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COURT OF APPEAL, FOURTH APPELLATE DISTRICT

DIVISION ONE

STATE OF CALIFORNIA

THE PEOPLE,

Plaintiff and Respondent,

v.

ROBERT ALEX LAWRENCE,

Defendant and Appellant.

D060783

(Super. Ct. Nos. SCD233950; SCD234531)

APPEAL from a judgment of the Superior Court of San Diego County, John S. Einhorn, Judge. Affirmed.

Robert Lawrence appeals from a judgment convicting him of mayhem and assault with a deadly weapon based on his attack on a homeless man in downtown San Diego. He argues the trial court erred in denying his day-of-trial request for a continuance to replace appointed counsel with retained counsel, and in denying his alternative request for self-representation. He also asserts the court erred by refusing his request that the jury be instructed on defense of property. We find no reversible error and affirm the judgment.

FACTUAL AND PROCEDURAL BACKGROUND

On the evening of May 3, 2011, defendant assaulted Michael Kelly by kicking him, punching him, and cutting his face with a box cutter. At the time of the attack, Kelly was sitting by a building in downtown San Diego in an area where food is provided to homeless persons. Several witnesses testified at trial to describe the circumstances of the attack, including Kelly and five individuals who were in the area receiving or serving food.

The witnesses testified that prior to the attack they noticed defendant because he was dressed distinctively in a gray or silver suit and a brimmed hat, and he was acting in a loud, belligerent manner. He was going up and down the street, drinking from a bottle, cursing and talking loudly, and "just messing with everybody." Witnesses heard defendant say that "he wanted to cut a White person"; he was "looking for a White boy . . . to cut"; he was going to get "a motherfucking White boy' "; or he was "going to mess somebody up." People were trying to get defendant to leave the area, saying things like " 'Boo' "; " 'Move on' "; " 'The people are trying to feed' "; and the lady serving food was "a Christian" and there were children in the area. At one point defendant got into an altercation with a woman (Laticia Nelson) who told him to "shut up." While Nelson and defendant were arguing, defendant threatened to "slice [her] ass up"; defendant pulled out a box cutter and Nelson pulled out a knife; and Nelson and defendant threw objects at each other. One or more males walked towards defendant telling him to leave, and defendant backed away down the street.

However, shortly after, defendant returned to the area and attacked Kelly. Kelly testified that while he was sitting by a building, defendant came up to him and started screaming at him. Kelly started to stand up, but defendant kicked him. Kelly stated that after this "[e]verything else went black" until he woke up in the emergency room. Witnesses who saw the attack testified that defendant kicked Kelly, punched him, and slashed him in the face with a box cutter. Defendant then fled down the street. The police were summoned and defendant was apprehended as he was walking on a street several blocks away.

As a result of the attack, Kelly sustained facial cuts to both sides of his face, including a six- to 10-inch cut on his cheek (from his eyelid down to under his jaw), a sliced ear, and a one-inch cut by his eye. He also suffered a broken hand and lacerations on the back of his head. He was hospitalized for three or four days. The cut on his cheek damaged a facial nerve, causing some paralysis of his facial muscles. At the time of trial he had a large scar on his cheek, and he continued to experience "extreme pain" and numbness in his cheek, blurred vision, constant tearing of his eye, and pain and swelling in his hand.

Defense

Testifying on his own behalf, defendant did not deny that he cut the victim, but claimed he acted in self-defense when a group of people assaulted and robbed him. Defendant testified he was visiting San Diego from another state. While he was sitting inside a homeless shelter, Nelson took defendant's hat off the rack where he had placed it. He followed Nelson outside, where she had joined two men who were passing his hat

around and "messing" with him. Defendant demanded his hat back and the men ran off. Defendant, feeling very angry, went down the street after the men, where he encountered a group of homeless people who were telling him to go away if he was not from the area. Nelson arrived with a knife and said he was not from "around here" and he should go away. People were throwing ice at him.

One of the men who had defendant's hat said defendant should "shoot dice" for his hat. Defendant kicked or threw the dice in the street, walked out in the street, and a "church lady" who was passing out food asked him if he was from "around here." Defendant told the lady he was looking for his "white hat," not for food. According to defendant, Nelson threw something at him and pulled out her knife, and he threw his alcohol bottle at Nelson.

