

No. 1-13-0089

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IN THE  
APPELLATE COURT OF ILLINOIS  
FIRST JUDICIAL DISTRICT

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THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from the
	)	Circuit Court of
Plaintiff-Appellee,	)	Cook County.
	)	
v.	)	No. 12 CR 5322
	)	
LARRY SPEARS,	)	Honorable
	)	Joseph G. Kazmierski, Jr.
	)	and Neera Lall Walsh,
Defendant-Appellant.	)	Judges Presiding.

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PRESIDING JUSTICE FITZGERALD SMITH delivered the judgment of the court.  
Justices Howse and Epstein concurred in the judgment.

**O R D E R**

¶ 1 *Held:* The trial court acted within its discretion in granting the defendant's request to act as his own attorney at trial. Additionally, the court did not err in denying the defendant's requests for standby counsel before and during the trial.

¶ 2 Following a bench trial in 2012, defendant Larry Spears was convicted of aggravated battery and was sentenced to five years in prison. On appeal, defendant contends that plain error occurred when the trial court allowed him to act as his own attorney. In the alternative, defendant argues the trial court abused its discretion in denying his request for standby counsel. We affirm.

¶ 3 On March 14, 2012, defendant was charged with three counts of aggravated battery to Tyrone Pickens. Count I alleged that on or about March 3, 2012, defendant caused great bodily harm by stabbing Pickens in the back with a knife in violation of subsection (f)(1) of the aggravated battery statute (720 ILCS 5/12-3.05(f)(1) (West 2012)). Count II charged defendant with committing a battery that caused great bodily harm (720 ILCS 5/12-3.05(a)(1) (West 2012)). Count III charged defendant with committing aggravated battery by stabbing Pickens in the back on a public way (720 ILCS 5/12-3.05(c) (West 2012)).

¶ 4 Defendant represented himself at a preliminary hearing, a transcript of which is not contained in the record. On March 30, the court asked defendant if he had legal representation, and defendant responded, "I would like an attorney." Assistant Cook County public defender (APD) Vernon Schleyer was assigned to represent defendant.

¶ 5 At a status date on April 26, defendant was represented by a different public defender, who asked for a May 3 status date, to which the court agreed. Defendant then addressed the court, stating: "Your Honor, last time I was here, I had asked my attorney for a demand for a speedy trial." Defendant went on to state: "I don't know if [such a demand] was made or not, but I'd like to have them 35 days on my time." The court told defendant he should confer with APD Schleyer on that point on May 3.

¶ 6 At the May 3 status date, the following colloquy occurred when defendant's case was called:

"DEFENDANT: Last time I was here, your Honor, I think it was the 9th of last month, I asked my attorney to make a motion for a speedy trial. I would like to know if it was done.

MR. SCHLEYER [assistant public defender]: It was not done. There is evidence Mr. Spears is asking me to investigate."

¶ 7 Defense counsel described that evidence to the court, and the court explained to defendant that his counsel was not yet ready for trial. After further discussion, the court set a status date of June 7 by agreement of the parties. Defendant then addressed the court:

"DEFENDANT: Your Honor, I would like to know do I have a right to a speedy trial?

THE COURT: You do have a right to a speedy trial. However, while you're represented by counsel, counsel's wishes control. Your attorney has to be ready for trial and able to go to trial in order to demand [a] speedy trial, and he's looking at your best interest and the bottom line is –

DEFENDANT: But I want my term to be running.

THE COURT: – you cannot demand trial in the absence of your attorney not demanding trial. Do you understand?

DEFENDANT: I don't.

THE COURT: Okay.

DEFENDANT: I don't understand.

THE COURT: You by yourself cannot demand trial while Mr. Schleyer represents you.

DEFENDANT: So if I represent myself, I can demand a speedy trial?

THE COURT: Technically you could.

THE DEFENDANT: Well, can I represent myself, your Honor? I'm asking.

THE COURT: All right, we're going to pass this, and I'm going to ask Mr. Schleyer to talk to you about the hazards of representing yourself. Did you go to law school?

DEFENDANT: I know enough about representing myself, your Honor."

¶ 8 The court passed the case after directing APD Schleyer to confer with defendant. When defendant's case was recalled, the court asked defendant if he talked to his counsel. The following exchange occurred:

"DEFENDANT: [Schleyer] seems to be kind of heated, your Honor, because I want to represent myself.

THE COURT: He doesn't seem to be heated about it at all, actually, but my question to you was did you talk to him.

