

IN THE COURT OF APPEALS
TWELFTH APPELLATE DISTRICT OF OHIO
WARREN COUNTY

STATE OF OHIO,	:	
Plaintiff-Appellee,	:	CASE NO. CA2008-07-094
- vs -	:	<u>OPINION</u>
	:	10/19/2009
NATHANIAL BLACKER,	:	
Defendant-Appellant.	:	

CRIMINAL APPEAL FROM WARREN COUNTY COURT OF COMMON PLEAS
Case No. 08CR24737

Rachel A. Hutzel, Warren County Prosecuting Attorney, Michael Greer, 500 Justice Drive, Lebanon, OH 45036, for plaintiff-appellee

Darin S. Barber, 12 East Warren Street, Lebanon, OH 45036, for defendant-appellant

POWELL, J.

{¶1} Defendant-appellant, Nathaniel Blacker, appeals his convictions in the Warren County Court of Common Pleas for felonious assault and possession of a deadly weapon while under detention. We affirm the decision of the trial court in part, reverse in part, and remand for further proceedings.

{¶2} In 2004, Blacker was convicted of aggravated robbery and sentenced to the Warren Correctional Institution. While serving his sentence, Blacker stabbed Ryan Waller, a

fellow inmate, with an improvised knife, also known as a shank. After an investigation, Blacker was indicted for felonious assault and possession of a deadly weapon while under detention.

{¶3} During pre-trial hearings and the jury trial itself, Blacker represented himself pro se after signing a waiver of his right to have an attorney appointed. During the trial, Blacker asserted that Waller attacked him with the shank and that the stabbing occurred in self-defense. Blacker cross-examined the state's witnesses and testified on his own behalf, but called no other witnesses to corroborate his self-defense story. The jury found Blacker guilty on both counts, and the trial court sentenced Blacker to five year sentences for each count. The court ordered the ten-year sentence to run consecutive to Blacker's aggravated robbery sentence he was serving at the time of the stabbing.

{¶4} Blacker now appeals his convictions and sentence, raising six assignments of error. For ease of discussion, we will address the assignments out of order.

{¶5} Assignment of Error No. 6:

{¶6} "MR. BLACKER STATES THAT THE TRIAL COURT ERRED TO THE PREJUDICE OF DEFENDANT-APPELLANT WHEN IT EXERCISED JURISDICTION OVER HIS NATURAL PERSON."

{¶7} In his sixth assignment of error, Blacker asserts that the trial court lacked the proper jurisdiction to try and convict him because he is a "non-resident alien to the Federal United States, the State of Ohio, and Warren County." This argument lacks merit.

{¶8} Blacker argues that as a "sovereign man," he is not subject to the "secret jurisdiction" imposed over him by the trial court. According to Blacker's political ideology, the United States Constitution sets forth three types of jurisdiction: admiralty, common-law, and equity, so that any jurisdiction conferred by statute is null absent a contract between himself and the state of Ohio. The trial court gave Blacker multiple chances to argue the jurisdiction

issue. Each time, it explained to Blacker that the common pleas court had jurisdiction over him based on the state's accusation that he committed a crime in Warren County. Blacker, however, continues to assert that the trial court improperly exerted jurisdiction. We disagree.

{¶9} Whether or not Blacker claims sovereignty, the Ohio Constitution, in accordance with the Federal Constitution, sets forth jurisdiction requirements by which a trial court has power to adjudicate a case. Article IV, Section 4(B) states that "the courts of common pleas and divisions thereof shall have such original jurisdiction over all justiciable matters * * *." In promulgating R.C. 2901.11(A)(1), the Ohio General Assembly set forth "Criminal Law Jurisdiction" and established that "a person is subject to criminal prosecution and punishment in this state if any of the following occur: The person commits an offense under the laws of this state, any element of which takes place in this state." R.C. 1.59(D) states that "'person' includes an individual" so that Ohio's Revised Code and any applicable criminal statutes apply to all individuals, regardless of citizenship or nonresident alien status. According to Ohio's criminal venue statute, R.C. 2901.12(A), "the trial of a criminal case in this state shall be held in a court having jurisdiction of the subject matter, and in the territory of which the offense or any element of the offense was committed."

{¶10} Blacker was indicted for two violations of Ohio's criminal code, with the violations occurring in Warren County. Therefore, the Warren County Court of Common Pleas held proper jurisdiction over Blacker, sovereign man or not. Blacker's sixth assignment of error is overruled.

