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ARKANSAS COURT OF APPEALS

DIVISION III
No. CR-17-751

	Opinion Delivered February 28, 2018
TONY JEFFERSON, JR. APPELLANT	APPEAL FROM THE FAULKNER COUNTY CIRCUIT COURT [NO. 23CR-16-465]
V.	HONORABLE CHARLES E. CLAWSON, JR., JUDGE
STATE OF ARKANSAS APPELLEE	AFFIRMED

LARRY D. VAUGHT, Judge

Tony Jefferson appeals his conviction by a Faulkner County jury of delivery of more than ten grams but less than 200 grams of methamphetamine, in violation of Arkansas Code Annotated section 5-64-422(b)(3) (Supp. 2011). We affirm.

Jefferson was charged by felony information on May 25, 2016. Attorney Karen Walker Knight was appointed as trial counsel for Jefferson after his private attorney withdrew from the case. On December 28, 2016, Jefferson filed a pro se motion to remove his counsel of record, stating that "counsel for the defendant is being verbally argumentative . . . and does not want to pursue the methods that the defendant raises . . . ." The circuit court denied the motion at a pretrial hearing February 10, 2017, stating the following:

> As far as your motion to remove counsel, at this point I'm going to deny that. It's not important that you love one another. It's important that you can consult with her, tell her what information you have, if you have witnesses that you believe to be important

> to your defense in these cases, provide that information to her so she can contact those witnesses and subpoena them if necessary. So that motion will also be denied.

Jefferson's immediate response to this ruling was "[o]kay, well, I ain't ready to go to trial then on the 21st then." Jefferson repeatedly asserted that he was not ready to go to trial because he had not "consulted with none of my people yet." After a lengthy back and forth between the circuit court and Jefferson, Jefferson stated, "Man, I'd rather just fire Karen Walker Knight and hire me an attorney." The court advised Jefferson "if that's what you want to do then you get it done . . . and you be ready to go but we're going to trial on [case number] 16-465 on February the 21st at nine o'clock." Jefferson again responded, "Okay, well, I'm firing Karen Walker Knight and I'll hire my own attorney."

At a pretrial hearing held February 17, 2017, three days before trial, Jefferson was still represented by Knight but asserted that he "was trying to hire private counsel," and he sought a continuance to hire a private attorney. At no time before trial did Jefferson indicate that he wanted to represent himself at trial. Likewise, during the trial Jefferson never indicated he wanted to proceed pro se. Jefferson merely told the court "Okay, I didn't want Karen Walker Knight as a lawyer anyway."

At trial, the jury was presented with overwhelming evidence of Jefferson's guilt. The State showed the jury a video of Jefferson delivering methamphetamine, which was corroborated by the testimony of Korey Bearden, an agent of the Drug Enforcement Agency (DEA); Tom Kennedy, a police officer with the Conway Police Department; Cardarious Walker, a DEA agent; and Clay Phelan, a forensic chemist employed by the DEA. The jury also heard the testimony of a confidential informant, Herbert Cameron, who testified that he bought approximately an ounce of methamphetamine from Jefferson as part of an agreement

between him and the Conway Police Department that resulted in leniency regarding other criminal charges he was facing.

During Cameron's testimony at trial, Jefferson made a pro se verbal motion seeking to have Cameron drug tested. The court denied the request because it found that the witness was coherent, his testimony was clear, and there was no indication that he was currently under the influence of drugs. Jefferson was convicted, and this appeal followed.

Jefferson's first point on appeal is that the circuit court erred in allowing his appointed counsel to remain on the case after he expressed his desire to fire her. He frames this as a violation of his right to self-representation. In *Faretta v. California*, 422 U.S. 806 (1975), the United States Supreme Court held that the accused generally has a Sixth Amendment right to defend himself because it is the accused who will suffer the consequences if the defense fails. *Id.* at 819–20. The right to self-representation is not, however, without limits. The Court made clear that, although the defendant need not have the skill and experience of a lawyer in order to competently and intelligently choose self-representation, he "should be made aware of the dangers and disadvantages of self-representation so that the record will establish that he knows what he is doing and his choice is made with open eyes." *Id.* at 835. In accordance with *Faretta*, the Arkansas Supreme Court has held that a defendant may invoke his right to self-representation provided that (1) the request to waive the right to counsel is unequivocal and timely asserted, (2) there has been a knowing and intelligent waiver of the right to counsel, and (3) the defendant has not engaged in conduct that would prevent the fair and orderly exposition of the issues. *Jarrett v. State*, 371 Ark. 100, 104, 263 S.W.3d 538, 542 (2007).