DEFENDANT: We didn't have much to talk about. He just told me to go ahead and represent myself.

THE COURT: All right. Is that still your desire? Do you want to represent yourself?

DEFENDANT: Yeah, I've got a motion right here for a speedy trial.

THE COURT: All right, well, I haven't appointed you to represent yourself yet or allowed you to do that.

DEFENDANT: Can you at least look at my motion?

THE COURT: Not yet. Hold on. Do you want any time to think about this before you make such a drastic decision? \*\*\* I mean, if this is a ploy to try and demand a speedy trial and then you want to ask for an attorney later, that's not going to work.

DEFENDANT: I'm not going to ask for an attorney later. I just want the term to be running. I want a speedy trial. I feel like I've got a right, a constitutional right to a speedy trial."

¶ 9 The court told defendant that self-representation was a complex matter and his attorney was experienced at handling criminal cases. The court then admonished defendant as to the three aggravated battery counts and told him those offenses are Class 3 felonies, carrying a sentence of between two and five years in prison.

¶ 10 Defendant said he thought the offense was a Class 4 felony with a sentencing range of between one and three years in prison. The court replied that the crime was a "Class [3], which is exactly why you shouldn't be representing yourself, because you don't know the law." The prosecutor then told the court that defendant was subject to an extended-term sentence and "needs to be advised of that, too." The court admonished defendant he was eligible for an extended-term sentence of up to 10 years in prison due to his criminal background. The court also advised defendant that if he elected to represent himself, he could not later contend he had received ineffective assistance of counsel. Defendant responded, "I understand that, your Honor. I'd rather take my chances."

¶ 11 The court stated that it had advised defendant of the applicable sentencing range and told defendant he had the right to an attorney and if he could not afford to pay private counsel, APD Schleyer would represent him. Defendant responded that he understood. The court asked if defendant still wished to represent himself, and defendant responded he did.

¶ 12 The court then stated:

"All right, for the record, I find talking with the defendant, there does not appear to be any physical or mental defects impairing his judgment, that his desire to represent himself is free and voluntary, and that he's answered all of my questions in a coherent manner. Although the Court, obviously, does not agree with his decision to represent himself, he is under the law completely entitled to represent himself, and he will be allowed to represent himself.

The Public Defender's Office is given leave to withdraw pursuant to Mr. Spears' wishes."

¶ 13 APD Schleyer told the court he had tendered discovery to the State. A trial date of June 4 was set. The court advised defendant that he would need to file an answer to discovery.

¶ 14 The following exchange then took place

"DEFENDANT: I would like to know if I can get the 41 days, your Honor, from the very first day I asked my attorney to demand a speedy trial and it wasn't done. I don't know why a demand for a speedy trial couldn't have been done that time. I want to know can I –

THE COURT: Because your attorney wasn't ready, and he didn't demand trial, [and] your attorney's wishes control, not yours. Now that you represent yourself, your wishes control. So you wish to demand a speedy trial; is that right?

DEFENDANT: Yes.

THE COURT: All right, the record will so reflect. Now, do you have your written motion that you want to file?

DEFENDANT: Yes. I have one for the State's Attorney."

¶ 15 The prosecutor acknowledged receipt of defendant's speedy trial request but objected to the date of the demand as April 9. The prosecutor said defendant was "trying to claim an additional month of speedy trial time, and I think that's inappropriate. The demand should be stricken. Defendant stated, "I just asked you about that," but the record does not reveal to whom defendant was speaking. The court then addressed defendant:

"THE COURT: Your [speedy trial] demand is not going to be allowed from April. It will be allowed from today.

DEFENDANT: Okay. Can we change the date to today?

THE COURT: Sure. The demand will be effective starting today."

¶ 16 Defendant then asked to file a motion for an "evidentiary hearing" to suppress evidence. The court advised defendant that he could not file such a motion while also filing a demand for trial. The prosecutor moved to strike defendant's trial demand and asserted the clock should not begin running to a speedy trial date if defendant intended to file a motion. Defendant responded that he wanted to file a motion to suppress evidence at the next court date.

¶ 17 The court again addressed defendant:

"We can take a short date. You can file a motion. That will be up to Judge Kazmierski to determine since you're demanding trial and you now want to delay your demand. And again, not being a lawyer, I'm just going to tell you this, that when you file a motion, you cannot demand trial at the same time. Speedy trial term is tolled. That means it's not running. And by you saying that you wish to file a motion today, legally –

DEFENDANT: No, the next time.