{¶11} Assignment of Error No. 4:

{¶12} "THE INDICTMENT FOR POSSESSION OF A DEADLY WEAPON WHILE UNDER DETENTION WAS FATALLY DEFECTIVE IN THAT IT DID NOT CONTAIN ALL OF THE ELEMENTS OF THE CRIME CHARGED."

{¶13} In his fourth assignment of error, Blacker asserts that the indictment charging

him with possession of a deadly weapon while under detention was defective because it failed to list a mental state. There is no merit to this argument.

{¶14} Blacker asserts that under the Ohio Supreme Court's decision in *State v. Colon*, 118 Ohio St.3d 26, 2008-Ohio-1624, his conviction must be overturned because the indictment charging him with possession of a deadly weapon while under detention failed to mention a mental state. However, there is no need to discuss whether the lack of a mental state was a structural error that warrants reversal because the crime for which Blacker was charged is a strict liability offense.

{¶15} Blacker was indicted on one count of possession of a deadly weapon while under detention in violation of R.C. 2923.131(B), which states that, "no person under detention at a detention facility shall possess a deadly weapon." Because no mental state is set forth in the statute, we are guided by R.C. 2901.21(B), which directs that "when the section defining an offense does not specify any degree of culpability, and plainly indicates a purpose to impose strict criminal liability for the conduct described in the section, then culpability is not required for a person to be guilty of the offense. When the section neither specifies culpability nor plainly indicates a purpose to impose strict liability, recklessness is sufficient culpability to commit the offense."

{¶16} Therefore, we must determine whether the Ohio General Assembly plainly indicated a purpose to impose strict liability or if the state was required to prove that Blacker acted recklessly in possessing the shank. After considering the purposes of the statute, as well as findings of strict liability for similar statutes, we hold that possession of a deadly weapon while under detention is a strict liability offense so that the state was not required to list or prove a requisite mental state.

{¶17} In *State v. Lester*, Slip Opinion No. 2009-Ohio-4225, the Ohio Supreme Court decided that aggravated robbery in violation of R.C. 2911.01(A)(1) imposes strict liability with

regard to the element of brandishing, displaying, using, or indicating possession of a deadly weapon. In doing so, the court compared the brandishing element of aggravated robbery to similar possession-driven statutes. Specifically, it considered *State v. Wharf*, 86 Ohio St.3d 375, 1999-Ohio-112, in which the court previously determined that having a deadly weapon on or about the offender's person or under the offender's control during or after a robbery was a strict liability offense. In its analysis, the court noted that, "by employing language making mere possession or control of a deadly weapon, as opposed to actual use or intent to use, a violation it is clear that the General Assembly intended that R.C. 2911.02(A)(1) be a strict liability offense." *Id.* at ¶20. The court noted that the elements in both R.C. 2911.01(A)(1) and R.C. 2911.02(A)(1) were virtually identical so that finding R.C. 2911.01(A)(1) a strict liability offense was in accord with past determinations of similar statutes.

{¶18} The court also considered the Ohio General Assembly's intent to require a mental state, and noted that "merely *having* the weapon is the potentially dangerous factual condition warranting the more severe penalty." *Id.* at ¶23. (Emphasis in original.) Based on the legislators' intent, bolstered by the statute's plain language, the court found strict liability applied.

{¶19} After performing a similar analysis, we find that strict liability applies to possessing a deadly weapon while under detention. Very similar to the robbery statutes discussed above, R.C. 2923.131(B) states clearly that no person under detention at a detention facility shall possess a deadly weapon. Therefore, the legislators made mere possession of the deadly weapon a crime, and did not make actual use or intent to use the weapon an element of the crime.

{¶20} A comparison to *State v. Clay*, 120 Ohio St.3d 528, 2008-Ohio-6325, is also helpful to our analysis. In *Clay*, the Ohio Supreme Court found that having a weapon while

under disability in violation of R.C. 2923.13(A)(3) included a reckless mental state and was not a strict liability crime. The appellant in *Clay* appealed his conviction for having weapons while he was under indictment because the state did not prove a mental state associated with the violation. The court concluded that mere possession of a firearm is not unlawful. However, the additional element of being under indictment made the possession a criminal act so that the appellant needed to have understood he was under disability at the time of his possession. When considering this aspect of *Clay*, the *Lester* court concluded that, "when the additional fact makes innocent conduct criminal * * * it is unlikely that the General Assembly plainly intended to impose strict liability." 2009-Ohio-4225 at ¶25.

