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IN THE
COURT OF APPEALS OF INDIANA

CHAD M. SKINNER,	)	
	)	
Appellant-Defendant,	)	
	)	
vs.	)	No. 37A05-0604-CR-206
	)	
STATE OF INDIANA,	)	
	)	
Appellee-Plaintiff.	)	

APPEAL FROM THE JASPER SUPERIOR COURT
The Honorable J. Phillip McGraw, Judge
The Honorable John T. Casey, Judge Pro Tempore
The Honorable E. Duane Daugherty, Senior Judge
The Honorable Robert M. Hall, Permanent Judge Pro Tempore
Cause No. 37D01-0503-FD-044

November 15, 2006

MEMORANDUM DECISION - NOT FOR PUBLICATION

BAKER, Judge

Appellant-defendant Chad M. Skinner appeals from his conviction for Residential Entry,[1] a class D felony. Specifically, Skinner raises a number of arguments, one of which we find dispositive—whether the trial court erred in permitting Skinner to proceed pro se without first determining that he had knowingly, intelligently, and voluntarily waived his right to be represented by counsel. Finding that the trial court improperly failed to determine that Skinner had knowingly, intelligently, and voluntarily waived his right to representation, we reverse the judgment of the trial court and remand with instructions to vacate Skinner's conviction and hold a new trial.

FACTS

Between 1999 and 2001, Skinner and Rachel Wood were in a romantic relationship. Wood lived with her two minor children in DeMotte, and on March 9, 2005, her son, E.W., went to the door after the doorbell rang. E.W. looked out a window and observed Skinner, who then opened the front door and entered the house without permission to do so. Although E.W. told Skinner to "stay right there," Skinner walked through the house and into the kitchen. Tr. p. 27, 33, 59. Wood noticed that the children were unusually quiet and entered the kitchen, where she observed Skinner. Skinner had never been to and had no permission to enter her residence. Wood yelled at Skinner to get out of her house and the two argued for approximately ten minutes. Eventually, Skinner left and Wood called the police to report the incident.

[1] Ind. Code § 35-43-2-1.5.

On March 14, 2005, the State charged Skinner with class D felony residential entry. Skinner retained a private attorney to represent him. On January 11, 2006, the attorney moved to withdraw as Skinner's counsel because Skinner had terminated her services. The trial court granted her motion on that date.

On February 15, 2006, the trial court held a status hearing at which Skinner appeared pro se. He informed the trial court that he would be represented by Gary Weiss or another attorney from Weiss's firm and stated that there was "just a financial issue that should be cleared up . . . . [S]omeone from the firm . . . agreed to [represent me] as long as I fulfill the financial responsibilities." Status Hr. Tr. p. 2. Skinner then confirmed that he wanted to proceed to trial as scheduled on February 28, 2006.

Based on Skinner's representations, the trial court began sending copies of pleadings and other relevant documents to Weiss. On February 24, 2006, Weiss notified the trial court that although Skinner had attempted to retain his services, Weiss would be unable to prepare for trial on such short notice and that "Mr. Skinner has a larger appetite for legal services than he does a pocketbook." Appellant's App. p. 72.

On February 28, 2006, the first day of Skinner's trial, neither Skinner nor an attorney representing Skinner appeared before the trial court. The trial court heard argument and ruled on the State's motions in limine, conducted voir dire, empaneled a jury consisting of the first six potential jurors who were questioned, read preliminary instructions to the jury, permitted the State to make an opening statement, and permitted the State to call and examine its first witness. After the State's first witness had testified, a fifteen-minute recess was held, after which Skinner appeared. Senior Judge E. Duane

Daugherty noted "for the record that the defendant, Chad M. Skinner, is now present in court, pro se." Tr. p. 29. Judge Daugherty made no further inquiry of Skinner regarding his absence or his willingness or desire to proceed pro se. The trial immediately proceeded with the State's next witness. At the end of the trial, the jury found Skinner guilty as charged. On March 27, 2006, the trial court sentenced Skinner to three years with two years suspended, with the one-year executed portion of the sentence to be served on work release. Skinner now appeals.

