In The
Court of Appeals
Sixth Appellate District of Texas at Texarkana

No. 06-15-00121-CR

BILLY JOE SELMAN, Appellant

V.

THE STATE OF TEXAS, Appellee

On Appeal from the County Court at Law
Hill County, Texas
Trial Court No. M0890-14

Before Morriss, C.J., Moseley and Burgess, JJ.
Memorandum Opinion by Chief Justice Morriss

MEMORANDUM OPINION

Responding to a call from an area resident, Hubbard, Texas,[1] police officer Darlin Lebel arrived at the resident's property just outside of town and saw Billy Joe Selman using his hands to dig in the dirt in the rear portion of that property. Inexplicably, when Lebel approached Selman and directed him to stop, Selman ran, and then drove, away from Lebel, although, in that small community, Lebel knew Selman and knew that the vehicle in which Selman attempted to elude her belonged to Selman's sister, Robin, and that Selman lived with his mother, Linda. Assuming that Selman was headed to his place of residence, Lebel drove straight to Linda's house. After pulling into the driveway, Lebel saw Selman run inside the residence. Once Lebel's backup, Hubbard Police Chief Jason Patrick, arrived, the officers requested and received help from Robin and Linda in the form of a key to the residence. Inside, after a search, officers found Selman hiding in a closet under a blanket.

Those events resulted in Selman's conviction for evading arrest and a sentence of eight months in county jail. On appeal, Selman complains that he was improperly denied the right to represent himself, that the warrantless search of Selman's residence was improper, and that a missing dashcam video was a discovery violation.

[1]Originally appealed to the Tenth Court of Appeals in Waco, this case was transferred to this Court by the Texas Supreme Court pursuant to its docket equalization efforts. *See* TEX. GOV'T CODE ANN. § 73.001 (West 2013). We are unaware of any conflict between precedent of the Tenth Court of Appeals and that of this Court on any relevant issue. *See* TEX. R. APP. P. 41.3.

We affirm the judgment of the trial court because (1) Selman abandoned any effort to represent himself at trial, (2) Selman preserved no complaint regarding officers' search of his residence, and (3) Selman's dashcam issue was inadequately briefed.

(1) Selman Abandoned any Effort To Represent Himself at Trial

Selman contends that the trial court erred by not allowing him to represent himself. We disagree.

The United States Supreme Court's foundational "self-representation" case, *Faretta v. California*, held that the Sixth and Fourteenth Amendments include a "constitutional right to proceed without counsel when" a criminal defendant "voluntarily and intelligently elects to do so." *Faretta v. California*, 422 U.S. 806, 807 (1975); *see Indiana v. Edwards*, 554 U.S. 164, 170 (2008). The right to represent one's self must be clearly and unequivocally asserted. *Williams v. State*, 252 S.W.3d 353, 356 (Tex. Crim. App. 2008) (citing *Funderburg v. State*, 717 S.W.2d 637, 642 (Tex. Crim. App. 1986)).

Before trial, Selman faxed to the trial court, but never filed, what the court described as a "waiver of attorney" in this case that had various portions underlined.[2] On the day of trial, just before voir dire, the trial court spoke with Selman regarding the waiver:

> THE COURT: I do have some questions in the fact that you have underlined certain paragraphs, or certain parts of the paragraphs, in this waiver of attorney and I wanted to get your true intent as to your request. You have underlined the fact that you have the right to represent yourself, also that you have knowingly and intelligently waived your rights, and that you request the Court to allow you to proceed without an attorney being appointed for you, but you also

[2]The "waiver of attorney" was not filed with the district clerk and was not admitted as an exhibit before the trial court. It is likewise not a part of the record on appeal.

underlined "so that I can hire my own private attorney." So I wanted to ask you, Mr. Selman, what is your intent in signing that waiver of attorney?

[Selman]: Well, I -- my intention was to try to find and hire a private attorney in the time that I was given between 4 o'clock yesterday -- about 3:30 when the hearing was over and this morning, and that wasn't enough time. I know my constitutional rights say I can represent myself. That seems to be good enough, unless you want to reschedule.

The trial court refused to reschedule the trial and explained that, if Selman chose to represent himself, he would "be held to the same standards as an attorney . . . such as . . . know[ing] the rules of evidence . . . how to conduct voir dire…[and] those are just some of the examples that you need to know…." The trial court made clear that its position was merely to ensure that Selman got a fair trial and "to make sure that [Selman was] equipped with counsel to assist [him] through this legal process of a fair trial." The court expressed "great concerns" regarding Selman representing himself, and the following exchange followed:

[Selman]: I would tend to agree with you. I would like a fair trial as well. Mr. Phillips has visited me probably a total of 15 minutes to prepare for this, so I'm not real sure that I'm getting a fair trial as far as being defended, you know, properly.

