

IN THE SUPREME COURT OF THE STATE OF NEVADA

JUSTIN LAMAR BELL,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 87061

FILED

JAN 03 2025

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
DEPUTY CLERK

ORDER OF REVERSAL AND REMAND

This is an appeal from a judgment of conviction, pursuant to a jury verdict, of murder with the use of a deadly weapon, victim 60 years of age or older. Eighth Judicial District Court, Clark County; Carli Lynn Kierny, Judge. Appellant Justin Bell challenges his conviction, arguing the district court abused its discretion in denying his motion for self-representation. We agree, and reverse and remand for a new trial.

Bell was indicted for killing a man at a bus stop. Bell retained Craig A. Mueller as counsel, pleaded not guilty, and invoked his right to a speedy trial. Mueller showed signs of deficient representation before trial by failing to obtain all discovery in a timely manner and failing to appear for several hearings. Nevertheless, Bell proceeded to trial in a mere six weeks. On the first day of trial, Bell asked if he could waive his speedy trial right; the district court told him he could not. On the second day of trial, Bell moved to replace Mueller. Bell asserted he and Mueller had only met on two occasions, for less than thirty minutes each, and that Mueller failed to provide Bell with discovery. Bell stated he only learned the depth of Mueller's unpreparedness two days before trial when Bell's investigator visited him in jail, but the district court unfortunately declined to take testimony from the investigator. The district court denied Bell's motion to substitute counsel as untimely. Bell then requested to represent himself,

stating he was ready to undergo a *Faretta* canvass to determine whether he was competent to waive his right to counsel. The district court declined to perform a *Faretta* canvass and denied Bell's motion to represent himself as untimely. Bell proceeded to trial and was convicted of first-degree murder. This appeal followed.

Bell contends the district court abused its discretion in denying his motion for self-representation. We agree. “[C]riminal defendants have an ‘unqualified right’ to self-representation.” *Lyons v. State*, 106 Nev. 438, 443, 796 P.2d 210, 213 (1990) (quoting *Baker v. State*, 97 Nev. 634, 636, 637 P.2d 1217, 1218 (1981)). Self-representation may only be denied as untimely “if the request is not made within a reasonable time before commencement of trial or hearing and there is no showing of reasonable cause for the lateness of the request.” *Id.* at 445-46, 796 P.2d at 214. We review such a denial for an abuse of discretion. *Id.* at 445, 796 P.2d at 214.

Bell's request was undoubtedly late, as it came on the second day of trial. The question is whether Bell had reasonable cause for the lateness of the request. Bell moved to represent himself only after his request to substitute Mueller was denied on the first day of trial, and only after Bell became fully aware of Mueller's lack of preparation. Additionally, Bell did not seem aware that he could represent himself until, during the discussion on Bell's motion to substitute Mueller, the district attorney said, “for the record, he could fire his lawyer at any time and proceed pro per, technically.” Bell asked for clarification as to what the district attorney meant, and once clarification was provided Bell stated he would like to proceed, representing himself. Under the particular circumstances of this case, reasonable cause existed for the delay. The district court erred in refusing to perform a *Faretta* canvass to determine whether Bell voluntarily

and knowingly requested to represent himself. See *O'Neill v. State*, 123 Nev. 9, 17, 153 P.3d 38, 43 (2007) (“The court should conduct a *Faretta* canvass” unless the request is untimely. (quoting *Hymon v. State*, 121 Nev. 200, 212, 111 P.3d 1092, 1101 (2005))); see also *Faretta v. California*, 422 U.S. 806, 835 (1975) (holding a court must assess whether a defendant requesting to self-represent is doing so “competently and intelligently”).

Further, no other grounds in the record support the district court’s denial of Bell’s motion to represent himself. “[A] defendant may be denied his right to self-representation where . . . the request is equivocal, the request is made solely for the purpose of delay, the defendant abuses his right by disrupting the judicial process or the defendant is incompetent to waive his right to counsel.” *Tanksley v. State*, 113 Nev. 997, 1001, 946 P.2d 148, 150 (1997) (citing *Lyons*, 106 Nev. at 443-44, 796 P.2d at 213). Bell never wavered in his request to represent himself once he understood the option. Bell stated he would proceed without a continuance of the trial – that he would prefer any option rather than continue to be represented by Mueller. Additionally, no evidence in the record shows Bell was disruptive. Thus, we conclude the district court abused its discretion in denying Bell’s motion to self-represent. Denial of the right to represent oneself is structural error, demanding reversal. *Lyons*, 106 Nev. at 443, 796 P.2d at 213 (citing *McKaskle v. Wiggins*, 465 U.S. 168, 177 n.8 (1984)).

Because the denial of Bell’s motion constitutes reversible error, we need not address Bell’s other claims, and we,

ORDER the judgment of the district court REVERSED AND
REMAND this matter to the district court for proceedings consistent with
this order.


_____, J.
Herndon


_____, J.
Lee


_____, J.
Bell

cc: Clark County Public Defender
Attorney General/Carson City
Clark County District Attorney
Eighth Judicial District Court Clerk