

[Cite as *State v. Street*, 2015-Ohio-2789.]

**IN THE COURT OF APPEALS OF OHIO
SECOND APPELLATE DISTRICT
MONTGOMERY COUNTY**

STATE OF OHIO

Plaintiff-Appellee

v.

EUGENE STREET

Defendant-Appellant

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Appellate Case No. 26501

Trial Court Case No. 2013-CRB-1358

(Criminal Appeal from
Municipal Court)

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OPINION

Rendered on the 10th day of July, 2015.

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WELBAUM, J.

{¶ 1} Defendant-appellant, Eugene Street, appeals from his conviction in the Montgomery County Municipal Court, Western Division, after a jury found him guilty of obstructing official business, disorderly conduct, and resisting arrest. Specifically, Street challenges the sufficiency and manifest weight of the evidence. He also contends the trial court failed to sufficiently advise him of the disadvantages of proceeding pro se at trial, and therefore, claims his waiver of counsel was invalid. After a thorough review of the record, we find Street's conviction was supported by sufficient evidence and not against the manifest weight of the evidence. However, the trial court failed to make a sufficient inquiry to determine whether Street knowingly, intelligently, and voluntarily relinquished his right to counsel. Accordingly, the judgment of the trial court will be reversed and the matter will be remanded for a new trial.

Facts and Course of Proceedings

{¶ 2} On September 20, 2013, Street was charged by complaint with one count of aggravated menacing in violation of R.C. 2903.21, a misdemeanor of the first degree; one count of resisting arrest in violation of R.C. 2921.33, a misdemeanor of the second degree; one count of disorderly conduct in violation of R.C. 2917.11(A), a minor misdemeanor; and one count of obstructing official business in violation of R.C. 2921.31, a misdemeanor of the second degree. The charges arose from Street's interactions with police at a cell phone store in Trotwood, Ohio, on May 29, 2013. As the record indicates, the police were dispatched to the store as a result of the owner calling and reporting that Street was causing a disturbance and possibly in possession of a gun.

{¶ 3} Following his indictment, Street pled not guilty to the charges and an initial pretrial hearing was held on October 16, 2013. At that hearing, Street notified the trial court that he would be representing himself and the following discussion took place on the record.

Court: Okay, Eugene, you got an agg[ravated] menacing, resisting [arrest], obstruction [of official business], and disorderly [conduct] minor. You want to talk to a lawyer don't you? You want to talk to a lawyer about your case, don't you?

Street: No, I don't. But I would like for the Court to record that I'm here especially and I'm here involuntarily.

Court: That's okay.

* * *

Court: Are you going to get--pay a lawyer to represent you or you need a public defender?

Street: I am representing Mr. Street here today.

Court: Okay, now Eugene you can represent yourself. We'll set this through a pretrial. You know you could go to jail for six months on a couple of these charges, and the person who's going to prosecute you has done this for a lot of years. There's certain rules the Court has to go by. If you don't know those rules, you may have a great defense and never get to tell the Judge about it. You understand what I'm saying?

Street: No, I do not.

Court: You're betting a lot and you don't really know the rules. That's why—you want to talk to a Public Defender to see if they can help you?

Street: I am here to represent Mr. Street today.

Court: But you are Mr. Street.

Street: Know that.

Court: Okay. We'll just set it for a pretrial knowing that you don't want the Public Defender. * * *

Initial Appearance Hearing Trans. (Oct. 16, 2013), p. 2-3.

{¶ 4} The trial court thereafter scheduled the matter for a second pretrial hearing on November 7, 2013. At the second hearing, the trial court again discussed Street's decision to proceed pro se and attempted to explain to Street the challenges and risks of representing himself at trial. The following discussion took place on the record.

Court: —the Court's been informed through its Bailiff and Mr. Goraleski indicates that you now are of the opinion that you would like to represent yourself in this case. Is that correct?

Street: Yes, sir.

* * *

Court: All right. You have a right to represent yourself. You understand that a jury trial is probably the most difficult and challenging environment that an attorney operates in—a trial attorney operates in. Do you understand that?

Street: I am aware of it.

