2017 IL App (4th) 170100-U

NO. 4-17-0100

FILED
November 15, 2017
Carla Bender
4th District Appellate
Court, IL

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from
Plaintiff-Appellee,	)	Circuit Court of
v.	)	Moultrie County
LYLE ROGER HARRISON,	)	No. 13CF47
Defendant-Appellant.	)	
	)	Honorable
	)	Richard L. Broch, Jr.,
	)	Judge Presiding.

JUSTICE APPLETON delivered the judgment of the court.
Justices Harris and Knecht concurred in the judgment.

ORDER

¶ 1 *Held*: (1) Defendant fails to establish, by reasoned arguments and citations to authorities and the record, that he was denied his statutory right to a speedy trial or that the judges presiding over his case were biased against him.

(2) It was reversible error to deny defendant his constitutional right to represent himself in the jury trial.

(3) Because the record contains sufficient evidence to support the convictions, the doctrine of double jeopardy will not bar a retrial.

¶ 2 A jury found defendant, Lyle Roger Harrison, guilty of two counts of theft (720 ILCS 5/16-1(a)(1) (West 2012). One theft was of property exceeding $500 but not exceeding $10,000 in value (720 ILCS 5/16-1(b)(4) (West 2012)). The other theft was of property exceeding $10,000 but not exceeding $100,000 in value (720 ILCS 5/16-1(b)(5) (West 2012)). The trial court sentenced him to probation for 36 months.

¶ 3 Defendant appeals, and he makes six arguments in his appeal. First, his statutory right to a speedy trial was violated. See 725 ILCS 5/103-5(b) (West 2014). Second, the judges presiding over his case were biased. Third, his appointed trial counsel rendered ineffective assistance. Fourth, the trial court failed to perform an adequate inquiry into his *pro se* posttrial allegations of ineffective assistance. See *People v. Krankel*, 102 Ill. 2d 181 (1984). Fifth, the trial court denied him his constitutional right to represent himself. Sixth, the evidence is insufficient to support his convictions.

¶ 4 Defendant fails to establish, by reasoned arguments and citations to authorities and the record, that he was denied his statutory right to a speedy trial or that the judges presiding over his case were biased. We find, however, that, immediately before *voir dire*, defendant made a clear and unequivocal request to proceed *pro se* and that the trial court unjustifiably refused the request. The denial of defendant's right to represent himself is reversible error. Because the trial evidence, however, is constitutionally sufficient to support the convictions, the doctrine of double jeopardy will not bar a retrial. Therefore, we reverse the judgment, and we remand this case for a new trial.

¶ 5 I. BACKGROUND

¶ 6 A. The Request To Proceed *Pro Se*

¶ 7 On August 1, 2016, before *voir dire*, the trial court held a motion hearing. During that hearing, defendant called the court's attention to a *pro se* motion he filed on April 29, 2016, in which he requested to terminate the appointment of his trial counsel, T. Jeannine Garrett. He told the court: "I want to continue to the trial pro se. I believe that's my constitutional right." The court asked the prosecutor if he had any objection to the court's hearing the motion. The prosecutor responded: "Judge, I think he has the right to represent himself pro se regardless of

whether he fires Ms. Garrett. In other words, if he comes before you and is properly admonished as to his right to proceed pro se, I think we would have to hear that ***." The court then stated: "Show then cause called for hearing on Defendant's pro se motion to relieve Ms. Garrett of her obligations as appointed counsel and for him to proceed to trial in a pro se fashion."

¶ 8 When the trial court invited defendant to make an argument in support of his motion, the prosecutor stated: "I disagree with arguing the motion. I think he has a decision to make."

¶ 9 Garrett then remarked that it actually was unclear, from the motion of April 29, 2016, that defendant wanted to proceed *pro se*; a request to *fire* her was not necessarily a request to *proceed pro se*. Defendant responded: "I didn't put in there 'pro se,' but I'd like to make an oral amendment to add to the relief section of the conclusion that that's exactly what I want is pro se at this point." The trial court ruled that the motion was amended so as to "include his desire to proceed pro se in this action and represent himself without counsel."

¶ 10 There then followed a rather lengthy discussion between the trial court and defendant as to exactly why he was dissatisfied with Garrett. The prosecutor interjected that, in any event, it was clear that defendant wished to proceed *pro se*. Expressing his hope to try the case only once, the prosecutor urged the court to give defendant the required admonitions. He was concerned that admonitions the court gave defendant a year ago would not suffice. The court responded: "For the record, the Court has already ruled and indicated that it was not going to grant [defendant's] motion to discharge Ms. Garrett and allow him to proceed in the pro se fashion. So, that being the order of the Court, I feel there is no need at this time to re-advise [defendant] as to the nature of the charges and the consequences of him representing himself."

¶ 11 The prosecutor posed the question:

"MR. ZALAR: Is it clear he wants to proceed pro se?