{¶21} Here, we note that possession of a deadly weapon is not in and of itself a crime. However, unlike *Clay*, the additional fact that makes innocent conduct criminal under R.C. 2923.131(B) is the accused's status as a detained person. The court in *Clay* reasoned that strict liability did not apply because an accused must be aware of an existing disability, or the possibility of one, in order to prove every element of the offense. Here, however, there is little doubt that an accused is unaware that he is in detention. Either the accused is detained or he is not.¹

{¶22} We also note that the court in *Clay* found the "indications outside the statute" did not point to strict liability. Mainly, the court reasoned that possessing a weapon, while subject to some restrictions, is a constitutionally-protected right and that the General Assembly did not make any "strong stances" against possessing a firearm. The court compared the constitutional right to possess a firearm to its decision in *State v. Maxwell*, 95 Ohio St.3d 254, 2002-Ohio-2121. There, the court found strict liability applied to R.C. 2907.321(A)(6), Ohio's pandering obscenity involving a minor statute, which forbids

1. According to R.C. 2921.01(E), detention is defined in pertinent part as "* * * confinement in any public or private facility for custody of persons charged with or convicted of crime in this state * * *." Additionally, R.C. 2921.01(F) defines detention facility as "any public or private place used for the confinement of a person charged with or convicted of any crime in this state or another state * * *."

"bring[ing] or caus[ing] to be brought into this state any obscene material that has a minor as one of its participants or portrayed observers."

{¶23} The court in *Maxwell* reasoned that "the General Assembly has assumed a strong stance against sex-related acts involving minors, as evidenced by the numerous statutes in the Ohio Revised Code providing for criminal liability for those acts. Therefore, it is reasonable to presume that the inclusion of a knowledge requirement regarding the character of the material and the absence of a mental element elsewhere in R.C. 2907.321 reflect legislative intent to impose strict liability for the act of bringing child pornography into the state of Ohio." *Id.* at ¶30.

{¶24} Essentially, the *Clay* court distinguished having a weapon under disability from possession of child pornography because of the nature of the item being possessed. In turn, the nature of possessing a deadly weapon while under detention is distinguishable from having a weapon while under disability. Unlike a person's constitutional right to bare arms, prisoners and other detainees have no protected right to possess deadly weapons. Additionally, the General Assembly specifically enacted R.C. 2923.131 as a separate section from R.C. 2923.13 because the nature of having a deadly weapon while under detention carries with it different repercussions for those detained with, and those detaining, the accused. While a person, even one under disability, may possess a weapon for innocuous reasons, a detainee has no harmless reason to possess a deadly weapon.

{¶25} Because the statute undoubtedly protects fellow detainees and those charged with detaining the accused, it is reasonable to assume that the General Assembly considered that a detainee would not possess a deadly weapon for any benign purpose. Instead, in detention settings, shanks and other dangerous weapons are created, obtained, and kept in order to inflict harm. The legislature recognized that there is no legitimate purpose in possessing a deadly weapon while detained, therefore, removing any similarity R.C.

2923.131 may seemingly share with R.C. 2923.13. By passing separate legislation aimed specifically at those under detention who choose to possess a deadly weapon, as opposed to merely having a weapon under disability, the General Assembly was making a strong stance against violence in detention settings.

{¶26} Before it enacted the statute, the General Assembly considered how best to protect both guards and inmates in a detention setting. When considering the proposed R.C. 2923.131, legislators heard testimony that by making mere possession of a deadly weapon while under detention a crime, the bill was "pro-guard" but also "pro-inmate." See March 21, 1995 Committee Report on HB 154. The legislative history also reveals that the bill's sponsor stated that his reason for proposing the bill was to promote safety in detention settings by "prohibiting inmate possession of 'shanks.'" See June 14, 1995 Committee Report on Sub. HB 154. However, the history is absent of any indication that the General Assembly passed the bill for any reason other than to promote safety in detention settings or meant to require the state to prove any mental state before convicting an inmate of a violation.

{¶27} Based on the legislators' strong stance regarding safety in detention settings, as well as the statute's plain indication, possessing a deadly weapon while under detention is a strict liability offense. Therefore, the state was not required to list a mental state on the indictment, and Blacker's fourth assignment of error is overruled.

