

MEMORANDUM DECISION

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IN THE COURT OF APPEALS OF INDIANA

Marcus T. Richardson,
Appellant-Defendant

v.

State of Indiana,
Appellee-Plaintiff.

June 23, 2022

Court of Appeals Case No.
21A-CR-2565

Appeal from the Elkhart Superior
Court

The Honorable Kristine A.
Osterday, Judge

Trial Court Cause No.
20D01-2106-F5-114

Pyle, Judge.

Statement of the Case

- [1] Marcus T. Richardson (“Richardson”) appeals his conviction, following a bench trial, for Level 5 felony domestic battery.¹ Richardson asserts that the trial court erred by determining that he had knowingly and intelligently waived his right to counsel. Concluding that facts and circumstances of the case reveal that the trial court did not err by determining that Richardson had knowingly and intelligently waived his right to counsel, we affirm the trial court’s judgment.
- [2] We affirm.

Issue

Whether the trial court erred by determining that Richardson had knowingly and intelligently waived his right to counsel.

Facts

- [3] On March 28, 2021, Richardson, who was on probation and had been placed on community corrections, was at his house with his former girlfriend, K.J. (“K.J.”). K.J.’s three children, two of whom she shared with Richardson, were with her at Richardson’s house. While K.J. was at the house, Richardson struck K.J. on her face, and she called the police.

¹ IND. CODE § 35-42-2-1.3.

- [4] In March 2021, the State initially charged Richardson with two counts of domestic battery. In June 2021, the State amended the charging information and charged Richardson with the following three counts: Count 1, Level 6 felony domestic battery; Count 2, Class A misdemeanor domestic battery, which was elevated to a Level 6 felony based on Richardson having a prior domestic battery conviction; and Count 3, Class A misdemeanor domestic battery, which was elevated to a Level 5 felony based on Richardson having a prior domestic battery conviction against K.J.
- [5] The trial court held an initial hearing on Richardson’s pending charges and on his probation violation allegation on April 1, 2021. At the beginning of this hearing, the trial court noted that Richardson was appearing pro se and reminded Richardson that he had the right to have an attorney represent him. The trial court also noted that the court and Richardson had “had issues in the past about whether or not [he was] going to have an attorney or represent [him]self.” (Tr. Vol. 2 at 4). When Richardson told the trial court that he was going to “win [his] . . . new case,” the trial court told Richardson the following: “Mr. Richardson, we’ve had some very lengthy discussions about, again, you might have the facts on your side, you might have the law on your side, but unless you know how to present the information. . . .” (Tr. Vol. 2 at 6). Richardson interrupted the trial court to tell the judge that he was “getting’ a lawyer this time.” (Tr. Vol. 2 at 6). Specifically, Richardson told the trial court that he had “some money” and was going to hire an attorney. (Tr. Vol. 2 at 6). The trial court then scheduled a counsel status hearing for May 3, 2021 and

informed Richardson that, if Richardson had failed to hire an attorney by that date, then Richardson should “[e]xpect that [the trial court was] going to talk to [him] about [a] public defender.” (Tr. Vol. 2 at 8).

[6] During the May 3, 2021 hearing, Richardson appeared pro se and told the trial court that he wanted a speedy trial.² Richardson also informed the trial court that he was not going to be able to hire an attorney. The trial court then offered to appoint a public defender for Richardson, and Richardson declined the trial court’s offer. The trial court informed Richardson that it “need[ed] to make this record with [Richardson] again” and proceeded to ask Richardson questions about his decision to waive his right to counsel. (Tr. Vol. 2 at 11). The trial court first confirmed that Richardson understood that he had a constitutional right to an appointed counsel. The trial court also had Richardson acknowledge that, during the previous hearing, he had thought that it was a good idea to get an attorney. Richardson, however, informed the trial court that he had not had all the facts of his case at that time and that he now believed that his case was “not that serious.” (Tr. Vol. 2 at 12). The trial court told Richardson that he “a lot at stake[,]” especially since he had been on community corrections at the time of the alleged offenses, and Richardson agreed. (Tr. Vol. 2 at 12).

² Richardson had filed a pro se motion for a speedy trial after his initial hearing.

