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STATE OF MICHIGAN
IN THE SUPREME COURT

PEOPLE OF THE STATE OF MICHIGAN,	Supreme Court No. 167315
Plaintiff-Appellee,	Court of Appeals No. 351593
v	Clare County Circuit Court No. 17-005731-FH
ALEXANDER JAMES HAUPT,	
Defendant-Appellant. /	

PEOPLE OF THE STATE OF MICHIGAN'S SUPPLEMENTAL BRIEF IN OPPOSITION TO DEFENDANT-APPELLANT'S APPLICATION FOR LEAVE TO APPEAL

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Dated: November 3, 2025

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COUNTER-STATEMENT OF JURISDICTION

The Court of Appeals affirmed Defendant-Appellant Alexander Haupt's convictions and sentences on April 25, 2024. Haupt filed an application in this Court after the decision of the Court of Appeals. This Court may review by appeal a case after decision by the Court of Appeals and thus has jurisdiction pursuant to MCR 7.303.

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COUNTER-STATEMENT OF QUESTIONS PRESENTED

1. Did Alexander Haupt validly waive his right to counsel following defense counsel's motions to withdraw on October 23, 2018, and June 10, 2019?

   Appellant's answer: No.

   Appellee's answer: Yes.

   Trial court's answer: Yes.

   Court of Appeals' answer: Did not answer.

2. Did Alexander Haupt forfeit his right to counsel through his conduct and remarks?

   Appellant's answer: No.

   Appellee's answer: Yes.

   Trial court's answer: Yes.

   Court of Appeals' answer: Did not answer.

3. Did the periods for which defendant was without counsel constitute critical stages of the proceedings?

   Appellant's answer: Yes.

   Appellee's answer: No.

   Trial court's answer: Did not answer.

   Court of Appeals' answer: No.

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CONSTITUTIONAL PROVISIONS AND RULES INVOLVED

U.S. Const. amend. VI

> In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the Assistance of Counsel for his defence.

MI CONST Art. 1, § 20

> In every criminal prosecution, the accused shall have the right to a speedy and public trial by an impartial jury, which may consist of less than 12 jurors in prosecutions for misdemeanors punishable by imprisonment for not more than 1 year; to be informed of the nature of the accusation; to be confronted with the witnesses against him or her; to have compulsory process for obtaining witnesses in his or her favor; to have the assistance of counsel for his or her defense; to have an appeal as a matter of right, except as provided by law an appeal by an accused who pleads guilty or nolo contendere shall be by leave of the court; and as provided by law, when the trial court so orders, to have such reasonable assistance as may be necessary to perfect and prosecute an appeal.

MCR 6.005(D)

> **Appointment or Waiver of a Lawyer.** Where the court makes the determination that a defendant is financially unable to retain a lawyer, it must promptly refer the defendant to the local indigent criminal defense system's appointing authority for appointment of a lawyer. The court may not permit the defendant to make an initial waiver of the right to be represented by a lawyer without first.
>
> (1) advising the defendant of the charge, the maximum possible prison sentence for the offense, any mandatory minimum sentence required by law, and the risk involved in self-representation, and
>
> (2) offering the defendant the opportunity to consult with a retained lawyer or, if the defendant is indigent, the opportunity to consult with an appointed lawyer.

The court should encourage any defendant who appears without counsel to be screened for indigency and potential appointment of counsel.

MCR 6.005(E)

Advice at Subsequent Proceedings. If a defendant has waived the assistance of a lawyer, the record of each subsequent proceeding (e.g., preliminary examination, arraignment, proceedings leading to possible revocation of youthful trainee status, hearings, trial or sentencing) need show only that the court advised the defendant of the continuing right to a lawyer's assistance (at public expense if the defendant is indigent) and that the defendant waived that right. Before the court begins such proceedings,

(1) the defendant must reaffirm that a lawyer's assistance is not wanted; or

(2) if the defendant requests a lawyer and is financially unable to retain one, the court must appoint one; or

(3) if the defendant wants to retain a lawyer and has the financial ability to do so, the court must allow the defendant a reasonable opportunity to retain one.

The court may refuse to adjourn a proceeding to appoint counsel or allow a defendant to retain counsel if an adjournment would significantly prejudice the prosecution, and the defendant has not been reasonably diligent in seeking counsel.

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INTRODUCTION

For nearly two years, Haupt did everything in his power to delay his case and alienate those trying to help him. After not communicating with his retained counsel, counsel asked twice to withdraw, finally being allowed to withdraw when Haupt threatened counsel's bar card. Then, appointed counsel was not good enough for Haupt so he expressly waived his right to counsel. It was not until Haupt wanted to continue delaying the case that Haupt finally asked for counsel, but then refused to meet, communicate, or work with counsel. Appointed counsel finally had enough when after refusing to work with counsel, Haupt accused counsel of colluding with the prosecutor and lying to him. By this time, not only did appointed counsel have enough, but so did the trial court. Haupt continuously deteriorated his relationships with his attorneys and did everything he could to circumvent the justice system.

Haupt blames everyone except himself, but the trial court and Court of Appeals got it right – he was provided counsel when it mattered most, during the critical stages of his trial. Haupt had a fair trial because he had counsel during the critical stages of his trial.

Accordingly, Haupt's application for leave to appeal should be denied. Haupt validly waived his right to an attorney when he thought he could do better on his own and forfeited his right to an attorney when he deliberately sabotaged any chance his appointed counsel had at assisting in his defense.

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COUNTER-STATEMENT OF FACTS AND PROCEEDINGS

Evidence of child sexually abusive material and witness intimidation was found on Haupt's phone during a stalking investigation.

