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IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON
DIVISION THREE

STATE OF WASHINGTON, Respondent, v. ERIK JON CSIZMAZIA, Appellant.	))))))))	No. 29924-4-III UNPUBLISHED OPINION

Korsmo, C.J. • Erik Csizmazia appeals his conviction for first degree malicious mischief, arguing the trial court erred by allowing him to represent himself without ordering a competency evaluation and by allegedly making comments on the evidence. Finding no error, we affirm.

FACTS

While in custody at Klickitat County jail, Mr. Csizmazia damaged the door of a holding cell, smeared feces on the walls, purposefully flooded the cell by clogging a toilet, and damaged the floor of the cell, causing toilet water and feces to enter the jail cook's office on the floor below. He was charged with malicious mischief in the first

degree for knowingly and maliciously causing an interruption or impairment of service rendered to the public in violation of RCW 9A.48.070(1)(b).

Mr. Csizmazia expressed his desire to represent himself and at arraignment the trial court engaged Mr. Csizmazia in a lengthy colloquy about his request to waive counsel. The trial court noted that Mr. Csizmazia had waived counsel in an earlier case heard by that court, but advised Mr. Csizmazia that representing himself was an unwise decision. After Mr. Csizmazia affirmed his desire to represent himself, the court found Mr. Csizmazia had knowingly and voluntarily waived his right to counsel.

At a status hearing several weeks later, the prosecutor asked the court for an order for commitment to Eastern State Hospital (ESH) for evaluation, explaining that there were concerns whether Mr. Csizmazia was competent to stand trial or to represent himself. The concerns were based on matters occurring prior to the waiver of counsel: some answers Mr. Csizmazia provided in a monthly offender report, the fact that drugs were found in Mr. Csizmazia's room when he was arrested, and whether a 2007 mental health evaluation deeming Mr. Csizmazia competent might no longer be valid. During this discussion, Mr. Csizmazia became so disruptive that he had to be removed from the courtroom. The court denied the motion for a mental health evaluation, finding that Mr. Csizmazia could assist himself, he had an independent recollection of what occurred, he was able to communicate that recollection, and he understood the consequences of it.

Mr. Csizmazia provided direct testimony at trial. During his direct testimony, the

State objected when he began discussing the fact that first degree malicious mischief requires a showing of $5,000 worth of damage. After the trial court reminded Mr. Csizmazia that he was charged with disruption of services and told him not to discuss damage costs, Mr. Csizmazia attempted to argue this point with the court in front of the jury.

The jury found Mr. Csizmazia guilty of first degree malicious mischief. Mr. Csizmazia timely appeals.

ANALYSIS

Mr. Csizmazia contends the superior court abused its discretion by allowing self-representation because the minimum colloquy requirement for self-representation was not met, and because the court's inquiry to determine Mr. Csizmazia's competency was insufficient. He also claims the superior court erred by making improper judicial comments on the evidence which denied him a fair trial. We address each of these arguments in turn.

Competency

Mr. Csizmazia initially argues the trial court's acceptance of his waiver of counsel was improper because he was misinformed about the seriousness of the charge and the possible penalties, and therefore the minimum colloquy requirement for self-representation was not met. We disagree. Mr. Csizmazia was fully informed of both the seriousness of the charge and the possible penalties he faced.

The Sixth Amendment right to counsel carries with it the implicit right to self-representation. *Faretta v. California*, 422 U.S. 806, 95 S. Ct. 2525, 45 L. Ed. 2d 562 (1975). Article I, section 22 of the Washington Constitution creates an explicit right to self-representation. *State v. Madsen*, 168 Wn.2d 496, 503, 229 P.3d 714 (2010). In order to exercise the right to self-representation, the criminal defendant must knowingly and intelligently waive the right to counsel; that waiver should include advice about the dangers and disadvantages of self-representation. *Faretta*, 422 U.S. at 835. A thorough colloquy on the record is the preferred method of ensuring an intelligent waiver of the right to counsel. *City of Bellevue v. Acrey*, 103 Wn.2d 203, 211, 691 P.2d 957 (1984). The colloquy should, at a minimum, consist of informing the defendant of the nature and classification of the charge, the maximum penalty upon the conviction, and that technical rules apply to the defendant's presentation of his case. *Id.* at 211.

At Mr. Csizmazia's first appearance the court informed him he was charged with one count of malicious mischief in the first degree, a class B felony that is punishable by up to 10 years imprisonment and/or a $20,000 fine. The court reiterated this information at the arraignment hearing prior to accepting his waiver of counsel. During a subsequent status hearing, the court told Mr. Csizmazia that the count was a relatively minor offense and that he would be potentially looking at some jail time, but not prison time, and also ordered the State to provide Mr. Csizmazia with the offender scoring sheets so he could see what the State would be requesting at sentencing if he was convicted. At a pretrial

hearing several weeks later, the court again reminded Mr. Csizmazia of the maximum penalty of 10 years in prison and/or a $20,000 fine.

