2019 IL App (1st) 163002-U

No. 1-16-3002

Order filed February 7, 2019

Fourth Division

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).

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. 15 CR 18581
	)	
ARTHUR GUERRERO,	)	Honorable
	)	Joseph Michael Claps,
Defendant-Appellant.	)	Judge, presiding.

JUSTICE GORDON delivered the judgment of the court.
Justices Reyes and Burke concurred in the judgment.

ORDER

¶ 1 *Held*: We affirm defendant's conviction for driving on a revoked or suspended license over his contention that his jury waiver was invalid.

¶ 2 Following a bench trial, defendant, Arthur Guerrero, was convicted of driving on a revoked or suspended license (625 ILCS 5/6-303(a) (West 2016)) and sentenced, based on his criminal background as a Class 4 offender, to three years' imprisonment. On appeal, defendant

contends that the trial court erred in failing to ensure he knowingly and intelligently waived his right to a jury trial. We affirm.

¶ 3 Defendant was charged with four counts of driving on a revoked or suspended license. For each count, the State sought to sentence defendant as a Class 4 offender (625 ILCS 5/6-303(d), (d-2) (West 2016)) based on his previous violations of section 6-303. Following a mistrial, a second trial was held, and the trial court found defendant guilty as charged and sentenced him to three years' imprisonment on count I.

¶ 4 At defendant's arraignment, the trial court asked defendant if he knew what a trial by jury was and defendant responded in the affirmative. At two separate status hearings, defense counsel confirmed that a bench trial was requested. At the beginning of the first trial, the following colloquy occurred:

> "DEFENSE ATTORNEY: Judge, we tender a jury waiver.
>
> THE COURT: This is a document giving up your right to a trial by jury.
>
> DEFENDANT: Yes.
>
> THE COURT: Did you sign this document?
>
> DEFENDANT: Yes.
>
> THE COURT: Mr. Guerrero, are you taking any medication?
>
> DEFENDANT: Excuse me.
>
> THE COURT: Are you taking any medication?
>
> DEFENDANT: No.
>
> THE COURT: Have you been drinking alcohol?
>
> DEFENDANT: No.

THE COURT: Anybody make any promises or threats to you to waive your right to a trial by jury?

DEFENDANT: No.

THE COURT: Are you making that decision after speaking to your attorney of your own free will?

DEFENDANT: Yes, sir."

¶ 5 The trial began but was stopped when the court inquired as to whether defendant wished to testify. The court conducted a colloquy regarding defendant's constitutional right to testify but received incoherent responses from defendant. At that point in time, the trial court ordered immediate drug testing of defendant. Ultimately, defendant tested positive for THC (tetrahydrocannabinol, a crystalline compound that is the main active ingredient of cannabis), opiates, marijuana, and methadone. The court then declared a mistrial, and a second bench trial was scheduled.

¶ 6 At the beginning of the second bench trial, the court again conducted a jury waiver colloquy:

"DEFENSE ATTORNEY: Judge, I presented to the Court a jury waiver purposedly [*sic*] signed by Mr. Guerrero.

THE COURT: Did you sign this, sir?

DEFENDANT: Yes, sir.

THE COURT: The case is set for trial. And what you want is to waive your right to trial by jury?

DEFENDANT: Yes, sir.

THE COURT: You know what a jury trial is?

DEFENDANT: Yes, sir.

THE COURT: Anybody make any promises or threats to you to get you to waive your right to trial by jury?

DEFENDANT: No, sir.

THE COURT: Did you make that decision of your own free will?

DEFENDANT: Yes, sir.

THE COURT: Are you under the influence of any alcohol or drugs?

DEFENDANT: No."

¶ 7 The defense then moved to bar the use of evidence or testimony presented during the mistrial due to the finding that defendant was under the influence of drugs at that time. The trial court denied the motion. Because defendant does not challenge the sufficiency of the evidence to sustain his conviction, we recount the facts only to the extent necessary to resolve the issue raised on appeal.

