2019 IL App (1st) 162176-U

No. 1-16-2176

SIXTH DIVISION
JANUARY 11, 2019



IN THE

APPELLATE COURT OF ILLINOIS

FIRST DISTRICT

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| THE PEOPLE OF THE STATE OF ILLINOIS, | ) | Appeal from the |
| | ) | Circuit Court of |
| Plaintiff-Appellee, | ) | Cook County. |
| | ) | |
| v. | ) | No. 15 CR 18446 |
| | ) | |
| MIGUEL DAVILA JR., | ) | Honorable |
| | ) | Gregory Robert Ginex, |
| Defendant-Appellant. | ) | Judge Presiding. |

JUSTICE CUNNINGHAM delivered the judgment of the court.
Presiding Justice Delort and Justice Harris concurred in the judgment.

**ORDER**

¶ 1 *Held*: Defendant's conviction for aggravated domestic battery affirmed over his contention that his jury waiver was not knowing and voluntary.

¶ 2 Following a bench trial, defendant Miguel Davila Jr. was found guilty of aggravated domestic battery (strangling) (720 ILCS 5/12-3.3(a-5) (West 2014)) and domestic battery (720 ILCS 5/12-3.2(a)(1) (West 2014)). After merging the two counts, the trial court sentenced defendant to four years and six months' incarceration. On appeal, defendant contends that the

trial court erred when it accepted his jury waiver without ensuring that his waiver was knowing and voluntary. We affirm the judgment of the circuit court of Cook County.

¶ 3 Before trial, the court admonished defendant regarding his right to a jury trial as follows:

> "THE COURT: Mr. Davila, this matter is set for trial today. You have a right to a bench trial, which is a trial with me alone or a trial where you, your attorney, the State and I would select 12 or 14 citizens as a jury. They would hear the case.
>
> Your attorney has handed me a document called a jury waiver. Did you sign it?
>
> THE DEFENDANT: Yes.
>
> THE COURT: Do you understand by signing that you're telling me you want to give up your right to those 12 citizens, a right to the jury, and you want a bench trial. You submit the matter to me alone; is that correct?
>
> THE DEFENDANT: Yes.
>
> THE COURT: And you talked to Mr. Kamin [defense counsel] about that, and that's what you wish to do?
>
> THE DEFENDANT: Yes.
>
> THE COURT: All right. Very well. Show the defendant has knowingly and intelligently waived his right to trial by jury. It will be filed with the Court and accepted."

> The record contains defendant's signed written jury waiver, in which he states: "I *** do hereby waive jury trial and submit the above entitled cause to the Court for hearing."

¶ 4 Because defendant does not challenge the sufficiency of the evidence, we will set out only a summary of the trial evidence. The evidence at trial showed that, in October 2015, defendant and Cynthia Flores were dating and living together with Flores's two daughters in an apartment in Elmwood Park. According to a statement Flores made to an assistant State's Attorney, early in the morning of October 23, 2015, defendant returned to the apartment and woke Flores who was sleeping on a futon in the living room. Defendant was angry and accused Flores of cheating on him. When she denied cheating, he struck her on the leg with a wooden backscratcher. He subsequently got on top of Flores and placed his arm across her neck impeding her ability to breath. To escape the situation, Flores said she was pregnant and hungry and asked defendant to take her out to eat. At a restaurant, Flores used her phone to contact a friend, Maria Denise Diaz, who called the police. Defendant and Flores returned to their apartment. Shortly thereafter, Diaz and the police arrived at the apartment. Flores met the police at the door, and defendant was arrested. Diaz drove Flores to a police station, where she gave a statement to assistant State's Attorney (ASA) Julia Ramirez.

¶ 5 At trial, the State supported its theory of the case with the statement, which the trial court admitted as substantive evidence, and the testimony of Diaz and the responding officers, who described a red mark across Flores's neck. Flores testified, and admitted making a statement, but denied being able to remember many of the details of the statement and denied that defendant ever struck or strangled her. Instead, Flores testified that they were both talking about problems

in their relationship. ASA Ramirez described the procedure she used to take Flores's statement and published the statement to the court.

¶ 6 Defendant did not present any evidence. The trial court found him guilty of aggravated domestic battery based on strangling Flores and domestic battery for striking Flores with the backscratcher. Defendant filed a motion for a new trial, but did not allege any error in the jury waiver. The trial court denied defendant's motion and, after merging the two counts, sentenced defendant to four years and six months' incarceration on the aggravated domestic battery count. Defendant appealed.

¶ 7 Defendant contends that the trial court erred when it accepted his jury waiver without providing adequate admonishments and without ensuring that his waiver was knowing and voluntary. The right to a jury trial is a fundamental right guaranteed by our federal and state constitutions. *People v. Bracey*, 213 Ill. 2d 265, 269 (2004).

¶ 8 Initially, defendant acknowledges that he failed to preserve the error because he neither objected during trial nor raised the issue in his posttrial motion. See *People v. Reed*, 2016 IL App (1st) 140498, ¶ 6. However, we may reach an unpreserved error as plain error where either (1) the evidence is closely balanced, or (2) the error is of such magnitude that defendant was denied a fair and impartial trial and remedying the error is necessary to preserve the integrity of the judicial process. *Id.* Whether a defendant's fundamental right to a jury trial has been violated is an error that may be considered as plain error. See *Bracey*, 213 Ill. 2d at 270. The first step of a plain-error analysis is to determine whether error occurred at all. *People v. Walker*, 232 Ill. 2d 113, 124 (2009).