Three young men then "jumped out of the [food] line" and started "war talk," saying "they going to do this and they going to do that." Defendant was trying to leave, and he stepped back out in the street. When he reached the sidewalk on the other side, the man he was shooting dice with hit him twice. He was then backed up against a tree. About six people started "going all through [his] pockets." Nelson tried to stab him with her knife, and he tried to grab her knife, which injured his finger. He started kicking, and he removed his knife from his belt loop. Describing the use of his knife, defendant stated: "I closed my eyes and I just crossed my heart to God, they better kill me, and I just went to swinging."

After defendant started swinging with the knife, someone said he had a knife and the people "backed off" him. Defendant walked towards an alley with the bloody knife in

his hand, intending to call the police. Unable to find a phone, he decided to return to his motel. In addition to his hat, he discovered that he was missing items that had been in his pockets, including his dentures, his watch, and \$200 cash.

Defendant testified that during the attack by the group of people, he was punched in his face with a hand, and his hand was cut. He claimed he did not see himself cut anyone, but he knew he cut "one of the Black guys." A police officer told him that he also cut "the White guy" (i.e., victim Kelly). Explaining why he cut the two people, he testified: "To get them off of me. I was afraid. They was in my pocket, taking my things and calling me an old man." Defendant denied that he assaulted Kelly in the manner described by the prosecution's witnesses. Also, he denied he said he was "looking for a White boy" or "looking to get somebody[,]" instead claiming he said he was looking for a "white hat."

Jury Verdict and Sentence

The jury convicted defendant of mayhem and assault with a deadly weapon, and found true enhancements that he personally inflicted great bodily injury and personally used a deadly weapon.¹ The trial court sentenced him to six years in prison.

¹ Before the case was submitted to the jury for deliberations, the trial court dismissed an aggravated mayhem charge. The jury found defendant not guilty of a charge that he attempted to dissuade a witness from testifying. Given this acquittal, we have not included the facts relevant to the dissuasion charge in our factual summary.

DISCUSSION

I. *Trial Court's Denial of Request for Continuance To Hire Retained Counsel and Alternative Request for Self-Representation*

Defendant argues the court abused its discretion and violated his constitutional rights by denying his pretrial request for a continuance to hire retained counsel and his alternative request to represent himself.

A. *Background*

On May 17, 2011, after defendant was charged with mayhem and assault based on his attack on Kelly, deputy public defender John O'Connell was appointed to represent defendant. On May 19 (the date for set for the preliminary hearing), O'Connell told the court that defendant was requesting a *Marsden* hearing because he wanted several witnesses to be interviewed before commencing the preliminary hearing, whereas O'Connell had explained to defendant that the investigation was not necessary for the preliminary hearing. At the *Marsden* hearing, defendant told the court that O'Connell was not acting for his benefit, stating: "[E]verything I'm trying to get him to do, he's telling me what the State got on me. . . . [¶] . . . [¶] . . . I want him to establish there was a robbery . . . before all this happened." The court explained to defendant that his counsel might pursue that line of defense if counsel determined it was in defendant's best interest, but the preliminary hearing was a probable cause hearing where the prosecution need only show enough evidence to continue with the case. After defendant stated he understood this and the court ascertained he had no other complaints about his counsel, the court denied the *Marsden* motion.

O'Connell represented defendant at the May 19 preliminary hearing on the mayhem/assault case. Defendant was bound over for trial, and the court set a readiness conference date for June 30 and a trial date for July 8.

On June 2, defendant was charged with attempting to dissuade a witness. (See fn. 1, *ante*.) On June 13, defendant requested that he be allowed to represent himself in the mayhem/assault and witness dissuasion cases, apparently because he believed O'Connell's case load unduly interfered with his time to work on defendant's case. Finding defendant's request was knowingly, intelligently and voluntarily made, the court granted him self-representation. Defendant represented himself at the preliminary hearing for the witness dissuasion case held on June 15, and the court ordered him bound over for trial on this charge. The court set the trial readiness date (June 30) and the trial date (July 8) to coincide with the dates on the mayhem/assault case.²

Defendant represented himself at the June 30 readiness conference, on which date the prosecution filed an amended information adding an allegation of aggravated mayhem. On July 7 (the day before the trial date), defendant requested that counsel again be appointed to represent him. He told the court that when someone gave him the statistics on pro. per. representation, he thought he "would be a crazy man" to continue

² The mayhem/assault and witness dissuasion cases were later consolidated on September 1.

with self-representation because the statistics were not in his favor.³ The court granted his request, ordering that his pro. per. status be revoked and the public defender's office be reappointed. After making this ruling, the court noted the trial was set to start the next day (July 8) and discussed this matter with the prosecutor and the deputy public defender (not O'Connell) present at the hearing. The prosecutor noted that any continuance beyond a week would be problematic because she had "about six homeless people" who had been served to appear on July 8. The court decided to retain the July 8 trial date, stating that O'Connell could appear the next day and they would discuss the scheduling issues at that time.

