

No. 1-10-0786

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IN THE
APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS,)	Appeal from the
)	Circuit Court of
Plaintiff-Appellee,)	Cook County.
)	
v.)	No. 07 CR 7943
)	
JOSE CARRILLO,)	Honorable
)	Stanley Sacks,
Defendant-Appellant.)	Judge Presiding.

JUSTICE FITZGERALD SMITH delivered the judgment of the court.
Presiding Justice Lavin and Justice Sterba concurred in the judgment.

ORDER

¶ 1 *Held:* The trial court did not abuse its discretion or deprive defendant of a fair trial when it did not strike a juror for cause where the juror was not a "close acquaintance" of one of the trial prosecutors but merely attended law school with her, had not seen her for 13 years, and affirmed her ability to be impartial. The trial court did not abuse its discretion in denying defendant's motions to proceed *pro se* where his limited education, poor English skills including inability to read English, and susceptibility to accepting legal advice from jail inmates supported a conclusion that he did not sufficiently grasp the consequences of his decision to proceed *pro se*.

¶ 2 Following a jury trial, defendant Jose Carrillo was convicted of three counts of predatory criminal sexual assault and sentenced to consecutive prison terms of 6 years and 8 months each

for a total of 20 years' imprisonment. On appeal, defendant contends that the trial court denied him a fair trial by an impartial jury when it did not strike a juror for cause where the juror was a close acquaintance of one of the prosecutors at trial. He also contends that the court erred in denying his clear request to waive his right to counsel and exercise his right to represent himself.

¶ 3 Defendant was charged with multiple counts of predatory criminal sexual assault and criminal sexual assault allegedly committed against minor Michele T. on multiple occasions between June 1 and August 31, 2006.

¶ 4 Defendant filed a motion to suppress statements, alleging in part that he "due to mental and educational and/or psychological state, capacity and condition *** was incapable and unable to appreciate and understand the full meaning of his *Miranda* rights." When the motion was amended to expand upon other allegations, this allegation was maintained. At the motion hearing, there was evidence that defendant spoke some English and was able to respond coherently in English to questions posed in English but, as he was "more comfortable" speaking Spanish, he was both informed of his *Miranda* rights and questioned in Spanish. The motion to suppress was denied.

¶ 5 As the motion to suppress was pending, the court granted defense counsel's request for a behavioral clinical examination (BCX) of defendant by the court's Forensic Clinical Services office (FCS) to determine his fitness to stand trial and ability to understand *Miranda* warnings. In March 2008, FCS psychiatrist Fidel Echevarria reported that he conducted the BCX and concluded that defendant was fit to stand trial and had the ability to understand his *Miranda* rights. However, defense counsel later reported ongoing "difficulty" communicating with defendant and employed "an expert to do some cognitive testing."

¶ 6 About a month before trial, defendant stated in open court that he wanted to represent himself. The court read the charges to defendant and told him that he could face three

consecutive prison terms of 6 to 30 years each, extendable to 60 years each due to the victim's age, and would have to serve at least 85 percent of the sentence. The court also told defendant that he would have to adhere to the "technical rules governing the conduct of a trial," that the State would be represented by one or more experienced attorneys, that he may fail to raise objections by not being aware of them, that he would not be able to claim on appeal that he was incompetent in representing himself, and that he would be allowed no more time or resources than counsel to prepare for trial. Defendant stated that he understood these admonishments and that he was 48 years old with a sixth-grade education. The court asked defendant if he was certain if he wanted to proceed *pro se*, and he replied affirmatively, although the court noted that his answer was accompanied by a "kind of a shrug." The court asked defendant why he wanted to represent himself, and he answered "I am innocent *** of what they are accusing me of doing" and that he wanted to "say the whole truth" about "what's happening to me." The court explained that counsel could better elicit the truth and prove his innocence than defendant by himself could, emphasized repeatedly that following the advice of fellow jail inmates is a bad idea, and told defendant that it was his constitutional right to represent himself but "it's a very poor decision." When the court asked defendant again if he wanted to proceed *pro se*, he apologized and then, when asked if he wanted to proceed with defense counsel, replied affirmatively.

