2019 IL App (1st) 153217-U

THIRD DIVISION
February 27, 2019

Nos. 1-15-3217, 1-15-3218, 1-15-3219 and 1-15-3220, Consolidated

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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. 13 CR 6121
	)	
TONY LYLES,	)	Honorable
	)	Maura Slattery Boyle,
Defendant-Appellant.	)	Judge Presiding.

JUSTICE HOWSE delivered the judgment of the court.
Justices Ellis and Cobbs concurred in the judgment.

ORDER

¶ 1 *Held*: The judgment of the circuit court of Cook County is affirmed; the trial court properly denied defendant's motion to represent himself where defendant stated that he did not understand the charges against him and insisted over a two-year period that because he was of Moorish ancestry, the trial court lacked jurisdiction of his case due to a treaty between Morocco and the United States; later disavowment of that position by defendant's counsel was insufficient to overcome the earlier position; the mittimus is ordered to be corrected to reflect the proper charges for which defendant was convicted and sentenced.

¶ 2 The State charged defendant, Tony Lyles, in separate indictments with four counts of delivery of a controlled substance based on defendant's sale of narcotics to an undercover police officer on four different dates. The circuit court of Cook Count consolidated the cases for trial.

1-15-3217)
1-15-3218)
1-15-3219)
1-15-3220)Cons.

Before trial defendant made multiple requests to proceed *pro se* and repeatedly asserted the trial court lacked jurisdiction over him. The court ordered a behavioral clinical examination to determine defendant's fitness for trial. The examination found defendant was fit to stand trial. After subsequent exchanges with defendant the court denied defendant's request to represent himself at trial. The trial court also required defendant to sit in a separate room where he could monitor the trial due to defendant's frequent disruptions. Following a jury trial, defendant was found guilty of delivery of less than five grams of benzylpiperazine (BZP); delivery of less than 1 gram of heroin and less than 5 grams of BZP; delivery of less than 1 gram of heroin and less than 5 grams of BZP; and possession with intent to deliver of alprazolam, cocaine, heroin, clonazepam, hydrocodone, and BZP. Defendant appeals, arguing the trial court erroneously denied him his right to self-representation, and the mittimus should be corrected to reflect the proper charges for which he was convicted. For the following reasons, we affirm the trial court's judgment and order the mittimus corrected to reflect the proper charges and sentences.

¶ 3 BACKGROUND

¶ 4 The trial court conducted defendant's arraignment on April 10, 2013. As it pertains to this appeal, the State charged defendant in five separate cases with (1) possession of a controlled substance with the intent to deliver and possession of cannabis with intent to deliver on school grounds on February 8, 2013; (2) delivery of a controlled substance on February 12, 2013; (3) delivery of a controlled substance on February 22, 2013; and (4) delivery of a controlled substance on February 28, 2013. The court asked defendant if he had an attorney. Defendant responded he did not, and the court appointed the public defender. The public defender accepted the appointment and waived formal reading of the charges. The trial court explained defendant's

trial rights should the trial proceed in absentia. Defendant stated he understood them. Defendant informed the court he wanted his attorney to file a motion to suppress. Defendant's attorney explained she could not file the motion until she received discovery. The trial court continued the case. The case was continued on subsequent dates for defendant's attorney to meet with defendant and to complete discovery. When the parties appeared in court on July 2, 2013, defendant's attorney and the State agreed on another continuance, which the trial court granted. Defendant then began to address the court. The court interrupted defendant asking if defendant was "going to tell [the court] that due to [defendant's] Moorish ancestry that [defendant is] somehow under the jurisdiction of the United States Constitution." Defendant responded he was, and the court informed defendant that "the treaty of peace and friendship" on which defendant was attempting to rely "only applies to commercial litigations and transactions. It does not apply in cases like this." Defendant continued with his argument that the United States is a corporation but the court interrupted stating: "Mr. Lyles, stop right now, or I am going to hold you in contempt. You are under the jurisdiction of Cook County. It is not a corporation. There is no transaction. *** You do not fall within the purview of [the] treaty [of] friendship;" whereupon proceedings concluded.

¶ 5 Immediately after the trial court called defendant's case on the next court date, defendant began to speak, stating "I'd like to state my status." The court stopped him, stated "[w]e've already been through ***," and ordered defendant taken back into detention and held him in direct contempt of court. After defendant was escorted out his attorney requested and was granted a continuance. When the parties appeared in court on September 19, 2013, defendant's attorney informed the court that defendant had informed his attorney that defendant intended to

proceed *pro se*. The court addressed defendant, and defendant stated "I want to go *pro se*. I wanted to go personal persona for juries." The court informed defendant that before it would allow him to go *pro se* the court would have defendant evaluated to make sure defendant appreciated "everything here." The court ordered a clinical examination (BCX) but defendant continued to address the court, stating he wanted "to go personal persona in my own right, natural right as a human being" and "to preserve my right under prejudice under UCC1-308." The court told defendant he was getting "ahead of the game" and that he had to wait for his evaluation. The court stated it had to make sure he appreciated "everything that's going on here," but if he wanted to represent himself he could. Defendant continued speaking, stating he wanted to reserve his right not to be compelled "to perform under contract or commercial agreement that I did not enter knowingly, voluntarily, or intentionally." The court responded:

> "Here is the thing. Your attempts or anybody's attempts of proceeding under the treaty of peace and friendship is null and void. It does not apply in these cases. You are not a [Moor] citizen. You are under the jurisdiction of this Court. You preserved your right. You put it on the record. You do not think that you fall within the jurisdiction of the United States and/or the State of Illinois. Heard you. It's preserved. You have got it preserved."
>
> Right now BCX."

The court set a return dated and concluded, "So we will see you on the 23rd after your evaluation, and then we will move forward from that; and if you want to represent yourself, Mr. Lyles, you can have that opportunity."