{¶28} Assignment of Error No. 2:

{¶29} "THE TRIAL COURT ERRED TO THE PREJUDICE OF DEFENDANT-APPELLANT WHEN IT DENIED HIM A CONTINUANCE TO SUBPOENA WITNESSES AND PREPARE FOR TRIAL."

{¶30} In his second assignment of error, Blacker asserts that the trial court erred in denying a second continuance. There is no merit to this argument.

{¶31} The decision to grant or deny a continuance rests in the broad discretion of the

trial court. *State v. Franklin*, 97 Ohio St.3d 1, 2002-Ohio-5304. "While there is no bright-line test for determining whether a continuance should be allowed, a court should be guided by consideration of several factors, including the length of the requested delay, whether other continuances have been requested and received, the inconveniences likely to result, the reasons for the delay, and whether the defendant contributed to the circumstances giving rise to the need for delay." *Id.* at ¶18.

{¶32} Applying these factors, the trial court did not abuse its discretion in denying Blacker's first request for an additional continuance. At a hearing on June 13, 2008, 10 days before his trial was to begin, Blacker requested that his trial be continued until January or February of the next year. After being granted a previous continuance of 60 days in March, 2008, Blacker requested the additional continuance due to his "restrictive placement" and because he did not have access to writing materials in order to file motions and requests for depositions. The trial court explained that depositions are not taken in criminal cases and then pointed out that Blacker had already filed multiple motions. Blacker then stated that he needed the continuance in order to obtain the rules of criminal procedure and copies of his medical records. The court verified that Blacker would have access to the rules in the prison's library, and further determined that Blacker's previous medical records were irrelevant to the charges he faced. Therefore, based on the fact that Blacker had already been granted a continuance that his request came just 10 days before his trial was to begin, and that his reasons for an additional continuance were not compelling, the trial court did not err in denying Blacker an additional continuance.

{¶33} On the first day of his trial, Blacker again requested a continuance because he had been unable to subpoena his witnesses. However, Blacker admitted that he understood that subpoenaing witnesses was his responsibility and that he had failed to follow the proper protocol. According to Blacker's argument to the court, he sent a communication to the court

clerk, requesting that the clerk issue the subpoenas and transfer orders for his witnesses who were prisoners. The court explained that it was not the clerk's responsibility to issue subpoenas, and considered that Blacker had sent his request to the clerk only the previous week. Therefore, the court reasoned that even if it was the clerk's responsibility to administer Blacker's subpoenas, there would have been insufficient time to make the necessary arrangements.

{¶34} Based on the *Franklin* factors, the court did not abuse its discretion in denying Blacker's renewed request for a continuance. Instead, Blacker requested the continuance on the day of his trial, once the potential jury pool was already assembled and the state was prepared to try its case. Given that Blacker had been granted a previous continuance, he had ample time to properly issue the needed subpoenas and request that the prisoners be transferred in order to appear as witnesses. Therefore, Blacker contributed to the circumstances giving rise to the need for delay and the trial court did not err in denying his renewed request for a continuance. Blacker's second assignment of error is overruled.

{¶35} Assignment of Error No. 1:

{¶36} THE TRIAL COURT ERRED TO THE PREJUDICE OF DEFENDANT-APPELLANT WHEN IT MADE HIM CONDUCT A JURY TRIAL IN SHACKLES IN VIOLATION OF THE FIFTH AND FOURTEENTH AMENDMENTS."

{¶37} In his first assignment of error, Blacker claims that the trial court erred by requiring him to be shackled during the trial without first justifying the state's interest in having him restrained. This argument lacks merit.

{¶38} During the jury trial, Blacker was restrained in shackles. Although the trial court ordered that the state and Blacker remain seated throughout the proceedings, including while questioning witnesses and giving opening and closing arguments, the record indicates that the jury was aware that Blacker was shackled. However, Blacker failed to object to the

shackles so that he has waived the argument on appeal other than plain error.

{¶39} According to Crim.R. 52(B), "plain errors or defects affecting substantial rights may be noticed although they were not brought to the attention of the court." Plain error does not exist unless, but for the error, the outcome of the trial would have been different. *State v. Waddell*, 75 Ohio St.3d 163, 166, 1996-Ohio-100. Notice of plain error "is to be taken with the utmost caution, under exceptional circumstances and only to prevent a manifest miscarriage of justice." *State v. Haney*, Clermont App. No. CA2005-07-068, 2006-Ohio-3899, ¶50, quoting *State v. Long* (1978), 53 Ohio St.2d 91, paragraph three of the syllabus.