THE COURT: I believe it's very clear he wishes to proceed pro se.

MR. ZALAR: He's indicating 'yes,' for the record, by shaking [*sic*] his head.

THE DEFENDANT: Yes.

* * *

THE COURT: *** We'll show for the record [defendant] has indicated several times this date that he wishes to represent himself. I'm not going to do that in this case. It's within the discretion of the Court, and given the history of this case and these types of things happening, jury setting after jury setting after jury setting, the Court also considers the expense to the County of Moultrie each time this matter is continued. The Court would indicate for the record that [defendant] has been given fair representation by counsel as this matter has proceeded through the months, and the Court has taken his arguments into consideration every step of the way. At this time, the Court is going to deny that motion."

¶ 12 B. The Jury Trial

¶ 13 In the jury trial, which was held in August 2016, the State's evidence tended to show the following.

¶ 14 Peter Lux, Jr., and his wife, Mary E. Lux, owned farmland in Piatt and Moultrie Counties. (Sometimes, in the record, Peter Lux, Jr., is referred to as simply "Peter Lux." There appears to be no dispute that, in either case, it is the same person.) On August 13, 1920, they signed a deed, which was notarized and recorded in Moultrie County. In the deed, they reserved a life estate in these lands, and they conveyed a life estate to their granddaughter, Faye Kinzel

Lux, with the remainder to her children or the descendants of her children. If Faye Kinzel Lux died without leaving any surviving child or descendants of her child, the remainder was to pass to Harry Howard Harrison or Lyle Lux Harrison, who were the other grandchildren of Peter Lux, Jr., and Mary E. Lux.

¶ 15 Specifically, the deed, People's exhibit No. 25, provided as follows:

> "The grantors, Peter Lux and Mary E. Lux, husband and wife, Village of Lovington, County of Moultrie and State of Illinois, first reserving and excepting to each of them a life estate in the real estate hereinafter described, and for and in consideration of the sum of One Dollar ($1.00) in hand paid, the receipt whereof is hereby acknowledged, and in further consideration of love and affection, convey and warrant to their granddaughter, Faye Kinzel Lux, subject to said life estates reserved, to have and to hold only for and during the term of her natural life, and at her death to the children born or her body, or their descendants, per stirpes, and in case the said Faye Kinzel Lux should die without leaving surviving her child or children, born of her body, or descendants of such, that the said real estate hereinafter described shall then become the absolute property, in fee simple, of Harry Howard Harrison and Lyle Lux Harrison, share and share alike, provided, however, that in case either the said Harry Howard Harrison or Lyle Lux Harrison die prior to the time of the death of Faye Kinzel Lux, and the said Faye Kinzel Lux dies without leaving her surviving child or children born of her body, or descendants of such, and the said Harry Howard Harrison or Lyle Lux Harrison, who first departs this life leaving no bodily heirs him surviving, that then and in that case, the survivor of the said Harry Howard Harrison or Lyle Lux

Harrison, or his descendants, in case of his death, shall be entitled to the remainder in fee simple, per stirpes."

¶ 16 One of the parcels of "real estate hereinafter described" was "the Northeast Quarter (1/4) of the Northeast Quarter (1/4) of Section 19 (19), Township Fifteen (15) North, Range Five (5) East of the Third Principal Meridian, situated in the County of Moultrie." For short, we will call this parcel "section 19." It consisted of about 40 acres.

¶ 17 On the same day they conveyed these various interests in section 19 to Faye Kinzel Lux and any children born to her, Peter Lux, Jr., and Mary E. Lux conveyed other parcels of farmland to their daughter, Susan Myrtle Harrison, and her children, Lyle Lux Harrison and Harry Howard Harrison.

¶ 18 All these *inter vivos* transfers occurred, as we said, on August 13, 1920. In addition, on that same day, Peter Lux, Jr., executed a will, in which he bequeathed $3,000 to Harry Howard Harrison and gave the residue of his estate to Mary E. Lux. The will is People's exhibit No. 22.

¶ 19 Peter Lux died in 1922.

¶ 20 On May 18, 1932, Mary E. Lux conveyed and quitclaimed to Faye Kinzel Lux her life estate in section 19. The deed is People's exhibit No. 17.

¶ 21 Mary E. Lux died in 1933.

¶ 22 Faye Kinzel Lux married Francis W. Purvis, and in 1937 a child was born to them, Amy Lou Purvis.

¶ 23 At the time of the trial, Amy Lou Purvis was still alive. She was 79 years old. Her married name was Amy Lou Purvis Willoughby, and she lived in California with her husband, Floyd M.Willoughby. They had been living in California since 1959. Amy Lou Purvis

Willoughby's parents, Faye Kinzel Lux Purvis and Francis W. Purvis, likewise moved to California in 1959, and until they passed away, they lived next door to Amy Lou Purvis Willoughby and Floyd M.Willoughby. (Because Amy Lou Purvis Willoughby was in poor health, she was unable to come to Illinois and testify in the trial, but her husband, Floyd M. Willoughby, age 82, a retired attorney, came to the trial and testified.)