¶ 8 According to the testimony presented at trial, on October 13, 2015, Chicago police officer John Thill, along with his partner, Officer Daniel Sheehy, were dispatched to the intersection of 87th and Loomis Streets due to a reported disturbance. When they arrived, a civilian directed the police officers to a white vehicle that was parked with its front left tire on the curb and the back of the vehicle protruding into traffic. Inside the vehicle, there was one occupant, who was later identified as defendant, located in the driver's seat. Defendant was sleeping, and the vehicle was running with the keys in the ignition. Defendant, after being awakened, was not able to produce a driver's license, but Thill was familiar with defendant from prior encounters. Thill ran his name

through the Illinois Citizen and Law Enforcement Analysis Reporting (I-CLEAR) system, and learned that defendant's driver's license was suspended or revoked. Defendant was then taken into custody.

¶ 9 Officer Sheehy's testimony aligned with that of Thill. Sheehy, along with his partner, responded to a call at the above-mentioned intersection, where they encountered defendant sleeping in the driver's seat of a white vehicle. Sheehy observed that the keys were in the ignition and the engine was running. Both officers testified that at no point during the incident did a woman come up to them and state that she was the driver of the vehicle.

¶ 10 The parties then stipulated to the introduction of defendant's certified driving abstract, showing that defendant's driver's license on the day in question was both suspended and revoked. At the close of the State's case, defendant moved for a directed finding, which the court denied.

¶ 11 Debra Jenkins, defendant's neighbor, testified for the defense that she was with defendant on the date at issue. She testified that she had driven him to his "DUI class" and, on their way home, she stopped at a convenience store near the intersection of 87th and Loomis. She had taken the keys with her when she went into the store. She testified that when she came out of the store, the police were talking to defendant, who was sitting in the passenger seat. She informed the police that she was the driver of the vehicle. She then testified that the police searched defendant and took him into custody.

¶ 12 Defendant was found guilty of driving on a revoked or suspended license. In finding defendant guilty, the court specifically noted that it did not find the defense's version of the

events credible as compared with that of the State. Due to his previous criminal history, defendant was convicted of a Class 4 felony and sentenced to three years' imprisonment.

¶ 13 On appeal, defendant contends that his conviction must be reversed and the case remanded for a new trial because the trial court did not adequately explain his right to a jury trial and ensure that his waiver was made knowingly and intelligently.

¶ 14 In setting forth this argument, defendant concedes that he has forfeited this issue on appeal by failing to raise it in the trial court. *People v. Hillier*, 237 Ill. 2d 539, 544 (2010) (a claim of error is preserved through a contemporaneous objection and a written postsentencing motion). However, he requests that we review this issue under the plain error doctrine. *People v. Winchester*, 2016 IL App (4th) 140781, ¶ 69 (stating that the forfeiture rule requiring preservation is not absolute and reviewing courts may review plain errors pursuant to Illinois Supreme Court Rule 615(a)).

¶ 15 The plain error doctrine is both narrow and limited in scope. *Hillier*, 237 Ill. 2d at 545. Upon demonstrating that a clear or obvious error occurred, a defendant must then establish either that (1) "the evidence is so closely balanced that the error alone threatened to tip the scales of justice against the defendant," or (2) the "error is so serious that it affected the fairness of the defendant's trial and challenged the integrity of the judicial process." *People v. Sargent*, 239 Ill. 2d 166, 189 (2010). "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." *People v. Bracey*, 213 Ill. 2d 265, 270 (2004). However, the first step in a plain error analysis is to determine whether any clear or obvious error occurred. Here, we find no error.

¶ 16 The right to a jury trial is protected by the United States Constitution (U.S. Const., amends. VI, XIV) and the Illinois Constitution (Ill. Const. 1970, art. I, § 8). Pursuant to section 115-1 of the Code of Criminal Procedure, a defendant's waiver of the right to a jury trial must be in writing. 725 ILCS 5/115-1 (West 2016). "Circuit courts have the duty of insuring that a defendant's waiver of his right to a jury trial be made expressly and understandably." *People v. Steiger*, 208 Ill. App. 3d 979, 981 (1991). There is no precise formula for determining the validity—that is, whether it was made expressly and understandably—of a jury waiver; the reviewing court must consider the particular facts and circumstances of each case. *Bracey,* 213 Ill. 2d at 269. Where the relevant facts are not in dispute, the issue of whether defendant made a valid waiver of his right to a jury trial is a question of law and is reviewed *de novo*. *People v. Ruiz*, 367 Ill. App. 3d 236, 238 (2006). "*De novo* consideration means that we perform the same analysis that a trial judge would perform." *Arient v. Shaik,* 2015 IL App (1st) 133969, ¶ 18.

