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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION ONE

THE PEOPLE, Plaintiff and Respondent, v. STANLEY GLEASON, Defendant and Appellant.	B271088 (Los Angeles County Super. Ct. No. BA439863)

APPEAL from a judgment of the Superior Court of Los Angeles County, James R. Dabney, Judge. Affirmed.

Stephanie L. Gunther, 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, Steven D. Matthews and Robert C. Schneider, Deputy Attorneys General, for Plaintiff and Respondent.

Following a bench trial, the court convicted Stanley Gleason of one count each of assault with a deadly weapon, carrying a dirk or dagger, and criminal threats, and found true an enhancement allegation that Gleason inflicted great bodily injury in committing the assault. (Pen. Code, §§ 245, subd. (a)(1), 422, subd. (a), 12022.7, 21310.) The court sentenced Gleason to six years in prison.

Gleason contends that the trial court improperly induced him to waive his right to a jury trial, rendering his waiver invalid. We disagree and affirm the judgment.

FACTUAL AND PROCEDURAL SUMMARY

On September 7, 2015, Israel F. was sitting near a bus stop playing a portable keyboard. Gleason approached Israel from behind, shouting " 'F you,' " and stabbed him three times. Israel ran to his wife, Michaela B., who was standing across the street. Michaela called 911. Police apprehended Gleason at the scene and found three "dagger type" knives in Gleason's back pocket, one of which appeared to have fresh blood on it.

On September 11, 2015, Gleason approached Michaela at a bus stop across from where the stabbing occurred, pointed to her chest, and said, " 'I should have taken care of you then when I did him[,] and I'm gonna do you next.' " Michaela fled on the bus and called the police.

At a pretrial hearing on February 5, 2016, Gleason's counsel informed the court that Gleason wished to represent himself. Gleason filled out the requisite *Faretta*[1] waiver form and the court granted Gleason's request to appear in propria persona.

When Gleason next appeared in court on February 24, 2016, the following exchange occurred:

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[1] *Faretta v. California* (1975) 422 U.S. 806.

"The court: We're set to begin picking a jury this morning. We're trying to—the bailiff has found some clothes that might fit you that you could wear so you don't have to be—

"[Gleason]: I lost a lot of weight, so I don't know.

"The court: These are different clothes. Okay? So, I guess, the question is, now, if you proceed pro[.] per[.] with the jury, you're going to have to address your questions—

"[Gleason]: Well, I've been in trial before. I basically—I have a basic—I never had a case of this magnitude pro[.] per[.], your Honor.

"The court: Yeah.

"[Gleason]: And my only concern is my stroke that[—]that I sustained. I'm speaking better. I seen a doctor yesterday, blah, blah, blah.

"The court: Right.

"[Gleason]: And I don't want to bore the court with that, but it is what it is.

"The court: Okay.

"[Gleason]: But I have an understanding of picking a jury.

"The court: Okay. Let me ask you this. I'm not sure whether the People would go along with this or not, but if they do, it's easier if you—it's up to you. But if you want to have a court trial, you don't have to worry about—you could just address me from there and we can do this. It's a little looser than if we have a full-blown jury trial.

"[Gleason]: If you would ask my opinion, given that I like you as a judge, I figure you've been very considerate of me as an individual. It's a very serious issue and I don't have to tell you, as a professional, the magnitude. And I thought—I gave it some thought prior to me becoming pro[.] per. I would prefer, under the circumstances, after I have—since I have time to answer your question, I have time to read the discovery that I have, I didn't

actually need this for what I see and blah, blah, blah. But to answer your question, sir, I don't need a jury, no. I could go—I am confident that your Honor would use, as a professional, give me a clear—I like that.

"The court: Okay. All right. So Mr. Gleason would be willing to waive jury if the People are.

"[The prosecutor]: You know, I did not—is that what he said, that he wanted to waive the jury? He said I need—

"The court: He doesn't need a jury.

"[The prosecutor]: I would have to get authorization from a supervisor to waive jury. If the court would give me ten minutes to[—if] the court would give me ten minutes.

"The court: If the People are willing to do that, it would be a lot easier. Then you could have your witnesses here this afternoon, okay? Go find out. Mr. Gleason, we'll give you that paper so you can review that. We'll bring you out in ten minutes to let you know if the People are also willing to waive jury. It would make things a lot easier.

"[Gleason]: Yeah, it would.

"The court: A lot cleaner.

"[¶] . . . [¶] . . .

"The court: On the record on *People v. Gleason*. Okay Mr. Gleason. The People have also agreed to waive jury and submit the case to a court trial. So before we begin, I just want to make sure we're all on the same page. So today we're here for trial. We are prepared to bring down the jury panel, but my understanding is that both Mr. Gleason and the People are willing to waive jury and have the case tried before me. Is that correct, Mr. Gleason?

"[Gleason]: Yes, your Honor." (Capitalization omitted and italics added.)

After a bench trial, the court found Gleason guilty on all counts and sentenced him to six years in state prison. Gleason timely appealed.