THE COURT: You're not ready for trial. Okay?

DEFENDANT: Okay.

THE COURT: These are issues we're getting into because you don't know how to represent yourself, and you're demonstrating that to the Court right now. Okay? You cannot demand trial and then want to file a motion at the same time because that means you're not ready for trial."

¶ 18 Defendant submitted his motion to the prosecutor, who noted defendant had filed a motion to suppress evidence that could be addressed June 4. The court allowed defendant leave to file the motion to suppress. Defendant stated he would be ready for trial on the next date. Before adjourning, the court said to defendant that "[t]erm is not running while the motion is pending." Defendant agreed to a continuance to June 4.

¶ 19 On June 4, Judge Joseph Kazmierski presided and noted that his court call had been covered by another judge on the previous date. Defendant appeared *pro se*. Judge Kazmierski noted that he did not preside over defendant's last two court dates. Upon learning that defendant decided on May 3 that he wanted to proceed *pro se*, the court admonished defendant as follows:

"THE COURT: You want to represent yourself? You want to be your own attorney, right?

DEFENDANT: Well, I was forced into –

THE COURT: No. Wait a second. Nobody is going to force you to do anything over here. You have a right to be your own attorney if you want to. That's why I have to advise about certain things. You can tell me what you want to say afterwards but listen to what I have to say first, okay?

DEFENDANT: Okay."

¶ 20 The court advised defendant of the charge against him and of the sentencing range for a Class 3 felony. In response to the court's questions about his age and education, defendant responded he was 61 years old and had completed three years of high school and earned his general education diploma (GED) while in prison. The court advised defendant that if he chose to represent himself, he would be held to the same standard as an attorney and the court could not assist him. The court said it would appoint an attorney to represent defendant if he could not afford one. Defendant said he understood and still wished to represent himself. Defendant said he wanted to suppress the knife used in the stabbing, and the court told him he would have to file a written motion. The court continued the case for two weeks.

¶ 21 On June 18, defendant appeared *pro se* and raised a question about the information in the case, and the court told defendant he would have to "file a motion to dismiss if you think something is wrong with it." The court continued the case until July 16.

¶ 22 On July 16, the court asked defendant if he sought a hearing on his motion to suppress. Defendant responded that he "wanted to know how many days I had on my speedy trial." The following exchange occurred:

"THE COURT: You don't have any because all of the delays so far have either been by your motion or by-agreement with the State, all the cases before me.

DEFENDANT: Could I let it be known to the State and the Court that I want my term to start running with no agreement?

THE COURT: No, you have to make up your mind, either you want all the discovery and you want to do your motions too?

DEFENDANT: Yes.

THE COURT: So you have to [] set those down for hearing so you can get those out of the way before you could start your trial demand.

DEFENDANT: Okay."

¶ 23 The court continued the case until later that week. On July 19, the court denied defendant's motion to dismiss the indictment, stating the charges had been amended to correct a scrivener's error as to the name of the victim. The court continued the case to consider a second motion to suppress filed by defendant.

¶ 24 On August 2, defendant told Judge Kazmierski he wanted to file two additional motions but then agreed to forego those filings if the court would set the case for trial. The court set a trial date of September 25.

¶ 25 On September 25, defendant appeared *pro se*, and a trial was held before Judge Neera Walsh. The prosecutor noted there was outstanding discovery as to the DNA testing. Defendant reiterated that he had made a motion for a speedy trial but agreed to go to trial without the DNA results. The prosecutor said defendant had filed a motion *in limine* to suppress evidence of his prior convictions.

¶ 26 Judge Walsh reviewed the record and noted that Judge Kazmierski had admonished defendant on June 4 about proceeding *pro se*. Defendant responded affirmatively when asked if he was ready to begin trial, and he waived his right to a jury trial. After hearing argument on defendant's motion *in limine*, the court ruled two of defendant's prior convictions would be admitted if defendant chose to testify.

¶ 27 At trial, Pickens testified that he and defendant had been friends for about 12 years. At about 3 a.m. on March 3, 2012, he, defendant and two women were drinking at Pickens' house.

After his guests left, Pickens went to the apartment of a friend, Addie Reddick, and went to sleep.

¶ 28 Pickens received a phone call from defendant in which defendant said he was "going to take my ass out" or "going to kill me, something like that." Pickens testified that there had been no animosity between the two earlier that evening. Pickens suggested that defendant meet him outside, and he and Reddick went down to the vestibule of the apartment building.

