COURT OF APPEALS
SECOND DISTRICT OF TEXAS
FORT WORTH

NO. 02-17-00139-CR

SAMSON MOSES BILLIOT AKA SAMSON M BILLIOT — APPELLANT

V.

THE STATE OF TEXAS — STATE

FROM THE 372ND DISTRICT COURT OF TARRANT COUNTY
TRIAL COURT NO. 1474072D

MEMORANDUM OPINION[1]

Appellant Samson Moses Billiot appeals from his conviction for arson of a habitation and forty-year sentence. *See* Tex. Penal Code Ann. § 28.02(a)(2), (d)(2) (West 2011). Billiot argues that the trial court erred by denying him the right to represent himself and that the evidence was insufficient to show he started the fire by igniting a flammable or combustible liquid. Because Billiot first

[1]*See* Tex. R. App. P. 47.4.

raised his right to represent himself after the jury was empaneled and sworn, and even then was equivocal about his desire to do so, the trial court did not err by not allowing Billiot to represent himself. And because Billiot failed to challenge on appeal the sufficiency of the evidence to support the alternative commission means alleged in the indictment—igniting a flammable or combustible material—the unchallenged means supports his conviction. We affirm.

On August 11, 2016, Billiot was caught on a security camera setting the front wall of his mother-in-law's house on fire.[2] A woman who had been inside the house attempted to extinguish the fire with a water hose but had to call the fire department, which eventually put the fire out. Fire investigators found a lighter-fluid bottle near where the fire had been set. Billiot later told the investigators that he used lighter fluid he found at the house and his own cigarette lighter to ignite the fire. Debris collected from the front of the house tested negative for ignitable liquids. This absence of ignitable liquids could have been "due to several factors, including destruction by the inherent nature of fire, evaporation prior to collection and analysis, fire suppression activities, improper packaging of sample, or lack of use of ignitable liquids." Even so, a fire investigator opined that a flammable liquid was used to start the fire. Billiot was

[2]The video showed Billiot walking from behind the house to the front and apparently splashing something from a bottle along the front wall while walking back and forth. Billiot then flicked his hand at the wall and ran away shortly before flames began to flicker at the base of the wall.

indicted with arson of a habitation "by igniting a flammable or combustible material or liquid with an open flame or other ignition source."

After a jury was selected and sworn, the trial court, outside the presence of the jury, addressed three motions Billiot had filed pro se.[3] Billiot's counsel pointed out that the relief Billiot requested in his pro se motion to suppress—redaction of "extraneous things" from his custodial statement—had been agreed to by the State, but averred that Billiot's remaining two motions were meritless. The trial court informed Billiot that he was not entitled to file motions on his own behalf unless he wanted to represent himself pro se. Billiot stated he wanted to represent himself if his counsel did not "adopt" his pro se motions and attempted to argue the merits of his motion to suppress his custodial statement. After the trial court questioned him on his education and facility with the rules of evidence, the trial court then "strongly, strongly urge[d]" Billiot to "follow [his counsel's] advice, because at this point I am not convinced that you are knowledgeable enough of the law to have you represent yourself." Billiot then requested "another attorney," which the trial court denied. After the jury returned and the trial court asked Billiot for his plea to the indicted offense, Billiot stated, "The plea is I'm not getting proper representation, so go [expletive] yourself." After

[3]Billiot filed a motion to quash the indictment two months before his trial and hand-delivered a motion to suppress the security-camera video and a motion to suppress his custodial statement the day after the jury was impaneled. The hand-delivered motions were neither filed nor ruled on; however, the trial court denied the motion to quash the indictment.

ushering the jury out, the trial court asked Billiot if he did "not wish to participate." Billiot affirmed that he would not enter a plea because he was "not getting proper representation." The trial court entered a not guilty plea on his behalf.