[7] Additionally, the trial court reminded Richardson as follows: “[W]e’ve had these discussions before where I’ve explained to you that you may have the facts on your side, you may have the law on your side, but if you don’t know how to effectively present that in front of a jury, do you understand that you may still lose?” (Tr. Vol. 2 at 12-13). Richardson then told the trial court that he did not want a jury trial and, instead, wanted a bench trial. The trial court acknowledged that Richardson could waive his right to a jury trial and informed Richardson that, during a bench trial, the trial court would hold Richardson to the same standard as an attorney. When the trial court asked Richardson to explain why he did not want a public defender appointed, Richardson responded, “I don’t trust ‘em period.” (Tr. Vol. 2 at 13). The trial court “assure[d]” Richardson that the public defenders who were assigned to that court were “top notch” and “outstanding[.]” (Tr. Vol. 2 at 13, 14). Richardson again declined the trial court’s offer for a public defender and confirmed that he wanted to proceed pro se.

[8] The trial court, after noting that it had previously asked Richardson these questions, asked Richardson about his level of education and legal experience. Richardson responded that he had a G.E.D. and had “been gettin’ arrested since [he] was 14 . . . [and] that’s experience enough.” (Tr. Vol. 2 at 14). The trial court cautioned Richardson that his experiences “may not put [him] in a position where it[] [would be] . . . a good idea for [him] to represent [him]self.” (Tr. Vol. 2 at 14-15). The trial court again asked Richardson, “are you sure that I cannot appoint a public defender to represent you in these cases?”, and

Richardson replied, “I’m 100 percent sure.” (Tr. Vol. 2 at 16). The trial court then confirmed that Richardson could not afford an attorney and that he was waiving his right to appointed counsel. Additionally, Richardson waived his right to a jury trial, and the trial court scheduled a bench trial for June 11, 2021.

[9] Thereafter, Richardson appeared pro se at a June 1, 2021 pre-trial hearing. During this hearing, the trial court discussed the State’s motion to amend the charging information. When Richardson objected to the amendment but was unable to provide the trial court with any relevant law or authority, the trial court again offered Richardson the opportunity to have appointed counsel who had “many tools at their disposal” and could “effectively respond” to the State’s motion. (Tr. Vol. 2 at 26). Richardson again declined the trial court’s offer and stated that he was “ready to go to trial.” (Tr. Vol. 2 at 27). Thereafter, the trial court granted the State’s motion to amend the charging information.

[10] The State then informed that trial court that Richardson had filed a witness and exhibit list but had not yet filed any subpoenas for witnesses. The trial court instructed Richardson regarding what he needed to do to have the court issue subpoenas to his witnesses, but Richardson replied that subpoenas were not necessary because his witnesses had “said they [were] just gon’ come.” (Tr. Vol. 2 at 30). The trial court warned Richardson of the consequences and risks of not subpoenaing his witnesses, and Richardson stated that he understood. The trial court then confirmed the bench trial date of June 11.

[11] The parties appeared for the June 11, 2021 bench trial, at which Richardson appeared pro se. Prior to commencing the trial, the trial court again addressed Richardson's decision to represent himself. Specifically, the trial court informed Richardson that it was "a terrible idea" for him to "go[] forward without an attorney" and again offered to appoint counsel for Richardson. (Tr. Vol. 2 at 35). Richardson, however, declined the trial court's offer for counsel. Thereafter, when Richardson appeared to have problems with some witnesses appearing for trial, the trial court asked Richardson if he was still prepared to go forward with the bench trial without the assistance of counsel. Richardson confirmed that he wanted to proceed without counsel. Thereafter, Richardson indicated that he was not prepared with his exhibits. The trial court again advised Richardson that a public defender could assist Richardson with the presentation of witnesses and exhibits, and the court, once more, offered to appoint counsel for him. This time, Richardson accepted the trial court's offer. Richardson also withdrew his request for a speedy trial. The trial court then appointed counsel for Richardson, continued the bench trial over the State's objection, and set a status hearing for July 12.

[12] Richardson appeared with counsel for the July 12 status hearing. During the hearing, however, Richardson informed the trial court that he no longer wanted a public defender and that he wanted to proceed pro se. The trial court expressed its "concern" that Richardson was "making a mistake[,] and the court told Richardson that it could not recall how many warnings it had given Richardson regarding proceeding without the assistance of counsel. (Tr. Vol. 2

at 55). The trial court warned Richardson that, if he proceeded pro se, then the bench trial would proceed whether or not he had his witnesses or exhibits ready. Richardson confirmed that he understood and told the trial court that he would be ready. Richardson also asked the trial court to withdraw the public defender's appearance and to allow him to proceed pro se. The trial court stated that it had "no reason to believe that [Richardson] [was] cognitively impaired" and that Richardson "kn[e]w full well what [he was] doing[.]" (Tr. Vol. 2 at 57). The trial court then "express[ed] to [Richardson] for at least the tenth time" that proceeding pro se was "a terrible idea" and again confirmed that Richardson understood the trial court's concerns before allowing Richardson to waive his right to appointed counsel. (Tr. Vol. 2 at 57).

