2017 IL App (1st) 142616-U

SIXTH DIVISION
Order filed: July 21, 2017

No. 1-14-2616

IN THE

APPELLATE COURT OF ILLINOIS

FIRST DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from the
	)	Circuit Court of
Plaintiff-Appellee,	)	Cook County
	)	
v.	)	No. 13 CR 2692
	)	
DERRICK BALDWIN,	)	Honorable
	)	Maura Slattery Boyle,
Defendant-Appellant.	)	Judge, Presiding.

PRESIDING JUSTICE HOFFMAN delivered the judgment of the court.
Justices Rochford and Delort concurred in the judgment.

ORDER

¶ 1 *Held*: The trial judge failed to admonish the defendant as required by Supreme Court Rule 401(a). The State confessed error, and we vacated the defendant's conviction and remanded the case to the circuit court for a new trial on the charge of residential burglary.

¶ 2 Following a jury trial, the defendant, Derrick Baldwin, was convicted of residential burglary and sentenced to 12 years' imprisonment with a 3-year term of mandatory supervised release (MSR). On appeal, he seeks reversal of his conviction and a new trial, arguing that the trial court failed to give him the requisite admonitions before allowing him to waive his right to

counsel. The State has conceded that the trial court failed to properly admonish the defendant before allowing him to waive his right to counsel. Based upon the State's concession and the following analysis, we vacate the defendant's conviction of residential burglary and remand this matter to the circuit court for a new trial.

¶ 3 The defendant was charged by indictment with residential burglary (720 ILCS 5/19-3(a) (West 2012)) based upon allegations that, on August 18, 2012, he entered the apartment of E.P. without authority to do so and with the intent to commit a theft therein.

¶ 4 The defendant was arraigned and appointed an assistant public defender (APD) on February 22, 2013. On August 1, 2013, Judge Steven Goebel was presiding in Judge Maura Slattery Boyle's stead when the APD advised the trial court that the defendant wanted to represent himself. Judge Goebel cautioned the defendant against representing himself, suggested that he think about what he wished to do, and told him to speak to Judge Slattery Boyle about the matter. When the case came before Judge Slattery Boyle on August 26, 2013, she acknowledged that the defendant had indicated that he wished to represent himself and stated that she would allow him to do so when she was convinced of his ability. On December 20, 2013, Judge Slattery Boyle acknowledged that Forensic Clinical Services had examined the defendant and determined that he was fit to stand trial. She then asked the defendant if he wished to represent himself, and he responded, "Yes, ma'am." The APD was thereby permitted to withdraw as the defendant's counsel and the defendant proceeded *pro se* thereafter.

¶ 5 On January 21, 2014, Judge Slattery Boyle advised the defendant that, although he had a right to represent himself, he would be held to the same standard as an attorney and that he would be required to state the basis for any objections. The following colloquy between the defendant and the court followed:

"THE COURT: *** [S]ir, you do understand that by representing yourself you might not necessarily be familiar with all the legal requirements, obligations; do you understand that, sir?

THE DEFENDANT: Yep.

THE COURT: And, sir, are you still wishing to undertake representing yourself knowing that by doing so you are placing yourself—your [*sic*] then being limited in the knowledge you have right now.

THE DEFENDANT: Oh, I want to represent myself.

***

THE COURT: Okay. But I want to make sure you fully understand.

THE DEFENDANT: I fully understand.

THE COURT: Okay.

THE DEFENDANT: I understand the consequences.

THE COURT: And you understand the peril.

THE DEFENDANT: Yes.

THE COURT: I just have to make sure you understand what? The perils of what.

THE DEFENDANT: The perils of me representing myself and me maybe possibly handicapping myself by representing [*sic*] because I'm not a legal licensed attorney in this state. It can come back to haunt me. You have to admonish me, so I understand that.

THE COURT: I just did.

THE DEFENDANT: Yep, I understand. Thank you."

¶ 6 On March 18, 2014, the trial court informed the defendant that "[r]esidential burglary is a Class One felony." On April 15, 2014, when the trial court asked the defendant whether he wanted to continue representing himself, the defendant replied, "I'd still like to represent myself."

¶ 7 On June 25, 2014, the matter proceeded to a jury trial. Before the *voir dire* examination of jurors, the trial court asked the defendant if he would be representing himself and he answered affirmatively.

