

MEMORANDUM DECISION

Pursuant to Ind. Appellate Rule 65(D), this Memorandum Decision shall not be regarded as precedent or cited before any court except for the purpose of establishing the defense of res judicata, collateral estoppel, or the law of the case.



ATTORNEY FOR APPELLANT

Janet Lynn Wheeler
Tatum Law Group, LLC
Indianapolis, Indiana

ATTORNEYS FOR APPELLEE

Theodore E. Rokita
Attorney General for Indiana
Megan M. Smith
Deputy Attorney General
Indianapolis, Indiana

IN THE COURT OF APPEALS OF INDIANA

Sanchez Stephens,
Appellant-Defendant,

v.

State of Indiana,
Appellee-Plaintiff.

April 11, 2022

Court of Appeals Case No.
21A-CR-2073

Appeal from the Miami Superior
Court

The Honorable J. David Grund,
Judge

Trial Court Cause No.
52D01-2005-F5-157

Bailey, Judge.

Case Summary

- [1] Sanchez Stephens (“Stephens”) appeals his conviction, following a jury trial, of battery resulting in bodily injury to a public safety official, as a Level 5 felony.¹ He raises one issue on appeal which we restate as whether the trial court committed clear error when it allowed Stephens to waive legal counsel and represent himself.
- [2] We affirm.

Facts and Procedural History

- [3] On May 26, 2020, the State charged Stephens with battery resulting in bodily injury to a public safety official engaged in official duties, as a Level 5 felony. On January 27, 2021, the trial court held an initial pretrial hearing at which Stephens appeared and asserted that he did not need a lawyer. Stephens stated to the court that he was “an attorney [him]self,” had “a law degree,” and would be “representing [him]self pro se.” Tr. v. 2 at 4. Stephens further asserted at the initial hearing, “I know my rights[,] man[,] I know what I’m doing, thank you.” *Id.* at 6. The trial court then set a date for a hearing regarding Stephens’s request to represent himself, i.e., what is sometimes called a “*Faretta* hearing” in reference to *Faretta v. California.*, 422 U.S. 806 (1975).

¹ Ind. Code § 35-42-2-1(c)(1), (g)(5)(A).

[4] At the February 9, 2021, *Faretta* hearing, the trial court advised and questioned Stephens extensively and under oath regarding Stephens's request to waive his right to legal counsel and represent himself at his criminal trial. Specifically, the trial court advised Stephens of:

- His right to court-appointed counsel and his right to represent himself;
- A “number of defenses” that a trained attorney could raise on his behalf, *Tr. v. 2* at 12;
- The penalties he could face if convicted of the offense with which he was charged;
- The skills that a trained attorney would have in presenting a defense for him;
- The requirement that he follow the same rules and procedures in his case as an attorney would, and the fact that he would not “receive any special treatment with [his] defense” if he chose to represent himself, *id.* at 14;
- The advantage the State would have by being represented by an attorney if Stephens represented himself;
- His inability to later claim he did not have effective counsel if he chose to represent himself;
- The fact that experienced attorneys charged with crimes “almost always decide to be represented by another attorney,” *id.*

To each individual point, above, Stephens responded under oath that he understood the point being made.

[5] In addition, the trial court asked Stephens “what skills or knowledge [he had] that would be helpful to [him] if [he] were to represent [him]self.” *Id.* at 15. Stephens responded that he had an Associate’s degree in criminal justice from “Indiana University[—]Purdue University, Indiana [sic]” and that he had “hands on” experience in the criminal justice system. *Id.* Stephens further testified that he was “[a]rticulate, knowledgeable, and intelligent enough to represent [him]self in [t]rial.” *Id.* at 16. He testified that he could “quickly become familiar with large numbers of special rules and procedures and use them the right way in a pressure ... situation such as a [t]rial.” *Id.* Stephens affirmed that he had not been promised special treatment or a milder sentence in exchange for representing himself, nor had he been threatened with harm if he chose to have an attorney.

