2015 IL App (4th) 130942-U

No. 4-13-0942

FILED
August 28, 2015
Carla Bender
4th District Appellate
Court, IL

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from
Plaintiff-Appellee,	)	Circuit Court of
v.	)	Macon County
RICHARD L. CAUDLE,	)	No. 13CF70
Defendant-Appellant.	)	
	)	Honorable
	)	Scott B. Diamond,
	)	Judge Presiding.

JUSTICE KNECHT delivered the judgment of the court.
Presiding Justice Pope and Justice Steigmann concurred in the judgment.

ORDER

¶ 1 *Held*: The appellate court affirmed, concluding the trial court did not abuse its discretion by vacating its prior order appointing standby counsel.

¶ 2 In January 2013, the State charged defendant, Richard L. Caudle, with burglary (720 ILCS 5/19-1(a) (West 2010)). In May 2013, the trial court appointed standby counsel. Within an hour of its ruling, the court recalled defendant's case and vacated its order appointing standby counsel. Following an August 2013 jury trial, defendant was found guilty, and the court sentenced him to six years' imprisonment. Defendant appeals, arguing the court abused its discretion by vacating its prior order appointing standby counsel. We disagree and affirm.

¶ 3 I. BACKGROUND

¶ 4 In January 2013, the State charged defendant by information with one count of burglary (720 ILCS 5/19-1(a) (West 2010)). The State alleged that on January 11, 2013, defendant, without authority, knowingly entered a building located at 704 West Wood Street, Decatur, Illinois, with the intent to commit a theft therein.

¶ 5 At a hearing that same month, before Judge Timothy J. Steadman, defendant indicated he wished to proceed *pro se* with an attorney as his "second chair." The trial court notified defendant that was not an option, and defendant requested to proceed *pro se*. The court informed defendant of his right to have an attorney appointed. Defendant indicated he understood, based on his previous experiences in the criminal courts, an attorney would be better equipped to conduct research, obtain witnesses, and present a defense at trial. The court admonished defendant he would be held to the same standard as an attorney, to which defendant responded, "As long as I'm able to use the law library[,] I'll be all right." The court informed defendant it was the Sheriff who managed the law library, not the court. After reconsidering his decision, defendant requested a public defender, which the court appointed.

¶ 6 In February 2013, Judge Hugh Finson held a preliminary hearing, at which defendant was represented by the public defender's office. The court found probable cause to believe defendant committed the offense charged. After the court's finding, defendant indicated he wished to proceed *pro se*. By examination of the court, defendant indicated he was 50 years old, completed 1.5 years of college, and had prior experience in courtroom proceedings. The court again admonished defendant as to his right to counsel, the consequences of waiving counsel, and the hurdles of presenting a case *pro se*. Defendant indicated he understood the court's admonishments and persisted in his request to proceed *pro se*. Appointed counsel advised

the court defendant was subject to Class X sentencing, requiring a possible sentence between 6 to 30 years. Defendant indicated he understood the possible penalties and persisted in his request to proceed *pro se*. The court found defendant's waiver of counsel was made knowingly, understandingly, and voluntarily. Defendant signed a written waiver of his right to counsel.

¶ 7 In March 2013, defendant *pro se* filed the following motions: (1) "Motion of Indigent," (2) "Motion for Speedy Trail [*sic*]," (3) "Motion To Review All Transcripts," (4) "Motion To Review Evidence," (5) "Motion for Discovery," (6) "Motion [To] Dismiss," (7) "Motion To Supress [*sic*] Statement and Evidence," (9) "Motion for Severance," and (10) "Motion to Subpoena."

