In the
Court of Appeals
Second Appellate District of Texas
at Fort Worth

No. 02-23-00036-CR

MALIK ABDULL JEMERSON, Appellant

V.

THE STATE OF TEXAS

On Appeal from the 396th District Court
Tarrant County, Texas
Trial Court No. 1531847D

Before Birdwell, Wallach, and Walker, JJ.
Memorandum Opinion by Justice Birdwell

MEMORANDUM OPINION

Appellant Malik Abdull Jemerson appeals the trial court's judgment adjudicating Jemerson guilty of the offense of forgery and sentencing him to two years' confinement. In one appellate issue, Jemerson contends that the trial court abused its discretion by denying him his right to self-representation. Because we hold that the trial court did not abuse its discretion, we affirm the judgment.

I. Background

In December 2018, pursuant to a plea bargain, Jemerson pleaded guilty to the offense of forgery, and the trial court placed him on six years' deferred adjudication. The State subsequently filed a petition to proceed to adjudication and five amended petitions alleging numerous violations of the terms and conditions of his community supervision. The trial court issued several warrants for Jemerson's arrest and heard the State's petition in February 2023.

At the hearing on the State's petition, Jemerson interrupted the proceedings to inform the trial court that he did not "consent." He acknowledged that he was represented by counsel but argued that he had "made a special appearance," apparently referring to a document he had filed, titled "Notice of Intent to Discharge Attorney of Record—Entry of Appearance of Counsel."[1] Jemerson referred to the

[1]The document requests that Jemerson's attorney of record be discharged and relieved of services. It is not signed by Jemerson himself but by his "authorized representative," who does not appear to be a licensed attorney. The document also names "Christopher J.L. Mosley" and another individual as Jemerson's counsel of

hearing as a civil matter, to the trial court as a Chapter 11 bankruptcy court, and to himself as a "creditor" with rights under the "Universal [sic] Commercial Code." He asserted that he had been denied his "God-given unalienable rights," that the trial court had violated its "oath of office," and that the case was "in default." As the "creditor," Jemerson requested the following:

> I ask you guys to remedy and settle this case. I also have the United States Treasury payment for these -- for these case [sic] because I cannot be in debt. I am the creditor.
>
> I have been fully annexed out of the United States jurisdiction. I have the proof right here. I'm a trust of the state making a special appearance. I'm the executor, the beneficiary, and the trustee of the -- all accounts of Malik Jemerson such that you made trust.

According to Jemerson, the trial court was a "foreign agency" with a "British Accredited Registry" number. He went on to tell the trial court, "You cannot represent legal flesh and blood."

When the trial court instructed the State's counsel to move forward with the evidence on its petition, Jemerson interrupted again and asserted that he did not "consent" to the proceedings and that the trial court was required to "follow bankruptcy law." The trial court attempted to address Jemerson's counsel, directly, but Jemerson interjected that he did not want to be represented by his counsel. When

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record. Mosley appeared at the hearing with Jemerson and represented to the trial court that he was Jemerson's "assistant counsel," though he was not a licensed attorney. Jemerson, however, asserted that Mosley did not have to be a licensed attorney because he had made a complaint with the "Foreign Agents Registry Act."

the trial court sought clarification, Jemerson stated that he wanted to represent himself.

The trial court ultimately held a *Faretta* hearing,[2] denied Jemerson's request to represent himself, and directed the State to proceed with its evidence. At the close of evidence, the trial court found that the State had met its burden of proof and adjudicated Jemerson guilty. This appeal followed.

II. Standard of Review

We review the denial of a defendant's request for self-representation for an abuse of discretion. *Wolfe v. State*, No. 02-22-00132-CR, 2023 WL 4359788, at *4 (Tex. App.—Fort Worth July 6, 2023, no pet.) (mem. op., not designated for publication); *Lathem v. State*, 514 S.W.3d 796, 802 (Tex. App.—Fort Worth 2017, no pet.). In our review, we view the evidence in the light most favorable to the trial court's ruling, and we imply any findings of fact supported by the record and necessary to affirm the ruling when the trial court did not make explicit findings. *Wolfe*, 2023 WL 4359788, at *4; *Lathem*, 512 S.W.3d at 802.