On July 8, O'Connell appeared on behalf of defendant, and the court set another readiness conference for August 16 and reset the trial date for September 1. The court ordered five prosecution witnesses to return to court on September 1 for the trial.

O'Connell represented defendant at the August 16 readiness conference. On September 1, the case was called for trial and O'Connell appeared on behalf of defendant. Apparently determining that the case would not be ready for witness testimony that day, the court ordered four prosecution witnesses to return to court on September 7, and issued a bench warrant for a fifth prosecution witness who had apparently failed to appear. After a break in the September 1 proceedings, O'Connell told the court that defendant wanted to make another *Marsden* motion.

³ Defendant's explanations for requesting self-representation on June 13 and then revoking it on July 7 were provided to the court during a subsequent *Marsden* hearing held on September 1.

At the September 1 *Marsden* hearing, defendant stated he wanted O'Connell relieved as his attorney, explaining: "[He's] [n]ot working hard enough[,] and "everything I ask of him, he either say no real quick, wouldn't give me no reason." Defendant complained about O'Connell's handling of certain defense witnesses that defendant had identified, and about O'Connell's failure to review with defendant photographs depicting defendant's injuries arising from the incident. In response, O'Connell explained the problems with the witnesses identified by defendant, and stated the photographs were prepared for submission as exhibits at trial.⁴ The court denied the *Marsden* motion.

After the denial of the *Marsden* motion, the September 1 proceedings resumed with in limine motions. Once the motions were argued and ruled upon by the court, the court set the proceedings to resume on September 6, when jury selection would commence.

On the morning of September 6, the court announced that the jury panel would arrive in about 45 minutes. O'Connell then told the court that defendant wanted to request pro. per. status. Defendant responded that he did not want "to go pro. per." but

⁴ Defendant told the court that a witness named Mike could testify to describe how the incident started with some people taking defendant's hat from him. O'Connell told the court that he agreed that Mike could be a useful defense witness, but that Mike claimed not to remember the incident. O'Connell stated that another defense witness identified by defendant had severe mental health problems and also said he did not remember the incident. Further, defendant had given O'Connell the names of two of his cellmates as character witnesses; one of these individuals said he did not know defendant long enough, and the other said "nice things" about defendant but this only concerned his conduct while in custody.

wanted a continuance because he was "going to get [his] own lawyer." Defendant explained: "As of this moment at this time after the holiday, they already working on it. And I do have someone here in San Diego." The court told defendant: "This is untimely This is the time and place set for trial, sir." Defendant answered, "I been trying to get somebody work my case for four months. I hadn't been able to do that through the courts. So the only thing I can do is take matters into my own hand and get my own attorney. Because if I don't, I feel like . . . I wouldn't have a just trial." When the court stated defendant had an opportunity to get his own attorney since he was arrested, defendant said: "I didn't know they were going to help me until I asked them over the weekend."

The court denied defendant's request for a continuance to obtain retained counsel, finding that it was untimely. The trial court noted the trial had been set to start the previous week, and they were picking the jury that day. Defendant then said, "Well, I'd rather go pro. per. then. If I got to go to trial, I want to go pro. per. . . . I won't have Mr. O'Connell representing me. I'll represent myself." The court reviewed the history of the case, including the denial of defendant's *Marsden* motions, defendant's self-representation followed by reappointment of counsel, and the fact that jury selection was set to start that morning. The court then denied defendant's self-representation request as untimely. After the court's ruling, defendant reiterated, "It better be stated that I still want to go pro. per."

The case proceeded to jury selection, which was completed that same day (September 6). Witness testimony commenced the following day, September 7.

