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2026 IL App (3d) 250063-U

Order filed October 19, 2026

IN THE
APPELLATE COURT OF ILLINOIS
THIRD DISTRICT

2026

THE PEOPLE OF THE STATE OF	)	Appeal from the Circuit Court
ILLINOIS,	)	of the 18th Judicial Circuit,
	)	Du Page County, Illinois,
Plaintiff-Appellee,	)	
	)	Appeal No. 3-25-0063
v.	)	Circuit No. 20-CF-76
	)	
TIMOTHY JACKSON,	)	Honorable
	)	Margaret O'Connell,
Defendant-Appellant.	)	Judge, Presiding.

JUSTICE BRENNAN delivered the judgment of the court.
Justices Holdridge and Peterson concurred in the judgment.

ORDER

- ¶ 1 *Held:* The trial court erred in denying defendant's request to proceed *pro se* at defendant's hearing on the motion to suppress and subsequent trial. Vacated and remanded.
- ¶ 2 The trial court convicted defendant, Timothy Jackson, of two counts of unlawful possession of a weapon by a felon (UPWF). 720 ILCS 5/24-1.1(a) (West 2020). The court sentenced defendant to two concurrent terms of eight years' imprisonment. On appeal, defendant argues that: (1) he was denied his constitutional right to proceed as a self-represented litigant; (2) the trial court erred in denying his motion to suppress; and (3) section 24-1.1(a) is facially

unconstitutional. For the reasons that follow, we agree that defendant was denied his constitutional right to proceed as a self-represented litigant; vacate the order denying defendant's motion to suppress, as well as defendant's conviction and sentence; and remand for further proceedings. In light of this relief, we do not reach defendant's remaining arguments.

¶ 3

I. BACKGROUND

¶ 4

On January 8, 2020, Wheaton police officers arrested defendant inside a 7-Eleven convenience store on charges of driving while license revoked. They seized the 2013 BMW that he had been driving, pursuant to article 36 of the Criminal Code of 2012. See 720 ILCS 5/36-1 (West 2020) (providing that a vehicle is subject to forfeiture for driving while license revoked). The vehicle was owned by defendant's mother, April McDowell. Prior to having the vehicle towed, the police conducted an inventory of items in the vehicle. During the inventory search, they found a 9 mm semi-automatic pistol and ammunition.

¶ 5

As a result of the January 8, 2020, events, the State indicted defendant in the instant case, No. 20-CF-76, with charges of: two counts of unlawful possession of a weapon by a felon (720 ILCS 5/24-1.1(a) (West 2020)); three counts of armed violence, predicated on driving while license revoked, theft, and possession of a controlled substance (*id.* §§ 33A-2(a), 33A-3(a)); three counts of aggravated unlawful use of a weapon (*id.* §§ 24-1.6(a)(1), (a)(3)(A), (a)(3)(C)), (d)(1), (d)(3), (d)(4)); theft (*id.* § 16-1(a)(4)(A), (b)(4)); unlawful possession of a controlled substance (720 ILCS 570/402(c) (West 2020)); and driving while license revoked (625 ILCS 5/603(a), (d-3) (West 2020)). While out on bond in this case, defendant was arrested in case No. 21-CF-1888, which included charges of aggravated unlawful restraint and two counts of unlawful possession of a weapon by a felon, and which were at issue in appeal No. 3-25-0051, recently resolved by this court. See *People v. Jackson*, 2026 IL App (3d) 250051-U. In this case (20-CF-76), the State

ultimately went to trial on the two counts of unlawful possession of a weapon, of which defendant was convicted, and one count of armed violence predicated on possession of a controlled substance, of which defendant was acquitted.

¶ 6 A. Defendant's Request to Proceed *Pro Se*

¶ 7 Prior to February 7, 2022, defendant was represented by the public defender. On that date, the trial court conducted a status hearing in case Nos. 20-CF-76 and 21-CF-1888, as well as two other pending cases, Nos. 18-CF-1077 and 20-CF-106. Private counsel, Scott Marquardt, requested leave to appear on defendant's behalf, but did not specify as to which case. He informed the court that, it was "a little bit confusing," but as to case No. 18-CF-1077, he stepped in for a different private counsel, George Kallas, who had had a death in the family. Marquardt also sought leave to file an appearance on Kallas's behalf as to the remaining three cases. The assistant public defender, Michael Sweeney, was then granted leave to withdraw on all four cases.

