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2017 IL App (3d) 150327-U

Order filed October 5, 2017

IN THE
APPELLATE COURT OF ILLINOIS
THIRD DISTRICT

2017

THE PEOPLE OF THE STATE OF ILLINOIS,)	Appeal from the Circuit Court of the 12th Judicial Circuit, Will County, Illinois,
Plaintiff-Appellee,)	
v.)	Appeal No. 3-15-0327
JULIUS H. LEWIS,)	Circuit No. 13-CF-1890
Defendant-Appellant.)	Honorable Edward A. Burmila, Jr., Judge, Presiding.

PRESIDING JUSTICE HOLDRIDGE delivered the judgment of the court.
Justices Carter and Lytton concurred in the judgment.

ORDER

- ¶ 1 *Held:* The record establishes that the defendant made a knowing and intelligent waiver of his right to counsel.
- ¶ 2 The defendant, Julius H. Lewis, appeals from his conviction for aggravated driving while license revoked (ADWLR). The defendant argues that his conviction must be reversed and the cause remanded for a new trial because the circuit court failed to comply with the admonishment requirements of Illinois Supreme Court Rule 401(a) (eff. July 1, 1984) before it accepted the defendant's waiver of his right to counsel.

FACTS

¶ 3

¶ 4

On September 3, 2013, the defendant was charged by information with ADWLR (625 ILCS 5/6-303(d-3) (West 2012)). On September 12, 2013, the information was supplanted by a bill of indictment that charged the same offense.¹ The court appointed the public defender to represent the defendant.

¶ 5

On September 24, 2013, the defendant appeared with private counsel, and the court granted the public defender leave to withdraw. On January 22, 2014, private counsel withdrew, and the court reappointed the public defender.

¶ 6

On May 9, 2014, the case was called for a pretrial and status hearing. Between the hearing dates, the defendant filed several *pro se* motions. Counsel refused to adopt the motions. The court admonished the defendant that he was not entitled to bifurcated representation and the legal decisions were to be made by counsel unless the defendant elected to represent himself. The defendant expressed a desire to hire private counsel, and the court granted the defendant a continuance.

¶ 7

On August 1, 2014, the public defender said that the defendant wanted to argue his motions *pro se*. The court admonished the defendant that: (1) he was charged with ADWLR, (2) the charge was punishable by 2 to 5 years' imprisonment or an extended term of up to 10 years' imprisonment, and (3) he had the right to represent himself. The defendant indicated that he understood the charge, potential sentence range, his right to self-representation, and asserted that he wanted to represent himself. The court granted counsel leave to withdraw and continued the case.

¹The indictment named the offense as ADWLR and cited to subsection 6-303(d-4) of the Illinois Vehicle Code (Code) (625 ILCS 5/6-303(d-4) (West 2012)). The information named the same offense but cited to subsection 6-303(d-3) of the Code (625 ILCS 5/6-303(d-3) (West 2012)).

¶ 8 At the September 9, 2014, hearing, the court asked the defendant if he wanted to be readmonished as to the potential penalties. The defendant declined. The court then admonished the defendant of his right to appointed counsel. The defendant responded that he wanted to represent himself. The cause proceeded to a hearing on the defendant's *pro se* motion to dismiss the indictment. The court granted the defendant's motion.

¶ 9 On September 18, 2014, the State filed a second bill of indictment that charged the defendant with ADWLR (625 ILCS 5/6-303(d-4) (West 2012)). At the September 19, 2014, arraignment, the court notified the defendant of the new charge and sentence range. The defendant stated that he was continuing to represent himself. Thereafter, the defendant filed a motion to dismiss the second indictment.

¶ 10 At the beginning of the September 25, 2014, hearing, the court advised the defendant that it would appoint counsel if he requested it. The defendant continued to represent himself. Later in the hearing, the defendant requested standby counsel. The court continued the case to allow the defendant to read the transcript from the second grand jury proceeding and determine if he wanted to proceed with his motion to dismiss the second indictment.

¶ 11 On October 2, 2014, the court asked the defendant if he wanted appointed counsel. The defendant responded that he wanted to represent himself. The hearing proceeded to arguments on the defendant's motion to dismiss the second indictment. After hearing the arguments, the court granted the defendant's motion.

¶ 12 On October 9, 2014, the State filed a third indictment that charged the defendant with ADWLR (625 ILCS 5/6-303(d-4) (West 2012)). At the arraignment, the court informed the defendant of the charge and potential sentence. The court asked the defendant if he intended to

hire counsel, seek appointed counsel, or represent himself. The defendant responded that he would continue to represent himself.

