FIRST DIVISION
November 5, 2018

No. 1-16-1206

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. 15 CR 18389
	)	
MONTEL WOODS,	)	Honorable
	)	Rickey Jones,
Defendant-Appellant.	)	Judge Presiding.

PRESIDING JUSTICE MIKVA delivered the judgment of the court.
Justices Pierce and Griffin concurred in the judgment.

O R D E R

¶ 1 *Held*: Defendant's conviction for delivery of a controlled substance is affirmed because defendant knowingly waived his right to a trial by jury.

¶ 2 Defendant Montel Woods was convicted of delivery of a controlled substance and sentenced to two years of probation, outpatient drug treatment, and a referral to Treatment Alternatives for Safe Communities (TASC). On appeal, Mr. Woods contends that, although he signed a written jury waiver, there was no discussion of that waiver in open court, nor did defense counsel orally waive this right on his behalf, and therefore there was no valid waiver of

his right to trial by jury. He also disputes certain fines and fees assessed against him. For the following reasons, we affirm his conviction and direct that the fines and fees order be modified.

¶ 3 I. BACKGOUND

¶ 4 On October 23, 2015, Mr. Woods was arrested after a police surveillance team saw him sell narcotics to an undercover police officer. He was charged by indictment with delivery of a controlled substance.

¶ 5 At a pretrial hearing, the trial court asked whether the trial would be "Bench or jury?" Mr. Woods replied: "Bench." The court set the case for a bench trial six weeks later.

¶ 6 Mr. Woods's one-day trial took place on February 24, 2016. The record contains a written jury waiver dated that same day, although there is no indication as to what time of day or at what point in the trial Mr. Woods signed the jury waiver. The document states, "I, the undersigned, do hereby waive jury trial and submit the above entitled cause to the Court for hearing." It also contains an illegible signature that the defense has never claimed was done by anyone other than Mr. Woods.

¶ 7 At the start of the trial, the following exchange occurred:

> "THE COURT: This matter is here for bench trial. You represent him, Counsel?
>
> [DEFENSE COUNSEL]: Assistant Public Defender, Monique Medley.
>
> THE COURT: State ready?
>
> [THE STATE]: Yes.
>
> THE COURT: You're charged with delivery of a controlled substance. Do you understand the charge?
>
> DEFENDANT WOODS: Yes, your Honor.

> THE COURT: You have a right to trial by jury. If you request a jury trial, a jury comprise[d] of 12 citizens selected in part by you and your lawyer and the State's attorney to hear all the evidence in the case and decide whether or not the State proved the charges against you beyond a reasonable doubt. In order for a jury to find you guilty, its verdict must be unanimous. That means all 12 jurors would have to vote you guilty in order to find you guilty. Do you understand your right to trial by jury?
>
> DEFENDANT WOODS: Yes, your Honor.
>
> THE COURT: Stand by. Let me pass the case for a minute."

¶ 8 The trial court turned to other matters and then, upon returning to this case, asked Mr. Woods, "[h]ow do you plead?" Mr. Woods responded, "[n]ot guilty." The trial then proceeded.

¶ 9 Chicago police officer Marcela Musgraves testified that, on October 23, 2015, she was working undercover when she approached Mr. Woods on a sidewalk on the 5400 block of South Ashland Avenue. The two exchanged brief words before Mr. Woods led her to an alley, where he gave her "two black tinted zip lock bags containing a white powder substance, suspect heroin." She left the area, motioned to a nearby surveillance team, returned to her undercover vehicle, and described Mr. Woods to her team. After being informed by a team member that a subject had been detained, she met with the arresting officer and identified Mr. Woods as the man who "conducted the hand to hand narcotics transaction with [her]."

¶ 10 Officer Reginald Dukes testified that he was monitoring Officer Musgraves on foot when he saw her interact with a man matching Mr. Woods's description. After seeing them both enter an alley and Officer Musgraves emerging shortly afterwards, Officer Dukes began surveying the suspect on foot. He saw him enter a home and later saw a man matching Mr. Woods's

description leave the home. Officer Dukes radioed Officer Clarence Hubbard, another member of the team, who was then directed to the relevant location. Officer Hubbard testified that he saw Mr. Woods run from a fellow officer before eventually being detained and arrested.

¶ 11 A forensic chemist testified that the zip lock bags contained 1.02 grams of heroin. The State rested its case in chief and the trial court denied Mr. Woods's motion for a directed verdict.

