MEMORANDUM DECISION

IN THE

Court of Appeals of Indiana

Victor Edward Cihonski, Jr.,
Appellant-Defendant

v.

State of Indiana,
Appellee-Plaintiff

December 29, 2025

Court of Appeals Case No.
25A-CR-283

Appeal from the Lake Superior Court

The Honorable Natalie Bokota, Judge

Trial Court Cause Nos.
45G02-1906-F3-96
45G02-1906-F3-97

Memorandum Decision by Judge Foley
Judges Kenworthy and Scheele concur.

Foley, Judge.

[1] Victor Edward Cihonski, Jr. ("Cihonski") represented himself at a consolidated criminal trial where the jury found him guilty but mentally ill. Cihonski appeals, claiming he was not competent to represent himself, and therefore, the trial court should have denied his request to proceed *pro se*. We affirm.

Facts and Procedural History

[2] On the morning of June 14, 2019, Cihonski walked into Zip Foods in Cedar Lake, Indiana, wearing a red plaid jacket, jeans, and aviators and carrying with him a blue suitcase. *See* State's Ex. 4. Cihonski approached the cash register, opened the suitcase, removed a sawed-off shotgun, pointed it at the clerk, and demanded the money from the register. While the clerk walked back and forth between the two cash registers gathering money, Cihonski "cracked the chamber open, showed [a bystander] that there was a shell in the chamber, locked it back up, [and] started pointing the gun around." Tr. Vol. 4 p. 48. After the clerk handed all the money over to Cihonski, he gathered his suitcase and left the store. The clerk then called 911, and an officer from the Cedar Lake Police Department responded within minutes.

[3] Two days later, on the evening of June 16, 2019, Cihonski walked into Casey's General Store in Lowell, Indiana, wearing a red plaid jacket, jeans, and a white baseball hat and, this time, pulling a black rolling suitcase. *See* State's Ex. 17. Cihonski again approached the cash register, pulled a sawed-off shotgun from his rolling suitcase, pointed it at the clerk, and demanded "the money." Tr.

Vol. 4 p. 108. While the clerk collected money from the register, Cihonski "continually held the gun on [him.]" *Id*. at 107. After the clerk handed Cihonski the money, he exited the store, and the clerk called 911. An officer from the Lowell Police Department responded within minutes; however, Cihonski had already left the scene.

[4] Based upon surveillance video and information from the clerks, law enforcement was able to identify Cihonski as the primary suspect. On June 17, 2019, detectives located a Ford Focus belonging to Cihonski "in a tow yard because it was crashed in Newton County[.]" *Id*. at 162. Investigators obtained a search warrant for the vehicle and discovered a blue suitcase that resembled the suitcase used in the robbery at Zip Foods and a white baseball hat that resembled the hat used during the robbery at Casey's General Store. *See id*. at 173, 174.

[5] Also on June 17, Officer John Weir ("Officer Weir") of the Plymouth Police Department was on patrol and responding to another call when he observed a black Chrysler vehicle fail to "make the curve" at an intersection and "[go] down into a deep ditch." *Id*. at 140. As Officer Weir arrived, he observed the driver, Cihonski, sitting with his feet outside the vehicle and with a shotgun on his lap. *See id*. at 143. Cihonski was ordered to drop the shotgun, and he eventually "threw it[.]" *Id*. at 144. After taking Cihonski into custody, officers retrieved the loaded shotgun from the grass near the vehicle, two blue suitcases, a black rolling suitcase, aviators, a red plaid jacket, and $708.00 in cash. *See id*. at 166, 167; *see* State's Ex. 27–32, 34–44.

[6] On June 19, 2019, the State charged Cihonski under cause number 45G02-1906-F3-000096 ("Cause 96"), in connection with the robbery at Zip Foods, with Level 3 felony armed robbery, two counts of Level 6 felony pointing a firearm, and Level 6 felony theft. The next day, the State charged Cihonski under cause number 45G02-1906-F3-000097 ("Cause 97"), in connection with the robbery at Casey's General Store, with Level 3 felony armed robbery, Level 6 felony pointing a firearm, and Level 6 felony theft. The two cases were eventually joined.