1-15-3217)
1-15-3218)
1-15-3219)
1-15-3220)Cons.

¶ 6 On October 23, 2013, the parties were back in court and the trial court stated the evaluation determined that defendant is fit. Defendant's attorney and the State stipulated to the report that defendant was fit to stand trial. Defendant's attorney informed the trial court she had spoken to defendant after the evaluation report was received and that defendant indicated to his attorney that it was still defendant's desire to represent himself. The trial court confirmed with defendant that he desired to represent himself, then the court proceeded to question defendant. The court asked defendant about his education. The court informed defendant the court would hold defendant to the same standard as an attorney and it would not sign any orders granting defendant additional access to the law library in the jail. The court informed defendant he would have to conduct his research within the rules at the jail and that the court would not appoint standby counsel. The court instructed the public defender to return discovery to the State so that it could be redacted. The court stated "[t]hen we'll have a date, State, which you can get your discovery together so you can tender that to Mr. Lyles."

¶ 7 At that point, defendant stated "I don't really understand the case, though, you know what I'm saying?" Defendant stated, "I don't understand the charges." The court responded, "If you don't understand the charges, the [the public defender] is going to represent you." Defendant replied "It's not the letter of the law [that I don't understand.] It's the nature of the law I don't understand, Your Honor. The Sixth Amendment give me the right to request that the Judge—the Court explain the nature of the case." The court stated, "I did that [at the] arraignment." Defendant stated, "But I didn't understand," and the court informed him that the public defender would assist him with his understanding. Defendant insisted he could represent himself and "it's not the letter of the law, it's the nature of the law that I don't understand."

After additional back-and-forth between the trial court and defendant consisting of defendant stating he did not want the public defender to represent him, he could represent himself, and it was only the "nature of the law" he did not understand, and the trial court explaining it explained the nature of the law at the arraignment and that defendant could not represent himself if he did not understand, the trial court stated:

> "Supreme Court Rule 402, if an individual does not understand the charges, then the Court can make a determination they don't represent you. [*Sic*] So based on your statement here, clearly indicated on the record and your lack of comprehension as to that, [the public defender] is the attorney of record."

The trial court attempted to address defendant's attorney, but defendant interrupted, stating again he did not want his attorney to represent him. The court stated "You can't because you have indicated you don't understand. It's very clear under Supreme Court Rule 402." Defendant continued to protest as the sheriff escorted him out and the proceedings concluded for the day.

¶ 8 When the parties were next in court, they were before a different trial judge. Defendant's attorney informed the trial court about the proceedings to date. Defendant's attorney stated that defendant was refusing to talk to his attorney and wanted to represent himself. Defendant's attorney requested a continuance of the matter to present argument before the first trial judge. The court granted the continuance, whereupon defendant stated discovery was being kept from him and that he wanted to reserve his rights. The trial court told defendant to present his argument at the next court date. At that next date, the case was again before a different trial judge. Defendant's attorney informed the trial court defendant refused to speak to his attorney and still wished to proceed *pro se*. Defendant's attorney informed the court she was hampered in

the sense that defendant's attorney did not know defendant's wishes with respect to the case or whether there were any witnesses. The court indicated its desire to have the first trial judge consider the matter and began discussing a date to continue the case to a date when the first trial judge would be back. Defendant interjected and the following exchange occurred:

> "DEFENDANT: I'm really not in agreement with anything, you know what I'm saying, with y'all talking about. I'm a natural human being, you know what I'm saying, and I don't, you know, incorporate with people of corporation and things of that nature. You know, I stand on the constitution.
>
> THE COURT: As do I. That's why I'm having this conversation with you because I believe it's required by the constitution and I don't want to do anything in dereliction of the constitution.
>
> DEFENDANT: No doubt about it, and that's what I'm basically depending on to go forward with because I'm really puzzled about the nature of the case. Because it appears to me that something like I got a civil suit and I also got a criminal case so to speak, you know what I'm saying, so I'm wondering if this case is civil or criminal.
>
> THE COURT: Here's what we'll do. We'll hold this matter over until December 19. Are you agreeing to that continuance, you represented Mr. Lyles in all these matters?
>
> DEFENDANT: She don't represent me. She didn't say she represented me and I refuse protest that so you can't force her on me like that, your Honor. There's no need to do that.

> THE COURT: You're currently represented by counsel, Mr. Lyles, and you have the right to waive counsel but we are not going to do that today and I anticipate we may well do that on---
>
> DEFENDANT: Well, I object.
>
> THE COURT: Your objection's noted. We may well do that on December 19, '13."

Defendant's attorney then informed the court she would agree to the continuance to December 19, 2013.

¶ 9 When proceedings resumed on December 19, 2013, the parties were back before the original trial judge. When the trial court announced the case defendant immediately objected stating the public defender was not representing him. The court informed defendant it was "not going to have any disruptions" and told defendant to just "stand there for a second." After addressing the State regarding the status of discovery the court turned to defendant's attorney, who informed the court defendant still wanted to proceed *pro se*. The court responded that defendant "does not understand that you [(the public defender)] are representing him, that's it. I'm not going to revisit it." Defendant's attorney stated she wanted to make a record that if defendant does not understand the nature of the charges then he is unfit, and therefore defendant is either fit for trial and can represent himself or he is unfit and cannot represent himself. The court responded: "No. There's cases in which an individual can be fit for trial but the inability to appreciate the procedures and the various proceedings in court does not mean an individual is unfit." The court stopped to admonish defendant to put his documents down because he had a

lawyer and defendant responded "No, I don't." The court warned defendant that it was not going to have a disruption or defendant would be taken out of the courtroom.