¶ 8 In April 2013, Judge Thomas E. Griffith held a hearing on defendant's motions. Defendant stood on his speedy trial motion, which the court granted. Following argument on his motion for discovery and motion to review evidence, the court denied defendant's motions, finding all discovery the State planned to introduce had been tendered to defendant. However, the court also indicated defendant could subpoena the sought after 9-1-1 tape and photos of the building from the police department. Defendant moved for those items to be subpoenaed, which the court granted defendant leave to submit. Following defendant's argument on his motion to review transcripts, the court directed the court reporter to prepare a report of the preliminary-hearing proceeding. Following defendant's argument on his motion to dismiss, the court denied the motion. As to defendant's motion to suppress statement and evidence, defendant asserted he was never read his "*Miranda* rights." See *Miranda v. Arizona*, 384 U.S. 436 (1966). In response, the State asserted defendant's statement was not made "under *Miranda*." The court asked defendant whether he wished to present evidence on this point, to which defendant

responded "[o]ther than it being a verbal conversation, his word against mine in good faith, the court is going to believe him so there is no other evidence I could have other than saying I did not say that." The court denied defendant's motion. Defendant stood on his motion for severance of trial from a codefendant, which the court granted. Finally, as to defendant's motion to subpoena, the court granted defendant leave to subpoena any necessary witnesses or documents. The court set the case for trial.

¶ 9 In May 2013, defendant *pro se* filed the following motions: (1) "Right to a Trial by Jury (Motion)," (2) "Motion for List Witnesses," and (3) "Motion To Subpoena."

¶ 10 That same month, Judge R.C. Bollinger presided over the scheduled jury trial. Prior to trial, the court inquired into whether defendant still wished to proceed *pro se*, to which defendant responded affirmatively. On the court's inquiry, defendant indicated he was 50 years old, mentally sound, had completed 1.5 years of college, and was familiar with court proceedings. The court reiterated the hurdles of presenting a case *pro se*. Defendant persisted in his request. The court *sua sponte* asked defendant if he would like standby counsel. Defendant responded he "would like some assistance in selecting the jury." After the court indicated it would have to continue the matter to appoint counsel, defendant indicated he wished to proceed without standby counsel. Again, the court obtained defendant's written waiver of counsel and found it was made freely, voluntarily, and knowingly.

¶ 11 The trial court proceeded to address defendant's recent motions. After learning defendant did not complete the necessary steps to have subpoenas issued, the court indicated it would consider granting defendant a continuance if defendant thought this evidence was critical to his case, to which defendant requested a continuance. As the matter was going to be

continued, the court, again, *sua sponte* asked defendant whether he would like standby counsel. Defendant responded, "I would like standby counsel *** if I can still represent myself. I need standby counsel to coach me or be beside me in the selection of the jury * * * [b]ecause I do not fully understand that part of the trial." Over no objection, the court continued the matter and appointed standby counsel.

¶ 12 That same day, within an hour of his ruling, Judge Bollinger recalled defendant's case to readdress appointment of standby counsel. The court first, citing *People v. Williams*, 277 Ill. App. 3d 1053, 661 N.E.2d 1186 (1996), highlighted the problems associated with appointing standby counsel. It then listed three factors it should consider in appointing standby counsel: (1) the nature and gravity of the charge; (2) the expected factual and legal complexity of the proceedings; and (3) the abilities and experience of defendant. As to the first factor, the court found there was "[n]othing too complicated about the [burglary] charge," but it did carry significant Class X sentencing ramifications. As to the second factor, after learning the State did not intend to present any scientific evidence, the court found there was no expected factual complexity such that it would prevent defendant from representing himself. As to the third factor, the court indicated it was considering the abilities and experience of defendant, but it specifically did not articulate those abilities and experience on the record. The court, in light of defendant's continued request to represent himself and when considering "all the factors," reversed its prior ruling appointing standby counsel. The court also noted "the potential lack of clarity in the role of counsel" as a factor in its determination. At the conclusion of the hearing, the court notified defendant if he wished to have counsel appointed, it would consider that request.

¶ 13 In June 2013, defendant *pro se* filed a "Motion To Compel Outstanding Discovery." In July 2013, Judge Thomas E. Griffith held a hearing on defendant's motion. The court denied defendant's motion, concluding the State had tendered all outstanding discovery.

¶ 14 In August 2013, Judge Scott B. Diamond conducted a jury trial. Defendant appeared *pro se*. Defendant participated in *voir dire*, during which he used multiple peremptory challenges to exclude jurors, and gave an opening statement.

