STATE OF MICHIGAN

COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN, Plaintiff-Appellee,	UNPUBLISHED January 18, 2011
v	No. 295049 Kent Circuit Court
DAMON JERALD BRADLEY, Defendant-Appellant.	LC No. 08-008128-FC

Before: MARKEY, P.J., and ZAHRA and DONOFRIO, JJ.

PER CURIAM.

Defendant appeals as of right his jury trial convictions of armed robbery, MCL 750.529, and assaulting/resisting/obstructing an officer during the performance of his duties, MCL 750.81d(1). Because, the trial court did not err when it allowed defendant to represent himself at trial, did not err in instructing the jury, and did not err in declining to order a second competency evaluation, we affirm.

I

This case stems from an incident that occurred during the early morning hours of July 4, 2008 at Joe Martini's bar in Grand Rapids, Michigan. There was a special event birthday party at the bar that evening and Shannon Bowman was collecting a $10 cover charge to enter the bar. Bowman testified at trial that she was seated at the front of the bar collecting the cover charge when two men approached the front of the bar seeking entry. One of the men was defendant and the other was Trinity Nelson. Bowman stated at trial that there was a "casual" or "nice" dress code in place for the party. According to Bowman, neither of the men met the dress code requirements because defendant was wearing a white t-shirt and Nelson was wearing a jersey. Bowman stated that when security informed the men that they were not dressed appropriately and could not enter the bar to attend the party, both men were unhappy, did not understand, and insisted that they should be able to enter. The discussion continued for about 10 to 15 minutes and the person whose birthday it was, Lacey Jones, came to the entrance and explained that they could not enter as a result of the dress code. Bowman testified that after a lengthy discussion at the bar entrance, defendant stated, "I'm gonna [sic] come back and shut you down." Both men then left the bar.

According to Bowman, about 40 minutes later the two men returned to the bar and entered. Bowman testified that Nelson had a long-barreled handgun by his side, then raised it,

and pointed it at her. She also testified that Nelson was "waving" the gun around. At first Bowman froze and then begged for her life. Bowman was scared the whole time. Bowman stated that when they saw that someone had a gun in the bar, everyone in the club started screaming that someone had a gun then tried to run. Daniel McMillon, a club promoter in attendance, testified that he saw Nelson trying to shoot the gun but it would not shoot. Then shortly thereafter, according to Bowman, parts started to fall off the gun and it appeared that the gun was falling apart. Bowman grabbed the money box but defendant "snatched" it from her hands and said, "This is mine." Bowman also testified that she could have handed the box to defendant out of fear for her life because of the gun.[1] Bowman testified that defendant and Nelson ran out the front door of the bar and headed to another parking lot where they jumped into an Explorer. As people were scattering, McMillon ran after defendant and Nelson and saw them get into the white Explorer. He then tried to chase them but stopped when he saw police taking over.

Officer Scott Ranburger of the Grand Rapids police department testified that he was on road patrol at the time of the incident at Joe Martini's on July 4, 2008. As he was driving along 28th Street he noticed suspicious activity. He saw two individuals running and it looked like they had something in their hands. When Ranburger turned his cruiser around to get a better look at what was going on, he was flagged down by a person (Mr. House) yelling that he had been robbed by "two guys" with "a great big gun." House jumped into the back of Ranburger's cruiser and then they both saw a white Explorer pulling onto the road. Ranburger engaged the spotlight on his cruiser as the Explorer drive past his car. House identified the two men in the car as the perpetrators. Ranburger followed the Explorer which travelled at posted speeds for a short time and then sped up to over 70 mph and eventually ended up traveling through Griggs Park. Ranburger initially gave chase but relented when assistance arrived because he had House in the cruiser. Ranburger's police cruiser had a video camera and the chase was recorded. The prosecutor played the recording for the jury. Ranburger testified that other officers picked up pursuit of the Explorer on the other side of the park where the Explorer came to a stop and a foot chase ensued.