¶ 13 The October 15 and 21, 2014, hearings began with the court's inquiry as to whether the defendant wanted appointed counsel. On both dates, the defendant asserted his right to represent himself. At the end of the October 21 hearing, the court set the case for trial. The defendant then asked the court to appoint counsel. The court appointed the public defender.

¶ 14 On October 31, 2014, the public defender informed the court that the defendant wanted to file several *pro se* motions and counsel was unwilling to adopt the filings. The court explained to the defendant that counsel was not required to adopt the defendant's *pro se* motions. The defendant responded that he wanted to represent himself. The court allowed the public defender to withdraw from the case.

¶ 15 On November 7, 2014, the defendant moved for the appointment of standby counsel. The court denied the defendant's motion, noting that the defendant was capable of handling the case without standby counsel as he had successfully argued two motions to dismiss the indictment.

¶ 16 At the November 21 and 26, December 1, 5, 10, and 23, 2014, and January 5, 2015, hearings, the court said that it had advised the defendant of the potential penalties and that it would appoint counsel if the defendant requested. At each of the hearings, the defendant said that he wanted to represent himself.

¶ 17 On January 7, 2015, the defendant indicated to the court that he was aware of the potential penalties. The defendant then asked the court to appoint counsel. On January 20, 2015, appointed counsel appeared on behalf of the defendant.

¶ 18 On January 23, 2015, counsel informed the court that the defendant did not relinquish all of the discovery documents. The defendant explained that he intended to file a *pro se* motion.

The court told the defendant that he could not file a *pro se* motion while he was represented by counsel, and the defendant moved to represent himself. The court allowed appointed counsel to withdraw.

¶ 19 At the beginning of the January 30, and February 4, 2015, hearings the defendant acknowledged that the court had previously advised him of the potential penalties, and the defendant said that he did not want appointed counsel.

¶ 20 On February 23, 2015, before jury selection, the court asked the defendant if he wanted to be readmonished of the nature of the offense and that the court would appoint the public defender if the defendant asked. The defendant said that he was aware of the nature of the offense and that counsel could be appointed, but he chose to continue to represent himself. The case proceeded to a two-day jury trial, which ended in a mistrial.

¶ 21 On March 4, 2015, the court called the case for a retrial. Before jury selection, the defendant said that he was aware of the penalties and did not want a readmonishment. The defendant also elected to continue to represent himself. At the conclusion of the retrial, the jury found the defendant guilty of ADWLR. After the trial, the court informed the defendant that his conviction had a mandatory prison sentence. The defendant indicated that he was unaware of the mandatory prison sentence. Following the sentencing hearing, the court sentenced the defendant to five years' imprisonment. The defendant made a motion to reconsider sentence *instanter*. The defendant provided no argument in support of his motion, and the court denied it. The defendant appeals.

¶ 22 ANALYSIS

¶ 23 The defendant argues that his conviction should be reversed because the court failed to comply with the admonishment requirements of Illinois Supreme Court Rule 401(a) (eff. July 1,

1984) when he waived his right to counsel. We review the circuit court’s compliance with Rule 401(a) *de novo*. *People v. Wright*, 2015 IL App (1st) 123496, ¶ 46.

¶ 24 The defendant has forfeited review of this issue as he did not object to the alleged improper admonishment at the times that he waived his right to counsel and he did not raise this issue in a posttrial motion. *People v. Johnson*, 238 Ill. 2d 478, 484 (2010). The defendant argues that his forfeiture does not bar our review as the admonishment issue is reversible under the second prong of the plain error doctrine.

“[T]he plain error doctrine allows a reviewing court to consider unpreserved error when *** a clear or obvious error occurred and the error is so serious that it affected the fairness of the defendant’s trial and the integrity of the judicial process, regardless of the closeness of the evidence.” *People v. Jones*, 2016 IL 119391, ¶ 10.

The first step of the plain error doctrine is to determine whether a clear or obvious error occurred. *Id.*

¶ 25 Rule 401(a) states:

“[t]he court shall not permit a waiver of counsel by a person accused of an offense punishable by imprisonment without first, by addressing the defendant personally in open court, 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.” Ill. S. Ct. R. 401(a) (eff. July 1, 1984).