¶ 9 Although the right to a jury trial is fundamental, a defendant remains free to waive that right. *Bracey*, 213 Ill. 2d at 269. Any such waiver must be knowingly and understandingly made in open court. See *id.*; 725 ILCS 5/103-6 (West 2014). A written waiver as required by section 115-1 of the Code of Criminal Procedure of 1963 (725 ILCS 5/115-1 (West 2014)) is one means of establishing a defendant's intent, although not dispositive of a valid waiver. *Bracey*, 213 Ill. 2d at 269-70. "For a waiver to be effective, the court need not impart to defendant any set admonition or advice." *Bracey*, 213 Ill. 2d at 270 (citing *People v. Smith*, 106 Ill. 2d 327, 334 (1985)). The court's admonishments must be reviewed in light of the facts and circumstances of each particular case. See *Reed*, 2016 IL App (1st) 140498, ¶ 7 (citing *People v. Bannister*, 232 Ill. 2d 52, 66 (2008)). Because the facts are not in dispute, we determine *de novo* whether defendant's jury waiver was valid. See *Bannister*, 232 Ill. 2d at 66.

¶ 10 Here, the record shows that defendant's jury waiver was knowingly and understandingly made. Before accepting defendant's waiver, the trial court fully described the difference between a bench trial and a jury trial. Defendant acknowledged that he understood that he was giving up the right to have 12 citizens hear his case and he was therefore submitting his case to the court "alone." Defendant signed a written jury waiver, and acknowledged that he had discussed the matter with trial counsel before deciding to waive his right to a jury trial. Moreover, the presentence investigation prepared after trial reflects that defendant was no stranger to the criminal justice system with seven prior convictions over a 15-year span. See *Reed*, 2016 IL App (1st) 140498, ¶ 7 ("Reviewing courts may also consider a defendant's prior interactions with the justice system in determining whether a jury waiver was made knowingly.") Therefore, we conclude that defendant's jury waiver was knowingly and understandingly made.

¶ 11 Defendant posits a series of admonitions the trial court did not give, including its failure to describe how a jury is selected, to determine whether defendant knew that a jury's verdict would have to be unanimous, and to explain that the burden of proof was the same whether he elected to have a bench or jury trial. However, defendant does not cite to any authority for these propositions. See IL. S. Ct. R. 341(h)(7) (eff. May 25, 2018). Moreover, as noted previously, there is no set list of admonitions or formula that must be followed; rather the validity of a jury waiver depends on the particular facts and circumstances of each case. *Bracey*, 213 Ill. 2d at 269.

¶ 12 Defendant criticizes the written waiver form for failing to define a jury trial or the scope of the right to a jury trial. However, defendant provides no citation to case law holding that a written jury waiver must follow the structure outlined in defendant's argument. Defendant also argues that the waiver form "misleadingly indicates that by signing a form, the defendant will be subject to a 'hearing,' and not a 'trial' " and "arbitrarily suggests that [defendant] ought to have known 'hearing' really meant 'bench trial.' " Defendant overlooks the fact that the form is simply part of the overall facts and circumstances of this case, and the trial court verbally defined the difference between a jury and bench trial for defendant in open court.

¶ 13 Defendant argues that his waiver was invalid because the trial court failed to make the "requisite" inquiries identified in *People v. Tooles*, 177 Ill. 2d 462 (1997). Specifically, defendant argues the trial court should explain what a waiver means, explain the differences between a bench and jury trial, ensure that the waiver is not the product of any promises or threats, and determine that the defendant had conferred with his attorney about the jury waiver before signing. However, the *Tooles* court never identified any particular admonition or inquiry as required for a valid jury waiver. Instead, the sole question before our supreme court was

whether a conviction must be reversed where the trial court fails to secure a defendant's written jury waiver. *Id.* at 464. It examined the admonishments in that context, and specifically noted that "while the circuit court must ensure [sic] 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. It reiterated that the validity of a jury waiver turns on the particular facts and circumstances of each case (*id.*) and in the case before us those facts and circumstances include both a verbal and, unlike in *Tooles*, a written waiver. Therefore, we are unpersuaded by defendant's reliance on *Tooles*.

¶ 14 Defendant also directs our attention to *People v. Sebag*, 110 Ill. App. 3d 821 (1982), arguing that its facts are analogous. We disagree. In *Sebag*, the trial court never explained that a jury is composed of 12 citizens; the defendant in that case was unfamiliar with criminal proceedings; and, of significance; the defendant in *Sebag* was not represented by counsel. *Id.* at 828-29. We find no analogous facts between *Sebag* and this case. This underscores our holding that defendant's jury waiver was valid.

¶ 15 For the reasons discussed, we conclude that the trial court did not err when it found that defendant's jury waiver was valid. Therefore, there is no plain error. Accordingly, the judgment of the circuit court of Cook County is affirmed.

¶ 16 Affirmed.