IN THE COURT OF APPEALS OF IOWA

No. 2-593 / 11-0812
Filed November 15, 2012

STATE OF IOWA,
Plaintiff-Appellee,

vs.

VERA ELIZABETH RHODES,
Defendant-Appellant.

Appeal from the Iowa District Court for Jefferson County, Michael R. Mullins (pretrial hearing), Joel D. Yates (dismissal hearing), and Lucy J. Gamon (attorney withdrawal hearing), and Daniel P. Wilson (trial), Judges.

Defendant appeals her conviction for first-degree theft. **AFFIRMED.**

Mark C. Smith, State Appellate Defender, and Rachel C. Regenold, Assistant Appellate Defender, for appellant.

Thomas J. Miller, Attorney General, Martha E. Trout, Assistant Attorney General, and Timothy W. Dille, County Attorney, for appellee.

Heard by Eisenhauer, C.J., and Doyle and Tabor, JJ. Mullins, J., takes no part.

EISENHAUER, C.J.

Vera Rhodes appeals her conviction for first-degree theft. She argues the trial court violated her due process rights by failing to hold a competency hearing. *See* Iowa Code section 812.3 (2007). She also asserts a violation of her Sixth Amendment right to counsel. We affirm.

I. Background Facts and Proceedings.

In early 2008, Rhodes bought a home divided into first floor andsecond floor apartments. Claudia Fischer had rented the top apartment for over twenty years. In March 2008, Rhodes wanted to move into the home's basement. Together, Rhodes and Fischer removed Fischer's items from the basement. During this process, Rhodes helped Fischer sort through her belongings. Rhodes and Fischer also discussed cleaning Fischer's apartment, which contained a second bedroom nicknamed the "avalanche" room due to it being filled with stacks of Fischer's papers for her home-based business.

Fischer left town in August 2008. When Fischer returned, she discovered a nearly-empty apartment. Fischer's family heirlooms, furniture, clothing, food, file cabinets, client records, and appliances were broken, given away, destroyed, scattered, used, or put out on the street for people to take.

Fischer contacted the police and was told she needed to compile a property list. Police Officer Harvey served Rhodes with a "no trespass order" for Fischer's apartment. Officer Harvey spoke briefly with Rhodes about her removal of the property, and Rhodes stated she "threw out the items because they were a fire hazard."

A year later, Fischer provided the police with the property list. In September 2009, Rhodes was charged with first-degree theft. During the proceedings discussed below, Rhodes was represented by several attorneys.[1] Rhodes also filed numerous pro se motions.[2] In May 2010, her third appointed attorney sought to withdraw. The court set the application for hearing on June 1. On June 1, Rhodes filed a pro se motion to dismiss stating:

> COMES NOW VERA RHODES and hereby motions the court defense counsel be dismissed, I notice him that for lack of communication and positive defense, that he is dismissed. I have notified by telephone. I believe I am entitled to competent council and the court's appointments have failed to provide this. RE: Iowa Rules Criminal Procedure 602.10113. I further move the court dismiss with prejudice for lack of jurisdiction. Neither of the court appointed counsel would file for dismissal even with the knowledge that:
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> 1. Testimony of the police officer clearly stated they tried to get the complaining party to file before the time limit expired but the party did not.
> 2. The citation was initiated more than a year after the alleged incident occurred and is questionable to its validity.
> 3. The date on the complaint and the date the notary's signed are not the same thereby invalidating the complaint and indicating a collusion that should be investigated.
> 4. There was little or no investigation and no evidence that the complaining party even had any of the items in question.
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> Should the court fail to dismiss this action, a continuance is requested to July 10, to be able to attempt to find competent council.

After hearing, the court allowed the attorney to withdraw and noted Rhodes's intention to retain private counsel. The court ordered counsel to "file

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[1] Attorney Small withdrew in September 2009, and attorney Mitchell withdrew in March 2010.