Officer Greg Bauer of the Grand Rapids police department heard a broadcast over his cruiser radio about the robbery at Joe Martini's and began pursuit. Bauer came across the Explorer parked and saw two men running. Bauer chased defendant and ordered him to stop and get on the ground. Eventually defendant tripped and fell. Defendant made it to his feet but Bauer corralled him against a porch. Defendant continued "pushing" and "twisting" and was able to spin away from Bauer. Bauer then deployed his taser to stop defendant from running. Bauer fell on top of him and sat on his back because defendant was struggling with him and trying to get away. Bauer testified that he had to deploy his taser a second time when he was trying to handcuff defendant because defendant continued to resist. Officer Greg Rekucki

[1] Bowman estimated that the cash box contained approximately $2,000 to $3,000.

testified that he heard Bauer in foot pursuit of defendant and proceeded to that location. On arrival, he saw defendant stumble and assisted in handcuffing defendant. Bauer and Rekucki both testified that crumpled clumps of money fell out of defendant's pants during his arrest and more money was found during the booking search. Officer Tony Leonard secured the white Ford Explorer after defendant and Nelson abandoned it. Leonard found a live large caliber bullet in the passenger door storage compartment and a metallic cash box containing only "guest passes" used instead of cash to enter a bar. Police found defendant's fingerprints on the exterior of white Explorer.

Jean Malamis testified that his wife is the owner of Joe Martini's bar and he is the general manager. Malamis was present during the incident. He stated that Joe Martini's has six surveillance cameras that were operating on the night of the incident. Malamis made copies of the surveillance footage and provided them to the Grand Rapids police. The DVDs do not have audio and were dated and time stamped July 4, 2008, 1:16:09 a.m. The prosecutor showed the footage of defendant and Nelson returning to the bar and entering the bar to the jury at trial. At trial, Bowman narrated the silent videotape of the events. Bowman identified defendant and Nelson on the DVD as well as herself. She then described the video showing Nelson and defendant walking into the bar, Nelson walking through the bar with a gun, and defendant taking the cash box.

Defendant presented Trinity Nelson to testify in his defense. Nelson testified that he and defendant had been drinking vodka at defendant's house and then went to the bar in a white Ford Explorer. Nelson admitted that he was angry when he was not allowed to enter because of his attire and returned to the bar with a gun because he "felt like, you know, these was friends of mine, and they didn't want to let me in the club, I felt like since I can't come in, then I don't want nobody in there. I wanted to shut the club down, I didn't want no party going on." Nelson stated that he walked through the club with the gun to put fear in people, especially the club promoter. He stated that at one point the gun fell apart and he picked up the cylinder off the ground before they left. Nelson testified that he did not point the gun at anyone, did not intend to rob the club, and did not see defendant take the money box. Nelson admitted that the cash box was in the back seat of the Explorer, but when the prosecutor asked Nelson how the cash box got into the Ford Explorer, he responded, "I don't know. I guess he must have had it. I don't know." Nelson admitted that he pleaded guilty to armed robbery for his role in this incident.

The jury found defendant guilty of armed robbery, MCL 750.529, and assaulting/resisting/obstructing an officer during the performance of his duties, MCL 750.81d(1). Defendant now appeals as of right.

II

Defendant first argues that the trial court erred by allowing defendant to represent himself at trial because the trial court did not substantially comply with the requirements to effectuate a valid waiver of defendant's constitutional right to counsel. Defendant did not preserve this issue at trial and therefore, this Court reviews the issue for plain error. *People v Carines*, 460 Mich 750, 764; 597 NW2d 130 (1999). A defendant must establish that the error was plain, and that the error affected the outcome of the proceedings. *Id*. at 734. Reversal is warranted only when the plain, forfeited error resulted in the conviction of an actually innocent defendant or when the

error seriously affected the fairness, integrity or public reputation of judicial proceedings independent of the defendant's innocence. *Id*. at 736-737.

