

NOTICE
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2017 IL App (5th) 140272-U

NO. 5-14-0272

IN THE

APPELLATE COURT OF ILLINOIS

FIFTH DISTRICT

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).

THE PEOPLE OF THE STATE OF ILLINOIS,)	Appeal from the
)	Circuit Court of
Plaintiff-Appellee,)	St. Clair County.
)	
v.)	No. 12-CF-997
)	
JOHN COLE,)	Honorable
)	John Baricevic,
Defendant-Appellant.)	Judge, presiding.

PRESIDING JUSTICE MOORE delivered the judgment of the court.
Justices Welch and Goldenhersh concurred in the judgment.

ORDER

- ¶ 1 *Held:* Conviction following bench trial affirmed where the defendant's jury waiver was knowing and voluntary.
- ¶ 2 The defendant, John Cole, appeals from a final judgment of conviction after a bench trial. He contends that his jury waiver was invalid because the circuit court did not determine that the waiver was knowing and voluntary. On that basis, the defendant requests that this court reverse his conviction and remand for a new trial. For the following reasons, we affirm.

¶ 3

FACTS

¶ 4 On August 3, 2012, the defendant was charged by indictment with first-degree murder (intent to kill) (720 ILCS 5/9-1(a)(3) (West 2010)); first-degree murder (while committing a home invasion) (720 ILCS 5/9-1(a)(3) (West 2010)); 720 ILCS 5/12-11 (West 2010)); home invasion (720 ILCS 5/12-11(a)(1) (West 2010)); and attempted first-degree murder (720 ILCS 5/8-4(a) (West 2010)).

¶ 5 On May 1, 2013—within 120 days of his arrest—the circuit court admonished the defendant of his right to a jury trial on the charges against him. When asked if he had any questions in this regard, the defendant replied in the negative. A hearing was conducted on January 22, 2014. At the hearing, defense counsel informed the circuit court that the defendant wished to waive his jury demand and have a bench trial. Defense counsel stated that he explained to the defendant in detail about the process of jury selection, *voir dire*, and about the facts of the case. He informed the defendant that he recommends a jury trial most of the time. Defense counsel further stated that the defendant raised certain points to him and they discussed the benefits of both a jury trial and a bench trial. Defense counsel asserted his belief that the defendant understood everything completely and still elected to waive the jury trial and proceed with a bench trial.

¶ 6 The circuit court asked the defendant if he agreed with everything his counsel stated. The defendant replied in the affirmative. The circuit court then explained to the defendant that there are certain decisions to be made solely by him—regardless of any advice given to him by counsel—and whether to have a jury trial or a bench trial is one

such decision. The defendant replied that he understood. The circuit court then asked the defendant if he needed more time to discuss the issue with his counsel. The defendant responded, "Oh, no, sir." The circuit court proceeded to ask the defendant if he had any questions about his right to a jury trial. The defendant replied, "No, sir." The circuit court then asked the defendant, "Do you wish to have a jury trial or a trial without a jury?" The defendant responded, "Trial without a jury."

¶ 7 The written jury waiver was then presented to the defendant. The circuit court told the defendant to read the waiver before signing it and told him if he had any questions to ask them and if he had no questions, to sign it. The defendant asked no questions and proceeded to sign the waiver in open court. The circuit court then acknowledged the defendant's written waiver of his right to a jury trial. At the conclusion of the bench trial, the defendant was convicted of two counts of murder and one count of attempted murder.

¶ 8 ANALYSIS

¶ 9 The sole issue on appeal is whether the defendant's jury waiver was valid. "Because the facts of this case are not in dispute, the question is a legal one and our review is *de novo*." *People v. Bracey*, 213 Ill. 2d 265, 270 (2004). At the outset, we note the defendant's stipulation that he did not preserve this issue by objecting to his jury waiver or by including it in a posttrial motion. We note that the "defendant's failure to question the validity of [a] jury waiver in the circuit court, either by objection or in a posttrial motion, does not mean that he has forfeited the alleged error on review." *Id.* "Whether a defendant's fundamental right to a jury trial has been violated is a matter that

may be considered under the plain error rule." *Id.* On that basis, we choose to address the defendant's argument.

