[Cite as *State v. Okoronkwo*, 2023-Ohio-48.]

IN THE COURT OF APPEALS OF OHIO
ELEVENTH APPELLATE DISTRICT
LAKE COUNTY

STATE OF OHIO, Plaintiff-Appellee, - vs - BRANDON K. OKORONKWO, Defendant-Appellant.	**CASE NO. 2022-L-041** Criminal Appeal from the Court of Common Pleas Trial Court No. 2021 CR 001163

O P I N I O N

Decided: January 9, 2023
Judgment: Reversed, vacated, and remanded

Charles E. Coulson, Lake County Prosecutor, and *Teri R. Daniel* and *Kristi L. Winner,* Assistant Prosecutors, Lake County Administration Building, 105 Main Street, P.O. Box 490, Painesville, OH 44077 (For Plaintiff-Appellee).

Cory R. Hinton, Hanahan & Hinton, LLC, 8570 Mentor Avenue, Mentor, OH 44060 (For Defendant-Appellant).

FREDERICK D. NELSON, J., Ret., Tenth Appellate District, sitting by assignment.

{¶1} Having previously expressed great dissatisfaction with his appointed counsel while telling the trial court "I'm ready to go" and "will be speaking" at the trial then some 12 days away, *see* March 3, 2022 Pretrial Tr. at 8, Defendant-Appellant Brandon K. Okoronkwo explicitly stated before jury selection began: "I want to represent myself." March 15, 2022 Trial Tr. at 12. He did not propose a delay: were he to represent himself, he said, "I'd say we can still do a trial now." *Id.* at 9. The trial court did not talk him through the pitfalls that can await a defendant attempting to act as his own lawyer. Nor did the

trial court inquire to ensure that Mr. Okoronkwo's election was knowing, voluntary, and intelligent. The trial court simply informed Mr. Okoronkwo that his lawyer "will be representing you in this trial," and admonished him against any "disruptions." *Id.* at 13. Trial had been "scheduled for a couple months," the trial court later added, and "it's too late for you to represent yourself." *Id.* at 15.

{¶2} Contrary to one of the state's arguments here, *see* Appellee's Brief at 25 ("by allowing trial counsel to participate in his trial, Appellant waived his right to self-representation," citing *State v. Hadden*, 11th Dist. Trumbull No. 2008-T-0029, 2008-Ohio-6999, ¶62), Mr. Okoronkwo did not acquiesce in the trial court's ruling. This is not *Hadden*, where "[w]hen the learned trial court admonished [the defendant there] that [self-representation] was not in his best interest," that defendant "stated that defense counsel could continue." *Hadden* at ¶64. Instead, after Mr. Okoronkwo called out to the jury at the start of his trial. "I just want to let y'all know this is not my attorney, man. * * * [T]hey're trying to stage a conviction," Trial Tr. at 193 (not revealing why the parties and the jury were present without the judge), he was excluded from the courtroom for the duration of the state's case.

{¶3} In due course, the jury found Mr. Okoronkwo guilty of aggravated robbery, felonious assault, kidnapping, grand theft of a motor vehicle, and operating a vehicle under the influence. It acquitted him of another kidnapping count in this odd matter involving among other things allegations of forcible commandeering of vehicles. The trial court sentenced Mr. Okoronkwo to a combined sentence of a minimum prison term of 10 years and five months and a maximum term of 14 years and 11 months.

{¶4} Mr. Okoronkwo appeals, positing three assignments of error:

> [1.] The jury's finding of guilt and the Defendant's convictions are contrary to the manifest weight of the evidence; therefore, Defendant's convictions for certain counts should be overruled, and Defendant should be remanded to the trial court for a new trial of said counts.
>
> [2.] The Trial Court's sentence as to Count 1, which was an indefinite sentence under Regan Tokes sentencing law, was improper under law as it was an unconstitutional sentence.
>
> [3.] Defendant/Appellant claimed that his trial counsel was ineffective for a variety of reasons raised by the Defendant/Appellant during the pendency of this case; which should have resulted in the trial court appointing different counsel and/or allowing the Defendant/Appellant to represent himself.

Appellant's Brief at 1-2.

