

IN THE
ARIZONA COURT OF APPEALS
DIVISION TWO

THE STATE OF ARIZONA,
Appellee,

v.

JOHNNY ANGEL SALAZAR,
Appellant.

No. 2 CA-CR 2020-0036
Filed November 8, 2021

THIS DECISION DOES NOT CREATE LEGAL PRECEDENT AND
MAY NOT BE CITED EXCEPT AS AUTHORIZED BY APPLICABLE RULES.
NOT FOR PUBLICATION
See Ariz. R. Sup. Ct. 111(c)(1); Ariz. R. Crim. P. 31.19(e).

Appeal from the Superior Court in Pima County
No. CR20171304001
The Honorable Javier Chon-Lopez, Judge

AFFIRMED

COUNSEL

Mark Brnovich, Arizona Attorney General
Linley Wilson, Deputy Solicitor General/Section Chief of Criminal Appeals
By Karen Moody, Assistant Attorney General, Tucson
Counsel for Appellee

Emily Danies, Tucson

and

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The Moss Law Firm, Tucson
By Vanessa C. Moss
Counsel for Appellant

MEMORANDUM DECISION

Chief Judge Vásquez authored the decision of the Court, in which Presiding Judge Eppich and Judge Brearcliffe concurred.

V Á S Q U E Z, Chief Judge:

¶1 Following a jury trial, Johnny Salazar was convicted of kidnapping, aggravated assault with a deadly weapon, and five counts of sexual assault. The trial court sentenced him to presumptive, concurrent and consecutive prison terms totaling 52.5 years. On appeal, Salazar argues the court erred in allowing him to represent himself. For the reasons stated below, we affirm.

Factual and Procedural Background

¶2 We view the facts in the light most favorable to sustaining the jury's verdicts. *State v. Felix*, 237 Ariz. 280, ¶ 30 (App. 2015). In March 2017, Salazar abducted A.S. at knifepoint after following her out of a restaurant. While taking A.S. to his cousin's house, Salazar sexually assaulted her multiple times. At his cousin's house, Salazar forced A.S. to shower. He then walked her back toward her car and eventually released her. Salazar was subsequently arrested and indicted for one count of kidnapping, one count of aggravated assault with a deadly weapon, and five counts of sexual assault.

¶3 Between March 2017 and November 2017, Salazar was appointed six different attorneys. One attorney withdrew due to caseload, and four withdrew due to irreconcilable differences or disagreements with Salazar. Salazar moved to dismiss his sixth attorney, also due to irreconcilable differences, which the trial court granted in January 2018. Later that same month, the court held a hearing to determine whether Salazar intended to represent himself and, ultimately, appointed a seventh attorney.

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¶4 In February 2018, both Salazar and his attorney sought to terminate the attorney's representation over disagreements about strategy. During a hearing on the matter, Salazar requested that the trial court allow him to represent himself. The court provided Salazar a waiver of counsel form, directing him to review it before the next hearing. The court also advised Salazar of his right to waive counsel and to advisory counsel, reviewed the possible sentencing range, and set a hearing on Salazar's request to proceed pro se and waive counsel. At a subsequent hearing in March 2018, the court affirmed its appointment of Salazar's (seventh) appointed attorney for trial purposes and Salazar became "agitated" and refused to cooperate, resulting in the court having him removed from the courtroom. The court then ordered Salazar's counsel to file a motion under Rule 11, Ariz. R. Crim. P., to determine Salazar's competency to stand trial and represent himself. After a hearing before a different judge, the motion was denied. The trial court appointed an eighth attorney to either serve as Salazar's counsel or advisory counsel, depending on whether it determined Salazar could represent himself. At an April 2018 hearing, the court found Salazar voluntarily waived his right to counsel and appointed a ninth attorney as advisory counsel.

¶5 Shortly thereafter, Salazar's advisory counsel moved to withdraw and following a May 2018 hearing at which Salazar also sought to have his advisory counsel replaced, the trial court appointed a tenth attorney to serve as advisory counsel for Salazar. The court also ordered another evaluation of Salazar under Rule 11 and in October 2018, found Salazar incompetent to stand trial. Two months later, after Salazar's participation in a restoration to competency program, the court found Salazar's competency to stand trial had been restored. The court noted it was still concerned about Salazar's ability to represent himself but agreed to let him do so on the condition that his advisory counsel would step in if the court deemed Salazar was no longer capable. Salazar then filed a series of pre-trial motions that the court denied, finding they lacked any merit or were untimely filed.

¶6 Following a five-day jury trial at which Salazar represented himself with advisory counsel, the jury found Salazar guilty on all counts and also found two aggravating circumstances. Salazar also represented himself at a trial on his prior convictions, while his advisory counsel represented him during sentencing, where he was sentenced as noted above. This appeal followed. We have jurisdiction pursuant to A.R.S. §§ 12-120.21(A)(1), 13-4031, and 13-4033(A)(1).