While investigating a stalking complaint against Defendant, Alexander Haupt, law enforcement executed a search warrant for Haupt's phone to look for evidence of stalking and ensure the user of the phone could be identified as Haupt. (7/24/2019 Hr'g Tr, p 155, 158-159, 160, 176-178; 7/25/2019 Hr'g Tr, p 6.) During the analysis of the information seized from the phone as a result of the search warrant, Clare County Sheriff Department Detective Don VanBonn saw an image that he believed to be child sexually abusive material. (7/24/2019 Hr'g Tr, p 159; 7/25/2019 Hr'g Tr, p 8.) Detective VanBonn immediately stopped his analysis and requested a second search warrant in order to then search for evidence of child sexually abusive material. (7/24/2019 Hr'g Tr, p 159-160; 7/25/2019 Hr'g Tr, p 8-9.) In total, Detective VanBonn found over 40 images he believed were child sexually abusive material. (7/25/2019 Hr'g Tr, p 10.)

The victim of the stalking complaint verified that she was the child depicted in the images and videos, that she was only 17 years old at the time the images and videos were taken, and that Haupt knew she was only 17 years old when he took them. (7/24/2019 Hr'g Tr, p 119-121, 122, 160; 7/25/2019 Hr'g Tr, p 76.) The images and videos depicted the victim naked and participating in different sexual acts with a person the victim identified as Haupt. (7/24/2019 Hr'g Tr, p 121-123; 7/25/2019 Hr'g Tr, p 14.) Information found within the phone also showed that Haupt had sold the images at least twice, but the victim never gave Haupt permission to

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distribute the images and videos. (7/24/2019 Hr'g Tr, p 122, 162-163; 7/25/2019 Hr'g Tr, p 15-16, 19.)

Also located on Haupt's phone was an audio file in which Haupt tried to persuade the victim of this case to not cooperate with the prosecutor's office in the then pending domestic violence/interfering with electronic communications case. (7/25/2019 Hr'g Tr, p 27-29.) The victim verified that the conversation took place in Haupt's truck and that she was made to feel like the original domestic violence complaint was her fault.

Haupt was charged with Child Sexually Abusive Activity, Child Sexually Abusive Activity – Distributing or Promoting, Possession of Child Sexually Abusive Material, three counts of Using a Computer to Commit a Crime, and Witness Intimidation based on the contents of his phone. Haupt retained an attorney to represent him.

Haupt refuses to communicate with retained counsel and threatens retained counsel's professional license

Haupt retained counsel and was arraigned September 27, 2017. After waiving preliminary examination in the district court, Haupt waived arraignment in the trial court on December 7, 2017. Three months later, retained counsel motioned to withdraw due to lack of communication by Haupt. (4/9/2018 Hr'g Tr, pp 3–5.) During the hearing regarding counsel's first request to withdraw, Haupt admitted that he was at fault for failing to communicate with counsel and indicated

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that he would be better, so the trial court denied the motion. (4/9/2018 Hr'g Tr, pp 5–6.)

However, a mere two months later, lack of communication was no longer the only issue; retained counsel motioned to withdraw a second time based on a strained relationship in which Haupt threatened the attorney's bar card and accused him of being biased. (6/21/2018 Hr'g Tr, pp 10–11.) During the hearing regarding the second request to withdraw, counsel indicated that he attempted to contact Haupt multiple times regarding a pending plea offer[1] in the days leading up to the status conference but was unable to speak with Haupt until the morning of the conference. (6/21/2018 Hr'g Tr, p 8.) Based solely on a risk assessment, retained counsel highly recommended that Haupt accept the offer and indicated that he thought Haupt would go to prison if he was convicted as charged. (6/21/2019 Hr'g Tr, p 7–11.) Haupt admitted that he took offense and indicated that he wanted retained counsel to still represent him, but retained counsel indicated that he simply was not comfortable representing Haupt. (6/21/2018 Hr'g Tr, p 15.) The trial court noted that it was pretty clear the relationship was strained and granted retained counsel's motion to withdraw but wanted to allow Haupt adequate time to retain and consult subsequent counsel before allowing the prosecution to withdraw its plea offer. (6/21/2018 Hr'g Tr, p 15, 17.)

[1] Haupt was offered a plea offer in which if he plead guilty to all of the charges in the then-three pending cases against him, the prosecution would agree to consideration under the Holmes Youthful Trainee Act (HYTA) with three years' probation, restitution, and forfeiture of devices CSAM was discovered on. (6/21/2018 Hr'g Tr, p 6.)

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Haupt refuses appointed counsel and tells the trial court that he can do better by representing himself

Haupt proceeded for months without retaining an attorney, and when asked about it by the trial court, refused assistance from an appointed attorney because Haupt believed he could represent himself better than any appointed counsel. (8/1/2018 Hr'g Tr, pp 3–4; 10/23/2018 Hr'g Tr, pp 6–8.) Haupt waived his right to an attorney on October 23, 2018, when he indicated to the trial court that he wanted to represent himself. (10/23/2018 Hr'g Tr. at 6–9.) At that time, the trial court found that Haupt made an unequivocal request to represent himself, that the waiver was made knowingly, voluntarily, and intelligently, and that Haupt's self-representation would not disrupt or unduly inconvenience or burden the trial court. (10/23/2018 Hr'g Tr. at 10.)

Haupt delays the trial further and requests appointed counsel when the trial court tires of his tactics

After validly waiving his right to an attorney, Haupt indicated to the trial court that he had been anticipating the prosecution to file a motion to stay for over two months, but no motion was ever filed. (10/23/2018 Hr'g Tr, p 10.) When the trial court indicated that the trial would not be delayed for a witness that Haupt had not yet subpoenaed that the prosecution did not at that time intend to call as a witness, Haupt requested that the trial court remand the case to the district court for a preliminary examination. (10/23/2018 Hr'g Tr, p 11–13.) The trial court noted that Haupt had conditionally waived preliminary examination in December 2017, that Haupt could have requested the preliminary examination in the months since

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June when the prosecution indicated its intent to withdraw the plea offer, and yet Haupt waited until days before trial to make the request to remand. (10/23/2018 Hr'g Tr, p 14, 17, 19–20.)

