IN THE COURT OF APPEALS OF IOWA

No. 1-988 / 11-0079
Filed February 1, 2012

STATE OF IOWA,
Plaintiff-Appellee,

vs.

KELVIN DEVELL WILLFORM,
Defendant-Appellant.

Appeal from the Iowa District Court for Des Moines County, Mary Ann Brown, Judge.

Defendant appeals from several convictions following his waiver of right to counsel. **AFFIRMED.**

Mark C. Smith, State Appellate Defender, and Theresa R. Wilson, Assistant Appellate Defender, for appellant.

Thomas J. Miller, Attorney General, Benjamin M. Parrott, Assistant Attorney General, Patrick C. Jackson, County Attorney, and Heidi Van Winkle, Assistant County Attorney, for appellee.

Considered by Vogel, P.J., and Eisenhauer, J., and Sackett, S.J.*

Senior judge assigned by order pursuant to Iowa Code section 602.9206 (2011).

SACKETT, S.J.

Kevin Willform appeals from convictions of domestic abuse assault as an habitual offender, possession of a controlled substance as an habitual offender, and assault on a police officer following a bench trial. Partway through the trial, Willform waived his right to counsel. He now contends the district court failed to conduct an adequate inquiry into his decision to waive counsel, rendering his waiver unknowing and unintelligent. We affirm.

SCOPE OF REVIEW. When a defendant's Sixth Amendment right to counsel or self-representation is at issue our review is de novo. *State v. Johnson*, 756 N.W.2d 682, 686 (Iowa 2008). The Sixth Amendment guarantees the right to self-representation as well as the right to counsel. *Faretta v. California*, 422 U.S. 806, 821, 95 S. Ct. 2525, 2534, 45 L. Ed. 2d 562, 574 (1975). "In a state criminal trial, a defendant has a Sixth and Fourteenth Amendment right under the United States Constitution to self-representation." *State v. Rater*, 568 N.W.2d 655, 658 (Iowa 1997) (citing *Faretta*, 422 U.S. at 807, 95 S. Ct. at 2527, 45 L. Ed. 2d at 566). Before the right to self-representation attaches, a defendant must voluntarily, clearly, and unequivocally elect to proceed without counsel by knowingly and intelligently waiving his Sixth Amendment right to counsel. *Id.* "While an accused may waive the right to counsel, whether there is a proper waiver should be clearly determined by the trial court, and it would be fitting and appropriate for that determination to appear upon the record." *Johnson v. Zerbst,* 304 U.S. 458, 465, 58 S. Ct. 1019, 1023, 82 L. Ed. 1461, 1467 (1938). A district court must inform the defendant about

"'the dangers and disadvantages of self-representation'" before accepting a defendant's request to proceed pro se. *Rater*, 568 N.W.2d at 658. (quoting *Faretta*, 422 U.S. at 835, 95 S. Ct. at 2532, 45 L. Ed. 2d at 572). To discharge this duty "a judge must investigate as long and as thoroughly as the circumstances of the case before him demand." *State v. Cooley*, 608 N.W.2d 9, 15 (Iowa 2000) (citation omitted). "While the extent of a trial court's inquiry may vary depending on the nature of the offense and the background of the accused, some sort of meaningful colloquy must be accomplished." *Id*. In order to help avoid the pitfalls associated with self-representation, the district court may appoint "standby counsel" to assist a pro se defendant in his defense, even over the defendant's objections. *Faretta*, 422 U.S. at 834 n.46, 95 S. Ct. at 2541 n.46, 45 L. Ed. 2d at 581 n.46.

MERITS. On appeal, Willform argues the district court's inquiry into his decision to represent himself was inadequate because the court "failed to inquire into [his] awareness of the charges for which he was on trial and the possible punishments he faced."

When the court was made aware of Willform's desire to represent himself, the court conducted an extensive and lengthy discussion with him to make sure he understood what he was doing, what he was giving up, and the risks inherent in representing himself.[1] Willform told the court, "I feel I represent the case best

[1] The colloquy extends from page fifty-seven, line six, through page seventy-six, line twenty-two in the trial transcript. Another discussion occurs from page eighty-eight, line six, through page ninety, line twenty-one, after which Willform confirms his decision to represent himself "on those three cases."

because I know the case," and "I've concluded that I would rather represent myself."