Court: All right. If you represent yourself and an—a error occurs, you will have a legal advisor. But that advisor is only going to respond to requests that you make. Do you understand that you assume the risk that if an error is made against your interest and you do not deal with that error that's at your risk?

Street: No, I do not because I'm not aware of the error that you're possibly—

Court: All right. Have—you've never been trained as an attorney, correct?

Street: That's correct.

Court: Have you ever represented yourself in a jury trial previously?

Street: No, I've never had to no.

Court: How far did you get in school? Did you graduate high school?

Street: In a past life yes.

Court: In a past life? Do you understand the roles of the people who are—will be participating in this jury trial? Do you understand that I am the Judge, that I set the rules and I control the process?

Street: No, I do not understand that.

Court: Why don't you understand that?

Street: Do you want my honest opinion?

Court: Yes.

Street: Because it sounds as if you are planning to be bias before any of the proceedings even occur.

Court: No, sir. I—I can't be biased, but I got—I have to be neutral. I can't show favor to you or to the State. Do you understand that[?]

Street: No, I do not because as of today up until this point favor has been shown strictly towards Prosecution. * * *

Court: Well, I'm informing you today that my role in this jury trial is to control the process so that we have an orderly trial. And my role is to be neutral between you and the State of Ohio. I can—well, the reason I'm telling you that and I want you to understand that is I cannot act as your attorney. Do you understand that?

Street: I am aware.

Court: Okay. And if you decide to represent yourself you are acting as your own attorney and if you make any mistakes no one's going to take you aside and say hey, you need to straighten this out because you've elected to act as your own attorney. No one can do that for you. Do you understand that?

Street: I am aware of it. * * *

Court: * * * You will have available to you Mr. Goraleski as your legal advisor. Do you understand that his role is to only respond to

your questions or inquires?

Street: I am aware.

Pro Se Representation Hearing Trans. (Nov. 7, 2013), p. 3-8.

{¶ 5} At the same hearing, the parties also discussed the State's plea offer to dismiss the aggravated menacing and disorderly conduct charges in exchange for Street pleading guilty to resisting arrest and obstructing official business. During this conversation, the trial court discussed the nature of the charges and the range of punishments Street could be subject to; however, the court never confirmed Street's understanding of either. The trial court did, nevertheless, discuss the plea offer at length due to Street continually claiming a lack of understanding. At the end of the hearing, Street ultimately refused to accept the State's plea offer.

{¶ 6} On November 20, 2013, the trial court filed a waiver of counsel stating that Street "had appeared in open Court and, after being fully advised of his* * * right to counsel * * * [a]ffirmatively and voluntarily waived that right and chose to proceed at this time without counsel." Waiver of Counsel (Nov. 20, 2013), Montgomery County Municipal Court Case No. 2013 CRB 1358, Docket No. 11. p.1. The waiver also stated that Street "had been fully advised by the Court of the nature of the charge against [him] and of the penalties involved; as well as the effect of a plea of guilty, no contest, and not guilty." *Id.* Street, however, did not sign the waiver. Rather, the phrase "signature refused" was affixed on the signature block where Street was supposed to sign. *Id.*

{¶ 7} The same day the waiver was filed, the trial court filed an appointment of standby counsel for Street. Due to the court receiving information from Street's family members about his odd behavior and previous hospitalization for mental health issues,

the trial court ordered Street's standby counsel to determine whether a motion for competency evaluation should be filed on his behalf. Street's standby counsel subsequently filed such a motion, which the trial court granted. On May 7, 2014, a hearing was held regarding Street's competency exam, which indicated he was competent to stand trial. After multiple continuances, a jury trial was eventually held on November 7, 2014.

{¶ 8} At trial, the State presented testimony from four Trotwood police officers who were present when Street allegedly committed the charged offenses. The State also admitted video evidence of a portion of Street's altercation with police that was recorded on a cell phone by Street's sister. Street, who represented himself with standby counsel, testified in his defense via a narrative statement. At the close of trial, the State dismissed the aggravated menacing charge and the jury deliberated on the charges for resisting arrest, obstructing official business, and disorderly conduct. After deliberation, the jury found Street guilty of all three charges and the trial court immediately sentenced Street to 90 days in county jail, with 45 of those days being suspended.