Specifically, when addressing the months that Haupt could have file the motion, the trial court noted, "But, see, this is the problem for you not hiring an attorney or asking for an attorney . . . . Because as an attorney, you can schedule court dates. You could – it was on your responsibility. And that is your risk of self-representation, not knowing what you can do and when you can do it. An attorney knows that they can file and ask for a hearing at any time on any kind of motion, and this is your problem, and this is a problem that you're now creating, and I don't see any good reason for a reason for a prelim at this point . . . at some point things go too far, and you've gone too far. You've waited too long." (10/23/2019 Hr'g Tr, pp 19–20.) The trial court then denied Haupt's request to remand, and the prosecution again offered the HYTA plea agreement that expired at the end of that day. (10/23/2018 Hr'g Tr, p 20.)

Haupt requests appointed counsel, refuses to communicate with appointed counsel, and accuses appointed counsel of lying and colluding with the prosecutor

When it was made clear that the case would proceed to trial the following Tuesday, Haupt requested an appointed attorney, thereby delaying the case even more. (10/23/2018 Hr'g Tr, pp 17, 19–20, 22; 10/26/2018 Request for Court-Appointed Attorney and Order.) Yet even after being appointed an attorney, Haupt did not communicate with his attorney in the three weeks leading up to the next

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hearing, but instead the attorney was forced to communicate with Haupt's father. (11/20/2018 Hr'g Tr, pp 3–4.)

In December 2018, the trial court granted the defense's motion to remand to the trial court, and a preliminary examination was held on February 28, 2019. (12/10/2018 Hr'g Tr, p 3–4; 2/28/2019 Hr'g Tr.) Haupt was bound over on one count of child sexually abusive activity/producing contrary to MCL 750.145c(2)(a), two counts of child sexually abusive activity distributing or promoting contrary to MCL 750.145c(3)(a), one count of child sexually abusive material possession contrary to MCL 750.145c(4)(a), four counts of using a computer to commit a crime based on the child sexual abusive material convictions contrary to MCL 752.796, MCL 752.797(3)(d), and MCL 752.797(3)(f), and one count of obstruction of justice contrary to MCL 750.505. (2/28/2019 Hr'g Tr, p 87–88.)

Appointed counsel was also assigned to represent Haupt in a separate misdemeanor case. During a hearing three months after assignment to the misdemeanor case, appointed counsel informed the trial court that they had made multiple attempts to talk to Haupt about his cases, but Haupt refused to respond. (Appendix A 17-0929-SM 5/22/2018 Hr'g Tr, p 4.) Appointed counsel then attempted to withdraw in this case via an ex-parte motion that was denied. (6/4/2019 Clare Cir Ct Order.)

During a status conference six days later, appointed counsel indicated that he had requested to withdraw based on representations made by Haupt during a district court hearing on a separate, but simultaneous, stalking case that

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questioned appointed counsel's truthfulness and accused appointed counsel of colluding with the prosecutor. (6/10/2019 Hr'g Tr, p 3-4.) Appointed counsel also indicated that his phone records would support that he did indeed speak with the private investigator that Haupt accused him of lying about. (6/10/2019 Hr'g Tr, p 5.)

Trial court requires appointed counsel to remain on Haupt's case in an advisory capacity

In denying counsel's request to completely withdraw and requiring Haupt to proceed pro se, the trial court specifically indicated:

> Actually, I don't want to hear any more about that situation - okay? This is your second attorney. You hired an attorney and he withdrew, and he filed a motion to withdraw that I denied, and then a few months later again he wanted to withdraw. The Court allowed him. At that time you said you would represent yourself. Several months later you came back asking for a court appointed attorney. When you asked to represent -- when you said you were representing yourself, you said you would do a better job than any court appointed attorney could.
>
> So at this point I'm not going to allow Mr. Moore to withdraw totally, but he's not going to have to represent you. He's going to be there for advisory purposes. So at this point, you are on your own, and you're going to have to represent yourself, and if you have any questions regarding the law, Court Rules or anything, Mr. Moore is the person you're going to have to go to.
>
> The Court is not going to adjourn the trial dates. You have a trial date scheduled for January -- or July 23rd. That is a definite date. So if you go out and hire another attorney, that is the date they have to be prepared for trial. This is the date you have to be prepared for trial. We are going to trial. This case is old, and your actions have delayed the case; nobody else's actions but yours. And the Court is not going to allow you to delay this any longer. So whether you're prepared to go to trial on July 23rd or not, you are going to trial. You will be here in this courtroom and we will have a trial.

(6/10/2019 Hr'g Tr, pp 5–6.)

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Haupt did not object, he did not claim that he did not want to represent himself, he did not ask for additional appointed counsel, but he did indicate that he understood. (6/10/2019 Hr'g Tr, p 6.) Leading up to trial, Haupt did not reach out to then-advisory counsel for any advice or counsel even though the trial court had previously directed him that he could. (6/10/2019 Hr'g Tr, p 6; 7/23/2019 Hr'g Tr, p 9.)

As trial looms, Haupt admits that he needs legal assistance

Jury trial was scheduled to begin on July 23, 2019. That morning, the trial court denied Haupt's previously filed motion to dismiss, having found that there was probable cause to support the search warrant that was not overbroad. (7/23/2019 Hr'g tr, p 3.) The trial court also denied what it considered to be a motion to reconsider the court's order granting the prosecution's previously filed motion to strike, denied motions to compel, and warned Haupt's father about offering him assistance during trial. (7/23/2019 Hr'g Tr, p 4–7.) The trial court noted that Haupt had advisory counsel, and that he could have asked advisory counsel questions if he wanted; "if he has never asked him a question, then that's his problem." (7/23/2019 Hr'g Tr, p 6–7.)

The trial court went on:

> Mr. Moore was placed as an advisory because of the length of this case; it's going on two years old. The delays have been mostly from the defendant. Last year we allowed Mr. Grabel to -- or the prior attorney to withdraw after his second case to withdraw, because he could not get along with the client. And we set up a court date approximately two months later and at the time of the withdrawal, Mr. Haupt, you were going to represent yourself. We went through the problems of representing yourself and the Court told you at any time if you wanted

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> a court appointed attorney you could have one. You just had to go to the clerk's office and ask, and you waited until the next court date to come to court and ask for a court appointed attorney. Another delay that, if you knew ahead of time, you could have easily contacted the clerk's office.
>
> [7/23/2019 Hr'g Tr, pp 7–8.]