B. Analysis

1. Denial of Request for Continuance To Obtain Retained Counsel

To effectuate the constitutional right to effective assistance of counsel, a defendant generally has the right to retain counsel of his or her own choosing. (*People v. Courts* (1985) 37 Cal.3d 784, 789 (*Courts*)). However, when an indigent defendant is represented by *appointed* counsel, the defendant may obtain a new appointed attorney only if he or she shows the first appointed attorney is providing inadequate representation or there is an irreconcilable conflict likely to result in ineffective representation. (*People v. Ortiz* (1990) 51 Cal.3d 975, 984 (*Ortiz*); *People v. Lara* (2001) 86 Cal.App.4th 139, 150.) This limitation on the right to substitute one appointed attorney for another is based on the "public expense or drain on the state's limited resources" that can arise from a change in appointed attorneys. (*Ortiz, supra*, at p. 986.)

In contrast, when the defendant seeks to be represented by *retained* counsel, the defendant need not make a showing of cause to justify the substitution. (See *Courts, supra*, 37 Cal.3d at pp. 790, 795, fn. 9; *People v. Byoune* (1966) 65 Cal.2d 345, 346; *People v. Blake* (1980) 105 Cal.App.3d 619, 623; see also *Ortiz, supra*, 51 Cal.3d at p. 986.) In this circumstance, there is no concern for "duplicative representation and repetitive investigation at taxpayer expense." (*Ortiz, supra*, at p. 986.)

However, the right to defend with retained counsel "is not absolute: it must be carefully weighed against other values of substantial importance, such as that seeking to ensure orderly and expeditious judicial administration, with a view toward an accommodation reasonable under the facts of the particular case." (*People v. Byoune*,

supra, 65 Cal.2d at p. 346.) The trial court must "balance the defendant's interest in new counsel against the disruption, if any, flowing from the substitution." (*People v. Lara, supra*, 86 Cal.App.4th at p. 153.) Although the courts seek to accommodate substitution of counsel requests to the fullest extent consistent with effective judicial administration, a trial court retains discretion to deny requests made in an untimely manner that would result in an unreasonable delay in the processes of justice. (See *Courts, supra*, 37 Cal.3d at pp. 790-791; *People v. Pigage* (2003) 112 Cal.App.4th 1359, 1367; *People v. Jeffers* (1987) 188 Cal.App.3d 840, 849-850; *People v. Lara, supra*, 86 Cal.App.4th at p. 155.)

When deciding whether to grant a continuance to secure retained counsel, the court may consider whether the defendant has been unjustifiably dilatory in obtaining counsel or is arbitrarily choosing to substitute counsel at the time of trial. (*Courts, supra*, 37 Cal.3d at pp. 790-791.) Further, the court may consider the practical difficulties of assembling witnesses, lawyers, and jurors that may arise from a delay. (See *People v. Lara, supra*, 86 Cal.App.4th at p. 153.) An eve-of-trial request for a continuance to substitute counsel may properly be denied unless there are compelling circumstances justifying the delay. (*Courts, supra*, 37 Cal.3d at p. 792, fn. 4; *People v. Jeffers, supra*, 188 Cal.App.3d at p. 850.)

On appeal, we review a trial court's decision to deny a continuance to secure retained counsel under the abuse of discretion standard. (*Courts, supra*, 37 Cal.3d at pp. 790-791.) We look to the circumstances of each case and the reasons presented to the trial court at the time the request was denied. (*Ibid.*)

Defendant made a request for a continuance to obtain a retained attorney after the date set for trial and when the case was ready for jury selection. Because of the day-of-trial timing of his request, the trial court was not required to grant the request unless there were compelling circumstances warranting the delay. The record supports the trial court's conclusion that there were no such circumstances and that a delay would unduly disrupt the efficient administration of justice.

Defendant had made two *Marsden* motions, both of which were denied. These rulings are not challenged on appeal, and there is nothing in the record suggesting that public defender O'Connell's representation of defendant was deficient. Thus, the delay necessary to secure representation by retained counsel cannot be justified by defendant's concern for the competency of O'Connell's representation. In this regard, the trial court could reasonably deduce that defendant's complaints about O'Connell were primarily a product of defendant's inability to fully understand various matters related to his case and that O'Connell would be able to work with defendant as effectively as any other counsel.

Further, defendant requested more time to retain private counsel after the trial had already been delayed for two months when he switched from self-representation to reappointment of counsel. Although only a few days lapsed between the trial court's denial of the second *Marsden* motion and defendant's request for more time to obtain his own attorney, the trial court could reasonably conclude that, viewing the pretrial proceedings as a whole, defendant had been dilatory because he was again seeking to delay a trial that had already been postponed for two months when he revoked his pro. per. status.