¶ 24 The parents of Amy Lou Purvis Willoughby were deceased. Her mother, Faye Kinzel Lux Purvis, died on August 2, 1988.

¶ 25 On November 3, 1997, Amy Lou Purvis Willoughby conveyed section 19 to herself and Floyd M. Willoughby as cotrustees under the Floyd M. Willoughby and Amy Lou Willoughby Declaration of Trust, dated September 18, 1997. The trustee's deed is People's exhibit No. 10.

¶ 26 Floyd M. Willoughby testified that, from 1965 continuously to the present, he had managed section 19 (among other parcels of farmland)—first for his mother-in-law, and then for his wife, and finally for the Willoughby trust. Since 1965, he had paid all the taxes on section 19.

¶ 27 In 2012 and 2013, Floyd M. Willoughby leased section 19 to a crop-share tenant, Don Cochran. In the fall of 2012, Cochran fertilized the ground with anhydrous ammonia, and in the spring of 2013, he planted it with corn. Cochran and the Willoughbys paid half and half for the fertilizer and seed.

¶ 28 In June 2012, Floyd M. Willoughby received a letter from defendant, in which defendant made the following claim and demand:

> "The Harrison Family will lay claim to the approximately 335.6 acres currently in your possession left from Peter & Mary E. Lux to Lyle Lux Harrison and Harry Howard Harrison that Attorney Francis Purvis retained from the settling of the

> Mary E. Lux Estate using his firm which this firm was obtained [*sic*] by Attorney Robert V. Elder. My family bears no malice or ill will toward your family, we are asking you to return all of the tax ID's, original deeds, original abstracts, and all original property documents and information through our Attorney to the Sole Trustee, Roger Lyle Harrison Sr., as quickly as possible. If your family or any other Attorney is unwilling to turn over this property, then you leave the Harrison Family no choice but to file a fraud suit in Cook County and pursue damages against every individual, bank, and attorney involved in this [P]onzi scheme of taking property illegally and also not paying mandatory taxes. My family intends to honor the wishes, requests, and intentions of Peter & Mary E. Lux and Lyle Lux Harrison to the fullest extent by having ownership pass the way our ancestors intended, not the way many people/lawyers have manipulated the Peter & Mary E. Lux Estate/Testamentary Trust and the Lyle Lux Harrison Revocable Trust."

¶ 29 Floyd M. Willoughby replied by a brief letter. He declined defendant's demands for documents, since the documents were "a matter of public record." He concluded by stating: "This matter is not open for further discussion."

¶ 30 In August 2013, the Willoughbys received two further pieces of correspondence from defendant. The first was a letter, in which defendant made the following offer:

> "The Roger L. Harrison Sr. family, et al, has determined to hold you harmless for any procedural or documentary errors or deficiencies that may have been made by you in the preparation or handling of the entire Peter & Mary Lux and Lyle L. Harrison Estate so long as you are willing to quit-claim on the 315.6 Acres of the Lux/Harrison Estate, and testify and/or prepare and file any and all

> necessary documents sufficient to correct those errors and/or deficiencies. In exchange for your help and testimony in our current case [(*i.e.*, a civil case that "Charlotte and Attorney Rollin Huggins filed in Moultrie County against my father, Roger L. Harrison Sr. and his Children")] as to us the Children (Heirs of the Body), the Harrison family will convey to your family 1000 acres of Brazilian farmland for which your family would receive a clear title. As that acreage would lie adjacent to Harrison land, I would offer also to manage it for your family."

Floyd M. Willoughby did not respond to that letter.

¶ 31 The second piece of correspondence the Willoughbys received in August 2013 was an invoice, signed by defendant, in which he demanded a total of $300,000 for "Proceeds and Income" that Floyd M. Willoughby allegedly took in 2012 and 2013 from "315.6 Acres," a alleged misappropriation that, according to the invoice, created a "Federal Tax Liability" for the "Roger L. Harrison Sr. Trust." Floyd M. Willoughby did not respond to the invoice.

¶ 32 On September 9, 2013, Floyd M. Willoughby was notified that a deed regarding section 19 had been recorded in Moultrie County. The deed, People's exhibit No. 11, was signed by defendant and several other Harrisons, as cotrustees of the Roger Lyle Harrison, Sr., Revocable Trust, dated July 10, 2012. In the deed, they purported to convey section 19 and other parcels to that trust.

¶ 33 In response, Floyd M. Willoughby did two things. First, he hired Citizen's Abstract to do a title search. Second, he hired an Illinois attorney to file an action to quiet title on the basis of the title search.