¶ 10 Defendant's attorney stated she wanted to make a record that defendant refused to speak to her about the case and although she filed an answer, defendant's attorney was not prepared for trial. Defendant's attorney stated she did not know what kind of trial defendant wanted or whether there were any witnesses because defendant did not want her representation and would like to represent himself. The court then stated as follows:

> "THE COURT: Okay. I have already found that he is fit. Second, I have found that due to his extended—in regards to his inability to appreciate he is not capable to represent himself pursuant to 402.
>
> This is not a unique situation. This is quite rudimentary and happens quite frequently. Just because an individual does not appreciate the procedures and the criminality and or the concepts that are proceeding here does not mean that an individual is unfit.
>
> Whether or not Mr. Lyles chooses to be cooperative with his attorneys to benefit his own behalf, that's completely up to Mr. Lyles. That is of no importance to the court. That is his position that he wishes to take with his attorneys. If he'd like to work with his attorneys he may. If he doesn't then it is completely within his voluntary pre-nature as he wishes to proceed."

As the trial court continued defendant attempted to object. The court warned defendant not to interrupt again. Defendant interrupted the court twice more and the court ordered defendant taken to the back. When the court made that order and was informed defendant could hear the

proceedings through a microphone, it stated it would set the matter for a *Boose* hearing "to determine whether or not his behavior is conducive enough that it will not be disruptive to the administration of justice," then the matter would be set for a jury trial. The court set the date for the *Boose* hearing and the proceedings ended.

¶ 11 On the next court date defendant's attorney filed a motion to reconsider the trial court's order that defendant was not fit to represent himself. Defendant's attorney argued that under United States Supreme Court and Illinois precedent a defendant's right to self-representation may only be overcome by a finding of severe mental illness affecting competency to conduct a trial. Defendant's attorney argued that because there had been no showing defendant suffered from a severe mental illness the court could not, based on what defendant said in court, deem defendant unfit to represent himself. Alternatively, counsel requested a forensic clinical examination "specifically on fitness to represent himself." The court ruled as follows:

> "THE COURT: Counsel, you still in regards to your lack of acknowledgment of Rule 402 in which I went over this ***.
>
> I went over this with Mr. Lyles. I inquired of him. He understood the chances and perils of representing himself. He indicated I did not understand the nature of the charges. Such is unacceptable then if you do not understand the nature of the offense, you're unable to represent yourself in accordance with Rule 402(c).
>
> Court will not reconsider its ruling. The court is well within *Edwards* and Illinois law and Supreme Court rule in regards to the ability and appreciation of

> an individual to understand whether or not what they are charged with and nature of the offense. Mr. Lyles opines he did not."

Defendant's attorney asked to clarify a point for the record. Defendant's attorney stated the trial court had initially indicated defendant would be allowed to proceed *pro se*, then there was additional colloquy during which defendant made statements indicating he did not understand the nature of the charges. Defendant's attorney argued "understanding the nature of the charges against you is expressly a requirement offered for fitness to stand trial," and without an expert opinion that defendant is unfit to represent himself the court cannot, "based on a sentence that someone has made," find defendant unfit to represent himself. The trial court ruled that the "[m]otion to reconsider whether or not he's going to represent himself is denied."

¶ 12 The proceeding continued and the trial court asked the parties the status of discovery. Defendant interrupted, saying he had not received any discovery and added "I don't even know the charges or the number of the charge." The court informed defendant it had read the charges to defendant on the day of his arraignment. Defendant's attorney stated she had attempted to go over the charge on which the State elected to proceed against defendant, but he refused, whereupon the following exchange occurred:

> "DEFENDANT: Reason why I wanted, because you all part of a corporation. I'm here, a natural human being.
>
> THE COURT: You're not a corporation, we are not a corporation.
>
> DEFEDNANT: How can you judge me when I'm a natural human being.

THE COURT: Because you fall under the jurisdiction of the court in regards to—are you asserting anything in regards to the Moroccan Treaty of Peace, are you referring to that, sir?

* * *

DEFENDANT: I know what I'm saying. I'm referring to being a natural human being.

THE COURT: We are not a corporation. Are you investigating?

DEFENDANT: There's no need to be here. Why am I here. In the first place. Why am I here?

THE COURT: Again Mr. Lyles' colloquy, his statement now further indicates why he's unable to represent himself.

DEFENDANT: I can represent myself.

THE COURT: You clearly don't understand the nature of the charges.

DEFENDANT: Up under the common law I need a corporate delecti.

THE COURT: I'm not going to have this interruption anymore. 2-26 by agreement.

DEFENDANT'S ATTORNEY: By agreement.

DEFENDANT: Where's the injured party, where's the corporate delecti."

Whereupon the proceeding ended.

¶ 13 At the next court date, defendant's attorney was not in court and another assistant public defender was standing in. As the trial court attempted to discuss the status of the case defendant "objected" multiple times. At the next court date, defendant's attorney informed the trial court

defendant persisted in his desire to represent himself and that defendant was not consenting to his attorney's representation. The court responded as follows:

> "THE COURT: Right. That right is preserved for appeal due to the fact that his previous responses and his ability to understand the charges. Once that has occurred, you can't unring it, the issue of his appreciation and understanding of the Court's proceedings. Once he indicated he did not -- he was not capable, under 402 admonishments overrule him representing himself. I know you have argued very vociferously on his behalf it is preserved for appeal. He has indicated he did not understand and at some point then nothing has changed. So that there's no situation in which would allow us to unring that bell."

¶ 14 Defendant's attorney began to ask for a continuance to file a motion when defendant objected to the continuance, whereupon the following exchange occurred:

> "DEFENDANT: I would like to discharge my attorney at this particular moment.
>
> THE COURT: Due to the fact of your inability—previous inability and lack of understanding.
>
> DEFENDANT: I don't understand the nature of the case. You haven't explained the nature which don't give you jurisdiction.
>
> THE COURT: It does.
>
> DEFENDANT: You don't have jurisdiction under the common law.