Mr. Csizmazia understood the seriousness of the charged offenses, including the potential consequences of conviction. The court informed Mr. Csizmazia of the maximum penalty for first degree malicious mischief in the colloquy at his arraignment. He was reminded of that penalty on two other separate occasions. While the statement that the offense was a relatively minor one carrying only potential jail time appears misleading in this context, it did not mislead Mr. Csizmazia about the penalties attached to this charge because it did not arise in that context. Instead, the comment was made in the context of a "strike offense" discussion when Mr. Csizmazia was provided copies of the offender scoring sheet well after he had waived counsel. Mr. Csizmazia has failed to demonstrate that he was misinformed of the nature of the charge and the maximum penalty.

Mr. Csizmazia also claims that the trial court erred in finding that he was competent and able to represent himself without ordering a mental health evaluation. He contends that the court received numerous indications throughout the pretrial hearings suggesting that Mr. Csizmazia had mental issues and given these indications it was premature for the court to declare him competent without obtaining more current mental health information. This matter, too, arose *after* the waiver of counsel at arraignment. Since the court based its competency determination on its personal observations of Mr.

Csizmazia and the State's failure to meet the threshold burden of establishing there was reason to doubt his competency, there was no abuse of discretion.

While courts must carefully consider the waiver of the right to counsel, an improper rejection of the right to self-representation requires reversal. *Madsen*, 168 Wn.2d at 503. Courts should engage in a presumption against waiver of counsel. *Id*. at

504. However,

> [t]his presumption does not give a court carte blanche to deny a motion to proceed pro se. The grounds that allow a court to deny a defendant the right to self-representation are limited to a finding that the defendant's request is equivocal, untimely, involuntary, or made without a general understanding of the consequences. Such a finding must be based on some identifiable fact; the presumption in [*In re Det. of*] *Turay*[,139 Wn.2d 379, 986 P.2d 790 (1999)] does not go so far as to eliminate the need for any basis for denying a motion for pro se status. Were it otherwise, the presumption could make the right itself illusory.

Id. at 504-05. The defendant's "skill and judgment" is not a basis for rejecting a request for self-representation. *Hahn*, 106 Wn.2d at 890 n.2.

Determinations of competence to stand trial are reviewed for abuse of discretion. *State v. Ortiz*, 104 Wn.2d 479, 482, 706 P.2d 1069 (1985). Deference is given to the trial court's determination due to the court's opportunity to observe the defendant's behavior and demeanor. *State v. Hanson*, 20 Wn. App. 579, 582, 581 P.2d 589 (1978).

The court engaged in the required colloquy with Mr. Csizmazia at the arraignment, and found that he knowingly and voluntarily waived his right to counsel. At a status hearing five weeks after the arraignment, the State requested an order for commitment for a mental health evaluation on the basis that there were concerns that Mr. Csizmazia was not competent and that his last mental health evaluation from 2007, which found he had drug-related mental health issues but was competent, might no longer be valid. Mr. Csizmazia objected to the motion, pointing out he was found competent in 2009 in relation to a different trial. The trial court denied the State's request, finding that based

on the court's observations, Mr. Csizmazia could assist himself, he had an independent recollection of the alleged events, he was able to communicate that recollection, and that he understood the consequences of it.

A motion to determine competency must be supported by facts. *State v. Lord*, 117 Wn.2d 829, 901, 822 P.2d 177 (1991). The trial court does not abuse its discretion by declining to order a mental examination and convene a hearing if the trial court is not provided with sufficient information regarding the defendant's competency or if there is no reason to doubt the defendant's competency. *Id.* at 901-04. Whether a formal inquiry into the defendant's competency is warranted depends on all the facts and circumstances known to the court, including "the defendant's appearance, demeanor, conduct, personal and family history, past behavior, medical and psychiatric reports and the statements of counsel." *In re Fleming*, 142 Wn.2d 853, 863, 16 P.3d 610 (2001).

Here, the State did not meet its threshold burden of establishing that there was reason to doubt Mr. Csizmazia's competence. The State supported its motion with an affidavit stating that the State had concerns about Mr. Csizmazia's competency based on several answers he provided in a monthly offender report, the fact that multiple "Spice"[1] packets were found in his room after his arrest, and concern that competency results from a 2007 mental health evaluation might not longer be valid. The State provided a copy of the monthly offender report and the 2007 evaluation results, but did not explain which answers in the offender report caused competency concerns or why the 2007 evaluation

[1] "Spice" is a brand of synthetic marijuana.

might no longer be valid. The State did not present the court with any specific information regarding Mr. Csizmazia's current competency.

Mr. Csizmazia was charged with engaging in some strange behavior at the Klickitat County jail, he was disruptive at the status hearing after the State requested the competency evaluation, and he engaged in an interesting conversation on the record regarding his unique use of a tent stake to protect his body from lasers.[2] However, the trial court observed Mr. Csizmazia in a previous trial as well as at multiple pretrial hearings where he demonstrated the ability to represent himself. The court concluded that Mr. Csizmazia was competent based on its personal observations of him and the State did not present sufficient information to call Mr. Csizmazia's competency into question. Since the trial court determined there was no reason to doubt Mr. Csizmazia's competence based on its observations or the State's affidavit, the court did not abuse its discretion in denying the State's request for a mental health evaluation and finding Mr. Csizmazia competent.

