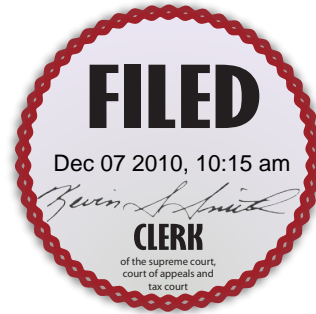


Pursuant to Ind.Appellate Rule 65(D), this Memorandum Decision shall not be regarded as precedent or cited before any court except for the purpose of establishing the defense of res judicata, collateral estoppel, or the law of the case.



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**IN THE
COURT OF APPEALS OF INDIANA**

RONALD COX,)
)
Appellant-Defendant,)
)
vs.) No. 49A02-1005-CR-494
)
STATE OF INDIANA,)
)
Appellee-Plaintiff.)

APPEAL FROM THE MARION SUPERIOR COURT
The Honorable Lisa Borges, Judge
Cause No. 49G04-0909-FC-81095

December 7, 2010

MEMORANDUM DECISION - NOT FOR PUBLICATION

BARNES, Judge

Case Summary

Ronald Cox appeals his conviction for Class C felony prisoner possessing dangerous device or material. We affirm.

Issue

Cox raises one issue, which we restate as whether he knowingly, intelligently, and voluntarily waived his right to a jury trial.

Facts

On September 13, 2009, officials at the Marion County Jail responded to a flood inside the jail and an altercation in which inmates were throwing urine and feces at each other. Cox was an inmate at the jail. A search of Cox's cell following the incident revealed a spoon filed to a point to be used as a shank and a brush with a sheet attached to be used as a swinging weapon.

The State charged Cox with Class C felony prisoner possessing dangerous device or material. Prior to trial, the trial court discussed the waiver of the right to a jury trial with Cox and defense counsel, Benjamin Jaffe. The following exchange took place:

The Court: All right. You signed this form, right? Is this your signature on it?

The Defendant: Yes, ma'am.

The Court: Did you read it?

The Defendant: I can't read.

The Court: Did your lawyer read it to you?

The Defendant: Yes, ma'am, yes, ma'am.

The Court: Okay. Well in it it says what a jury trial is. What do you think a jury is?

The Defendant: Where you can hear it.

The Court: No.

The Defendant: It's not other people.

The Court: No, that's a court trial. What does it mean for a jury to hear the case?

The Defendant: I don't understand what it means.

Mr. Jaffe: If you give me a second, Judge, I might be able to refresh him on - -

The Court: Well, no, I'm in the middle of what I'm trying to do here.

Mr. Jaffe: I understand.

The Court: So if you have jury trial, it means that I bring in people from the community who are registered to vote or who have a driver's license or an ID card, and they get their name on a list, they get put up in random order. Your lawyer and the State's lawyer both get to ask them questions, all right?

The Defendant: Yeah.

The Court: Each side gets to excuse 10 people for whatever reason that's a legal reason, and what we'll wind up with are 12 people who would listen to all the evidence and make up their minds as to whether you were guilty or not guilty or something else. They'd all have to agree, all 12 of them. I'd also have two extra people in case there was an emergency and I'd have to excuse somebody so that we would have a total of 14 people that would listen to all the evidence, and they would listen to all my instructions, the argument from your lawyer, the argument from the State's lawyer, and all the witnesses, okay?

The Defendant: Yes, ma'am.

The Court: They would be the ones who make a decision about guilty or not guilty or something else, but they wouldn't be the ones that make the decision about a sentencing. If you were found guilty, it would be up to me. Do you understand?

The Defendant: Yes, ma'am.

The Court: Now do you think you know what a jury is?

The Defendant: Yes, ma'am.

The Court: Are you sure?

The Defendant: No, I'm not.

The Court: Tell me what you heard me say.

The Defendant: I heard you say just how people judge me for what I'm doing or what I might have did or might have haven't done or didn't do.

The Court: What the State is accusing you of.

The Defendant: What the State is accusing me of. That's all I know.

The Court: Okay. All those 12 people would have to agree.

The Defendant: Yes, ma'am.

The Court: And you can have them hear it or you can have the judge hear it.

The Defendant: I'd rather have the judge hear it.