{¶ 9} Street now appeals from his conviction, raising three assignments of error for review.

First and Second Assignments of Error

{¶ 10} For purposes of convenience, we will address Street's First and Second Assignments of Error together. They are as follows:

- I. THE JURY ERRED TO MR. STREET'S PREJUDICE BY FINDING HIM GUILTY OF OBSTRUCTION OF OFFICIAL BUSINESS,

RESISTING ARREST, AND DISORDERLY CONDUCT, AS THOSE FINDINGS WERE NOT SUPPORTED BY SUFFICIENT EVIDENCE.

II. THE JURY ERRED TO MR. STREET'S PREJUDICE BY FINDING HIM GUILTY OF THE NOTED CHARGES AS THESE FINDINGS WERE CONTRARY TO LAW.

{¶ 11} Under the foregoing assignments of error, Street contends his convictions for obstructing official business, disorderly conduct, and resisting arrest were not supported by sufficient evidence and that the jury's decision finding him guilty was against the manifest weight of the evidence. We disagree.

{¶ 12} "A sufficiency of the evidence argument disputes whether the State has presented adequate evidence on each element of the offense to allow the case to go to the jury or sustain the verdict as a matter of law." *State v. Wilson*, 2d Dist. Montgomery No. 22581, 2009-Ohio-525, ¶ 10, citing *State v. Thompkins*, 78 Ohio St.3d 380, 386, 678 N.E.2d 541 (1997). "When reviewing a claim as to sufficiency of evidence, the relevant inquiry is whether any rational factfinder viewing the evidence in a light most favorable to the state could have found the essential elements of the crime proven beyond a reasonable doubt." (Citations omitted.) *State v. Dennis*, 79 Ohio St.3d 421, 430, 683 N.E.2d 1096 (1997). "The verdict will not be disturbed unless the appellate court finds that reasonable minds could not reach the conclusion reached by the trier-of-fact." (Citations omitted.) *Id.*

{¶ 13} In contrast, "[a] weight of the evidence argument challenges the believability of the evidence and asks which of the competing inferences suggested by

the evidence is more believable or persuasive.” (Citation omitted.) *Wilson* at ¶ 12. When evaluating whether a conviction is against the manifest weight of the evidence, the appellate court must review the entire record, weigh the evidence and all reasonable inferences, consider witness credibility, and determine whether, in resolving conflicts in the evidence, the trier of fact “clearly lost its way and created such a manifest miscarriage of justice that the conviction must be reversed and a new trial ordered.” *Thompkins* at 387, quoting *State v. Martin*, 20 Ohio App.3d 172, 175, 485 N.E.2d 717 (1st Dist.1983). “The fact that the evidence is subject to different interpretations does not render the conviction against the manifest weight of the evidence.” *State v. Adams*, 2d Dist. Greene Nos. 2013 CA 61, 2013 CA 62, 2014-Ohio-3432, ¶ 24, citing *Wilson* at ¶ 14.

{¶ 14} “The credibility of the witnesses and the weight to be given to their testimony are matters for the trier of facts to resolve.” *State v. Hammad*, 2d Dist. Montgomery No. 26057, 2014-Ohio-3638, ¶ 13, citing *State v. DeHass*, 10 Ohio St.2d 230, 231, 227 N.E.2d 212 (1967). Because the trier of fact sees and hears the witnesses at trial, we must defer to the factfinder’s decisions whether, and to what extent, to credit the testimony of particular witnesses. *State v. Lawson*, 2d Dist. Montgomery No. 16288, 1997 WL 476684, *4 (Aug. 22, 1997). “This court will not substitute its judgment for that of the trier of facts on the issue of witness credibility unless it is patently apparent that the factfinder lost its way.” (Citation omitted.) *State v. Bradley*, 2d Dist. Champaign No. 97-CA-03, 1997 WL 691510, *4 (Oct. 24, 1997).