¶ 7 A few days before trial, defendant filed a written motion to proceed *pro se*. He argued that, to be allowed to proceed *pro se*, he does not have to be competent to represent himself but merely sufficiently competent to make the decision to represent himself. In the motion hearing, the court ascertained from defendant that a fellow jail inmate drafted the motion for him and told him again that following the advice of inmates over that of counsel is unwise. Defendant told the court that he wanted to proceed *pro se* to "tell the whole truth about what happened to me" and complained that counsel "doesn't believe me." The court told him that the trial would commence

as scheduled whether he was proceeding *pro se* or with counsel. When defendant asked for more time to familiarize himself with the case file, the court stated that he would have the intervening weekend to do so and opined that defendant "had two years" and that "it is obvious to me, sir, you don't want to go to trial but you are going to trial next week either with [counsel] or by yourself." The court elicited from defendant that he was 48 years old with a sixth-grade education, read the charges against him and the applicable sentencing provisions, and told him that he had "very good" counsel now. The court reminded him again that he would have to "comply with various technical rules" at trial, would be up against a trained prosecuting attorney, could waive objections he was unaware of, could not raise his own ineffectiveness on appeal, and would be allowed no more time or resources to prepare for trial than counsel would have. The court also told defendant that he would not have standby counsel and could not change his mind and seek counsel in the midst of the trial. Defendant repeatedly acknowledged that he understood these admonishments. Defendant reiterated that he wanted to represent himself, and the court, while emphasizing that he was making a bad decision on bad layman's advice, declared that defendant "wants to go *pro se*" and ordered the State to tender discovery to defendant.

¶ 8 However, the State pointed out that defendant cannot read English and would not be able to read the discovery documents without a translator. Defendant confirmed that he cannot read English and was "going to see who can help me out" in reading the discovery. The court reiterated that defendant had no more than a sixth-grade education and ascertained from him that he had only one prior court case, a domestic dispute in 1991. The court then referred to several opinions of this court requiring the trial court to make careful inquiry into a defendant's ability to represent himself, in light of age, educational level, mental capacity, and prior legal experience, to properly evaluate his capacity to make an intelligent waiver of his right to counsel. Noting the magnitude of this case and defendant's limited education, inability to read English, and reliance

upon an interpreter to communicate orally, the court found that he could not make an intelligent waiver of counsel and denied his motion to proceed *pro se*. Just before trial, the court clarified its ruling, finding that defendant was "mentally fit to stand trial [but] not able to waive his right to counsel under these circumstances." The court added that his motion to proceed *pro se* was untimely, coming well over two years after his arrest and "very late in the proceedings."

¶ 9 At trial, Assistant State's Attorney (ASA) Nancy Galassini was one of the prosecutors. However, she was not present in court for the beginning of jury selection, and when the venire was asked if they recognized any of the participants by appearance or name, none of the venire members responded. During *voir dire*, venire member Gina Anderson told the court that she attended law school with ASA Galassini. When the court asked Anderson if that would affect her ability to be "fair to both sides," she replied that she and ASA Galassini "did our mock trial together." The court asked "so what?" and Anderson replied "I know. I'm sure it's fine." The court asked if she could "be fair and impartial to both sides," and she replied "I believe so," and when the court followed up with "in spite of the fact that you might know [ASA] Galassini from law school days," she replied "Yes." When the court questioned Anderson further, she explained that she attended law school with ASA Galassini 13 years earlier, had not seen her since, was only "vaguely" friends with her during law school, did not socialize with her outside of class, and knew nothing of her reputation as an attorney. When asked again if she could "not hold [her] personal relationship with her against *** defendant," Anderson replied "[s]he has to put on her case, right."

¶ 10 When defendant asked to strike Anderson for cause "based on her prior law school relationship with [ASA] Galassini," the court denied the strike, noting that "there was no relationship" and "she hadn't seen her for 13 years." Defendant still had two peremptory challenges left at that point and used them against two other venire members, so that Anderson

was empaneled as a juror. When ASA Galassini came to court for the first day of trial testimony, defendant had the court ask juror Anderson if she could identify ASA Galassini, and she did.

