

No. 1-15-2126

NOTICE: This order was filed under Supreme Court Rule 23 and may not be cited as precedent by any party except in the limited circumstances allowed under Rule 23(e)(1).

IN THE
APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from the
	)	Circuit Court of
Plaintiff-Appellee,	)	Cook County.
	)	
v.	)	No. 14 MC1 243394
	)	
CAROL BAILEY,	)	Honorable
	)	Clarence L. Burch,
Defendant-Appellant.	)	Judge Presiding.

PRESIDING JUSTICE HYMAN delivered the judgment of the court.
Justices Neville and Pierce concurred in the judgment.

O R D E R

¶ 1 *Held:* Defendant's conviction for criminal trespass to real property affirmed where defendant failed to unambiguously request to proceed *pro se*, and the trial court did not abuse its discretion by denying defendant's motion for mistrial.

¶ 2 After a jury trial, defendant Carol Bailey was convicted of criminal trespass (720 ILCS 5/21-3(a) (1) (West 2014)) and sentenced to one year supervision. On appeal, Bailey contends that the trial court abused its discretion by (i) not permitting Bailey to proceed *pro se* and (ii)

denying Bailey's motion for mistrial. We affirm. Regarding proceeding *pro se*, Bailey did not make an unequivocal statement to the trial court that she wished to do so, and although her motion requested that she act as "co-counsel" with her public defender serving as "lead counsel," the trial court was under no duty to entertain such a motion. As to the mistrial motion, the cumulative effect of the four alleged violations did not deprive Bailey of a fair trial and, in any event, the trial court took appropriate remedial measures to address them.

¶ 3 Background

¶ 4 The pertinent facts will be briefly stated. Bailey was initially charged with battery and criminal trespass. Before trial, Bailey requested a public defender but thereafter informed the trial court that she had filed a *pro se* motion "for discovery." The motion made various discovery requests and requested that the court appoint Bailey as "co-counsel" with her public defender acting as "lead counsel." On learning of her *pro se* motion, the trial court stated, "You are not representing yourself. You have a Public Defender representing you. You're not *pro se*. *** Give [the motion] to your attorney."

¶ 5 On the day of trial, the State entered a *nolle prosequi* on the battery charge. The trial court partially granted a defense motion *in limine*, ruling that the State could only elicit evidence of Bailey's notice to leave the Harold Washington Library on the day of the crime, not earlier incidents. The trial court further ruled that the State was prohibited from eliciting specific facts regarding the alleged battery, and instead could reference the battery only as "the incident."

¶ 6 During opening statements, the prosecutor stated that the complaining witness told Bailey she was no longer welcome at Washington Library "based on a prior incident." Defense counsel objected to the State referencing prior incidents, and during a sidebar out of the jury's presence,

the State contended that the remark was a “slip of the tongue.” The court subsequently admonished the jury to disregard any statement concerning a prior incident.

¶ 7 Steven Brown, the complaining witness, testified that he is a supervisor of security at the Washington Library. He patrols the library and has the authority to ask people to leave. Brown was working on October 27, 2014 around 3 p.m. and saw Bailey on the third floor in the computer common area. This colloquy ensued:

“Q: And what happened around that time?

A: Well, first we got a complaint from staff about Ms. Bailey. She has been at the library before waving –

Q: I’m going to stop you right there. ***

* * *

Q: And when you saw her there, what did you ask her to do?

A: Well, we asked her to leave the building due to complaints from staff about her prior –

Q: I’ll stop you right there.”

¶ 8 When Brown approached Bailey that day, he identified himself and was wearing his uniform. Brown was standing in front of Bailey and knew she was hearing impaired, so to help her understand him, he wrote a note that she needed to leave the library. He wrote the note on a notepad that he used to take notes, and handed Bailey the notepad so she could read the note herself. Brown did not see where Bailey went after he asked her to leave.

¶ 9 Brown was alerted to a disturbance in the library around 3:15 p.m. Bailey was still on the third floor, and Brown stated that a male patron “was pointing in the direction of Carol Bailey, saying that she had spat on him.” Defense counsel objected, and the court conducted a sidebar.