{¶ 15} “Although sufficiency and manifest weight are different legal concepts, manifest weight may subsume sufficiency in conducting the analysis; that is, a finding that a conviction is supported by the manifest weight of the evidence necessarily includes a

finding of sufficiency.” (Citation omitted.) *State v. McCrary*, 10th Dist. Franklin No. 10AP-881, 2011-Ohio-3161, ¶ 11. As a result, “a determination that a conviction is supported by the weight of the evidence will also be dispositive of the issue of sufficiency.” (Citations omitted.) *State v. Braxton*, 10th Dist. Franklin No. 04AP-725, 2005-Ohio-2198, ¶ 15.

{¶ 16} As noted earlier, Street was convicted of obstructing official business, disorderly conduct, and resisting arrest. With regards to Street’s conviction for obstructing official business, R.C. 2921.31 provides that:

No person, without privilege to do so and with purpose to prevent, obstruct, or delay the performance by a public official of any authorized act within the public official’s official capacity, shall do any act that hampers or impedes a public official in the performance of the public official’s lawful duties.

{¶ 17} “A person acts purposely when it is the person’s specific intention to cause a certain result, or, when the gist of the offense is a prohibition against conduct of a certain nature, regardless of what the offender intends to accomplish thereby, it is the offender’s specific intention to engage in conduct of that nature.” R.C. 2901.22(A). “ ‘The proper focus in a prosecution for obstructing official business is on the defendant’s conduct, verbal or physical, and its effect on the public official’s ability to perform the official’s lawful duties.’ ” *State v. Herron*, 2d Dist. Montgomery No. 23868, 2011-Ohio-127, ¶ 20, quoting *State v. Wellman*, 173 Ohio App.3d 494, 2007-Ohio-2953, 879 N.E.2d 215, ¶ 12 (1st Dist.)

{¶ 18} In this case, there was sufficient, credible evidence presented at trial for a reasonable jury to conclude that Street was guilty of obstructing official business. During

trial, Officer Michael Richardson of the Trotwood Police Department testified that he and three or four other officers were dispatched to a cell phone store in response to the owner of the store calling and reporting that a man in the store was causing a disturbance and possibly had a gun. When Richardson arrived at the store, he testified that he saw a white SUV starting to leave the parking lot and then return upon seeing him arrive. Richardson then testified that he observed a man and a woman exit the white SUV and begin screaming and cursing at a store employee in the parking lot. Richardson testified that other officers arrived after him and that they tried to calm down the scene and separate everyone.

{¶ 19} Continuing, Richardson testified that he spoke with the owner of the store who informed him that the female in the white SUV was an employee who had come to pick up her paycheck, and that the male, identified as Street, was her brother. Another Trotwood police officer at the scene, Sergeant Kimberly DeLong, testified that the store owner told her that Street's sister came to the store to pick up her paycheck early and became upset and argued with him when he declined her request. Richardson testified that the owner told him Street came into the store and got involved in the argument. According to Richardson, the owner said Street began yelling and cursing in the store and refused to leave when asked.

{¶ 20} Richardson further testified that the owner of the store told him he wanted to have Street trespass from the store so that Street would not be able to come back. Richardson testified that in an attempt to trespass Street from the store, he made contact with him and asked for his personal information. In response, Richardson testified that Street asked him why his information was needed, and that he thereafter explained to

Street that it was needed for purposes of trespassing him from the property. Richardson then testified that Street would not answer his questions, but instead continued yelling, cursing, and interrupting him. Richardson testified that he warned Street that he would be arrested for obstructing official business if he did not provide his information, because Street's actions were preventing him from doing his job. According to Richardson, Street then said "you can't trespass me." Trans. (Nov. 7, 2014), p. 52.

{¶ 21} After Street continued refusing to answer Richardson's questions, Richardson testified that he asked Street to go to his cruiser, as it was his intention to secure and arrest him. In response to this request, Richardson testified that Street said "no" in a loud boisterous voice. *Id.* Thereafter, Richardson testified that he told Street he was under arrest for obstructing official business, and then forcefully effectuated the arrest with the assistance of another officer at the scene.