{¶5} We begin (and end) with the last part of the third assignment, relating as it does to the question of whether the trial was flawed from the outset. Because the government, writ large, is rather constrained in its power to charge someone with crimes of this nature and then, under these circumstances, impose a defense counsel and thereby a defense to which the defendant objects in preference to representing himself, we will on these particular facts and on the particular arguments presented sustain that third assignment in part and remand this matter to the trial court for further proceedings.

{¶6} The March 3, 2022 pretrial conference presaged Mr. Okoronkwo's desire to represent himself. His lawyer began the conference by advising the trial court that there had been "a complete lack of back and forth" between counsel and client, and said that absent new developments, "I am going to proceed with the strategy that I see best fit." Pretrial Tr. at 3, 4; *see also id.* at 5 ("I do not intend to continue attempting to speak with Mr. Okoronkwo regarding strategy if those conversations are completely fruitless as they have been up to this point," adding that his strategy "does include conceding certain portions of the indictment"). Mr. Okoronkwo advised the trial judge that he intended to

"let it be known in the court that [his lawyer] is not going to do anything with me." *Id.* at 6 (adding at 6-7 the fairly common complaint that his lawyer "is really working with the prosecutor"). Mr. Okoronkwo rejected an approach that would "make me look like a junky on the stand," and emphasized instead his own preferred, if potentially legally dubious, position: "the only defense I'm going for is I was afraid for my life [when he sought to commandeer occupied vehicles] and that's it." *Id.* at 7. The trial court informed Mr. Okoronkwo that his lawyer "is going to represent you in this case," *id.*, and told him: "You're only going to be speaking * * * if you take the stand," *id.* at 8.

{¶7} After emphasizing that his lawyer would be required to take his direction, *id.* at 10, Mr. Okoronkwo seemingly promised disciplinary action against counsel ("I'm going to write you up") before returning to the theme that the lawyer was trying to "incriminate" him. *Id.* at 12. Declaring, "[e]verybody knows he is the worst attorney in Lake County," Mr. Okoronkwo insisted that "[h]e don't do his job." *Id.* at 16. Pretrial discussions thus suggested that the lawyer-client relationship may have confronted insurmountable obstacles, but Mr. Okoronkwo did not at that time make an unequivocal request to represent himself.

{¶8} But he did make such a request before the trial started. After his lawyer told the trial court that Mr. Okoronkwo had "declined to discuss a defense and so I am proceeding on the defense without his input," Mr. Okoronkwo demurred: "I gave him my defense a long time ago * * * * I will represent myself if I have to * * *." Trial Tr. at 5, 6 (reiterating at 7 that "he's trying to incriminate me"). Somewhat less equivocal was Mr. Okoronkwo's statement that "I don't want nobody from [the public defender's office] representing me. I'll represent myself and then re-appeal it. I don't want him on the side

of me, man. He's ineffective representation," *id.* at 7-8. After again equivocating a bit ("If he don't want to represent my case like I told him how to represent my case, the defense I gave him, he ain't even got to do my case * * * *"), Mr. Okoronkwo repeated his willingness to proceed without delay: "I'd say we can still do a trial now. I could prove –"). *Id.* at 8, 9. After further discussion, Mr. Okoronkwo emphatically restated his desire not to be represented by anyone from the public defender's office. *Id.* at 12. That is when he unequivocally proclaimed: "I want to represent myself because –," before being cut off. *Id.*

{¶9} Later, Mr. Okoronkwo declaimed: "This is my life on the line. * * * * I'm not about to tell this [lawyer] what I'm about to say on the stand when I know he's working for the prosecutor." The trial court responded: "Well, we are going to proceed with our jury trial here this morning. [Appointed counsel] will be representing you in this trial. Your comments and objections are noted for the record." *Id.* at 13. Only after the trial court had rejected his request, subsequently saying "it's too late for you to represent yourself," did Mr. Okoronkwo counter by making what could be construed as a suggestion for standby or perhaps hybrid counsel. *Id.* at 15 ("I should be half pro se or something with him, man"). The trial court did understand him to be "wanting to represent yourself * * *." *Id.* Even after voir dire was complete, Mr. Okoronkwo still was asserting "the right to pick my own jury," *id.* at 171, 189 (adding that counsel had not consulted with him on jury selection). It was after the lunch break but before opening statements that he told the jury "[t]his is not my real attorney." *Id.* at 193.