When Haupt then indicated that he wanted an attorney, the trial court noted that Haupt had advisory counsel and subsequently reappointed advisory counsel to represent Haupt in a full capacity. (7/23/2019 Hr'g Tr, p 10.) After a brief recess, Haupt, through counsel, requested an adjournment in order for counsel to prepare for trial, and the trial court indicated as follows:

> The Court is not going to adjourn the trial. A lot of what Mr. Haupt claims are going to be appellate issues, as Mr. Moore says, and who knows, maybe we'll have to come back next year and have another trial. Maybe not. There's no guarantee there's going to be a conviction. There's no guarantee there's not going to be a not-guilty verdict for either side. Mr. Moore has been an attorney for a long time and very capable at handling criminal trials. He's the one that has done the preliminary exam. He's familiar with all the evidence in the case, and so the only thing this Court would do is maybe adjourn it until 9:00 a.m. tomorrow morning, if that's a request coming from Mr. Moore, to prepare for the rest of the day, but that would be the only request. This trial is going forward this week.
>
> [7/23/2019 Hr'g Tr, p 16.]

Haupt then agreed to the trial court's terms. (*Id.*)

Jury trial finally began on July 24, 2019. (7/24/2019 Hr'g Tr). On July 25, 2019, after approximately a half hour of deliberation, the jury unanimously found Haupt guilty as charged. (7/25/2019 Hr'g Tr, p 139.) On November 12, 2019, the trial court sentenced Haupt to 78 months to 20 years for the child sexually abusive material activity/producing and the accompanying using a computer to commit a

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crime convictions, 19 months to 7 years for the child sexually abusive activity distributing or promoting and accompanying using a computer to commit a crime convictions, 13 months to 4 years for the child sexually abusive material possession conviction, and 13 months to 5 years for the obstruction of justice conviction. (11/12/2019 Hr'g Tr, p 21.)

The Court of Appeals affirms – twice

Haupt filed a claim of appeal asserting that his Sixth Amendment right to counsel was violated, but the Court of Appeals found that Haupt had failed to show plain error. *People v Haupt*, unpublished per curiam opinion of the Court of Appeals, issued September 23, 201 (Docket No. 351593). This Court then remanded for reconsideration in light of this Court's opinion in *People v King*, 512 Mich 1 (2023). *People v Haupt*, 513 Mich 912 (2023). On remand, the Court of Appeals affirmed Haupt's convictions and sentences after it found that Haupt "was not deprived on counsel at a critical stage of the proceeding such that it constituted a structural error requiring automatic reversal." *People v Haupt*, unpublished per curiam opinion of the Court of Appeals, issued April 25, 2024 (Docket No. 351593) at *4, 8.

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STANDARD OF REVIEW

The deprivation of counsel during critical stages of criminal proceedings which constitutes a claim of structural error under *United States v Cronic*, 466 US 468 (1984), and "preserved structural errors are a limited class of constitutional errors that are not subject to harmless-error analysis, but are instead subject to automatic reversal." *King*, 512 Mich at 10, citing *Arizona v Fulminante*, 499 US 279, 309 (1991) and *Neder v United States*, 527 US 1, 7 (1999).[2] However, the deprivation of the right to counsel at a noncritical stage of a criminal proceeding is a nonstructural constitutional error. *People v Willing,* 267 Mich App 208, 224 (2005). Unpreserved, nonstructural constitutional errors are reviewed for plain error affecting the defendant's substantial rights. *People v Brown,* 294 Mich App 377, 389 (2011).

A trial court's factual findings surrounding a defendant's waiver are reviewed for clear error, but to the extent that a ruling involves an interpretation of the law or the application of a constitutional standard to uncontested facts, review is de novo. *People v Russell*, 471 Mich 182, 187 (2004). "[T]he standard of review for a

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[2] The People would note however, "every federal circuit court of appeals has stated, post-*Cronic,* that an absence of counsel at a critical stage may, under some circumstances, be reviewed for harmless error." *People v Murphy,* 481 Mich 919, 923 (2008) (MARKMAN, J., concurring), citing, among others, *Satterwhite v Texas,* 486 US 249 (1988), *Ellis v United States,* 313 F3d 636, 643 (CA 1, 2002) (absence of counsel at critical stage would require presumption of prejudice only if "pervasive in nature, permeating the entire proceeding"), and *United States v Lampton,* 158 F3d 251, 255 (CA 5, 1998) (applying harmless-error review when counsel was absent during adverse testimony).

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subsequent waiver need not be the same as the review of an initial waiver . . . the failure to comply with MCR 6.005(E) is to be treated as any other trial error." *People v Lane*, 453 Mich 132, 139–140 (1996). Because Haupt has not preserved an error regarding MCR 6.005(E), such a claim is reviewable for plain error. See *People v Carines,* 460 Mich 750, 764–765 (1999).

"To avoid forfeiture of the issue under the plain error rule, the defendant bears the burden to show that '(1) error . . . occurred, (2) the error was plain, i.e., clear or obvious, (3) and the plain error affected substantial rights. The third requirement generally requires a showing of prejudice, i.e., that the error affected the outcome of the lower court proceedings.' " *People v Loper*, 299 Mich App 451, 457 (2013), quoting *Carines*, 460 Mich App at 763. Finally, this Court must exercise its discretion in deciding to reverse, which is warranted only when the error "seriously affects the fairness, integrity, or public reputation of the judicial proceedings." *Carines*, 460 Mich at 763–764.

A trial court's decision regarding substitution of counsel will not be disturbed absent an abuse of discretion. *People v Traylor,* 245 Mich App 460, 462 (2001).