[6] The trial court next advised Stephens of the advantages of having standby counsel to advise him if he chose to represent himself. Stephens objected to the appointment of standby counsel. Stephens asked the court the name and purpose of the hearing being held, and the court explained the purpose of the hearing regarding representation by counsel and ability to engage in self-representation. The trial court appointed Kristina Lynn (“Ms. Lynn”) as standby counsel for Stephens and explained to Stephens the difference between co-counsel and standby counsel. Stephens still objected to the appointment of standby counsel, stating “If ... I wasn’t ... confident you know in ... my

knowledge of the law and you know the situation in [sic] I wouldn't go to ... [t]rial representing myself pro se. I'm confident enough to go, I'm knowledgeable enough to go and that's why I earned a, uh you know criminal justice degree so I'd like to uh, go ahead and, represent myself pro se. Thank you." *Id.* at 20. Stephens further noted that he did not wish to have standby counsel because it would be "a distraction." *Id.*

[7] Stephens then signed a form acknowledging his right to counsel and his waiver thereof. In doing so, Stephens stated that he read it and "underst[oo]d everything that's uh printed here." *Id.* at 21. Stephens then moved for a speedy trial and the trial court accepted the oral motion but noted that it "generally needs to be filed in writing." *Id.* at 22. Stephens then stated that he had considered whether a bench trial would be quicker but had decided to "move forward with the ... Jury Trial instead." *Id.* at 23. The court set the matter for a jury trial.

[8] On March 9, 2021, the court held a pretrial hearing at which it addressed discovery issues. Stephens assured the court that he was ready for a trial on April 28, 2021. On April 6, the court held a final pretrial hearing at which the parties and the court discussed depositions. In addition, the Prosecutor informed the court that she had "concerns about Stephens's ability to represent himself in [t]rial" because he "seemed to be unaware of some basic procedural things" during depositions and "appeared to be talking to himself in conversations back and forth." *Id.* at 37. The court asked Stephens if he believed it was in his best interests to have an attorney represent him at trial, to

which Stephens responded that, if he needed an attorney, he would hire one. The court then granted a continuance of the trial to give Stephens time to hire an attorney and set a new trial date. The court informed Stephens, “if you can’t hire an attorney then I’d like you to file something with the Court stating that ... you’re not able to so that the Court can take the step necessary to make sure you have an attorney.” *Id.* at 38.

[9] On June 8, the court held another pretrial hearing at which Stephens informed the court that he had not yet hired counsel to represent him. The court asked Stephens if he would like for Ms. Lynn to represent him until he was able to hire his own counsel, Stephens responded in the affirmative, and the court so-appointed Ms. Lynn. The court set a final pretrial hearing.

[10] On July 13, the court held another “final” pretrial hearing. *Id.* at 46. The court asked Stephens if he thought it was “probably in [his] best interest for Ms. Lynn to represent [him] as [he] indicated previously,” to which Stephens replied that he wished for Ms. Lynn to remain as standby counsel and he would represent himself pro se. *Id.* at 47. The Prosecutor then stated that Stephens “doesn’t understand the law, [and] he cannot adequately represent himself.” *Id.* The Prosecutor further noted that “during those depositions he spent the entire time that we were waiting ... in between those depositions having full conversations with himself. Uh we have ... concerns about his competency to stand Trial let alone his competency to represent himself.” *Id.* Ms. Lynn stated that she “share[d] many of the same concerns that [the Prosecutor] ha[d]” but planned to speak further with Stephens to determine how to proceed. *Id.* at 49. Noting

that a determination on Stephens's representation at trial needed to be made, the court told Stephens that it had "some serious concerns about [his] ability to represent [him]self adequately." *Id.* at 50. Stephens responded, "Yes sir[,] I understand that Your Honor. And it's also my right to go pro se. Whether you feel I'm competent or not, I can still go pro se and that's on me if I lose or win my [t]rial...." *Id.* The court set a date for another pretrial hearing and noted it would make a final ruling on representation at that time.