THE COURT: Mr. Lyles, I'm not going to have any interruption. It's not going to be tolerated. You have been afforded your opportunity. Your issues are preserved for appeal. [To defendant's attorney] What date are you seeking ***?

DEFENDANT: I object to—

THE COURT: Again, there's only one attorney.

DEFENDANT: I am a proper persona at this time, suri juri (phonetic).

THE COURT: You can talk to somebody back there in the back who has got the same line, too.

* * *

DEFENDANT: I don't understand.

THE COURT: Clearly you don't understand, that's why you have an attorney. She'll explain it to you.

DEFENDANT: I don't need that attorney. If I come back, I'm coming against my will.

THE COURT: Bring him out here.

Let me set you straight cause you will come back to court, Mr.—don't interrupt me. I'm going to hold you in contempt of Court. I'll sentence you—don't say another word. I've had it with your disruptions. You will not disrupt this Court and you will have respect for this Court. You put yourself in a situation indicating that you don't understand, not me. You will conduct yourself accordingly. I have treated you with respect, you will do it in return. Do not interrupt me. Walk out that door quietly.

DEFENDANT: Is this a civil or criminal case?

THE COURT: This is now direct contempt of court, additional 6 months.

DEFENDANT: Is that civil or criminal? I have an allocation—

THE COURT: ACC, direct criminal contempt, 6 months.

DEFENDANT: Of course it is, but is this case civil or criminal?

THE COURT: [To the assistant public defender] Go explain it to him ***.

ASSISTANT PUBLIC DEFENDER: I am not his attorney."

¶ 15 On May 21, 2014, the parties were back in court before the original trial judge. The assistant public defender originally appointed to represent defendant was no longer with that office, and the trial court announced a different assistant public defender "currently of record" as defendant's attorney, to which defendant objected. The trial court stated: "There's an issue in regards to whether Mr. Lyles in his ability to represent himself. We are sending him for an evaluation at Forensic Clinical Services." Defendant objected and stated that he refused to get examined. Defendant asked why he was there and that he was there against his will. The court responded it told defendant the charges, and defendant responded "I don't understand these charges against me. Why am I here?" The court attempted to explain the evaluation it ordered but defendant kept interrupting. The court set a court date for the evaluation and concluded "and I will have a *** hearing if disruption continues to determine whether or how Mr. Lyles will proceed."

¶ 16 On the next court date, June 25, 2014, the trial court called defendant's case and after the attorneys stated their names for the record defendant immediately began objecting. The court attempted to explain to defendant that if he wanted to represent himself he had to participate in

an evaluation. The court stated, "If you participate and they say that you're fine, then you can represent yourself." Defendant began raising his previous objections to the jurisdiction of the court. The court attempted to explain to defendant that he would be able to make all of his arguments if he participates in the evaluation and is found fit to represent himself, and repeatedly asked if defendant would participate in the evaluation. Defendant continued to challenge the court's jurisdiction and the need for an evaluation and ultimately the court stated "either you participate in this evaluation or [the assistant public defender] is representing you." Defendant refused to participate, and the court stated the assistant public defender is his lawyer. Defendant continued to interrupt the proceedings and the court ordered him taken to a location he could monitor the proceedings via microphone. The case was then continued by agreement.

¶ 17 On October 16, 2014, the trial court conducted a *Boose* hearing to determine whether defendant should be restrained or removed from the court during trial. Defendant was removed to the gallery because of his disruptions prior to the hearing. Following arguments by the parties, the court ruled defendant would be permitted to remain in court unrestrained provided he comports himself appropriately. Later in the proceedings, defendant's attorney clarified with the court that if defendant was not in the courtroom he would be able to monitor the proceedings via microphone and defendant's attorney would have the opportunity to speak to defendant throughout the trial. Defendant's attorney renewed defendant's request to represent himself, which the trial court denied. The court stated, in part, that because of defendant's "indication that he did not understand" the nature of the charges against him, he cannot represent himself.

¶ 18 On a subsequent court date (November 13, 2014), defendant appeared in court but was kept behind a glass partition where he could hear the proceedings through a microphone.

Nonetheless, the record reflects defendant objected at several times during the proceeding as the court and the attorneys discussed the status of the case. Defendant's attorney informed the court defendant still refused to speak to his attorney. The trial court continued the matter to February 4, 2015.

¶ 19 When the parties returned to court on February 19, 2015, after another continuance, defendant's attorney renewed defendant's request to represent himself. Defendant's attorney stated to the trial court that defendant informed his attorney that defendant understands the charges that are against him. The trial court responded:

> "THE COURT: When I asked him that, *** and it was clear from the record he said he did not. That's a situation where once an individual says that they indicate that they do not understand the charges against him, it's hard to remedy that and then say oh, I did, but I don't. It's a situation where I think any appellate court on review would be—it's attempting to unring a bell. It's improbable. I'm just saying that now he may have an appreciation, but at the time—and then it presents an issue.
>
> So given his initial statement, I understand your request for his renewal to represent himself, but given his representation and lack of understanding, which he stated on the record, and I understand what he's indicating to you as his attorney.
>
> Motion for him to represent himself is denied."

Defendant's attorney asked to make a complete record, whereupon the following exchange occurred:

> "DEFENDANT'S ATTORNEY: Mr. Lyles in the back said when he responded to your question about understanding the charges against him, he did not fully understand at that time what you were asking, that he misunderstood what you were saying. He did not believe that you were referring to the actual, as he said, black and white letters of what he's charged with.
>
> So, Judge, given that as his counsel and because he has a right to represent himself, I just have to renew the motion."

The trial court denied the renewed request and continued with a hearing on the State's motion to admit other crimes evidence. Following arguments by the parties the trial court granted the State's motion. Based on that ruling, defendant's attorney moved to consolidate defendant's cases, which the trial court allowed.

