

**IN THE MISSOURI COURT OF APPEALS
WESTERN DISTRICT**

COMPLETE TITLE OF CASE

STATE OF MISSOURI,

Respondent,

v.

GABRIEL L. LEONARD,

Appellant.

DOCKET NUMBER WD77979

**MISSOURI COURT OF APPEALS
WESTERN DISTRICT**

DATE: March 15, 2016

APPEAL FROM

The Circuit Court of Jackson County, Missouri
The Honorable J. Dale Youngs, Judge

JUDGES

Division Two: Martin, P.J., and Pfeiffer and Mitchell, JJ.

CONCURRING.

ATTORNEYS

Chris Koster, Attorney General
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Attorneys for Respondent,

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Attorney for Appellant.



MISSOURI APPELLATE COURT OPINION SUMMARY
MISSOURI COURT OF APPEALS, WESTERN DISTRICT

STATE OF MISSOURI,)
)
) **Respondent,**)
v.) **OPINION FILED:**
) **March 15, 2016**
GABRIEL L. LEONARD,)
)
) **Appellant.**)

WD77979

Jackson County

Before Division Two Judges: Cynthia L. Martin, Presiding Judge, and Mark D. Pfeiffer and Karen King Mitchell, Judges

Gabriel Leonard appeals his convictions, following a jury trial, of the class B felony of kidnapping, § 565.110, the class B felony of first-degree burglary, § 569.160, and the class C felony of second-degree domestic assault, § 565.073, for which he was sentenced to a total of twenty-four years' imprisonment. On appeal, Leonard challenges the sufficiency of the evidence to support his convictions, the trial court's decision to allow Leonard to represent himself at trial, and the court's failure to instruct the jury, *sua sponte*, on lesser-included offenses.

AFFIRMED.

Division Two holds:

1. Under the kidnapping statute, confining someone while simultaneously threatening a loss of life or physical injury is sufficient to demonstrate a purpose to terrorize.
2. Terrorizing means to coerce by intimidation. Leonard's acts of invading Victim's home and forcing her into a dog kennel at gunpoint, after threatening a loss of life or physical harm, while simultaneously demanding money, were sufficient to demonstrate his purpose to coerce Victim by intimidation.
3. It is unnecessary in a burglary prosecution to prove more than the intent to commit a crime in the building. Consummation of the intent is unnecessary. If a person breaks and enters a house intending to steal, he is not exonerated from the commission of burglary

merely because he did not steal anything or because he was frightened away before he carried out his intent.

4. Even if the evidence supports an inference that Leonard entered Victim's home out of anger over a failed relationship, that inference does not negate the evidence, including comments made before entering and while in Victim's home regarding insurance proceeds, and inferences demonstrating that his true purpose in entering Victim's home was to steal money from her.
5. Evidence that Leonard held Victim down and put his hands over her mouth, causing her to hit her head and strain her neck, was sufficient to support the element of physical injury for purposes of second-degree domestic assault.
6. Leonard failed to demonstrate that his waiver of counsel was neither knowing nor intelligent; the court exhaustively discussed all of the matters required by § 600.051.1, warned Leonard of the perils of self-representation, and questioned Leonard about the specific issues he now challenges on appeal.
7. Even though Leonard was not fully aware of all the elements of the charges, defenses, or lesser-included offenses at the time of the waiver, he assured the court he would be knowledgeable by the time of trial. The right to waive counsel is the right knowingly to proceed in ignorance into the labyrinth of the law without the assistance of a trained guide.
8. A trial court is not categorically required to allow a criminal defendant to withdraw a previously entered, valid waiver of counsel at any time he so desires, and it is within the trial court's discretion to deny motions filed by a defendant which are calculated to delay trial, as well as to deny a defendant's assertions that his constitutional rights were violated when such assertions are made simply to hinder his prosecution.
9. The trial court here determined that Leonard's requests for a continuance and reappointment of the public defender were simply for the purpose of delay. We see no evident, obvious, or clear error in either that determination or the court's decision to deny the last-minute requests.
10. Instructions on lesser-included offenses are not required to be given if not requested. A request for the instruction is a prerequisite for imposing the requirement on a court. If a defendant does not specifically request a lesser-included offense instruction, the defendant may not complain about the trial court's failure to give the instruction.
11. Here, Leonard failed to request any lesser-included offense instructions, apparently in accordance with his alibi defense. Thus, the trial court committed no error in not submitting any lesser-included offense instructions.

Opinion by: Karen King Mitchell, Judge

March 15, 2016

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