Under the Sixth Amendment of the United States Constitution, a criminal defendant has the right to "the assistance of counsel for his defense." US Const, Am VI; *Gideon v Wainwright*, 372 US 335, 343; 83 S Ct 792; 9 L Ed 2d 799 (1963). The Sixth Amendment applies to the states through the Due Process Clause of the Fourteenth Amendment. *Id*. at 343-344. The Sixth Amendment right to counsel attaches at "the initiation of adversary judicial criminal proceedings" such as a preliminary examination. *Moore v Illinois*, 434 US 220, 231; 98 S Ct 458; 54 L Ed 2d 424 (1977). Once the Sixth Amendment right to counsel attaches, a defendant has a right to counsel at all "critical" proceedings. *People v Frazier*, 478 Mich 231, 244 n 11; 733 NW2d 713 (2007). However, a defendant has the right to waive the assistance of counsel at trial and instead invoke his right to self-representation. *Iowa v Tovar*, 541 US 77, 87; 124 S Ct 1379; 158 L Ed 2d 209 (2004). A defendant's waiver must be knowing, intelligent, and voluntary. *Id* at 88.

Michigan law also protects a defendant's right to self-representation. Const 1963, art 1, § 13; MCL 763.1. For a defendant's request to waive the assistance of counsel and represent himself or herself to be valid under Michigan law, the request must meet a three-part test set out in *People v Anderson*, 398 Mich 361; 247 NW2d 857 (1976). First, the request must be unequivocal. *Id*. at 367. Second, the trial court must determine whether the defendant is knowingly asserting his right to self-representation. *Id*. at 368. Third, before accepting the request, the trial court must determine whether "the defendant's acting as his own counsel will not disrupt, unduly inconvenience and burden the court and the administration of the court's business." *Id*. MCR 6.005(D)(1) sets out the procedures a trial court should follow, consistent with *Anderson*, when a defendant requests to represent himself. The trial court must advise the defendant of the charge, the maximum possible prison sentence for the offense, any mandatory minimum sentence, and the risk involved in self-representation. MCR 6.005(D); *People v Williams*, 470 Mich 634, 642-643; 683 NW2d 597 (2004). Although a defendant has waived the assistance of counsel, at each subsequent proceeding the record must affirmatively show that the court advised the defendant of the right to a lawyer's assistance, and to assistance at public expense if he is indigent, and that the defendant waived those rights. MCR 6.005(E); *People v Lane*, 453 Mich 132, 137; 551 NW2d 382 (1996). The presence of standby counsel does not satisfy the notice and waiver requirements. MCR 6.005(E); *Lane*, 453 Mich at 139.

Trial courts must substantially comply with the waiver of counsel procedures set forth in case law and the court rule before granting a defendant's request to represent himself. *People v Russell*, 471 Mich 182, 191; 684 NW2d 745 (2004). Substantial compliance requires the court to discuss with the defendant the waiver of counsel requirements, and to find that the defendant "fully understands, recognizes and agrees to abide by the procedures." *Id*.

The trial court initially set the trial date as May 26, 2009. On that date, defense counsel informed the trial court that defendant would not communicate with him, refused to see him at the county jail, and did not accept any letters or correspondence that defense counsel sent him. The trial court asked defendant if he wanted counsel to represent him at trial and initially defendant's response was, "I don't know how I can represent myself." After a short recess,

defendant indicated that he had changed his mind and that he wanted to represent himself. The trial court stated as follows:

> All right, that's fine, and I don't have any problem with you representing yourself. I do want to mention a couple of things, though. One is, this is a serious charge for which you could get life in prison if you're convicted. It is a risky thing for someone who is not trained in the law to represent themselves. I feel pretty confident here that Mr. Grace would be in a much better position to represent you. I just want to make sure you've considered that. This is a decision you wish despite knowing the risks or representing yourself; you understand that?

Defendant responded by asking for an adjournment so he could properly prepare for trial. While the prosecutor opposed the adjournment because witnesses were scheduled to arrive, the trial court ultimately granted defendant's request. The trial court then stated as follows to defendant:

> And the other thing I want you to know, Mr. Bradley, is I'm going to leave Mr. Grace on as consulting attorney so that you can consult with him about things. You can't have it both ways. You either represent yourself or he represents you, one or the other. But he will be there for you to consult with if you have any questions. I'll have him here for your trial so that you can talk to him and get advice from him if you're so inclined.
>
> In fact, if you decide prior to trial that you want Mr. Grace to represent you, I believe he's ready, willing and available and able to do so. So if you change your mind, we will have Mr. Grace represent you at trial. But right now, I assume that despite knowing the risks of representing yourself, despite knowing that you're subject to the same Court Rules and evidentiary rules as an attorney would be, that you do want to represent yourself, correct? I just want to make sure I'm right about that.

