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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION FOUR

THE PEOPLE,

Plaintiff and Respondent,

v.

ANDRE BAUTISTA,

Defendant and Appellant.

B281615

(Los Angeles County
Super. Ct. No. LA081744)

APPEAL from a judgment of the Superior Court for Los Angeles County, Gregory A. Dohi, Judge. Affirmed.

Leonard J. Klaif, under appointment by the Court of Appeal, for Defendant and Appellant.

Xavier Becerra, Attorney General, Gerald A. Engler, Chief Assistant Attorney General, Lance E. Winters, Assistant Attorney General, Paul M. Roadarmel, Jr., John R. Prosser and Kristen Inberg, Deputy Attorneys General, for Plaintiff and Respondent.

Defendant Andre Bautista appeals from a judgment sentencing him to 13 years in prison after the trial court found him guilty of attempted murder (Pen. Code,¹ §§ 664/187, subd. (a)) and assault with a deadly weapon (§ 245, subd. (a)(1)), and found to be true allegations that he personally used a deadly weapon (§ 12022, subd. (b)(1)) and inflicted great bodily injury (§ 12022.7, subd. (a)) on the victim. Defendant's only contention on appeal is that his waiver of jury trial was invalid because his attorney did not join in the waiver. The record shows that, in fact, defendant's attorney *did* join in defendant's waiver. Accordingly, we affirm the judgment.

DISCUSSION²

Article I, section 16 of the California Constitution provides, in relevant part, that “[a] jury may be waived in a criminal cause by the consent of both parties expressed in open court by the defendant and the defendant’s counsel.” Our Supreme Court has instructed that “[t]he requirement that a defendant and defense counsel personally and expressly waive the right to jury trial describes the manner in which a criminal defendant who wishes to waive this ‘inviolable’ right may do so, and constitutes the only method by which the constitutional right to jury trial may be waived in a criminal case.” (*People v. Vera* (1997) 15 Cal.4th 269, 278.)

¹ Further undesignated statutory references are to the Penal Code.

² Because the only issue on appeal is whether defendant's waiver of a jury trial was valid, we need not discuss the facts of the crime.

Defendant contends that the jury trial waiver in this case was invalid because even though *he* expressly waived his right to jury trial, his trial counsel did not. He is mistaken.

On the day before the trial started, the following colloquy took place between the trial court, defendant, defendant's counsel, Barry F. Hammond, and the prosecutor:

“THE COURT: As you know, your attorney has a health issue which he has documented. And we are set to start jury selection no later than tomorrow. I understand that both sides are willing to waive the right to trial by jury and allow me to be the trier of fact. [¶] Is that correct, Mr. Hammond?

“MR. HAMMOND: It's against my recommendation, but based on—after talking to my client, I'm willing to go along with it.

“THE COURT: A jury waiver has to be done with your approval, so are you telling me that even though if you had your way, you wouldn't do it, you are willing to go along with your client's wishes to waive jury?

“MR. HAMMOND: Yes.

“THE COURT: Would the D.A.'s office be willing to waive jury?

“[PROSECUTOR]: Yes. I spoke with my supervisor and he's authorized it.

“THE COURT: I'll take the jury waiver then at this time.

“[The court and the prosecutor advised defendant of his rights and possible sentence.]

“THE COURT: Are you at this time giving up your right to trial by jury so that I would determine whether the evidence shows beyond a reasonable doubt that you were guilty?”

“THE DEFENDANT: Yes, Your Honor. I do believe that you have very good ethics and that’s the reason that I want to go with you.

“THE COURT: Does counsel join in the jury waiver?”

“MR. HAMMOND: Join.”

Defendant argues that because defense counsel stated that defendant’s waiver of jury trial was against his recommendation, counsel did not expressly waive jury trial. He asserts that counsel’s statement that he was “willing to go along with” defendant’s decision is insufficient to constitute consent to the waiver. We disagree.

This is not a situation like that in *People v. Upshaw* (1974) 13 Cal.3d 29, where defense counsel objected to the defendant’s waiver and expressly declined to concur in it, or in *People v. Peace* (1980) 107 Cal.App.3d 996, where defense counsel’s only statement at the time the trial court took the defendant’s waiver was to state that it was against the advice of counsel. Defense counsel in this case not only agreed to “go along with” defendant’s waiver, *he expressly joined in it*. Thus, the

waiver satisfied the requirements of the California Constitution, and the trial court properly accepted it.³

DISPOSITION

The judgment is affirmed.

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WILLHITE, J.

We concur:

EPSTEIN, P. J.

COLLINS, J.

³ Significant portions of the respondent's brief and the appellant's reply brief address whether the failure to obtain defense counsel's consent to the defendant's waiver of jury trial is reversible per se error or is to be analyzed under the harmless error standard of *People v. Watson* (1956) 46 Cal.2d 818. In light of our conclusion that there was no error in this case, we decline to address these arguments.