{¶40} Traditionally, a defendant remains unrestrained during his trial because the presence of restraints has a negative impact on the presumption of innocence. *State v. Franklin*, 97 Ohio St.3d 1, 2002-Ohio-5304.² However, a defendant may be shackled when there is danger of violence or escape. *State v. Woodards* (1966), 6 Ohio St.2d 14. The trial court is in the best position to consider the defendant's conduct both inside and outside the courtroom. *State v. Murphy*, Butler App. No. CA2006-06-143, 2007-Ohio-4535. Therefore, the decision to impose shackles is left to the sound discretion of the trial court. *Woodards* at 23. However, the court must articulate on the record the reasons for imposing shackles. *State v. Wightman*, Fayette App. No. CA2006-12-045, 2008-Ohio-95.

{¶41} Here, while it is true that the trial court failed to expressly state why it was requiring Blacker to remain in shackles, we cannot say that the error rose to the level of plain error. Instead, Blacker fails to show how he was prejudiced by being made to wear shackles. After the trial began, Blacker asked that a portion of his hand cuffs be removed to facilitate note-taking. The court allowed the removal so that during the majority of proceedings, Blacker was bound primarily by leg shackles.

2. We are aware of *Deck v. Missouri* (2005), 544 U.S. 622, 125 S.Ct. 2007, in which the Supreme Court found that a defendant need not demonstrate actual prejudice to make out a due process violation when the trial court fails to adequately justify why the defendant must proceed in shackles. However, the Ohio Supreme Court has not addressed this issue, and *Franklin* remains binding precedent when determining the case at bar.

{¶42} During the trial, the jury was well-aware that Blacker was incarcerated, as he chose to wear his prison-issued uniform at trial and was accused of committing additional crimes while in prison. Before the trial began, Blacker discussed his status with the jury during voir dire. Specifically, he stated, "all right, obviously I'm a prisoner. Please don't hold that against me. Is there anyone here that could not look at me today, even in these chains (indicating), and say that, you know, I'm not innocent?" (Parenthetical in original.)

{¶43} During his direct testimony, Blacker addressed the jury and stated, "you know, the common fact I am in chains and everything, I am a criminal. Yes, I was convicted of an aggravated robbery. Yes, I am currently serving seven years for that." Blacker also chose to appear at trial in his prison-issued clothing. See *State v. Evans*, Scioto App. No. 05CA3002, 2006-Ohio-2564, ¶41, quoting *Holbrook v. Flynn* (1986), 475 U.S. 560, 568, 106 S.Ct. 1340 (recognizing that "prison attire carries a similar indicia of guilt as restraints. When a defendant is forced to appear before the jury in prison clothes, 'the constant reminder of the accused's condition implicit in such distinctive, identifiable attire may affect a juror's judgment'").

{¶44} From these facts, we cannot say that the shackles were the sole source of any prejudice the jury may have felt against Blacker. Instead, Blacker chose to flourish his restraints in front of the jury and made reference to them while testifying. Additionally, Blacker's status as a prisoner, as well as his decision to wear his prison uniform, provided other sources of possible prejudice. Therefore, we cannot say the restraints alone prejudiced Blacker throughout the proceedings or during the jury's deliberations.

{¶45} The jury also heard testimony regarding the investigation into the incident, and Blacker himself admitted to possessing the shank and stabbing Waller with it. By virtue of the jury's verdict, it chose not to believe Blacker's self-defense story. However, we cannot say that Blacker wearing shackles during the trial caused the jury to return a guilty verdict or

that the results of the trial would have been different had the court allowed Blacker to proceed without restraints. Therefore, having found no plain error, Blacker's first assignment of error is overruled.

{¶46} Assignment of Error No. 3:

{¶47} "THE TRIAL COURT ERRED TO THE PREJUDICE OF DEFENDANT-APPELLANT WHEN IT ACCEPTED HIS WAIVER OF COUNSEL THAT WAS NOT INTELLIGENTLY, KNOWINGLY, AND VOLUNTARILY MADE."

{¶48} In his third assignment of error, Blacker asserts that the trial court erred in accepting his waiver of counsel because the waiver was invalid. We find this argument meritorious.