Defendant responded, "I believe that's correct." After the adjournment, defense counsel forwarded all relevant materials regarding defendant's case to defendant in jail. On June 12, 2009, defendant sent a letter to the trial court stating that the jail denied him access to the law library and asking for access. On July 8, 2009, the trial court sent a letter to the Captain Randy Demory at the Kent County Jail requesting that defendant be granted reasonable access to the jail law library so he could prepare for trial which was scheduled to occur on August 31, 2009. The trial court sent a copy of that letter to defendant and, in a separate letter, stated as follows, "Mr. Bradley, if you wish Mr. Grace to represent you, you should make sure he is aware of that. If you wish to represent yourself, that is also your choice. Whatever you decide." On the date set for trial, August 31, 2009, the following exchange occurred at the outset:

> *The Court*: You are Mr. Bradley, sir; is that right?
>
> *Defendant*: I believe so.
>
> *The Court*: Alright, Mr. Bradley, do you wish to represent yourself or have Mr. Grace represent you in this matter?

Defendant: I believe Mr. Grace did show that he's unwilling to represent the person on trial, so I have to proceed on my own.

The Court: Mr. Grace, are you unwilling to represent the defendant?

Mr. Grace: No, sir. I am here and ready.

The Court: It's your choice Mr. Bradley. And I would tell you that you have every right to represent yourself if you want. If you prefer to be represented by counsel, Mr. Grace will represent you. He indicated he's able, ready, and prepared to do so.

I would note for you that the charge that you're currently facing here and to which you're to be tried starting today is a count of armed robbery. If you're found guilty of that, the maximum sentence you could receive is life in prison, or any term of years. If there's any kind of aggravated assault or serious injury involved, you'd be required to be incarcerated for not less than two years.

There's also another count of resisting and obstructing a police officer. That is a felony also. That carries a maximum penalty of two years in prison and/or a fine of up to $2,000.

With respect to both of those charges, I should tell you that it's being alleged here that this would be at least your third felony conviction. The jurors will not be told about that. We're simply going to go on the armed robbery charge and resisting and obstructing a police officer charge. But if, for some reason, you are convicted of either one of those two offenses, then the – and if it's shown later on that, in fact, you do have two prior felony convictions, the maximum potential sentence you'd receive is doubled. And on the armed robbery charge, of course, it's already a possibility of life in prison. But on the resisting and obstructing a police officer, for example, if you were only found guilty of that, the maximum penalty, rather than being two years and/or $2,000, would be four years and/or $4,000. Do you understand that?

Defendant: I'm ready to proceed.

The Court: All right. I'll take that as a understanding because the only other thing I wish to advise you of is while I'm – if you wish to represent yourself, that's okay. There are risks of that. I mentioned that to you other times you've been in front of me, that you are still subject to the court rules, you're subject to the same laws that attorneys are subject to here. I assume you're not as well versed in these procedures as an attorney would be. I'm providing Mr. Grace to be with you in case you want to consult with him during the trial, but if you do things that aren't permitted by law, I'll make a ruling right away and you're subject to the same court rules an attorney would be.

Given the seriousness of this case, carrying a potential life in prison, it's – it seems to be very risky to go forward on your own and not have an

attorney represent you. But you're indicating that's what you wish; is that correct, you want to represent yourself?

Defendant: As stated before, I have no choice but to represent the person charged.

The Court: No, you have choices. I told you Mr. Grace will represent you today. He's been involved with this, he's knowledgeable about the case, and he indicates he's ready, willing, and able, if you want him to, to represent you. So there is a choice there. And at any time, you could have hired your own attorney to represent you, too, so there have been choices. But we're ready to do this trial. This has been sitting around for a long time and we're ready to proceed.