Out of the jury's presence, the court asked the State whether it instructed Brown not to discuss the facts of the alleged battery. The State responded that after the court's ruling on the motion *in limine*, the prosecutor was unable to leave the courtroom to instruct Brown on the limits on his testimony. The court stated that it would admonish the jury to disregard the statement. Defense counsel moved for a mistrial, which the court denied. Both the court and the State admonished Brown not to discuss earlier incidents or the alleged spitting.

¶ 10 When the jury returned, the trial court admonished, "Before we start, you're not to consider the last question as it relates to what was the nature of the incident. Do not consider that as evidence, nor the response that was given. Okay. You're not to consider that as evidence."

¶ 11 On cross-examination, Brown stated that Bailey gave him his notepad back after reading the note, and acknowledged that he did not still have the note.

¶ 12 Bailey testified that on October 27, 2014, she was leaving the computer area to exit the library around 3 p.m. No one approached her until she was on the escalator near the second floor. Then, security guards approached her. Bailey is deaf so she was uncertain about whether the guards spoke to her, but she "got the impression" that they wanted her to follow them so she complied. She denied receiving a note from a security guard telling her to leave the library.

¶ 13 On cross-examination, Bailey denied having contact with Brown and characterized his testimony as incorrect. Library security guards approached her on the second floor between 3:00 and 3:30 p.m. The security guards took Bailey to a room on the first floor. She was detained in the room by three security guards, and four Chicago police officers arrived as well.

¶ 14 Following closing arguments, the trial court instructed the jury to disregard as evidence any sustained objections. The jury subsequently found Bailey guilty of criminal trespass to real property. During sentencing, Bailey claimed that she filed a motion to represent herself before

trial, which the court unfairly denied. She additionally claimed that she did not receive a fair trial because the court did not allow her to present evidence of how many times she was previously in the Harold Washington Library. The court sentenced Bailey to one year of supervision.

¶ 15 Analysis

¶ 16 Self-Representation

¶ 17 On appeal, Bailey first contends that the trial court abused its discretion by not allowing Bailey to represent herself during trial. The State responds that Bailey failed to make an unequivocal demand to proceed *pro se* and that her motion before trial requested that she proceed as co-counsel with her public defender in contravention of Illinois law.

¶ 18 A defendant has a constitutional right to self-representation. See U.S. Const., amend. VI; Ill. Const. 1970, art. 1, § 8; *Faretta v. California*, 422 U.S. 806, 832 (1975). “For a defendant to invoke the right of self-representation, he [or she] must knowingly and intelligently relinquish the right to counsel, and the waiver of counsel must be clear and unequivocal, not ambiguous.” *People v. Rasho*, 398 Ill. App. 3d 1035, 1041 (2010); see also *Faretta*, 422 U.S. 835. A defendant represented by counsel generally has no authority to file *pro se* motions, and the court should not consider them. *People v. Stevenson*, 2011 IL App (1st) 093413, ¶30. “A defendant has the right to proceed either *pro se* or through counsel; he [or she] has no right to some sort of hybrid representation whereby he [or she] would receive the services of counsel and still be permitted to file *pro se* motions.” *Id.* We review a trial court’s decision regarding a self-representation request for abuse of discretion. *People v. Hunt*, 2016 IL App (1st) 132979, ¶ 16.

¶ 19 The record reveals that the trial court was not called on to exercise its discretion regarding Bailey’s alleged *pro se* request. Although Bailey is correct in stating that a defendant must be required to make an election between self-representation and representation by counsel,

Bailey never made an unequivocal statement to the trial court that she wished to proceed *pro se*. On the contrary, Bailey initially elected to be represented by a public defender. While Bailey later told the trial court that she filed a *pro se* motion “for discovery,” she did not explain that her motion additionally requested that she proceed as co-counsel along with her public defender, or otherwise alert the trial court that she wished to proceed *pro se*. Thus, the trial court cannot have been expected to ascertain Bailey’s intent. See *e.g.*, *People v. Taylor*, 237 Ill. 2d 68, 77 (2010) (citing *People v. Grant*, 71 Ill. 2d 551, 557-58 (1978) (“If a defendant does not articulate his [or her] theory *** he [or she] cannot reasonably expect the trial court, unaided, to divine his [or her] intent”).