[2] For example, on July 12, 2010, Rhodes filed a motion entitled "Writ of Exigent," which referred to numerous trial judges as "Fictitious Foreign Corporation male/female employee" and referenced "a fictitious written, notice Warrant . . . for a CRIME committed but not adjudicated."

an appearance on or before July 9," set hearing on Rhodes's motion to dismiss for July 27, and continued trial to August 2010. No appearance was filed.

On July 26, Rhodes filed a letter stating:

> I have been unable to find private council since my last court appearance June 1, 2010. I feel that I need an Attorney who can stand up for me and prove my innocence. Recently I retained the legal service of Edward Noyes to advise me on this case. He is unable to represent me at my trial date due to summer vacation plans.

Also on July 26, attorney Noyes sent an e-mail to prosecutor Dille asserting Rhodes "is not savvy in the law, being raised in an Amish/Mennonite community." Further, "witness[es] will testify as to [Rhodes's] reasonable belief that she had the right or privilege to clean up [Fischer's] apartment, just as she had helped [Fischer] in the basement rooms." After asserting a claim-of-right defense, Noyes proposed the State dismiss the criminal charge if Rhodes paid "a reasonable amount of money (or support an insurance claim) in a civil context."

At the hearing on Rhodes's pro se motion to dismiss, attorney Noyes stated: "I know that she was unable to get other counsel. She told me she was unable to obtain private counsel for this hearing. So I agreed that I would come here just for today and represent her in this motion." Attorney Noyes also stated "the motion that she personally drafted does not properly address the issues that really should be addressed previous to trial," and he requested the court continue the dismissal hearing "pending the filing of an appropriate supplemental motion by a court-appointed attorney." Noyes did not accept court appointments. The State objected to a continuance, noting the speedy trial deadline, and objected to attorney Noyes "appearing only for [the motion to dismiss] hearing."

Attorney Noyes then requested the hearing go forward based on the additional defenses in his recent e-mail. Prosecutor Dille replied the State was prepared to address the issues in the June 1 motion to dismiss. The court ruled the hearing would be limited to the pending June 1 motion and stated:

> I think, though, before we go any further, again, we need to address this issue . . . in terms of your involvement in the case, Mr. Noyes. There's not been an Appearance filed by you. And I'm going to leave it up to you and your client. If you're involved in this hearing, then I am going to make a record that you're the attorney of record in this case. If you're not the attorney of record, then you're not going to participate in the hearing, and I will look and review . . . an application, if the defendant so desires, to have [a] court-appointed attorney appointed.

The court reiterated there was only one motion pending—Rhodes's pro se motion—and denied Noyes's request to argue a "motion that essentially doesn't exist." After consulting with Rhodes, Noyes stated:

> NOYES: What she told me was, is that—and I've agreed—that she needs to have a court-appointed attorney appointed to represent her. That's no. 1.
>
> How she wants to handle the current motion, I think there needs to be a hearing on it, a proper hearing and a properly-drafted motion, but she's going to be able to do whatever she needs to do on that.
>
> THE COURT: . . . What I need to hear from you, [Ms. Rhodes,] is are you, prepared to proceed today substantively on the Motion to Dismiss, are you prepared to dismiss the Motion to Dismiss, or are you asking for a continuance?
>
> RHODES: I am prepared to proceed Your Honor.
>
> THE COURT: Okay. Mr. Dille, what's your position, then, in terms of Mr. Noyes's involvement?
>
> DILLE: If he is not appearing for her as her attorney, I don't believe the rules allow him to do an appearance just on a limited basis.
>
> THE COURT: Agree with that assessment. Mr. Noyes, thank you for being here. Appreciate your assistance, and I'm going to ask you to leave at this point.