¶ 34 On September 27, 2013, defendant hired Robert Kauffman to harvest the corn on section 19 (planted by Cochran). According to their custom-farming contract, Kauffman was to

receive $30 an acre for shucking and hauling. Because the corn was still green, Kauffman had reservations as to whether defendant rightfully owned the crop. Defendant adamantly insisted to him that he did, and, in any event, it was written into the custom-farming contract that defendant's company, "Harrison Farm Management[,] assume[d] all legal liability for crop removal."

¶ 35 On September 28, 2013, Kauffman harvested 28 to 30 acres of section 19. He hauled the grain to the Cargill elevator in Tuscola, Illinois, and to the Top Flight elevator in LaPlace, Illinois.

¶ 36 On September 29, 2013, Kauffman received a telephone call from a Moultrie County deputy sheriff, who told him he better check on the ownership of section 19. Kauffman then confronted defendant, who, Kauffman testified, "drilled into [his] head the utmost importance of getting this crop harvested and hauled to the elevator in a very quick fashion and not to worry about the phone call from the deputy." Defendant assured him he had gone to the courthouse and checked on the ownership of the land.

¶ 37 To his "regret," Kauffman harvested more corn from section 19 the next day, September 30, 2013. He did so at defendant's insistence.

¶ 38 The State called Rebecca Burton, an employee of Cargill, which operated a grain elevator in Tuscola. She testified that on September 28, 2013, the elevator received four truckloads of corn, which were credited to the Roger Lyle Harrison, Sr., Trust. For three of the truckloads, she issued a check to the trust in the amount of $9,813.23. She never did issue a check for the fourth truckload, however, because management had told her to hold off on that transaction until a dispute over ownership was resolved. The net quantity of the fourth load was

780.10 bushels. At $4.39 per bushel, the elevator would have paid $3,400.25 for the fourth truckload.

¶ 39 It was Cargill's policy to pay for the *net* quantity of grain, to account for shrinkage after drying. The moisture level of one of the truckloads Kauffman brought was 22.9%. The other three truckloads had a moisture content in the range of 25%. For any moisture content above 15%, Cargill charged a drying fee and also made a deduction so as to account for the shrinkage that resulted from drying. The drying fee for the fourth truckload was about $300.

¶ 40 The State also called Vanessa Stinson, who worked for Top Flight Grain Co-op, at LaPlace. She testified that on September 28, 2013, she weighed two truckloads of grain brought in the name of the Harrison revocable trust. The elevator paid $5,070 to the trust. The drying charge was $639.70.

¶ 41 Gary Carroll testified he was a deputy sheriff for Moultrie County and that on September 29, 2013, at 3 p.m., Cochran reported to him that someone had harvested corn from section 19 without authority. Carroll spoke with defendant, who expressed his intention to continue harvesting the corn. Carroll pointed out to defendant that a tenant farmer had planted the corn and that the tenant farmer therefore would have costs. He advised defendant to allow the tenant farmer to do the harvesting and then, if defendant saw fit to do so, he could bring a civil suit against the owner for compensation and, in so doing, obtain a judicial opinion on ownership. Defendant showed Carroll documents from the early twentieth century. Defendant claimed that, according to these documents, the land could not have been given to Amy Lou Willoughby or her line because women were not allowed to have property in those days. Defendant made other arguments as well, which Carroll could not specifically recall.

¶ 42 In his own case, defendant took the stand and explained why he had been in such a hurry to harvest the corn on section 19. The reason was defendant's exhibit No. 14, a notice of federal tax lien, dated October 14, 2015, in which the Internal Revenue Service claimed an unpaid balance of $17,890,746.46 from the Roger Lyle Harrison, Sr., Revocable Trust for the tax period ending on December 31, 2013. Defendant had felt under pressure to sell the corn and pay the taxes before the federal government put a lien on the property.

¶ 43 As for his claim that section 19 had passed to the Harrison line of the family (his ancestors), the pivotal events, according to defendant, occurred in 1924 and 1926.

¶ 44 On February 26, 1924, Mary E. Lux signed a declaration of trust, defendant's exhibit No. 6. The declaration of trust began with an explanatory background. It explained that before Peter Lux, Jr., made his will, he and his wife, Mary E. Lux, deeded property to their granddaughter, Faye Kinzel Lux (daughter of their son, Arthur William Lux, who died in 1910); their daughter, Susan Myrtle Harrison; and her two sons, Lyle Lux Harrison and Harry Howard Harrison. Part of the consideration for the conveyances to Susan Myrtle Harrison, Lyle Lux Harrison, and Harry Howard Harrison was the conveyance, by those three, of their interest in certain parcels in Piatt County, so that Peter Lux, Jr., and Mary E. Lux in turn could convey those Piatt County parcels to Faye Kinzel Lux.

