MEMORANDUM DECISION

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IN THE COURT OF APPEALS OF INDIANA

Courtney Lamar Parker
Appellant-Defendant,

v.

State of Indiana,
Appellee-Plaintiff,

July 16, 2021

Court of Appeals Case No. 21A-CR-84

Appeal from the Lake Superior Court

The Honorable Salvador Vasquez, Judge

Trial Court Cause No. 45G01-1712-F5-134

Tavitas, Judge.

Case Summary

[1] Courtney Lamar Parker was convicted of two counts of burglary, as Level 5 felonies, after a jury trial. In the lead-up to trial, Parker repeatedly affirmed his intent to proceed pro se, albeit with the assistance of standby counsel. The trial court admonished Parker that proceeding pro se is highly inadvisable. Nevertheless, Parker insisted. Parker now argues that his constitutional right to counsel was violated when the trial court permitted Parker to represent himself and that his self-representation inhibited his ability to obtain a fair trial. We disagree and, thus, affirm.

Issue

[2] Parker raises two issues, which we consolidate and restate whether Parker's waiver of counsel deprived him of his Sixth Amendment right to counsel.

Facts

[3] Shortly before 9:00 p.m. on the night of December 27, 2015, Officer Brian Taylor of the Hobart Police Department responded to a radio call regarding gunfire. Arriving at the area from which the call was generated, Officer Taylor noticed an unattended sports utility vehicle parked next to a vacant building. Officer Taylor began to investigate. He noticed that the vehicle contained large cable or copper wire covered in soot or ash. Officer Taylor then turned his attention to the vacant building, spotting what he believed to be fresh damage to an entry door. The lock to the door appeared to have been cut and was on

the ground. An exterior electric panel was similarly damaged. At this point, Officer Taylor placed a radio call requesting additional officers at the scene.

[4] Before additional officers could arrive, Officer Taylor's attention was drawn to an area behind the vacant building. He illuminated the area and discovered Parker and Nicole Glauvogl standing there. Officer Taylor summoned the two and made note of their dirty hands as they approached. Parker and Glauvogl indicated that the unoccupied car belonged to them, and, in response to questioning about the copper wire inside, Parker said that he found the wire on the ground. Parker was subsequently searched, and a flat-head screw matching those used to secure the doors on the electrical panel was recovered from his person. A screwdriver was recovered from Parker's car.[1]

[5] A second business unit in the vacant building also showed the signs of a recent break-in, including damage to the door and exterior electric panels and a cut lock. The second unit had previously been subjected to fire damage and the resulting soot and ash had yet to be removed. Electrical panels in both units were stripped of their copper wiring. Officers also discovered bolt cutters inside the doorway of one of the damaged units. Officer Taylor conducted his routine patrols earlier that day, at which time the units were undamaged.

[6] On December 28, 2015, the State charged Parker with two counts of burglary, as Level 5 felonies, one for each of the two business units. At a hearing on

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[1] Though both Parker and Glauvogl claimed ownership of the car, it was registered in Glauvogl's name.

September 4, 2019, Parker dismissed his attorney and announced to the trial court that he would be proceeding pro se. The following colloquy ensued:

> The Court: Now, from there, I don't know what occurred in Judge Boswell's court, but apparently you went pro se.[2]
>
> The Defendant: Yes, I did.
>
> The Court: You did not have any assistance whatsoever? No standby counsel, no nothing?
>
> The Defendant: No. Well, actually I did have standby counsel, but --
>
> The Court: And you were found not guilty of some counts and guilty on others? Is that what happened?
>
> The Defendant: Yes.
>
> * * * * *
>
> THE COURT: Okay. I don't want you to make a snap decision on this, but I understand how you've represented yourself. I -- you know, [ ] it rather is what it is, what occurred in Room 3. I believe [representing yourself is] a horrible idea. It's rarely successful. Almost 30 years of doing this, I've seen it work once. And maybe you're -- maybe you're number two over what

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[2] According to Parker, he represented himself in three trials prior to the instant case. The record does not reveal whether this comment refers to a prior unrelated proceeding or to the proceedings in this case, which was transferred from a different courtroom in accordance with the Lake County local rules. *See* Appellant's App. Vol. II p. 5.

happened in Room 3, but given that you have some history of representing yourself, you certainly can if you want. I mean, our -- your constitutional right to go forward without an attorney is absolutely secure here, if that's what you truly want to do. You have to follow all the rules of evidence, Rules of Trial Procedure, Criminals Rules of Procedure. Very little help on my end to get you through all that. You have to conduct yourself professionally, accordingly and abide by all the rules of Court. You're -- and if you can pull that off, then you can represent yourself. I don't -- I don't have any problem with it. I mean, we're here to try -- you know, to do trials. If you truly want to go forward without an attorney, one, it's a bad idea, and I highly do not recommend you do so. But two, if you truly want to do that, I won't stand in your way, Mr. Parker. You're going to trial on the arson case, cause 30. Only one trial, though. We're not trying two. The burglary case will be set aside and we'll give you a different trial date for that, but it's the arson case that's the case that's the State's electing to try you on, that week.[3] What do you wish to do, Mr. Parker?

