

No. 1-15-1654

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IN THE
APPELLATE COURT OF ILLINOIS
FIRST DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS,)	Appeal from the
)	Circuit Court of
Plaintiff-Appellee,)	Cook County
)	
v.)	No. 14 CR 14603
)	
RODNEY SHEARRILL,)	Honorable
)	James Michael Obbish,
Defendant-Appellant.)	Judge, Presiding.

PRESIDING JUSTICE HOFFMAN delivered the judgment of the court.
Justices Connors and Delort concurred in the judgment.

ORDER

- ¶ 1 *Held:* The trial court did not err in its assessment that the defendant knowingly and voluntarily waived his right to a jury trial.
- ¶ 2 Following a bench trial, the defendant, Rodney Shearrill, was convicted of aggravated driving under the influence (625 ILCS 5/11-501(a) (West 2014)) and driving with a suspended or revoked license (625 ILCS 5/6-303(a) (West 2014)). He was sentenced to three years and six months' imprisonment. On appeal, he argues that his conviction should be reversed and the

matter remanded for a new trial because he did not knowingly and intelligently waive his right to a jury trial. For the reasons that follow, we affirm the judgment of the trial court.

¶ 3 In August 2014, the defendant was charged by information with four counts of aggravated driving under the influence (625 ILCS 5/11-501(a) (West 2014)) and two counts of driving with a suspended or revoked license (625 ILCS 5/6-303(a) (West 2014)). The charges alleged that, on August 4, 2014, the defendant drove a motor vehicle while under the influence of alcohol during a period in which his driving privileges were revoked based upon a prior conviction of driving under the influence of alcohol.

¶ 4 On March 26, 2015, just prior to the commencement of trial, the defendant appeared in court with his attorney and the following colloquy occurred:

"THE COURT: All right. Rodney Shearrill. This is set for trial today.
Counsel?

MR. KLOAK [(defense counsel)]: Richard Kloak, K-l-o-a-k. I'm here for Rodney Shearrill. He is set for bench. We're asking leave to file a written jury waiver, and we're answering ready for trial.

THE COURT: All right. State's ready as well?

MS. GLEASON [(Assistant State's Attorney)]: Yes.

THE COURT: All right. Mr. Shearrill, is this your signature on this document indicating that you want to waive your right to trial by jury and submit the case to this Court as a bench trial?

THE DEFENDANT: Yes, sir.

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

THE DEFENDANT: Yes, sir.

THE COURT: Anybody force, threaten you, or promise you anything to get you to waive your right to jury trial?

THE DEFENDANT: No, sir.

THE COURT: All right. The jury waiver will be accepted. I believe the defendant has knowingly and voluntarily exercised his right to waive a jury, proceed by way of a bench trial.

You may have a seat at the counsel table next to your lawyer, sir.”

The defendant's signed jury waiver, dated March 26, 2015, provides as follows: "I, the undersigned, do hereby waive jury trial and submit the above entitled cause to the Court for hearing."

¶ 5 Following the bench trial, the defendant was found guilty of aggravated driving under the influence (625 ILCS 5/11-501(a) (West 2014)) and driving with a suspended or revoked license (625 ILCS 5/6-303(a) (West 2014)). Thereafter, the court ordered a presentence investigation (PSI) report and scheduled a sentencing hearing. According to the PSI report, the defendant obtained a GED degree and had four prior adult convictions (one conviction for driving under the influence and three convictions for possession of a controlled substance). At the sentencing hearing, the court sentenced the defendant to three years and six months' imprisonment for aggravated driving under the influence and a concurrent sentence of one year for driving with a suspended or revoked license. The court denied the defendant's posttrial motions, and this appeal followed.

¶ 6 On appeal, the defendant contends that his right to a jury trial was violated because the trial court failed to ensure that his waiver of this fundamental right was knowingly and intelligently made. Specifically, he argues that the court never explained the nature of a jury trial

or the difference between a bench trial and jury trial. The defendant acknowledges that he failed to preserve his claim on appeal, but argues that the issue should be reviewed under the plain error doctrine.