¶ 17 After reviewing the record, we find that defendant knowingly and intelligently waived his right to a jury trial. At his arraignment, the trial court asked defendant if he knew what a jury trial was and he stated that he did. At two status hearings prior to defendant's first trial, defense counsel confirmed that a bench trial was requested. At the mistrial, a jury waiver form was submitted and the court confirmed that defendant signed that form voluntarily. *People v. Reed*, 2016 IL App (1st) 140498, ¶ 10 (though jury waivers from prior trials are not valid for future trials, they may be considered by the court in judging a defendant's knowledge). At his second trial, another jury waiver form was submitted. Although a written waiver is not conclusive evidence of a defendant's understanding, it does weigh in favor of finding a valid waiver. *People v. Clay*, 363 Ill. App. 3d 780, 791 (2006). After receiving the waiver, the court again engaged in

a colloquy to confirm that defendant wanted to waive his right to a jury trial. In doing so, the court asked defendant if he: signed the waiver; wanted to waive his right to trial by jury; knew what a jury trial was; received any promises or was threatened to waive his right to a jury; made the decision of his own free will; and was under the influence of alcohol or drugs. Defendant answered all of the questions appropriately.

¶ 18 Additionally, defendant's presentence investigation report shows that he has a lengthy criminal history, including convictions for robbery in 1999, possession of a stolen motor vehicle in 2001, residential burglary in 2007, driving on a suspended license in 2010 and driving under the influence of alcohol in 2014. Defendant's history suggests that he was knowledgeable about the criminal justice system and his constitutional rights. See *Reed*, 2016 IL App (1st) 140498, ¶ 7 ("[r]eviewing courts may also consider a defendant's prior interactions with the justice system in determining whether a jury waiver was made knowingly"); *People v. Bannister*, 232 Ill. 2d 52, 71 (2008) (prior criminal conduct suggests a defendant's familiarity of the constitutional right to a jury trial).

¶ 19 Defendant nevertheless argues that the trial court should have explained to him the difference between a jury trial and a bench trial. However, Illinois courts have consistently held that no set of admonishments are necessary to find a valid jury waiver (*People v. West*, 2017 IL App (1st) 143632, ¶ 14), and "a trial court does not necessarily have to give a defendant an explanation concerning the ramifications of a jury waiver unless there is an indication that the defendant did not understand his right to a jury trial" (*Steiger*, 208 Ill. App. 3d at 981). Nothing during the second colloquy indicates that defendant did not understand his right to a jury trial, nor did defendant raise any concerns regarding the jury waiver or bench trial during any of the

proceedings in this case. Under these circumstances, the trial court did not err in accepting defendant's jury waiver.

¶ 20 Finally, defendant argues in his reply brief that we should reject the State's reliance on the trial court's admonishments at the mistrial as evidence of a valid jury waiver at his second trial. However, even considering solely the signed written waiver and colloquy from the second trial, there is still sufficient evidence that defendant knowingly and intelligently waived his right to a jury trial. As stated above, the trial court confirmed that defendant knew what a jury trial was and defendant's responses during the colloquy did not suggest any hesitation or confusion in choosing to waive his right to a jury trial. The trial court here satisfied its duty to ensure defendant's waiver was made "expressly and understandably" and that duty was not perfunctorily discharged. See *Steiger*, 208 Ill. App. 3d at 981; see also *People v. Chitwood*, 67 Ill. 2d 443, 448-49 (1977) (stating that a trial judge should make certain the defendant understands his right to a jury trial and what a jury trial is and determine whether the defendant voluntarily wishes to waive that right).

¶ 21 Because we find that the trial court committed no error, our plain error analysis ends. Accordingly, we conclude that defendant knowingly and intelligently waived his right to a jury trial.

¶ 22 For these reasons, we affirm the judgment of the circuit court of Cook County.

¶ 23 Affirmed.