Willform is no novice in the criminal justice system. The initial charges in this case included domestic abuse assault *third or subsequent offense* and possession of a controlled substance *third offense.* The State also alleged Willform qualified as an habitual offender as to both of these charges.[2] During plea negotiations Willform rejected one plea offer that would have eliminated the domestic abuse assault charge and the accompanying habitual offender enhancement. He also rejected a plea offer that would have avoided habitual offender enhancements of the two underlying charges. Willform understood the charges were felonies.

Just prior to trial,[3] and after discussion with his attorney, Willform waived his right to a jury trial and asked for a bench trial. The court then addressed the State's second motion to amend the trial information:

> [S]ince this is a bench trial, I think we can proceed differently than we would have with a jury trial. If we'd had a jury trial, this would have been a trifurcated case to establish previous domestic abuse and possession of controlled substances offenses to enhance those misdemeanors into felonies, and then also a second enhancement stage to deal with the habitual offender status for the felonies, and because this is a bench trial, *I believe we can hear all that evidence at once* and not wait for the verdict on the initial case to hear that evidence, because I can instruct myself to disregard the previous convictions in evaluating the evidence on the merits of the case.

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[2] The prior convictions supporting habitual offender enhancements included one for possession of a controlled substance *third or subsequent offense as a habitual offender*.
[3] The jury was already in the courtroom being oriented and trained.

(Emphasis added.) The court allowed the amendment. The court's statement makes it clear all the charges and all the enhancements were going to be considered in the trial that was about to begin.

During the trial, after the lengthy colloquy with Willform about his request to represent himself, the court explicitly told Willform "you're being charged by way of County Attorney's trial information with all the charges and the whole thing is being tried today, and that's been that way from the get-go." And moments later, "And we're trying three charges today . . . . We're trying three charges all at once." And again, "We're trying three cases. Are you prepared to go forward to represent yourself on those three cases today?" Willform replied, "Yes, ma'am."

The case before us is not like the situation in *Hannan v. State*, 732 N.W.2d 45 (Iowa 2007). There, the defendant had gone through four court-appointed attorneys and the court merely confirmed, "So you're either going to hire one or represent yourself?" *Hannan*, 732 N.W.2d at 49. Hannan asked some questions about procedures and the court gave him a brief overview. *Id.* There never was any lengthy inquiry by the court to make sure he understood what he was doing, what he was giving up, and the risks inherent in representing himself.

Nor is this case like the situation in *State v. Cooley*, 608 N.W.2d 9 (Iowa 2000). There, the defendant appeared without counsel at the arraignment and indicated he wanted to represent himself. *Cooley*, 608 N.W.2d at 11. The court did not question the defendant. Subsequently, the court heard Cooley's motion

to proceed pro se. *Id.* at 11-12. Cooley stated he was fully advised of the pitfalls claimed to be associated with one representing himself, but [that he] had found them to be without merit while representing himself in numerous previous jurisdictions." *Id.* The court merely clarified that Cooley understood he had a constitutional right to an attorney at the State's expense. *Id.* at 12.

In the case before us, Willform was represented by counsel through all proceedings until part of the way through the State's case in chief. He had been through plea negotiations that gave him an understanding of his options if he chose to plead guilty and the possible consequences if he elected to go to trial and was found guilty. The court made a searching inquiry of Willform concerning his decision, his familiarity with criminal proceedings from prior criminal charges, the reasons for his decision, and that he was capable of making an informed decision. Willform's choice to represent himself was confirmed later in the trial.

From our review of the entire record, we conclude the colloquy between the court and Willform was sufficient to determine his waiver of counsel was voluntary, knowing, and intelligent. We find no merit in his argument the court was required, under the circumstances, to inform him of the charges facing him and the possible punishments. The court's colloquy "provide[d] fair notice of the obstacles inherent in self-representation before [Willform] embark[ed] on so perilous an endeavor." *See id.* at 16. Under the circumstances before us, we conclude Willform's waiver of counsel was "made with an apprehension of the nature of the charges, the statutory offenses included within them, the range of allowable punishments thereunder, possible defenses to the charges and

circumstances in mitigation thereof, and all other facts essential to a broad understanding of the whole matter." *See id.* at 15.

AFFIRMED.