So the question today is whether you want Mr. Grace or whether you're going to represent yourself.

Defendant: I'm already prepared.

The Court: All right. Thank you, sir.

Mr. Grace: Your Honor, I'm just wondering, if I may, I'll leave Mr. – Mr. Bradley, in court, can sit here or there, whatever Mr. Bradley would prefer.

The Court: Unless Mr. Bradley prefers otherwise, I'd just as soon have you close to him so if he wants to consult with you and whisper to you or whatever, you can give him advice.

Is that okay with you Mr. Bradley?

Defendant: I would prefer he can sit back there.

The Court: All right. We'll have him sit back there.

Mr. Doyle?

Prosecutor: Yes, your Honor. I have wanted to address an issue, but, your Honor, I believe you've covered it under Michigan Court Rules 6.005(D)(1)(2), the employment of or waiver in this particular case of a lawyer. As indicated in *People v Williams*, 470 Mich 634, a 2004 case, I think you've already adequately done that today.

Any other issue, your Honor, regarding the defendant representing himself, depending on whether it comes up in trial or how it comes up, we can address that with possibly a special jury instruction when we get to that point.

Other than that, you Honor, the People are ready to proceed.

The Court: Okay. All right, we'll have the jurors summoned – summoned up then.

Defendant specifically asserts that the trial court's warnings to defendant about the risks of representing himself at trial were "insufficient to establish that Mr. Bradley was properly and thoroughly advised of the risks of self-representation at trial and was insufficient to ensure that he had any real or substantive idea of what dangers self-representation might include; simply, there was no basis upon which a reviewing court might find a valid and effective waiver." Defendant does not further explain this argument. The record belies defendant's claim.

Again, before a defendant may represent himself, the trial court must determine that: (1) the defendant's request is unequivocal; (2) the defendant is asserting his right knowingly, intelligently, and voluntarily; and (3) the defendant's self-representation will not disrupt, unduly inconvenience, and burden the court. *Russell*, 471 Mich at 190. In addition, pursuant to MCR 6.005, the trial court has a duty to inform the defendant of the charge and penalty he faces, advise him of the risks of self-representation, and offer him the opportunity to consult with retained or appointed counsel. MCR 6.005(D)(1). The trial court need only substantially comply with these requirements, and if the court is uncertain regarding whether any of the waiver procedures are met, it "should deny the defendant's request to proceed in propria persona, noting the reasons for the denial on the record." *Russell*, 471 Mich at 191 (citation omitted).

The record is more than clear that defendant's request was unequivocal, that defendant asserted his right knowingly, intelligently, and voluntarily. *Russell*, 471 Mich at 190. The trial court gave defendant every opportunity to be represented by Mr. Grace. Defendant was adamant that he would represent himself at every turn. The trial court repeatedly explained the risks associated with representing himself to defendant, but defendant stated that he wanted to represent himself. Defendant even asked the trial court for an adjournment so he could have time to prepare for trial. The trial court granted defendant's request despite inconveniencing the prosecutor who had witnesses present for trial on the first trial date. On defendant's request, the trial court contacted the jail to ask that defendant's wishes to use the jail law library to prepare for trial were reasonably accommodated. When the date of trial arrived, the trial court again advised defendant of the risks associated with representing himself and explained the charges to him and the possible sentences he faced if convicted of either charge. Defendant continued to state that he was prepared and ready to proceed on his own behalf. Even so, the trial court asked Mr. Grace to remain present and available if defendant had any questions throughout the course of trial. The trial court even asked defendant where he would prefer Mr. Grace to sit, so that defendant could whisper questions to him if the need arose.

Moreover, the trial court's determination that defendant's self-representation would not disrupt, unduly inconvenience, and burden the court was also a proper determination. *Russell*, 471 Mich at 190. Defendant was professional and appropriate at all times throughout the course of trial, especially when the jury was present. Prior to trial, on several occasions before the court, defendant's answers were non-responsive and defendant took to citing "UCC jargon" and speaking in what can only be described as legal gibberish. However, defendant did not make any nonsensical or inappropriate comments before the jury and was at all times able to rationally and professionally communicate with the trial court, the prosecutor, and witnesses. Defendant was prepared for trial, asked probative questions of witnesses, raised objections, and overall demonstrated an understanding of our criminal justice system. Defendant has not shown plain error.