THE COURT: Well, I can tell you that in the pretrial motions that he has filed today, the motions in limine, it does appear that he has reviewed the case. It does appear that he has prepared for the case. We have voir dire -- he has tendered to the Court a voir dire PowerPoint where he is prepared to go forward on your case, so, I mean, I don't know whether or not you're satisfied with that, but that -- but I want you to know that it does appear that he has prepared for your case, even though it might seem to you that it is a very limited time in talking with you. So I guess I want to -- I want to make it very clear. Are you okay with going forward today with him as your assisted -- him as your attorney?

[Selman]: I'll allow due process the opportunity to work, yes, sir.

THE COURT: Okay. So you're okay with Mr. Phillips representing you today?

[Selman]: Today, yes.

Here, Selman never clearly or unequivocally asserted his right to self-representation. In fact, even if he had asserted the right, he expressly agreed to have an attorney represent him at the trial that day.

A defendant may waive his right to represent himself once that right has been asserted. *McKaskle v. Wiggins*, 465 U.S. 168 (1984); *Funderburg v. State*, 717 S.W.2d 637, 642 (Tex. Crim. App. 1986). While the record must reflect that a defendant waives his right to self-representation after it is asserted, that waiver is not subject to the same stringent standards as the waiver of the right to counsel. *Brown v. Wainwright*, 665 F.2d 607, 611 (5th Cir. 1982); *Funderburg*, 717 S.W.2d at 642. "A waiver may be found if it reasonably appears to the court that [the] defendant has abandoned his initial request to represent himself." *Brown*, 665 F.2d at 611.

Here, the trial court specifically asked Selman if he was "okay with Mr. Phillips representing [him] today," and Selman answered, "Today, yes." Based on Selman's answer, it could have reasonably appeared to the trial court that Selman had abandoned his initial request for self-representation.

We overrule this point of error.

(2) Selman Preserved No Complaint Regarding Officers' Search of His Residence

Selman also contends that, because "the officers made the observations leading to [his] arrest from the [home's] curtilage . . . and they had neither an express nor an implied license to be [there,]" the officers' search of the home violated his rights under the Fourth Amendment. This issue was unpreserved for our review.

To preserve a complaint for our review, a party must first present to the trial court a timely request, objection, or motion stating the specific grounds for the desired ruling if not apparent from the context. TEX. R. APP. P. 33.1(a)(1). Further, the trial court must have ruled on the request, objection, or motion, either expressly or implicitly, or the complaining party must have objected to the trial court's refusal to rule. TEX. R. APP. P. 33.1(a)(2).

Here, Selman failed to object to Lebel's testimony regarding her observations at the home and also did not seek to suppress the evidence gained from or the testimony based on the allegedly improper search. Accordingly, this issue was not preserved for our review. *See* TEX. R. APP. P. 33.1(a)(1).

(3) Selman's Dashcam Issue Was Inadequately Briefed

Selman's complaint about an apparently missing dashcam video states, in its entirety:

> In reviewing the [Court] Reporters Record it is clear that a violation of Article 39.14 [occurred] in the instant case. In support of the position Appellant presents the following testimony that was elicited by Trial Counsel:
>
> Q. Okay. Okay. Now -- so you arrive -- does your -- was your car equipped with any kind of dashcam video?
>
> A. Yes, sir.
>
> Q. Okay. And was a dashcam video made of this incident?
>
> A. Yes, sir.
>
> Q. Okay[.] Was it entered into evidence?
>
> A. It should have been.
>
> Q. Okay. Okay. Because I was looking through your report and I didn't see anything about a dashcam video being made. Do you know of any reason --

A. There was not one turned in?

Q. The report doesn't seem to indicate that. Do you know otherwise?

A. Our reports don't state about evidence.

Selman contends that the above testimony shows a violation of Article 39.14 and requests that we reverse on that basis.

An appellate brief must contain "a clear and concise argument for the contentions made, with appropriate citations to authorities and to the record." TEX. R. APP. P. 38.1(h). While it is apparent from the testimony cited that Selman's argument is centered around the video made by Lebel's dash camera, there is no allegation or argument that the video is exculpatory, that Selman requested the video, that the State had a duty to disclose it and failed to do so, or that the video was otherwise improperly withheld. Selman claims a violation of Article 39.14, but fails to provide any law or reasoning explaining how Article 39.14 was allegedly violated.

If a point of error is inadequately briefed, we need not address it. *See* TEX. R. APP. P. 38.1; s*ee Cardenas v. State*, 30 S.W.3d 384, 393 (Tex. Crim. App. 2000) (appellate court has no obligation to consider inadequately briefed points of error); *Vuong v. State*, 830 S.W.2d 929, 940 (Tex. Crim. App. 1992). Finding Selman's brief inadequate as to this point of error, we overrule it. *See* TEX. R. APP. P. 38.1. Even if there were adequate briefing on this point, we see nothing in the record suggesting that the video could have been exculpatory.

We affirm the trial court's judgment.

Josh R. Morriss, III
Chief Justice

Date Submitted: December 14, 2015
Date Decided: January 8, 2016

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