¶ 29 Pickens saw defendant's dog "running wild" and defendant walking behind the dog. Pickens turned around to go back into the vestibule because the dog did not like him. When defendant reached the door, he "fanned a knife" at Pickens. Pickens testified he saw defendant coming at him with a knife and called police. When the dog attacked Reddick, Pickens fought off the dog with a wooden walking stick. Defendant stabbed Pickens in the left side of his lower back. After Pickens fell to the ground, defendant swung the knife at him three more times before police arrived. Pickens testified he was hospitalized for four or five days for the treatment of his stab wounds. Pickens identified photographs of his injuries and of the knife used by defendant.

¶ 30 On cross-examination, defendant asked Pickens who was at Pickens' house on the night in question. Pickens responded, "Blacky and some other young lady I met and you." Defendant then said Pickens had given defendant's phone number to a person, and defendant asked who that person was. Pickens responded he did not give anyone defendant's number.

¶ 31 The State called Reddick as a witness, and her account of the stabbing was consistent with Pickens' testimony. Chicago police officer Chuck Kaufmann testified that when he responded to a call of a stabbing in the area of 9800 South Loomis, he saw defendant holding a knife and standing over Pickens. The officer identified the knife that defendant was holding as

pictured in the State's photographic exhibit. On cross-examination, the officer said he did not see defendant stab Pickens. Defendant had a bruise on his forehead. A broken wooden cane was recovered from the scene.

¶ 32 After the State rested, defendant argued that he acted in self-defense. The court found that the State has met its burden to that point and told defendant he could testify or present witnesses in his case. Defendant said he did not wish to testify and would call no witnesses.

¶ 33 In closing argument, defendant asserted he did not instigate the fight with Pickens and that it was a "set-up." The prosecutor responded that Pickens admitted striking defendant only after defendant stabbed Pickens and also pointed to Officer Kaufmann's testimony that when he arrived, defendant was hovering over Pickens with a knife.

¶ 34 The court found defendant guilty on the charged counts. Defendant requested counsel for sentencing, and APD Schleyer was again appointed as defendant's counsel.

¶ 35 APD Schleyer filed a motion for a new trial, which was denied. The court heard arguments in aggravation and mitigation of defendant's sentence. Defendant addressed the court and said that what occurred was an accident. The court sentenced defendant to five years in prison.

¶ 36 On appeal, the State points out that defendant's arguments were not included in the motion for a new trial filed by APD Schleyer. Therefore, defendant's contentions can only be considered under the plain error doctrine. See *People v. Enoch*, 122 Ill. 2d 176, 186 (1988) (an issue is forfeited where a defendant fails to raise it in a post-trial motion). Because the first step in a plain-error analysis is determining whether error occurred at all (*People v. Sargent*, 239 Ill. 2d 166, 189 (2010)), we address the merits of defendant's arguments.

¶ 37 Defendant first contends the trial court abused its discretion in allowing him to act *pro se* where the court was aware that he did not fully understand the consequences of proceeding without counsel. Defendant argues the court should not have let him proceed *pro se* in his attempt to exercise his right to a speedy trial because he did not understand that his *pro se* filings continued to toll the 120-day time limit.

¶ 38 The sixth amendment to the United States Constitution guarantees a defendant the right to the assistance of counsel and also provides the defendant with the correlating right to proceed without counsel. U.S. Const., amend. VI; see also Ill. Const. 1970, art. I, § 8; *Faretta v. California*, 422 U.S. 806, 832 (1975); *People v. Burton*, 184 Ill. 2d 1, 21 (1998). A defendant's waiver of his right to counsel must be voluntary, knowing and intelligent. *People v. Haynes*, 174 Ill. 2d 204, 235 (1996), citing *Faretta*, 422 U.S. at 835. For a defendant to effectively waive his right to counsel, he must be admonished as to the nature of the charge against him, the minimum and maximum sentences applicable in the case, and that he has a right to appointed counsel, pursuant to Illinois Supreme Court Rule 401(a) (134 Ill. 2d R. 401(a) (eff. July 1, 1984)). Whether a defendant has made an intelligent waiver of the right to counsel depends upon the facts and circumstances of each case, including the background, experience and conduct of the accused. *People v. Baez*, 241 Ill. 2d 44, 116 (2011).

