

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

DANIEL TARNOIS MADDOX,

Defendant-Appellant.

UNPUBLISHED

June 12, 2007

No. 270344

Isabella Circuit Court

LC No. 05-002367-FH

Before: Fitzgerald, P.J., and Sawyer and O’Connell, JJ.

PER CURIAM.

Following a bench trial, defendant was convicted of possession of less than 25 grams of a controlled substance, MCL 333.7403(2)(a)(v), and was sentenced to 30 months’ to 8 years’ imprisonment as a repeat offender, MCL 333.7413(2). He appeals as of right. We affirm.

Defendant argues that the waiver of his right to a jury trial was invalid. Specifically, he claims the waiver did not meet the requirements of MCR 6.402(B), which requires that such a waiver be made personally, voluntarily, and understandingly. However, defendant did not raise this claim below. Unpreserved constitutional issues are reviewed for plain error that affected the defendant’s substantial rights. *People v Carines*, 460 Mich 750, 764; 597 NW2d 130 (1999).

At his pretrial hearing, defendant’s lawyer requested a bench trial. The trial judge asked defendant, “[i]s that your pleasure, Mr. Maddox, do you want to waive your right to a jury trial and just have the court try it?” Defendant responded, “[y]es, sir.” Immediately before beginning the trial, the judge asked, “...it’s my understanding that you waived your right to a jury trial and you wanted a bench trial. Is that correct?” Again, defendant replied, “Yes, sir.”

In Michigan, the requirements for a valid waiver of the right to jury trial have been codified in MCR 6.402(B), which reads:

Waiver and Record Requirements. Before accepting a waiver, the court must advise the defendant in open court of the constitutional right to trial by jury. The court must also ascertain, by addressing the defendant personally, that the defendant understands the right and that the defendant voluntarily chooses to give up that right and to be tried by the court. A verbatim record must be made of the waiver proceeding.

Therefore, to be effective, a waiver must be made in open court and must be personal, voluntary, and understanding. *People v Reddick*, 187 Mich App 547, 549; 468 NW2d 278 (1991).

The first element of effective waiver is that the defendant be advised in open court of the right to trial by jury, and that a verbatim record of the proceeding be kept. MCR 6.402(B). Defendant claims he was not informed of his right to jury trial during open court and that there is no record of a waiver being entered. As noted above, however, defendant was asked by the trial judge on two separate occasions whether he wanted to waive this right. Both of these inquiries were made in the courtroom, with a court reporter making a verbatim transcript of the proceedings. The judge did not expressly tell defendant that he had a right to a trial by jury. However, by asking whether defendant would like to waive his right to jury trial, the judge impliedly informed defendant that he did have the right to a jury. Similar interactions have been held to be sufficient to meet the requirements of MCR 6.402(B) in previous cases. See *Reddick, supra* at 549-550; *People v Shields*, 200 Mich App 554, 560-561; 504 NW2d 711 (1993). Therefore, defendant was informed in open court of his right to jury trial and there is a verbatim record of the proceeding.

Second, the waiver must have been personal. MCR 6.402(B) states that the court must personally address the defendant. The trial judge addressed his questions directly to defendant on both occasions. Defendant replied directly to the judge both times. This shows personal interaction between the judge and defendant.

Third, the waiver must have been voluntary. Here, there is no indication in the record that defendant was coerced or pressured in any way. The waiver was therefore voluntary.

Finally, waiver must have been made understandingly, i.e., defendant was aware of his rights and knew he was giving them up. Whether a fundamental right has been waived understandingly depends “upon the particular facts and circumstances surrounding that case, including the background, experience, and conduct of the accused.” *North Carolina v Butler*, 441 US 369, 374-375; 99 S Ct 1755; 60 L Ed 2d 286 (1979) (quoting *Johnson v Zerbst*, 304 US 458, 464; 58 S Ct 1019; 82 L Ed 1461 [1938]). Here, defendant had the advice of an attorney and has experience with the legal system, as indicated by his conviction as a repeat offender. These factors indicate that defendant waived his right to jury trial understandingly.

The elements for an effective waiver of the right to a jury trial have been met. Defendant has not shown that any error, let alone plain error, occurred.

Affirmed.

/s/ E. Thomas Fitzgerald

/s/ David H. Sawyer

/s/ Peter D. O’Connell