The court asked Rhodes to present her evidence and, when Rhodes stated she intended to testify, the court explained:

> THE COURT: Before I swear you in and you testify, I want to forewarn you of your constitutional right to remain silent in a criminal case, and if you choose to waive that right and you choose to testify, keep in mind that whatever you say can or may be used against you later at trial. Do you understand what I've just said, Miss Rhodes?
>
> RHODES: Urn, I hear what you say.
>
> THE COURT: Do you understand the constitutional right as I've explained it to you?
>
> RHODES: I do not understand or over stand another. I live in common law and live from my heart and duty to my fellow man.
>
> THE COURT: I'm telling you that if you testify here today . . . I want you to understand that anything you say may be used against you later at a trial. Do you understand that, Miss Rhodes?
>
> RHODES: I'll okay that.
>
> THE COURT: Do you want to testify understanding that right?
>
> RHODES: Yes.

Rhodes testified she was "here as Vera E. Rhodes. I am one of the United States of America. My life and experience is common law." Rhodes gave the court a file of papers including character references and pictures of the furniture at issue, and she professed her innocence. Rhodes called two witnesses who stated Rhodes's actions were intended to be a helpful surprise for a friend. At the close of testimony, Rhodes summarized her position: "The Motion to Dismiss here is that I am one of the United States of America and I live by common law treating my fellow men as myself and there was only good will in this."

The court denied Rhodes's motion to dismiss, ruling Rhodes failed to meet the dismissal criteria in Iowa Rules of Criminal Procedure 2.11. Subsequently,

Rhodes applied for court-appointed counsel, and attorney Powell was appointed. Rhodes waived her right to trial within one year.

Attorney Powell moved to withdraw on November 4, 2010, noting Rhodes "has decided to proceed pro se." On November 15, Rhodes filed a pro se petition for writ of mandamus with the Iowa Supreme Court requesting it order the trial court to "cease, desist, or arrest" the criminal court action because it is "without jurisdiction." The court denied the motion.

At the hearing on attorney Powell's motion to withdraw, the court conducted an extensive colloquy about Rhodes's waiver of counsel. During the colloquy, the following exchange occurred:

> THE COURT: What are your reasons . . . for not wanting court-appointed counsel in this case?
> RHODES: Conscientious objector.
> . . . .
> THE COURT: Can you explain what you mean by conscientious objector?
> RHODES: It is my experience that in a court with the ion present and the law of nature and nature's god, that I deal with my own affairs or with—or through the help of those in my tribe, my community.
> THE COURT: So you're telling me you want to rely on the help of God and nature and your tribe and yourself?
> RHODES: Yes.

The prosecutor stated Rhodes had no prior criminal history. The court explained the jury trial process, the potential penalties for the crime, and the role of standby counsel. The court granted attorney Powell's motion to withdraw and appointed attorney Glass as standby counsel.

On January 4, 2011, attorney Glass, at Rhodes's request, was changed from standby counsel to court-appointed counsel. On March 15, Rhodes filed a pro se affidavit stating she did "not wish to comply with an unconstitutional

Statutory Corporate Administrative process and procedures." She also filed a "UCC" statement containing the same language. At the hearing on pretrial motions, attorney Glass informed the court he was unaware of Rhodes's separate filings.

Prior to the start of the March 22 jury trial, prosecutor Dille informed the court that Rhodes had filed several pro se documents late in the afternoon of March 21. Attorney Glass requested time to speak with Rhodes and then expressed concerns about Rhodes's competency to stand trial due to the pro se filings, his conversation with her, and her behavior. Prosecutor Dilly stated he had questioned some of Rhodes's past behaviors and believed "every attorney that has dealt with her has voiced frustrations of some type." The court questioned Rhodes, who remained standing due to her belief that if she sat down, she would be within the court's jurisdiction.

> THE COURT: Feel free to continue standing, or you can sit down . . . . Do you understand this is a day we're going to start a jury trial in your theft case here in Jefferson County?
>
> RHODES: That's what I have been told.
>
> THE COURT: And do you feel like you understand that this is a criminal charge? And the nature of it?
>
> RHODES: That's what I have been told. However, I'm wondering how you have evidence and jurisdiction over me as one of the United States of America.
>
> THE COURT: Do you feel like during this trial, even though you may disagree with whether I have authority or not, do you think you could assist Mr. Glass in putting on your case or representing you?
>
> RHODES: I cannot, sir.
>
> THE COURT: And why is that?
>
> RHODES: Because I have not seen any contract with him, or any records that you have jurisdiction over me.
>
> THE COURT: Okay . . . I just need to know if you're competent to stand trial based on what Mr. Glass just raised. Are you willing to try to assist him in representing you?
>
> RHODES: And what does that mean, sir?