¶ 8 On June 22, 2022, Marquardt informed the court that he and attorney Kallas were moving to withdraw, as defendant intended to hire private attorney, Rick Kayne. Marquardt had spoken to Kayne in the hallway, who indicated he intended to speak with defendant. Defendant then confirmed that he hoped to hire Kayne but had not yet done so. The court allowed Marquardt and Kallas to withdraw and granted defendant a continuance to hire Kayne or alternative counsel.

¶ 9 On July 5, 13, and 20, 2022, attorney Kayne informed the trial court that he had spoken with defendant and shared a proposal with defendant's family, but defendant had not yet retained him.

¶ 10 On August 2, 2022, defendant, appearing remotely due to COVID protocol, informed the trial court that he wished to proceed *pro se* in all four cases:

“THE COURT: So there are multiple cases that you have in my courtroom. On the last court date you had said that you were going to try to re-retain Mr. Kayne. It does not appear as if that has occurred. Do you have a private attorney?

THE DEFENDANT: No, no ma’am. I will not be hiring a private attorney at this time. At the moment I would like to go *pro se*.

THE COURT: Okay. Well, that is not a great idea. You are—there’s—you have a lot of cases and you are in jeopardy of having multiple sentences, some of which will run consecutive to one another, so—

THE DEFENDANT: Yes, ma’am.

THE COURT: I—I don’t feel that that is the right decision for you to make.

THE DEFENDANT: I’ll respectfully take your advice into consideration, but still at the moment I would like to go *pro se*.

THE COURT: Okay. We’re going to bring you over [next week] for admonishments regarding proceeding *pro se*, but in the interim I want you to really, really think about it.”

¶ 11 On August 15, 2022, the trial court admonished defendant about his request to represent himself in all four cases:

“THE COURT: All right. Mr. Jackson, when we last spoke, you [said] that you wanted to proceed *pro se*. Do you maintain that position?

THE DEFENDANT: Yes, ma’am.

THE COURT: All right. So I have to make an inquiry at this point pursuant to *People versus Ward* as to whether or not you have the requisite capacity to make an intelligent and knowing waiver of your right to counsel.

So how old are you?

THE DEFENDANT: I'm 30.

THE COURT: How far did you go in school?

THE DEFENDANT: I graduated [high school in 2011].”

The trial court further ascertained that defendant had not pursued additional degrees or trade school.

¶ 12 The trial court informed the defendant that, if convicted in all three of his pending cases, he faced between 30 and 61 years in prison:

“THE COURT: Okay. So the range of penalties here goes from a minimum of 30 years to a maximum of 61 years. Do you understand that?

THE DEFENDANT: Yes, ma'am.

THE COURT: All right. And do you understand that presenting a defense is not simply a matter of telling your story but requires adherence to the technical rules governing the administration of justice and also the rules of evidence?

THE DEFENDANT: Yes, ma'am.

THE COURT: Are you familiar with the rules of evidence?

THE DEFENDANT: Yes, ma'am.

THE COURT: How so?

THE DEFENDANT: The law library and the tablet that they give us.

THE COURT: Okay.

THE DEFENDANT: And I study [in the law library and on the tablet].

THE COURT: Okay. You understand that someone in your position unfamiliar with legal procedures may allow the prosecution *** an advantage by failing to make objections to inadmissible evidence, may not make effective use of such rights such as *voir dire* during jury selection, and may make tactical decisions that produce unintended consequences. Do you understand that?

THE DEFENDANT: Yes, ma'am.

THE COURT: *** If I allow you to [proceed *pro se*], you can't use that as a reason when you file an appeal. Do you understand that?

THE DEFENDANT: Yes, ma'am.

THE COURT: And you will receive no special consideration from this Court if you proceed *pro se*. Do you understand that?

THE DEFENDANT: Yes, ma'am.

THE COURT: You won't receive any extra time for preparedness or any greater time in the library. Do you understand that?

THE DEFENDANT: Yes, ma'am.