Defendant also contends that defendant's request for self-representation cannot be seen as unequivocal when defendant abandoned his own representation and asked Mr. Grace to deliver closing argument on his behalf. We agree with the prosecutor's response to this issue, that "the fact that [d]efendant subsequently changed his mind does not mean that his original request to represent himself was equivocal." Defendant was adamant that he wanted to represent himself leading up to trial, at the outset of trial, and throughout nearly four days of trial despite repeated warnings tendered by the trial court. Defendant has not shown error.

Defendant also asserts that the trial court had concerns about defendant's mental state and for that reason should not have concluded that defendant was adequately advised of the risks of self-representation. The record does reflect that early on in the proceedings defendant would almost exclusively respond to questions by the trial court in nonsensical terms citing "UCC jargon." Also, defendant sent the trial court a series of motions referencing the UCC but having nothing to do with the instant case against him. The trial court, not being able to communicate with defendant, sent defendant for a forensic examination of his mental well-being. Defendant refused to participate with the examination and physically left the room. When defendant appeared before the trial court the next time, defendant eventually ceased his UCC references and actually began to respond to the trial court in rational terms. From that point on, defendant was able to effectively communicate his positions to the trial court and counsel including representing himself, asking for an adjournment to prepare for trial, requesting that Mr. Grace forward evidence to him for his trial preparation, and sending a letter to the trial court asking it for assistance in accessing the jail law library. And, we do find it important that defendant did not lapse into the "UCC jargon" at any point during trial. Instead, defendant was coherent, rational, and focused on his own representation when it suited his needs. Defendant has not shown error.

III

Defendant next argues that the trial court erred when it refused to instruct the jury on unarmed robbery, MCL 750.530. He specifically asserts that unarmed robbery is a necessarily included lesser offense of armed robbery and evidence was presented in this case which supported a conviction of unarmed robbery. We review de novo claims of instructional error. *People v McGhee*, 268 Mich App 600, 606; 709 NW2d 595 (2005). However, we review for an abuse of discretion a trial court's determination that a jury instruction is not applicable to the facts of the case. *People v McKinney*, 258 Mich App157, 163, 670 NW2d 254 (2003). Importantly, "[t]he right to a properly instructed jury is fundamental to the right to receive a fair trial." *People v Embree*, 68 Mich App 40, 44; 241 NW2d 753 (1976).

All of the elements of a necessarily included lesser offense are contained in a greater offense. *People v Walls*, 265 Mich App 642, 645; 697 NW2d 535 (2005). However, the greater offense contains at least one element that the necessarily included lesser offense does not. *Id*. at 644. Therefore, on request, an instruction on a necessarily included lesser offense is proper "if the charged greater offense requires the jury to find a disputed factual element that is not part of the lesser included offense, and a rational view of the evidence would support it." *People v Silver*, 466 Mich 386, 388; 646 NW2d 150 (2002); *Walls*, 265 Mich App at 644. If evidence has been presented in the case that supports a conviction of a lesser included offense, the refusal to

give the requested instruction is error requiring reversal. *People v Hendricks*, 446 Mich 435, 442; 521 NW2d 546 (1994).