We afford "almost total deference" to the trial court's decision to deny self-representation because the trial judge is in the best position to (1) determine whether a defendant is competent to proceed pro se and (2) evaluate the defendant's credibility and demeanor. *Long v. State*, 525 S.W.3d 351, 369 (Tex. App.—Houston [14th Dist.]

[2]*See Faretta v. California*, 422 U.S. 806, 835, 95 S. Ct. 2525, 2541 (1975) (requiring a court to ensure that an accused who wants to manage his own defense understands the dangers and disadvantages of self-representation).

2017, pet. ref'd) (quoting *Chadwick v. State*, 309 S.W.3d 558, 561 (Tex. Crim. App. 2010)); *Lewis v. State*, 532 S.W.3d 423, 430 (Tex. App.—Houston [14th Dist.] 2016, pet. ref'd) (quoting *Chadwick*, 309 S.W.3d at 561). We will uphold the trial court's ruling on any valid legal theory applicable to the case, even if the trial court articulated a different—or wrong—reason for its ruling. *Martell v. State*, 663 S.W.3d 667, 672 (Tex. Crim. App. 2022); *Wolfe*, 2023 WL 4359788, at *4. This is otherwise known as the "right ruling, wrong reason" doctrine. *Martell*, 663 S.W.3d at 672 (quoting *State v. Herndon*, 215 S.W.3d 901, 905 n.4 (Tex. Crim. App. 2007)); *Wolfe*, 2023 WL 4359788, at *4.

The denial of the right to self-representation is "a structural defect, and 'prejudice is presumed because the trial has been rendered inherently unfair and unreliable.'" *Osorio-Lopez v. State*, 663 S.W.3d 750, 756 (Tex. Crim. App. 2022) (quoting *Williams v. State*, 252 S.W.3d 353, 357 (Tex. Crim. App. 2008)); *see Lathem*, 514 S.W.3d at 802. Thus, such error is not subject to harmless-error review and instead requires reversal. *Lathem*, 514 S.W.3d at 802.

III. Constitutional Right to Self-Representation

"It is well established that every criminal defendant has a constitutional right to the assistance of counsel and the constitutional right to self-representation."[3] *Osorio-Lopez*, 663 S.W.3d at 756 (citing U.S. Const. amend. VI); *see Faretta v. California*, 422 U.S. 806, 819, 95 S. Ct. 2525, 2533 (1975). The two constitutional rights are mutually

[3]These rights extend to a defendant in probation-revocation proceedings. *See Hatten v. State*, 71 S.W.3d 332, 333–34 (Tex. Crim. App. 2002); *Parker v. State*, 545 S.W.2d 151, 155 (Tex. Crim. App. 1977).

exclusive: "[t]o choose one obviously means to forego the other." *Osorio-Lopez*, 663 S.W.3d at 756 (quoting *United States v. Purnett*, 910 F.2d 51, 54 (2d Cir. 1990)); *see Lathem*, 514 S.W.3d at 802 (citing *Faretta*, 422 U.S. at 818–21, 95 S. Ct. at 2532–34).