[7] In September 2023, Cihonski, by counsel, filed a notice of intent to interpose the defense of insanity resulting from mental disease or defect. *See* Appellant's App. Vol. 2 p. 98. At a hearing on October 24, 2023, Cihonski orally moved to proceed *pro se* because of "ineffective counsel and a peremptory venue change of court." Tr. Vol. 2 p. 26. On October 27, 2023, a Motion for Determination of Counsel was filed by Cihonski's appointed counsel, and four days later the court conducted a hearing, where Cihonski withdrew his request, indicating his desire that his attorney continue to represent him for purposes of reaching a plea agreement. *See id*. at 35. Cihonski's attorney requested that the court take no action on the motion and reset the hearing for thirty days, which the trial court granted and reset for December 5, 2023.

[8] At the December 5 hearing, the trial court granted Cihonski's attorney's request for more time to speak with the State regarding a possible plea agreement. During the hearing, Cihonski repeatedly interrupted and spoke over the trial court despite multiple admonishments from the trial court. Eventually,

Cihonski told the trial court that it "can't shut [him] up like that." *Id*. at 48. The trial court then proceeded to a contempt hearing and found Cihonski in contempt for his repeated outbursts. As a sanction for his contempt, the trial court ordered Cihonski to serve thirty days executed in the Lake County Jail. After the trial court sentenced Cihonski for his contemptuous conduct, the trial court had Cihonski removed from the proceedings and rescheduled the hearing for January 2024, which was eventually continued to February 6, 2024.

[9] At the February hearing, the trial court granted the defense's request to assert the insanity defense and appointed two doctors to evaluate Cihonski. *See* Tr. Vol. 2 p. 59. The trial court also heard argument regarding Cihonski's request to proceed *pro se*, but because Cihonski reconsidered and decided to have his court-appointed attorney continue to represent him, made no ruling on the request.

[10] Cihonski was eventually evaluated by two court-appointed doctors for the purpose of determining whether he met the legal definition of insanity at the time of the robberies. Dr. Douglas Caruana ("Dr. Caruana") and Dr. Gary Durak ("Dr. Durak") each evaluated Cihonski and filed a report with the court. Dr. Caruana conducted his evaluation on February 19, 2024, and concluded that although Cihonski met the legal definition of mentally ill at the time of the alleged offense, the "[d]ata generated in this evaluation do not establish a condition of grossly and demonstrably impaired perceptions to the degree to which the individual was unable to appreciate the wrongfulness of behavior in question. Insanity, as defined by statute is not indicated." Appellant's App.

Vol. 2 p. 113. In support of his conclusion, Dr. Caruana noted that Cihonski knew "the shotgun was not loaded[,] . . . he knew the policy of the places where you're a clerk or at a cash register . . . they would give money if they felt threatened," sawed off the shotgun, and understood his actions were wrong. Tr. Vol. 5 p. 53. At the time of the interview, Dr. Caruana noted that Cihonski was "alert, oriented and cooperative[.] . . . His speech was clear and coherent[.]" Appellant's App. Vol. 2 p. 112. In addition, Dr. Caruana noted that Cihonski's jail medical records "describe[d] a working diagnosis of Depression and Anxiety and document[ed] compliance on routine and psychotropic medications." *Id*.

[11] Dr. Durak conducted his evaluation on March 17, 2024, and similarly concluded that Cihonski "did not lack substantial capacity to appreciate the wrongfulness of his conduct at the time of the alleged offenses." *Id*. at 118. Specifically, Dr. Durak noted in his written report that:

> Mr. Cihonski[']s behaviors reflected his planning and preparing for the alleged offenses and aware[ness] of the criminality of the offenses. His actions had focus with respect to choosing and selecting the places robbed and the purpose of his behavioral choices. He had adequate control of his behaviors, even though he reported being under the influence of drugs and possibly alcohol.