¶ 39 A criminal defendant has a constitutional right to represent himself if he makes an unequivocal request to do so. *People v. Miller*, 2013 IL App (1st) 110879, ¶ 127. A defendant's competency to choose self-representation is not based on the level of the defendant's abilities as a lawyer. *People v. Simpson*, 172 Ill. 2d 117, 137-38 (1996). Rather, to exercise the right of self-

representation, a defendant must have "a full awareness of the nature and consequences of his decision to proceed without counsel." *People v. Woodson*, 2011 IL App (4th) 100223, ¶ 23.

¶ 40 Although a court may consider the defendant's decision to act *pro se* to be unwise, a defendant's knowing and intelligent choice to represent himself must be honored based on "that respect for the individual which is the lifeblood of the law." *Haynes*, 174 Ill. 2d at 235, quoting *Illinois v. Allen*, 397 U.S. 337, 350-51 (1970) (Brennan, J., concurring). The trial court's decision on a defendant's election to act *pro se* will be reversed only if the court abused its discretion. *Miller*, 2013 IL App (1st) 110879, at ¶ 127. An abuse of discretion occurs only where the trial court's decision is arbitrary, fanciful or unreasonable to the degree that no reasonable person would agree with it. *People v. Rivera*, 2013 IL 112467, ¶ 37.

¶ 41 In the case at bar, the trial court did not abuse its discretion in granting defendant's request to act as his own attorney. Defendant made unequivocal requests to represent himself after he was twice given the full admonitions of the consequences of waiving his right to counsel. On May 3, 2012, defendant asked to represent himself so he could "demand a speedy trial." Defendant said he would not "ask for an attorney later," and the court admonished defendant as to the charges against him and the applicable sentences, including his eligibility for an extended-term sentence. Defendant said he still wished to represent himself. After those admonitions were given, the trial court allowed APD Schleyer to withdraw from representing defendant.

¶ 42 On the next court date of June 4, defendant appeared before a different judge, who again fully admonished him in accordance with Rule 401(a). Defendant said he understood those admonitions and wished to represent himself. Defendant continued to act as his own counsel

after the court explained to him that his own motions tolled the running of time on his speedy trial demand.

¶ 43 Defendant next contends the trial court erred in denying his request for standby counsel. Defendant asserts the court should have considered (1) the nature and gravity of the charge against him; (2) the expected factual and legal complexity of the proceedings; and (3) his own abilities and experience, as required by *People v. Gibson*, 136 Ill. 2d 362, 374 (1990). He argues the *Gibson* factors demonstrate his need for standby counsel and contends he was prejudiced by the court's decision not to appoint an attorney in that capacity. Defendant further asserts the court operated under an impermissible "blanket policy" of rejecting requests for standby counsel based on a defendant's decision to act *pro se*.

¶ 44 The record establishes that APD Schleyer was allowed to withdraw from representing defendant on May 3. On August 2, defendant made his first of two references to standby counsel, shortly after Judge Kazmierski had set a trial date:

"THE COURT: 9/25/2012, with subpoenas for trial. Do you understand that, Mr. Spears?

DEFENDANT: Yes, sir.

THE COURT: You're still representing yourself for that day?

DEFENDANT: Yes. I would like [t]o put in a motion for a standby attorney if possible.

THE COURT: Why?

DEFENDANT: Because I have certain resources to investigate.

THE COURT: That's what happens. That's one of the problems with being your

own attorney."

¶ 45 Defendant's second request for standby counsel was made during trial as he cross-examined the victim. After asking Pickens if he gave defendant's phone number to anyone, defendant said to the court, "Your Honor, if I had a standby attorney for investigative proof that [Pickens] gave my number to Blacky to get in touch with me [*sic*]."

¶ 46 Judge Walsh responded:

"Sir, we've already had this discussion. You already indicated to Judge Kazmierski [] on June 4th, that you are going to represent yourself. The determination was made, at that time, that you were going to be representing yourself. There's not going to be any standby attorney representing – that's going to assist you in this matter. So that ship has sailed, at this point."

¶ 47 The right of self-representation does not carry with it a corresponding right to legal assistance via standby counsel. *People v. Simpson*, 204 Ill. 2d 536, 562 (2001); see also *McKaskle v. Wiggins*, 465 U.S. 168, 174 (1984) (a defendant is not entitled to a hybrid trial where he alternates between proceeding *pro se* and being represented by counsel). When appointed, standby counsel may assist a *pro se* defendant in completing specific tasks, such as introducing evidence or objecting to testimony, and standby counsel also may help to "ensure the defendant's compliance with basic rules of courtroom protocol and procedure." *Simpson*, 204 Ill. 2d at 562, quoting *McKaskle*, 465 U.S. at 183.