¶ 20 On March 20, 2015, the trial court called defendant's case, and defendant's attorney informed the court she attempted to speak to defendant before court, but defendant refused and used profanity towards her stating she was not his attorney. The court indicated its desire to try to have defendant participate in the proceedings and asked deputy sheriffs to try to get defendant to come to the courtroom. Neither the sheriffs nor defendant's attorney were able to convince defendant to participate in the proceeding. The trial court made a record with the sheriffs' supervisors who testified that several attempts were made to try to convince defendant to participate, and that defendant used profanity and became physically aggressive toward several people who asked him to voluntarily appear in court.

¶ 21 On March 31, 2015, when the clerk called defendant's case, he made the following statement:

> "DEFENDANT: I am a free and solvent Moorish-American, born of a flesh and blood mother and father. I am here exercising and enforcing the Friendship Treaty of Peace between Morocco and America 1887 superseded by the Friendship Treaty of Peace 1836. Why am I here? Why am I handcuffed? Why do I got all these people around me?"

The trial court repeatedly asked defendant if he wanted to be in court, but defendant continued to make similar protestations to that quoted above, additionally stating that he was not accepting any representation and that his case must be dismissed.

¶ 22 Before trial began, the trial court brought defendant into the courtroom and asked if he wanted to be present. Defendant responded he was enforcing the treaty of friendship and peace between the United States and Morocco, there was no need for the proceedings to continue, and he objected to any court proceedings and did not need to be there. The court also denied two motions defendant had filed himself. The court then proceeded with defendant's jury trial.

¶ 23 Defendant does not challenge the sufficiency of the State's evidence to convict him. Therefore, we note only briefly that the evidence adduced at defendant's trial was that an undercover police officer, who testified at trial, arranged to purchase narcotics from defendant on three separate occasions. On February 8, 15, and 22, the undercover police officer called defendant and arranged to meet in a given area to purchase heroin. The officer would go to the location, defendant would enter the officer's vehicle and instruct the officer to circle the block, and defendant would sell the officer the narcotics the officer requested in their phone call. On each occasion the officer asked for additional narcotics the officer had not requested during the phone call, defendant retrieved items from a vehicle parked nearby, and defendant returned to the

officer's vehicle with the additional narcotics the officer requested. On February 28, 2013, officers observed defendant manipulating some items in the same vehicle he had removed items from when the undercover officer requested additional narcotics. Officers observed defendant enter a different vehicle and drive away. Officers stopped defendant and arrested him, then they returned to the first vehicle. A police officer observed items he suspected to be narcotics in the vehicle and, using a key taken from defendant, drove it to the police station. Once there, police searched the first vehicle and recovered several different types of narcotics. A forensics expert for the State testified as to the types of narcotics defendant sold the undercover officer on each date and the narcotics seized after defendant's arrest.

¶ 24 Following trial, the jury found defendant guilty of (1) delivery of less than 5 grams of BZP on February 8, 2013, (2) delivery of less than 1 gram of heroin on February 15, 2013, (3) delivery of less than 5 grams of BZP on February 15, 2013, (4) delivery of less than 1 gram of heroin on February 22, 2013, (5) delivery of less than 5 grams of BZP on February 22, 2013, (6) possession with intent to deliver of alprazolam on February 28, 2013, (7) possession with intent to deliver of cocaine on February 28, 2013, (8) possession with intent to deliver of heroin on February 28, 2013, (9) possession with intent to deliver of clonazepam on February 28, 2013, (10) possession with intent to deliver of hydrocodone on February 28, 2013, and (11) possession with intent to deliver of BZP on February 28, 2013. Following a sentencing hearing, the trial court sentenced defendant as follows: "[T]he Class X offense, a plea of not guilty, finding of guilty 15 years Illinois Department of Corrections; on the Class 3s, plea of not guilty, finding of guilty, five years Illinois Department of Corrections. These all merge."

¶ 25 This appeal followed.

¶ 26 ANALYSIS

¶ 27 On appeal, defendant first argues the trial court erred in denying his motion to proceed *pro se* because the BCX revealed defendant did not suffer from a mental illness and was fit to stand trial. Defendant argues his statement that he did not understand the charges was not "an insurmountable hurdle to self-representation." Rather, because he was found fit to stand trial, was not diagnosed with a mental illness, and later stated that he did understand the charges, the trial court wrongfully denied his constitutional right to self-representation requiring reversal and a new trial. Defendant relies on *People v. Sheley*, 2012 IL App (3d) 090933, ¶ 25, interpreting the United States Supreme Court's decision in *Indiana v. Edwards*, 554 U.S. 164, 178 (2008), for the proposition that a court may not deny a defendant the right to self-representation if the record fails to show the defendant suffered from a severe mental illness that would affect the defendant's competency to handle their own defense. We review the trial court's judgment concerning a defendant's request for self-representation for an abuse of discretion. *People v. Garcia*, 2017 IL App (1st) 133398, ¶ 51. A trial court abuses its discretion when its decision on a defendant's election to represent himself or herself is arbitrary and without a logical basis. *People v. Washington*, 2016 IL App (1st) 131198, ¶ 50.

¶ 28 "In the federal courts, the right of self-representation has been protected by statute since the beginnings of our Nation." *Faretta v. California*, 422 U.S. 806, 812 (1975). The United States Supreme Court has "recognized that the Sixth Amendment right to the assistance of counsel implicitly embodies a 'correlative right to dispense with a lawyer's help.' " *Id.* at 814. Further, "[t]he United States Court of Appeals have repeatedly held that the right of self-representation is protected by the Bill of Rights." *Id.* at 816. "And although [defendants] may

conduct [their] own defense ultimately to [their] own detriment, [their] choice must be honored out of 'that respect for the individual which is the lifeblood of the law.' [Citation.]" *Id*. at 834.