THE COURT: A lawyer can render important assistance by determining the existence of possible defenses to the charges, by possibly engaging in plea negotiations to get a reduced or lesser penalty, and by presenting the Court with matters that may lead to a lesser sentence. Do you understand that?

THE DEFENDANT: Yes, ma'am.

THE COURT: And you understand you can't engage in plea negotiations. Do you understand that?

THE DEFENDANT: Yes, ma'am.

THE COURT: All right. *** [W]hy is it that you want to represent yourself?

THE DEFENDANT: No certain reason at all.

THE COURT: What?

THE DEFENDANT: No certain reason at all.

THE COURT: No reason? Have you had the Public Defender appointed?

THE DEFENDANT: No, ma'am.

THE COURT: All right. I'm not gonna—you've got too much at risk here. I can't—I cannot in good conscience allow you to waive your right to counsel. The fact that you have a high school education and you have been in the law library a couple of times just isn't sufficient for you to have the background necessary to be effective in these legal proceedings. You're looking at a minimum of 30 years in jail, in prison. I just don't feel as if you're up to that task. So I am going to appoint the Public Defender to represent you on all four of these matters.

MR. SWEENEY: Michael Sweeney [public defender] for the record.

THE COURT: All right. So, Mr. Jackson, you're gonna have to work with Mr. Sweeney on these cases in order [for] him to help you with the defense on these. ***

MR. SWEENEY: Judge, I had previously represented him on the matters. ***

THE COURT: Oh, so you did have the Public Defender before.

THE DEFENDANT: Not on [21] CF 188[8]. Just [20 CF 76].

THE COURT: All right. So now you're gonna go back to the Public Defender. You just—I can't let you do it in good conscience. You've got a lot on the line here.

THE DEFENDANT: I understand. I'm fully aware.

THE COURT: Okay. Are you okay with my decision?

THE DEFENDANT: Not really.

THE COURT: Okay. Why not?

THE DEFENDANT: I mean, it's your decision. I mean, I can't—

THE COURT: Mr. Sweeney is a member of the largest criminal defense firm here in the County.

THE DEFENDANT: I understand that.

THE COURT: He has resources available to him that you just don't have. And I have a lot of faith in Mr. Sweeney and his ability to communicate with you and give you the resources that you need and the resources that you deserve. ***.

THE COURT: All right. Sorry, Mr. Jackson.”

¶ 13 On September 7, 2022, defendant filed a *pro se* motion to suppress evidence of the firearms in case No. 20-CF-76, arguing that the vehicle search was illegal because it was conducted without a warrant and did not meet the requirements of a valid search incident to arrest. He also filed a motion to set case No. 21-CF-1888 for trial.

¶ 14 On September 14, 2022, the trial court admonished defendant:

“THE COURT: [Didn't] we tal[k] about whether or not you were going to represent yourself?

DEFENDANT: Yes, ma'am.

THE COURT: *** [A]fter we had that hearing[,] I thought you agreed that you were not going to represent yourself.

THE DEFENDANT: I mean, I didn't think that it [would take] away from me being able to motion my case up and ask for that.

THE COURT: Okay. But that's an action that is reserved for your attorney. ***."

¶ 15 The State then informed the trial court that it elected to proceed on case No. 20-CF-76 first. Sweeney informed the court that he would be amending defendant's motion to suppress in case No. 20-CF-76. The court then asked defendant if he would cooperate with defense counsel and defendant agreed.

¶ 16 B. Motion to Suppress

¶ 17 On October 5, 2022, defense counsel filed an amended motion to suppress. At the hearing, the defense informed the court that its case-in-chief would consist of two arguments: (1) defendant's arrest was unlawful because it was unsupported by a warrant or probable cause to arrest for driving while license revoked in that the State would not be able to prove defendant was the driver; and (2) the search was unlawful because there was not a search warrant and the search was not conducted under any exception to the warrant requirement. The defense called defendant as its only witness. Defendant testified that he had not been pulled over while driving and instead was arrested without a warrant at 7-Eleven while his vehicle was legally parked outside the store. Defendant was not present when the police searched the vehicle. He was not shown a warrant to search the vehicle, nor did he give the police permission to search the vehicle. The State moved for a directed finding, which the trial court summarily denied.