{¶49} Before an accused's Sixth and Fourteenth Amendment right to representation may be waived, the trial court must make "sufficient inquiry to determine whether the defendant fully understands and intelligently relinquishes that right." *State v. Doyle*, Brown App. No. CA2005-11-020, 2006-Ohio-5373, ¶8. "While no single definitive test exists in determining whether a defendant voluntarily, knowingly, and intelligently waives his right to an attorney, Ohio courts generally examine whether the totality of the circumstances demonstrate such a waiver." *State v. Bizzell*, Clinton App. No. CA2006-04-015, 2007-Ohio-2160, ¶12.

{¶50} In *Doyle*, we strongly suggested that trial courts investigate thoroughly a defendant's wish to proceed pro se, to ensure that a waiver of representation is valid. In doing so, we quoted *State v. Gibson* (1976), 45 Ohio St.2d 366, 377, in which the court stated that for there to be a valid waiver, it must be "made with an apprehension of the nature of the charges, the statutory offenses included within them, the range of allowable punishments thereunder, possible defenses to the charges and circumstances in mitigation thereof, and all other facts essential to a broad understanding of the whole matter."

{¶51} We also stated that in addition to the court's duty to inform and ascertain whether the defendant understands his rights and the charges against him, the defendant must also be advised of the following consequences of proceeding pro se: "(1) self-representation would be detrimental; (2) the defendant will be held to the same standards as an attorney; (3) thus, the defendant must follow all technical rules of substantive, procedural, and evidentiary law; (4) a defendant's lack of knowledge of evidentiary and procedural rules will not prevent the court from enforcing them; (5) the defendant's lack of knowledge of these rules may result in waiving review of certain issues on appeal; (6) if the defendant has any difficulty in presenting his defense and complying with procedural rules, the court cannot and will not assist him in the presentation of his case so that it is done properly; (7) the prosecution would be represented by an experienced attorney; (8) the right of self-representation is not a license to abuse the dignity of the courtroom; thus, if there is a disruption of the trial, the right to self-representation can be vacated; and (9) whatever else may or may not be open to him on appeal, a defendant who elects to represent himself cannot thereafter complain that the quality of his own defense amounted to a denial of effective assistance of counsel." *Doyle* at ¶24.

{¶52} Beyond the consequences of self-representation, we also stated that trial courts should ask the defendant "whether (1) he suffers from any physical or mental disease or disability; (2) is under the influence of drugs or alcohol; and (3) was forced to or was promised something in exchange for waiving his right to counsel. * * * trial courts would also be well advised to ask a defendant whether he has represented himself before in a criminal prosecution." *Id.* at ¶25. Finally, and as we stated in *Doyle*, trial courts would be well advised to require a thorough and full written waiver of counsel rather than a bare bone written waiver. *Id.*

{¶53} Here, there is little doubt that Blacker expressed his desire to represent himself.

As the state points out, Blacker stated multiple times that he did not want counsel appointed, and even stated that no one could represent himself better than he could. Even so, and as we stated in *Bizzell*, "a court does not fulfill its responsibility to sufficiently inform a defendant as to that defendant's waiver of counsel merely because the defendant expresses a desire to represent himself * * *." *Bizzell*, 2007-Ohio-2160 at ¶20.

{¶54} Instead, Blacker's waiver was not made voluntarily, intelligently, or knowingly because the trial court failed to sufficiently inform Blacker of his rights and the repercussions of waiving them. During the pre-trial hearing, the court informed Blacker that he was facing single counts of felonious assault and possession of a deadly weapon while under detention, both second-degree felonies. The court then stated that each carried a possibility of eight years in prison and a fine of \$15,000, and that Blacker had a right to an attorney. However, the court then expressed its understanding that Blacker previously indicated during his arraignment the desire to proceed pro se. Instead of making sure that Blacker understood the nature of the charges and the statutory offenses included within them, the court merely named the two pending charges. The court did state the range of allowable punishments, but failed to inform Blacker of the possible defenses to the charges and circumstances in mitigation of the charges.

{¶55} The court also failed to advise Blacker of any of the nine consequences of self-representation we set forth in *Doyle*, and instead told Blacker that he needed to sign a written waiver if he wished to proceed pro se. Instead of a full colloquy to investigate the validity of Blacker's waiver, the court merely summarized the written waiver, which stated: "I, Nathaniel Blacker, hereby acknowledge that I have been advised, in open Court, of my right to be represented by a lawyer. I understand that if I am unable to afford an attorney, one will be assigned by the Court at no cost to me. By signing this waiver, I knowingly, intelligently, and voluntarily waive the right to be represented by an attorney, or to have one assigned to me by

the Court. **I wish to go forward in this proceeding without the assistance of an attorney.**" (Emphasis in original.)