¶ 29 Subsequently, in *Edwards*, 554 U.S. at 167, the Court held that the United States Constitution does not forbid a state from insisting that a defendant "found mentally competent to stand trial if represented by counsel but not mentally competent to conduct that trial himself" proceed to trial with counsel. The defendant in *Edwards* had been found incompetent to stand trial because a psychiatrist testified that the defendant, despite being able to understand the charges against him, was "unable to cooperate with his attorney in his defense because of [the defendant's] schizophrenic illness." (Internal quotation marks omitted.) *Edwards*, 554 U.S. at 168. The trial court in *Edwards* committed the defendant and, about eight months later, the hospital reported that the defendant's condition had improved to the point that he was competent to stand trial. *Id*. The defendant asked to represent himself, but the trial court denied his request. *Id*. at 169. The trial court, "[r]eferring to the lengthy record of psychiatric reports," noted that the defendant "still suffered from schizophrenia and concluded that '[w]ith these findings, he's competent to stand trial but *** [not] competent to defend himself.' [Citation.]" *Id*.

¶ 30 The *Edwards* Court addressed the question of "whether the Constitution permits a State to limit [a] defendant's self-representation right by insisting upon representation by counsel at trial—on the ground that the defendant lacks the mental capacity to conduct [the] trial defense unless represented." *Id*. at 174. The Court concluded that:

> "the Constitution permits judges to take realistic account of the particular defendant's mental capacities by asking whether a defendant who seeks to conduct his own defense at trial is mentally competent to do so. That is to say,

> the Constitution permits States to insist upon representation by counsel for those competent enough to stand trial *** but who still suffer from severe mental illness to the point where they are not competent to conduct trial proceedings by themselves." *Id*. at 177-78.

¶ 31 The *Sheley* court, applying *Edwards*, noted that the record failed to show that the defendant suffered from a "severe mental illness" that would affect his competency to conduct his own defense. *Sheley*, 2012 IL App (3d) 090933, ¶ 25. On the contrary, the defendant in *Sheley* demonstrated to a neurologist and a psychiatrist "that he understood the charges against him, that he was knowledgeable regarding courtroom proceedings, and that he was coherent and capable of participating effectively in a conversation." *Id*. The court found that "[t]he defendant's courtroom demeanor also demonstrated his ability to represent himself." *Id*. ¶ 26. The only evidence of a lack of control by the defendant was an "isolated incident that transpired after the trial court's adverse rulings." *Id*. ¶ 27. The *Sheley* court held that the defendant's "mental and emotional capabilities indicate[d] that he [could] prepare his own defense." *Id*. ¶ 28. The court held that although the defendant may have had difficulty controlling his emotions, he did not "suffer from a severe mental illness that impair[ed] his ability to conduct trial proceedings under the *Edwards* standard. Moreover, nothing in the record demonstrate[ed] that allowing [the] defendant to proceed *pro se* would result in an unfair trial." *Id*. Thus, the court held the trial court had erred in denying the defendant the right to represent himself. *Id*.

¶ 32 Defendant's argument on appeal focuses on the absence of a diagnosis of a severe mental illness but that focus is misdirected in this case. The Supreme Court's "foundational 'self-representation' case [is] *Faretta*." *Edwards*, 554 U.S. at 170. The *Edwards* court did not

abrogate anything in *Faretta*; instead, the *Edwards* court found that "*Faretta* does not answer the question before us both because it did not consider the problem of mental competency ([citation]), and because *Faretta* itself and later cases have made clear that the right of self-representation is not absolute. [Citations.]" *Edwards*, 554 U.S. at 171. The *Edwards* court only addressed "a mental-illness-related limitation on the scope of the self-representation right." *Id.* *Edwards* did not hold, however, that a mental-illness-related limitation is the only limitation on the self-representation right. See *Edwards*, 554 U.S. at 170-71 (citing *Faretta*, 422 U.S. at 834 n 46). In *Faretta*, the Court noted that "[t]he right of self-representation is not a license to abuse the dignity of the courtroom. Neither is it a license not to comply with relevant rules of procedural and substantive law." *Faretta*, 422 U.S. at 834 n 46. *Faretta* also recognized that "the trial judge may terminate self-representation by a defendant who deliberately engages in serious and obstructionist misconduct." *Id.* (citing *Illinois v. Allen*, 397 U.S. 337 (1970)). See also *Garcia*, 2017 IL App (1st) 133398, ¶ 51 ("As stated, a defendant has a constitutional right to represent himself in criminal proceedings. [Citation.] However, he may lose that right by engaging in serious and obstructionist misconduct, or if he cannot make a knowing and intelligent waiver. [Citation.]"). In *Jordan v. Hepp*, 831 F.3d 837, 845 (7th Cir. 2016), the Seventh Circuit Court of Appeals held that a Wisconsin court's decision, that given the defendant's "limited literacy and education, he would 'not [be] able to effectively represent [himself] and present a meaningful defense in this case' " (*Hepp*, 831 F.3d at 842), was "not an unreasonable interpretation of *Faretta* and *Godinez* [*v. United States*, 509 U.S. 389 (1993)] (*Hepp*, 831 F.3d at 845). The *Hepp* court found that the defendant's "problem went well beyond the lack of knowledge of court procedure or an ability to make strategic judgments." *Id.* In the

context of that case, the defendant "was unlikely to be able to avoid confronting the written evidence ***—evidence that was functionally unavailable to him because of his near-illiteracy." *Id.*

¶ 33 The question defendant's argument asks—whether the right to self-representation may be denied *only* where the defendant has a severe mental illness—must be answered negatively. But that is not the question raised by the proceedings below. In this case, the trial court based its judgment on defendant's inability to make a knowing and intelligent waiver of his right to counsel. Specifically, the trial court found that defendant did not understand the nature of the charges against him. Defendant repeatedly stated that he did not understand the charges.

