MEMORANDUM DECISION

ATTORNEY FOR APPELLANT

Christopher J. Petersen
Goshen, Indiana

ATTORNEYS FOR APPELLEE

Theodore E. Rokita
Attorney General of Indiana

Ellen H. Meilaender
Deputy Attorney General
Indianapolis, Indiana

IN THE COURT OF APPEALS OF INDIANA

Angel L. Ubiles,
Appellant-Defendant,

v.

State of Indiana,
Appellee-Plaintiff.

July 14, 2023

Court of Appeals Case No. 22A-CR-2389

Appeal from the Elkhart Superior Court

The Honorable Stephen R. Bowers, Judge

Trial Court Cause No. 20D02-2108-F3-28

Memorandum Decision by Judge Riley.
Chief Judge Altice and Judge Pyle concur.

Riley, Judge.

STATEMENT OF THE CASE

[1] Appellant-Defendant, Angel L. Ubiles (Ubiles) appeals his conviction for burglary, a Level 3 felony, Ind. Code § 35-43-2-1(2); resisting law enforcement, a Class A misdemeanor, I.C. § 35-44.1-3-1(a)(3); and his adjudication as an habitual offender, I.C. § 35-50-2-8.

[2] We affirm.

ISSUES

[3] Ubiles presents this court with three issues on appeal, which we restate as:

(1) Whether Ubiles' Sixth Amendment right was violated when the judicial officer presiding over his initial hearing purportedly lacked authority;
(2) Whether Ubiles knowingly and voluntarily waived his right to counsel; and
(3) Whether the State presented sufficient evidence beyond a reasonable doubt to support Ubiles' conviction for burglary.

FACTS AND PROCEDURAL HISTORY

[4] On August 28, 2021, at approximately 2:30 a.m., Carla Stanfill (Stanfill), who was at home with her three-year-old granddaughter, noticed her dog barking and acting in an unusual manner. She went into the kitchen and saw a hand on the window next to the back door. Thinking it was her husband trying to enter the house, Stanfill walked to the door when it opened and a stranger, later identified as Ubiles, entered the residence. Ubiles immediately grabbed Stanfill

and a struggle ensued. Ubiles slammed Stanfill against the wall and into a freezer. When she tripped and fell in the hallway, Ubiles fell on top of her. Stanfill tried to fight him off, and Ubiles told her to "stop fighting," telling her that he "just want[ed] something to eat," he "just want[ed] food," and that he was "hungry." (Transcript Vol. II, p. 246; Vol. III, pp. 120, 173, 177). Stanfill was able to break free from Ubiles and run into the living room where she retrieved her husband's gun. She pointed the gun at Ubiles and ordered him to leave the house. Ubiles fled and Stanfill called 911.

[5] Officers arrived within minutes. Stanfill was distraught and was breathing heavily. The officers observed signs of a struggle inside the house and injuries on Stanfill. She had visible redness on the back of her neck, rug burns on her knees, a bruise on her back, and was sore all over. A canine police officer tracked Ubiles to an alley between some buildings approximately two blocks away from Stanfill's residence. Ubiles attempted to flee, and after the canine was released, Ubiles was apprehended.

[6] Following Ubiles' arrest, law enforcement officers submitted a probable cause affidavit for the warrantless arrest, and the Elkhart superior court issued an order that same day, August 28, 2021, finding that probable cause existed to arrest Ubiles. Three days later, on August 31, 2021, the State filed an Information, charging Ubiles with Level 3 felony burglary, Class A misdemeanor resisting law enforcement, and an habitual offender adjudication based on his prior convictions for burglary and robbery.

[7] On September 2, 2021, Ubiles' initial hearing was presided over by a Magistrate *Pro Tempore* of the Elkhart superior court. At the hearing, Ubiles was advised of his rights, the charges against him, and the possible penalties for those charges. Ubiles entered a plea of not guilty and was appointed a public defender to represent him. On April 27, 2022, Ubiles' attorney filed a motion to withdraw her appearance, as Ubiles wished to represent himself. On May 2, 2022, the trial court conducted a hearing on Ubiles' motion. After Ubiles confirmed that he still wanted to represent himself, the trial court advised him that it was a "very bad idea" to do so:

> the perils to you, the pitfalls for you, are substantial, starting with the fact that, [], the person you're up against is a trained attorney with experience handling these matters. They know the rules of evidence. They know the rules of procedure. They know how trials work. They know what the law says. They know what the available defenses and motions are that can be made. And as far as I know, you don't have any of that knowledge.