{¶56} However, this bare bones waiver, and the summary provided by the court, fails to advise Blacker of the repercussions of waiving counsel and to fully develop and explain what rights Blacker was giving up by waiving his right to representation. Additionally, at no time did the trial court ever ask Blacker if he suffered from any physical or mental disease or disability, if he was under the influence of drugs or alcohol, or if he was forced or promised something in exchange for his waiver.

{¶57} The state argues that several times throughout the proceedings that followed Blacker's waiver, the court pointed out the consequences of self representation by telling Blacker that he would be held to the same standards as an attorney, and also explained that it had to enforce certain procedural rules even if Blacker failed to understand them. However, the court's admonitions came after Blacker had already signed his waiver and could not therefore serve to make valid an already invalid waiver.

{¶58} We also note that in *Doyle*, while we found the defendant's waiver invalid, we nonetheless affirmed his conviction because he failed to show that but for the trial court's failure to properly advise him of the rights he was waiving and the consequences of proceeding pro se, he would not have waived his right to counsel. Instead, Doyle knew he could be sentenced to between six and 18 months for receiving stolen property, was no stranger to the criminal justice system, was aware of the nature of the charges against him because he had previously been charged with the exact same crime, represented himself at a previous trial, and appealed his previous conviction claiming his waiver was invalid in that instance too.

{¶59} Here, while Blacker was in prison on a previous conviction and therefore familiar with the criminal justice system, his prior conviction was for aggravated robbery, not

felonious assault or possession of a deadly weapon while under detention. Also, Blacker was represented by counsel at his aggravated robbery trial and had not proceeded pro se.

{¶60} Additionally, throughout the proceedings, Blacker requested assistance in preparing motions and was willing to accept help from a court-appointed attorney. However, before the trial started, the attorney requested to withdraw because he felt uncomfortable in an advisory situation where he may be liable for "any missteps of the pro se defendant." The court allowed the attorney to withdraw and asked Blacker if he wanted other counsel or another advisor appointed. Although Blacker again declined and stated that he did not want representation, he did state that he needed someone to "assist [him] in typing up documents and stuff like that" because he did not have access to supplies and postage to submit motions. Even then, the trial court did not address the consequences we set out in *Doyle* or explain to Blacker that he faced numerous disadvantages and would not receive the requested assistance just because he was proceeding pro se. Based on the circumstances surrounding Blacker's decision to proceed pro se and his subsequent requests for help, we find the facts of this case dissimilar to those in *Doyle*. We are therefore unable to say that but for the court's failure to inform Blacker of his rights and the consequences of waiver, he would have waived his right to representation anyway.

{¶61} We are sympathetic to the trial court in this instance. Multiple times, the court had to stop what it was doing in order to address Blacker's assertions regarding jurisdiction and challenges to the history and constitutionality of trial courts. Particularly, the transcripts of the pretrial hearings and the jury trial reveal the trial court's patience towards Blacker, its willingness to discuss Blacker's concerns over jurisdiction, and its tolerance towards Blacker's atypical political ideology. While it was often interrupted and drawn off course by Blacker's reactions and assertions, it nonetheless had a duty imposed by the Ohio Constitution and higher courts to thoroughly investigate before accepting Blacker's waiver as

valid. Ironically, the transcripts reveal Blacker's complete disregard for Ohio's criminal code, statutes, court systems, and constitution. However paradoxical, our adherence to, and respect for, the very system and processes Blacker disparages as a "sovereign man" now protects him and affords the right to a new trial.

{¶62} Having found Blacker's argument meritorious, we sustain his third assignment of error.

{¶63} Assignment of Error No. 5:

{¶64} "THE CUMULATIVE EFFECT OF THE NUMEROUS ERRORS PREJUDICED DEFENDANT-APPELLANT AND DENIED HIM A FAIR TRIAL."

{¶65} In his fifth assignment of error, Blacker asserts that there were numerous errors at trial that denied him a fair trial. While we have overruled Blacker's first, second, fourth, and sixth assignments of error, our decision to sustain Blacker's third assignment of error renders the cumulative error argument moot.

{¶66} Judgment reversed and remanded for further proceedings.

BRESSLER, P.J., and YOUNG, J., concur

[Cite as *State v. Blacker*, 2009-Ohio-5519.]