> "For a defendant to invoke the right of self-representation, he or she must 'knowingly and intelligently relinquish the right to counsel.' [Citation.] That is the purpose of Rule 401(a), to ensure a defendant's waiver is knowing and voluntary. [Citation.] Before permitting waiver of counsel, Rule 401(a) requires the trial court determine the defendant understands (1) the nature of the charge; (2) the sentence range, including the penalty to which the defendant may be subjected due to other convictions; and (3) the right to counsel and to have counsel appointed due to indigency. [Citation.]" *People v. Washington*, 2016 IL App (1st) 131198, ¶ 48.

On appeal, defendant argues that defendant's "*lone* statement that he did not understand the charges" does not "preclude his right to self-representation." (Emphasis added.) Defendant argues that the record shows that this statement was based upon defendant's belief that the court did not have jurisdiction over him, and his attorney "clarified that he misunderstood the court's

question and meant to express his belief that he should not have been charged with a crime given his background."

¶ 34 When defendant's attorney allegedly "clarified" what defendant meant when he said he did not understand the nature of the charges, his attorney stated:

> "DEFENDANT'S ATTORNEY: Mr. Lyles in the back said when he responded to your question about understanding the charges against him, he did not fully understand at that time what you were asking, that he misunderstood what you were saying. He did not believe that you were referring to the actual, as he said, black and white letters of what he's charged with."

Defendant's attorney said only that defendant "understands" the charges. Defendant's attorney did not say anything about defendant having based his prior statement on his belief the court did not have jurisdiction over him. Defendant's attorney did not assert that defendant told his attorney that when he said he did not understand the charges he was merely expressing his belief that he should not have been charged with a crime given his background. Based on this record, we cannot say the trial court erred in determining defendant did not understand the nature of the charges against him.

¶ 35 "A defendant may waive this right and proceed without counsel only if he 'voluntarily and intelligently elects to do so.' [Citation.]" *People v. Pike*, 2016 IL App (1st) 122626, ¶ 109. The determination that there has been an intelligent waiver of the right to counsel "is not to be made lightly." (Internal quotation marks omitted.) *People v. Perkins*, 2018 IL App (1st) 133981, ¶ 46 (quoting *People v. Vanderwerff*, 57 Ill. App. 3d 44, 49-50 (1978)). "Courts must indulge in every reasonable presumption against waiver of the right to counsel. [Citations.]"

(Internal quotation marks omitted.) *Perkins*, 2018 IL App (1st) 133981, ¶ 42. In this case the trial court denied defendant's request to represent himself based on its determination defendant did not understand the nature of the charges against him, which itself was based on defendant's repeated assertions that he did not understand the charges. Over the course of several hearings and being told he would not be allowed to represent himself because he did not understand the charges, defendant continued to state he did not understand the charges. At one hearing, defendant's attorney reported that defendant told his attorney he had misunderstood the question on those prior occasions in that he did not understand that the trial court had been asking him if he understood "the actual *** black and white letters of what he's charged with." The trial court found that despite that claim it could not find defendant then had an intelligent understanding of the charges. The trial court did not abuse its discretion.

¶ 36 The "nature of the charge" for purposes of Rule 401(a) is "the essence or general character of the offense." *People v. Walker*, 21 Ill. App. 3d 759, 761 (1974) (citing *People v. Harden*, 78 Ill. App. 2d 431 (1967)). Thus, when asking whether a defendant has been adequately informed of the nature of the charge the question is whether the record as a whole discloses "that the defendant has been advised of the 'essence, general character, kind or sort' of the offense to the extent that the particular defendant before the court deciding on the options available to him has a common understanding of the nature of the charge. [Citations.]" *People v. Diaz*, 15 Ill. App. 3d 280, 283-84 (1973). "[W]hen determining whether a defendant understands the nature of the charge, it is proper for the court to consider the entire record. [Citations.]" *People v. Wright*, 2 Ill. App. 3d 304, 306 (1971).

¶ 37 If we were to construe defendant's statements as reported by his attorney to mean that he understands the "black and white letters of what he's charged with" there is still not a clear showing that defendant understands the essence or general character of the offenses, especially given the totality of the record and defendant's insistence that he should not be in court, which statements were not always qualified by the court's alleged lack of jurisdiction because of defendant's ancestry. Rather than draw these conclusions in favor of finding waiver, the trial court properly indulged every reasonable presumption against waiver. *Id.* In denying defendant's request to represent himself after defendant's attorney informed the trial court defendant had previously misunderstood the question, the court reasoned as follows:

> "THE COURT: And as the Court recalls, I indicate to him—I was reading him the charges, 'Do you understand?'
>
> 'No, I don't understand the charges.'
>
> It was verbatim. So it wasn't as though there was a misapprehension, the Court was clearly reading from the indictment or information as to what Mr. Lyles was being charged with. His 'Now I have a lack of understanding of understanding the question of understanding the charges,' it's become multi-layered, and the lack of appreciation—it's clear on all levels. Now it's he didn't appreciate the question, but now he understands the charges.
>
> Exactly where the Court is supposed to then decide that, the Court finds that given his representation to this Court of him saying 'I don't understand.' It wasn't like 'Repeat the question,' or 'What did you just say?' or 'Could you state that again?' It was, 'No, I don't understand the charges against me.'

> So it's a rather quagmire, if you will, of his representations of him not understanding *** the question about understanding the charges, so at this point, he's still not going to represent himself. [The assistant public defender] is the attorney of record."

