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2016 IL App (3d) 140538-U

Order filed September 26, 2016

IN THE
APPELLATE COURT OF ILLINOIS
THIRD DISTRICT

2016

THE PEOPLE OF THE STATE OF ILLINOIS,)	Appeal from the Circuit Court of the 13th Judicial Circuit, Bureau County, Illinois,
Plaintiff-Appellee,)	
v.)	Appeal No. 3-14-0538
KRISTOPHER A. KOCH,)	Circuit No. 13-CF-82
Defendant-Appellant.)	Honorable Marc P. Bernabei, Judge, Presiding.

JUSTICE LYTTON delivered the judgment of the court.
Justices McDade and Schmidt concurred in the judgment.

ORDER

¶ 1 *Held:* There is no plain error where defendant knowingly and voluntarily waived his right to a jury trial.

¶ 2 Defendant, Kristopher A. Koch, appeals his convictions and sentences arguing that the trial court violated his constitutional right to a jury trial when it accepted his jury waiver without ensuring that the waiver was knowing, voluntary, and intelligently made. We affirm.

¶ 3 **FACTS**

¶ 4 On October 15, 2013, the State charged defendant by indictment with three counts of aggravated criminal sexual abuse (720 ILCS 5/11-1.60(c)(1)(i) (West 2012)). Count I alleged that defendant, who was 17 years of age or older, placed his penis on the buttocks of T.K. (his daughter) who was under 13 years old. Count II alleged that defendant placed his penis on the buttocks of P.P., who was under 13 years of age. Count III alleged that defendant placed his penis on the buttocks of M.D., who was under 13 years of age, through clothing.

¶ 5 On February 19, 2014, the parties appeared in court for a pretrial hearing. At the hearing, the following colloquy occurred:

“[DEFENSE COUNSEL]: I have a jury waiver to present to the court.

THE COURT: So your client wishes to waive jury on all counts, and at the same time he’s asking for a continuance of the trial and selecting a bench trial date at a later date?

[DEFENSE COUNSEL]: That’s correct. And I believe that’s been agreed to by the State.

* * *

THE COURT: Okay. [Defendant], is that what you want to do?

THE DEFENDANT: Yes, sir.

THE COURT: Okay. So [Defendant], I’m told—I’m told by your attorney that you wish to—oh, this is a jury waiver proceeding, Deputy, so we should have him unshackled during this. So I’d like to have him unshackled since we have a jury waiver proceeding.

So off the record for a moment.

(A conversation was held off the record.)”

¶ 6 When the parties went back on the record, they discussed scheduling the next court date, the possession of an exhibit, and that defendant waived his right to a speedy trial. After this discussion, the trial court stated, “I have an order here signed by the defendant, approved by [defense counsel], prepared by [the State] entered this 19th day of February, 2014, which shows the new trial dates and bench trial dates and the speedy trial findings.” The written order, corresponding to this date includes defendant’s signature and states that defendant waived a jury trial and that the bench trial would occur on April 15, 2014. Defendant personally signed the written order. Defendant signed a written jury waiver and filed it the same day.

¶ 7 On March 3, 2014, defendant filed a motion for psychological evaluation arguing that a *bona fide* doubt existed as to defendant’s fitness to stand trial. The trial court ordered a fitness evaluation be conducted and the matter was continued.

¶ 8 On April 15, 2014, the trial court addressed defendant’s fitness to stand trial. Regarding defendant’s fitness evaluation, the trial court stated that it “had a chance to carefully study that more than once and as recently as last night at home and again today. So I’m very much up to speed on the contents of that report.” The trial court then questioned defendant about the charges against him and the role of the defense attorney and the prosecutor. Then, the following exchange occurred:

“THE COURT: All right. And in the criminal justice system, what is the role, as you see it, of the judge; not necessarily me, but as a judge generally? What is your understanding that the role of a judge is in a criminal case?”

THE DEFENDANT: To sit there and listen to arguments and then make your own decision based upon the law, not your own opinion.

THE COURT: Okay. All right. The criminal cases, as I'm sure you know, are tried either before a jury where a jury of 12 people make the decision, or a judge makes the decision. You're aware that you've waived a jury in this case and have requested that I make the—return the verdicts in this case, is that correct?

THE DEFENDANT: Yes.

THE COURT: Okay. If this was a jury trial, which it's not, what's your understanding what the role of the jury would be, if this was a jury trial?

