

MEMORANDUM DECISION

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IN THE COURT OF APPEALS OF INDIANA

Quami Mingle,
Appellant-Defendant,

v.

State of Indiana,
Appellee-Plaintiff

July 24, 2023

Court of Appeals Case No.
22A-CR-1928

Appeal from the Tippecanoe
Superior Court

The Honorable Steven P. Meyer,
Judge

Trial Court Cause No.
79D02-2011-F2-66

Memorandum Decision by Judge Mathias
Judges Crone and Kenworthy concur.

Mathias, Judge.

[1] Quami Mingle appeals his convictions for Level 2 felony robbery and Level 6 felony theft following a bench trial. Mingle raises four issues for our review, which we restate as follows:

1. Whether the trial court abused its discretion when it refused to allow Mingle to rescind his waiver of his right to a jury trial.

2. Whether the trial court erred when it denied Mingle's mid-trial request to represent himself.

3. Whether the State presented sufficient evidence to support Mingle's conviction for Level 2 felony robbery.

4. Whether Mingle's conviction for Level 6 felony theft must be vacated as contrary to law.

[2] We affirm the trial court's decisions to hold Mingle to the waiver of his jury trial right and to deny Mingle's request to proceed pro se. We also hold that the State presented sufficient evidence to support Mingle's conviction for Level 2 felony robbery. However, as the State concedes, Mingle's conviction for Level 6 felony theft is a lesser-included offense to his Level 2 felony robbery conviction. Thus, we reverse Mingle's Level 6 felony theft conviction and remand with instructions for the trial court to vacate that conviction and its corresponding, concurrent sentence.

Facts and Procedural History

[3] Around 7:20 in the morning on December 30, 2019, Angela Saylor arrived at her place of work in downtown Lafayette. She exited her car and walked to the

edge of the parking lot. There, Mingle confronted her and demanded her car keys. Saylor refused and “turned to run.” Tr. Vol. 2, p. 51. However, Mingle quickly caught up to her and “forced [her] to the ground.” *Id.* at 54. She had her keys on a key ring around her right ring finger, and Mingle “ripped the keys out of [her] hand.” *Id.* at 55. Saylor felt her finger break. Mingle then “took off” with Saylor’s car. *Id.* at 56. A fellow employee came over to help Saylor and called law enforcement.

[4] The Lafayette Police Department recovered surveillance video of Mingle’s attack on Saylor and circulated that video to nearby law enforcement departments. West Lafayette Police Department Officer Brian Danosky viewed the video and recognized Mingle based on recent experiences with him.

However, Mingle was not located.

[5] Meanwhile, Saylor was transported to a nearby emergency room. There, Dr. Calin Oster diagnosed Saylor as having suffered a spiral fracture to her right ring finger. Dr. Oster placed Saylor’s finger in a splint and advised Saylor to wear the splint until she could be seen by an orthopedic specialist.

[6] Saylor was able to see a specialist within the week, and the specialist concluded that Saylor had also suffered “tears and damage to tendons . . . in the back of [her] hand.” *Id.* at 61. Due to the injury to her hand, she had to quit one of her two jobs near the end of January 2020 because she was no longer able to “grip” the “tools and things that [she] had to use” for that job. *Id.* Saylor’s grip in that hand remains compromised. *Id.*

- [7] In May 2020, Athens, Alabama, Police Department Detective Jonathan Caldwell came into contact with Mingle while investigating a local robbery. During an interview, and after having been Mirandized, Mingle admitted to having stolen a car in Lafayette, Indiana, at the end of December after attacking its female driver. Mingle further stated that he had driven the car to Chicago, where he abandoned it. Detective Caldwell contacted the Lafayette Police Department with this information, and, later, Chicago Police Department officers recovered Saylor's vehicle.
- [8] The State charged Mingle with Level 2 felony robbery and Level 6 felony theft. During a pretrial conference, Mingle waived his right to a jury trial. However, two days before his scheduled bench trial, Mingle moved to continue the trial and sought to withdraw his waiver of his jury trial right. The court held a hearing on Mingle's motion that same day, and, when asked "what has changed," Mingle responded only that he had "been thinking about it" and "felt that it would be better if I went to a jury trial." *Id.* at 37. The court denied Mingle's motion.
- [9] At his ensuing bench trial, the State called Saylor and Detective Caldwell to testify. After their testimony but before the State called its additional witnesses, Mingle informed the court that he wanted to dismiss his counsel and proceed pro se. The court informed Mingle that his request was not timely and denied the request. After the State closed its case, Mingle testified that he was not the person who attacked Saylor and stole her car. The trial court, however, found