¶ 12 Mr. Woods testified that he had not been on Ashland Avenue on October 23, 2015. He also testified that although his outfit matched the description of the suspect given by Officer Musgraves, he left his home that night only to go to a nearby restaurant and had not been in the alley where the narcotics transaction was said to have occurred. Mr. Woods testified that he ran from the officer because he had "seen a person running towards [him] with a gun."

¶ 13 After closing arguments, the trial court found Mr. Woods guilty of delivery of a controlled substance.

¶ 14 Mr. Woods filed a motion for a new trial, which did not include any objection to the validity of his jury waiver. After a hearing on March 31, 2016, the trial court denied the motion. Mr. Woods was sentenced that same day. This appeal followed.

¶ 15 II. JURISDICTION

¶ 16 Mr. Woods was sentenced on March 31, 2016, and timely filed his notice of appeal that same day. We have jurisdiction pursuant to article VI, section 6, of the Illinois Constitution and Illinois Supreme Court Rules 603 and 606, governing appeals from final judgments of conviction in criminal cases. Ill. Const. 1970, art. VI § 6; Ill. S. Ct. Rs. 603, 606 (eff. Feb. 6, 2013).

¶ 17 III. ANALYSIS

¶ 18 A. Jury Waiver

¶ 19 Mr. Woods argues on appeal that he is entitled to a new trial because he never knowingly

waived his right to a trial by jury. Mr. Woods acknowledges that he "failed to object and properly preserve this issue for review," but argues that we can review this issue for plain error. The State concedes that the second prong of the plain error doctrine allows us to consider a forfeited issue if an obvious or clear error occurred and the error affected the trial's fundamental fairness. *People v. Piatkowski*, 225 Ill. 2d 551, 565 (2007). The State also concedes that the right to a trial by jury is a substantial right in the criminal justice system, and we may therefore review the validity of a jury waiver under the second prong of the plain error doctrine. See *People v. Owens*, 336 Ill. App. 3d 807, 810-11 (2002) (citing *In re R.A.B.*, 197 Ill. 2d 358, 363 (2001)). The State contends, however, that no clear or obvious error exits regarding Mr. Woods's waiver of his right to a jury trial. We agree.

¶ 20 The accused in a criminal proceeding has a constitutional right to a jury trial (U.S. Const., amends. VI, XIV; Ill. Const. 1970, art. I, §§ 8, 13). Two Illinois statutes govern waiver of this right. Section 103-6 of the Code of Criminal Procedure (725 ILCS 5/103-6 (West 2014)) provides that "[e]very person accused of an offense shall have the right to a trial by jury unless *** understandingly waived by defendant in open court," and section 115-1 (725 ILCS 5/115-1 (West 2014)) mandates that "[a]ll prosecutions except on a plea of guilty or guilty but mentally ill shall be tried by the court and a jury unless the defendant waives a jury trial in writing."

¶ 21 "[T]he failure to secure a written jury waiver does not require a new trial where it can be shown that the defendant's waiver was otherwise understandingly made." *People v. Tooles*, 177 Ill. 2d 462, 464 (1997) (citing 725 ILCS 5/103-6 (West 1992); *People v. Smith*, 106 Ill. 2d 327, 334 (1985)). Defense counsel may orally waive the right to a jury trial on the defendant's behalf by affirming that the defendant wishes to proceed with a bench trial while in the defendant's presence with no objection from him. *People v. Asselborn*, 278 Ill. App. 3d 960, 962-63 (1996).

This holds true even if the court does not admonish or provide advice to the defendant. *People v. Lake*, 297 Ill. App. 3d 454, 460 (1998). However, "[t]he determination whether a jury waiver was made understandingly *** turns on the facts and circumstances of each particular case." *Tooles*, 177 Ill. 2d at 469 (citing *People v. Tye*, 141 Ill. 2d 1, 24 (1990)).

¶ 22 Mr. Woods argues that although he did sign a written jury waiver, it was never acknowledged in court, nor was he ever questioned in open court about waiving his right to a jury trial. He also argues that defense counsel did not make any statements in open court that would suggest he wished to waive his right to a trial by jury. The State responds that Mr. Woods "knowingly, voluntarily and intelligently waived his right to trial by jury" by virtue of the full sequence of events: he stated "bench" at the earlier hearing, he was told of his right to a trial by jury and how such a trial would function, he confirmed that he understood this right and never objected to a bench trial when mentioned in open court, and finally, he executed a signed jury waiver at some point.

¶ 23 We agree with the State that the full facts and circumstances demonstrate sufficient compliance with statutory and constitutional requirements for a jury waiver. At his pretrial hearing, the court presented Mr. Woods with the choice between a bench or jury trial, at which time he stated he wanted a bench trial. On the eve of trial six weeks later, the court again informed him of his right to a jury trial and explained how trial by jury functions. Mr. Woods then conveyed that he understood. These facts together suggest that Mr. Woods understandingly waived his right to a jury trial.