The rule is intended “to ensure that a waiver of counsel is knowingly and intelligently made.” *People v. Haynes*, 174 Ill. 2d 204, 241 (1996). Strict compliance with the rule is not required “if the record indicates that the waiver was made knowingly and voluntarily, and the admonishment the defendant received did not prejudice his rights.” *Id.* at 236. A court’s failure to provide a Rule 401(a) admonishment immediately before a defendant’s waiver of his right to counsel does not render the defendant’s waiver invalid. *Id.* at 242. Instead, each case must be assessed on its own particular facts. *Id.*

¶ 26 Our error determination is not whether the circuit court provided a rote recitation of Rule 401(a). Instead the question we are faced with is whether, in light of the facts of this case, the defendant made a knowing and voluntary waiver of his right to counsel, and if the admonishments issued by the court caused the defendant prejudice. *Id.* at 236, 242.

¶ 27 The record establishes that the defendant was represented by appointed counsel four separate times during the pretrial proceedings. The court’s September 24, 2013, dismissal of the public defender is not at issue as the defendant appeared at that hearing with private counsel. The dismissal of the defendant’s second (August 1, 2014), third (October 31, 2014), and fourth (January 23, 2015) public defenders are the subject of this case. We address each of these waivers in turn.

¶ 28 On August 1, 2014, the defendant moved to waive his right to counsel and allow his second-appointed public defender to withdraw. Before granting the defendant’s motion, the court admonished the defendant of the charges and potential penalties. The court omitted the

admonishment that the defendant has the right to counsel or, if he is indigent, the right to have counsel appointed. Ill. S. Ct. R. 401(a)(3) (eff. July 1, 1984). On October 31, 2014, the defendant moved to waive his right to counsel and allow his third-appointed public defender to withdraw. The court accepted the defendant's waiver without providing any of the Rule 401(a) admonishments. Ill. S. Ct. R. 401(a) (eff. July 1, 1984). On January 23, 2015, the defendant moved to waive his right to counsel and allow his fourth-appointed public defender to withdraw. The court granted the defendant's motion, but provided none of the Rule 401(a) admonishments. *Id.* Viewed in isolation, the court's omissions are error. However, the record establishes that, despite the incomplete or omitted admonishments, the defendant made three knowing and voluntary waivers of his right to counsel.

¶ 29 First, on August 1, 2014, the defendant received a partial admonishment that included the charge and potential sentencing range. The omission of the defendant's right to counsel or appointed counsel was not fatal. At that time, the defendant had received representation from the public defender twice, having dismissed his first public defender after he retained private counsel. Therefore, the defendant was well aware of his right to counsel and made a knowing and voluntary waiver.

¶ 30 Second, on October 31, 2014, the defendant received no admonishments at the time, but he had been recently admonished of the charge and potential sentence and was well aware of his right to appointed counsel. Specifically, on October 9, 2014, 22 days before his waiver, the court re-arraigned the defendant of the charge and potential sentence. At that time, the defendant was representing himself and had previously succeeded on his motion to dismiss the second indictment. Additionally, the court had asked the defendant if he wanted counsel appointed at several of the hearings that immediately preceded this waiver. Thus, the defendant was well

aware of his right to appointed counsel. Given these circumstances, the defendant made a knowing and voluntary waiver on October 31, 2014.

¶ 31 Third, on January 23, 2015, the defendant made his final waiver of counsel and the court provided none of the Rule 401(a) admonishments. At the time, the defendant was represented by his fourth appointed public defender. At the beginning of eight hearings that preceded this waiver, between November 21, 2014, and January 7, 2015, the defendant acknowledged that he was aware of the potential penalties and, after the court asked if the defendant wanted counsel appointed, the defendant said that he wanted to represent himself. Therefore, the defendant indicated an ongoing awareness of the three core tenets of Rule 401(a).

¶ 32 Finally, we note that the defendant exercised his right to the appointment of counsel four times during the pretrial proceedings. This showed that the defendant was well aware of and willing to assert his right to counsel. The majority of these appointments ended when counsel and the defendant had divergent strategic views. At these points, the defendant felt strongly enough about his *pro se* motions that he elected to waive his right to counsel. This decision proved beneficial on the two occasions that the court granted the defendant's motion to dismiss the first and second indictments. In light of this record, we cannot say that each of the defendant's waivers was rendered unknowing or unintelligent because the court provided an inadequate Rule 401(a) admonishment. While we do not condone the omission of the Rule 401(a) admonishments, we conclude that, in this case, the defendant suffered no prejudice as a result of the omissions. The defendant's waivers of his right to counsel were knowing and voluntary.

¶ 33 CONCLUSION

¶ 34 The judgment of the circuit court of Will County is affirmed.

¶ 35

Affirmed.