appeal, defendant contends that this case must be reversed and remanded for a new trial because the trial court failed to ensure both that he understood the right that he was giving up - his right to have 12 people decide his guilt or innocence - when he waived his right to a jury trial and that he did so voluntarily. Defendant argues that the court only briefly asked him if he

knew what a jury trial was, and took his "yes" at face value, without conducting any further inquiry into his understanding of his right to a jury trial or the ramifications of waiving that right. Defendant also argues that the court never asked him if he was waiving his right to a jury trial of his own free will and therefore the record does not establish that he voluntarily waived his right to a jury trial.

¶ 13 The State initially responds that defendant has forfeited review of this issue because he failed to object prior to trial and did not raise the issue in a written posttrial motion. Substantively, the State argues that, although we may review this issue under the plain error doctrine, in this case no error occurred because the trial court properly admonished defendant of his right to a trial by jury and the record shows defendant knowingly and voluntarily waived that right.

¶ 14 Because the facts of this case are not in dispute, we review *de novo* the question of whether defendant knowingly and understandingly waived his fundamental right to a jury trial. *People v. Bannister*, 232 Ill. 2d 52, 66 (2008). The parties agree, as do we, that, despite defendant's failure to properly preserve this issue for review by either objecting to the validity of the jury waiver in the trial court or in a written posttrial motion, the issue may be considered under the plain error doctrine. *In re R.A.B.*, 197 Ill. 2d 358, 362-63 (2001); see also *People v. Owens*, 336 Ill. App. 3d 807, 810-11 (2002).

¶ 15 Under the plain error doctrine, a reviewing court will review an unpreserved error when a clear and obvious error occurs and: (1) the evidence is closely balanced; or (2) the alleged error is so serious that it affected the fairness of the defendant's trial and challenged the integrity of the judicial process. *Bannister*, 232 Ill. 2d at 65. The first step in the plain error analysis is

determining whether an error occurred. *People v. Piatkowski*, 225 Ill. 2d 551, 565 (2007). Here, we find that no error occurred.

¶ 16 The right to a jury trial is a fundamental right guaranteed by our federal and state constitutions. *Bannister*, 232 Ill. 2d at 65, citing U.S. Const., amends. VI, XIV; *Duncan v. Louisiana*, 391 U.S. 145, 149 (1968); Ill. Const. 1970, art. I §§ 8, 13. A defendant may waive the right to a jury trial, but for that waiver to be valid, it must be knowingly and understandingly made. *People v. Bracey*, 213 Ill. 2d 265, 269 (2004); see also 725 ILCS 5/103-6 (West 2012) ("Every person accused of an offense shall have the right to a trial by jury unless *** understandingly waived by defendant in open court"). A trial court has the duty to ensure that a defendant waives his right to a jury trial expressly and understandingly. *Bannister*, 232 Ill. 2d at 66, citing *People v. Smith*, 106 Ill. 2d 327, 334 (1985) (collecting cases).

¶ 17 A trial court does not need to give any specific admonition or advice for a defendant to make a valid jury waiver. *Bracey*, 213 Ill. 2d at 270. The determination of whether a jury waiver is valid does not rest on any precise formula, but rather, depends on the facts and circumstances of each case. *Bannister*, 232 Ill. 2d at 66. The crucial determination is whether the defendant understood that his case would be decided by a judge and not a jury. *Bannister*, 232 Ill. 2d at 69. Although not dispositive of a valid jury waiver, a written waiver, as required by section 115-1 of the Criminal Code of 1963, is one means by which a defendant's intent may be established. *Bracey*, 213 Ill. 2d at 269-70; 725 ILCS 5/115-1 (West 2012). A jury waiver is valid even if it is made by defense counsel if made in the defendant's presence in open court, without an objection by the defendant. *Bracey*, 213 Ill. 2d at 270 citing *People v. Murrell*, 60 Ill. 2d 287 (1975); *People v. Sailor*, 43 Ill. 2d 256 (1969). Defendant bears the burden of establishing that his jury

waiver is not valid. *People v. Reed*, 2016 IL App (1st) 140498, ¶ 8. Moreover, a reviewing court may consider a defendant's prior interactions with the criminal justice system in determining whether the defendant knowingly waived his right to a jury. See *Id.*, citing *Bannister*, 232 Ill. 2d at 71; see also *People v. Tooles*, 177 Ill. 2d 462, 471 (1997); *Turner*, 375 Ill. App. 3d 1101, 1109; *People v. Sebag*, 110 Ill. App. 3d 821, 829 (1982); and *People v. Phuong*, 287 Ill. App. 3d 988, 991 (1997).

¶ 18 The facts and circumstances of this case support the finding that defendant knowingly and voluntarily waived his right to a jury trial. The record shows that before trial, on two separate dates, defense counsel, in defendant's presence, indicated to the court that defendant was seeking a bench trial. Defendant did not object or ask questions at any point. On the date of trial, defendant signed a written jury waiver indicating that he did not wish to have a jury trial. The court then admonished defendant that he had a right to a jury trial if he so chose. The court also asked defendant if he knew what kind of trial was a jury trial. Defendant answered "yes." The court then again admonished defendant that he had a right to a jury trial and asked him if he was waiving that right. Defendant answered "yes."