Id. Specifically, Dr. Durak noted in his report that Cihonski's "physical appearance was appropriate . . . [e]ye contact was good. Speech was responsive to the questions and he was adequately articulate." *Id*. at 116. Dr. Durak also

noted that Cihonski "was alert . . . [m]emory was intact" and that his "reasoning, impulse control, judgment and insight are all assessed to be in the fair to good range. No current hallucinations or delusions were reported." *Id*. Finally, Dr. Durak reported that Cihonski's jail records reflected that he was diagnosed with depression and anxiety but did not experience psychosis. *See* Tr. Vol. 5 p. 128.

[12] During a hearing on April 16, 2024, Cihonski, by counsel, orally renewed his request to proceed *pro se*. The trial court requested the motion be reduced to writing and set a hearing for May 7, 2024. At the commencement of the May hearing, the trial court gave Cihonski a lengthy advisement on the perils of self-representation. The trial court questioned Cihonski on his ability to represent himself inquiring about the medications he is taking and whether they impair his ability to think or reason. The trial court further advised Cihonski on the role of an attorney, their ability to represent him in the instant matter, skills an attorney possesses, and defenses they are trained to raise. Next, the trial court advised Cihonski of the range of penalties he would be facing if he should be convicted of the offenses. The trial court also advised him that the State would be represented by an attorney, he would be not be given special treatment, the trial court could not assist him in his case, and he "would have to know all the Rules of Evidence, not only how to apply them, but how to respond to them." Tr. Vol. 2 p. 81.

[13] The trial court then proceeded to question Cihonski on his "skills or knowledge" with regard to self-representation. *Id*. at 82. Cihonski explained

that he represented himself "several times" and that he had previously successfully represented himself before and secured a more favorable plea deal. *Id*. at 83. Cihonski explained that he had previously been diagnosed with bipolar disorder, but he is "on medication daily." *Id*. at 85. Furthermore, he explained the "whole reason that [he] wanted to go pro se is that [he] wanted a change of venue." *Id*. at 85–86. Cihonski explained that he had "some college" and was able to read and write. *Id*. at 89. Further, Cihonski affirmed that he could familiarize himself with the Rules of Evidence and the Rules of Court and planned to maintain his defense of insanity. The trial court then granted Cihonski's motion, discharged his attorney, and permitted Cihonski to represent himself. *See id*. at 95.

[14] At subsequent pretrial conferences, the trial court inquired as to whether Cihonski still wished to represent himself and each time Cihonski maintained his desire to proceed *pro se*. *See, e.g.*, Tr. Vol. 2 pp. 139–40, 162, 191–94; Tr. Vol. 3 pp. 18–20. A jury trial was held on November 4, 2024, through November 7, 2024, and returned guilty but mentally ill verdicts as to all charged conduct. Prior to sentencing, Cihonski requested and was granted appointed counsel. The trial court held a sentencing hearing on January 7, 2025, and sentenced Cihonski to an aggregate thirty-year sentence executed in the Indiana Department of Correction ("the DOC"). As to Cause 96, the trial court sentenced Cihonski to consecutive terms of fourteen years for armed robbery in the DOC and two years for pointing a firearm. As to Cause 97, the trial court sentenced Cihonski to fourteen years in the DOC for armed robbery. The trial

court ordered Cause 97 to run consecutively to Cause 96. Cihonski now appeals.

Discussion and Decision

[15] Cihonski contends that the trial court erred in permitting him to proceed *pro se* at trial. "The Sixth Amendment of the United States Constitution guarantees the fundamental right to counsel in a criminal trial, and it also provides and protects the implicit right to self-representation." *Bowie v. State*, 203 N.E.3d 535, 543 (Ind. Ct. App. 2023) (citing *Wright v. State*, 168 N.E.3d 244, 252, 256 (Ind. 2021), *cert. denied*.), *trans. denied*. However, the right to self-representation "is not absolute." *Wright*, 168 N.E.3d at 256. "Once a defendant invokes the right to self-represent, that assertion triggers strict procedural requirements for the trial court to ensure compliance with basic constitutional guarantees of fairness." *Id*. at 259. Moreover, courts today are charged with ensuring that the defendant "'knows what he is doing and his choice is made with eyes open.'" *Id*. (quoting *Faretta v. California*, 422 U.S. 806, 835 (1975)). "The trial court is uniquely situated to assess whether a defendant has waived the right to counsel." *Wright*, 168 N.E.3d at 254–55 (citation omitted) (citing *Poynter v. State*, 749 N.E.2d 1122, 1128 (Ind. 2001)).

