



## **Case Summary**

Simon Shulkin was convicted of class C misdemeanor failure to stop after damage to a vehicle for an incident in which he left the scene after rear-ending a motorcycle with his SUV at a railroad crossing. Although he initially was represented by counsel, he proceeded to trial pro se following his counsel's withdrawal. The transcripts of both the pretrial conference and the trial indicate that the trial court at no time made inquiry into the voluntariness of his decision to represent himself. He now appeals, asserting that his waiver of counsel was not voluntarily, knowingly, and intelligently made. We conclude, and the State concedes, that the trial court failed to conduct an inquiry to ensure that Shulkin understood the dangers and disadvantages of self-representation. As such, we vacate his conviction and remand for a new trial.

## **Facts and Procedural History**

On July 20, 2009, the State charged Shulkin with class C misdemeanor failure to stop after damage to a vehicle. Shulkin was represented by counsel at the July 23, 2009 initial hearing. On December 1, 2009, defense counsel filed a motion for leave to withdraw his appearance, and the trial court granted the request.

Shulkin appeared pro se at his January 14, 2010 pretrial conference. The trial court's inquiry consisted of one question: "Okay. Sir how would you like to proceed today by resolving this matter today or by having it scheduled for another pretrial conference or by having it scheduled for trial?" Tr. at 4. When Shulkin replied that he wanted to schedule the matter for trial, the trial court set a trial date, and no further discussion occurred.

At the March 16, 2010 bench trial, the trial court's inquiry consisted of the following:

BY THE COURT: Sir, you are scheduled today for a bench trial in a case where you were charged with the offense of failure to stop after accident resulting in damage to an attended vehicle. Do you understand that, sir?

BY MR. SHULKIN: Yes.

BY THE COURT: Are you prepared to proceed to trial today?

BY MR. SHULKIN: Yes, sir.

*Id.* at 6. The trial court made no other inquiry into Shulkin's decision to represent himself and, after hearing testimony, convicted him as charged. This appeal ensued.

### **Discussion and Decision**

Shulkin contends that his conviction must be set aside due to the trial court's failure to conduct an inquiry that was sufficient to ensure that he was voluntarily, knowingly, and intelligently waiving his right to counsel. The United States and Indiana Constitutions guarantee a criminal defendant's right to counsel as essential to the fairness of his criminal proceeding. *Gideon v. Wainwright*, 372 U.S. 335, 344-45 (1963); *Drake v. State*, 895 N.E.2d 389, 392 (Ind. Ct. App. 2008). Implicit in the right to counsel is the right to waive counsel and self-represent. *Drake*, 895 N.E.2d at 392.

Because a criminal defendant gives up many benefits when the right to counsel is waived, the accused must knowingly and intelligently forgo those relinquished benefits. Furthermore, when a defendant asserts his or her right to self-representation, the trial court should advise the defendant of the dangers and disadvantages of self-representation.

*Id.* (citations and internal quotation marks omitted).

Although our supreme court has stated that there are no specific talking points

required for a trial court when making such an advisement, it has adopted the following factors to consider when determining whether a defendant has knowingly and intelligently waived his right to counsel:

(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.

*Id.* (citation and quotation marks omitted).

Here, none of the three questions posed by the court prior to trial addressed the waiver of counsel issue even in its most general sense, let alone the specific dangers and disadvantages of self-representation. Moreover, the record is devoid of any evidence indicating that Shulkin was otherwise aware of the pitfalls of his choice to self-represent, whether through past experience or any other means. Thus, we conclude, and the State concedes, that the trial court's inquiry fell short of ensuring that Shulkin's waiver of counsel was voluntary, knowing, and intelligent. Accordingly, we vacate his conviction and remand for a new trial.

Vacated and remanded.

NAJAM, J., and ROBB, C.J., concur.