[11] On July 20, the trial court conducted another *Faretta* hearing. Stephens repeatedly insisted, under oath, that he wished to represent himself at trial. The court again extensively questioned Stephens about his decision to represent himself and his education and experience in doing so. The court advised Stephens of the potential adverse consequences of self-representation. Stephens claimed to have represented himself in jury trials "about eight or ten" times and noted it was a matter of public record. *Id.* at 57. The Prosecutor noted there is no record of a jury trial in Stephens's criminal history going back to 2005. When the court asked Stephens about that discrepancy, Stephens insisted it was a matter of "public record." *Id.* at 63. During the hearing, Stephens repeatedly asserted that he could make motions orally during court proceedings, although the court informed him that motions must be in writing and filed with the court. Stephens continued to insist that he wished to represent himself at trial and asserted that it was "illegal" to deny him that right. *Id.* The trial court allowed Stephens to represent himself but appointed standby counsel.

[12] The trial court conducted Stephens's final pretrial hearing on August 10. The trial court again advised Stephens that he would be held to the same standard as a lawyer. The court twice more asked Stephens if he still wished to represent himself at trial, and Stephens twice more answered in the affirmative. A one-day jury trial was held on August 11, 2021, and the jury found Stephens guilty as charged. Stephens was sentenced accordingly, and this appeal ensued.

Discussion and Decision

Standard of Review

[13] Stephens maintains on appeal that the trial court violated his Sixth Amendment right under the United States Constitution when it allowed him to waive counsel and represent himself. The trial court's determination of competence to act pro se is reviewed under the clearly erroneous standard. *Edwards v. State*, 902 N.E.2d 821, 824 (Ind. 2009). "Clear error is that which leaves us with a definite and firm conviction that a mistake has been made." *Austin v. State*, 997 N.E.2d 1027, 1040 (Ind. 2013). In reviewing for clear error, we neither reweigh the evidence nor determine the credibility of witnesses, but consider only the probative evidence and reasonable inferences supporting the judgment. *Id.* Moreover, when the trial court "has made the proper inquiries and conveyed the proper information,' and then 'reaches a reasoned conclusion about the defendant's understanding of his rights and voluntariness,' an appellate court, after a careful review of the record, 'will most likely uphold' the trial court's 'decision to honor or deny the defendant's request to represent himself.'"

Wright v. State, 168 N.E.3d 244, 255 (Ind. 2021) (quoting *Poynter v. State*, 749 N.E.2d 1122, 1128 (Ind. 2001)).

Analysis

- [14] A defendant’s Sixth Amendment right to counsel is essential to the fairness of a criminal proceeding. *Drake v. State*, 895 N.E.2d 389, 392 (Ind. Ct. App. 2008) (citing *Gideon v. Wainwright*, 372 U.S. 335, 344-45 (1963)). Implicit in the right to counsel is the right to self-representation. *Faretta*, 422 U.S. at 819. However, the right of self-representation is not absolute; the right is granted only where the defendant’s waiver of counsel is “knowingly, intelligently, and voluntarily” made. *Wright*, 168 N.E.3d at 263. “Once a defendant invokes the right to self-represent, that assertion triggers strict procedural requirements for the trial court to ensure compliance with basic constitutional guarantees of fairness.” *Id.* at 259. Such procedures include “an admonishment of the dangers and disadvantages of self-representation.” *Id.* Moreover, the defendant’s assertion of the right to self-representation must be clear and unequivocal. *Id.*
- [15] When deciding whether a waiver of counsel is knowingly, intelligently, and voluntarily made,

a trial court should inquire, on the record, whether the defendant clearly understands (1) the nature of the charges against her, including any possible defenses; (2) the dangers and disadvantages of proceeding pro se and the fact that she’s held to the same standards as a professional attorney; and (3) that a trained attorney possesses the necessary skills for preparing for and presenting a defense.