¶ 18 The State called retired Wheaton Police Detective Donald Stelmar as its only witness. Stelmar testified that he began investigating defendant in 2019 in a case involving disorderly

conduct. He learned that, in 2018, the same BMW at issue in the present case had been subject to article 36 forfeiture proceedings when defendant was taken into custody for fleeing and alluding. Stelmar also learned that defendant had been convicted of a DUI in 2014, had been convicted of driving on a revoked license at least four times, and currently had a revoked license. Stelmar observed the BMW parked at two addresses associated with defendant, including one in Wheaton. On January 2, 2020, Stelmar called defendant's mother, McDowell, and informed her that he believed defendant was driving her BMW, defendant had previously been arrested for DUI and was not permitted to drive, and, if defendant was caught driving the BMW, the BMW would be subject to forfeiture. During cross-examination, defendant successfully moved to introduce an audio recording of the call between Stelmar and McDowell, wherein McDowell informed Stelmar that defendant should not be driving the BMW.

¶ 19 Regarding defendant's arrest, Stelmar testified that, on January 8, 2020, he saw defendant driving the BMW near the Wheaton address. After temporarily losing sight of the vehicle, he called dispatch. The vehicle was found legally parked outside 7-Eleven. Stelmar and other officers arrested defendant for driving while license revoked. They decided to tow the vehicle pursuant to article 36. It is department policy to conduct an inventory search prior to towing to safeguard items inside the vehicle. During the inventory search, they found the weapons that resulted in the charges against defendant. Stelmar was asked if article 36 provided the sole basis for the tow and he answered that, while article 36 was "one of the main reasons," a tow is also proper where, as he found, defendant did not have a driver's license or proof of insurance.

¶ 20 The trial court denied the motion to suppress. Later, it denied defendant's motion to reconsider, explaining: "[Stelmar] did testify that it was a matter of department policy that the car

would be searched because the police were losing custody of it when it was going to be towed away.”

¶ 21 C. Subsequent Proceedings Including Bench Trial

¶ 22 Between August 4, 2023, and January 22, 2024, numerous hearings were held pursuant to *pro se* filings by defendant. As noted by this court in appeal No. 3-25-0051, “the record reflects that the defendant continued to seek private counsel during the pendency of the case, multiple times reminded the court that it had denied his request to proceed *pro se*, and sought to file motions on his own behalf.” *Jackson*, 2026 IL App (3d) 250051-U, ¶ 7. In particular, the parties highlight *pro se* motions that concerned defendant’s request for pretrial release in various pending cases. The trial court denied defendant’s request for pretrial release, and this court affirmed the denial in *People v. Jackson*, 2024 IL App (3d) 240086-U.

¶ 23 On May 3, 2024, the trial court conducted a status hearing wherein the State informed the court that was changing its previous election and instead intended to proceed first in case No. 21-CF-1888. On July 26, 2024, a jury determined that defendant was guilty of aggravated unlawful restraint and two counts of unlawful possession of a weapon by a felon. The court sentenced defendant to 8 years’ imprisonment for aggravated unlawful restraint and 10 years’ imprisonment for each count of unlawful possession of a weapon by a felon, all to be served concurrently.

¶ 24 On December 11, 2024, the trial court conducted a bench trial in case No. 20-CF-76, on counts I and II, alleging unlawful possession of a weapon (a firearm and ammunition, respectively), and count XI, alleging armed violence predicated on unlawful possession of a controlled substance. The evidence introduced was consistent with that taken at the hearing on the motion to suppress. In addition, a forensic scientist testified that the firearm that had been found in the driver’s door pocket contained a mixture of DNA, from which defendant could not be

excluded as a major donor. Defendant had given a recorded statement wherein he said that his DNA would probably be on the gun, which he kept for protection. The gun contained a 9 mm round in the chamber and a magazine with eight rounds of 9 mm ammunition. After the vehicle had been towed, Stelmar and another officer obtained a search warrant to perform a search more extensive than the initial inventory search in which the firearm had been found. In the trunk, the officers found a Crown Royale bag, which contained a plastic tray holding a substance determined to be 0.053 grams of cocaine.