Also, when balancing defendant's representation desires with effective administration of justice, the court could consider that the prosecutor had subpoenaed several witnesses (described by the prosecutor as homeless) who had shown up at court on several dates and been instructed to return; one of these witnesses had failed to return; and further delay created a risk that additional witnesses might fail to appear.

Defendant argues the trial court erred by denying his continuance request as untimely without clarifying whether he had a firm commitment from an attorney or how much more time he needed. We are not persuaded. As set forth above, the court could reasonably conclude that even a short delay in the trial was unwarranted given the absence of a showing that defendant legitimately needed new counsel; defendant's previous change in representation had already delayed the trial; and additional delay created a risk of loss of prosecution witnesses. Thus, even if defendant might have claimed he had a firm commitment and only needed a short continuance, the trial court reasonably denied his continuance request.

Moreover, defendant did not produce any documents or bring private counsel with him to show a private attorney had actually agreed to represent him. Under this circumstance, the trial court could reasonably deny the continuance based on an assessment that, absent a direct communication from a private attorney, there were no assurances that private representation would actually be forthcoming even if a continuance were granted. (*Courts, supra*, 37 Cal.3d at p. 791 & fn. 3 [trial courts can reasonably deny continuances when "confronted with the 'uncertainties and contingencies' of an accused who simply want[s] a continuance to *obtain* private counsel"]

or when the "participation by a particular attorney [is] still quite speculative"; *People v. Johnson* (1970) 5 Cal.App.3d 851, 858-859.) The trial court did not abuse its discretion in denying defendant's request for a continuance.

2. Denial of Self-Representation Request

A defendant has a constitutional right to self-representation if he or she knowingly and intelligently waives the right to counsel. (*People v. Jenkins* (2000) 22 Cal.4th 900, 959.) However, the right of self-representation is not absolute, and the request may be denied if it is not made within a reasonable time before the commencement of trial. (*People v. Lynch* (2010) 50 Cal.4th 693, 721-722, disapproved on other grounds in *People v. McKinnon* (2011) 52 Cal.4th 610, 637-638.) Absent timely assertion of the right, the trial court has discretion to deny the request, considering such factors as the quality of counsel's representation, the defendant's prior proclivity to substitute counsel, the reasons for the request, the length and stage of the proceedings, and the disruption or delay that might result. (*Id.* at p. 722 & fn. 10.) "Moreover, whether timely or untimely, a request for self-representation must be unequivocal." (*People v. Doolin* (2009) 45 Cal.4th 390, 453.)

Because defendant's request for self-representation was made after the day set for trial and when jury selection was to commence, the trial court did not err in concluding that it was untimely. (See *People v. Lynch, supra*, 50 Cal.4th at pp. 722-723 ["[W]e have held on numerous occasions that [self-representation] motions made on the eve of trial are untimely".]) In this circumstance, defendant's self-representation was "no longer . . . a matter of right but [was] subject to the trial court's discretion." (*People v.*

Jenkins, supra, 22 Cal.4th at p. 959.) Defendant contends the court should have granted his request for self-representation because there was no showing it would have delayed the proceedings. He notes the court did not ask about his readiness to proceed immediately to trial, and posits that because he requested self-representation after the court had already denied his continuance request "it can be inferred that [he] was willing to immediately proceed with trial."

Assuming defendant was willing to immediately proceed to trial, the court could reasonably deny the self-representation request based on other factors relevant to an untimely request. (*People v. Barnett* (1998) 17 Cal.4th 1044, 1105-1106 [fact that defendant did not ask for continuance is not determinative on untimely self-representation request; court may consider other factors as well]; *People v. Jenkins, supra*, 22 Cal.4th at pp. 961-963.) As noted, there was no showing that O'Connell's representation was deficient. Defendant had earlier been granted pro. per. status, and then requested reappointment of an attorney after he determined it was not to his benefit to represent himself. Although a defendant may unequivocally request self-representation in response to a court's denial of an attorney substitution request (see, e.g., *People v. Michaels* (2002) 28 Cal.4th 486, 524), the court here could deduce that defendant's pro. per. request, although facially expressed in unequivocal terms, was not truly what he wanted given his prior statements to the court recognizing the vagaries of self-representation (see *People v. Roldan* (2005) 35 Cal.4th 646, 683, disapproved on other grounds in *People v. Doolin, supra*, 45 Cal.4th at p. 421, fn. 22 [when deciding whether self-representation request is unequivocal, court should consider all of

defendant's words and conduct]). There were no assurances that defendant would not resurrect his request for appointment of counsel once trial commenced, which could disrupt the proceedings by raising the issue of whether the trial should again be delayed to bring counsel back on the case.