Billiot now argues that the trial court improperly denied him the right to represent himself without making "specific findings justifying [the] decision." We review the trial court's factual determination of whether Billiot elected to represent himself for an abuse of discretion. *See DeGroot v. State*, 24 S.W.3d 456, 457 (Tex. App.—Corpus Christi 2000, no pet.). Although a defendant is entitled to represent himself, such a request must be timely and unequivocal. *See Teehee v. State*, No. 02-14-00137-CR, 2015 WL 1868868, at *1 (Tex. App.—Fort Worth Apr. 23, 2015, no pet.) (mem. op., not designated for publication) (citing *Ex parte Winton*, 837 S.W.2d 134, 135 (Tex. Crim. App. 1992)). The court of criminal appeals has clearly held that to be timely, the request must be made before a jury is empaneled—before the jury is selected and sworn. *See McDuff v. State*, 939 S.W.2d 607, 619 (Tex. Crim. App. 1997); *Winton*, 837 S.W.2d at 135; *Blankenship v. State*, 673 S.W.2d 578, 585 (Tex. Crim. App. 1984); *see also Lathem v. State*, 514 S.W.3d 796, 809–10 (Tex. App.—Fort Worth 2017, no pet.). Here, Billiot's actions, even if construed to be a waiver of his right to counsel, were untimely. We reject Billiot's appellate contention that we should stray from the court of criminal appeals' clear timeliness demarcation.

Additionally, Billiot did not clearly and unequivocally waive his right to counsel and assert his desire to represent himself. Although Billiot stated that he

wanted to represent himself if his counsel did not "adopt" his pro se motions, he also requested a different court-appointed attorney. This is insufficient to constitute a clear and unequivocal assertion of his right to represent himself. *See, e.g.*, *Robinson v.* State, 387 S.W.3d 815, 820–21 (Tex. App.—Eastland 2012, no pet.); *Livingston v. State*, No. 14-06-01031-CR, 2008 WL 2262033, at *9–10 (Tex. App.—Houston [14th Dist.] May 29, 2008, pet. ref'd) (mem. op., not designated for publication); *Saldaña v. State*, 287 S.W.3d 43, 52–56 (Tex. App.—Corpus Christi 2008, pet. ref'd); *Thomas v. State*, Nos. 05-04-01289-CR, 05-04-01290-CR, 2006 WL 1624393, at *2 (Tex. App.—Dallas June 13, 2006, pet. ref'd) (mem. op., not designated for publication). On this record, we cannot conclude that the trial court abused its discretion, and we overrule point one.

In his second point, Billiot contends that the evidence was insufficient to show that he used a flammable or combustible liquid to ignite the fire. He mainly relies on the fact that because the fire debris tested negative for an ignitable liquid, the fire investigator's opinion that a flammable or combustible liquid was used based on the security-camera video and Billiot's custodial statement was mere "guesswork." But as the State argues, Billiot fails to challenge the sufficiency of the evidence to support ignition by use of a flammable or combustible *material*, which was an alternative method alleged in the indictment and included in the jury charge. Thus, his conviction is supported by this unchallenged commission method. *See Kitchens v. State*, 823 S.W.2d 256, 259 (Tex. Crim. App. 1991); *Henderson v. State*, 77 S.W.3d 321, 327 (Tex. App.—

Fort Worth 2002, no pet.); *Moore v. State*, 54 S.W.3d 529, 547 (Tex. App.—Fort Worth 2001, pet. ref'd). We overrule point two.[4]

Having overruled Billiot's appellate points, we affirm the trial court's judgment. *See* Tex. R. App. P. 43.2(a).

/s/ Lee Gabriel

LEE GABRIEL
JUSTICE

PANEL: SUDDERTH, C.J.; MEIER and GABRIEL, JJ.

DO NOT PUBLISH
Tex. R. App. P. 47.2(b)

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[4]Even if we addressed Billiot's issue, the fact that the forensic report found no ignitable liquids in the fire debris while the investigator believed Billiot used a flammable or combustible liquid to start the fire based on Billiot's statement and the security-camera video does not render the evidence insufficient. *See, e.g.*, *Brady v. State*, 5 Tex. Ct. App. 343, 344 (1879); *Morris v. State*, No. 05-17-00063-CR, 2018 WL 1516834, at *2 (Tex. App.—Dallas Mar. 28, 2018, no pet. h.) (mem. op., not designated for publication); *Johnson v. State*, 176 S.W.3d 74, 78 (Tex. App.—Houston [1st Dist.] 2004, pet. ref'd). And Billiot's admission to the fire investigator that he used lighter fluid and a cigarette lighter to start the fire was evidence that a fact-finder could have credited in finding that Billiot used a flammable or combustible liquid.