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ARGUMENT

I. When Haupt knowingly, voluntarily, and intelligently indicated that he wished to represent himself, Haupt validly waived his right to an attorney.

Haupt's application for leave to appeal should be denied first and foremost because he validly waived his right to an attorney. He knowingly determined that he did not want the assistance of an attorney and believed that he could represent himself better even after the trial court adequately warned him of the dangers of doing so. That he later realized the justice system was not just going to give him what he wanted and only asked for an attorney in an attempt to further delay the process, does not now mean that he did not validly waive his right to counsel.

A. Because the trial court established the requirements set forth in *Anderson* and MCR 6.005(D), Haupt validly waived his right to counsel on October 23, 2018.

A criminal defendant's right to represent himself is implicitly guaranteed by the United States Constitution. *Faretta v California,* 422 US 806, 814, 820–821 (1975); *King*, 512 Mich at 11. In Michigan, the right to self-representation is explicitly guaranteed by both the state's Constitution, Const 1963, art 1, § 13, and by statute, MCL 763.1. But because the right to self-representation is not absolute, *Indiana v Edwards,* 554 US 164, 171 (2008), several requirements must be met before a defendant may represent himself. *People v Anderson*, 398 Mich 361, 367–368 (1976); *People v Russell,* 471 Mich 182, 190–191 (2004). First, a defendant's request to represent himself must be unequivocal. *People v Williams,* 470 Mich 634, 642 (2004). Second, "the trial court must be satisfied that the waiver [of the right to

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counsel] is knowingly, intelligently, and voluntarily made." *Williams,* 470 Mich at 642. "Third, the trial court must be satisfied that the defendant will not disrupt, unduly inconvenience, and burden the court or the administration of court business." *Id.*

Additionally, the trial court must comply with MCR 6.005(D), which provides:

> The court may not permit the defendant to make an initial waiver of the right to be represented by a lawyer without first
>
> (1) advising the defendant of the charge, the maximum possible prison sentence for the offense, any mandatory minimum sentence required by law, and the risk involved in self-representation.
>
> (2) offering the defendant the opportunity to consult with a retained lawyer or, if the defendant is indigent, the opportunity to consult with an appointed lawyer.

"[I]f the trial court fails to substantially comply with the requirements in *Anderson* and the court rule, then defendant has not effectively waived his Sixth Amendment right to the assistance of counsel." *Russell*, 471 Mich at 191–192. The requirements set forth in *Anderson* and MCR 6.005(D) "are merely vehicles to ensure that the defendant knowingly and intelligently waived counsel with open eyes." *People v Adkins (After Remand)*, 452 Mich 702, 725 (1996), overruled in part on other grounds *Williams*, 470 Mich at 641 n 7. Accordingly, a trial court is not required to take a "litany approach" to comply with the requirements of *Anderson* and MCR 6.005(D); a trial court must only substantially comply with the substantive requirements set forth therein. *Adkins*, 452 Mich at 725–726. "Substantial compliance requires that the court discuss the substance of both *Anderson* and MCR 6.005(D) in a short colloquy with the defendant, and make an

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express finding that the defendant fully understands, recognizes, and agrees to abide by the waiver of counsel procedures." *Russell*, 471 Mich at 191 (quotation marks and citation omitted).

In this case, months after his retained counsel twice asked to withdraw due to communication issues with Haupt and subsequent threats by Haupt regarding retained counsel's professional license, the following colloquy occurred:

> THE COURT: All right. Well, you are entitled to have an attorney represent you, and if you're unable to afford one, the Court will appoint one. Are you asking the Court to appoint you an attorney?
>
> THE DEFENDANT: Not at the moment, Your Honor.
>
> THE COURT: All right. And you understand that you're entitled to a lawyer's assistance? You understand that; is that correct?
>
> THE DEFENDANT: I do, yep.
>
> THE COURT: All right. And you're waiving the right to be represented by a court appointed attorney at this time; is that correct?
>
> THE DEFENDANT: That is correct, Your Honor.
>
> THE COURT: And do you understand the charge and the maximum possible prison sentence if –
>
> THE DEFENDNAT: I do. I do, Your Honor.
>
> THE COURT: And do you understand the risk involved in self-representation?
>
> THE DEFENDANT: I do, Your Honor.
>
> THE COURT: All right. And what is your educational background? Do you have a high school degree?
>
> THE DEFENDANT: No, Your Honor.

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THE COURT: You're still in high school?

THE DEFENDANT: Nope.

THE COURT: No? You're not going to school at all?

THE DEFENDANT: No, sir.

THE COURT: What grade did you complete?

THE DEFENDANT: Eleventh.

THE COURT: And have you ever represented yourself before in court?

THE DEFENDANT: I have not, Your Honor.

THE COURT: And why do you wish to represent yourself this time?

THE DEFENDANT: At the time, I feel that it is better representation than a public defendant can provide. It's just personal opinion.

THE COURT: And you understand the risk of self-representation> You understand the elements of the offense?

THE DEFENDANT: I do, Your Honor.

THE COURT: All right. And you understand the rules of criminal procedure that we follow in this court?

THE DEFENDANT: I have the gist of it.

THE COURT: All right. You would be well advised to pick up a copy of the rules of criminal procedure.

THE DEFENDANT: I will, Your Honor.

THE COURT: All right. You understand the Michigan Rules of Evidence that we have to follow in this court?

THE DEFENDANT: Vaguely as well.

THE COURT: Those are both available online. You can download them and get copies. The Court is going to suggest that you do that. You understand that there's rules regarding jury instructions and jury selection?

THE DEFENDANT: I do.

THE COURT: All right. And those are available online too, those jury instructions, so –

THE DEFENDANT: I understand, Your Honor.

THE COURT: The Court is going to advise you to make sure you go through that. You understand that there's certain rules for preserving issues for appeal?

THE DEFENDANT: I do.

THE COURT: Okay. And you understand that self-representation is almost always unwise?

THE DEFENDANT: I was not aware of that, but I do understand the basis behind that.

THE COURT: There's the old adage that an attorney who will represent himself has a fool for a client. That's been around for a long time. All right.