{¶10} Then, outside the presence of the jury, the trial court reviewed the events that had led up to that outburst. After the pretrial conference at which Mr. Okoronkwo

voiced his dissatisfaction with counsel, his lawyer again had tried to speak with him, but Mr. Okoronkwo refused. *Id.* at 196. He had comported himself appropriately during jury selection, but later made his comments including statements about "how [his lawyer] does not represent him." *Id.* at 197-198 (with the judge adding that "[a]t that point, the bailiff took the jurors back into the jury room before I even came out on the bench, though I did observe it through the cameras"). The trial court barred Mr. Okoronkwo from the courtroom, making provision for video and telephone links. *Id.* at 198-201; *see also id.* at 213-14 (accidentally "unmuted" Mr. Okoronkwo announces, "[t]hey're trying to stage a conviction"; trial court advises jury of a "brief break").

{¶11} Mr. Okoronkwo eventually was permitted back into the courtroom to testify on his own behalf; he testified to having been rear-ended on the roadway by people who pulled guns on him and from whom he was trying to escape. *Id.* at 433. His diffuse account did not carry the day for his defense.

{¶12} Against that backdrop, we turn to Mr. Okoronkwo's third assignment of error insofar as it implicates the state and federal rights to self-representation in criminal matters. Article I, Section 10 of the Ohio Constitution explicitly provides: "In any trial, in any court, the party accused shall be allowed to appear and defend in person and with counsel[.]" *Compare* Crim.R. 44(A) ("Where a defendant charged with a serious offense is unable to obtain counsel, counsel shall be assigned to represent [him] * * * unless the defendant, after being fully advised of his right to assigned counsel, knowingly, intelligently, and voluntarily waives [his] right to counsel").

{¶13} As the Ohio Court of Appeals for the Eighth District has noted, "[Article I, Section 10] of the Ohio Constitution contains a more explicit provision permitting self-

representation [than does the federal Constitution]." *State v. Jackson*, 145 Ohio App.3d 223, 226 (8th Dist.2001); *State v. Tierney*, 8th Dist. Cuyahoga No. 78847, 2002-Ohio-2607, ¶19. But although less explicitly, and perhaps somewhat more narrowly, the federal Constitution's Sixth Amendment right to counsel "implicitly embodies a 'correlative right to dispense with a lawyer's help.'" *State v. Martin,* 103 *O*hio St.3d 385, 2004-Ohio-5471, 816 N.E.2d 227, ¶23, quoting *Adams v. United States ex rel. McCann*, 317 U.S. 269, 279, 63 S.Ct. 236, 45 L.Ed 268 (1942). "This right is thwarted when counsel is forced upon an unwilling defendant, who alone bears the risks of a potential conviction." *State v. Obermiller*, 147 Ohio St.3d 175, 2016-Ohio-1594, 63 N.E.3d 93, ¶26, citing *Faretta v. California,* 422 U.S. 806, 819-20, 95 S.Ct. 2525, 45 L.Ed.2d 562 (1975).

{¶14} After all, as the Supreme Court of Ohio reminded us in *Obermiller*, the United States Supreme Court underscored in *Faretta* that:

> The Sixth Amendment does not provide merely that a defense shall be made for the accused; it grants to the accused personally the right to make his defense. It is the accused, not counsel, who must be 'informed of the nature and cause of the accusation,' who must be 'confronted with the witnesses against him,' and who must be accorded 'compulsory process for obtaining witnesses in his favor.' Although not stated in the Amendment in so many words, the right to self-representation – to make one's own defense personally – is thus necessarily implied by the structure of the Amendment. The right to defend is given directly to the accused; for it is he who suffers the consequences if the defense fails.

Obermiller at ¶27, quoting *Faretta* at 819-20. Thus, even by the implicit rule of the federal Sixth Amendment, "'a defendant in a state criminal trial has an independent constitutional right of self-representation and * * * may proceed to defend himself without counsel when he voluntarily, and knowingly and intelligently elects to do so.'" *Obermiller* at ¶28, quoting *State v. Gibson*, 45 Ohio St.2d 366, 345 N.E.2d 399 (1976), paragraph one of the syllabus, citing *Faretta*.