{¶ 22} In support of Richardson's testimony, Officer Eric White testified that he was at the scene and observed Richardson attempt to get Street's personal information multiple times and that Street refused and screamed profanities at him. Additionally, Officer Brad Gully testified that he was also at the scene and observed Street continuously talk over the other officers and curse at them, which prevented the officers from calming down the situation. Gully also testified that the owner of the store had asked Street to be trespassed from the property, but that Street would not provide his personal information.

{¶ 23} Based on the officers' testimony, the jury could reasonably conclude that Street purposefully hampered or impeded Officer Richardson in the performance of his duties, i.e. trespassing Street from the cell phone store, by refusing to provide Richardson

with his personal information as requested. Accordingly, Street's conviction for obstructing official business was not against the manifest weight of the evidence and was necessarily supported by sufficient evidence.

{¶ 24} With regards to Street's conviction for disorderly conduct, R.C. 2917.11(A)(1) provides that:

No person shall recklessly cause inconvenience, annoyance, or alarm to another by doing any of the following: (1) Engaging in fighting, in threatening harm to persons or property, or in violent or turbulent behavior[.]

{¶ 25} “ ‘Turbulent behavior’ as stated in [R.C. 2917.11](A)(1) refers to ‘tumultuous behavior or unruly conduct characterized by violent disturbance or commotion.’ ” *State v. Heffner*, 2d Dist. Montgomery No. 16230, 1997 WL 309368, * 3 (June 6, 1997), quoting *State v. Reeder*, 18 Ohio St.3d 25, 27, 479 N.E.2d 280 (1985). “[A] verbal berating of another individual may constitute turbulent behavior that causes inconvenience, annoyance, or alarm without regard to the content of that speech and that, under such circumstances, the verbal conduct may result in a conviction for disorderly conduct even if it does not provoke injury or a breach of the peace.” *State v. Jackson*, 2d Dist. Montgomery No. 17128, 1998 WL 801367, *4 (Nov. 20, 1998). In determining whether a finding of turbulent behavior was against the manifest weight of the evidence, we stated in *Jackson* that:

The state's evidence, if believed, established that Jackson had confronted the store manager and sheriff's deputies loudly and hostilely and had not calmed down at the deputies' request. The state's evidence also established that Jackson had refused to leave the store when she was

asked to do so and had grabbed at a deputy's name tag. Viewing this evidence, the trial court could have reasonably concluded that Jackson had engaged in turbulent behavior that caused inconvenience, annoyance, or alarm to others. Thus, the trial court did not err in concluding that the deputies had had probable cause to arrest Jackson for disorderly conduct, and its judgment was not against the manifest weight of the evidence.

Id.

{¶ 26} The present case is similar to *Jackson*, and upon reviewing the record, we find there was sufficient, credible evidence presented for a reasonable jury to conclude that Street was guilty of disorderly conduct. The officers' testimony established that Street confronted the cell phone store owner and officers loudly and hostilely outside the store, shouted profanities at the officers, and would not calm down at the officers' request. Street himself testified that he screamed and yelled profanities during the incident because he was upset about the police being called. The officers' testimony also established that Street remained uncooperative even though his compliance was continually requested, and that his behavior inconvenienced the officers while they were trying to perform their duties. Accordingly, we do not find the disorderly conduct conviction was against the manifest weight of the evidence and was necessarily supported by sufficient evidence.

{¶ 27} With regards to Street's conviction for resisting arrest, R.C. 2921.33(A) provides that: "No person, recklessly or by force, shall resist or interfere with a lawful arrest of the person or another." *Id.* "An arrest is 'lawful' if the surrounding circumstances would give a reasonable police officer cause to believe that an offense has

been or is being committed.” (Citations omitted.) *State v. Blair*, 2d Dist. Montgomery No. 24784, 2012-Ohio-1847, ¶ 8. “ ‘Although the arrest must be “lawful,” it is not necessary for the state to prove that the defendant was in fact guilty of the offense for which the arrest was made to uphold a conviction for resisting arrest.’ ” *Id.*, quoting *State v. Hurst*, 1st Dist. Hamilton No. C-880706, 1989 WL 140010, * 1 (Nov. 22, 1989).