> THE COURT: Well, help him with the various stages of the trial . . . .
>
> RHODES: As a conscientious objector, no.
>
> THE COURT: Are you telling me that you're just unwilling to assist him . . . not that you can't assist him?
>
> RHODES: It goes against my principle as a conscientious objector, and also that being one of the United States of America.

Attorney Glass stated he was not aware of any medical diagnosis and "up to [today] when I've dealt with Ms. Rhodes, she was appropriate." Prosecutor Dilly agreed there had been an increase in filings, and her pro se subpoenas caused him some concern: "I guess it would draw a question in my mind as to her ability to assist in her counsel. Or is she going to hinder what her counsel is trying to do."

The court ruled:

> The issue under [section] 812.3 . . . is whether Ms. Rhodes is suffering from a mental disorder that would prevent her from appreciating the charge, understanding the proceedings, or assisting effectively in her defense.
>
> Based on the information in the file, which granted is somewhat unusual, and the record to this point, I am not going to suspend these proceedings at this time and go into [a] probable cause . . . hearing of Ms. Rhodes's competency. I'll monitor that situation and I'll ask counsel to help me monitor the situation as we go through these proceedings to see if I should go another direction on the competency question.
>
> The fact that a client might be difficult in a sense for an attorney to represent doesn't necessarily call into question that person's competency.

Attorney Glass asked a final set of questions:

> GLASS: . . . I'd like to direct a question to my client as to whether or not she's going to assist me in her trial this morning . . . . Are you going to help me?
>
> RHODES: I'm bearing witness. You do what you need to do.
>
> GLASS: Are you going to sit down outside or are you going to stand through all the proceedings?
>
> RHODES: I don't know that.

No concerns about Rhodes's competency were raised during the multi-day trial, and the jury found her guilty of first-degree theft. At sentencing, the court imposed a fine and suspended her prison sentence. The court also ordered Rhodes to undergo a psychiatric/psychological evaluation and comply and participate in all recommended treatment and programs as a special condition of her probation Three days later, Rhodes filed a pro se "Enter into Evidence—Affidavit of Notice." She stated:

> [W]hile I fully intend to comply with all terms of probation . . . nevertheless, if your ongoing dishonor of my unalienable rights results in further damage to me . . . I charge $2000 per hour of my time spent in detention, incarceration, or any medical procedure to which I do not give my free will approval.

After a restitution hearing, the court ordered Rhodes to pay Fischer $9177.50 and found: "Rhodes continues to assert, and apparently believes, that this criminal prosecution against her should never have occurred, that she is innocent of the charge, that this court lacks jurisdiction over her concerning this prosecution, and that, as a sovereign citizen, she is somehow 'immune' from this matter." This appeal followed.

II. Scope and Standard of Review.

"[T]he constitutional basis of a claim the defendant is not competent to be tried requires a de novo review on appeal." *State v*. *Johnson*, 784 N.W.2d 192, 194 (Iowa 2010). The denial of the Sixth Amendment right to counsel is also reviewed de novo. *State v*. *Shipley*, 757 N.W.2d 228, 231 (Iowa 2008).

III. Competency.

Rhodes argues the trial court erred when it failed to hold a hearing to determine whether she was competent to stand trial. The State argues Rhodes's

behavior may have been unusual, but the record does not establish a competency hearing was required.

A criminal defendant is presumed to be competent, and the burden is on the defendant to rebut the presumption. *Jones v*. *State*, 479 N.W.2d 265, 270 (Iowa 1991). Iowa Code section 812.3 provides the procedure to be followed:

> If . . . the defendant's attorney, upon application to the court, alleges specific facts showing that the defendant is suffering from a mental disorder which prevents the defendant from appreciating the charge, understanding the proceedings, or assisting effectively in the defense, the court shall suspend further proceedings and determine if probable cause exists to sustain the allegations . . . .