It is apparent from the record that defendant's reason for requesting self-representation did not reflect a true desire to manage the case on his own, but rather was based on his dissatisfaction with Attorney O'Connell and the denial of his request for a continuance to obtain his own attorney. The court did not abuse its discretion in denying defendant's request for self-representation.

II. *Trial Court's Refusal To Instruct on Defense of Property*

The trial court refused defendant's request to instruct the jury on defense of property, but agreed to instruct the jury on principles of self-defense. Defendant contends the court erred in refusing to instruct on defense of property as set forth in CALCRIM No. 3476.⁵ He asserts there was sufficient evidence to support the instruction based on his testimony that he slashed out and cut two people with his knife in response to the group of people who were searching his pockets and who stole the items in his pockets.

A trial court has a duty to instruct on a defense if it is supported by substantial evidence. (*People v. Salas* (2006) 37 Cal.4th 967, 982.) In deciding whether there is substantial evidence to support the instruction, "the trial court does not determine the

⁵ CALCRIM No. 3476 states in part: "The owner [or possessor] of . . . property may use reasonable force to protect that property from imminent harm."

credibility of the defense evidence, but only whether 'there was evidence which, if believed by the jury, was sufficient to raise a reasonable doubt' (Ibid.)

We need not decide whether the trial court erred in refusing to instruct the jury in the language of CALCRIM No. 3476 because the record shows any error was harmless even under the more stringent harmless beyond a reasonable doubt standard. (See *People v. Salas, supra*, 37 Cal.4th at p. 984; *People v. Demetrulias* (2006) 39 Cal.4th 1, 23.) In the context of this case, the self-defense instructions sufficed to tell the jury that defendant had a right to use reasonable force to defend his property.⁶

The trial court instructed the jury that defendant was not guilty under self-defense principles if he reasonably believed he was "in imminent danger of suffering bodily injury or was in imminent danger of *being touched unlawfully*"; he reasonably believed immediate use of force was necessary to defend against that danger; and he used no more force than was reasonably necessary to defend against that danger. (Italics added; see CALCRIM No. 3470.) Additionally, the trial court incorporated the concept of *robbery*

⁶ To support instruction on defense of property based on CALCRIM No. 3476, defense counsel argued to the trial court that defendant was "basically claiming he was being robbed and property was taken from him." The trial court refused to give the instruction, finding that instruction on defense of property was not warranted without "having any specificity as to the victim in this case being part or parcel of that theft or taking of personal property." Contrary to the trial court's reasoning, we agree with defendant that his testimony that he was blindly swinging his knife to repel off the people going through his pockets and assaulting him, and that an officer thereafter told him that he cut the victim, was, in combination, sufficient to support an inference that the victim was cut because he was part of the group engaging in the robbery/assault. Nevertheless, as we shall explain, there was no prejudicial instructional error because the self-defense instructions given here effectively apprised the jury of defendant's right to defend his property.

into the self-defense instructions when telling the jury that the defendant was not required to retreat. This portion of the instruction stated: "A defendant is not required to retreat. He or she is entitled to stand his or her ground and defend himself or herself and, if reasonably necessary, to pursue an assailant *until the danger of death/bodily injury/robbery has passed.*"

Under the facts of this case, the self-defense instructions telling the jury that defendant had the right to defend against an unlawful touching and/or robbery in effect apprised the jury of his right to protect his property from imminent harm. The property allegedly taken was located essentially on his body; thus, reasonable jurors would have understood that his right to defend himself from an unlawful touching included the right to defend himself from the searching of and theft from his pockets. Further, the instruction indicating he had a right to stand his ground and defend during the robbery directly informed the jurors that he could defend against the forceful taking of property from his person.

Because the instructions apprised the jury of defendant's right to use reasonable force to defend against the taking of his property from his person, his claim of reversible instructional error fails.

DISPOSITION

The judgment is affirmed.

HALLER, J.

WE CONCUR:

NARES, Acting P. J.

McINTYRE, J.