Judicial Comments

Mr. Csizmazia's other argument is that the trial court made improper comments on the evidence on three different occasions. None of the challenged statements were

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[2] Although this exchange took place after both the waiver of counsel and the denial of the motion for the evaluation, Mr. Csizmazia argues this was another indication that the court should have obtained more current mental health information. We disagree that this after the fact commentary, when viewed against the totality of the remainder of proceedings, required the trial court to revisit its earlier rulings.

improper because none of them conveyed the court's opinion as to the evidence or the merits of the case.

Article 4, section 16 of the Washington Constitution provides that, "Judges shall not charge juries with respect to matters of fact, nor comment thereon, but shall declare the law." This section "forbids only those words or actions which have the effect of conveying to the jury a personal opinion of the trial judge regarding the credibility, weight, or sufficiency of some evidence introduced at the trial." *State v. Jacobsen*, 78 Wn.2d 491, 495, 477 P.2d 1 (1970). The court's statements or actions are comments on the evidence if the jury may reasonably infer the court's attitude towards the merits of the case. *State v. Elmore*, 139 Wn.2d 250, 276, 985 P.2d 289 (1999). The reviewing court looks to the facts and circumstances in each case to determine whether the judge's words or actions amount to an improper comment. *Jacobsen*, 78 Wn.2d at 495.

Mr. Csizmazia first takes issue with the trial court's comments during his own direct testimony. He began discussing the $5,000 damage requirement of first degree malicious mischief and the State objected because Mr. Csizmazia was charged with causing an interruption or impairment of service, not causing a set amount of damage. The trial court told Mr. Csizmazia that it would give him some latitude in his testimony but that he could not discuss the damage costs because that was not the basis of the malicious mischief charge. Mr. Csizmazia attempted to disagree, and the court stated, "Mr. Csizmazia, I'm telling you what's true. I'm the judge. I'm looking at the

information. And I'm in control of this aspect of the case." RP at 259-60.

This comment did not convey the court's personal opinion toward the merits of Mr. Csizmazia's case. The reprimand was made after Mr. Csizmazia continued to argue with the court following an evidentiary ruling. Similar rebukes made in similar situations also have been found to not be improper comments. *See, e.g.*, *State v. Haye*, 72 Wn.2d 461, 433 P.2d 884 (1967) (holding that judge's comment to defense counsel to "just keep quiet . . . this is all trivia anyway" was not prejudicial error); *State v. Bowen*, 12 Wn. App. 604, 611, 531 P.2d 837 (1975) (holding that trial court's admonishment to key defense witness of "Will you listen to me a minute? I run this courtroom. You don't. . . . You answer the question and don't interject all of your personal ideas about it," did not amount to comments on the evidence). This statement cannot be construed as a comment on the evidence.

Mr. Csizmazia also challenges the court's statement:

> I'm going to allow you to argue later on if you want. Right now is your opportunity to talk about facts- - . . . . The entire day and a half we've been here the [S]tate has been putting on facts against you, fact after fact after fact. Now is your opportunity to say whatever you want about those facts.

RP 259-60. He claims this exchange was improper because it clearly conveyed the court's feeling as to the truth value of the testimony of the State's witnesses. This statement also was not an improper judicial comment. It was made in the context of the dispute over the damage element of malicious mischief. The court instructed Mr.

Csizmazia he would have an opportunity to argue the law later, but that this was his opportunity to present his testimony regarding the facts of what happened during the alleged incident and to address the State's facts. When the comment is viewed in the context in which it was made it is apparent the court was using the word "fact" to distinguish Mr. Csizmazia's direct testimony from his legal arguments, not to express its acceptance of the State's evidence as the truth.

The final challenge is to the court's statement that "Mr. Csizmazia having not filed a witness list is not entitled to call witnesses at this time, therefore I assume you rest at this point," claiming it conveyed hostility toward Mr. Csizmazia as though he had done something wrong and the jury could infer that the State had proven its case. RP at 291. But this comment was not improper. The court was simply noting that since Mr. Csizmazia did not file a witness list, he could not call any more witnesses and therefore the defense rested. If the court had not mentioned that Mr. Csizmazia failed to file a witness list and simply stated that he was not entitled to call any more witnesses, the jury would have been more likely to infer that the court held a negative personal opinion of Mr. Csizmazia or his case. The jury could not have inferred the court's personal opinion of the merits of Mr. Csizmazia's case from this comment.

The trial court did not make any improper judicial comments on the evidence. The court properly accepted the waiver of counsel and did not abuse its discretion by failing to reconsider that issue after hearing allegations of incompetency. Instead, the record

shows that the trial court exercised great care in once again dealing with Mr. Czismazia's desire to represent himself. There was no error.

Affirmed.

A majority of the panel has determined this opinion will not be printed in the Washington Appellate Reports, but it will be filed for public record pursuant to RCW 2.06.040.

Korsmo, C.J.

WE CONCUR:

Sweeney, J.

Siddoway, J.