(Tr. Vol. II, p. 37). The trial court inquired about Ubiles' education and legal training. Ubiles acknowledged that he had never studied law and had never been involved in a trial[1] but did have an associate degree from Ball State. The trial court warned Ubiles that he would be held to the same rules of evidence and standards as a trained attorney and that the court would not be able to assist him. The court cautioned Ubiles that due to his lack of knowledge, he

[1] Although Ubiles has a significant criminal record, all of his prior convictions were the result of deferred prosecution agreements or guilty pleas.

might fail to recognize evidentiary objections to keep evidence from being admitted and would waive those matters. Ubiles clarified that he wanted to represent himself because his attorney was "not representing [him] in [] a manner that best suit[ed] [his] interests. [S]he seem[ed] to be like she's more a prosecutor than a defense attorney[.]" (Tr. Vol. II, p. 40). The trial court tried to explain that part of being a good lawyer was to understand the other side's case and to anticipate the arguments. The trial court cautioned Ubiles that he was facing "very serious charges" and a "fair amount" of prison time in the case. (Tr. Vol. II, p. 41). After being advised, Ubiles reiterated his request to represent himself. The trial court granted his petition and appointed his counsel as standby counsel.

[8] On June 14 through 15, 2022, a bifurcated jury trial was conducted, at the close of which the jury found Ubiles guilty as charged. Thereafter, Ubiles pleaded guilty to the habitual offender enhancement. On July 21, 2022, the trial court conducted a sentencing hearing and imposed a sixteen-year sentence for the burglary conviction, enhanced by an additional eighteen years for the habitual offender adjudication, and a concurrent one-year sentence for the resisting law enforcement conviction, resulting in an aggregate sentence of thirty-four years.

[9] Ubiles now appeals. Additional facts will be provided as necessary.

DISCUSSION AND DECISION

I. *Initial Hearing*

[10] As an initial matter, Ubiles contends that his Sixth Amendment right was violated because there is no record of a duly elected or appointed judge having appointed the Magistrate *Pro Tempore* pursuant to Indiana Trial Rule 63(E) and therefore he maintains that the Magistrate *Pro Tempore* lacked authority to preside over his initial hearing. "The proper inquiry for a reviewing court when faced with a challenge to the authority and jurisdiction of a court officer . . . is first to ascertain whether the challenge was properly made in the trial court so as to preserve the issue for appeal." *Floyd v. State*, 650 N.E.2d 28, 32 (Ind. 1994).

[11] Ubiles' initial hearing was held on September 2, 2021. He was in custody, brought to the courthouse by the sheriff, and was unrepresented by counsel. Throughout the initial hearing, nothing was mentioned that would have informed Ubiles that the Magistrate *Pro Tempore* was sitting in that capacity. The only indication that a Magistrate *Pro Tempore* was presiding was the signature line on the initial hearing order. As a result, Ubiles could not have objected to that which he could not have known. *See Ringham v. State*, 768 N.E.2d 893, 897 (Ind. 2002) (holding that a defendant does not waive an issue challenging the appointment of a judge pro tempore when he has no knowledge that the presiding judge is sitting in that capacity), *reh'g denied*.

[12] Turning to Ubiles' argument on the merits, we note that, except for the power of judicial mandate, a magistrate has the same powers as a judge. I.C. § 33-23-5-8.5. In addition, a judge who is unable to attend and preside over a hearing may appoint a judge pro tempore to conduct the business of the

court during his or her absence. T.R. 63(E). Therefore, as the Magistrate *Pro Tempore* was properly appointed, Ubiles' Sixth Amendment right was not violated.

II. *Right to Counsel*

[13] Next, Ubiles contends that he was deprived of being represented by counsel, in accordance with his Sixth Amendment right, because he did not knowingly, voluntarily, and intelligently waive his right to representation. When a defendant asserts his or her right to proceed *pro se*, the trial court must "acquaint the defendant with the advantages to attorney representation and the disadvantages and the dangers of self-representation." *Jackson v. State*, 992 N.E.2d 926, 932 (Ind. Ct. App. 2013).

[14] In *Wright v. State*, 168 N.E.3d 244, 263 (Ind. 2021), the supreme court concluded that the right to self-representation is not absolute and that the waiver of counsel must be: (1) knowing; (2) intelligent; (3) unequivocal; and (4) voluntary. When deciding whether a defendant meets these standards, a trial court should inquire, on the record, whether the defendant clearly understands (1) the nature of the charges against him, including any possible defenses; (2) the dangers and disadvantages of proceeding *pro se* and the fact that he is held to the same standards as a professional attorney; and (3) that a trained attorney possesses the necessary skills for preparing for and presenting a defense. *Id*. at 263-64 (citing *Jones v. State*, 783 N.E.2d 1132, 1138 (Ind. 2003)). "In considering these factors, a court should 'indulge in every reasonable

presumption against waiver of the right to counsel.'" *Id*. at 264 (quoting *Brewer v. Williams*, 430 U.S. 387, 404, 97 S. Ct. 1232 (1977)). The trial court is uniquely situated to assess whether a defendant has waived the right to counsel. *Poynter v. State*, 749 N.E.2d 1122, 1128 (Ind. 2001). And when that court "has made the proper inquiries and conveyed the proper information," and then "reaches a reasoned conclusion about the defendant's understanding of his rights and voluntariness," an appellate court, after a careful review of the record, "will most likely uphold" the trial court's "decision to honor or deny the defendant's request to represent himself." *Id.*