Unarmed robbery is a necessarily included lesser offense of armed robbery. *People v. Reese*, 466 Mich 440, 446-447; 647 NW2d 498 (2002). The element distinguishing unarmed robbery from the offense of armed robbery is the use of a weapon. *Id*. at 447. Thus, to find error requiring reversal, we must determine whether the facts surrounding the use of a gun were disputed and a rational view of the evidence would support an unarmed robbery instruction. *Id*.; *Walls*, 265 Mich App at 644. Testimony at trial established the presence of a gun at the robbery. Bowman saw Nelson with a long-barreled gun at his side when he entered the bar, watched him raise the gun so that it was pointing directly at her, and then she watched him walk throughout the bar with the gun "waving" it around. There was also testimony that partygoers inside the bar were agitated and scattering because they saw the gun and were scared as Nelson walked toward the back of the bar. Nelson admitted that he brought the gun into the bar because he was angry that he was not allowed into the birthday party and that he wanted to shut down the party. There was even testimony that Nelson was trying to fire the gun but the gun was malfunctioning and started to fall apart. Importantly, Bowman specifically testified that she was scared because of the presence of the gun and that was why she let the cash box go freely when defendant "snatched" it. There was no other testimony indicating that defendant or Nelson did any other action that put Bowman or the other people present in fear. Under these facts, where people were scattering and actually yelling that someone's got a gun, defendant's argument that he did not see the gun or was not otherwise aware that Nelson had a gun, is irrational and not supported by the evidence. Our review of the record reveals that a rational view of the evidence does not support an unarmed robbery instruction. *Reese*, 466 Mich at 448. The trial court did not abuse its discretion in declining to instruct the jury on unarmed robbery.

IV

Defendant has also filed a Standard 4 brief with this Court. In it, defendant argues that the trial court committed reversible error when it ordered defendant to undergo a forensic examination, then vacating that order, and finding defendant competent to stand trial. He also asserts that the trial court erred when it then denied defendant's written request for a forensic examination and then proceeding to trial without a competency hearing. "[A] defendant is presumed competent to stand trial unless his mental condition prevents him from understanding the nature and object of the proceedings against him or the court determines he is unable to assist in his defense." *People v Mette*, 243 Mich App 318, 331; 621 NW2d 713 (2000). Where a defendant does not raise the issue, "the trial court ha[s] no duty to sua sponte order a competency hearing," *People v Inman*, 54 Mich App 5, 12; 220 NW2d 165 (1974), unless facts are brought to the trial court's "attention which raise a 'bona fide doubt' as to the defendant's competence." *People v Harris*, 185 Mich App 100, 102; 460 NW2d 239 (1990).

Here, it is true that at the beginning of these proceedings, defendant's statements to the trial court may have been sufficient to create a "bona fide doubt" regarding his competency. Defendant questioned the court's jurisdiction over him and raised questions that he may be in an admiralty court. Defendant repeatedly answered questions with the same phrase, "I accept that statement for value and honor," followed by a string of indiscernible "UCC jargon." The trial court believed it could not communicate with defendant and at that point did request a forensic

review of defendant's mental health on December 1, 2008. Dr. David Boersma attempted to perform a forensic competency examination on January 28, 2009, but defendant refused to cooperate stating that he did not want to participate in the examination. Defendant declined to provide a reason for his refusal to participate and walked out of the interview room. Dr. Boersma also reported that defendant had been seen by mental health staff at the jail on two occasions and defendant denied having a history of psychiatric problems, had no current mental health concerns, and had no need for contact with mental health staff. Thereafter, the trial court rescinded the order for a competency evaluation. Defendant continued to speak and communicate to others only in the UCC jargon until the trial court explicitly informed him, in May 2009, that defendant would stand trial on the charges that day. It seems to this Court that as soon as defendant was aware that the trial court intended to proceed to trial despite defendant's senseless communications, defendant abandoned the UCC jargon and instead began to communicate clearly and even expressed his desire to represent himself. It was at this point that defendant asked for an adjournment to prepare his defense. On the date of trial, defendant was prepared, was appropriate at all times, and in fact, was an effective advocate for himself. While defendant's statements during the early portion of this case may have necessitated a competency hearing, that was certainly not the case two months before trial and during trial. The record is plain that defendant understood the charges against him, and not only was able to assist in his own defense, but he actually put on his own defense over the course of a four day trial. In other words, there is simply no indication on the record before us that defendant was incompetent to stand trial. Therefore, the trial court did not plainly err in failing to order a second competency hearing.

V

The trial court did not err when it allowed defendant to represent himself at trial, did not err in instructing the jury, and did not err in declining to order a second competency evaluation. Defendant has not shown error on this record, and we affirm defendant's convictions.

Affirmed.

/s/ Jane E. Markey
/s/ Brian K. Zahra
/s/ Pat M. Donofrio