¶ 25 The trial court found defendant guilty of counts I and II, possession of a weapon by a felon, and not guilty of count XI, armed violence. Following an unsuccessful posttrial motion, in which defendant again argued that the trial court should have granted his motion to suppress, the trial court sentenced defendant to two concurrent eight-year terms of imprisonment for counts I and II. Those terms of imprisonment were to run consecutively to his terms in case No. 21-CF-1888. This appeal followed.

¶ 26 II. ANALYSIS

¶ 27 Defendant contends that the trial court erred when, on August 15, 2022, it denied his constitutional right to self-representation. He argues that both the suppression hearing and the trial that followed were in violation of his right to self-representation. Defendant acknowledges that he forfeited the argument that he was denied the right to proceed *pro se*, because he did not raise it in his posttrial motion (*People v. Enoch*, 122 Ill. 2d 176, 185 (1988)), but asks that we review it as plain error. The State implicitly concedes that the denial of self-representation is considered a structural error excusing forfeiture. See, e.g., *People v. Thompson*, 238 Ill. 2d 598, 609, 613-14 (2010) (denial of self-representation at trial is plain error excusing forfeiture). The State addresses the merits of defendant's argument, arguing that the trial court properly denied defendant's request

to proceed *pro se*. The trial court's denial of a defendant's request to proceed *pro se* is reviewed for an abuse of discretion. *People v. Baez*, 241 Ill. 2d 44, 116 (2011). A court abuses its discretion when its ruling is unreasonable or when it applies an improper legal standard. See *People v. Hunt*, 2016 IL App (1st) 132979, ¶ 16 (reasonableness); *People v. Woodson*, 2011 IL App (4th) 100223, ¶ 21 (legal standard).

¶ 28 The United States and Illinois Constitutions guarantee criminal defendants the right to counsel. U.S. Const., amends. VI, XIV; Ill. Const. 1970, art. I, § 8. The sixth amendment right to counsel implicitly provides for the right to self-representation in criminal proceedings. *People v. Wright*, 2017 IL 119561, ¶ 39. The right to self-representation extends to all critical stages of the proceeding, including a hearing on a motion to suppress. See *United States v. Lee*, 760 F.3d 692, 694 (7th Cir. 2014) (relying upon *United States v. Hamilton*, 391 F.3d 1066, 1070 (9th Cir. 2004)). A hearing on a motion to suppress is a critical stage of the proceeding for purposes of triggering a defendant's sixth amendment rights because, "in many cases[,] the crucial issue is the admissibility of evidence found in the defendant's possession." *Hamilton*, 391 F.3d at 1070.

¶ 29 To proceed as a self-represented litigant, a defendant must "knowingly and intelligently relinquish his right to counsel." *Baez*, 241 Ill. 2d at 115-16. To ensure that the defendant's waiver is knowing and intelligent, the trial court shall admonish him pursuant to Illinois Supreme Court Rule 401(a) (eff. July 1, 1984). *People v. Albea*, 2017 IL App (2d) 150598, ¶ 22. Rule 401(a) requires the trial court to address the defendant personally in open court and determine that he understands the nature of the charges against him, the minimum and maximum sentences prescribed by law, and that he has a right to counsel and, if indigent, to have counsel appointed to represent him. Ill. S. Ct. R. 401(a) (eff. July 1, 1984). Substantial compliance with Rule 401(a) typically effectuates a valid waiver. *Albea*, 2017 IL App (2d) 150598, ¶ 22. The court should also

look to the defendant’s background, experience, and conduct, as well as the overall context of the proceedings to determine that he understood the significance and consequences of his waiver. *People v. Simpson*, 172 Ill. 2d 117, 133 (1996).

¶ 30 A trial court may deny a defendant’s request to proceed as a self-represented litigant if the request was: (1) not knowingly and intelligently made; (2) not clear and unequivocal such that the defendant is found to have vacillated in his request; or (3) made so late in the proceedings that it would be disruptive. *Woodson*, 2011 IL App (4th) 100223, ¶ 24; *People v. Meeks*, 249 Ill. App. 3d 152, 169-70 (1993) (vacillating). Additionally, the court may deny a defendant’s request to proceed *pro se* if he engages in serious obstructionist conduct. *Woodson*, 2011 IL App (4th) 100223, ¶ 24. To preserve the fundamental right to self-representation, trial courts must be prepared to tolerate a *pro se* defendant with an unpolished demeanor who engages in occasional irritating, foolish, or otherwise unprofessional behavior. *People v. Rodriguez-Aranda*, 2022 IL App (2d) 200715, ¶ 45.

