# MISSOURI COURT OF APPEALS
# WESTERN DISTRICT

**STATE OF MISSOURI,**

**Respondent,**

**v.**

**MATTHEW JAY SCHURLE,**

**Appellant.**

---

DOCKET NUMBER WD83914

**Date: September 7, 2021**

---

Appeal from:
Nodaway County Circuit Court
The Honorable Corey K. Herron, Judge

---

Appellate Judges:
Division One: Lisa White Hardwick, P.J., and Alok Ahuja, and Anthony Rex Gabbert, JJ.

---

Attorneys:
Christian Lehmberg, Columbia for appellant
Daniel N. McPherson, Jefferson City for respondent

MISSOURI APPELLATE COURT OPINION SUMMARY

MISSOURI COURT OF APPEALS
WESTERN DISTRICT

**STATE OF MISSOURI, Respondent,**
**v.**
**MATTHEW JAY SCHURLE, Appellant.**

WD83914 Nodaway County

Before Division One Judges: Lisa White Hardwick, P.J., and Alok Ahuja, and Anthony Rex Gabbert, JJ.

Matthew Schurle was arrested in Nodaway County in the early morning of March 29, 2018, as the result of a traffic stop. When Schurle was searched, he was found to be in possession of $480 in cash, all in $20 bills, and admittedly lied to the arresting officer about the source of the money. The officer also found a digital scale covered in a methamphetamine residue on Schurle's possession; the scale had been packaged to look like a bar of soap from a hotel. Schurle was visibly nervous, gave the officer a suspicious explanation as to where he was traveling, and took measures to prevent the officer from conducting an inventory search of Schurle's vehicle.

Schurle was charged with delivery of a controlled substance, for his possession of methamphetamine with the intent to distribute, as well as with possession of marijuana and possession of drug paraphernalia.

With money received from his father, Schurle posted bond and hired private counsel. His private attorneys were later allowed to withdraw, however, due in part to Schurle's failure to pay their past-due legal fees. When Schurle applied to the Public Defender for appointed counsel, the Public Defender found that he was not eligible for appointed counsel given his posting of bond, and his retention of private counsel. The circuit court refused to overturn that determination.

The case proceeded to a jury trial, with Schurle representing himself *pro se*. Schurle was convicted of all three counts with which he was charged.

**REVERSED AND REMANDED FOR FURTHER PROCEEDINGS.**

**Division One holds:**

Schurle argues that the evidence was insufficient to support his conviction for delivery of methamphetamine, because the evidence fails to prove that he had an intent to distribute the methamphetamine residue found on the digital scale in his possession at the time of his arrest. We agree with Schurle that, to support his conviction, the State was required to prove that he possessed a quantity of methamphetamine, with an intent to distribute *that quantity*. Schurle was not arrested in possession of a "distributable quantity" of methamphetamine. It was not necessary, however, that Schurle actually be "caught in the act" of possessing a distributable quantity of methamphetamine at the moment of his arrest, or that he actually be observed in possession of such a quantity. Even if there was no direct evidence of Schurle's possession of a distributable quantity of methamphetamine, the jury could still draw an inference of such possession from the circumstantial evidence. Here, the evidence was sufficient to support an inference that Schurle had recently possessed a distributable quantity of methamphetamine, and had actually sold it. This evidence included Schurle's possession of an unusual amount of cash, his lies about the source of that cash, his possession of a digital scale with methamphetamine residue, and the deceptive packaging of that scale.

As the State concedes, however, the circuit court plainly erred by permitting Schurle to proceed *pro se* without conducting a hearing to explicitly advise Schurle of the consequences and perils of self-representation, as required by *Faretta v. California*, 422 U.S. 806 (1975). Because Schurle did not effectively waive his right to counsel, his convictions must be reversed, and the case remanded for further proceedings.

**Opinion by: Alok Ahuja, Judge** **September 7, 2021**

THIS SUMMARY IS UNOFFICIAL AND SHOULD NOT BE QUOTED OR CITED.