THE DEFENDANT: 12 people of my peers that would weigh the State's and my attorney's arguments and then go and deliberate and then come up with a verdict."

¶ 9 After its discussion with defendant, the trial court found "absolutely" no *bona fide* doubt existed as to defendant's fitness to stand trial. The court noted that defendant

"clearly appreciates the nature of the case. He's able to assist his attorney. He understands the parties, what a judge does, what a bench trial is, what a jury trial is.

So the court finds that there's no *bona fide* doubt as to his fitness; and as a matter of fact, what I have before [m]e affirmatively proves that he's fit. So there's no reason for a fitness hearing, so we won't have one. We'll proceed to trial."

¶ 10 Following the bench trial, the trial court found defendant guilty on all three counts of aggravated criminal sexual abuse. The trial court sentenced defendant to consecutive sentences of 9 years on count I, 6 years on count II, and 3 years on count III.

ANALYSIS

¶ 11

¶ 12

Defendant’s sole contention on appeal is that the trial court failed to obtain a proper waiver of his constitutional right to a jury trial. Defendant concedes that he failed to contest the validity of his jury waiver before the trial court, but argues that this issue should be reviewed under the plain error doctrine. Upon review, we find the record establishes that defendant’s jury waiver is valid because it was knowingly and voluntarily made. Because we find no error, we hold defendant has failed to establish plain error.

¶ 13

Pursuant to the plain error doctrine, a reviewing court may consider an issue that was not preserved when 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 the error was so serious it affected the fairness of the proceedings and challenged the integrity of the judicial process, regardless of the closeness of the evidence. *People v. Piatkowski*, 225 Ill. 2d 551, 565 (2007). The first step to determine whether the plain error doctrine applies is to determine whether any error occurred. *People v. Patterson*, 217 Ill. 2d 407, 444 (2005).

¶ 14

A criminal defendant’s right to a jury trial is one that is guaranteed by the federal and state constitutions. U.S. Const., amends. VI, XIV; Ill. Const. 1970, art. I, §§ 8, 13. Nonetheless, a defendant may waive his right to a jury and elect to proceed by way of a bench trial as long as the waiver is made knowingly and understandingly in open court. 725 ILCS 5/103-6 (West 2012). The validity of a jury waiver does not rest on any precise formula; rather it depends on the facts and circumstances of a particular case. *In re R.A.B.*, 197 Ill. 2d 358, 364 (2001). Although the trial court must ensure that a defendant’s jury waiver is understandingly made, no set admonition is required before an effective waiver may be made (*id.*), and the court is not required to explain the ramifications of a jury waiver unless there is an indication that the

defendant did not understand the right to a jury trial (*People v. Steiger*, 208 Ill. App. 3d 979, 981 (1991)). Based on our review of the record, we find the facts and circumstances demonstrate that defendant knowingly waived his right to a jury trial.

¶ 15 In the present case, defendant, through counsel, presented the trial court with a written jury waiver signed by defendant. At the same time, defendant acknowledged that it was his desire to waive his right to a jury trial. See *People v. Frey*, 103 Ill. 2d 327, 330 (1984) (upholding the validity of a jury waiver where a defense attorney, in his client’s presence, advised the court that defendant had elected to waive his right to jury trial and defendant made no objection to those statements). Defendant also acknowledged his jury waiver by signing the written order stating the same. Moreover, although it occurred after the trial court accepted defendant’s jury waiver, defendant’s responses to the trial court’s inquiries at the fitness hearing confirm that defendant knew the difference between a jury and a bench trial and that he had decided to waive his right to a jury trial. *Supra* ¶ 8.

¶ 16 From this exchange, it is clear defendant demonstrated that he knowingly waived his right to a jury trial. See *People v. Bannister*, 232 Ill. 2d 52, 69 (2008) (the “pivotal knowledge that the defendant must understand” is that the facts of the case will be determined by a judge rather than a jury). While the trial court did not advise defendant of the implications of waiving his right to a jury trial, it was not required to do so where, as here, defendant demonstrated that he understood his right to a jury trial. *Steiger*, 208 Ill. App. 3d at 981. Under the circumstances presented, we conclude that defendant knowingly, understandingly, and voluntarily waived his right to a jury trial. Having found no error, there can be no plain error. *Bannister*, 232 Ill. 2d at 71.

¶ 17

CONCLUSION

¶ 18 The judgment of the circuit court of Bureau County is affirmed.

¶ 19 Affirmed.