¶ 48 A decision whether to appoint standby counsel is left to the trial court's broad discretion and will not be reversed absent an abuse of that discretion. *Gibson*, 136 Ill. 2d at 380. This court recently observed that no Illinois trial court has been reversed for exercising its discretion to not

appoint standby counsel. *People v. Ellison*, 2013 IL App (1st) 101261, ¶ 42; see also *People v. Pratt*, 391 Ill. App. 3d 45, 57 (2009); *People v. Williams*, 277 Ill. App. 3d 1053, 1060-61 (1996) (noting that no "bright line" rule exists regarding the role of standby counsel and such an appointment allows a *pro se* defendant to argue on appeal that such counsel impeded his attempt at self-representation).

¶ 49 As to defendant's argument that the trial court had a "blanket policy" of rejecting requests for standby counsel, a similar contention was rejected in *Ellison*, where the defendant asked to represent himself "with assistance of counsel." *Ellison*, 2013 IL App (1st) 101261 at ¶ 43. The trial court admonished the defendant that he could either represent himself or have an attorney and also said the court could not assist him in trying his case. *Id.* On appeal, this court held the exchange in *Ellison* did not reflect a "blanket policy" of the trial judge against the appointment of standby counsel but, rather, reflected the court's admonition to the defendant that a criminal defendant who elects to act *pro se* "must be prepared to do so without legal assistance." *Id.* at ¶ 44; see also *People v. Trotter*, 254 Ill. App. 3d 514, 526 (1993) (no error occurred where the trial court told the defendant that his "only two choices were representation by counsel or [acting] *pro se*, not anything in between").

¶ 50 In the instant case, although defendant asserts that neither Judge Kazmierski nor Judge Walsh questioned him about the *Gibson* factors, this court has determined a trial court does not abuse its discretion in denying standby counsel without discussing those factors. *Ellison* noted the trial court is presumed to know and properly apply the law and that record in that case did not demonstrate an improper application of the law on standby counsel. *Ellison*, 2013 IL App (1st)

101261 at ¶ 47, citing *People v. Ware*, 407 Ill. App. 3d 315, 351 (2011); *People v. Phillips*, 392 Ill. App. 3d 243, 265 (2009); *People v. Redmond*, 265 Ill. App. 3d 292, 304 (1994).

¶ 51 Moreover, an application of the *Gibson* factors in the case at bar does not demonstrate that the trial court abused its discretion in rejecting defendant's request for a standby counsel. First, the nature and gravity of the charges in this case do not support the need for legal assistance. Defendant was charged with three counts of aggravated battery (720 ILCS 5/12-3.05 (West 2012)), each of which is a Class 3 felony (720 ILCS 5/12-3.05(h) (West 2012)). Due to his six prior felony convictions, defendant was subject to an extended-term sentence of up to 10 years in prison. We note that claims of the denial of standby counsel have been rejected in more serious cases than this. See *Ellison*, 2013 IL App (1st) 101261 at ¶ 48, citing *Ware*, 407 Ill. App. 3d at 351-52 (upholding denial of standby counsel for defendant convicted of attempted first degree murder and sentenced to 25 years in prison) and *Pratt*, 391 Ill. App. 3d at 48 (upholding denial of standby counsel for defendant who had been convicted of first degree murder and sentenced to 40 years in prison).

¶ 52 The second and third *Gibson* factors, the expected factual and legal complexity of the proceedings and the defendant's abilities and experience, also do not weigh in favor of appointing standby counsel for defendant. The facts of the case were not complex. Defendant filed a motion for a speedy trial, two motions to suppress evidence, and a motion *in limine* to bar evidence of his prior convictions. Defendant cross-examined the State's witnesses and argued that he acted in self-defense but elected not to testify. Defendant was 61 years old, earned a GED in prison, and had multiple convictions and previous encounters with the legal system.

1-13-0089

¶ 53 In conclusion, the court did not err in allowing defendant to act as his own attorney and also did not err in denying his request for standby counsel. Because we have found that no error occurred here, defendant cannot establish plain error.

¶ 54 Accordingly, the judgment of the trial court is affirmed.

¶ 55 Affirmed.