Despite defendant's attorney's argument attempting to explain defendant's original position as a misunderstanding, the trial court recognized that defendant's claim of not understanding the question was contravened by his unconditional assertion of not understanding the charges; and in light thereof, the record also demonstrates the difficulty the trial court would face in resolving defendant's claim that he understands the charges but did not understand that what he was being asked if he understood the charges. (As the trial court noted, "It's improbable.") The resolution of these incongruities would have required the trial court to either indulge certain presumptions or at least draw inferences as to defendant's meaning. If the court is to do so it must do so against waiver. *Perkins*, 2018 IL App (1st) 133981, ¶ 42.

¶ 38 Defendant also argues the trial court failed to comply with Rule 401 because it failed to explain the charges to defendant before ruling that his lack of understanding prevented him from representing himself. "The legal issue of whether the court failed to substantially comply with Supreme Court Rule 401(a) admonishments is a question of law that we review *de novo*." *Pike*, 2016 IL App (1st) 122626, ¶ 114. "We note that strict compliance with Rule 401(a) is not necessary in every case. [Citation.] Even where admonishments are prescribed, only substantial compliance—rather than strict compliance—is required. [Citation.]" *Id*. ¶ 112. When the defense raised this argument below, the trial court responded it explained the charges at defendant's arraignment. On appeal, defendant argues that contention is belied by the record

where defendant waived formal reading of the charges. However, before the trial court appointed the public defender to represent defendant, and before the public defender waived formal reading of the charges, the court read the charge and date of occurrence to defendant for each of defendant's cases. This court has held that "admonishing a defendant of all the specific counts against him or her is not required under Supreme Court Rule 401(a)(1)." *Id*. ¶ 121. All that is required is that the defendant be admonished of the nature of the charge. *Id.* In *People v. Robinson,* 28 Ill. App. 3d 757 (1975), the issue was whether there was substantial compliance with the requirement that the trial court personally inform the defendant of the nature of the offense with which the defendant has been charged when the trial court merely names the offense. *Robinson*, 28 Ill. App. 3d at 760. The court held there was substantial compliance in that circumstance. *Id*. at 761. Similarly, here, we find the trial court substantially complied with Rule 401.

¶ 39 The trial court's judgment that defendant did not understand the charges against him and therefore could not make a knowing and intelligent waiver of his right to counsel is not arbitrary and without a logical basis. Defendant stated unconditionally that he did not understand the charges. Defendant's proffered reason for that statement could be found to be implausible but, regardless, required the trial court to make presumptions about defendant's meaning in which case the court was required to indulge all reasonable presumptions *against* waiver. The trial court's ruling demonstrates the court did exactly that. We cannot say the trial court's decision to deny defendant's election to represent himself was arbitrary and without a logical basis, therefore we find no abuse of discretion. *Washington*, 2016 IL App (1st) 131198, ¶ 50. Accordingly, the trial court's judgment denying defendant's request to represent himself is affirmed.

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¶ 40 Next, defendant argues this court should order the clerk to correct the mittimi to correctly reflect the counts on which he was convicted and the class of each felony. "[W]here the defendant's mittimus 'incorrectly reflects the jury's verdict,' this court may 'amend the order to conform to the judgment entered by the court.' [Citation.] Remand is unnecessary, as we may directly order the clerk of the circuit court to correct the mittimus pursuant to our authority under Illinois Supreme Court Rule 615(b)(1). [Citation.]" *People v. Doolan*, 2016 IL App (1st) 141780, ¶ 54.

¶ 41 The jury found defendant guilty of delivery of less than 5 grams of BZP on February 8, 2013, a Class 2 felony. 720 ILCS 570/401(d) (West 2012). The mittimus reflects a conviction for a violation of section 401(d) within 500 feet of a school, a Class 1 felony. 720 ILCS 570/407(b)(2) (West 2012). The mittimus is ordered to be corrected to reflect the proper offense and class.

¶ 42 The jury found defendant guilty of delivery of less than 1 gram of heroin on February 15, 2013, a Class 2 felony. 720 ILCS 570/401(d) (West 2012). The jury also found defendant guilty of delivery of less than 5 grams of BZP on February 15, 2013, a Class 2 felony. 720 ILCS 570/401(d) (West 2012). The mittimus reflects convictions for violations of section 401(d) within 500 feet of a school, Class 1 felonies. 720 ILCS 570/407(b)(2) (West 2016). The mittimus is ordered to be corrected to reflect the proper offense and class.

¶ 43 The jury found defendant guilty of delivery of less than 1 gram of heroin on February 22, 2013, a Class 2 felony. 720 ILCS 570/401(d) (West 2012). The mittimus reflects a conviction for delivery of 1 gram or more but less than 15 grams of heroin, a Class 1 felony. 720 ILCS

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1-15-3220)Cons.

570/401(c)(1) (West 2012). The mittimus is ordered to be corrected to reflect the proper offense and class.

¶ 44 The jury found defendant guilty of possession with intent to deliver of cocaine on February 28, 2013, a Class 1 felony. 720 ILCS 570/401(c)(2) (West 2012). The mittimus reflects convictions for possession with intent to deliver of cocaine, a Class 1 felony (720 ILCS 570/401(c)(2)), and a conviction for possession with intent to deliver of cocaine within 500 feet of a school, a Class X felony (720 ILCS 570/407(b)(1) (West 2012)). Additionally, the jury found defendant guilty of possession with intent to deliver of heroin, BZP, clonazepam, hydrocodone, and alprazolam on February 28, 2013. The mittimus reflects convictions for possession with intent to deliver of clonazepam (count 16 of the indictment), hydrocodone (count 17 of the indictment), and alprazolam (count 19 of the indictment). The mittimus is ordered to be corrected to reflect the proper charges for which defendant was convicted and the proper classes of those offenses.

¶ 45 CONCLUSION

¶ 46 For the foregoing reasons, the circuit court of Cook County is affirmed, mittimi corrected.

¶ 47 Affirmed, mittimi corrected.