{¶15} "[A] defendant's unambiguous assertion of the right to self-representation triggers a trial court's duty to conduct * * * *Faretta* inquires to establish [whether] the defendant is knowingly and voluntarily waiving his constitutional right to counsel." *Obermiller* at ¶30, citing *United States v. Cromer*, 389 F.3d 662, 682-83 (6th Cir. 2004). *See also, e.g., State v. Travis*, 11th Dist. Trumbull Nos. 2018-T-0101, 2018-T-0102, 2020-Ohio-628, ¶80 (quoting again from *Obermiller* with further citation omitted, to add that a trial judge "'*must* investigate [a defendant's request for self-representation] as long and as thoroughly as the circumstances of the case before him demand'") (emphasis added). "[I]f a trial court denies the right to self-representation when that right is properly invoked, the denial is, per se, reversible error." *Obermiller* at ¶28, citing *State v. Reed*, 74 Ohio St.3d 534, 535, 660 N.E.2d 456 (1996) (further citation omitted).

{¶16} The state acknowledges that "[a]n appellate court must 'review a trial court's denial of a request for self-representation asserted prior to the commencement of trial de novo." Appellee's Brief at 23, quoting *State v. Degenero*, 11th Dist. Trumbull No. 2015-T-0104, 2016-Ohio-8514, ¶19. Under the specific circumstances of this case, we agree with the state that the de novo standard of review applies. *See also, e.g., State v. Struble*, 11th Dist. Lake No. 2016-L-108, 2017-Ohio-9326, ¶35 ("When the right to self-representation is properly invoked before trial, the denial of that right is per se reversible error. *State v. Cassano*, 96 Ohio St.3d 94, 2002-Ohio-3751, 772 N.E.2d 81, ¶32. On the other hand, if the right to self-representation is not invoked until after the trial has begun, the denial of the right is reviewed under the abuse of discretion standard. *State v. Owens*, 9th Dist. Summit No. 25389, 2011-Ohio-2503, ¶13"). "The balance in question," we stated

in *Degenero*, "is primarily the accused's interest in self-representation versus the disruption of proceedings that are already in progress." *Degenero* at ¶19.

{¶17} *Degenero* did not firmly decide the standard of review that obtains when self-representation is denied to a defendant who makes that election on the day of trial but before jury selection has begun; it did not need to assess that question because the defendant there "never requested to proceed pro se." *Id.* Under the facts of this case, we agree with the state as to the de novo standard of review because Mr. Okoronkwo did not seek to delay proceedings by continuing the trial date: the record reflects that (without having been appropriately cautioned by the trial court in these matters) he wanted to explain in his own words what he considered to be his own defense, to pick his own jury, and otherwise to captain his legal fate. *See* Pretrial Tr. at 8 ("I will be ready to go"); Trial Tr. at 9 ("we can still do a trial now"). *Compare Degenero* at ¶18 (citation omitted) (the "right of self-representation 'does not exist * * * to be used as a tactic for delay,'" disruption, or manipulation).

{¶18} So – at least given the lack of any inquiry or exploration by the trial court into Mr. Okoronkwo's proposed self-defense – this is not a case like *Owens* (where the defendant sought to delay trial yet again "by seeking a continuance * * * so he could prepare to represent himself," *Owens* at ¶19, or *Cassano*, at ¶37-42 (involving an initial request for hybrid representation, with no unequivocal demand for self-representation, and where any such request was made "only in the context of supporting his last-minute request for delay" and was "an attempt to delay the trial," a request in any event then "abandoned"), or *State v. Deir*, 11th Dist. Lake No. 2005-L-117, 2006-Ohio-6885, ¶34 (denial based in part on "fact that three continuances of the trial had already been granted

* * * and that a fourth continuance might be necessary"), or *State v. Howard*, 11th Dist. Lake No. 2019-L-153, 2020-Ohio-5057 (attempts at further delay, and defendant said he did "not at all" want to represent himself), or *State v. Vrabel*, 99 Ohio St.3d 184, 2003-Ohio-3193, 790 N.E.2d 303, ¶53 (jurors were on the clock: "[e]xtensive voir dire had already been completed and appellant never completely invoked his right to proceed pro se"). *Obermiller*, where a jury had been waived, highlights the point: there, a day of trial request with "no evidence that Obermiller used his request to waive counsel as a delaying tactic" triggered the required *Faretta* inquiry into whether his request was advanced knowingly, intelligently, and voluntarily. *Obermiller,* 2016-Ohio-1594, at ¶29, fn.1.