¶ 15 Officer Lonny Lewellyn testified for the State. Officer Lewellyn testified that on January 11, 2013, he observed defendant through a window inside of a vacant apartment building carrying what appeared to be metal slats to a heat register. Officer Lewellyn knocked on the window to get defendant's attention. Defendant dropped the items and ran toward the front of the building. Officer Lewellyn apprehended defendant in the front of the building. According to Officer Lewallyn, defendant initially stated he found the building's front doors opened and entered to search for scrap metal to sell. Officer Lewellyn stated to defendant, regardless of whether the doors were open, he committed a burglary. Defendant then changed his story and stated he was never inside and when he was stopped he just happened to be walking down the street. Officer Lewellyn testified he entered the building and discovered exposed wiring and plumbing, the heat registers in every room had been removed, and water pipes had been cut away from the baseboards of all the rooms.

¶ 16 Defendant cross-examined Officer Lewellyn. Officer Lewellyn indicated he responded to the building based on an "anonymous call by a neighbor." He never spoke with the neighbor. Officer Lewellyn also admitted he was the only one who saw defendant inside the

building. Officer Lewellyn acknowledged he did not find anything from the building in defendant's possession.

¶ 17 The State next called Pamela Robinson, the owner of the vacant apartment building. Robinson testified she did not give defendant permission to enter the building. On this evidence, the State rested.

¶ 18 Outside the presence of the jury, defendant sought to introduce various exhibits, all of which were denied. Defendant rested without presenting any evidence.

¶ 19 The trial court held a jury-instruction conference. Defendant objected to two of the State's instructions, which the court overruled as no alternative instructions were tendered by defendant.

¶ 20 Defendant gave a detailed closing argument. Defendant asserted he lived four houses from the building. He argued he was never in the building but rather was just walking down the street. Defendant highlighted the State did not admit evidence of what the officer allegedly saw him carrying or the 9-1-1 call. Defendant asserted he "was in the right place, just at the wrong time." Defendant argued the only evidence the State had was the officer's word, which defendant asserted was insufficient to prove him guilty beyond a reasonable doubt.

¶ 21 The jury returned a verdict finding defendant guilty of burglary.

¶ 22 In September 2013, defendant *pro se* filed a "Motion for New Trial." In October 2013, the trial court, Honorable Scott B. Diamond presiding, held a hearing on defendant's motion and sentencing. After argument of the parties, the court denied defendant's motion. As to sentencing, the court found defendant, due to two prior Class 2 felonies, was subject to mandatory Class X sentencing with a term of imprisonment ranging from 6 to 30 years. After

hearing the recommendations of the parties, the court sentenced defendant to the minimum six years' imprisonment with credit for time served in presentence custody.

¶ 23 This appeal followed.

¶ 24 II. ANALYSIS

¶ 25 On appeal, defendant argues the trial court abused its discretion by vacating its prior order appointing standby counsel. Specifically, defendant asserts, in considering the factors governing the appointment of standby counsel (see *People v. Gibson*, 136 Ill. 2d 362, 380, 556 N.E.2d 226, 233 (1990)), the court (1) misapplied the first two factors; (2) failed to consider the third factor; and (3) improperly considered a fourth, superfluous factor. Defendant contends he was prejudiced by the court's error as evidenced by his inability to (1) present documentary evidence, (2) introduce witness testimony, and (3) testify on his own behalf.

¶ 26 "[A] defendant who chooses to represent himself must be prepared to do so." *Williams*, 277 Ill. App. 3d at 1058, 661 N.E.2d at 1190. "A *pro se* defendant does not have a right to standby counsel, but since there is no state statute or court rule to the contrary, such appointment is permissible." *People v. Ellison*, 2013 IL App (1st) 101261, ¶ 42, 987 N.E.2d 837. Our supreme court has outlined the following criteria for a trial court to consider in deciding whether to appoint standby counsel: (1) the nature and gravity of the charge; (2) the expected factual and legal complexity of the proceedings; and (3) the abilities and experience of the defendant. *Gibson*, 136 Ill. 2d at 380, 556 N.E.2d at 233 (1990). This decision is left to the trial court's broad discretion and will not be reversed absent an abuse of discretion. *Ellison*, 2013 IL App (1st) 101261, ¶ 42, 987 N.E.2d 837. "An abuse of discretion will be found only where the trial court's ruling is arbitrary, fanciful, unreasonable, or where no reasonable person would

take the view adopted by the trial court." *People v. Caffey*, 205 Ill. 2d 52, 89, 792 N.E.2d 1163, 1188 (2001).