The right to counsel must be waived, and the right of self-representation must be asserted. *Osorio-Lopez*, 663 S.W.3d at 756 (quoting *Brown v. Wainwright*, 665 F.2d 607, 610 (5th Cir. 1982)). The assertion of the right of self-representation "must be clear and unequivocal." *Id.* Specifically, "the waiver should be made 'knowingly and intelligently,' and [the defendant] should be warned of the 'dangers and disadvantages' accompanying such waiver." *Id.* (quoting *Hatten v. State*, 71 S.W.3d 332, 333 (Tex. Crim App. 2002)). However, "'[c]ourts indulge every reasonable presumption against waiver' of fundamental constitutional rights." *Id.* (quoting *Johnson v. Zerbst*, 304 U.S. 458, 464, 58 S. Ct. 1019, 1023 (1938)); *see Lathem*, 514 S.W.3d at 802. The effectiveness of the waiver of counsel "depends on the totality of the circumstances, which includes considering 'the background, experience, and conduct of the accused.'" *Osorio-Lopez*, 663 S.W.3d at 756 (quoting *Johnson*, 304 U.S. at 464, 58 S. Ct. at 1023). In the case of an invalid waiver, "the right to counsel remains in effect, and a defendant is entitled to counsel." *Id.* If the trial court allows a defendant to represent himself "without a valid waiver of the right to counsel," the defendant has effectively been denied the right to counsel. *Williams*, 252 S.W.3d at 359.

"The record must reflect that the trial court thoroughly admonished the defendant." *Osorio-Lopez*, 663 S.W.3d at 757 (quoting *Collier v. State*, 959 S.W.2d 621,

626 n.8 (Tex. Crim. App. 1997)). In doing so, the trial court is not required to follow any "formulaic questioning" or "script" to "assure itself that an accused who has asserted his right to self-representation does so with eyes open." *Id.* (quoting *Burgess v. State*, 816 S.W.2d 424, 428 (Tex. Crim. App. 1991)). It is not necessary that the defendant have the skill and experience of a lawyer, only that he "is competent to choose to proceed *pro se*." *Id.* (citing *Godinez v. Moran*, 509 U.S. 389, 400–01, 113 S. Ct. 2680, 2687 (1993)).

The Court of Criminal Appeals noted that a defendant's constitutional right to self-representation is not absolute:

> A defendant must be competent before he can knowingly and intelligently waive his right to counsel and represent himself. *Godinez*, 509 U.S. at 400, 113 S.[ ]Ct. [at] 268[7]. The United States Supreme Court has held that the competency to waive the right to counsel is the same as the "competency to stand trial" standard: Whether the defendant has (1) "sufficient present ability to consult with his lawyer with a reasonable degree of rational understanding" and has (2) "a rational as well as factual understanding of the proceedings against him." *Id.* at 396, 113 S.[ ]Ct. [at] 268[5] (quoting *Dusky v. United States*, 362 U.S. 402, 402, 80 S.[ ]Ct. 788, [788–89] (1960)) . . . .

Id.; *see Indiana v. Edwards*, 554 U.S. 164, 178, 128 S. Ct. 2379, 2388 (2008). The states are permitted—but not obligated—to adopt a higher standard. *Osorio-Lopez*, 663 S.W.3d at 757; *see Edwards*, 554 U.S. at 178, 128 S. Ct. at 2388 ("[T]he Constitution permits [s]tates to insist upon representation by counsel for those competent enough to stand trial under *Dusky* but who still suffer from severe mental illness to the point where they are not competent to conduct trial proceedings by themselves."). In Texas,

the Court of Criminal Appeals has said that "the trial judge is in the best position to make the decision of whether a mentally ill defendant is competent to proceed *pro se*." *Osorio-Lopez*, 663 S.W.3d at 757 (quoting *Chadwick*, 309 S.W.3d at 563).

A defendant's self-representation must always respect the "dignity of the courtroom." *Lewis*, 532 S.W.3d at 430 (quoting *Faretta*, 422 U.S. at 834 n.46, 95 S. Ct. at 2541 n.46). "The government's interest in ensuring the integrity and efficiency of the trial at times outweighs the defendant's interest in acting as his own lawyer." *Id.* (quoting *Martinez v. Ct. of App. of Cal., Fourth App. Dist.*, 528 U.S. 152, 162, 120 S. Ct. 684, 691 (2000)). It is therefore within a trial court's discretion to deny a defendant's request for self-representation when the defendant "deliberately engages in serious and obstructionist misconduct" or "abuse[s] the dignity of the courtroom." *Id.* (quoting *Faretta*, 422 U.S. at 834 n.46, 95 S. Ct. at 2541 n.46).