¶ 20 Moreover, although Bailey’s motion requested that the trial court allow her to act as “co-counsel” with her public defender acting as “lead counsel,” the trial court was under no duty to entertain her *pro se* motion. See *Stevenson*, 2011 IL App (1st) 093413, ¶31 (Trial court may not entertain a defendant’s *pro se* motion while being represented by competent counsel.) Further, Bailey is not entitled to the hybrid representation that she requested. *Id.* ¶ 30. Accordingly, we find Bailey’s contention lacks merit.

¶ 21 Mistrial Motion

¶ 22 Next, Bailey contends that the trial court abused its discretion by denying her motion for mistrial because the State violated the court’s ruling on her motion *in limine*. Specifically, Bailey takes issue with the State referencing “prior incidents” during opening statements and Brown’s testimony regarding earlier staff complaints and Bailey allegedly spitting on another library patron. The State counters first, that Bailey failed to preserve this issue because she did not object to the incidents at trial where the State interrupted Brown and failed to ask for plain error review in her opening brief. Second, the State contends that any mistakes during trial were not

significant enough to warrant a mistrial, and the court's admonishments to the jury cured any harm. In reply, Bailey suggests that she preserved the issue; and alternatively, asks for plain error review for any unpreserved violations. But, before considering whether the violations were preserved, we must first determine if an error exists, and we find no error.

¶ 23 The error resulting from introducing evidence in violation of the trial court's ruling on a motion *in limine* generally may be cured by sustaining the defendant's objection and instructing the jury to disregard the statement. *People v. Hall*, 194 Ill. 2d 305, 342 (2000). A trial court may declare a mistrial for violating its ruling on a motion *in limine* only when the violation effectively deprives the defendant of his or her right to a fair trial. *Id.* at 341-42; see also *People v. Bishop*, 218 Ill. 2d 232, 251 (2006) ("a mistrial should be granted where an error of such gravity has occurred that it has infected the fundamental fairness of the trial, such that continuation of the proceeding would defeat the ends of justice"). The grant or denial of a motion for mistrial is within the trial court's sound discretion, and therefore, absent an abuse of discretion we will uphold the trial court's determination. *Id.* at 251; *People v. Nolan*, 332 Ill. App. 3d 215, 229 (2002). A trial court abuses its discretion when it acts in an "'arbitrary, fanciful, unreasonable, or where no reasonable person would take the view adopted by the trial court.'" *People v. Jackson*, 2014 IL App (1st) 123258, ¶ 39 (quoting *People v. Wheeler*, 226 Ill. 2d 92, 133 (2007)).

¶ 24 Bailey identifies four violations of the motion *in limine*, two of which were accompanied by contemporaneous objections. But, we find no need to examine the question of error with regard to individual violations. We conclude that, taken together, the cumulative effect of the violations did not deprive Bailey of a fair trial.

¶ 25 The court remedied the State's inadvertent violation during opening statements by sustaining defense counsel's objection, admonishing the jury to disregard the remark, and later instructing the jury that opening statements are not evidence. See *Hall*, 194 Ill. 2d at 342.

¶ 26 On the issue of Brown's testimony, we agree with Bailey that the State had a responsibility to inform its witness of the motion *in limine*. The record indicates the State explained to the trial court that the ruling on the motion *in limine* had been made immediately before trial, and the prosecutor had no time to leave the courtroom to speak with Brown before he testified. All the prosecutor had to do was, before Brown got on the stand, ask the trial court for a couple minutes to tell Brown about the trial court's ruling.

¶ 27 Nevertheless, the State interrupted Brown's testimony twice without defense objection to prevent him from revealing further information regarding the earlier complaints. Also, regarding the nature of the incident, the trial court sustained defense counsel's objection and remedied the violation by admonishing the jury to disregard both the question and Brown's response and not consider it as evidence. Additionally, at both the beginning and end of trial, the trial court instructed the jury to disregard any sustained objections. These appropriate remedial steps ensured Bailey received a fair trial in light of the evidence presented against her. Therefore, we conclude that the trial court did not abuse its discretion by denying Bailey's motion for mistrial.

¶ 28 Affirmed.