* * * * *

The Court: Okay. So you still want to go pro se?

The Defendant: Yes, your Honor.

The Court: You sure?

The Defendant: I'm absolute[ly] positive.

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[3] This order was subsequently reversed, with the burglary trial occurring first.

Tr. Vol. II pp. 9, 21-22.

[7] Parker indicated that he had represented himself on prior occasions with some success. He further demonstrated that he was familiar with the process for issuing subpoenas to witnesses, for requesting that the State turn over its discovery, and for requesting a witness list. The trial court warned Parker that Parker would be held to the same standards as an attorney and would receive no special treatment. The trial court also instructed Parker to file all appropriate motions in writing. Finally, the trial court attempted once more as follows to ascertain whether Parker was serious about proceeding pro se:

> The Court: Okay. So you still want to go pro se?
>
> The Defendant: Yes, your Honor.
>
> The Court: You sure?
>
> The Defendant: I'm absolute[ly] positive.
>
> The Court: Can I talk you out of it?
>
> The Defendant: You say what?
>
> The Court: Can I talk you out of it?
>
> * * * * *

> The Defendant: [ ] Well, your Honor, I need a copy of his witness list so I'll know who [I] would like to file a motion on in regards to deposing [sic].

Tr. Vol. II pp. 21-22.

[8] In a series of hearings leading up to Parker's trial, the trial court frequently checked in with Parker to confirm his desire to proceed pro se. At no point did that desire appear to waver, despite subsequent renewed warnings from the trial court that proceeding pro se is inadvisable. Parker did eventually request, and was granted, standby counsel. The record reflects that Parker filed a variety of motions. Parker also made frequent discovery requests and subpoenaed and took the depositions of key witnesses.

[9] Parker underwent a jury trial for the burglaries in October 2020. The jury returned verdicts of guilty on both counts. On December 15, 2020, the trial sentenced Parker to five years on each count to be served concurrently. Parker now appeals.

Analysis

[10] Parker argues that the trial court's decision to allow him to proceed pro se violated Parker's Sixth Amendment rights. "Constitutional claims raise questions of law, which we review de novo." *Hendricks v. State*, 162 N.E.3d 1123, 1135 (Ind. Ct. App. 2021) (citing *Tiplick v. State*, 43 N.E.3d 1259, 1262 (Ind. 2015)), *trans. denied*. "A 'defendant who is competent to stand trial and who knowingly, intelligently and voluntarily makes a timely and unequivocal

waiver of counsel is entitled to exercise the right of self-representation . . . .'" *Wright v. State*, 168 N.E.3d 244, 264 (Ind. 2021) (quoting *Sherwood v. State*, 717 N.E.2d 131, 135 (Ind. 1999), *trans. denied*). "It is undeniable that in most criminal prosecutions defendants could better defend with counsel's guidance than by their own unskilled efforts." *Faretta v. California*, 422 U.S. 806, 834, 95 S. Ct. 2525, 2540 (1975). Nevertheless,

> Personal liberties are not rooted in the law of averages. The right to defend is personal. The defendant, and not his lawyer or the State, will bear the personal consequences of a conviction. It is the defendant, therefore, who must be free personally to decide whether in his particular case counsel is to his advantage. And although he may conduct his own defense ultimately to his own detriment, his choice must be honored out of that respect for the individual which is the lifeblood of the law.

Id., 95 S. Ct. at 2550-51.

[11] Accordingly, the right to self-representation may, unfortunately, often conflict with the right to a fair trial. *See, e.g.*, *Martinez v. Court of Appeal of California, Fourth Appellate Dist.*, 528 U.S. 152, 164, 120 S. Ct. 684 (2000) (Breyer, J., concurring) (citing *United States v. Farhad*, 190 F.3d 1097, 1107 (9th Cir. 1999) (Reinhardt, J. concurring)). Our Supreme Court recently reviewed the history of this "constitutional paradox" in *Wright v. State*, 168 N.E.3d 244 (Ind. 2021). The Court concluded that the right to self-represent 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 her, including any possible defenses; (2) the dangers and disadvantages of proceeding pro se and the fact that she's 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.

Wright, 168 N.E.3d 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)) (emphasis in original).

[12]

> 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) (citation omitted). 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*. (citation omitted).

Wright, 168 N.E.3d at 254-55.

[13] The *Wright* Court determined that Wright's waiver of counsel did not satisfy the "intelligently" prong. "The 'information a defendant must have to waive counsel intelligently will depend, in each case, upon the particular facts and circumstances surrounding that case.'" *Id*. at 266 (quoting *Iowa v. Tovar*, 541

U.S. 77, 92, 124 S. Ct. 1379 (2004)). "Case-specific factors we may consider include 'the defendant's education or sophistication, the complex or easily grasped nature of the charge, and the stage of the proceeding.'" *Id*. (quoting *Tovar*, 541 U.S. at 88, 124 S. Ct. 1379). Wright did not have any experience picking a jury, cross-examining a witness, or delivering a closing argument. Though Wright had previously represented himself, the nature of the prior case was materially different.