IV. Analysis

Jemerson contends that he unequivocally requested to represent himself and that the trial court's denial of his request was an abuse of discretion and structural error. The State argues that the trial court did not abuse its discretion because Jemerson's statements and conduct at the hearing raised questions about his ability to competently represent himself and whether he would respect the dignity of the courtroom.

During the *Faretta* hearing, the trial court asked Jemerson questions about his educational background. When asked whether he had taken any law school courses, Jemerson responded,

> I don't need to take any courses from a law school. This is commercial law, sir. Like I said, once again, I'm fully competent enough to have my own trust estate.
>
> . . . .
>
> . . . And I have proof of it granted to me by the United States State Department and the U.S. government that stating that I'm fully aware and that I'm the accounts receivable and I'm on the accounts payable.

When asked about specific evidence rules, Jemerson told the trial court that "it's not Article III[, s]o under Chapter 11 bankruptcy laws, you guys are legally debt collectors." He explained that "all crimes are commercial" and that he could "settle" the hearing as a "commercial transaction."

The trial court also asked Jemerson what his potential punishment would be if he were found in violation of his probation, and he responded that "[p]robation doesn't exist on a fictitious entity." Despite referring to himself as a "fictitious entity," he then called himself "a legal flesh and blood sentient man." Jemerson accused the trial court of using "all of the big words" to mask a "debt situation" as criminal.

After further interruptions by Jemerson and multiple attempts by the trial court to gain control of the proceeding,[4] the trial court denied Jemerson's request to represent himself, stating he did not "have sufficient legal knowledge of the Rules of Evidence and everything [] applicable to" trial court proceedings. Jemerson again asserted that he did not want his counsel and said that he would "get a different

[4]The trial judge attempted to address Jemerson several times but was interrupted by Jemerson's outbursts. Jemerson continued speaking over the trial judge until the judge stated, "Mr. Jemerson, when I'm speaking, you need to listen."

attorney." The following exchange occurred when the trial court then asked for the attorney's name:

> THE COURT: Do you have the --
>
> [JEMERSON]: You have to allow me that. You can't force me to have somebody. I have another attorney in mind just for that reason because I know that you and him have something going on.
>
> Now, I -- I would like to settle this debt and remedy this debt. I am the beneficiary and executor of this trustee. Now, the --
>
> THE COURT: Mr. Jemerson.
>
> [JEMERSON]: -- Federal Reserve --
>
> THE COURT: Mr. Jemerson.
>
> [JEMERSON]: -- have been notified --
>
> THE COURT: Mr. Jemerson.
>
> [JEMERSON]: -- securitize me, sir.
>
> THE COURT: When I speak, you need to be quiet because the court reporter has to take everything down and --
>
> [JEMERSON]: I know. That's why I keep talking so when it goes to the higher court and let them know you're not honoring your oath of office.
>
> THE COURT: All right.
>
> [JEMERSON]: This debt needs to remedied [sic] and settled today. I demanded a letter of segregation from him in writing on December 19th.

Jemerson finally told the trial court that the attorney's name was "John Story" but then questioned himself: "Starr. Is it Starr? John Starr." Jemerson claimed that "Starr"

was an expert in commercial law and then argued with the trial court about the nature of the proceeding and whether the trial court had authority.