DISCUSSION

Gleason contends that his waiver is invalid "because it was induced by the trial court promising that waiving a jury would make things a lot easier." We disagree.

The right to trial by jury in criminal cases is guaranteed by the Sixth Amendment of the United States Constitution and article I, section 16 of the California Constitution. (*Duncan v. Louisiana* (1968) 391 U.S. 145, 149; *People v. Ernst* (1994) 8 Cal.4th 441, 445.) The right is considered "fundamental to the American scheme of justice" (*Duncan v. Louisiana*, *supra*, 391 U.S. at p. 149), and the denial of the right is a structural error that requires the judgment be set aside. (*People v. Ernst*, *supra*, 8 Cal.4th at pp. 448-449; *People v. Cahill* (1993) 5 Cal.4th 478, 501.)

A defendant can expressly waive his or her right to trial by jury. (Cal. Const., art. I, § 16; see *People v. Sivongxxay* (2017) 3 Cal.5th 151, 166; *People v. Holmes* (1960) 54 Cal.2d 442, 443-444.) To be valid, the waiver must be "knowing and intelligent, that is, ' " 'made with a full awareness both of the nature of the right being abandoned and the consequences of the decision to abandon it,' " ' as well as voluntary ' " 'in the sense that it was the product of a free and deliberate choice rather than intimidation, coercion, or deception.' " ' (*People v. Collins* (2001) 26 Cal.4th 297, 305 (*Collins*).) Whether a waiver is valid depends upon the totality of the circumstances. (*People v. Sivongxxay*, *supra*, 3 Cal.5th at pp. 166-167; see also *Adams v. U.S. ex rel. McCann* (1942) 317 U.S. 269, 278 [validity of waiver depends "upon the unique circumstances of each case"].)

A waiver of the right to a jury trial is not voluntary if it was induced by a threat of punishment for exercising the right, or by the promise of a benefit, such as leniency in sentencing, in exchange for waiving the right. (*Collins*, *supra*, 26 Cal.4th at p. 306; *People v. Dixon* (2007) 153 Cal.App.4th 985, 990 (*Dixon*).) The trial court risks such inducements when it injects itself into the defendant's decision-making process, and may unintentionally coerce a defendant who is "intimidated by the judge's participation in the matter." (*People v. Orin* (1975) 13 Cal.3d 937, 943; accord, *Collins*, *supra*, 26 Cal.4th at p. 309.) The court, however, is not prohibited from giving information or advice to the defendant as justice requires, so long as it is "accurate and not coercive." (*People v. Williams* (1969) 269 Cal.App.2d 879, 885.)

In *Collins*, *supra*, 26 Cal.4th 297, our Supreme Court held that a trial court's promise of a vague, unspecified benefit rendered defendant's waiver involuntary. (*Id.* at p. 312.) In that case, the defendant communicated to the trial court that he wished to waive his right to a jury trial. (*Id.* at p. 301.) The court asked whether he understood that it was " 'not promising [him] anything just to get [him] to waive jury.' " (*Id.* at p. 302.) Collins replied that he thought there would be " 'some type of benefit.' " (*Ibid.*) The court then stated, " 'I didn't specify and I'm not specifying that there's any particular benefit, but that by waiving jury, you are getting some benefit, but I can't tell you what that is because I don't know yet.' " (*Ibid.*) This promise of an unspecified benefit, the Supreme Court explained, "presented a 'substantial danger of unintentional coercion.' [Citation.]" (*Id.* at p. 309.) The trial court had, in effect, offered a reward to the defendant in exchange for his waiver of the right to trial by jury and thereby violated his right to due process. (*Ibid.*)

In a concurring opinion, Justice Brown agreed that "the trial court's offer of some unspecified benefit would necessarily render the waiver not knowing or intelligent," but added that "there may be situations in which we would not find that the benefit noted rendered the waiver invalid. For example, if a defendant asked the court what benefit there would be in a court trial over a jury trial, and the court stated, 'Well, court trials tend to proceed more quickly than jury trials,' it is unlikely we would conclude the trial court's statement rendered the subsequent jury trial waiver not knowing, intelligent, or voluntary, particularly if the defendant rejoined that he in fact wanted the trial over as quickly as possible." (*Collins*, *supra*, 26 Cal.4th at p. 315 (conc. opn. of Brown, J.).)

Here, Gleason asserts that the trial court improperly induced him to waive a jury trial, pointing to the court's description of a court trial as "easier," "looser," and "cleaner" than a jury trial. We disagree. Unlike in *Collins*, the court here did not offer a benefit to the defendant in exchange for his waiver of the right to a jury trial. The court did not promise leniency in sentencing if Gleason waived the right or imply that it would impose a harsher punishment if Gleason demanded a jury trial. Instead, the court made commonsense observations that a court trial would take less time and could be less formal than a jury trial. Such observations, like the observation that " 'court trials tend to proceed more quickly than jury trials,' " are merely descriptive of the choice facing the defendant, not a coercive inducement to waive the right to a jury trial. (See *Collins*, *supra*, 26 Cal.4th at p. 315 (conc. opn. of Brown, J.).)