Mingle guilty of both offenses and, after a hearing, sentenced him accordingly. This appeal ensued.

1. The trial court did not abuse its discretion when it denied Mingle’s motion to withdraw his waiver of his right to a jury trial.

[10] Mingle first argues on appeal that the trial court erred when it denied his motion to withdraw his waiver of his right to a jury trial. “Although the right to a jury trial is of fundamental dimension, one who knowingly relinquishes that right has no constitutional right to withdraw that relinquishment or waiver.” *Hutchins v. State*, 493 N.E.2d 444, 445 (Ind. 1986) (citing *Davidson v. State*, 249 Ind. 419, 425, 233 N.E.2d 173, 176 (1968)). “The decision to allow withdrawal of the waiver is within the court’s discretion.” *Id.* (citing *Stevenson v. State*, 163 Ind. App. 399, 402, 324 N.E.2d 509, 511 (1975)). “An abuse of discretion occurs if the decision is clearly against the logic and effect of the facts and circumstances before the court, or the reasonable, probable, and actual deductions to be drawn therefrom.” *Owen v. State*, 210 N.E.3d 256, 269 (Ind. 2023) (quotation marks omitted).

[11] The trial court did not abuse its discretion when it denied Mingle’s request to withdraw his waiver of his jury trial right two days before the start of his trial. The record is clear that Mingle’s only purported basis for his request was that he had simply changed his mind. Mingle cites no authority to show that a trial court is required to grant such a request in those circumstances.

[12] Still, on appeal Mingle argues that he had recently received (and rejected) a plea offer from the State prior to his request to withdraw his waiver. He also asserts that he had issues with his trial counsel, though he did not at this time request her appearance to be withdrawn. But Mingle does not explain why either of those facts may have been relevant to his decision as to who the fact finder at his trial would be. *See Ind. Appellate Rule 46(A)(8)(a)*. We therefore conclude that Mingle has not met his burden on appeal to show that the trial court abused its discretion when it denied his motion to withdraw his waiver of his right to a jury trial.

2. The trial court correctly concluded that Mingle’s mid-trial request to represent himself was untimely.

[13] Mingle next asserts that the trial court erred when it denied his mid-trial request to proceed pro se. But Mingle is not correct. As our Supreme Court has explained:

this Court (as with most others) recognizes an untimely request for self-representation as “a proper limitation of the right.” *Russell[v. State]*, 270 Ind. [55,] 61, 383 N.E.2d [309,] 314 [(Ind. 1978)]. *See also Martinez[v. Ct. of App. of Cal., 4th App. Dist.]*, 528 U.S. [152,] 162 [(2000)] (observing that “most courts” require a timely request). By requiring a defendant to assert his right “within a reasonable time *prior to the day on which the trial begins*,” a trial court can avoid a “rushed procedure,” thereby decreasing “the chances that the case should be reversed because some vital interest of the defendant was not adequately protected.” *Russell*, 270 Ind. at 62, 383 N.E.2d at 314.

Wright v. State, 168 N.E.3d 244, 259 (Ind. 2021) (emphasis added).

[14] Mingle did not make his request prior to the commencement of his trial at all, let alone within a reasonable time prior to the day on which his trial began. Instead, Mingle made his request mid-trial and during the State’s case-in-chief. Thus, Mingle’s request was not timely, and the trial court properly denied it.