{¶19} Here, the trial court did not attempt the required inquiry and initially offered no explanation for its denial of Mr. Okoronkwo's request to represent himself. *See* Trial Tr. at 12-13. It then told him, without exploration or explanation, that "it's too late for you to represent yourself." *Id.* at 15. Although we review the ruling de novo, we note that even under an abuse of discretion standard (for which the state does not argue), with no record that delay of proceedings would be at issue and with no further rationale offered regarding the significance of the timing of the request, our assessment of the trial court's summary denial of a right central to the integrity of our criminal justice system largely would track the de novo review we provide. We note, also, that the state's briefing, while stating that Mr. Okoronkwo did not make the self-representation request "until the day of trial," Appellee's Brief at 25, does not seek to justify the trial court's ruling on that basis.

{¶20} Instead, the state contends among other things that Mr. Okoronkwo's self-representation "request was not unequivocal." *Id.* Because we fail to see any nuance in Mr. Okoronkwo's request as denied by the trial court – "I want to represent myself," Trial

Tr. at 12 -- we disagree. The trial court understood that Mr. Okoronkwo asked to represent himself, *see id.* at 13, 15 ("it's too late for you to represent yourself"), and the state's brief here acknowledges that Mr. Okoronkwo made it plain that "[h]e did not want an attorney from the Lake County Public Defender's Office to represent him," Appellee's Brief at 24. (At oral argument of this appeal, we heard the state to acknowledge that its equivocation argument is limited to the March 3, 2022 pretrial proceedings.)

{¶21} The state's observation that Mr. Okoronkwo's appointed counsel "was a longtime public defender" who was prepared to go forward, *id.*, is not an argument to disregard Mr. Okoronkwo's right under the Ohio Constitution to "defend in person," *see* Ohio Constitution, Article I, Section 10, nor is it an argument to disregard his right under the federal Sixth Amendment "to make [his] own defense personally," *see Faretta,* 422-U.S. at 819-20 (defining the federal "right to self-representation"). *Compare State v. Newman*, 8th Dist. Cuyahoga No. 109182, 2020-Ohio-5087, ¶24 ("the *Faretta* court assumed that most lay people who defend themselves in a criminal action will fare worse than those represented by skilled counsel").

{¶22} The state's brief then appears perhaps to suggest – without actually making a bold statement to this effect – that the trial court attempted to engage in the required colloquy with Mr. Okoronkwo to ascertain whether he was making his request for self-representation knowingly, intelligently, and voluntarily. *See* Appellee's Brief at 24 (quoting *Travis*, 2020-Ohio-628 at ¶146, describing efforts of the trial court there "to determine that appellant understood the consequences and responsibilities of representing himself"), Appellee's Brief at 25 ("[t]he trial court tried to understand Appellant's concerns and complaints by engaging in a discussion with him"). The record

does not support any such suggestion: the trial court made no effort at all to elucidate for Mr. Okoronkwo the burdens and special risks of self-representation and then to determine whether Mr. Okoronkwo understood and accepted those potential consequences. *Compare Travis* at ¶80 (outlining "a trial court's duty to conduct the *Faretta* inquires"), ¶81 (trial court there "made at least three formal attempts to conduct a *Faretta* colloquy and ensure that appellant was 'made aware of the dangers and disadvantages of self-representation'"). The problem was not that Mr. Okoronkwo obstructed or refused to respond to trial court *Faretta* inquiries; the problem was that the trial court did not even try to make the inquiries that a self-representation request "triggers," *see Travis* at ¶80 quoting *Obermiller,* 2016-Ohio-1594, at ¶30. *Compare* Trial Tr. at 5, 7, 12 (civil exchanges between trial court and defendant, not involving *Faretta* inquiries); *id.* at 10 (THE COURT: "You can't talk over [your lawyer]. I'll give you another chance [to talk later]." THE DEFENDANT: "All right. My bad.").

