

Note: Decisions of a three-justice panel are not to be considered as precedent before any tribunal.

ENTRY ORDER

SUPREME COURT DOCKET NO. 2004-398

SEPTEMBER TERM, 2005

State of Vermont	}	APPEALED FROM:
	}	
v.	}	District Court of Vermont,
	}	Unit No. 3, Lamoille Circuit
Jon Demeritt	}	
	}	DOCKET NO. 510-9-03 LeCr
	}	Trial Judge: Edward J. Cashman

In the above-entitled cause, the Clerk will enter:

Defendant appeals his convictions for domestic assault, disorderly conduct, and violations of conditions of release. He argues that (1) the trial court did not obtain a valid waiver of his right to counsel, and (2) his convictions for domestic assault and disorderly conduct violate his constitutional right to be free from double jeopardy. We affirm.

The charges against defendant arose from an altercation he had with his girlfriend while driving home from a bar in August 2003. The State's information on the domestic assault charge alleged that defendant kicked and hit the victim in the face and arms in violation of 13 V.S.A. ' 1042. The State also charged him with disorderly conduct under 13 V.S.A. ' 1026(1) for *Arecklessly creat[ing]* a risk of causing public inconvenience, by engaging in violent behavior, by kicking, hitting and yelling at his girlfriend, . . . by the side of a public highway.@ The trial court granted defendant's request for a public defender and arraigned him on September 2, 2003.

In December 2003, defendant moved for the appointment of a new attorney. The court convened a hearing on the motion and a new attorney was assigned to represent defendant. Defendant was dissatisfied with the second attorney so he moved to proceed pro se in April 2004. Another hearing was held at which the defendant and the court had a long exchange about the risks to defendant of representing himself. In June, the court granted defendant's motion. But later that month, on the second day of jury draw, defendant reasserted his right to counsel. The court continued the trial after reappointing defendant's second attorney to represent him.

The next month, defendant's lawyer moved to withdraw and allow defendant to proceed pro se once again. Defendant signed a waiver-of-counsel form and the court granted the motion. Defendant went to trial and was convicted. This appeal followed.

On appeal, defendant argues that he was denied his right to counsel because the court failed to obtain a valid waiver from him. We disagree. Criminal defendants are constitutionally entitled to choose between having a lawyer represent them or appearing pro se. *State v. Merrill*, 155 Vt. 422, 424-25 (1990). Faced with a defendant's request to proceed pro se, the trial court must determine whether the choice was made intelligently and competently. *Id.* at 425. When reviewing a claim like defendant's on appeal, this Court requires a sufficient record demonstrating that the defendant understood the adverse consequences of pro se representation.@ *Id.* The Court is not, however, willing to reverse a conviction of a defendant who in fact knowingly and intelligently waived the right to counsel simply because the record does not decisively show his knowledge and intelligence.@ *Id.* at 426.

In this case, the record leaves no room to doubt that defendant understood the adverse consequences of his decision. The trial court judge engaged defendant on more than one occasion about his right to a lawyer and the risks of proceeding without one. Indeed, the trial judge told defendant that in the court's view, defendant's decision to proceed without a lawyer was *Ahorrendously bad,*@ but noted that he could not force defendant use a lawyer. We are mindful that defendant does not claim on appeal that he did not understand what he was doing by asking to proceed pro se. Defendant's appeal is limited to the adequacy of the record of his waiver. We are satisfied that the court did what was required of it to protect defendant's constitutional rights to counsel and to represent himself. Defendant has not demonstrated reversible error.

Defendant next argues that he faces double jeopardy by being convicted and sentenced for domestic assault and disorderly conduct for the same set of facts. In other words, defendant claims he is being punished twice for the same conduct. If that is true, defendant properly states a claim under the Double Jeopardy Clause of the United States Constitution. See *State v. Karov*, 170 Vt. 650, 651-52 (2000) (mem.) (explaining the boundaries of double jeopardy). But defendant's claim must fail because the two offenses—domestic assault and disorderly conduct—require proof of different elements. See *id.* at 652 (AA single criminal goal may be effected by multiple criminal acts, and those multiple criminal acts may be separate and distinct

offenses.@). Domestic assault, as charged in this case, required the State to prove that defendant recklessly caused bodily injury to a household member. 13 V.S.A. ' 1042. The disorderly conduct charge, on the other hand, required proof that defendant engaged in violent behavior by the side of a public highway and thereby recklessly created a risk of public inconvenience. 13 V.S.A. ' 1026(1). Defendant=s convictions do not violate the prohibition against double jeopardy because they represent two statutory offenses with distinct elements.

Affirmed.

BY THE COURT:

Paul L. Reiber, Chief Justice

Marilyn S. Skoglund, Associate Justice

Brian L. Burgess, Associate Justice