¶ 8 The evidence adduced at trial established, *inter alia*, that, at approximately 6 a.m. on August 18, 2012, E.P. was sleeping on the futon of her apartment—located at 545 North Dearborn Street in Chicago—when she woke up to a creaking sound. She opened her eyes and observed a man—later identified as the defendant—opening her roommate's bedroom door. When the defendant noticed E.P., he left the apartment. Sometime later that day, E.P. realized her driver's license was missing from her wallet. On November 1, 2012, the defendant was arrested. Among the items in his possession at that time was E.P.'s driver's license.

¶ 9 After the State rested, the defendant moved for a directed verdict, which was denied. The defendant chose not to testify and rested without calling any witnesses. The jury found him guilty of residential burglary.

¶ 10 In July 2014, the defendant filed a motion for new trial, which was denied. Thereafter, a sentencing hearing was held and the trial court sentenced the defendant to 12 years' imprisonment with a 3-year term of MSR. This appeal followed.

¶ 11 On appeal, the defendant argues that his conviction must be reversed and the matter remanded for a new trial because the trial court failed to admonish him as required by Illinois Supreme Court Rule 401(a) (eff. July 1, 1984) before allowing him to waive counsel and

represent himself. The State has confessed error, agreeing that the trial judge failed to substantially comply with Rule 401(a). We agree with the defendant's argument and the State's concession.

¶ 12 Illinois Supreme Court Rule 401(a) (eff. July 1, 1984) provides that a trial court shall not permit a waiver of counsel by a person, such as the defendant, accused of an offense punishable by imprisonment without first:

> "informing him of and determining that he understands the following:
>
> (1) the nature of the charge;
>
> (2) the minimum and maximum sentence prescribed by law, including, when applicable, the penalty to which the defendant may be subjected because of prior convictions or consecutive sentences; and
>
> (3) that he has a right to counsel and, if he is indigent, to have counsel appointed for him by the court."

The purpose of Rule 401(a) is to ensure that a defendant's waiver of counsel is knowingly and intelligently made. *People v. Haynes*, 174 Ill. 2d 204, 241 (1996). Substantial compliance with the rule is required for an effective waiver of counsel. *Id.* at 236. In *People v. Maxey*, 2016 IL App (1st) 130698, ¶ 86, this court explained:

> "the lack of a single admonition does not mean that the trial court did not substantially comply with Rule 401. Nor does it mean that the waiver of counsel was not knowing and voluntary. [Rather, the d]efendant must *** show that the lack of the admonishment so infected the entire trial proceedings or challenged the integrity of the judicial process so as to deny [him of] his fundamental right to a fair trial."

¶ 13 In this case, the State concedes that the trial court did not admonish the defendant at all regarding Rule 401(a)(2)—the defendant's "minimum and maximum sentence prescribed by law, including *** the penalty to which *** [he] may be subjected because of prior convictions or consecutive sentences[.]" According to the State, the "defendant's reasons for proceeding *pro se* had nothing to do with a sentencing range, rather he considered himself to be his best representative[;]" therefore, he did not know " 'what he [wa]s doing and his choice [was not] made with eyes open.' " *Faretta v. California*, 422 U.S. 806, 835, 95 S. Ct. 2525, 2541 (1975), quoting *Adams v. U.S. ex rel. McCann*, 317 U.S. 269, 279, 63 S. Ct. 236, 242 (1942). We agree with this concession; accordingly, the defendant's conviction must be vacated. See *People v. Wright*, 2015 IL App (1st) 123496, ¶ 50 ("regardless of the sentence that [the] defendant actually received, we cannot say for certain that [he] would have proceeded to represent himself *pro se* had he known that he was facing 75 years in prison"); see also *People v. Campbell*, 224 Ill. 2d 80, 88 (2006).

¶ 14 In requesting that this court remand the matter for a new trial—rather than outright reversal—the defendant is conceding that the totality of the evidence at his trial was sufficient for a rational trier of fact to find that the State proved beyond a reasonable doubt each of the essential elements of the offense of residential burglary. Accordingly, there would be no double jeopardy impediment to the retrial of the defendant on that charge. See *People v. Ward*, 2011 IL 108690, ¶ 50.

¶ 15 For the foregoing reasons, the defendant's conviction of residential burglary is vacated and the cause is remanded to the circuit court of Cook County for a new trial.

¶ 16 Vacated and remanded.