¶ 45 One of the parcels that Peter Lux, Jr., and Mary E. Lux conveyed to Harry Howard Harrison was the following parcel in Moultrie County: "Lot Eleven (11) being the Northeast Quarter (NE 1/4) of the Southwest Quarter (SW 1/4) of Section Sixteen (16), Township Fifteen (15) North, Range Five (5) East of the third Principal Meridian." (For short, we will call this parcel "lot 11." *Note that this is a different parcel from section 19.*) Mary E. Lux had reserved a life estate in lot 11, and the remainder was to pass to the heirs of her body, a class

that included Faye Kinzel Lux. Because Faye Kinzel Lux was a minor, she was legally incapable of conveying her remainder interest in lot 11 to Harry Howard Harrison. Therefore, to secure Harry Howard Harrison his share of his grandparents' estate, his grandfather, Peter Lux, Jr., had bequeathed $3,000 to him in his will. His grandmother, Mary E. Lux, as the executor, had paid that bequest to Harry Howard Harrison.

¶ 46 Harry Howard Harrison now had deposited the $3,000 with Mary E. Lux on the understanding that she was to hold it in trust (the declaration of trust continued). The terms of the trust were as follows. If, within one month after reaching majority, Faye Kinzel Lux quitclaimed her interest in lot 11 to Harry Howard Harrison, the trust would cease and Mary E. Lux would pay the $3,000 to herself as her own personal property. Until then, the income from the $3,000 would be paid to her, individually. If Faye Kinzel Lux did not execute a quitclaim deed of lot 11 to Harry Howard Harrison within one month after she reached majority, the $3,000 would be paid back to him. If Mary E. Lux died before the time arrived for Faye Kinzel Lux to execute a quitclaim deed, Hardware State Bank would become the successor trustee, and if Faye Kinzel Lux executed the quitclaim deed by the deadline, the $3,000 would be paid to the estate of Mary E. Lux. Alternatively, if Faye Kinzel Lux failed or refused to execute the quitclaim deed by the deadline, Hardware State Bank would pay the $3,000 to Harry Howard Harrison.

¶ 47 On August 27, 1926, in return for "One Dollar and other good and valuable Consideration," Faye Kinzel Lux quitclaimed to Harry Howard Harrison any and all interest she had in lot 11. The quitclaim deed is defendant's exhibit No. 7. Mary E. Lux was still alive at the time. (As we stated, she died in 1933.)

¶ 48 Defense counsel asked defendant:

"Q. And what is your belief as to how [the declaration of trust, defendant's exhibit No. 6,] [a]ffects your claim to ownership of Section 19?

A. My belief is that when Mary signed with Harry, when Faye signed the quitclaim deed upon reaching 18, one day after that, that she sold all right, title[,] and interest for the one-third of the $3,000.

Q. Okay. So it's your belief that this property should have been at that point in time in the name of Harry Howard and Lyle Harrison; is that correct?

A. My belief is that it would either be Harry Howard Harrison as trustee or just the Peter Lux trust estate. That's my belief."

¶ 49 II. ANALYSIS

¶ 50 A. The Lack of Citations to the Record in Defendant's Brief

¶ 51 The State argues we should strike defendant's brief because it fails to cite the relevant pages of the record. See Ill. S. Ct. R. 341(h)(6), (7) (eff. Jan. 1, 2016). To be sure, this is a valid criticism, but when it comes to the dispositive issue in this appeal—the denial of the constitutional right to proceed *pro se*—defendant cites the transcript of August 1, 2016, and Garrett's posttrial motion, or at least he does so in his reply brief. And it is not that his initial brief altogether lacks citations. He cites various appendices to his brief, and these appendices contain photocopies of his trial exhibits. He also has "pasted" photocopied excerpts of these exhibits into the text of his statement of facts. This is not correct practice, but we conclude that striking his brief would be too severe a sanction.

¶ 52 Defendant has moved for permission to file a corrected brief, a brief that substitutes citations to the record for his citations to the appendices. We deny his motion, since the State already has filed a brief in response to his original brief.

¶ 53 B. The Claim of a Speedy-Trial Violation

¶ 54 Defendant argues he was denied his right to a speedy trial under section 103-5(b) of the Code of Civil Procedure of 1963 (725 ILCS 5/103-5(b) (West 2014)). Because defendant never filed a motion for discharge on speedy-trial grounds prior to his conviction and because his posttrial motion says nothing about being denied a speedy trial, he has forfeited this issue. See *People v. Alcazar*, 173 Ill. App. 3d 344, 354 (1988). To the extent that defendant raised a speedy-trial issue in his *pro se* filings in the trial court, we disregard those filings because he was represented by an attorney and he could not represent himself while being represented by an attorney. See *People v. Handy*, 278 Ill. App. 3d 829, 836 (1996).

