

No. 98-0802. [9-182] STATE v. COOLEY

Appeal from the Iowa District Court for Linn County, L. Vern Robinson, Judge. **AFFIRMED.** Considered by Sackett, C.J., and Vogel and Mahan, JJ. Opinion by Vogel, J. (9 pages \$3.60)

Steven Cooley appeals his conviction for third-degree burglary as a habitual offender, contending that a valid waiver of his Sixth Amendment right to counsel did not occur. **OPINION HOLDS: I. *Preservation of error.*** The State asserts that Cooley has failed to preserve error. Relying on Iowa R. App. P. 10(c), the State asserts it was Cooley's burden to provide this court with a record of certain unreported conversations he had with the district court about representation. The State apparently suggests that Cooley must recreate these conversations from memory so we may determine whether or not a sufficient inquiry and warning occurred. However, where a defendant asserts that there was no inquiry or warning as to the pitfalls of self-representation, as Cooley does here, then we presume there is no record to recreate pursuant to rule 10(c). Moreover, it is the State's burden to prove that a defendant's waiver of his right to counsel was valid. For these reasons, we hold that it is the State's burden to see that a sufficient record is created when a defendant waives his constitutional Sixth Amendment right to counsel. **II. *Knowing and intelligent waiver.*** Cooley clearly and unequivocally invoked his Sixth Amendment right to self-representation. However, Cooley asserts the district court failed to make an inquiry as to whether his waiver of representation was knowing and intelligent. For a knowing and intelligent waiver of the right to counsel, the court needs to ensure that there is "an admonishment as to what defendant faces by representing himself." We do not have a clear directive as to how extensive of an admonishment is required, and have not adopted a mandatory line of inquiry, as some jurisdictions have. However, our district courts are provided suggested areas of inquiry in our own state's Benchbook. Given the gravity of the charge in this case, we cannot say that only informing Cooley of his right to court-appointed counsel was sufficient to obtain a knowing and intelligent waiver of Cooley's right to counsel. There is no indication on the record that the court warned Cooley about the dangers of proceeding pro se. However, the State argues, and we agree, that Cooley's own pleadings and extensive familiarity with the criminal justice system demonstrate that his decision to proceed pro se was made knowingly and intelligently, and that he was aware of the pitfalls of self-representation. In this case a lengthy admonishment by the court was unnecessary. Cooley affirmatively stated that he was fully advised of the pitfalls associated with self-representation and demonstrated his understanding in his legal memorandum in support of his motion to proceed pro se.