¶ 24 Even a brief colloquy between a defendant (or defense counsel) and the trial court can demonstrate a sufficient waiver of a jury trial right, if the defendant was offered a choice and the facts and circumstances demonstrate that choice was knowingly made. See *Asselborn*, 278 Ill.

App. 3d at 962-63. In *Asselborn*, the court gave defense counsel the choice of "bench or jury?" *Id.* at 962. Defense counsel, in the defendant's presence, responded, "[i]t will be a bench your Honor." *Id.* This court held that this exchange constituted the defendant's knowing, understanding waiver of his right to a jury trial. *Id.* at 963. In the present case, a nearly identical exchange occurred during Mr. Woods's pretrial hearing, and even more compelling, Mr. Woods himself was given the choice between a bench or jury trial and indicated he wanted a bench trial. At his trial six weeks later, the court mentioned that the case was there for a bench trial while talking to defense counsel in Mr. Woods's presence, with no objection from Mr. Woods. These facts are further confirmation of Mr. Woods's choice to waive his right to a trial by jury.

¶ 25 Mr. Woods hinges much of his argument on our supreme court's ruling in *People v. Scott*, 186 Ill. 2d 283 (1999). He relies on *Scott* to argue that Illinois courts have "never found a valid jury waiver where the defendant was not present in open court when a jury waiver, written or otherwise, was at least discussed." *Scott*, 186 Ill. 2d at 285. Mr. Woods fails to highlight, however, that our supreme court reached this decision in *Scott* because the defendant was never given a choice between a bench and jury trial. *Id.* Here, Mr. Woods was presented with this choice at his pretrial hearing, and the trial court confirmed he understood his right to a jury trial six weeks later.

¶ 26 Mr. Woods's reliance on *People v. Thornton*, 363 Ill. App. 3d 481, 490 (2006), is similarly misplaced. He cites *Thornton* to argue that references made to a bench trial in a defendant's presence do not constitute an open-court jury waiver discussion. *Id.* at 488. However, this case did not involve the mere "mention" of a bench trial. Rather, Mr. Woods was directly asked, during his pretrial hearing, whether he wanted a bench or jury trial. The court then had Mr. Woods confirm he understood his right to a jury trial six weeks later. Mr. Woods's

choice of a bench trial, coupled with his later confirmation that he understood his right to a jury trial make this case quite different than *Thornton*, in which the court mentioned only the fact that the case would be a "bench" trial in the context of discussing dates and other matters. Based on the facts and circumstances of this case, we conclude that Mr. Woods knowingly and understandingly waived his right to a trial by jury.

¶ 27 B. Fines and Fees

¶ 28 Mr. Woods argues he was improperly assessed the following fees: a $5 electronic citation fee, a $20 probable cause hearing fee, and $50 and $25 for two quasi-criminal complaint conviction fees. He also argues he was erroneously denied presentence incarceration credit of $5 per day for each of the two days which he spent in custody. The State agrees that we should vacate each of these fees and award him the $10 credit.

¶ 29 The $5 electronic citation fee is not applicable in felony cases, but only applies "in any traffic, misdemeanor, municipal ordinance, or conservation case." 705 ILCS 105/27.3e (West 2014). The $20 probable cause hearing fee is inapplicable here because Mr. Woods was charged by indictment with no probable cause hearing. 55 ILCS 5/4-2002.1(a) (West 2014). And both the $50 and $25 quasi-criminal complaint conviction fees were erroneously assessed because Mr. Woods was also charged with a $190 felony complaint fee under subsection (w)(1)(A) of the same statute (705 ILCS 105/27.2a(w)(1)(A), 27.2a(w)(2)(B) (West 2014)), and the statute only "authorizes the imposition of one fee per complaint." *People v. Martino*, 2012 IL App (2d) 101244, ¶¶ 34-35. These improperly assessed fees must be vacated.

¶ 30 In addition, the parties agree that Mr. Woods spent two days in presentence custody; we agree that he is therefore entitled to a total of $10 credit. 725 ILCS 5/110-14(a) (West 2014). We remand and direct the trial court to correct the mittimus to vacate the improperly assessed fees

totaling $100 and award Mr. Woods the $10 credit toward fines assessed.

¶ 31 IV. CONCLUSION

¶ 32 For these reasons, the judgment of the trial court is affirmed and the trial court directed to modify the fines and fees order.

¶ 33 Affirmed.