¶ 55 If defendant means to claim, on appeal, that his appointed trial counsel, Garrett, rendered ineffective assistance by agreeing to a continuance on January 21, 2016, we reject that claim because she requested a continuance in order to prepare for trial. See *United States v. Hodges*, 259 F.3d 655, 659 (7th Cir. 2001) ("[Defense counsel] requested a continuance to better prepare for trial. It seems peculiar, then, that such conduct, without more, could be the basis of an ineffective assistance of counsel claim."). The case had been dropped into her lap only a few days ago. She was appointed to replace defendant's previous attorney, Jacob DiCiaula, whom the trial court allowed to withdraw on January 13, 2016, on the grounds that defendant not only had failed to pay him but, in the words of DiCiaula's motion to withdraw, had "intentionally defrauded" him by stopping payment on a check. The case was set for the February jury calendar, which ran from February 1 to 12, 2016. Garrett thought that two weeks would be insufficient time to prepare for trial, so, against defendant's wishes, she moved for a continuance. Garrett explained on the trial court:

> "[I]f it becomes a question between defendant's speedy trial right and my obligation to be prepared for trial, I think that my obligation to be properly prepared trumps his speedy trial demand. I'm not sure that [defendant] agrees with that. But I don't feel that I ethically have any choice, other than to ask for a continuance from the February date."

The trial court scheduled the jury trial for May 2, 2016.

¶ 56 Defendant faults Garrett for moving for another continuance on April 25, 2016. In that motion for a continuance, Garrett explained:

> "3. That the facts of this case relate to three Moultrie County civil cases pending at the time the instant case was filed. These cases are 13-CH-35; and 11-CH-27. Representation in this criminal case requires an understanding of the complex civil litigation in the above referenced cases.
>
> 4. To complete trial preparation[,] it will be necessary for counsel to spend additional time with defendant. Defendant cancelled an appointment set for March 16, 2016. Defendant and counsel met at counsel's office in Tuscola on April 15, 2016.
>
> 5. That during the April 15, 2016[,] meeting[,] defendant indicated dissatisfaction with counsel's handling of the case. Since that time[,] defendant has been unwilling to discuss any aspect of the case with counsel.
>
> 6. That counsel has not been able to complete trial preparation and will not be able to do so before the scheduled trial date."

The trial court granted Garrett's motion for a continuance, scheduling a pretrial hearing for July 15, 2016. Again, it is not ineffective assistance to move for a continuance if one is necessary to

prepare for trial. See *id.* It appears that defendant hindered Garrett's preparation. At the pretrial hearing, the court scheduled the jury trial for August 1, 2016. *Voir dire* began on that date.

¶ 57 C. The Claim of Judicial Bias

¶ 58 Defendant claims that the two judges who presided over this case, Judge Flannell and Judge Broch, were biased against him. (Judge Flannell presided over some of the pretrial hearings, whereas Broch presided over the trial.)

¶ 59 As for Judge Flannell, we have repeatedly rejected defendant's allegations of bias. *Huggins v. Harrison*, 2017 IL App (4th) 170026-U, ¶ 54; *Huggins*, 2013 IL App (4th) 120956, ¶¶ 75-80. Ignoring our previous holdings, defendant recycles the same allegations in this appeal.

¶ 60 As for Judge Broch, defendant argues that his bias is revealed in a statement that he allegedly made to defendant from the bench: " 'YOU are the problem with this case[,] Mr. Harrison, not your counsel!' " We are unable to find where in the record Judge Broch said that. We note, however, that Judge Broch made the following observation to defendant in the hearing of May 2, 2016:

> "Some [of your previous seven attorneys in this case] have actually stood up and indicated that they could not work with you because what you were wanting them to do, in the words of one of your attorneys, was in the very least unethical, in the worse unlawful, and these are statements that were made by your attorneys. *** [W]hether or not those attorneys have been appointed by the Court or whether they were your attorneys of choice, there has always been some type of an issue to where the attorneys or you yourself in some cases have felt that they could no longer represent you due to personal matters."

We are unaware of any case holding it is indicative of bias for a judge to recount what attorneys have stated about their own client in court. So, we are unconvinced by defendant's claim of judicial bias.

¶ 61 D. The Denial of the Right to Self-Representation

¶ 62 Defendant claims the trial court denied his constitutional right to self-representation. See *Faretta v. California*, 422 U.S. 806, 819 (1975).

¶ 63 To represent himself, defendant had to "explicitly inform the trial court he want[ed] to proceed *pro se*[,] because anything else [would be] an effort to sandbag the court and the opposition, to seek an acquittal with an ace up the sleeve to be whipped out in the event of conviction." (Internal quotation marks omitted.) *People v. Burton*, 184 Ill. 2d 1, 22 (1998). "A defendant waives his right to self-representation unless he articulately and unmistakably demands to proceed *pro se*." (Internal quotation marks omitted.) *Id.* We "indulge in every reasonable presumption against waiver of the right to counsel." (Internal quotation marks omitted.) *Id.* at 23.

