

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

PAUL ANTHONY MONROE,

Defendant-Appellant.

UNPUBLISHED

November 23, 1999

No. 204719

Recorder's Court

LC No. 96-002886

Before: Jansen, P.J., and Saad and Gage, JJ.

PER CURIAM.

Following a jury trial, defendant was convicted of bank robbery, MCL 750.531; MSA 28.799. The trial court sentenced defendant to ten to twenty years' imprisonment. Defendant appeals as of right. We affirm.

On March 14, 1996, at approximately 2:15 p.m., the National Bank of Detroit (NBD), located at 7340 Grand River in the city of Detroit, was robbed. The perpetrator handed a teller a deposit slip which included the words, "Give me the money. Don't move. All out the cash drawer." The teller gave the man approximately \$800 along with an exploding dye pack. Bank surveillance photographs depicted the perpetrator at the teller's window and leaving the bank after receiving the money. On March 15, 1996, at approximately 4:30 a.m., two Detroit police officers received a police run instructing them to go to the corner of West Warren and Lawton to meet a man named Paul Monroe who wanted to turn himself in for robbing a bank. When the officers arrived at the corner, defendant approached them and stated that he wanted to turn himself in for robbing a bank on Grand River and West Grand Boulevard. The officers observed red dye on defendant's clothing and hands. Defendant was arrested after the officers confirmed that the robbery had occurred. After being advised of his constitutional rights, defendant gave the arresting officers detailed information regarding the robbery and gave a detailed, signed statement to a Detroit police investigator.

On appeal, defendant first argues that the trial court erred when it allowed him to proceed in *propria persona* at the pretrial evidentiary hearing held pursuant to *People v Walker (On Rehearing)*, 374 Mich 331; 132 NW2d 87 (1965) to suppress statements given to the police. It is defendant's position that he did not unequivocally state that he intended to waive his right to counsel at the hearing

and there was no inquiry regarding whether he knowingly, intentionally, and voluntarily waived his right to counsel. We review a trial court's decision to grant a criminal defendant's request to proceed in propria persona for whether the trial court substantially complied with the waiver of counsel procedures set forth in *People v Anderson*, 398 Mich 361; 247 NW2d 857 (1976) and MCR 6.005(D).

A criminal defendant has both the right to counsel, US Const, Ams V and VI; Const 1963, art 1, §§ 17 and 20, and the right to represent himself, US Const, Am VI; Const 1963, art 1, § 13; MCL 763.1; MSA 28.854. Both rights are equally important and, by asserting one, the defendant necessarily waives the correlative right. *People v Adkins (After Remand)*, 452 Mich 702, 724; 551 NW2d 108 (1996). The right to represent oneself is not absolute and every presumption should be made against waiver of one's right to counsel. *Id.* at 721; *People v Ahumada*, 222 Mich App 612, 616; 564 NW2d 188 (1997). The presumption against waiver is based on the belief that a defendant who is represented by counsel stands a better chance of receiving a fair trial. *Adkins, supra* at 721. The trial court is in the best position to determine whether a defendant has waived the right to counsel. *Id.* at 723; *Ahumada, supra* at 614.

Before granting a defendant's request to proceed in propria persona, the trial court must substantially comply with the waiver of counsel procedures set forth in *Anderson* and MCR 6.005(D). *Adkins, supra* at 706. Substantial compliance requires that the trial court discuss the substance of *Anderson* and MCR 6.005(D) in a short colloquy with the defendant and make an express finding that the defendant fully understands, recognizes, and agrees to abide by the waiver of counsel procedures. *Adkins, supra* at 726-727. First, a defendant's request to represent himself must be unequivocal. *Id.* at 722. Second, the trial court must determine that the defendant's assertion of his right is knowing, intelligent, and voluntary. *Id.* Third, the trial court must determine that the defendant's self-representation will not disrupt, inconvenience, or burden the court. *People v Dennany*, 445 Mich 412, 432 (Griffin, J); 519 NW2d 128 (1994); *Anderson, supra* at 368; *People v Ramsdell*, 230 Mich App 386, 405; 585 NW2d 1 (1998). Fourth, the trial court must comply with the requirements of MCR 6.005(D). *Adkins, supra* at 722. MCR 6.005(D) provides, in pertinent part:

The court may not permit the defendant to make an initial waiver of the right to be represented by a lawyer without first

(1) advising the defendant of the charge, the maximum possible prison sentence for the offense, any mandatory minimum sentence required by law, and the risk involved in self-representation, and

(2) offering the defendant the opportunity to consult with a retained lawyer or, if the defendant is indigent, the opportunity to consult with an appointed lawyer.

In the present case, the trial court did not comply with the requirements of *Anderson* and MCR 6.005(D) before allowing defendant to proceed in propria persona at the *Walker* hearing. At the start of the hearing, the following exchange occurred:

Mr. Edison: Yes. For the record, your Honor, Jeffrey Edison, in court with Mr. Paul Monroe. Mr. Monroe had filed a motion for an evidentiary hearing challenging the legality of his arrest, and alleging that his arrest was illegal, and therefore the subsequent evidence that was obtained by the police should be suppressed, specifically statements that he gave to the police after his arrest.

Mr. Monroe is representing himself in these proceedings and I am present to support him in this matter, your Honor. I believe he had addressed the Court earlier regarding his representation of himself.

The Court: Fine. Ready to proceed, Mr. Monroe?

The Defendant: Yes, sir.

The Court: Call your first witness.

A review of the record establishes that the trial court never substantially addressed the issue of defendant's waiver of his right to counsel during any of the prior proceedings.