The Court: And you know that's me?

The Defendant: Yes, ma'am.

The Court: Has anyone forced you or threatened you in any way to get you to give up your right to a jury trial?

The Defendant: Just people in the cell blocks and that's it.

The Court: What? What have they said?

The Defendant: They're just going to bop me, and I didn't even do nothing. They just going to bop me and just because. They just going to send me on through (inaudible) just because. I'm trying to do all jail time, trying to do all my time here in the jail, in the county.

Mr. Jaffe: If I could just interject for one moment?

The Court: Sure.

Mr. Jaffe: Mr. Cox, you've talked with me about it as well, right, and we went over what a jury trial is?

The Defendant: Yeah.

Mr. Jaffe: And I talked to you about a judge trial, a bench trial?

The Defendant: Yeah.

Mr. Jaffe: Now, you've had a judge trial in this court before, right?

The Defendant: I had a bench trial here.

Mr. Jaffe: Yeah, you had a bench trial here.

The Defendant: Yeah.

Mr. Jaffe: And you told me that you'd prefer to have the same thing you had before; is that right?

The Defendant: Yeah. That's the only thing I feel safe doing.

Mr. Jaffe: Okay. And I've talked to you about some of the other things and why it might be a good idea to have a jury trial, but even after that you decided that you still wanted to have a bench trial, right?

The Defendant: Yeah. My mind is set on a bench trial only.

Mr. Jaffe: Okay. So you've also talked to me and not just people in your cell block about it, right?

The Defendant: Yeah.

Mr. Jaffe: Okay, thanks. Thank you, Judge. I appreciate you letting me interject there.

The Court: All right. What do you think will happen if I'm the one who hears the case?

The Defendant: You'll hear me out and understand that I'm going through some stuff right now, just some stuff that I've been accused of and I didn't even do.

The Court: Do you understand that I might believe that you were guilty?

The Defendant: I know.

The Court: Okay. You understand that I might believe that you are not guilty?

The Defendant: Yes, ma'am. It's better you than all these other people.

The Court: All right. I'll accept the waiver.

Tr. pp. 16-21. Following a bench trial, the trial court found Cox guilty as charged. He now appeals.

Analysis

Cox argues that his waiver of his right to a jury trial was not knowingly, intelligently, and voluntarily made. "A fundamental linchpin of our system of criminal justice is the right to a trial by jury." Kellems v. State, 849 N.E.2d 1110, 1112 (Ind. 2006) (citing U.S. Const. amend. VI; Ind. Const. art. 1, § 13). Although this right may be

waived, the statutory requirement that a defendant assent to a waiver of his or her right to jury trial means that an assent by the defendant be personally reflected in the record before the trial begins either in writing or in open court. Id. (noting Ind. Code § 35-37-1-2). This assures that the waiver is made in a knowing, intelligent, and voluntary manner, with sufficient awareness of the surrounding circumstances and the consequences. Id. The waiver must be made part of the record so that the question of an effective waiver can be reviewed even though no objection was made at trial. Id.

Cox argues that his waiver was not knowingly made because, even after being informed of his right to a jury trial by his attorney and receiving a “rather detailed description” of what a jury trial is, he told the trial court he was not sure what a jury trial was. Appellant’s Br. p. 8. He argues that it was not voluntarily made because he stated that he had been threatened by fellow inmates.

Upon reviewing the transcript, we believe Cox’s waiver was both knowingly and voluntarily made. It is clear from the record that Cox’s attorney advised of him of his right to a jury trial and that Cox wished to proceed with a bench trial. It is also clear that the trial court explained the differences between a bench trial and a jury trial and that Cox ultimately understood the differences between the two and chose to proceed with a bench trial. Although Cox indicated he had been threatened by fellow inmates, it is not clear that the threats were made in relation to his decision of whether to exercise his right to a jury trial. Further, the record indicates that Cox previously had a bench trial in the same trial court and wished to proceed with a bench trial again. Cox was aware of his right to a jury trial and knowingly and voluntarily waived that right.

Conclusion

Cox knowingly, intelligently, and voluntarily waived his right to a jury trial. We affirm.

Affirmed.

BAKER, C.J., and VAIDIK, J., concur.