[15] The trial court engaged in an extensive and thorough colloquy with Ubiles in which it advised Ubiles of the benefits of being represented by counsel and the pitfalls of proceeding *pro se*. The trial court expressed its opinion that proceeding without counsel was a "very bad idea" and cautioned him that he would be up against a trained attorney, who was versed in the rules and procedures of a trial, none of which Ubiles had experience in. (Tr. Vol. II, p. 37). The trial court inquired as to Ubiles' educational and legal background, eliciting from him admissions that he had no training in the law and had never conducted a trial. However, as reflected by his criminal history, Ubiles was no stranger to the criminal justice system and obviously knew he had the right to counsel. The trial court told him that an attorney could help him, including by investigating the case, finding witnesses, filing motions and jury instructions, and arguing the law. Despite Ubiles' limited experience, the trial court advised him that he would be held to the same standards as a trained attorney and

warned him that his lack of knowledge could prevent him from raising adequate objections. The trial court cautioned Ubiles that he was facing "very serious charges" and a "fair amount" of prison time in the case. (Tr. Vol. II, p. 41). Even after hearing all these warnings, Ubiles elected to represent himself.

[16] Focusing on *Dowell v. State*, 557 N.E.2d 1063, 1066-67 (Ind. Ct. App. 1990) and *Leonard v. State*, 579 N.E.2d 1294, 1296 (Ind. 1991), which detail a list of guidelines that the trial courts should use in their advisements, Ubiles contends that "there was no mention of rules of criminal procedure, trial rules or jury rules. Also, there was no specific mention that [he] would need to follow the same ground rules as a lawyer would do as the trial court did in *Faretta v. California*, 422 U.S. 806, 95 S.Ct. 2525, 45 L.Ed.2d 562 (1975)." (Appellant's Br. p. 13). When deciding whether a defendant properly waives the right to counsel, both our Indiana Supreme Court and the U.S. Supreme Court "have deliberately eschewed any attempt to formulate a rigid list of required warnings, talismanic language, or formulaic checklist." *Hopper v. State*, 957 N.E.2d 613, 619 (Ind. 2011). Here, the trial court's warnings were strongly worded, extensive, and reiterated on multiple occasions. In different words it repeatedly warned Ubiles of reasons why self-representation was not a good idea, ways that an attorney could help him, and ways that he could harm his own case by his lack of knowledge. Despite his claim now that the trial court should have inquired into his mental health as part of its advisements, there was no evidence before the court to suggest that Ubiles had any mental health problems. Ubiles did not manifest any obvious signs of mental health issues during the

preliminary proceedings nor did his crime itself suggest them. Ubiles was lucid and presented coherent and reasonable arguments in his own defense at trial.

[17] Accordingly, by requesting to represent himself, Ubiles knew "what he [was] doing and [made] his choice with eyes open." *Faretta*, 422 U.S. at 835. He was admonished as to the dangers and disadvantages of self-representation, the nature of the charges, and the standards to which he would be held. *See Wright*, 168 N.E.3d at 263-64. Therefore, we find that the trial court properly inquired into Ubiles' request to proceed *pro se* and that he cannot now contend that his waiver of his right to counsel was not knowing, voluntary, or intelligent. We conclude that Ubiles was not denied his Sixth Amendment right to counsel.

III. *Sufficiency of the Evidence*

[18] Lastly, Ubiles contends that the State failed to present sufficient evidence beyond a reasonable doubt to support his conviction for burglary. Sufficiency of evidence claims "warrant a deferential standard, in which we neither reweigh the evidence nor judge witness credibility." *Powell v. State*, 151 N.E.3d 256, 262 (Ind. 2020). We consider only the evidence supporting the judgment and any reasonable inferences drawn from that evidence. *Id*. "We will affirm a conviction if there is substantial evidence of probative value that would lead a reasonable trier of fact to conclude that the defendant was guilty beyond a reasonable doubt." *Id*. We affirm the conviction "unless no reasonable fact-finder could find the elements of the crime proven beyond a reasonable doubt. It is therefore not necessary that the evidence overcomes every reasonable

hypothesis of innocence. The evidence is sufficient if an inference may reasonably be drawn from it to support the verdict." *Sutton v. State*, 167 N.E.3d 800, 801 (Ind. Ct. App. 2021). "A reasonable inference of guilt must be more than a mere suspicion, conjecture, conclusion, guess, opportunity, or scintilla." *Patel v. State*, 60 N.E.3d 1041, 1049 (Ind. Ct. App. 2016).