[16] Cihonski concedes the trial court gave him adequate advisements regarding the perils of self-representation and benefits of counsel and does not claim that he was not competent to stand trial, but rather challenges his competency to

represent himself during his jury trial.[1] *See* Appellant's Br. p. 12. The United States Supreme Court addressed a defendant's competency for self-representation in *Indiana v. Edwards* (*Edwards I*), 554 U.S. 164, 178 (2008), stating, "the Constitution permits States to insist upon representation by counsel for those competent enough to stand trial under *Dusky* but who still suffer from severe mental illness to the point where they are not competent to conduct trial proceedings by themselves." On remand, the Indiana Supreme Court in *Edwards v. State* (*Edwards II*), 902 N.E.2d 821, 824 (Ind. 2009) interpreted the rule of law announced in *Edwards I* to mean: "a trial court may deny a defendant's request to act pro se when the defendant is mentally competent to stand trial but suffers from severe mental illness to the point where he is not competent to conduct trial proceedings by himself." Our Supreme Court further stated that:

> Denial of self-representation is admittedly an intrusion into the defendant's right to direct his own affairs and to make his own decisions in conducting his defense. But if a defendant is so impaired that a coherent presentation of a defense is unlikely, fairness demands that the court insist upon representation.

Edwards II, 902 N.E.2d at 829. The pertinent inquiry is whether there is sufficient record support for the trial court to conclude that a defendant was not

---

[1] Cihonski identifies whether he knowingly and intelligently waived his right to counsel as separate issues, but devotes the entirety of his brief to the issue of permitting him to proceed *pro se* and does not otherwise develop or support these claims of error. Any claim of error based upon Cihonski's waiver of his right to counsel is therefore waived.

so impaired by mental illness that a coherent presentation of his defense was unlikely. *See, e.g. Sturdivant v. State*, 61 N.E.3d 1219 (Ind. Ct. App. 2016), *trans. denied*; *Bowi*e, 203 N.E.3d at 535.

[17] We review a trial court's "determination of competence to act pro se . . . under the clearly erroneous standard." *Edwards II*, 902 N.E.2d at 824. That is, "[w]e will affirm the trial court's decision unless it is clearly erroneous, meaning that it is unsupported by the facts and circumstances and reasonable inferences[.]" *Bowie*, 203 N.E.3d at 546. "[A]s a result, defendants making such a claim face 'an uphill battle.'" *Id*. (quoting *Sturdivant*, 61 N.E.3d at 1224). Clear error is "that which leaves us with a definite and firm conviction that a mistake has been made." *Hitch v. State*, 51 N.E.3d 216, 226 (Ind. 2016) (citation omitted) (quoting *State v. Oney,* 993 N.E.2d 157, 161 (Ind. 2013)).

[18] A competency determination to proceed *pro se* involves a "fact-sensitive evaluation of the defendant's capabilities that the trial court is best-situated to make." *Edwards II*, 902 N.E.2d at 824. "[I]f a defendant is so impaired that a coherent presentation of a defense is unlikely, fairness demands that the court insist upon representation." *Id*. at 829. In *Edwards II*, while acknowledging that the evidence was "not without conflict[,]" our Supreme Court identified adequate evidence supporting the trial court's decision to deny Edwards's request to represent himself. *Id*. at 827. The Court summarized the record upon which the trial court based its decision as follows:

> Edwards was evaluated by several mental health professionals from 1999 through 2004 and was diagnosed at various points in