¶ 10 "The right to a trial by jury is a fundamental right guaranteed by our federal and state constitutions." *Id.* at 269. "A defendant may, of course, waive the right to a jury trial, but any such waiver, to be valid, must be knowingly and understandingly made." *Id.* "Whether a jury waiver is valid cannot be determined by application of a precise formula, but rather turns on the particular facts and circumstances of each case." *Id.*

¶ 11 Here, the defendant argues that the jury waiver was invalid because the written jury waiver and the in-court discussions failed to satisfy the requirements to assure that he understood the nature of the right that he was relinquishing. The defendant contends that the circuit court relied on the representations made by defense counsel and did not ask the defendant if he understood the distinction between a bench trial and a jury trial, and if he waived his right to a jury without coercion. We disagree.

¶ 12 We emphasize at the outset that "[f]or a waiver to be effective, the court need not impart to [the] defendant any set admonition or advice." *Id.* at 270. "Generally, a jury waiver is valid if it is made by defense counsel in [the] defendant's presence in open court, without an objection by [the] defendant." *Id.* Here, the record belies the defendant's assertion that the circuit court failed to inquire if he understood the difference between a bench trial and a jury trial. At the hearing, defense counsel gave a lengthy recitation of his extensive efforts to ensure that the defendant knew precisely the difference between a bench trial and a jury trial and to thoroughly inform him of the pros and cons of each. Defense counsel asserted his belief that the defendant completely

understood the difference and still elected to waive the jury trial and proceed with a bench trial. After defense counsel's explanation of the process, the circuit court asked the defendant if he agreed with everything his counsel had stated. The defendant replied that he agreed, that he understood, that he needed no more time to discuss the issue with his counsel, that he had no questions, and that he wished to proceed with a bench trial and to waive the jury trial. After this exchange, the defendant was given a written jury waiver form. The circuit court instructed the defendant to read the waiver and to ask any questions before signing. The defendant asked no questions and signed the waiver.

¶ 13 The defendant emphasizes that although he signed the written waiver, the existence of such a waiver is not dispositive of the question of whether it was entered knowingly and voluntarily. See *Bracey*, 213 Ill. 2d at 270. While we agree with this proposition and basic rule of law, we do not agree with the defendant's assertion that the written waiver in this case does not compensate for the circuit court's alleged inadequate admonishments.

¶ 14 The defendant cites *People v. Tooles*, 177 Ill. 2d 462 (1997), which he contends in his brief is "illustrative of the admonishments *required* to establish a knowing jury waiver." (Emphasis added.) We disagree. We initially note that *Tooles* is distinguished from the instant case, as the issue in *Tooles* was whether the conviction should be reversed where the circuit court failed to secure a written jury waiver. See *id.* at 464. Moreover, we disagree with the defendant's assertion that *Tooles* requires a certain type of admonishment to establish a knowing and voluntary waiver. As already mentioned and as *Tooles* itself makes clear, "while the circuit court must insure that a defendant's

jury waiver is understandingly made, no set admonition or advice is required before an effective waiver of that right may be made." *Id.* at 469. Accordingly, the defendant's suggestion that a specific admonishment is required is incorrect, as is his assertion that *Tooles* stands for any such proposition.

¶ 15 The defendant also contends that his jury waiver was invalid because the circuit court accepted the representations of defense counsel, rather than addressing him directly to ensure he understood the difference between a bench trial and a jury trial. Again, we disagree. To restate the general rule, "a jury waiver is valid if it is made by defense counsel in [the] defendant's presence in open court, without an objection by [the] defendant." *Bracey*, 213 Ill. 2d at 270. Moreover, defense counsel was painstakingly thorough in his explanation to the court regarding the lengthy efforts he expended to ensure the defendant completely understood the differences between a bench trial and a jury trial and the pros and cons of each. The circuit court should not be required to reiterate everything defense counsel stated while the defendant stood by and confirmed that he not only heard and understood everything perfectly, but also agreed with everything that was stated. We find it appropriate that the circuit court confirmed that the defendant understood and agreed with everything defense counsel represented. Accordingly, we disagree with the defendant's argument that his jury waiver was invalid because the circuit court did not address him directly.

¶ 16 **CONCLUSION**

¶ 17 For the aforementioned reasons, we find the defendant's jury waiver was knowing and voluntary, and affirm the judgment of conviction.

¶ 18 Affirmed.