¶ 64 The State notes: "It is true defendant attempted to fire Ms. Garrett by moving to terminate her representation in April 2016. However, defendant did not represent to the court he wanted to proceed *pro se* at that time." In the common-law record, we have found the motion to which the State appears to be referring. On April 29, 2016, defendant filed a *pro se* motion to "terminate his public defender," Garrett. He stated in the motion, however, that he was "currently trying to hire an attorney to replace [her]"—which would be at odds with an intention to proceed *pro se*. The State asserts: "Defendant did not request to proceed *pro se* after he attempted to 'fire' Ms. Garrett, therefore it should be assumed that defendant wanted the trial court to once against appoint him another attorney."

¶ 65 In his reply brief, defendant rebuts that assertion by citing the transcript of the hearing on August 1, 2016, in which, immediately before *voir dire*, he clearly and unequivocally requested to proceed *pro se*—and requested to amend his motion of April 29, 2016, so as to expressly request to proceed *pro se*. He also cites the posttrial motion, filed on September 6, 2016, in which Garrett alleged: "The court erred in denying defendant's oral motion to proceed pro se at trial. The motion was made by defendant on August 1, 2016[,] the morning of trial. The court denied defendant's motion and failed to admonish him pursuant to Supreme Court Rule 401(a)."

¶ 66 "[W]hen a request to proceed *pro se* is made and there is no request for additional time to prepare, a motion to proceed *pro se* should generally be viewed as timely as long as it is made before trial." *People v. Ward*, 208 Ill. App. 3d 1073, 1084 (1991). "To be timely, the demand must be made before meaningful trial proceedings have begun. [Citations.] This is generally understood to be before the jury is sworn." *Pitts v. Redman*, 776 F. Supp. 907, 915 (D. Del. 1991) (cited in *Burton*, 184 Ill. 2d at 24). On August 1, 2016, when defendant requested to proceed *pro se*, a jury had not yet been sworn, and he did not move for a continuance. Nevertheless, the trial court refused to allow him to proceed *pro se*.

¶ 67 In justification of its decision to deny self-representation, the trial court cited "the history of this case and these types of things happening, jury setting after jury setting after jury setting." We have held that "a trial judge may *terminate* self-representation by a defendant who engages in serious and obstructionist misconduct." (Emphasis added.) *Ward*, 208 Ill. App. 3d at 1084. In this case, however, the trial court did not terminate self-representation but, rather, denied it from the start.

¶ 68 Granted, we further have held that, "in *exceptional situations*, *** a defendant's behavior in the course of seeking to obtain self-representation may in itself be disruptive and thereby justify denying his motion to proceed *pro se*." (Emphasis in original.) *Id.* But the record appears to contain no indication that defendant was disruptive on August 1, 2016, when requesting to proceed *pro se*; therefore, that exception is inapplicable. It is true that, in the pretrial phase of this case, defendant went through a lot of attorneys, and apparently he was difficult to deal with. We are unaware of any legal basis for holding, however, that he thereby forfeited his constitutional right to self-representation.

¶ 69 Unless, when admonishing a defendant pursuant to Illinois Supreme Court Rule 401(a) (eff. July 1, 1984), the trial court finds he or she is "unable to reach the level of appreciation needed for a knowing and intelligent waiver," the court should honor the defendant's demand to proceed *pro se*. *Id.* at 1084. Absent such a finding, it was reversible error to deny defendant's right to self-representation. See *id.* at 1085. "Unless the defendant had a mental disability that incapacitated him from understanding the content of Rule 401(a), the sixth amendment (U.S. Const., amend. VI) required the court to honor his choice to represent himself, even if the choice was in all likelihood a disastrous one for the defense." *People v. Fisher*, 407 Ill. App. 3d 585, 590 (2011).

¶ 70 E. The Sufficiency of the Evidence

¶ 71 Before remanding a case for a new trial on the ground of trial error, the reviewing court must consider whether another trial would violate the double-jeopardy clause (Ill. Const. 1970, art. I, § 10). See *People v. Taylor*, 76 Ill. 2d 289, 309 (1979); *People v. Hunt*, 2016 IL App (1st) 132979, ¶ 28. "If the evidence presented at the first trial was sufficient for a rational trier of fact to find the essential elements of the crime had been proved beyond a reasonable doubt, no

double jeopardy violation is created on retrial." (Internal quotation marks omitted.) *Hunt*, 2016 IL App (1st) 132979, ¶ 28.

¶ 72 Defendant challenges the sufficiency of the evidence. Accordingly, we will look at all the evidence in the light most favorable to the prosecution and decide whether any rational trier of fact could find the essential elements of theft to be proven beyond a reasonable doubt. See *People v. Lopez*, 229 Ill. 2d 322, 367 (2008).

¶ 73 Theft has two essential elements: (1) someone other than the defendant owned property, and (2) the defendant knowingly obtained or exerted unauthorized control over the property. 720 ILCS 5/16-1(a)(1) (West 2012).

