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IN THE COURT OF APPEALS OF IOWA

**FILED**

JAN 28 1987

CLERK SUPREME COURT

STATE OF IOWA

)

Plaintiff-Appellee,

)

vs.

)

VIRGINIA GIOVANNI TENSLEY,

)

Defendant-Appellant.

)

Filed January 28, 1987

6-543  
86-798

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Appeal from the Iowa District Court for Black Hawk County (No. C7006515)

- William P. Evans, Judge.

Defendant appeals from a judgment and sentence for theft in the fourth degree. **AFFIRMED.**

Charles Harrington, Appellate Defender, and John P. Messina, Assistant Appellate Defender, for defendant-appellant.

Thomas J. Miller, Attorney General; Pamela Greenman Dahl, Assistant Attorney General; and Mark W. Fransdal, Assistant Black Hawk County Attorney, for plaintiff-appellee.

Considered by Schlegel, P.J., and Hayden, and Sackett, JJ.

**PER CURIAM****237**

Defendant was charged by a trial information filed February 24, 1986, with theft in the fourth degree contrary to Iowa Code 714.1(1). The alleged theft took place February 12, 1986. On February 24, 1986, the same day the trial information was filed, defendant appeared without an attorney and entered a guilty plea. Defendant claims the plea was taken in violation of her fifth, sixth and fourteenth amendment rights. The basis for her challenge appears to be her contention the record does not show a penetrating and comprehensive inquiry into defendant's waiver of counsel nor any meaningful advisement of the dangers and disadvantages of self-representation.

In evaluating the validity of a defendant's waiver of the right to counsel, it is well established the waiver:

... must not only be voluntary, but must also constitute a knowing and intelligent relinquishment or abandonment of a known right or privilege, a matter which depends in each case "upon the particular facts and circumstances surrounding that case, including the background, experience, and conduct of the accused.

Edwards v. Arizona, 451 U.S. 477, 482, 101 S.Ct. 1880, 1884, 68 L.Ed.2d 378 (1981), (quoting Johnson v. Zerbst, 304 U.S. at 464, 58 S.Ct. at 1023, 82 L.Ed.2d at 14 (1938)).

The defendant was advised of the nature of the charge against her, the range of possible penalties, her right to an attorney, and her right to have an attorney appointed for her if she could not afford to hire one. She was informed the country attorney's office expected to recommend jail time if she pled guilty. She repeatedly stated that she did not want an attorney and that she wanted to plead guilty. The defendant acknowledged that she had a copy of the indictment and she was advised of and waived her privilege against self-incrimination.

The trial court gave the following explanation of rights she would waive by pleading guilty:

THE COURT: You've heard me talk about the Sixth Amendment. That gives you the right to a lawyer whether you can afford it or not. The Court would appoint it at public expense; gives you the right to have a trial and to be judged by twelve fellow citizens. And before you can be convicted — because all of us are presumed innocent until proven guilty beyond a reasonable doubt — twelve of those impartial jurors would have to unanimously agree that they believed the State of Iowa had proved you guilty beyond a reasonable doubt. You'd have the right to take this witness chair and talk to the jury. You'd have the right to call people to come in and to testify on your own behalf, and you would have the right to enforce that request by a subpoena ordering them to testify on your behalf. You would have the right to take the witness stand or not to take the witness stand; and if you didn't take the witness stand, nobody during the trial of that case could comment about that and nobody could tell the jury that Virginia Tensley hadn't taken the witness stand. If somebody said that, the trial would be stopped by the judge immediately. It would be a mistrial. Do you understand?

THE DEFENDANT: Yes.

THE COURT: Now, are you still willing to proceed without having a trial in this matter?

THE DEFENDANT: Yes.

THE COURT: And do you understand that when you plead guilty, there will be no further trial?

THE DEFENDANT: Yes.

The court established the defendant was not under the influence of drugs or alcohol and determined there was a factual basis for the crime. Following the acceptance of the plea, defendant was notified of her right to file a motion in arrest of judgment. The defendant had prior experience with the criminal justice system. The defendant's decision to waive counsel and plead guilty was knowingly, intelligently and voluntarily made. We affirm the conviction.

**AFFIRMED.**