THE DEFENDANT: Very understandable.

THE COURT: Okay. You understand that you will receive no special treatment and can receive no help from the court regarding the process of a trial?

THE DEFENDANT: I do, Your Honor.

THE COURT: All right. And you understand that the prosecutor is an experienced trial lawyer who is unlikely to give you any special consideration during a trial>

THE DEFENDANT: I understand.

THE COURT: And that you will receive no special help from the court staff regarding --

THE DEFENDANT: I understand.

THE COURT: You're expected to follow the same rules and requirements that apply to all attorneys?

THE DEFENDANT: I understand, Your Honor.

THE COURT: All right. The Court determines that the waiver of a court appointed attorney at this time is knowingly,

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> intelligently and voluntarily made. The waiver is unequivocal; the defendant understands the disadvantages of self-representation and at this time the Court doesn't believe that self-representation will disrupt or unduly inconvenience or burden the court for the trial.

[10/23/2018 Hr'g Tr, pp 6–10.]

A trial court ensures a waiver of counsel is knowingly and intelligently given by "mak[ing] the pro se defendant aware of the dangers and disadvantages of self-representation, so that the record will establish that he knows what he is doing and his choice is made with eyes open." *People v Dennany*, 445 Mich 412, 432 (1994). Here, the trial court abided by the factors set forth in *Anderson*, and MCR 6.005(D), and found that Haupt made an unequivocal request to represent himself, that the waiver was made knowingly, voluntarily, and intelligently, and that Haupt's self-representation would not disrupt or unduly inconvenience or burden the trial court. (10/23/2018 Hr'g Tr. at 10.) "A waiver extinguishes the right, as well as any right to pursue an alleged error on appeal." *People v King*, 512 Mich 1, 9 (2023) citing *United States v Olano*, 507 US 725, 733 (1993) and *People v Carter*, 462 Mich 206, 215 (2000).

Haupt admits that "the Court was in substantial Anderson and MCR 6.005 compliance" in October 2018 (Def Br, p 29.), and thus, Haupt's valid express waiver of counsel extinguished his right to counsel. Waiver has been defined as "the 'intentional relinquishment or abandonment of a known right.' " *People v Carines,* 460 Mich 750, 762–763, n 7 (1999), quoting *United States v Olano*, 507 US 725, 733 (1993). "A waiver extinguishes the right, as well as any right to pursue an alleged

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error on appeal." *King*, 512 Mich at 9, citing *Olano,* 507 US at 733 and *Carter*, 462 Mich at 215. Because Haupt waived his right to counsel on October 23, 2018, he cannot now claim error regarding any right to an attorney that he intentionally relinquished, abandoned, or extinguished through his waiver.

B. Through his valid waiver in October 2018 and/or in combination with factors the trial court recognized since then, Haupt waived his right to an attorney on June 10, 2019, in accordance with *Anderson*.

Following a valid wavier of an attorney, waiver at subsequent proceedings is not required by the Michigan or United States Constitution, and indeed Justice Boyle noted in her dissent in *People v Dennany,* 445 Mich 412, 464 (1994), "[t]he requirement in MCR 6.005(E) that a trial court obtain a new waiver at every subsequent proceeding is neither compelled nor discussed by *Faretta* [*v California,* 422 US 806 (1975)], *McKaskle* [*v Wiggins,* 465 US 168 (1984)], or *Anderson.*"

When applying *Anderson*, this Court has indicated at least twice that the trial court must determine those factors set forth in *Anderson* upon a defendant's *initial* request to proceed pro se. See *People v Adkins*, 452 Mich 702, 725 (1996); *People v Russell*, 471 Mich 182, 190 (2004); see also Justice Boyle's concurrence/dissent in *People v Dennany*, 445 Mich 412, 466 n 10 (1994). Likewise, MCR 6.005(D) specifically states that a trial "court may not permit the defendant to make an *initial* waiver of the right to be represented by a lawyer without first" providing a defendant certain opportunities and advice. MCR 6.005(D) (emphasis added). The comments of the court rules specify this as well, "The remainder of

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subrule (D) pertains to the defendant's *initial* waiver of the right to be represented by a lawyer and addresses the defendant's constitutional right to self-representation." MCR 6.005(D) citing *Faretta* (emphasis in original).

As previously shown, the trial court did abide by *Anderson* and MCR 6.005(D) when Haupt made his initial request to waive his right to an attorney and represent himself. Although a defendant remains entitled to the right to counsel for every critical stage of criminal proceedings *without* a valid waiver, *People v King*, 512 Mich 1, 14 (2023), Haupt did validly waive his right to an attorney, and therefore no longer remained entitled to the right to counsel.

While Haupt now claims that he "had time for reflection," this Court has previously indicated that while "there are any number of factors or influences that may cause a defendant to appreciate the opportunity to terminate his pro se term and proceed with the assistance of counsel later in the courtroom proceedings[, t]he comments to MCR 6.005 indicate that this Court does *not desire or expect* that a trial court will repeat the inquiry required at the *initial* waiver of counsel procedure unless the judge believes the particular circumstances warrant such an inquiry." *Adkins*, 452 Mich at 723, n 21 (emphasis added). The point of the waiver inquiry is to ensure "that the record will establish that 'he knows what he is doing and his choice is made with eyes open.' " *Faretta,* 422 US at 835, citing *Adams v United States ex rel McCann,* 317 US 269, 279 (1942). Having already established that Haupt knew what he was doing in relinquishing his right to an attorney and did so with his eyes open in October 2018, Haupt cannot now claim that his eyes were

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somehow closed in June 2019, or he was not aware of the dangers and disadvantages of self-representation. Haupt did not simply "forget" the right to be represented or the consequences of self-representation after having received the assistance of counsel and validly waiving that right previously. See Justice Boyle' concurrence/dissent in *Dennany*, 445 Mich at 465–466.