DISCUSSION AND DECISION

We apply a de novo standard of review to a trial court's determination that a defendant knowingly, intelligently, and voluntarily waived his right to counsel. Balfour v. State, 779 N.E.2d 1211, 1216 (Ind. Ct. App. 2002). We will uphold a decision granting a defendant's request to proceed pro se where the trial court made proper inquiries of and conveyed the proper information to the defendant. Poynter v. State, 749 N.E.2d 1122, 1128 (Ind. 2001).

The Sixth Amendment to the United States Constitution and Article 1, Section 13 of the Indiana Constitution guarantee a criminal defendant the right to be represented by counsel. Jones v. State, 783 N.E.2d 1132, 1138 (Ind. 2003). A defendant also has the right to proceed pro se and manage his own defense. Id. at 1139 n.4. When a criminal defendant waives his right to counsel, we must decide whether the trial court properly determined that the defendant's waiver was knowing, intelligent, and voluntary. Id. at 1138.

Waiver of assistance of counsel may be established based upon the particular facts and circumstances surrounding the case, including the background, experience, and conduct of the accused. Id. The trial court should inform the defendant of the dangers and disadvantages of proceeding pro se and the record should show that the defendant made "his choice with eyes open." Poynter, 749 N.E.2d at 1127. There are no prescribed "talking points" that the trial court is required to include in its advisement; rather, it need only come to a "considered determination" that the defendant's waiver is knowing, intelligent, and voluntary. Id. at 1126.

Here, the State concedes that the trial court neither inquired into Skinner's decision to proceed pro se nor advised Skinner of the risks of self-representation. Appellee's Br. p. 7. The State also impliedly concedes—as it should—that Skinner did not explicitly waive his right to be represented by counsel. The State argues, however, that a verbal waiver of representation is not always necessary and that, under certain circumstances, a trial court may infer from a defendant's conduct that he waived his right to counsel. Balfour, 779 N.E.2d at 1216.

Our Supreme Court has adopted the following four-part test to determine whether a defendant's choice to appear for trial without counsel was knowing and intelligent: "(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." Poynter, 749 N.E.2d at 1127-28. Here, as noted above, the trial court did not inquire into Skinner's decision to

proceed pro se or advise Skinner of the risks of self-representation. This lack of inquiry and advisement "weighs heavily against finding a knowing and intelligent waiver." Id.

As for the other three factors, "[w]e can find nothing in the record that either directly or inferentially supports the notion that the defendant may have independently understood the dangers and disadvantages of self-representation." Id. Skinner graduated from high school, which does not, in and of itself, lead to a conclusion that he was aware of the risks of self-representation. See Powell v. Alabama, 287 U.S. 45, 68-69 (1932) ("[e]ven the intelligent and educated layman has small and sometimes no skill in the science of law"). Skinner has had past contacts with the criminal justice system, but as the State concedes, his criminal history "does not show that he was ever involved in any lengthy trials, or complex litigation." Appellee's Br. p. 8.

Additionally, the fact that Skinner cross-examined witnesses and presented exhibits and final argument does not necessarily mean that he understood the risks of doing so without representation by counsel. See Gideon v. Wainwright, 372 U.S. 335, 337 (1973) (requiring appointment of attorney for indigent defendant even though defendant had "conducted his defense about as well as could be expected from a layman" by making an opening statement, cross-examining witnesses, present witnesses in his defense, and making a closing argument). Finally, the State has not established that Skinner's conduct appears manipulative or strategic in nature; to the contrary, a factfinder could easily infer from the facts in the record that Skinner appeared without counsel on the day of his trial because he could not afford to retain a private attorney. See Slayton v. State, 755 N.E.2d 232, 235 (Ind. Ct. App. 2001) ("[t]he law indulges every reasonable

presumption against a waiver of this fundamental right to counsel"). As in Balfour, therefore, the final three factors of the Poynter test "do not weigh so heavily in favor of finding that [the defendant] knowingly and intelligently waived his right to counsel that they can overcome the fact that [the defendant] was not given an adequate advisement regarding the dangers and disadvantages of self-representation." 779 N.E.2d at 1218.

We reaffirm that a defendant may not deliberately discharge his counsel on the eve of trial as a tactic for delaying his trial. Id. Nevertheless, given the facts herein and applicable precedent, we are compelled to reverse Skinner's conviction and remand for a new trial.

The judgment of the trial court is reversed and remanded with instructions to vacate Skinner's conviction and hold a new trial.

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