{¶23} The state would like to suggest further that such inquires would have demonstrated that Mr. Okoronkwo's election was not knowing, intelligent, and voluntary. *See* Appellee's Brief at 25 ("Appellant was in no position to represent himself"). But neither the Ohio Constitution nor the Constitution of the United States leaves such speculation to the prosecutor alone. Here, the trial court did not conduct the required inquiry and did not make any such determination. Again, "[t]he trial court is required to make a sufficient inquiry to determine whether the defendant fully understands and intelligently relinquishes his right to counsel." *State v. Robinson*, 1st Dist. Hamilton No. C-150346, 2016-Ohio-3330, ¶22, citing *State v. Johnson*, 112 Ohio St.3d 210, 2006-Ohio-

6404, ¶89, citing *State v. Gibson,* 45 Ohio St.2d 366, 345 N.E.2d 399 (1976), paragraph two of the syllabus.

{¶24} In this context, moreover, "intelligent" does not mean "wise," and "knowing" does not imply technical competence in the law. The inquiry is into whether a defendant knows what he is taking on and has made his choice "with eyes open." *Robinson* at ¶23, quoting *Iowa v. Tovar*, 541 U.S. 77, 88, 124 S.Ct. 1379, 158 L.Ed 209 (2004) (and adding that the trial court had "emphasized to Robinson that he did not have the skill and expertise of a lawyer, and would not know the proper procedure, all of which could hinder him at trial"). *See also, e.g., Newman*, 2020-Ohio-5087, at ¶24 ("an accused's technical legal knowledge is irrelevant to an assessment of his or her knowing exercise to defend himself or herself," citing *Faretta*; adding that "just as it is the accused's right to plead guilty or no contest to the charges * * * , it is equally an accused's personal constitutional right to face the charges alone * * * by attempting to defend himself or herself").

{¶25} We also emphasize that "[i]n situations in which a defendant asserts a right to self-representation, the trial court must first determine whether the defendant is competent [to make that election], if the trial court has reason to doubt his competency." *Robinson* at ¶17. "'The standard of competency to waive the right to counsel is whether a defendant has "sufficient present ability to consult with his lawyer with a reasonable degree of rational understanding" and has a "rational as well as factual understanding of the proceedings against him."'" *Id.,* quoting *State v. Jordan*, 101 Ohio St.3d 216, 2004-Ohio-783, 804 N.E.2d 1, ¶27 (further citation omitted). Here, the trial court at this juncture, and having previously found Mr. Okoronkwo competent to stand trial, *see* November 10, 2021 judgment, at T.d. 25, did not make further inquiry into the competency issue.

Compare State v. Cedeno, 8th Dist. Cuyahoga No. 102327, 2015-Ohio-5412, ¶9, 20, 30 (trial court ordered competency exam as to defendant's competency both to stand trial and to "waive his right to counsel"; found him either not competent to represent himself or in willful obstruction of proceedings; denial of self-representation affirmed, with citations to competency evaluation and subsequent conduct). We do not mean to preclude any such further exploration of the competency question as may be appropriate; we observe only that it was not a stated basis for the trial court's denial of Mr. Okoronkwo's claim of the right to self-representation, and we are not in a position to ratify that denial on this record.

{¶26} As noted above, the record also does not support the state's contention that Mr. Okoronkwo abandoned his right to self-representation "by allowing trial counsel to participate" in the proceedings from which Mr. Okoronkwo was banned due to his objections. *Compare* Appellee's Brief at 25.

{¶27} Because the trial court failed to inquire into whether Mr. Okoronkwo's assertion of his right to represent himself at trial was made knowingly, voluntarily, and intelligently, the trial that followed with defense counsel whom the court imposed on him violated his rights under both the Ohio and federal constitutions. The record before us does not establish that Mr. Okoronkwo should have been stripped of his right to defend himself in person either with or without an intermediary (and a consequent defense) forced upon him by the government. We sustain Mr. Okoronkwo's third assignment of error to the extent that it posits a violation of his right to self-representation. That determination obviates questions about the weight of the evidence then presented at trial and the sentence that followed his conviction, and we overrule his first and second

assignments of error as moot. We reverse and vacate the judgment below and remand the case to the trial court for further proceedings consistent with this decision.

JOHN J. EKLUND, P.J.,

MATT LYNCH, J.,

concur.