¶ 19 In addition, defendant's PSI shows that he has a 25-year history with the criminal justice system, including several convictions starting in 1988. On that occasion, defendant pleaded not guilty, waived his right to a jury trial, and was found guilty after a bench trial. On four other occasions defendant pled guilty and waived his right to a jury trial. See *Reed*, 2016 IL App (1st) 140498, ¶ 8 (the defendant's history showed a familiarity with the criminal justice system where he had been previously convicted of eight felonies, waived a jury trial twice and pled guilty numerous times); *Turner*, 375 Ill. App. 3d 1101, 1109 (the defendant's history indicated a

familiarity with the criminal justice system, and, thus, a familiarity with her right to a trial by jury and with the ramifications of waiving that right). Accordingly, we find that defendant has failed to show that his jury waiver was not knowingly and voluntarily made.

¶ 20 Defendant nevertheless claims that presuming knowledge of the right to a jury based on his criminal experience runs contrary to precedent refusing to make similar presumptions regarding defendants' knowledge "about other constitutional rights." See *People v. Whitfield*, 217 Ill. 2d 177, 200 (2005) (refusing to consider the defendant's past criminal experience in determining whether he knew mandatory supervised release would be imposed); and *People v. LeFlore*, 2013 IL App (2d) 100659, ¶ 58 (refusing to ascribe to the defendant a heightened level of legal sophistication based on his criminal experience when assessing admonishments regarding the defendant's waiver of counsel), *rev'd on other grounds*, *People v. LeFlore*, 2015 IL 116799. However, these cases are distinguishable from the case at bar, because, as conceded by defendant, they involve "other" constitutional rights.

¶ 21 In reaching our conclusion that defendant knowingly and understandingly waived his right to a jury trial, we are not persuaded by defendant's reliance on *Sebag*, 110 Ill. App. 3d 821 (1982). In *Sebag*, the defendant, who was not represented by counsel, was charged with battery and public indecency. *Sebag*, 110 Ill. App. 3d at 827. The defendant was not arraigned on the public indecency charge, and, at his arraignment for the battery charge, he waived his right to a jury trial by answering "judge" in response to the court's admonishment that he was "entitled to have [his] case tried before a jury or judge." *Sebag*, 110 Ill. App. 3d at 829. The court then asked the defendant if he understood that "by waiving a jury at this time that you cannot reinstate it"

and the defendant answered "yes." *Sebag*, 110 Ill. App. 3d at 829. After a bench trial, the defendant was found guilty of public indecency. *Sebag*, 110 Ill. App. 3d at 822.

¶ 22 In reversing and remanding for a new trial, the court in *Sebag* found that the record as a whole did not establish a waiver of defendant's right to a jury trial on the public indecency charge. *Sebag*, 110 Ill. App. 3d at 829. The court pointed out that defendant was without the benefit of counsel, the discussion about the jury trial in the record related to the offense of battery, and this discussion did not appear to advise the defendant of the meaning of a trial by jury nor did it appear that the defendant was familiar with criminal proceedings. *Sebag*, 110 Ill. App. 3d at 829.

¶ 23 Unlike *Sebag*, defendant in this case was represented by counsel, who on at least two prior occasions indicated to the court in defendant's presence that he was seeking a bench trial. Moreover, defendant acknowledged that he knew the meaning of a trial by jury. Finally, unlike *Sebag*, we cannot say that defendant in this case was not familiar with criminal proceedings where, as mentioned, he had a 25-year history with the criminal justice system.

¶ 24 We are also not persuaded by defendant's reliance on *People v. Phuong*, 287 Ill. App. 3d 988 (1997). In *Phoung*, this court found that the defendant did not knowingly waive her right to a jury because the trial court did not inform her that a jury trial meant that members of the community would serve as fact finders in her case. *Phoung*, 287 Ill. App. 3d at 996. Unlike the defendant in *Phoung*, however, defendant in this case is not a Chinese speaker who recently immigrated to the United States and who had no criminal record or any dealing with the American criminal justice system. See *Phoung*, 287 Ill. App. 3d at 991. Accordingly, we

conclude the trial court did not err when it accepted defendant's "yes" at face value when it asked whether he knew what a jury trial was.

¶ 25 After considering defense counsel's requests for a bench trial in defendant's presence and defendant's written jury waiver, his colloquy with the trial court and his familiarity with the criminal justice system, we find the trial court did not err in finding that defendant knowingly and understandingly waived his right to a jury trial. See *Reed*, 2016 IL App (1st) 140498, ¶11. Because we find no error occurred, there can be no plain error. *Id*.

¶ 26 For the reasons stated, we affirm the judgment of the circuit court of Cook County.

¶ 27 Affirmed.