Id. at 263-64. But the Indiana and United States Supreme Courts “have deliberately eschewed any attempt to formulate a rigid list of required warnings, talismanic language, or formulaic checklist[,]” instead requiring warnings that will “often depend upon an array of case-specific factors.” *Id.* at 264 (quotations and citations omitted).

[16] “[A] trial court may deny a defendant’s request to act pro se when the defendant is mentally competent to stand trial but suffers from severe mental illness to the point where he is not competent to conduct trial proceedings by himself.” *Edwards*, 902 N.E.2d at 824 (citing *Indiana v. Edwards*, 554 U.S. 164 (2008)). Mental competency is not a static condition; accordingly, it is to be determined at the time of trial. *Id.* at 827. “[I]f a defendant is so impaired that a coherent presentation of a defense is unlikely, fairness demands that the court insist upon representation.” *Id.* at 829. Thus, in *Edwards v. State*, for example, the defendant was found to be incompetent to represent himself—even though he was competent to stand trial—when several psychiatric evaluations concluded that he suffered from severe and pervasive mental illness and that he was competent to stand trial only if he had the assistance of legal counsel. *Id.* at 826-27; *cf. Sturdivant v. State*, 61 N.E.3d 1219, 1225 (Ind. Ct. App. 2016) (affirming holding that defendant could represent herself where there were “some indicators of mental illness [but] they certainly were not sufficient to outweigh [the defendant’s] explicit and repeated requests to waive counsel and represent herself”), *trans. denied*.

[17] Here, over the course of eight pretrial hearings, the trial court advised and questioned Stephens extensively regarding his decision to represent himself at trial. Stephens consistently maintained his ability and desire to do so.² Furthermore, the record reveals no indication that Stephens suffered from “severe mental illness” that made him incompetent to represent himself. *Edwards*, 902 N.E.2d at 834. There is no evidence³ that Stephens was ever evaluated for mental illness, much less found to suffer from mental illness. Moreover, Stephens’s behavior during court proceedings did not indicate that he suffered from severe mental illness. Stephens repeatedly asserted that he understood all the court’s advisements⁴ and that he was capable of, and wished to, represent himself. And while he may have lacked some legal knowledge and skills, that is not sufficient evidence of a severe mental illness rendering him incompetent to represent himself. *See Sturdivant*, 61 N.E.3d at 1225 and n.1 (“While some of Sturdivant’s statements were undeniably strange, and she clearly lacked the legal skills of an experienced criminal defense attorney, ... [a]

² Although Stephens at one point obtained a continuance in order to hire legal counsel, later he clearly changed his mind and again strongly asserted his ability and desire to represent himself. Stephens was entitled to change his mind regarding representation, and his one brief consideration of hiring legal counsel was not the kind of “equivocation” Indiana courts have found to be evidence of a lack of intelligent waiver. *See, e.g., Wright*, 168 N.E.3d at 265 (reversing decision to allow self-representation where the defendant wavered back and forth regarding the desire for self-representation and did not make a “clear assertion” of his right to do so).

³ Stephens points out that the trial judge, Prosecutor, and Ms. Lynn all expressed some concern at times about Stephens’s ability to represent himself adequately. However, those statements of counsel and the court obviously were not evidence, nor did they indicate that Stephens suffered from severe mental illness.

⁴ Stephens does not challenge the adequacy of the trial court’s advisements regarding the dangers of self-representation and the benefits of counsel.

court cannot deny a defendant the right of self-representation based on the defendant's lack of legal skills, experience, or knowledge." (citing *Faretta*, 422 U.S. at 835, and *Edwards*, 902 N.E.2d at 827)).

[18] The trial court was in the best position to observe Stephens's demeanor and behavior in making its ultimate determination that he was competent to represent himself, and we will not reweigh the evidence or judge witness credibility, as Stephens urges us to do. *Austin*, 997 N.E.2d at 1040. The trial court's decision to allow Stephens to waive counsel and represent himself was not clearly erroneous.

[19] Affirmed.

Mathias, J., and Altice, J., concur.