After initially denying appointed counsel's motion to withdraw and then allowing appointed counsel and Haupt to offer further commentary on the record, the trial court admonished Haupt's experience with his attorneys:

> Actually, I don't want to hear any more about that situation - okay? This is your second attorney. You hired an attorney and he withdrew, and he filed a motion to withdraw that I denied, and then a few months later again he wanted to withdraw. The Court allowed him. At that time you said you would represent yourself. Several months later you come back in asking for a court appointed attorney. When you asked to represent -- when you said you were representing yourself, you said you would do a better job than any court appointed attorney could.
>
> So at this point I'm not going to allow Mr. Moore to withdraw totally, but he's not going to have to represent you. He's going to be there for advisory purposes. So at this point, you are on your own, and you're going to have to represent yourself, and if you have any questions regarding the law, Court Rules or anything, Mr. Moore is the person you're going to have to go to.
>
> The Court is not going to adjourn the trial dates. You have a trial date scheduled for January – or July 23rd. That is a definite date. So if you go out and hire another attorney, that is the date they have to be prepared for trial. That is the date you have to be prepared for trial. We are going to trial. This case is old, and your actions have delayed this case; nobody else's actions but yours. And the Court is not going to allow you to delay this any longer. So whether you're prepared to go to trial on July 23rd or not, you are going to trial. You will be here in the courtroom and we will have a trial.
>
> [6/10/2019 Hr'g Tr, pp 5–6.]

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While not as directly laid out as it was in October 2018, a review of the trial court's determination still shows the *Anderson* requirements.

"[B]y rejecting all of his options except self-representation, [he] necessarily chose self-representation." *King v Bobby*, 433 F3d 483, 492 (CA 6, 2006); see also *United States v Ealy*, 682 F. App'x 432, 436 (CA 6, 2017). When the trial court indicated to Haupt that he would need to represent himself, he did not object or in any way indicate that he did not want to represent himself, yet he did constantly cause friction with his retained and appointed counsels. The trial court noted that Haupt had previously retained counsel, and twice counsel asked to withdraw. Then when the court did appoint counsel, Haupt again failed to communicate and accused counsel of misconduct. "[O]ther facts, such as evidence of a defendant's intentional manipulation or delay of the court proceedings as a tactical decision may favor a judicial finding of a knowing and intelligent waiver. *United States v Sandles,* 23 F3d 1121, 1129 (CA 7, 1994)." *People v Adkins*, 452 Mich 702, 723–724 (1996), abrogated by *People v Williams*, 470 Mich 634 (2004); see also *United States v Bell,* 901 F2d 574, 579 (CA 7, 1990) (the defendant's decision to proceed in propria persona as a tactical decision was a relevant factor in establishing a knowing waiver). Because Haupt was clearly unwilling to work with any counsel, had previously waived his right to an attorney, and did not indicate that he did not want to represent himself, Haupt rejected all of his options except self-representation and thus, unequivocally, knowingly, voluntarily, and intelligently requested to represent himself.

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Then finally, the trial court's indication that it was going to trial the following month whether Haupt was ready or not, along with the warnings previously given to Haupt in October 2018, show that the court was not going to allow Haupt's self-representation to disrupt or otherwise burden the trial court. If Haupt had questions, he was provided with advisory counsel that he could ask.[3] "[T]here are no exact guidelines regarding what warnings should be given to a defendant who wishes to proceed in propria persona." *People v Burden,* 141 Mich App 160, 163 (1985) as cited in *Dennany*, 445 Mich at 434. Having already given Haupt these warnings previously and Haupt acknowledging them when he waived his right to an attorney, the trial court was free to determine that by rejecting his retained counsel and his appointed counsel, the only option left was for Haupt to represent himself. Thus, Haupt again expressly waived his right to an attorney on June 10, 2019.

[3] The People understand that the presence of standby counsel is not recognized as an exception to the *Anderson* or court rule requirements, *Dennany,* 445 Mich 416, (1994), but instead put forth this fact to show that the trial court would not be burdened by Haupt's self-representation because of the availability of advisory counsel – thus supporting the third requirement in *Anderson*.

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II. The line between waiver and forfeiture has been blurred over time, but regardless of whether Haupt forfeited, waived-by-conduct, and/or impliedly waived his right to an attorney, he relinquished his right to an attorney when he refused to hire his own attorney, only requested an appointed attorney to further delay trial, refused to work with appointed counsel, and accused appointed counsel of lying and misconduct.

According to Black's Law Dictionary (12th ed. 2024), forfeiture is defined as "The loss of a right, privilege, or property because of a crime, breach of obligation, or neglect of duty." However, over time forfeiture has often been confused or used interchangeably with waiver. While different concepts, they boil down to the same premise – the relinquishment or giving up of something, and in this case – the right to an attorney. Regardless of whether this Court chooses to consider this case as a forfeiture, waiver-by-conduct, implied waiver, or something else entirely given the uniqueness of this case, the result should be the same – Haupt relinquished his right to an attorney through his conduct.

This Court has previously recognized that these concepts have been intermingled:

> We decline to follow the dictum of the Supreme Court of the United States because it conflates the concepts of waiver and forfeiture that we have historically recognized in Michigan. Both this Court and the Supreme Court of the United States have distinguished the failure to assert a right—forfeiture—from the affirmative waiver of a right. *Olano* explained that "[w]aiver is different from forfeiture" in that waiver is "the '*intentional* relinquishment or abandonment of a known right.' " A defendant who waives a right extinguishes the underlying error and may not seek appellate review of a claimed violation of that right. "Mere forfeiture, on the other hand, does not extinguish an 'error.' "
>
> [*People v Vaughn*, 491 Mich 642, 663 (2012) (cleaned up).]

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Many other courts have recognized the use of waiver and forfeiture interchangeably and have attempted to separately define them. For instance, the Tenth Circuit Court of Appeals previously noted, "[b]efore turning to the merits of this argument, we pause to clarify the difference between waiving a right and forfeiting one. Although related, these concepts are unquestionably distinct." *Vreeland v Zupan*, 906 F3d 866, 875 (CA 10, 2018), citing *United States v Olano*, 507 US 725, 733 (1993) ("Waiver is different from forfeiture."). See also *Carruthers v Mays*, 889 F3d 273, 284 (CA 6, 2018) ("many courts considering this issue do not distinguish between the two concepts and have used the terms implicit waiver and forfeiture interchangeably.")