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Discussion

¶7 Although recognizing the trial court found him competent to stand trial, Salazar argues the court should not have let him represent himself because he was “unable to carry out the basic tasks needed” for his defense. He maintains that “[f]airness and competence do not always go hand in hand and may collide in instances where as presented here, a defendant may not be competent to present his own defense.” We review a trial court’s decision on a defendant’s competency to waive counsel for an abuse of discretion. *State v. Gunches*, 225 Ariz. 22, ¶ 8 (2010).

¶8 A criminal defendant has a constitutional right to waive counsel and represent himself, unless he is mentally incompetent. *Id.* ¶ 9. While competence to stand trial requires that a defendant have a rational and factual understanding of the case against him and be able to consult with his lawyer, self-representation at trial requires the ability to understand the nature of the case; formulate a defense; and engage with the court, counsel, witnesses, and jury. *State v. Ibeabuchi*, 248 Ariz. 412, ¶ 16 (App. 2020). Because a defendant’s lack of capacity to represent himself can affect whether he receives a fair trial, a trial court may deny the right to self-representation if he lacks “sufficient ability to manage the most basic of trial tasks.” *Id.* ¶¶ 18-19; *see also Indiana v. Edwards*, 554 U.S. 164, 176 (2008) (“[A] right of self-representation at trial will not affirm the dignity of a defendant who lacks the mental capacity to conduct his defense without the assistance of counsel.” (internal quotations omitted)). Such a decision is soundly within the court’s discretion. *Ibeabuchi*, 248 Ariz. 412, ¶ 19; *see also Edwards*, 554 U.S. at 177 (“[T]he trial judge . . . will often prove best able to make more fine-tuned mental capacity decisions, tailored to the individualized circumstances of a particular defendant.”). Even if a reviewing court may resolve an issue of competency differently, a trial court does not abuse its discretion if reasonable evidence supports its decision. *State v. Glassel*, 211 Ariz. 33, ¶¶ 27-28 (2005).

¶9 Salazar argues there is substantial evidence that he was not competent to represent himself, stating he went through multiple attorneys before trial, had been previously declared incompetent before his competency was restored, engaged in disruptive and contentious conduct, insisted on filing motions that lacked focus and legal clarity, struggled to properly examine witnesses, and was overall unable to present a coherent defense. Salazar compares his case to *Ibeabuchi*, 248 Ariz. 412, and *State v. Gomez*, 231 Ariz. 219 (2012), where the defendants were not deemed capable of representing themselves. In those cases, the defendants repeatedly

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engaged in disruptive conduct by not following the trial court's instructions or refusing to attend hearings and trial. *Gomez*, 231 Ariz. 219, ¶ 16 (defendant refused to comply with court deadlines and disclosure rules for several years); *Ibeabuchi*, 248 Ariz. 412, ¶¶ 21-23 (defendant refused to attend court, was not responsive to the court's questions, and repeatedly filed frivolous motions).

¶10 In this case, although the trial court expressed concerns about Salazar's ability to represent himself, it allowed him to do so on the condition that his advisory counsel would step in if the court later determined Salazar was no longer capable. But, although Salazar was removed from court after an outburst during a March 2018 hearing and had to be reminded the court would revoke his right of self-representation if he continued to argue with the court on the third day of trial, these instances do not rise to the same level of repeatedly disruptive conduct that justified revoking self-representation in *Ibeabuchi* and *Gomez*.

¶11 The record shows that Salazar was able to manage the most basic of trial tasks in representing himself, including formulating defenses and engaging with the court, counsel, witnesses, and the jury. Before trial, Salazar questioned a potential juror who reported being a victim of sexual assault and argued for a mistrial.

¶12 During trial, Salazar cross-examined the victim about her consumption of alcohol and statements to the police, questioned the victim's mother about the victim's condition when she came home, successfully objected on foundation and leading the witness grounds while the state questioned witnesses, argued the state's evidence had chain of custody and confrontation issues, and moved for a judgment of acquittal. During closing arguments, Salazar challenged the victim's credibility, disputed he had a knife, and noted the lab had not tested all the evidence.

¶13 But Salazar contends his motions were unclear or frivolous and he struggled to examine witnesses. Yet, these difficulties can be attributed to a lack of legal training, which is not required for a defendant to be competent to represent himself. See, e.g., *State v. Cook*, 170 Ariz. 40, 48 (1991) ("While [defendant] certainly lacked a lawyer's skills, the record demonstrates that he was intellectually competent, understood the trial process, and was capable of making . . . rational decisions in managing his case."); *State v. Martin*, 102 Ariz. 142, 146 (1967) ("The test to be applied in determining whether one is legally capable of waiving counsel, however, is clearly [n]ot one of legal skills."). Notably, the court sought to discourage Salazar from representing himself on at least six occasions, stating his

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advisory counsel would be better, he lacked legal training, and he was facing a long prison sentence. Salazar reaffirmed his decision to represent himself in every instance. Because there is reasonable evidence in the record to support the trial court's determination that Salazar was competent to represent himself, it did not abuse its discretion in permitting him to do so.

Disposition

¶14 For the foregoing reasons, we affirm Salazar's convictions and sentences.