This statutory procedure satisfies the due process hearing requirement. *State v*. *Edwards*, 507 N.W.2d 393, 395 (Iowa 1993). "Whether a reasonable person would believe a substantial question of a defendant's competency exists is a legal question." *Id*.

On appeal, "our task is to examine the information before the trial court to determine if at the relevant time an unresolved question of the defendant's competency reasonably appeared." *State v*. *Kempf*, 282 N.W.2d 704, 707 (Iowa 1979). In making "our own evaluation," relevant considerations include: "(1) the defendant's apparent irrational behavior, (2) any other demeanor that suggests a competency problem, and (3) any prior medical opinion of which the trial court is aware." *State v*. *Mann*, 512 N.W.2d 528, 531 (Iowa 1994). "Our standard of review is 'whether a reasonable judge, situated as was the trial court judge whose failure to conduct an evidentiary hearing is being reviewed, should have experienced doubt with respect to competency to stand trial.'" *Id*. (quoting *Griffin v*. *Lockhart*, 935 F.2d 926, 930 (8th Cir. 1991)).

Our de novo review does not convince us a question of competency reasonably appeared within the meaning of section 812.3. There is no medical evidence addressing competency and the lack of a diagnosis supports the district court's ruling. We also note Rhodes's prior defense attorneys did not raise a competency issue. The doubt expressed by attorney Glass prior to trial "is a legitimate factor to consider, but alone is not enough to create sufficient doubt." *Griffin*, 935 F.2d at 930; *see Edwards*, 507 N.W.2d at 398. When questioned by the court, Rhodes responded coherently, and her testimony does not support the presence of a mental disorder. Rather, Rhodes's testimony, actions, and behaviors demonstrate her unwillingness to accept the fact she was being prosecuted and the fact the court had jurisdiction over her. Her numerous pro se filings show her tenacity in dealing with the situation as she thought appropriate. Rhodes's unconventional beliefs applying or misapplying populist legal theories do not raise a competency issue. *See United States v. James*, 328 F.3d 953, 955 (7th Cir. 2003) (stating many defendants, such as tax protestors, articulate beliefs that have no legal support but such beliefs do not imply mental instability).

We conclude the record affirmatively shows Rhodes had a present ability to appreciate the charge, to understand the proceedings, and to assist effectively in her defense. The district court committed no legal error.

IV. Sixth Amendment Right to Counsel—Motion to Dismiss Hearing.

Rhodes asserts two Sixth Amendment arguments.[3] First, she argues the district court erred in failing to obtain a knowing, voluntary, and intelligent waiver

[3] Rhodes also asserts trial counsel was ineffective in failing to file a post-trial motion challenging the district court's failure to engage her in a colloquy before allowing

of her right to counsel at the hearing on her motion to dismiss. Citing *People v. Vernon*, 919 N.E.2d 966, 975 (Ill. Ct. App. 2009), Rhodes asserts the motion to dismiss hearing was a critical stage in the proceedings requiring the court to conduct a colloquy before allowing her to proceed pro se.

The State argues a motion to dismiss hearing does not qualify as a "critical stage" because counsel was not required to assist Rhodes in coping with legal problems or in challenging the State. The State notes the prosecutor chose not to cross-examine Rhodes when she testified and it merely argued Rhodes's motion did not meet any of the requirements of the governing rule of criminal procedure, nor was there a bill of particulars filed.

"At all critical stages of the criminal process, the Sixth Amendment affords an accused facing incarceration the right to counsel." *State v. Majeres*, 722 N.W.2d 179, 182 (Iowa 2006). However, not every moment is a "critical stage." The test for a critical stage pretrial is "an examination of the event in order to determine whether the accused required aid in coping with legal problems or assistance in meeting his adversary." *United States v. Ash*, 413 U.S. 300, 313 (1973) (finding no Sixth Amendment right to counsel at photographic displays conducted by the government); s*ee Gilbert v. California*, 388 U.S. 263, 267 (1967) (holding the taking of handwriting exemplars is not a critical stage entitling defendant to counsel).

