

Carlin Allman appeals his conviction of Battery,¹ a class A misdemeanor, and presents the following restated issue: Did the trial court abuse its discretion by failing to appoint counsel?

We reverse and remand for a new trial.

Allman was arrested on November 4, 2004, spent five or six days in a Jackson County jail, and was released after he posted a \$6,000 bond. Allman's mother and father provided the bond money. Allman was initially represented by private counsel, but, for reasons that are unclear, Allman's counsel withdrew. Allman was employed at Impact Forge before he was arrested, but was unemployed from November 4, 2004 until at least January 23, 2006, the date of his trial. During the time Allman was unemployed, he unsuccessfully sought employment at Impact Forge, a "mold shop" and another business in Scottsburg, Ison's in Seymour, and Rightway in Columbus. *Transcript* at 15. Allman lived with his parents and had an income of approximately \$120 per month, which he earned by selling chopped wood. Allman had a truck payment of \$400 per month, the payments for which were two months in arrears as of December 19, 2005.

On December 19, 2005 during a pretrial hearing, Allman informed the trial court he "would like to have an attorney but [] [could not] really afford one." *Id.* at 10. The trial court responded that "[Allman] posted a [six] thousand dollar cash bond. [Allman] could use that or at least a portion of that . . . to hire an attorney[,]” *id.* at 10, and concluded, “[Allman is] not disabled. [He] can live virtually rent free. Hopefully [he is]

¹ Ind. Code Ann. § 35-42-2-1(1)(A) (West, PREMISE through 2006 Public Laws approved and effective through March 15, 2006).

coming into the good time of year to be selling firewood. [The trial court does] not believe that [Allman is] indigent and [it is] not going to appoint court appointed counsel.” *Id.* at 16. Allman did not hire an attorney. On January 23, 2006, a trial was held in Allman’s absence. The jury found Allman guilty of battery as a class A misdemeanor. Allman now appeals.

Allman contends, and the State concedes, the trial court abused its discretion when it refused to appoint counsel to represent him. The trial court has discretion to determine whether counsel shall be appointed at public expense. *Lamonte v. State*, 839 N.E.2d 172 (Ind. Ct. App. 2005). The trial court, however, does not have discretion to deny counsel to an indigent criminal defendant. *Id.* Although it is impossible to set specific financial guidelines for the determination of indigency, a defendant need not be wholly without means to be entitled to court-appointed counsel. *Id.* If a defendant legitimately lacks the financial resources to employ an attorney without imposing a substantial hardship upon either his family or him, the trial court must appoint counsel to defend him. *Id.* The determination of indigency must be based upon a thorough examination of the defendant’s “total financial picture[,]” and not upon “a superficial examination of [the defendant’s] income and ownership of property.” *Id.* at 176-77. The record must show the trial court’s determination of the defendant’s ability to pay included a balancing of his assets and liabilities as well as a consideration of the amount of the defendant’s disposable income or other resources reasonably available to him after the payment of his fixed or certain obligations. *Lamonte v. State*, 839 N.E.2d 172.

The trial court concluded Allman was not indigent primarily for the following reasons: (1) Allman posted a \$6,000 bond, part of which he could use to hire an attorney; (2) Allman was capable of working; (3) Allman was “coming into the good time of year to be selling firewood[,]” *Transcript* at 16; and (4) Allman had few expenses.

The funds Allman used to post bond were provided by his parents, and were not legitimately Allman’s resources. Even assuming the funds were Allman’s, his ability to post pretrial bond was irrelevant in determining whether he could afford to hire an attorney at the time of trial. *See Moore, et al. v. State*, 401 N.E.2d 676 (Ind. 1980) (defendant’s ability to obtain an appeal bond after his conviction was irrelevant to his indigency status prior to trial since an indigency determination must be made at any stage of the proceedings upon the defendant’s request for counsel). Further, although Allman was capable of working, in the sense that he was physically able to work, he was simply unable to secure employment. Allman sought employment at five separate businesses to no avail. Finally, Allman earned approximately \$120 per month selling chopped wood. Accepting as true that Allman was “coming into the good time of year to be selling firewood[,]” he would have been required to sell at least four times the amount of wood to afford his truck payment, which was already two months in arrears. *Transcript* at 16. The trial court correctly concluded Allman had few expenses. Allman’s expenses, however, exceeded his income.

Based upon Allman’s “total financial picture,” *Lamonte v. State*, 839 N.E.2d at 176, including a balancing of his assets against his liabilities, and a consideration of the amount of his disposable income and other resources reasonably available to him after

the payment of his fixed obligations, Allman legitimately lacked the financial resources to employ an attorney without imposing upon his family and himself a substantial financial hardship. *See Redmond v. State*, 518 N.E.2d 1095 (Ind. 1988) (defendant determined to be indigent where he took home approximately \$450 every two weeks, paid \$200 per month in rent and supported an unemployed wife, a daughter, and a son). The trial court, therefore, abused its discretion in failing to appoint an attorney for Allman.

Judgment reversed and remanded for a new trial.

NAJAM, J., and DARDEN, J., concur.