IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

DIVISION II

STATE OF WASHINGTON, Respondent, v. RANDALL J. PATTON, Appellant.	No. 37833-7-II UNPUBLISHED OPINION

Bridgewater, J. – Randall J. Patton appeals his bench trial conviction for possession of methamphetamine with intent to deliver while within 1,000 feet of a school. Holding that the search of Patton's vehicle was lawful and that he validly waived his right to a jury trial, we affirm.

Facts

Based on reports from confidential informants of methamphetamine sales at Patton's residence, police obtained a search warrant for Patton's residence and vehicle. When police executed the warrant, they found a baggie of methamphetamine and some empty baggies along with a triple beam scale in Patton's bedroom. In a safe they found 16 baggies of methamphetamine and $3,000 in cash. They also found a digital scale in his car parked outside his residence. The State charged Patton by amended information with possession of methamphetamine with intent to deliver, occurring within 1,000 feet of a school.

Pretrial, Patton challenged the issuance and service of the search warrant. Patton argued

in part that while the affidavit supporting the search warrant alleged drug sales in his home, there was no nexus between the alleged sales and his vehicle, and thus the search of his vehicle was invalid. The trial court denied Patton's suppression motion.

On the date set for his jury trial, Patton filed a written waiver of his jury trial right. The court engaged Patton in colloquy about his jury trial waiver and ultimately accepted the waiver.

At trial Patton testified that he was a methamphetamine addict and that all of the drugs and other items found were for his own use. The trial court found Patton guilty as charged in the amended information. Patton appeals.

Discussion

Patton makes two arguments. First, he contends that the search of his vehicle was unlawful. We disagree.

Patton argues that because the affidavit supporting the search warrant identified illegal drug sales at his residence, but did not associate those sales with his vehicle, there was no required probable cause to search his vehicle. In other words, there was no nexus between the alleged criminal activity and his vehicle. Thus, he contends, the search of his vehicle located at his residence was improper and the trial court erred in denying his suppression motion.

We previously rejected the same argument in *State v. Frye*, 26 Wn. App. 276, 280-81, 613 P.2d 152, *review denied*, 94 Wn.2d 1008 (1980), holding that because there was probable cause to believe that defendant dealt in illegal drugs, it was not unreasonable for the judge issuing a search warrant to infer that the defendant's cache of drugs may be in his automobile. We subsequently limited *Frye* in *State v. Rivera*, 76 Wn. App. 519, 526, 888 P.2d 740 (1995). We

disapproved *Frye* to the extent it could be read to approve a search of *any* vehicle (including one not associated with the identified suspect and subject of the search) that happened to come onto the premises during the search, thereby offending the particularity requirement of the Fourth Amendment. *Rivera*, 76 Wn. App. at 526.[1] This limitation does not assist Patton. He makes no challenge under the particularity requirement of the Fourth Amendment.[2] Moreover, *Rivera* makes clear that when police execute a premises search warrant that includes the premises owner's personal property, the search of the premises owner's vehicles that are found on the premises during the search does not offend the Fourth Amendment. *Rivera*, 76 Wn. App. at 524-26. Accordingly, we hold that the search of Patton's vehicle was valid.

Patton next contends that his waiver of his right to a jury trial was invalid. We disagree. A defendant may waive his right to a jury trial as long as he acts knowingly, intelligently, voluntarily, and free from improper influences. *State v. Pierce*, 134 Wn. App. 763, 771, 142 P.3d 610 (2006). We will not presume that the defendant waived his jury trial right unless we have an adequate record showing that the waiver occurred. *Pierce*, 134 Wn. App. at 771. In examining the record, we consider whether the defendant was informed of his constitutional right to a jury trial and the facts and circumstances in general, including the defendant's experience and

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[1] The Fourth Amendment requires a judge to determine that probable cause exists for the search and that the warrant particularly describe the place to be searched and the persons or things to be seized. *Marron v. United States*, 275 U.S. 192, 195, 48 S. Ct. 74, 72 L. Ed. 231 (1927); *State v. Worth*, 37 Wn. App. 889, 892, 683 P.2d 622 (1984).

[2] Such a challenge would be fruitless in any event. The search warrant specified vehicles subject to search as those "registered to or operated by" the occupants of the described property, which was Patton's residence and which was so identified in the affidavit supporting the search warrant. CP at 21.

capabilities. *Pierce*, 134 Wn. App. 763, 771. While court rules call for a written waiver,[3] appellate decisions have established that a written waiver is not determinative, but is strong evidence that the defendant validly waived the jury trial right. *Pierce*, 134 Wn. App. at 771; *State v. Lund*, 63 Wn. App. 553, 558, 821 P.2d 508 (1991), *review denied*, 118 Wn.2d 1028 (1992). An attorney's representation that his client knowingly, intelligently, and voluntarily relinquished his jury trial rights is also relevant. *Pierce*, 134 Wn. App. at 771. Notably, an extended colloquy on the record is not required. *Pierce*, 134 Wn. App. at 771. Instead, Washington requires only a personal expression of waiver from the defendant. *Pierce*, 134 Wn. App. at 771.

Patton argues that he was not fully informed of the rights he was waiving because the trial court's colloquy was brief and did not specifically inform him of derivative rights he was waiving such as the right to have a unanimous jury verdict as to guilt, the right to an impartial jury of his peers, that jurors would be required to presume him innocent, and that he could participate in jury selection. These contentions fail. Patton never waived his right to be presumed innocent until proven guilty beyond a reasonable doubt or his right to an impartial trier of fact because these rights are inherent in all trials. *Pierce*, 134 Wn. App. at 772. As to Patton's contention that the colloquy was inadequate because the trial court failed to inform him that he could participate in jury selection and that a jury verdict of guilty had to be unanimous, as noted, no colloquy was required. Moreover, he cites no legal authority saying that the trial court had to specifically inform him of these matters. In fact, authority is to the contrary. *See State v. Stegall*, 124 Wn.2d

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[3] CrR 6.1(a) provides that cases required to be tried by jury shall be so tried unless the defendant files a written waiver of a jury trial and has consent of the court.

719, 725, 881 P.2d 979 (1994) (no colloquy or on-the-record advice as to the consequences of a waiver is required for waiver of a jury trial; all that is required is a personal expression of waiver from the defendant).

Here, the record includes Patton's written waiver; defense counsel's statement in open court that, after discussing the matter with his client, Patton wanted to waive his right to a jury trial and proceed with a bench trial; the trial court's colloquy with Patton verifying the defendant's desire to waive jury trial; and Patton's acknowledgement in open court that he wished to have a judge rather than a jury decide his case. We hold that the record is adequate and that Patton validly waived his right to a jury trial.

Affirmed.

A majority of the panel having determined that this opinion will not be printed in the Washington Appellate Reports, but will be filed for public record pursuant to RCW 2.06.040, it is so ordered.

Bridgewater, J.

We concur:

Houghton, J.

Van Deren, C.J.