¶ 74 Let us begin with the first element, the ownership of the corn on section 19. On August 13, 1920, in People's exhibit No. 25, Peter Lux, Jr., and Mary E. Lux conveyed a life estate in section 19 to Faye Kinzel Lux while reserving a life estate for themselves, and they provided that, upon the death of Faye Kinzel Lux, the remainder would pass to "the children born or her body, or their descendants." Alternatively, the remainder would pass to defendant's ancestors, Lyle Lux Harrison and Harry Howard Harrison, only if Faye Kinzel Lux died without leaving any children or descendants of her children. Faye Kinzel Lux had a child, Amy Lou Purvis. When Amy Lou Purvis was born, in 1937, her interest as a remainderman vested, and the interest of Lyle Lux Harrison and Harry Howard Harrison as alternate remaindermen was extinguished. See *Winchell v. Winchell*, 259 Ill. 471, 475 (1913). Peter Lux, Jr., died in 1922, Mary E. Lux died in 1933, and Faye Kinzel Lux Purvis died in 1988. Upon the death of Faye Kinzel Lux Purvis, the remainderman, Amy Lou Purvis Willoughby, became the owner of section 19. On November 3, 1997, in People's exhibit No. 10, Amy Lou Purvis Willoughby conveyed section 19 to herself and Floyd M. Willoughby as cotrustees under the Floyd M.

Willoughby and Amy Lou Willoughby Declaration of Trust, dated September 18, 1997. The Willoughbys, as cotrustees, leased section 19 to Cochran under a crop-share agreement for 2013. In spring 2013, Cochran planted section 19 with corn. Thus, in September 2013, someone other than defendant owned the corn on section 19, and that someone was Cochran. See *Grommes v. Town of Aurora*, 37 Ill. App. 2d 1, 8 (1962) ("[T]he title to the crop is in the lessee until the lessor's part is separated and allotted to him.").

¶ 75 Defendant argues, on the other hand, that "Peter Lux Disposed of his farmland through his WILL which was a Trust for the Harrison LINE." That is false. People's exhibit No. 22 is the will of Peter J. Lux, Jr. It consists of a single page and says nothing about a trust. Besides, Peter Lux, Jr., could not have conveyed section 19 by his will. His will did not take effect until his death (see *Thompson v. J.D. Thompson Carnation Co.*, 279 Ill. 54, 61 (1917)), and at his death, it would have conveyed only the property that he owned at his death. When Peter J. Lux, Jr., died, in 1922, his estate had no ownership interest in section 19, because some two years earlier, he had deeded that parcel away, while retaining only a life estate. It appears that the only time section 19 ever entered a trust was in 1997, when it entered the trust of which Amy Lou Purvis Willoughby and Floyd M. Willoughby were cotrustees.

¶ 76 At times in these proceedings, defendant has argued that Amy Lou Purvis quitclaimed her interest in section 19 to Harry Howard Harrison by signing the quitclaim deed in 1926. That argument likewise is false. The quitclaim deed, defendant's exhibit No. 7, has nothing to do with section 19. On its face, it pertains only to lot 11, a different parcel. A cursory glance at the quitclaim deed would have made that plain.

¶ 77 In sum, we find evidence to support the first element of theft: ownership of section 19 by someone other than defendant in September 2013, namely, the Willoughbys' crop-share tenant, Cochran. See *Grommes*, 37 Ill. App. 2d at 8.

¶ 78 The second element is that defendant knowingly obtained or exerted unauthorized control over the corn crop on section 19. That Kauffman, rather than defendant, did the actual harvesting is legally irrelevant. One can obtain unauthorized control over property through others.

¶ 79 When we look at the evidence in the light most favorable to the prosecution, we conclude it would be possible for a rational jury to infer, beyond a reasonable doubt, that defendant committed the charged offenses knowingly. The jury could infer that the reason why he was in such a hurry to get the unripe corn harvested on a parcel that Floyd M. Willoughby had been managing for more than half a century was that he knew his harvesting of the corn would be unauthorized and wrongful and he wanted to get it done before the rightful owner intervened. The jury could infer that the reason why defendant rejected Carroll's advice, *i.e.*, to let the tenant farmer, Cochran, do the harvesting and to seek a judicial determination of ownership, was that defendant knew the judicial determination would be unfavorable to him—because he had no deeds to back up his claim. Absent a proven chain of title leading to defendant, the jury could have regarded his patently irrelevant exhibits as deliberate obfuscation.

¶ 80 In sum, because the evidence was sufficient to support the convictions, the doctrine of double jeopardy does not bar a new trial.

¶ 81 III. CONCLUSION

¶ 82 For the foregoing reasons, we reverse the trial court's judgment, and we remand this case for further proceedings. Because the State successfully defended a portion of the appeal,

as part of our judgment, we award the State its statutory $50 assessment against defendant as costs of this appeal.

¶ 83 Reversed and remanded.