

IN THE COURT OF APPEALS OF IOWA

No. 8-427 / 97-2055
Filed October 29, 1998

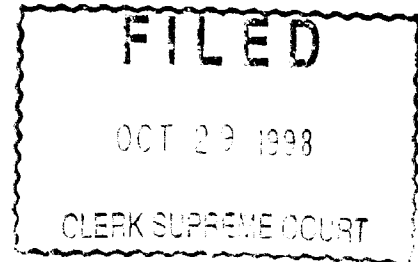
STATE OF IOWA,

Appellee,

vs.

BLAKE ARNOLD TRAPP,

Appellant.



Appeal from the Iowa District Court for Cherokee County, Donavon D.

Schaefer, Judge.

Blake Trapp appeals from his conviction, following a jury trial, for operating while intoxicated in violation of Iowa Code section 321J.2 (1997). **AFFIRMED.**

Linda Del Gallo, State Appellate Defender, and Tricia A. Johnston, Assistant State Appellate Defender, for appellant.

Thomas J. Miller, Attorney General, Martha E. Boesen, Assistant Attorney General, and John A. Wibe, County Attorney, for appellee.

Considered by Huitink, P.J., and Vogel, and Mahan, JJ.

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HUITINK, P.J.

The defendant, Blake Trapp, appeals from his conviction, following a jury trial, for operating while intoxicated in violation of Iowa Code section 321J.2 (1997). He contends he did not knowingly, voluntarily, and intelligently waive his right to counsel. We affirm.

The State charged Trapp with operating while intoxicated following his arrest. A police officer initially observed Trapp drive erratically. Trapp was also unsteady as he exited his car, his breath smelled of alcohol, and he failed a field sobriety test.

Trapp waived his right to counsel. He discussed his trial rights and trial procedure at length with the trial judge in chambers, and represented himself in the jury trial. The jury found Trapp guilty and the district court sentenced him to two days in jail plus a \$500 fine.

We review a defendant's claim a constitutional right was violated de novo. *State v. Spencer*, 519 N.W.2d 357, 359 (Iowa 1994). The Sixth and Fourteenth Amendments to the United States Constitution guarantee a criminal defendant the right to assistance of counsel. The United States Supreme Court determined a criminal defendant also has a constitutional right to proceed pro se. *Faretta v. California*, 422 U.S. 806, 807, 95 S. Ct. 2525, 2527, 45 L.Ed.2d 562, 566 (1975). In its discussion of a defendant's right to waive counsel, the court stated:

When an accused manages his own defense, he relinquishes, as a purely factual matter, many of the traditional benefits associated with the right to counsel. For this reason, in order to represent himself, the accused

must “knowingly and intelligently” forgo those relinquished benefits. *Johnson v. Zerbst*, 304 U.S. at 464-65, 58 S.Ct. at 1023. Cf. *Von Moltke v. Gillies*, 332 U.S. 708, 723-724, 68 S.Ct. 316, 323, 92 L.Ed. 309 (plurality opinion of Black, J.). Although a defendant need not himself have the skill and experience of a lawyer in order competently and intelligently to choose self-representation, he should be made aware of the dangers and disadvantages of self-representation, so that the record will establish that “he knows what he is doing and his choice is made with eyes open.” *Adams v. United States ex rel. McCann*, [317 U.S. 269, 279, 63 S.Ct. 236, 242, 87 L.Ed. 268, --- (1942)]

Faretta, 422 U.S. at 835, 95 S. Ct. at 2541, 45 L.Ed.2d at 581-82.

The Iowa Supreme Court recently discussed *Faretta* and considered the inquiry a court must make before allowing a defendant to waive the constitutional right to counsel in *State v. Rater*, 568 N.W.2d 655, 658 (Iowa 1997). In *Rater*, the defendant first waived his right to counsel, then after the court-appointed stand-by counsel, claimed he felt unqualified to represent himself. The supreme court held the trial court conducted an insufficient inquiry to ensure Rater’s waiver of counsel was “intelligent, done knowingly with an awareness of the pitfalls inherent in self-representation, and that the defendant was competent to make that decision.” *Id.* at 662. The supreme court also held the trial court erred in denying Rater’s later waiver of his right to proceed pro se. *Id.*

In this case Trapp contends the district court failed to obtain a knowing, intelligent, and voluntary waiver of his right to counsel because it did not ensure he was aware of the danger and disadvantages of self-representation. The State responds the inquiry required for a valid waiver in this case did not need to be very specific

because the nature of the offense was readily understandable, the case was not complex, and the State only called one witness, the arresting officer. *See State v. Hindman*, 441 N.W.2d 770, 772 (Iowa 1989) (degree of inquiry required to assure valid waiver varies with nature of offense and ability of accused to understand process).

From our de novo review of the record, we find the colloquy in chambers sufficiently informed the defendant of his rights at trial and the difficulty of self-representation to meet the requirements of *Faretta*, *Rater*, and *Hindman*. We find the defendant knowingly and intelligently waived his right to counsel and asserted his right to proceed pro se. We also find the trial court and the State took great care at trial to ensure the defendant did not stumble into any of the “pitfalls inherent in self-representation.” *Rater*, 568 N.W.2d at 662.

The defendant asks us to overrule *Hindman* as “out of step with U.S. Supreme Court case law such as *Faretta*.” We find no merit in the defendant’s claim. We also note the supreme court stated in *State v. Eichler*, 248 Iowa 1267, 1270, 83 N.W.2d 576, 578 (1957): “If our previous holdings are to be overruled, we should ordinarily prefer to do it ourselves.”

AFFIRMED.