> time with schizophrenia of an undifferentiated type, disorganized type schizophrenia, a delusional disorder, and a personality disorder. Edwards's psychiatric evaluations reveal that he experienced hallucinations and delusions, and that he manifested disorganized thought processes and impaired verbal communication. Several psychiatric reports concluded that Edwards was not competent to stand trial in the first instance, let alone represent himself. And as the trial court pointed out, Edwards produced a litany of disorganized and incoherent motions that support the physicians' observations as well as the conclusion that Edwards was not competent to conduct trial proceedings on his own. The court's ruling was thus based on an extensive record of psychiatric evaluations that were already produced in connection with Edwards's competency proceedings, as well as a number of self-authored motions that Edwards submitted to the trial court in the course of these proceedings. The trial court was also in a position to observe Edwards's behavior and demeanor in the first trial, the two pretrial pro se request arguments, and Edwards's 2002 competency hearing.

Id.

[19] In support of his argument, Cihonski focuses on his "in court behavior" and argues that "this behavior would have demonstrated that [he] could not comport himself with the decorum and rules of court[.]" Appellant's Br. p. 10. Cihonski likens his case to *Edwards II*, pointing out that he had "documented diagnoses for mental illness when [the trial court] let [him] represent himself[,]" and had two sanity evaluations that had occurred months prior to the hearing on self-representation. *Id*. at 14. However, the claim Cihonski raises is distinct from the claim involved in *Edwards I* and *Edwards II*, where the trial court

denied the defendant's right to proceed *pro se*. Here, the trial court *granted* Cihonski's request to proceed *pro se*.

[20] Because Cihonski is challenging the decision granting his request to proceed *pro se*, this case is more analogous to *Sturdivant*. 61 N.E.3d at 1219. In *Sturdivant*, the defendant was permitted to proceed *pro se* and after numerous advisements, still insisted on proceeding *pro se*. Sturdivant provided coherent responses to the trial court's repeated inquiries on her desire to proceed *pro se* and the right to counsel. For example, after the advisement at the initial hearing, the trial court asked the defendant if she wished to be represented by counsel. The defendant responded "[n]o I do not." *Id*. at 1221. At a later hearing, Sturdivant accepted the appointment of counsel, but later indicated that she wished to proceed *pro se*. *See id*. at 1222. After receiving an advisement, she said that "she understood the advantages of having counsel but that she nonetheless wanted to represent herself." *Id*. On at least four occasions, Sturdivant confirmed her desire to proceed *pro se*. *See id*. at 1220–22. Sturdivant proceeded to trial and was ultimately convicted of the underlying criminal offenses. On appeal, she argued that "the trial court should have denied her request for self-representation under [*Edwards I*.]" *Id*. at 1220.

[21] Unlike *Sturdivant*, Cihonski had a diagnosed mental illness with self-reported instances of hallucination in the past. However, there was no indication that Cihonski was hallucinating or disoriented during his numerous appearances before the trial court where he repeatedly asserted his right to represent himself. Cihonski's insanity evaluations were in relatively close proximity to this request

and despite his diagnosis, revealed that he was compliant in taking his medications and that he was not experiencing any psychosis or hallucinations. While Cihonski was held in contempt due to outbursts during open court approximately 11 months prior to his jury trial, his subsequent pre-trial court appearances occurred without incident. While the evidence is not without conflict, we cannot say the trial court erred in permitting Cihonski to proceed *pro se*.

[22] Based on the facts in the record before us and applying the applicable standard, the record supports that Cihonski was competent to proceed *pro se*. Therefore, we conclude that the trial court did not clearly err in granting Cihonski's request to represent himself.

[23] Affirmed.

Kenworthy, J. and Scheele, J., concur.

ATTORNEY FOR APPELLANT

Sean C. Mullins
Office of the Lake County Public Defender
Crown Point, Indiana

ATTORNEYS FOR APPELLEE

Theodore E. Rokita
Attorney General of Indiana

Ellen H. Meilaender
Supervising Deputy Attorney General
Indianapolis, Indiana