¶ 27 An hour after its ruling to appoint standby counsel, the trial court recalled the matter for reconsideration. The court, after reviewing *Williams* and applying the *Gibson* factors, vacated its previous order appointing standby counsel. Defendant contends an exploration of the *Gibson* factors reveals the trial court abused its discretion by reversing its decision to appoint standby counsel. We disagree.

¶ 28 As to the nature and gravity of the charge, we generally agree defendant's burglary charge, in light of his record subjecting him Class X sentencing, may be considered serious. However, our courts have also found no abuse of discretion in denying standby counsel where the charges were more severe. *People v. Pratt*, 391 Ill. App. 3d 45, 51, 58, 908 N.E.2d 137, 143, 148 (2009) (finding no abuse of discretion in not appointing standby counsel for defendant convicted of first degree murder and sentenced to 40 years' imprisonment); *People v. Ware*, 407 Ill. App. 3d 315, 352, 943 N.E.2d 1194, 1225 (2011) (finding no abuse of discretion in not appointing standby counsel for defendant charged with attempted first degree murder and aggravated battery and ultimately convicted of attempted first degree murder and sentenced to 25 years' imprisonment).

¶ 29 Next, we consider the expected factual and legal complexity of the proceedings. Here, the facts and law involved with the charge were not complex; defendant was accused of knowingly entering a building without authority with the intent to commit a theft therein. Defendant's defense was straightforward: he was never in the building. Additionally, the State intended to introduce only testimony from the arresting officer and the building's owner. The

State did not intend to introduce expert witnesses or scientific evidence. See *Ware*, 407 Ill. App. 3d at 352, 943 N.E.2d at 1225 (2011) (noting the lack of expert witnesses and scientific evidence in finding the facts and law were not complex.) In fact, we note, defendant addressed the State's lack of evidence during his cross-examination of the officer and in closing argument.

¶ 30 Third, we consider the abilities and experience of defendant. Defendant asserts the trial court failed to consider the third factor. Although the court did not articulate on the record defendant's abilities and experience, it did indicate it considered this factor when reaching its decision. We presume the court applied the law properly and nothing in the record affirmatively indicates the court did not properly apply the law. See *Ellison*, 2013 IL App (1st) 101261, ¶ 47, 987 N.E.2d 837. Defendant previously indicated he was 50 years old, completed 1.5 years of college, and had prior experience in courtroom proceedings. See *Ware*, 407 Ill. App. 3d at 352, 943 N.E.2d at 1225 (noting the defendant was 41 years old and no stranger to criminal proceedings in considering defendant's abilities and experience). Defendant's extensive pretrial motion practice further lent support to his ability to conduct himself during the proceedings. *Ellison*, 2013 IL App (1st) 101261, ¶ 49, 987 N.E.2d 837 (noting the defendant's pretrial discovery and motion practice in considering defendant's abilities and experience). Our review of the *Gibson* factors does not show the court's vacature of its prior order appointing standby counsel was arbitrary or unreasonable.

¶ 31 Finally, defendant asserts the trial court improperly considered the potential lack of clarity in the role of standby counsel in determining whether to appoint counsel. As we stated in *Williams*, 277 Ill. App. 3d at 1059, 661 N.E.2d at 1190, "The appointment of standby counsel frequently creates more problems than it solves." The court considered the *Gibson* Factors and

the policy outlined in *Williams* in reaching its decision. We find no error in the trial court's consideration of the concerns of appointing standby counsel. We reiterate, "In our judgment, consistent with the views expressed by the supreme court in *Gibson*, the trial court's prudent course in most cases is not to appoint standby counsel, even if the *pro se* defendant specifically requests that appointment." *Williams*, 277 Ill. App. 3d at 1061, 661 N.E.2d at 1192.

¶ 32 III. CONCLUSION

¶ 33 We affirm defendant's conviction and sentence. As part of our judgment, we award the State its $50 statutory assessment against defendant as costs of this appeal. 55 ILCS 5/4-2002(a) (West 2012).

¶ 34 Affirmed.