{¶ 28} Once again, there was sufficient, credible evidence presented at trial for a reasonable jury to conclude that Street resisted a lawful arrest. Officer Richardson testified that he informed Street that he was under arrest for obstructing official business and asked him to put his hands behind his back. In response, Richardson testified that Street said: “no you can’t arrest me.” Trans. (Nov. 7, 2014), p. 52. Thereafter, Richardson testified that he and another officer attempted to grab Street’s arms to secure him, but that Street pulled away from them and turned toward them, which Richardson considered threatening.

{¶ 29} Richardson also testified that he and another officer had to forcefully put Street on the hood of a car to hold him down. According to Richardson, Street continued to resist and would not give them his hands. Richardson testified that he continued telling Street to cease resisting, but Street did not comply. Eventually, Richardson testified that he and the other officer were able forcefully to pull Street’s hands behind his back and cuff them. Officer Gully also testified that he was one of the officers attempting to arrest Street and confirmed that Street resisted arrest and was forcibly handcuffed. Officer White further testified that he observed Street refusing to put his hands behind his back and that he was forcibly placed under arrest by the officers.

{¶ 30} The foregoing testimony clearly establishes that Street resisted arrest.

The record also establishes that Street's arrest was lawful, as the officers had a reasonable basis to arrest him for obstructing official business as well as disorderly conduct. Accordingly, we find the State adduced sufficient evidence at trial to convict Street of resisting arrest, and that his conviction was not against the manifest weight of the evidence.

{¶ 31} Street's First and Second Assignments of Error are overruled.

Third Assignment of Error

{¶ 32} Street's Third Assignment of Error is as follows:

THE TRIAL COURT DID NOT SUFFICIENTLY ASCERTAIN WHETHER MR. STREET TRULY UNDERSTOOD THE DANGERS OF PROCEEDING PRO SE IN A CRIMINAL MATTER.

{¶ 33} Under his Third Assignment of Error, Street contends that while the trial court attempted to discuss the disadvantages and risks of proceeding pro se in his criminal matter, the trial court's admonishments were insufficient to facilitate a valid waiver of his right to counsel. We agree.

{¶ 34} "The Sixth Amendment guarantees that a criminal defendant 'has an independent constitutional right of self-representation and that he may proceed to defend himself without counsel when he voluntarily, and knowingly and intelligently elects to do so.' " *State v. Schleiger*, 141 Ohio St.3d 67, 2014-Ohio-3970, 21 N.E.3d 1033, ¶ 18, quoting *State v. Gibson*, 45 Ohio St.2d 366, 345 N.E.2d 399 (1976), paragraph one of the syllabus. (Other citation omitted.)

{¶ 35} " '[C]ourts are to indulge in every reasonable presumption against the

waiver of a fundamental constitutional right[,] including the right to be represented by counsel.’ ” *State v. Mathers*, 2d Dist. Clark No. 2000-CA-92, 2002-Ohio-4117, ¶ 4, quoting *State v. Dyer*, 117 Ohio App.3d 92, 95, 689 N.E.2d 1034 (2d Dist.1996). “As a result, a valid waiver affirmatively must appear in the record, and the state bears the burden of overcoming the presumption against a valid waiver.” *Id.*

{¶ 36} “ ‘In order to establish an effective waiver of right to counsel, the trial court must make [a] sufficient inquiry to determine whether [the] defendant fully understands and intelligently relinquishes that right.’ ” *Schleiger* at ¶ 18, quoting *Gibson* at paragraph two of the syllabus. “To discharge its duty ‘properly in light of the strong presumption against waiver of the constitutional right to counsel, a judge must investigate as long and as thoroughly as the circumstances of the case before him demand.’ ” *Mathers* at ¶ 5, quoting *Gibson* at 377. “[A]bsent a knowing and intelligent waiver, no person may be imprisoned for any offense, whether classified as petty, misdemeanor, or felony, unless he was represented by counsel at his trial”. (Footnote omitted.) *Argersinger v. Hamlin*, 407 U.S. 25, 37, 92 S.Ct. 2006, 32 L.Ed.2d 530 (1972).