3. The State presented sufficient evidence to support Mingle’s conviction for Level 2 felony robbery.

[15] We next address Mingle’s argument that the State failed to present sufficient evidence to support his conviction for Level 2 felony robbery. As our Supreme Court has stated:

On a fundamental level, sufficiency-of-the-evidence arguments implicate a “deferential standard of review,” in which this Court will “neither reweigh the evidence nor judge witness credibility,” but lodge such matters in the special “province” and domain of the jury, which is best positioned to make fact-centric determinations. See *Brantley v. State*, 91 N.E.3d 566, 570 (Ind. 2018). In reviewing the record, we examine “all the evidence and reasonable inferences supporting the verdict,” and thus “will affirm the conviction if probative evidence supports each element of the crime beyond a reasonable doubt.” *Id.*

Carmack v. State, 200 N.E.3d 452, 459 (Ind. 2023).

[16] To demonstrate that Mingle committed Level 2 felony robbery, the State was required to show beyond a reasonable doubt that Mingle knowingly or intentionally took property from Saylor by the use of force on her, which resulted in serious bodily injury to her. See *Ind. Code § 35-42-5-1(a)* (2019). On appeal, Mingle argues only that the State failed to show that Saylor suffered

serious bodily injury. [Indiana Code section 35-31.5-2-292](#) defines “serious bodily injury” in relevant part as an injury that causes “protracted loss or impairment of the function of a bodily member or organ.”

[17] Mingle contends that a broken finger is insufficient as a matter of law to demonstrate serious bodily injury. In support of his position, Mingle cites [Davis v. State, 813 N.E.2d 1176 \(Ind. 2004\)](#). In [Davis](#), the defendant pushed his former girlfriend down onto a street and “punched her in the mouth.” [Id. at 1177](#). The former girlfriend suffered a cut lip, a bruise on her knee, and a fractured pinkie finger. The State sought and obtained a conviction for criminal recklessness elevated to a Class D felony based on the former girlfriend’s alleged “serious bodily injury.” [Id.](#) However, at the ensuing trial, the former girlfriend did not testify to any notable pain she had suffered or to any protracted loss of a bodily member or organ. [See id. at 1178](#). Accordingly, our Supreme Court held that the State’s evidence of serious bodily injury was insufficient to support the elevated charge.

[18] We conclude that [Davis](#) is readily distinguishable. Here, unlike the former girlfriend’s testimony in [Davis](#), Saylor testified that she has had protracted loss in the use of her right hand as a result of Mingle’s attack. Shortly after the attack, a specialist concluded that she had suffered tendon and ligament damage to her right hand in addition to the broken finger. One month after the attack, she had to quit one of her two jobs due to her inability to grip necessary tools with that hand. And during her testimony nearly two-and-one-half years later, Saylor continued to suffer from a loss of grip in her right hand.

[19] We conclude that the State’s evidence is therefore sufficient to demonstrate that Mingle’s attack on Saylor resulted in the protracted loss or impairment of the function of her right hand, which is a serious bodily injury under [Indiana Code section 35-31.5-2-292](#). Thus, we affirm Mingle’s conviction for Level 2 felony robbery.

4. Mingle’s conviction for Level 6 felony theft is contrary to law.

[20] Last, Mingle argues that his conviction for Level 6 felony theft is contrary to law. There is no dispute that Mingle’s theft conviction is premised on his theft of Saylor’s vehicle. Accordingly, the State properly concedes that Mingle’s conviction for Level 6 felony theft is a lesser-included offense to his conviction for Level 2 felony robbery of the same vehicle and, as such, both convictions cannot stand. We accept the State’s concession, reverse Mingle’s conviction for Level 6 felony theft, and remand with instructions for the trial court to vacate that conviction and its corresponding sentence.

Conclusion

[21] In sum, we affirm the trial court’s denial of Mingle’s motion to withdraw his waiver of his right to a jury trial and its denial of his mid-trial motion to proceed pro se. We also affirm Mingle’s conviction for Level 2 felony robbery.

However, we reverse Mingle’s conviction for Level 6 felony theft and remand with instructions for the trial court to vacate that conviction and its sentence.

[22] Affirmed in part, reversed in part, and remanded with instructions.

Crone, J., and Kenworthy, J., concur.