> To be sure, a pro se "defendant need not possess technical legal knowledge" when exercising her right to self-represent. *Sherwood*, 717 N.E.2d at 134 (citing *Faretta*, 422 U.S. at 836, 95 S. Ct. 2525). But even with incomplete knowledge of the law, a defendant should demonstrate at least some "familiarity with legal procedures and rules of evidence" as well as a basic "understanding of the sentencing process." *Jones*, 783 N.E.2d at 1138; *Kubsch* [*v. State*], 866 N.E.2d [726,] 738 (Ind. 2007), *cert. denied*]. Wright, for his part, failed to show a rudimentary understanding of either. *Cf. United States v. Steele*, 2000 WL 796191, at *3, 221 F.3d 1340 (7th Cir. 2000) (unpublished) (finding a knowing and intelligent waiver where defendant had taken "three paralegal courses and received certificates in legal research and civil procedure," successfully "obtained a settlement from the State of Indiana" in a[ ] previous pro se suit, and explained that his choice to self-represent was "a matter of trial strategy").

Wright, 168 N.E.3d at 267. Finally, Wright had no discernible trial strategy.

[14] In the case at bar, Parker argues that he was insufficiently advised of the dangers of self-representation. We, however, cannot contemplate what more Parker expects of a trial court. Even if it were not the case that the courts

"'have deliberately eschewed any attempt to formulate a rigid list of required warnings, talismanic language, or formulaic checklist[,]'" *id*. at 264 (quoting *Hopper v. State*, 957 N.E.2d 613, 619 (Ind. 2011)), the trial court's warnings here were strongly worded, extensive, and reiterated on multiple occasions. The trial court indicated that pro se representation is rarely effective, that Parker would be held to all the same standards as an attorney, and granted Parker standby counsel. Parker reiterated on multiple occasions that he understood the position he had assumed. We find that the trial court far exceeded its duty to inform Parker of the perils of proceeding pro se.

[15] We find little difficulty in concluding that Parker's waiver was knowing, voluntary, and unequivocal. Parker's assertion of waiver was plain and durable. He repeatedly demonstrated that he knew what he was choosing to do. We must examine, therefore, whether Parker's waiver was made intelligently. Like Wright, Parker had experience with the legal system and, moreover, had previously represented himself in numerous criminal proceedings and succeeded in attaining a dismissal of some claims. Unlike Wright, however, Parker's grasp on procedure, jury selection, trial strategy, and the rules of evidence was impressively firm for a layman.[4]

[4] We note that technical knowledge or skill is not a necessity for an intelligent *waiver*, though it may constitute one factor to consider. We must distinguish between an able presentation at trial and the waiver decision that preceded it. *Faretta*, 422 U.S. at 836, 95 S. Ct. at 2541 ("For his technical legal knowledge, as such, was not relevant to an assessment of his knowing exercise of the right to defend himself.").

[16] During Parker's trial, we can say with confidence that Parker held his own. Whereas Wright "articulated no defenses to his crimes or potentially mitigating evidence[,]" *Wright*, 168 N.E.3d at 267, Parker consistently tested the State's evidence via cross-examination, and delved into inconsistencies in testimony. Parker was able to impeach witnesses via prior inconsistent statements.[5] Moreover, Parker clearly made the case that circumstantial evidence was an insufficient basis upon which to convict—a clear-cut and viable trial strategy. Though we do not necessarily agree with Parker's claim to be "one of the best, if not the best attorney[s] in Lake County [J]ail[,]" Tr. Vol. II pp. 189-90, we are unconvinced that Parker's Sixth Amendment rights were violated. We find that his waiver was made intelligently. Accordingly, we affirm the trial court.

Conclusion

[17] The trial court did not err in allowing Parker to proceed pro se, and that determination was not tantamount to a deprivation of Parker's Sixth Amendment rights. Accordingly, Parker knowingly, unequivocally, intentionally, and intelligently waived his right to trial counsel. We affirm.

[18] Affirmed.

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[5] Parker makes several points about avenues not taken during his trial, as well as whether circumstantial evidence alone was enough to support his conviction. Appellant's Br. pp. 14-15. These points, however, are ensconced in his arguments about whether his waiver of counsel was constitutionally sound. Parker stops short of actually making a sufficiency of evidence claim, and so we do not address such a claim. Even if we did, however, the claim would be dispatched by the well-worn understanding that we will not reweigh evidence in order to assess its sufficiency. *See, e.g., Powell v. State*, 151 N.E.3d 256, 262 (Ind. 2020).

Najam, J., and Pyle, J., concur.