[13] The trial court held a final pre-trial conference on August 2, 2021, and Richardson appeared pro se. During the hearing, the trial court took time to "make a continuing record" regarding Richardson's decision to waive appointed counsel. (Tr. Vol. 2 at 66). The trial court then summarized the events regarding Richardson's decision to proceed pro se. The trial court, yet again, confirmed that Richardson was waiving his right to a public defender and that he understood that his decision to proceed without counsel "could be at [Richardson's] peril or [his] disadvantage." (Tr. Vol. 2 at 67). Richardson confirmed that he understood the trial court's advisement and stated that he was prepared to proceed pro se at the bench trial.

[14] The trial court held a bench trial on August 31, 2021. Prior to commencing the trial, the trial court once again addressed Richardson's waiver of his right to

appointed counsel. Richardson acknowledged that the trial court had had “many, many conversations about [Richardson] wanting to represent [him]self” and that the trial court had expressed its “concern with [Richardson] proceeding without the assistance of an attorney.” (Tr. Vol. 2 at 81).

Richardson then confirmed that he wanted to proceed without counsel for the bench trial.

[15] At the conclusion of the bench trial, the trial court found Richardson guilty as charged. The trial court, for double jeopardy purposes, merged Counts 1 and 2 into Count 3 and sentenced Richardson to six (6) years in the Indiana Department of Correction. Richardson now appeals.

Decision

[16] Richardson’s sole argument on appeal is that “the record does not support a finding that Richardson knowingly and intelligently waived his right to counsel[.]” (Richardson’s Br. 9). We disagree.

[17] 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.* 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 [the defendant] knows what he is doing and [that] his choice is made with eyes open.” *Hopper*, 957 N.E.2d at 618 (internal quotation marks and citations omitted). Our supreme court has made clear that there is no definitive language that a trial court must use in its advisement to a defendant who wishes to waive his right to counsel. *See Poynter v. State*, 749 N.E.2d 1122, 1126 (Ind. 2001) (explaining that “[t]here are no prescribed ‘talking points’ the court is required to include in its advisement to the defendant”); *Hopper*, 957 N.E.2d at 618 (“There is no particular formula or script that must be read to the defendant.”); *Kubsch v. State*, 866 N.E.2d 726, 736 (Ind. 2007) (“There are no magic words a judge must utter to ensure a defendant adequately appreciates the nature of the situation.”), *cert. denied*. “Rather, determining if a defendant’s waiver was knowing and intelligent depends on the particular facts and circumstances surrounding [the] case, including the background, experience, and conduct of the accused.” *Kubsch*, 866 N.E.2d at 736 (internal quotation marks and citation omitted).

[18] To determine whether a defendant’s waiver of counsel was voluntarily and intelligently made, courts must consider: “(1) the extent of the 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. We review de novo a trial court’s determination that a defendant

waived his right to counsel. *McBride v. State*, 992 N.E.2d 912, 917 (Ind. Ct. App. 2013), *reh'g denied, trans. denied*.

[19] Here, the record reveals that Richardson's decision to waive his right to counsel and to proceed pro se was made with his eyes opened. *See Hopper*, 957 N.E.2d at 618. From the time of Richardson's initial hearing in April 2021 to his bench trial in August 2021, Richardson appeared for numerous hearings during which the trial court repeatedly informed Richardson of his right to counsel. The trial court also advised Richardson of the dangers of self-representation and the advantages of having a public defender appointed for him. Each time, Richardson confirmed that he understood the trial court's advisements, yet he expressed his desire to waive his right to counsel. The trial court also inquired into Richardson's background, experience, and his decision for declining the appointment of counsel. Richardson's understanding of the dangers and disadvantages of proceeding pro se were made clear when he appeared at the scheduled June 2021 bench trial and had trouble with the preparation of his witnesses and exhibits. Over the State's objection, the trial court continued the bench trial and appointed counsel for Richardson. Thereafter, however, Richardson informed the trial court that he no longer wanted a public defender and that he wanted to proceed pro se. The trial court, yet again, confirmed that Richardson was waiving his right to a public defender and that he understood that his decision to proceed without counsel would be at Richardson's "peril or . . . disadvantage." (Tr. Vol. 2 at 67). Richardson confirmed that he

understood the trial court's advisement and stated that he was prepared to proceed pro se at the August 2021 bench trial.

[20] Based on the particular facts and circumstances surrounding this case, we conclude that the trial court did not err by determining that Richardson had knowingly and intelligently waived his right to counsel. Accordingly, we affirm the trial court's judgment.

[21] Affirmed.

Robb, J., and Weissmann, J., concur.