[19] To convict Ubiles of burglary, the State was required to establish that he broke and entered the building or structure of another person with the intent to commit a felony therein. I.C. § 35-43-2-1. While Ubiles does not contend that the State satisfied its burden with respect to the breaking and entering of Stanfill's property without her consent, he challenges the State's burden to establish the underlying felony prong of the offense. Here, the State alleged that Ubiles intended to commit a theft, which is statutorily defined as the exertion of unauthorized control over the property of another with the intent to deprive the person of the value or use of that property. I.C. § 35-43-4-2. Ubiles now maintains that Stanfill's testimony that he wanted food can, at best, "be seen as a statement that he [was] hungry," and that inserting into this statement an intent to commit theft "is in the realm of mind-reading and speculation." (Appellant's Br. p. 16). Ubiles continues his argument that as there is no evidence that "he ransacked the kitchen looking for food, ordered Stanfill or any other occupant in the house to prepare a meal for him against their will, opened any kitchen cabinet, refrigerator or freezer looking for food, or that he left the premises with any property," the State failed to carry its burden of proof. (Appellant's Br. pp. 16-17).

[20] The intent to commit a felony may not be inferred solely from the proof of breaking and entering. *Freshwater v. State*, 853 N.E.2d 941, 943 (Ind. 2006). Some fact in evidence must provide a reasonable basis from which to infer the defendant had the specific intent to commit theft inside when he broke and entered. *Id*. The evidence does not need to be insurmountable, but it must provide "a solid basis to support a reasonable inference" that the defendant intended to commit the underlying felony. *Id*. The evidentiary inference pointing to the defendant's intent must be separate from the inference of the defendant's breaking and entering. *Justice v. State*, 530 N.E.2d 295, 297 (Ind. 1988). The inference of intent must not derive from or be supported by the inference of breaking and entering. *Freshwater*, 853 N.E.2d at 943. In other words, the evidence must support each inference—felonious intent and breaking and entering—independently, and neither inference should rely on the other for support. *Id*. This is not to say, however, that the same piece of evidence cannot support both inferences. *Id.* In *Baker v. State*, 968 N.E.2d 227, 230 (Ind. 2012), our supreme court concluded:

> there was evidence that the defendant had been in the church kitchen and opened several cupboards and drawers while there. This evidence, standing alone, permits a reasonable inference of the defendant's felonious intent at the time of entry. Looking through the kitchen cupboards and drawers was not a necessary step in the act of breaking and entering the church. It was an additional act, separate and distinct from the breaking and entering, in which the defendant chose to engage. The opening of cabinets and drawers by an intruder suggests, among other things, that the person opening them was looking for something to take. From this, the jury reasonably could have concluded

> that the defendant broke and entered the church with an intent to commit theft. That there was no evidence that the defendant had rummaged through the drawers or cabinets, as the defendant argues, is of no consequence. The act of opening the drawers and cabinets alone was enough to support an inference of intent to commit theft. Evidence of rummaging would simply bolster the already reasonable inference of intent.

[21] Unlike the usual precedent where a defendant's intent is inferred from the circumstances, here, Ubiles explicitly announced his intent to commit theft. As soon as he entered the kitchen of the residence and noticed Stanfill, he told her that he "just want[s] something to eat," he "just want[s] food," and he's "hungry." (Transcript Vol. II, p. 246; Vol. III, pp. 120, 173, 177). Ubiles clearly sought to take this food from Stanfill without her consent as he did not knock on the door of the residence but rather entered without her consent and immediately fought her. The fact that Ubiles never opened any kitchen cabinets or the refrigerator does not undermine the evidence of his intent. Ubiles never had the opportunity to continue his search for food as he encountered Stanfill in the kitchen and immediately began fighting with her. Accordingly, based on these facts, we conclude that sufficient evidence beyond a reasonable doubt existed to support Ubiles' conviction for burglary.

CONCLUSION

[22] Based on the foregoing, we hold that (1) as the Magistrate *Pro Tempore* was properly appointed, Ubiles' Sixth Amendment right was not violated; (2) Ubiles knowingly, intelligently, and voluntarily waived his right to counsel; and

(3) the State presented sufficient evidence beyond a reasonable doubt to support Ubiles' conviction for burglary.

[23] Affirmed.

[24] Altice, C.J. and Pyle, J. concur