After further interruptions, and despite the trial court's warning Jemerson—several times—to follow its instructions to remain silent until it was his turn to speak, the trial court had Jemerson removed from the courtroom until he was later called to testify.[5]

Viewing the evidence in the light most favorable to the trial court's ruling, we conclude that the trial court did not abuse its discretion by denying Jemerson's request to represent himself. The trial judge, who was in the best position to evaluate Jemerson's competency and demeanor, apparently did not believe that Jemerson was competent to choose to proceed pro se or that he would respect the dignity of the courtroom. Jemerson believed, among other things, that his criminal probation-revocation hearing was a commercial transaction, that probation did not apply to him because he was a "fictitious entity," that he was a creditor, that he was "a trust of the state," that the trial court was a bankruptcy court, that the trial court was using "big words" to try to mask his "debt situation" as a criminal matter, and that his non-lawyer friend could act as his "assistant counsel." Jemerson repeatedly interrupted the trial judge and made several disruptive outbursts during the proceeding—despite the trial judge's patience and warnings—and his disruptive behavior ultimately led to his

[5]Notably, this did not deter Jemerson from exclaiming from holdover that the trial court was "in default."

removal from the courtroom. He apparently believed himself to be beyond the reach of any criminal court.[6]

Although the trial court stated that it was denying Jemerson's request to represent himself because of his lack of legal and procedural knowledge, the record supports the proposition that the trial court ultimately denied Jemerson's request because of his unusual and disruptive behavior. *See Long*, 525 S.W.3d at 370; *Lewis*, 532 S.W.3d at 431 n.5; *see also Martell*, 663 S.W.3d at 672 (upholding trial court's ruling

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[6]The record indicates that Jemerson belongs to a group of so-called "sovereign citizens" who have plagued courtrooms across the country:

> Courts across the country have encountered their [sovereign citizens] particular brand of obstinacy—not consenting to trial, arguing over the proper format and meaning of their names, raising nonsensical challenges to subject matter jurisdiction, making irrelevant references to the Uniform Commercial Code, and referring to themselves as trustees or security interest holders.

Lewis v. State, 532 S.W.3d 423, 430–31 (Tex. App.—Houston [14th Dist.] 2016, pet. ref'd); *see, e.g.*, *United States v. Benabe*, 654 F.3d 753, 761–64 (7th Cir. 2011); *United States v. Mosley*, 607 F.3d 555, 557–58 (8th Cir. 2010); *United States v. Cochran*, Nos. 2:06 CR 114, 2:09 CV 275, 2009 WL 4638836, at *6–8 (N.D. Ind. Nov. 30, 2009); *United States v. Mitchell*, 405 F.Supp.2d 602, 603–06 (D. Md. 2005); *People v. Miller*, No. F067409, 2015 WL 4029853, at *7 (Cal. Ct. App. June 26, 2015); *People v. Frazier*, No. A134256, 2013 WL 3947765, at *2 (Cal. Ct. App. July 30, 2013); *State v. Thigpen*, No. 99841, 2014 WL 265503, at *2–4 (Ohio Ct. App. Jan. 23, 2014).

When a defendant asserts one of these nonsensical arguments, "it becomes difficult to discern whether he lacks a complete understanding of the proceedings or whether he is simply attempting to subvert them." *Lewis*, 532 S.W.3d at 431 (citing *Mosley*, 607 F.3d at 557–59). The trial court's own evaluation of the defendant is therefore critical. *Id.* We agree with our sister court that in either case, the trial court may deny the defendant's request to represent himself and insist upon appointed counsel. *See id.*

on any applicable legal theory); *cf. Lathem*, 514 S.W.3d at 803 n.17 (distinguishing *Lewis* and noting that appellant never "engaged in calculated obstructionist or obstreperous behavior"). Accordingly, based on Jemerson's statements to the trial court and his behavior during the *Faretta* hearing, we cannot say that the trial court abused its discretion by denying Jemerson's request to represent himself.

We overrule Jemerson's sole issue on appeal.

V. Conclusion

Because we conclude that the trial court did not abuse its discretion by denying Jemerson's request to represent himself, we affirm the trial court's judgment.

/s/ Wade Birdwell

Wade Birdwell
Justice

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Delivered: October 19, 2023