¶ 11 Briefly stated, the evidence at trial was defendant, who in the summer of 2006 was living with Durinda (or Dorinda) Buchanan, Michele's mother and defendant's then-girlfriend, on three separate occasions sexually assaulted then-eight-year-old Michele. Subsequently, Tracie Burns, who knew Michele since birth as she (Tracie) was the sister of one of Buchanan's boyfriends, became Michele's guardian. Michele, 11 years old at the time of the trial, identified defendant at trial and testified to the assaults. Tracie testified that, on January 25, 2007, when Michele was already living with her at Buchanan's behest, Michele told her that defendant had sexually assaulted her. Tracie also testified that Michele was skipping school and "acting out" when Buchanan gave Michele over to her care. School social worker Amy Fournier, pediatrician Emily Siffermann of the Children's Advocacy Center (CAC), and Christine Escobar of the CAC testified that Michele told them (separately, on January 25 for Fournier and in February for Escobar and Dr. Siffermann) that defendant had sexually assaulted her. Police detectives Manuel De La Torre and Eileen O'Donnell testified that defendant gave a statement in March 2007 admitting to sexually assaulting Michele twice. Outside the jury's presence, defendant was admonished at length on his right to testify and chose not to testify. Upon this evidence, the jury (with Anderson as foreperson) found defendant guilty of three counts of predatory criminal sexual assault.

¶ 12 Defense counsel filed a post-trial motion alleging in part that the court erred in denying defendant's (1) request to strike juror Anderson for cause and (2) motion to proceed *pro se*.

¶ 13 Defendant filed another motion to proceed *pro se*, accompanied by a motion to appoint new counsel and his *pro se* supplemental motion for a new trial. In the latter, he alleged that he had told counsel that Buchanan and her sister had fabricated the allegations against him and that

they had revealed the fabrication to a friend named Shara, who in turn told defendant during a jail visit. However, counsel did not subpoena the jail visitor logs to learn Shara's full name, nor did she cross-examine Burns about her role in the fabrication or call Buchanan as a witness. He also alleged that counsel "interfered" with his right to testify at trial. Lastly, he challenged the denial of his right to self-representation and the failure to strike Anderson from the jury for cause.

¶ 14 The court denied the motions to proceed *pro se* and to appoint new counsel, stating that defendant was unable to waive his right to counsel not due to his mental capacity but his "lack of education, *** basic decision to listen to advice of others who are not trained in what they are doing, and [his] desire not to proceed to trial at all." When defendant reiterated his complaint that counsel did not believe him and "would not pay attention to me," the court noted that he had raised that claim earlier.

¶ 15 The court heard and denied counsel's post-trial motion and defendant's *pro se* post-trial motion. The court reiterated that it found him unable to waive counsel due to his lack of education, reliance on advice of jail inmates, and the lateness of his motion to waive counsel. Regarding juror Anderson, she had not seen ASA Galassini in years and she swore that she could be fair. As to the evidence allegedly supporting his claim of conspiracy or fabrication, the court noted that defense counsel had argued at trial that Michele fabricated her testimony but the jury concluded otherwise. As to defendant's right to testify, the court noted that it admonished him that it was his right and not counsel's to waive or exercise, and the court rejected his claim that counsel told him to waive his right to testify and to answer the court's questions as he did.

¶ 16 Following evidence and arguments in aggravation and mitigation, the court sentenced defendant to three consecutive prison terms of 6 years and 8 months, for a total of 20 years. Defendant's post-sentencing motion was denied, and this appeal timely followed.

¶ 17 On appeal, defendant contends that the trial court deprived him of his right to a fair trial by an impartial jury when it did not strike juror Anderson for cause where she was a close acquaintance of ASA Galassini, one of the prosecutors at trial.

¶ 18 A defendant has the right to a trial before an impartial and unbiased jury; that is, one capable and willing to decide the case solely on the evidence before it. *People v. Runge*, 234 Ill. 2d 68, 102-03 (2009). The standard for juror impartiality is whether the juror had such fixed opinions that he could not judge impartially whether defendant was guilty. *Id.* at 103. It is necessary to consider a prospective juror's statements as a whole rather than in isolation. *People v. Ramsey*, 239 Ill. 2d 342, 419 (2010). The trial court must determine a prospective juror's state of mind from the evidence, rather than from a mere suspicion of bias, and the burden of showing that a prospective juror possesses a disqualifying state of mind is on the party challenging that potential juror. *People v. Smith*, 341 Ill. App. 3d 729, 737 (2003). Because the trial court is in a superior position to gauge the meaning of a prospective juror's responses to examination, its decision whether to excuse a prospective juror for cause is reviewed for abuse of discretion. *Ramsey*, 239 Ill. 2d at 419.

