IN THE COURT OF APPEALS OF IOWA

No. 0-2001 / 98-956
Filed April 28, 2000

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CLERK SUPREME COURT

STATE OF IOWA,
Plaintiff-Appellee,

vs.

STEPHEN ANDRE TAYLOR,
Defendant-Appellant.

Appeal from the Iowa District Court for Jones County, Larry Conmey, Van D. Zimmer, L. Vern Robinson, and Kristin L. Hibbs, Judges.

The defendant appeals his conviction and sentence, following a jury trial, for interference with official acts causing bodily injury. **REVERSED AND REMANDED.**

Jeffrey M. Ireland of Kirkley Law Offices, Cedar Rapids, for appellant.

Thomas J. Miller, Attorney General, Martha E. Boesen, Assistant Attorney General, Connie S. Rickles, County Attorney, and Charles W. Larson, Jr., Assistant County Attorney, for appellee.

Heard by Huitink, P.J., and Streit and Miller, JJ. Zimmer, J., takes no part.

HUTTING, P.J.

I. Background Facts and Proceedings.

Inmate Stephen Taylor was charged with committing felony interference with official acts as an habitual offender following an altercation with a correctional officer at the Iowa Men's Reformatory. Taylor denied the charges against him, claiming he acted in self-defense.

At Taylor's written request, the district court removed counsel appointed to represent Taylor, and Taylor was permitted to represent himself with the assistance of standby counsel. Taylor's subsequent motions to secure removal of standby counsel and appointment of new standby counsel were denied.

In a pretrial motion to suppress Taylor sought exclusion of an incriminatory statement attributed to him in a report prepared by a correctional officer incidental to the altercation resulting in the charges against Taylor. The State conceded the merits of Taylor's motion and, in a report filed with the court, the State indicated it would not attempt to introduce Taylor's purported statement that: "five years have been a frustration, he [the correctional officer] just happened to be the wrong guy in the wrong place." This statement nevertheless became an issue when, during the State's cross-examination of Taylor, he was asked, "Did you ever tell anyone that this occurred because of five years of pent up frustration?" Taylor answered, " I don't recall that."

Taylor's subsequent objection and motion for a mistrial were allowed to precede the answer. The district court overruled the objection and motion for mistrial but precluded further inquiry concerning Taylor's alleged statement.

Other trial issues included the necessity for Taylor's physical restraint during the trial. The record indicates the district court denied Taylor's request for removal or modification of the restraining devices used to transport him from his place of confinement to the courtroom. As a result, Taylor's physical restraints were visible to the jury throughout the trial.

Following trial, the jury found Taylor guilty of the lesser-included misdemeanor offense of interference with official acts causing injury. Taylor was sentenced to an indeterminate term not to exceed two years consecutive to the fifty-year term he was already serving.

On appeal Taylor argues the district court erred by allowing him to represent himself at trial without determining whether he made a knowing, voluntary, and intelligent waiver of his right to counsel. Next he argues the district court erred by failing to grant his motion to remove or modify physical restraints during his trial. Finally, he contends the district court erred by failing to declare a mistrial when the prosecutor referred to Taylor's statement that was to be excluded by agreement.

II. Standard of Review.

To the extent Taylor's claims implicate his constitutional rights, our review is de novo. *State v. Rater*, 568 N.W.2d 655, 657 (Iowa 1997). The trial court's ruling on evidentiary issues and motions for a mistrial are reviewed for an abuse of discretion. *State v. Hubka*, 480 N.W.2d 867, 868 (Iowa 1992).

[redacted] of Right to Counsel

In *State v. Stephenson*, ___ N.W.2d ___, ___ (Iowa 2000), the court recited the law applicable to this issue. The court said:

> The Sixth Amendment to the United States Constitution guarantees an accused the right to legal representation. *Faretta v. California*, 422 U.S. 806, 807, 95 S. Ct. 2525, 2527, 45 L. Ed. 2d 562, 56 (1975); *Rater*, 568 N.W.2d at 658. In accordance with this right a criminal defendant may opt to proceed without an attorney and to conduct his or her own defense. *Faretta*, 422 U.S. at 819, 95 S. Ct. at 2533, 45 L. Ed. 2d at 572; *Rater*, 568 N.W.2d at 658. However, before a trial court honors an accused's request to waive the right to counsel, it must satisfy itself the defendant's election is voluntary, knowing, and intelligent. *Faretta*, 422 U.S. at 835-36, 95 S. Ct. at 2541, 45 L. Ed. 2d at 582; *Rater*, 568 N.W.2d at 658 (a waiver must also be unequivocal). In making this determination courts are required to engage the accused in a colloquy sufficient to apprise a defendant of the dangers and disadvantages inherent in self-representation. *Patterson v. Illinois*, 487 U.S. 285, 298-99, 108 S. Ct. 2389, 2398, 101 L. Ed. 2d 261, 276-77 (1988); *Faretta*, 422 U.S. at 835-36, 95 S. Ct. at 2541, 45 L. Ed. 2d at 582; *Von Moltke v. Gillies*, 332 U.S. 708, 723-24, 68 S. Ct. 316, 323, 92 L. Ed. 2d 309, 320-21 (1948); *Rater*, 568 N.W.2d at 658. The degree of inquiry necessary to assure a valid waiver varies with the nature of the offense and the ability of the accused to understand the process. *Rater*, 568 N.W.2d at 660. This colloquy serves a dual purpose. It safeguards the constitutional guarantees of the accused, and by creating a formal record, it insulates the judiciary from claims of abuse.

State v. Stephenson, ____ N.W.2d _____, _____ (Iowa 2000). The court's duty to conduct such an inquiry is absolute. *State v. Cooley*, ___ N.W.2d ___, ___ (Iowa 2000). Failure to conduct an adequate inquiry is reversible error. *Id.* The burden of proving a valid waiver lies with the State. *Id.*

Contrary to the State's contention, the record fails to disclose that the court made an adequate inquiry concerning Taylor's waiver of his right to counsel. The order granting Taylor's court-appointed counsel permission to

withdraw and appointing standby counsel was entered without any supporting record contemplated by *Farretta*. Subsequent references to Taylor's self-representation were no more than incidental to the subject matter of unrelated motions then under consideration. Moreover, a careful review of the court's only colloquy with Taylor that occurred prior to jury selection indicates it was limited to concerns over Taylor's compliance with relevant procedural rules and the jury selection process. In our opinion, it falls far short of a colloquy sufficient to apprise Taylor of the dangers inherent in self-representation. Because the State has failed in its burden to show Taylor's waiver of his right to counsel was knowingly and intelligently made, the judgment of the district court must be reversed and remanded for a new trial.

Our decision to reverse on this issue eliminates the need to consider the merits of the remaining issues raised on appeal. The judgment of the district court is reversed and remanded for new trial.

REVERSED AND REMANDED.