IN THE COURT OF APPEALS OF IOWA

No. 1-267 / 00-0907
Filed May 23, 2001

FILED
MAY 23 2001
CLERK SUPREME COURT

STATE OF IOWA,
Plaintiff-Appellee,

vs.

CAROLINE LOUISE HOWELL,
Defendant-Appellant.

Appeal from the Iowa District Court for Wayne County, James W. Brown, Judge.

Caroline Howell appeals from her conviction and sentence for operating while intoxicated second offense. **AFFIRMED.**

Linda Del Gallo, State Appellate Defender, and David Arthur Adams, Assistant State Appellate Defender, for appellant.

Thomas J. Miller, Attorney General, Martha E. Boesen, Assistant Attorney General, and Alan M. Wilson, County Attorney, for appellee.

Considered by Sackett, C.J., and Huitink and Streit, JJ.

STREIT, J.

Caroline Howell claims the trial court violated her constitutional right of self-representation. We affirm.

I. Background Facts.

Caroline Howell was arrested for operating while intoxicated. Howell filed a pretrial motion that she captioned as follows:

> Request to Retain Pro Se
> Rights / with Legal Counsel
> Request for Trial
> Continuance

In the motion, Howell stated she had "the right to lawfully obtain witnesses in [her] favor," claimed her attorney "had not conducted proper due process of law concerning subpoenas to have persons and records for [her] defense," requested her "trial be continued to a later date so subpoenas [could] be lawfully and timely served," and also requested "Pro Se rights due to [her] attorney's demure and lack of interest in making a defense."

Prior to trial, the trial court questioned Howell about her motion. She explained she had certain people whom she wanted to testify on her behalf and she did not know if her attorney had subpoenaed them. Her attorney told the court whom he had contacted and why he was not subpoenaing all of the people Howell wanted. He later called some of these people as defense witnesses.

The court also asked Howell what she was requesting regarding her "pro se rights":

> THE DEFENDANT: I'm requesting that I be able to have the right to indeed communicate with you personally, as we're doing now, and/or ask questions that my attorney feels is [sic] irrelevant or ridiculous or some of the other terms that he's used to me,

> because I do feel that there is a lot of evidence that leads to assumptions in this case.
>
> THE COURT: Do you want to able to ask questions of witnesses?
>
> THE DEFENDANT: Yes, that my lawyer refuses to ask.

Following this exchange, the court told Howell it would allow her to ask questions. The court explained that when she wanted to ask a particular witness questions she would have to wait until her attorney had finished with his questions and then discuss her potential questions with him and the court. Howell requested to ask additional questions on one occasion. Her attorney eventually asked the questions for her.

Before closing arguments, Howell inquired about the "possibility" of her personally addressing the jury. The court stated she could not address the jury. It did, however, suggest she tell her attorney what she thought he should discuss during his closing argument.

Howell was convicted of operating while intoxicated, second offense. On appeal, she claims she is entitled to a new trial because she was denied her Sixth Amendment right to self-representation. Specifically, she argues the trial court erroneously refused to allow her to question witnesses and to personally address the jury in closing argument.

II. The Merits.

We review Howell's constitutional claim de novo. *See State v. Rater,* 568 N.W.2d 655, 657 (Iowa 1997). The Sixth Amendment affords the accused in all criminal prosecutions the right to assistance of counsel. U.S. Const. amend. VI. This right applies to the states via the Fourteenth Amendment. *Gideon v. Wainwright,* 372 U.S. 335, 341, 83 S. Ct. 792, 795, 9 L. Ed. 2d 799, 803 (1963).

With this right comes a concomitant right of the accused to represent themselves. *Faretta v. California,* 422 U.S. 806, 807, 95 S. Ct. 2525, 2527, 45 L. Ed. 2d 562, 566 (1975). This right to self-representation is not effective until asserted. *See Reese v. Nix,* 942 F.2d 1276, 1280 (8th Cir. 1991). "To invoke his right to represent himself, a defendant must knowingly, intelligently, voluntarily, and unequivocally waive[s] his right to counsel and state[s] his intentions to represent himself." *Hamilton v. Groose,* 28 F.3d 859, 861 (8th Cir. 1994).

Howell did not unequivocally waive her right to counsel and invoke her right to represent herself. *See Hamilton*, 28 F.3d at 861. As the above-discussed facts illustrate, Howell did have some concerns about how her attorney was going to present her case—particularly the witnesses he was going to call and the questions he was going to ask them. She never, however, sought actual control over her case. *Cf. McKaskle v. Wiggins*, 465 U.S. 168, 178, 104 S. Ct. 944, 951, 79 L. Ed. 2d 122, 133 (1984) ("[T]he pro se defendant is entitled to preserve actual control over the case he chooses to present to the jury."). After the court addressed her concerns by allowing her case to proceed to trial on a hybrid-representation basis, she never objected to her attorney's participation in her case. *See State v. Ruesga*, 619 N.W.2d 377, 384-85 (Iowa 2000)(holding, in a case involving hybrid representation, that defendant's right to self-representation was not denied where he "plainly invited counsel's substantial participation in the cross-examination of the State's expert witnesses"). Howell's Sixth Amendment rights have not been violated. We affirm her conviction.

AFFIRMED.