¶ 31 The trial court may not deny a defendant’s request to proceed as a self-represented litigant because it is concerned that the defendant is making a mistake. *Baez*, 241 Ill. 2d at 116-17. Indeed, the right to self-representation “is a right that when exercised usually increases the likelihood of an outcome that is unfavorable to the defendant.” *McKaskle v. Wiggins*, 465 U.S. 168, 178, n.8 (1984). Related, a defendant’s lack of legal knowledge and legal ability is not a proper basis to deny his request to proceed *pro se*. *Rodriguez-Aranda*, 2022 IL (2d) 200715, ¶¶ 41, 60; *Woodson*, 2011 IL App (4th) 100223, ¶ 23.

¶ 32 In *Woodson*, 2011 IL App (4th) 100223, ¶ 11, the trial court rejected defendant’s request to proceed *pro se*, explaining to him that he did not have the “legal knowledge or ability to represent [him]self.” The court further noted: “[The defendant’s] *pro se* motions show *** beyond

a shadow of a doubt that he is incapable of guiding his own defense.” *Id.* ¶ 12. The *Woodson* appellate court determined that the trial court had applied the wrong legal standard in denying the defendant’s request to represent himself. *Id.* ¶ 26. The legal standard for self-representation is not whether a defendant has a certain level of legal knowledge or ability but whether he has a “full awareness of the nature and consequences of his decision to proceed without counsel.” *Id.* ¶ 23. In addition, the appellate court rejected the State’s argument that the denial should nevertheless be affirmed because the defendant engaged in obstructionist conduct. *Id.* ¶ 28. The court’s “exclusive” focus in denying the defendant’s request had been his lack of legal ability, and the alleged contentious exchanges had occurred after defendant’s request to proceed *pro se* had been improperly denied. *Id.* ¶¶ 25, 29.

¶ 33 Here, as in *Woodson*, the trial court relied almost exclusively on defendant’s apparent lack of legal knowledge and ability in denying his request. On August 2, 2022, defendant first requested to proceed *pro se*. The trial court replied that it “didn’t feel that is the right decision for [him] to make,” it would provide formal admonishments at the next hearing, and, “in the interim, [it] want[ed] [him] to really, really think about it.” When, on August 15, 2022, defendant persisted in his request following the trial court’s Rule 401(a) admonishments, the trial court nevertheless denied defendant’s request. The trial court stated that it “[could not] in good conscience allow [defendant] to waive [his] right to counsel,” because he had “too much at risk.” The trial court reiterated the point later at the same hearing: “I can’t let you do it in good conscience. You’ve got a lot on the line here.” The trial court expressed serious concern for defendant’s lack of legal ability: “The fact that you have a high school education and you have been in the law library a couple of times just isn’t sufficient for you to have the background necessary to be effective in

these legal proceedings. You're looking at a minimum of 30 years in jail, in prison. I just don't feel as if you're up to that task."

¶ 34 The trial court's concerns, however well-intentioned, were legally misplaced. A defendant's lack of legal ability may not serve as a basis to deny his request to proceed *pro se*. *Woodson*, 2011 IL App (4th) 100223, ¶ 23. Nor is the circumstance that a defendant has "too much at risk" a basis to deny his request. As the *Woodson* court explained: "Although it is important that a defendant who wants to proceed *pro se* be made aware of the potential pitfalls of self-representation so that he can make his election with his 'eyes wide open,' such pitfalls may not be the basis for a court to deny the defendant his right to self-representation." *Id.* ¶ 25.