¶ 7 Under the plain error doctrine, a reviewing court may consider an issue that was not preserved in two circumstances: (1) where 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) where 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). Before considering the defendant's claim under either prong, we must first determine whether an error has occurred. *People v. Eppinger*, 2013 IL 114121, ¶ 19.

¶ 8 Both our federal and state constitutions guarantee a criminal defendant's right to a jury trial. U.S. Const., amends. VI, XIV; Ill. Const. 1970, art. I, §§ 8, 13. A defendant may waive this right, but in order for him to validly do so, he must make the jury waiver knowingly and voluntarily in open court. *People v. Bannister*, 232 Ill. 2d 52, 65-66 (2008). Courts are not required to communicate "any set admonition or advice" before accepting a waiver. *Id.* at 66. Consequently, whether a defendant's jury waiver is made knowingly and voluntarily "depends on the facts and circumstances of each particular case." *Id.* The pivotal concept that the jury-waiving defendant must understand is that the judge, not a jury, will determine the facts of his case. *Id.* at 69. "Although a signed jury waiver alone does not prove a defendant's understanding, it is evidence that a waiver was knowingly made." *People v. Reed*, 2016 IL App (1st) 140498, ¶ 7. Likewise, a defendant's silence while his attorney requests a bench trial provides evidence that the waiver is valid. *Id.* Reviewing courts may also consider a defendant's

prior interactions with the criminal justice system in determining whether a jury waiver was knowingly made. *Bannister*, 232 Ill. 2d at 71. We review whether a defendant knowingly and voluntarily waived his right to a jury trial *de novo*. *People v. Bracey*, 213 Ill. 2d 265, 270 (2004).

¶ 9 In this case, the particular facts and circumstances support the finding that the defendant knowingly and voluntarily waived his right to a jury trial. The record shows that the defendant was present in court with his attorney when his attorney stated that the matter was set for a bench trial. The court admonished the defendant that he had a right to a jury trial and questioned him about whether he knew what a jury trial is, whether he wished to waive his right, and whether he signed a jury waiver. The defendant answered in the affirmative to each question and at no time did he object or ask questions. The court also inquired as to whether anyone had pressured the defendant into waiving his right to a jury trial, to which the defendant answered in the negative. Moreover, the defendant submitted a signed jury waiver, and confirmed he understood that, by signing the document, he was waiving his right to a jury trial. Finally, the record reveals that the defendant had a history with the criminal court system—namely, four prior convictions—which suggests that he was familiar with the right to a jury trial and the consequences of waiving that right. *People v. Tooles*, 177 Ill. 2d 462, 471 (1997) (the defendant's four prior convictions supported a presumption of familiarity with jury waivers). Accordingly, under these facts and circumstances, we find that the defendant knowingly and voluntarily waived his right to a jury trial.

¶ 10 In reaching this conclusion, we find *People v. Sebag*, 110 Ill. App. 3d 821 (1982), cited by the defendant, inapposite. In *Sebag*, the defendant was not represented by counsel, had no familiarity with criminal proceedings, and was not advised of the meaning of a jury trial. *Id.* at

829. Unlike the defendant in *Sebag*, the defendant in this case had the benefit of counsel when he waived his right to a jury trial, was familiar with criminal proceedings, and understood the difference between a bench trial and jury trial.

¶ 11 In sum, after considering the defendant's colloquy with the trial court and his familiarity with the criminal justice system, we conclude that the trial court did not err in finding the defendant knowingly and voluntarily waived his right to a jury trial. In the absence of error, the plain error doctrine does not apply and the defendant's forfeiture is not excused.

¶ 12 For the foregoing reasons, the trial court did not err by accepting the defendant's jury waiver, and we affirm the judgment of the trial court.

¶ 13 Affirmed.