MEMORANDUM DECISION

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IN THE COURT OF APPEALS OF INDIANA

Willie G. Maffett,
Appellant-Defendant,

v.

State of Indiana,
Appellee-Plaintiff.

August 29, 2022

Court of Appeals Case No. 21A-CR-2909

Appeal from the Vanderburgh Superior Court

The Honorable Donald Vowels, Magistrate

Trial Court Cause No. 82D07-2108-CM-4516

Bailey, Judge.

Case Summary

[1] Willie Maffett appeals his conviction for battery, as a Class B misdemeanor.[1] Maffett raises two issues for our review, one of which we find dispositive, namely, whether the court erred when it allowed Maffett to proceed *pro se* absent an advisement on the dangers of self-representation. We reverse and remand for further proceedings.

Facts and Procedural History

[2] On August 20, 2021, the State charged Maffett with one count of domestic battery, as a Class A misdemeanor.[2] At his initial hearing, the court engaged in the following colloquy with Maffett:

> [The court]: Are you going to have an attorney represent you?
>
> [Maffett]: No, sir.
>
> [The court]: How do you wish to plead?
>
> [Maffett]: Not guilty.

Tr. at 5-6.

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[1] Ind. Code § 35-42-2-1(c) (2022).

[2] I.C. § 35-42-2-1.3(a). The State also charged Maffett with one count of possession of paraphernalia, as a Class A misdemeanor. I.C. § 35-48-4-8.3(b). However, the trial court entered a directed verdict in Maffett's favor on that count.

[3] Maffett appeared at his ensuing bench trial *pro se*. Officer Seth Gorman with the Evansville Police Department testified that, on August 20, 2021, he was dispatched to a home in response to a "9-1-1 hang up." *Id*. at 32. He then testified that he witnessed Moffett "lower[] his shoulder and ma[k]e contact in a rude insolent manner" with N.P., which caused N.P. to "stumble backwards." *Id*.

[4] At the conclusion of the trial, the court determined that Maffett had touched N.P. in a rude, insolent, or angry manner. However, the court concluded that the State had failed to present any evidence to show that Maffett was in a relationship or lived with N.P. Accordingly, the court entered judgment of conviction against Maffett for the lesser-included offense of battery, as a Class B misdemeanor. This appeal ensued.

Discussion and Decision

[5] Maffett contends, and the State agrees, that the trial court erred when it allowed Maffett to proceed *pro se* without having properly advised him of the dangers of self-representation. The Sixth Amendment to the United States Constitution guarantees a criminal defendant the right to counsel. *Hopper v. State*, 957 N.E.2d 613, 617 (Ind. 2011). "This protection also encompasses an affirmative right for a defendant to represent himself in a criminal case." *Id*.

[6] When a defendant waives his right to counsel and proceeds *pro se*, the trial court must determine that the defendant's waiver of counsel is knowingly, intelligent,

and voluntary. *Jones v. State*, 783 N.E.2d 1132, 1138 (Ind. 2003). A trial court should make the defendant "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 eyes open." *Hopper*, 957 N.E.2d at 618 (quotation marks omitted).

[7] There is no particular "formula or script" that a court must read to the defendant. *Poynter v. State*, 749 N.E.2d 1122, 1126 (Ind. 2001). Rather, to determine whether a defendant's waiver of counsel was knowingly and voluntarily made, this Court must consider: (1) the extent of the trial court's inquiry into the defendant's decision; (2) other evidence in the record that establishes whether the defendant understood the dangers and disadvantages of self-representation; (3) the background and experience of the defendant; and (4) the context of the defendant's decision to proceed *pro se*. *Hopper*, 957 N.E.2d at 618.

[8] Here, when Maffett stated that he did not intend to have an attorney represent him, the court simply responded by asking how Maffett intended to plead. The court did not inquire into his decision or otherwise provide *any* advisement to Maffett regarding the dangers or disadvantages of self-representation. And there is nothing in the record to establish that Maffett understood the dangers of representing himself. Accordingly, the record does not demonstrate that Maffett made the decision to proceed *pro se* with "eyes wide open" such that his waiver of his right to counsel was knowing and voluntary. *Id*.

Conclusion

[9] The trial court failed to advise Maffett of the dangers of self-representation. As a result, we cannot say that Maffett voluntarily, knowingly, and intelligently waived his right to counsel. We therefore reverse the judgment against Maffett and remand for a new trial.[3] *See Poynter*, 749 N.E.2d at 1129.

[10] Reversed and remanded.

Riley, J., and Vaidik, J., concur.

[3] Because we reverse the judgment against Maffett and remand for a new trial, we need not address Maffett's claim that the trial court failed to provide him adequate access to evidence prior to his trial.