The right to counsel may not be manipulated or subverted to obstruct the orderly procedures of the court, or to interfere with the fair, efficient, and effective administration of justice, particularly when a change of counsel is sought on the eve of trial, primarily for the purpose of delay, and without making any effort to obtain substitute counsel. *Liggins v. State*, 2015 Ark. App. 321, at 5–6, 463 S.W.3d 331, 335–36. In *Jarrett*, the Arkansas Supreme Court held that a request to proceed pro se is not an unequivocal request if it is an attempt on the part of the defendant to have another attorney appointed. *Jarrett*, 371 Ark. at 104, 263 S.W.3d at 542.

Although he now argues that the circuit court violated his constitutional right to serve as his own counsel, Jefferson never requested that he be allowed to represent himself. Jefferson expressed displeasure with his appointed counsel and stated that he wanted to fire her and hire new counsel, but he never did so. As discussed above, *Faretta* requires that the request to waive the right to counsel be unequivocally and timely asserted. Here, it was never asserted at all. Therefore, the self-representation analysis in *Faretta* and its progeny does not apply. *See Morgan v. State*, 359 Ark. 168, 177–78, 195 S.W.3d 889, 894–95 (2004); *Whitlow v. State*, 2016 Ark. App. 510, at 11, 506 S.W.3d 272, 278. The court expressly told Jefferson that he was free to fire his appointed attorney and obtain new counsel but that he should do so quickly because the case was going to trial as scheduled. Jefferson never followed through on his stated wish to replace his appointed attorney with private counsel and never stated that he wished to represent himself.

Jefferson's second point on appeal challenges the court's denial of his pro se request to drug test Cameron, the confidential informant who testified against him at trial. Jefferson

frames this issue as a challenge to the "sufficiency of the evidence" but essentially argues that the court erred by denying him the ability to obtain and present evidence of Cameron's alleged drug use. The argument has no merit under either lens.

First, it must be assumed that Jefferson not only wished to drug test Cameron but also to introduce that evidence at trial, making this a ruling on the admissibility of evidence, which is within the sound discretion of the circuit court. The court specifically stated that Cameron appeared coherent and testified clearly at trial, and neither the State nor the court had any reason to believe he was under the influence of drugs at the time. Jefferson was advised that he could question Cameron about his history of drug use and his role as a confidential informant.

Rulings on the admissibility of evidence are matters within a circuit court's discretion, and those rulings are not disturbed on appeal absent a showing of an abuse of that discretion and prejudice. *Grant v. State*, 357 Ark. 91, 93, 161 S.W.3d 785, 786 (2004). Abuse of discretion is a high threshold that does not require simply error in the circuit court's decision, but requires that the circuit court act improvidently, thoughtlessly, or without due consideration. *Id.* at 93, 161 S.W.3d at 786. Jefferson has provided no legal authority or persuasive argument for why the court's denial of his request to drug test the State's confidential informant was an evidentiary error.

Jefferson also attempts to frame the drug-testing issue as a challenge to the sufficiency of the evidence presented against him. However, he did not raise this argument in his motion for directed verdict, and it is therefore unpreserved for our review. His directed-verdict motion solely challenged the State's proof as to the element of "delivery" of methamphetamine

without specifying the way or ways in which the proof of delivery was allegedly lacking. His motion for directed verdict did not mention his request to drug test Cameron, and our supreme court has repeatedly held that "failure to make the motions for directed verdict with specificity regarding the sufficiency issue raised on appeal equates to the motion never having been made." *Maxwell v. State*, 373 Ark. 553, 559, 285 S.W.3d 195, 200 (2008) (citing *Tillman v. State*, 364 Ark. 143, 147, 217 S.W.3d 773, 775 (2005); *Webb v. State*, 327 Ark. 51, 60, 938 S.W.2d 806, 811–12 (1997)). Therefore, we do not address Jefferson's sufficiency challenge to the court's refusal to drug test Cameron.

Affirmed.

VIRDEN and GLADWIN, JJ., agree.

Dusti Standridge, for appellant.

Leslie Rutledge, Att'y Gen., by: *Michael A. Hylden*, Ass't Att'y Gen., for appellee.