Dixon, *supra*, 153 Cal.App.4th 985 is instructive. In *Dixon*, the trial court initially made improper comments promising leniency in sentencing if the defendant, Dixon, and his co-defendant waived their right to a jury trial. (*Id.* at p. 993.) The defendants, however, declined to waive a jury trial and requested that the jury

panel be summoned. (*Id*. at pp. 991-992.) A discussion among counsel and the court about various evidentiary issues followed, during which the prosecutor explained to the defendants that they would " 'have a hard time testifying in front of a jury because they will look at your priors if you testify. You'll be impeached with them.' " (*Id*. at p. 992.) The court stated that the prosecutor's comment was " 'absolutely correct.' " (*Ibid.*)

After a break and an off-the-record discussion, Dixon's counsel stated, " 'Your Honor, Mr. Dixon at this time would waive his right to a jury, and if I might just for the record . . . I think Mr. Dixon is doing that because you said it's in his own best interest and it is—it's been my advice to him that I thought that he would have—that we would have—[been] freer to present his case in front of you than we would in front of a jury.' " (*Dixon*, *supra*, 153 Cal.App.4th at pp. 992-993, fn. omitted.) The Court of Appeal interpreted counsel's statement, "you [the court] said it's in his own best interest," as a reference to the trial court's statement that "the prosecutor was correct when he said there were evidentiary benefits to having a court trial." (*Id.* at pp. 992-993, fn. 2.) In light of this interpretation, the court held that Dixon's waiver was valid for several reasons, including: (1) The prosecutor "explained in detail how a court trial would benefit Dixon, and there was no mention of any sentencing considerations"; and (2) "[T]he reasons given by counsel and confirmed by Dixon are that Dixon wanted to waive his right to a jury trial because he felt freer to present his case to a judge rather than to a jury." (*Id.* at p. 994.)[2]

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[2] Gleason's decision to waive his right to counsel does not affect the jury waiver analysis. A self-represented defendant is his or her "own counsel for the purpose of trial, and therefore is fully capable of waiving his [or her] right to a jury trial." (*People v. Kranhouse* (1968) 265 Cal.App.2d 440, 449.)

Similarly, the court in the instant case informed Gleason of procedural and evidentiary advantages of a court trial over a jury trial. In noting that a court trial would be "easier" and "looser" than a jury trial, the court did not promise him a more lenient sentence or suggest that a jury would be more likely to find him guilty. Instead, the court was alluding to the fact that communicating clearly with one individual would be easier than communicating with twelve, and that the court could be less concerned about "inadmissible evidence coming out" because the court could simply choose not to consider it.

Gleason also asserts that the court initially raised the possibility of a bench trial, which he contends was intimidating. Even if this is a fact that might imply judicial intimidation in some situations, that possibility is unlikely here because, as Gleason informed the court, he had already given "some thought" to having the court try the case. Judicial intimidation, he contends, is also evidenced by his "respectful and deferential" statements to the court. Gleason points to statements such as: "I'm not going to waste the court's time," "I don't want to waste the court's time," and "I don't want to bore the court with that." Gleason offers no citation for the proposition that speaking respectfully to the court is evidence of intimidation, and we decline to so hold. Moreover, the record in this case does not suggest that Gleason's respect and deference to the court was due to any feeling of intimidation. Apparently, he had had previous experience with trial courts to help him evaluate his choices.

Additional evidence suggests that Gleason's waiver of his right to a jury trial was knowing, intelligent and voluntary based on the totality of the circumstances. Prior to Gleason's exchange with the court about waiving a jury trial, the court was ready to proceed with jury selection; it was only after learning of Gleason's speaking difficulties that it suggested a court trial. Thus, the record does

not support Gleason's suggestion that the trial court was "harboring a private desire to avoid time consuming jury trials." Rather, the court provided information to Gleason about some aspects of a court trial based on Gleason's demonstrated concerns. Lastly, appellant suggests this case is analogous to *People v. Burgener* (2009) 46 Cal.4th 231. In *Burgener*, the California Supreme Court found that the trial court improperly induced defendant's waiver of counsel by suggesting that defendant was the only person who had full knowledge of his case and would thus diminish his chances of success if represented by counsel. (*Id*. at p. 242.) *Burgener* is distinguishable from this case. Although the court informed Gleason of some positive attributes of a court trial, it did not suggest that a jury would disadvantage Gleason or be more likely than the court to convict him. We therefore reject Gleason's reliance on *Burgener*.

For all the foregoing reasons, we conclude that Gleason's waiver of his right to trial by jury was valid.

DISPOSITION

The judgment is affirmed.

NOT TO BE PUBLISHED.

ROTHSCHILD, P. J.

We concur:

CHANEY, J.

JOHNSON, J.