Our Iowa Supreme Court has not determined whether a motion to dismiss constitutes a "critical stage in the proceedings" that requires the assistance of

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her to proceed pro se at the motion to dismiss hearing. We preserve this claim for possible postconviction relief proceedings.

counsel. We do not resolve the issue in this appeal. We conclude, under the unusual circumstances presented here, Rhodes did not require counsel's aid in coping with legal problems or assistance in meeting her adversary at the hearing on her pro se dismissal motion.

Rhodes filed her motion based on lack of jurisdiction even though she recognized and informed the court her prior appointed attorneys had refused to present this meritless claim. At the dismissal hearing, attorney Noyes informed the court the pro se motion did not contain grounds for dismissal, and he attempted to enlarge the grounds to be argued at the hearing without filing an appearance and without filing an amended motion to dismiss. Attorney Noyes alternatively sought a continuance to allow newly-appointed counsel time to draft a different dismissal motion. Rhodes elected not to continue the hearing until after her fourth appointed attorney could be assigned. During the hearing Rhodes was not subject to examination by the State. Based on these unusual, specific circumstances, no colloquy was required.

Second, Rhodes argues she was denied her Sixth Amendment right to counsel when the district court asked attorney Noyes to leave the courtroom at the hearing on her motion to dismiss. We find no merit to this claim. At the hearing attorney Noyes repeatedly stated Rhodes needed to have other counsel appointed and he would represent her at the dismissal hearing *if* he would be allowed to argue his unfiled grounds for dismissal. Noyes made it clear he was unwilling to argue the motion to dismiss Rhodes had filed. Specifically:

> Well, you know, I've already stated what the realities of my schedule [are] and I do not accept court appointments, and I am not

> available for the current trial date. I do think Miss Rhodes needs representation.
>
> *If the Court was willing . . . to allow . . . a Motion to Dismiss based on what I believe to be the facts of the case today, I would be willing to represent her*. We have witnesses . . . .
>
> I'm just concerned that the way that the Motion to Dismiss was previously drafted, it may or may not encompass the proper defenses, but *if the Court is willing to allow there to be a hearing today on what I believe to be there's at least two legitimate defenses to this case that should dispose of it, I would be willing to represent her today.*
>
> . . . .
>
> THE COURT: Mr. Noyes, let me ask you, is there a motion pending other than the Motion to Dismiss filed June 1st 2010?
>
> NOYES: No.
>
> THE COURT: That's what the Court is prepared to proceed on today.

(Emphasis added.) *See State v. Parker*, 747 N.W.2d 196, 203-04 (Iowa 2009) (discussing when relationship of lawyer and client arises).

Attorney Noyes did not enter an appearance. Although he accompanied Rhodes to the dismissal hearing, Noyes told the court he was unavailable to represent Rhodes at trial. Prior to the hearing, Noyes did not amend the dismissal motion set for hearing, and he declined to argue the existing motion. Rather, Noyes repeatedly maintained he would represent Rhodes at the dismissal hearing *if* the court would let him assert and argue additional grounds not encompassed in the motion set for hearing. Noyes also repeatedly informed the court Rhodes needed appointed counsel and unequivocally stated he did not accept court appointments. Under these circumstances, we are unable to conclude attorney Noyes represented Rhodes on her pending pro se motion. Accordingly, Rhodes cannot claim she was denied counsel by the court's request that attorney Noyes leave the hearing.

V. Conclusion.

We affirm Rhodes's conviction. This is not the "rare case" that allows us to decide Rhodes's ineffective-assistance claim on direct appeal without an evidentiary hearing. *See State v. Straw*, 709 N.W.2d 128, 138 (Iowa 2006). We preserve her claim for possible postconviction relief proceedings.

AFFIRMED.