Despite the trial court's failure to substantially comply with the waiver of counsel requirements, the period during which defendant proceeded in propria persona cannot reasonably be said to have contributed to his conviction and, therefore, was harmless beyond a reasonable doubt. See *People v Anderson (After Remand)*, 446 Mich 392, 405-406; 521 NW2d 538 (1994). There was overwhelming testimony at the *Walker* hearing supporting the trial court's ruling on the motion that defendant was subject to a lawful arrest. A police officer may arrest a person without a warrant if there is probable cause to justify the arrest based upon the facts and circumstances within the officer's knowledge that are sufficient to warrant a person of reasonable caution in believing that the suspect has committed or is committing an offense. *People v Champion*, 452 Mich 92, 115; 549 NW2d 849 (1996); *People v Kelly*, 231 Mich App 627, 631; 588 NW2d 480 (1998). According to the arresting officers' testimony at the hearing, they were sent on the police run for the specific purpose of meeting a man named Paul Monroe who intended to turn himself in for bank robbery. When they reached the destination described in the police run, defendant flagged them down and told them he had robbed the NBD at Grand River and West Grand Boulevard. The police officers confirmed that a robbery at that specific bank had occurred. Defendant had red dye on his clothing and hands, which one police officer believed was consistent with dye emitted from a bank's dye pack. Therefore, the overwhelming evidence supported the trial court's finding that defendant was subject to a lawful arrest.

Moreover, there was no evidence that defendant's statements to the police were involuntary. The arresting officers testified at the hearing that they believed defendant was not drunk at the time of his arrest and the investigator who took defendant's written statement believed that defendant was not under the influence of drugs or alcohol when he gave the detailed statement. Defendant indicated in the statement that he was not under the influence of drugs or alcohol at the time the statement was given. There was no testimony at the hearing suggesting defendant's statements were otherwise involuntarily given. Each of the officers testified that defendant was informed of his constitutional rights on several

occasions and that he voluntarily spoke about his involvement in the robbery. Furthermore, it is clear that defendant's arguments at the motion were adequately set forth at the hearing despite defendant's self-representation. Defendant effectively cross-examined each of the witnesses and defendant's counsel presented a detailed summation of defendant's arguments for suppression before the trial court rendered its ruling. Defendant was represented by counsel at all times after the suppression hearing. Accordingly, there was no reasonable possibility that the trial court's failure to substantially comply with waiver of counsel procedures contributed to the denial of defendant's motion to suppress statements made to police officers or contributed to the jury's verdict convicting defendant.

Defendant argues next that the trial court erred in finding that the statements made to the police were obtained pursuant to a lawful arrest. A trial court's findings of fact following a suppression hearing are reviewed for clear error. *People v LoCicero (After Remand)*, 453 Mich 496, 500; 556 NW2d 498 (1996). The application of the constitutional standard to uncontested facts, however, is not entitled to the same deference. *Id.* at 500-501. Rather, a question of law is reviewed de novo. *People v Melotik*, 221 Mich App 190, 198; 561 NW2d 453 (1997). In reviewing a challenged finding of probable cause, the court determines whether the facts available to the arresting officer at the moment of the arrest would justify a fair-minded person of average intelligence in believing that the suspected individual had committed a felony. *Kelly, supra* at 631.

Defendant's statement to police officers that he wanted to turn himself in for a bank robbery, the presence of red dye on defendant's clothes and hands, and the police officers' confirmation that a robbery had, in fact, occurred at the bank described by defendant was sufficient to give the arresting officers a reasonable belief that defendant committed the robbery. Consequently, the police officers had probable cause to arrest defendant. *Champion, supra* at 115; *Kelly, supra* at 631.

Lastly, defendant argues that there was insufficient evidence to support his conviction given the prosecution's failure to introduce a recording of the 911 call to police that precipitated the police run to West Warren and Lawton. When reviewing the sufficiency of the evidence in a criminal case, this Court must view the evidence in a light most favorable to the prosecution and determine whether a rational trier of fact could find that the essential elements of the crime were proven beyond a reasonable doubt. *People v Terry*, 224 Mich App 447, 452; 569 NW2d 641 (1997).

To prove the commission of a bank robbery, the prosecution must prove that a defendant threatened someone or placed them in fear for the purpose of stealing money from a bank with the intent to commit a larceny. *People v Avery*, 115 Mich App 699, 701; 321 NW2d 799 (1982). In the present case, despite the fact that the prosecution did not introduce a tape of the 911 call at trial, there was sufficient evidence of each element of the crime. Barbara Davis, the bank teller who was handed the note by the perpetrator, testified that, upon reading the note, she realized she was being robbed and was scared. She testified that defendant was the perpetrator and that he had a "mean" expression on his face. Although the note did not contain an express threat, the words, "Don't move," frightened Davis because she believed defendant had a weapon in his pocket. Bank teller Shawn Mitchell testified that Davis was trembling, crying, and was unable to speak immediately following the robbery. Such evidence of the circumstances surrounding the robbery was sufficient to establish that Davis was reasonably placed in fear by defendant's conduct. See *People v Kruper*, 340 Mich 114, 121; 64

NW2d 629 (1954); *People v Hearn*, 159 Mich App 275, 281; 406 NW2d 211 (1987). The arresting officers and the investigator who interviewed defendant testified at trial that defendant had red dye on his hands and clothes, which was consistent with dye from a bank's dye pack. Those witnesses also testified that defendant admitted he committed the bank robbery, obtained \$800 to \$850 from the teller, removed the money from the bank and spent it on his friend's children. Consequently, there was sufficient evidence to conclude that defendant placed Davis in fear for the purpose of stealing money from the bank with the intent to take it away and, thus, was guilty of bank robbery.

Affirmed.

/s/ Kathleen Jansen
/s/ Henry William Saad
/s/ Hilda R. Gage