¶ 19 Here, the record squarely contradicts defendant's contention that juror Anderson was a "close acquaintance" of ASA Galassini. While they attended law school together, Anderson clearly stated that they had no social contact outside of their studies. More importantly, she had not seen ASA Galassini in the intervening 13 years, further belying any "close" relationship. While defendant tries to conjure from the lack of enthusiasm in some of Anderson's assertions of impartiality the specter that she doubted her own impartiality, it is clear to us that the court gave Anderson several opportunities to express such a doubt but she did not do so. Under such circumstances, the court did not abuse its discretion in denying defendant's request to strike Anderson for cause, nor was defendant denied his right to an impartial jury.

¶ 20 Defendant also contends that the court erred in denying his clear request to waive his right to counsel and exercise his right to represent himself.

¶ 21 A criminal defendant has a constitutional right to represent himself. *People v. Baez*, 241 Ill. 2d 44, 115 (2011). In order to represent himself, a defendant must knowingly and intelligently relinquish his right to counsel. *Id.* at 115-16. The trial court must accept a defendant's decision to represent himself if it is freely, knowingly, and intelligently made, even if the court considers the decision unwise. *Id.* at 116. Knowing and intelligent choice requires a full awareness of both the nature of the right being abandoned and the consequences of the decision to abandon it. *Id.* at 117. While a defendant need not possess the skill and experience of an attorney in order to choose self-representation competently and intelligently, he should be made aware on the record of the dangers and disadvantages of self-representation so that the record establishes that he knew what he was doing. *Id.* at 117.

¶ 22 Waiver of counsel must be clear and unequivocal, not ambiguous, so that a defendant waives his right to self-representation unless he articulately and unmistakably demands to proceed *pro se*. *Id.* at 116. In determining whether a defendant's statement is clear and unequivocal, a court must determine whether the defendant truly desires to represent himself and has definitively invoked his right of self-representation. *Id.* We must indulge every reasonable presumption against waiver of the right to counsel. *Id.* The purpose of requiring that a defendant make an unequivocal request to waive counsel is to (1) prevent him from appealing the denial of his right to self-representation or the denial of his right to counsel, and (2) prevent him from manipulating or abusing the criminal justice system by vacillating between requesting counsel and requesting to proceed *pro se*. *Id.*

¶ 23 The determination of whether there has been an intelligent waiver of the right to counsel depends upon the particular facts and circumstances of the case, including the background,

experience, and conduct of the defendant. *Id.* We review the trial court's determination for abuse of discretion. *Id.*

¶ 24 Here, defendant's background and experience supported the court's conclusion that he lacked the capacity to intelligently waive his right to counsel. His limited ability to converse in English, and his limited sixth-grade education, were important factors. A key factor was defendant's inability to read and write English, which would have crippled his ability to take the reins of his case only days before trial. Last but definitely not least, defendant repeatedly demonstrated a susceptibility to following the advice of fellow jail inmates, a matter which we agree with the trial court has serious potential to be disastrous to a defendant's case.

¶ 25 In particular, the last two factors – defendant's inability to read English and apparent suggestibility – would have colored, if not distorted, his understanding of the consequences of his decision to waive his right to counsel. It is true that the court twice admonished defendant, pursuant to Supreme Court Rule 401(a) (eff. July 1, 1984), of the charges against him and the potential sentences therefor. However, it is reasonable to conclude that, without the ability to quickly read the volume of documents inherent to a felony case, and with a potentially garbled view of his case and the law derived from lay or even offhand advice, defendant was not aware of the full panoply of consequences of his decision to proceed *pro se*. Stated another way, it is reasonable to conclude that defendant knew what sentence he faced if he were he to be found guilty at trial but did not comprehend how his decision to waive counsel would affect the probability of being found guilty. We find no abuse of discretion in denying defendant's motions to proceed *pro se* under these circumstances.

¶ 26 Accordingly, the judgment of the circuit court is affirmed.

¶ 27 Affirmed.