¶ 35 Rather, the key question is whether a defendant's waiver of counsel was knowingly and intelligently made. *Woodson*, 2011 IL App (4th) 100223, ¶ 23. The propriety of the trial court's Rule 401(a) admonishments are not challenged here. Ill. S. Ct. R. 401(a) (eff. July 1, 1984). The State takes issue with defendant's choice of words following the admonishments, noting that defendant did not provide a "certain reason" for his request and that he was "not really" "okay" with the court's decision. This inartful language, however, in no way undermined defendant's persistence in his desire to proceed *pro se*. Rule 401(a) requires only that a defendant understands the nature of the charges, the maximum and minimum sentences, and that he has a right to counsel. See *id.* It does not require that a defendant also explain his reasons for waiving his right to counsel. While true that a trial court may question a defendant to ensure that he understands the consequences of his decision, defendant, who was 30 years old and had a high school degree, affirmatively answered that he understood each of the potential drawbacks set forth by the court. Yes, when the court asked defendant whether he was "okay" with its decision to deny his request to proceed *pro se*, defendant answered, "not really" but "it's your decision." This response

evidenced defendant's resignation rather than lack of clarity. The trial court certainly understood that defendant wished to waive his right to counsel and proceed *pro se*. It even apologized to defendant for denying his request, demonstrating its understanding that defendant did not agree with its ruling.

¶ 36 The State argues that defendant's attempts in June and July of 2022 to hire private counsel Marquardt, Kallas, and Kayne were part of a pattern evidencing that his desire to proceed *pro se* was equivocal. To be sure, a trial court should deny an equivocal request to prevent a defendant from appealing the denial of his right to self-representation or to his right to counsel. *People v. Mayo*, 198 Ill. 2d 530, 538 (2002). Likewise, requiring an unequivocal waiver prevents a defendant from manipulating the system by going back and forth between his request for counsel and his wish to proceed *pro se*. *Id.* However, a request is not equivocal merely because it is expressed as a fallback or a second choice to seeking new or private counsel. *Rodriguez-Aranda*, 2022 IL App (2d) 200715, ¶ 36.

¶ 37 Here, when defendant was unable to retain private counsel in June and July of 2022, he sought to proceed *pro se*. Defendant's request to proceed *pro se* was a second choice, but it was not equivocal. Moreover, this case is distinguishable from the cases upon which the State relies, in which the trial courts initially *granted* the defendants' requests to proceed *pro se* but denied subsequent post-appointment requests when defendants began to vacillate. *People v. Rainey*, 2019 IL App (1st) 160187, ¶ 61 (the trial court twice allowed the defendant to proceed *pro se* before denying his third request), and *Meeks*, 249 Ill. App. 3d 152, 163, 169-70 (1993) (concerning, *inter alia*, the participation of standby counsel for a defendant whose request to proceed *pro se* had initially been granted). Here, the trial court never permitted defendant's request to proceed *pro se*.

¶ 38 The State also points to defendant’s actions around the time that his motions for pretrial release were pending. It notes that, despite the court’s appointment of counsel, defendant both attempted to hire private counsel and continued to file *pro se* motions, an act that the trial court found to be obstructionist. In *Jackson*, 2026 IL App (3d) 250051-U, ¶ 15, this court reasoned that “[W]hat the State finds to be obstructionist behavior instead shows the defendant’s attempt to manage the case after his request to proceed *pro se* was denied.” Indeed, this behavior occurred after defendant had been improperly denied the opportunity to proceed *pro se* at the hearing on the motion to suppress. This behavior cannot constitute a retroactive waiver by conduct of defendant’s right to proceed *pro se* at the hearing on the motion to suppress, which of course impacted crucial evidence introduced at trial. Nor does it somehow constitute obstructionist behavior warranting the denial of the right to self-representation at trial.

¶ 39 Having found that the trial court denied defendant’s sixth amendment right to self-representation from August 15, 2022, through the conclusion of his bench trial, we vacate the order denying the motion to suppress, as well as defendant’s conviction and sentence, and remand the case for further proceedings. We thus do not reach defendant’s arguments regarding the trial court’s rulings in the motion to suppress or his challenge to the constitutionality of the UPWF statute.

¶ 40 III. CONCLUSION

¶ 41 The judgment of the circuit court of Du Page County is vacated and the case is remanded for proceedings consistent with this disposition.

¶ 42 Vacated and remanded.