{¶ 37} In *Schleiger*, 141 Ohio St.3d 67, 2014-Ohio-3970, 21 N.E.3d 1033, the Supreme Court of Ohio recently noted that in *Iowa v. Tovar*, 541 U.S. 77, 124 S.Ct. 1379, 158 L.Ed.2d 209 (2004), the United States Supreme Court “stated that it has not ‘prescribed any formula or script to be read to a defendant who states that he elects to proceed without counsel. The information a defendant must possess in order to make an intelligent election * * * will depend on a range of case-specific factors, including the defendant’s education or sophistication, the complex or easily grasped nature of the charge, and the stage of the proceeding.’ ” *Schleiger* at ¶ 19, quoting *Tovar* at 88.

{¶ 38} However, while the United States Supreme Court has not prescribed a specific formula or script for waiving counsel, the Supreme Court of Ohio has on the other hand held that: “ ‘To be valid [a waiver of counsel] 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.’ ” *Gibson*, 45 Ohio St.2d at 377, 345 N.E.2d 399, quoting *Von Moltke v. Gillies*, 332 U.S. 708, 723, 68 S.Ct. 316, 92 L.Ed. 309 (1948). *Accord State v. Martin*, 103 Ohio St.3d 385, 2004-Ohio-5471, 816 N.E.2d 277, ¶ 40.

{¶ 39} In *Martin*, the Supreme Court of Ohio held that a trial court failed to make a sufficient inquiry to determine whether the defendant fully understood and intelligently relinquished his right to counsel in part because the trial court “did not adequately explain the nature of the charges, the statutory offenses included within them, the range of allowable punishments, possible defenses, mitigation or other facts essential to a broad understanding of the whole matter, per *Von Moltke* * * * and *Gibson* * * *.” *Martin* at ¶ 43.

{¶ 40} In following *Martin*, we held in *State v. Stewart*, 188 Ohio App.3d 850, 2010-Ohio-3657, 937 N.E.2d 155 (2d Dist.), that “[a]lthough the trial court did attempt to properly warn [the defendant] of the dangers inherent in self-representation, it failed to adequately discuss the possible defenses and circumstances in mitigation of the offense charged as required by the Ohio Supreme Court in *Martin*.” *Id.* at ¶ 46. As a result, we concluded in *Stewart* that the defendant was denied his constitutional right to counsel. *Id.*

{¶ 41} In the present case, the record is clear that Street advised the trial court at

two separate hearings that he wanted to represent himself in his criminal matter. The record is also clear that during those two hearings, the trial court explained to Street the challenges and risks of proceeding pro se. At the second hearing, while going over the State's plea offer, the trial court discussed the nature of the charges against Street and the possible punishments he could face, but failed to specifically ask if Street understood the nature of the charges and punishments for purposes of waiving counsel. In addition, the record indicates the trial court failed to discuss the statutory offenses, as no reference was made to the provisions of the Ohio Revised Code that Street was charged with violating or the elements of his offenses. The trial court also failed to discuss Street's possible defenses or any potential mitigating circumstances.

{¶ 42} While a written waiver of counsel was filed on November 20, 2013, stating that Street understood the nature of the charges and the penalties involved, and that he “voluntarily” and “affirmatively” waived his right to counsel, we find the waiver has no effect since the phrase “signature refused” was affixed on the signature block as opposed to Street's signature. Even if the written waiver had been signed by Street, it does not indicate Street was advised of the possible defenses to the charges or possible mitigating circumstances, which we have held is required for a knowing, intelligent, and voluntary waiver. See *Stewart* at ¶ 46.

{¶ 43} For the foregoing reasons, the record does not establish that the trial court engaged in a sufficient inquiry to waive counsel as required by *Martin*, 103 Ohio St.3d 385, 2004-Ohio-5471, 816 N.E.2d 277 and *Gibson*, 45 Ohio St.2d 366, 345 N.E.2d 399. Therefore, we must follow the strong presumption against waiver and find that Street did not knowingly, intelligently, and voluntarily waive his right to counsel. Accordingly,

Street's Third Assignment of Error is sustained.

Conclusion

{¶ 44} Having sustained Street's Third Assignment of Error, the judgment of the trial court is reversed and the matter is remanded for a new trial.

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FROELICH, P.J. and FAIN, J., concur.

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