Forfeiture in the context of this case is not the same type of forfeiture as was discussed by this Court when it decided *King*, 512 Mich 1 (2023). In *King*, this Court held that a criminal defendant cannot forfeit the right to counsel. *Id.* at 12–17. In that case, however, the term was used to refer to "the failure to make the timely assertion of a right" in the context of the plain error rule. *Id.* at 15 (quotation marks and citation omitted). This Court held that "a defendant who did not make a knowing and intelligent waiver of the right to counsel" did not need to "object to their own waiver" in order to preserve the issue for appellate review. *Id.* at 14–15.

In this case, Haupt did not fail to assert his right to counsel timely, he outright gave it up through his conduct. Therefore, to the extent that this Court

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questions whether Haupt forfeited his right to counsel as the term was used in *King*, Haupt did not fail to timely assert his right counsel.

If, however, this Court questions whether Haupt forfeited his right to counsel in a different context, such that he gave it up, surrendered, relinquished, and/or lost it, then yes, Haupt forfeited his right to counsel through his conduct.

"The Sixth Amendment withholds from federal courts, in all criminal proceedings, the power and authority to deprive an accused of his life or liberty unless he has or waives the assistance of counsel." *Johnson v Zerbst*, 304 US 458, 463 (1938). "A waiver is ordinarily an intentional relinquishment or abandonment of a known right or privilege. The determination of whether there has been an intelligent waiver of the right to counsel must depend, in each case, upon the particular facts and circumstances surrounding that case, including the background, experience, and conduct of the accused." *Johnson,* 304 US at 464. Indeed, this Court has held that "the Constitution requires a defendant to give a 'knowing, voluntary, and intelligent' waiver of the right to counsel in order to exercise the right to self-representation," *King*, 512 Mich at 11, citing *Iowa v Tovar*, 541 US 77, 87–88 (2004). Under this premise, the right to an attorney can only be waived. However, many courts have found that defendants can, through their conduct, forfeit the right to an attorney. See *King*, 433 F3d at 492; *Ealy*, 682 F App'x at 436.

In *People v Kammeraad*, 307 Mich App at 130, 132 (2014), the Court of Appeals adopted the principle or doctrine of forfeiture of counsel when the

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defendant refused to accept the assistance of counsel but also refused to represent himself and partake in the proceedings. The Court of Appeals noted how "[f]orfeiture, unlike waiver, 'results in the loss of a right regardless of the defendant's knowledge thereof and irrespective of whether the defendant intended to relinquish the right.' " *Kammeraad*, 307 Mich App at 113 citing *United States v Goldberg,* 67 F3d 1092, 1100 (CA 3, 1995). The defendant in *Kammeraad* forfeited his rights to appointed counsel and self-representation because he had the free choice to refuse both and did so. *Kammeraad*, 307 Mich App at 99, 135. Haupt, however, is different.

Haupt did not refuse to represent himself – rather, he previously chose to do so and validly waived his right to an attorney previously. He may have requested the assistance of appointed counsel later, but the fact remains that he was aware of the dangers and disadvantages of self-representation yet chose them anyway. Then, when represented by counsel, he did not assist in his defense but rather failed to communicate with appointed counsel for months and accused appointed counsel of lying and colluding with the prosecutor. He did everything he could to delay this case and used the question of his representation as a tactic for delay.

The Eleventh Circuit Court of Appeals has also recognized that the right to counsel can be forfeited, stating:

> The appointment of counsel for an indigent is required at every stage of a criminal proceeding where substantial rights of a criminal accused may be affected. Nonetheless, the right to assistance of counsel, cherished and fundamental though it may be, may not be put to service as a means of delaying or trifling with the court.

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> Courts thus have recognized that a criminal defendant may forfeit constitutional rights by virtue of his or her actions. The Sixth Amendment right to counsel, for example, may be forfeited by a defendant's failure to retain counsel within a reasonable time, even if this forfeiture causes the defendant to proceed *pro se*. Additionally, a defendant who misbehaves in the courtroom may forfeit his constitutional right to be present at trial . . . .
>
> [*United States v McLeod,* 53 F3d 322, 325 (CA 11, 1995).]

Additionally, the Sixth Circuit Court of Appeals has "conclude[d] that an indigent criminal defendant may implicitly waive or forfeit the right to counsel by utilizing that right to manipulate, delay, or disrupt trial proceedings." *Carruthers v Mays*, 889 F3d 273, 284 (CA 6, 2018).

The Michigan Court of Appeals also recognized "the hybrid situation of 'waiver by conduct,' " also known as " 'forfeiture with knowledge,' " "which combines elements of forfeiture and waiver." *Kammeraad*, 307 Mich App at 133–134, quoting *United States v Goldberg*, 67 F3d 1092, 1101 (CA 3, 1995). Many other courts have also found that a defendant's conduct can waive his right to counsel. The Sixth Circuit Court of Appeals has noted multiple times that "a court must beware that a demand for counsel may be utilized as a way to delay proceedings or trifle with the court" and, therefore, a "persistent, unreasonable demand for dismissal of counsel and appointment of new counsel . . . is the functional equivalent of a valid waiver of counsel." *United States v Green,* 388 F3rd 918, 921–922 (CA 6, 2004), citing *United States v Krzyske,* 836 F2d 1013, 1017 (CA 6, 1988) and *United States v Henderson,* No. 98-5216, 1999 WL 313842, at *2 (CA 6, May 3, 1999).

Similarly, the Fifth Circuit Court of Appeals has also found that a defendant can be deemed to have waived the right to counsel by refusing the assistance of

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appointed counsel and persisting in a demand for different counsel. See *Wiggins v Procunier*, 753 F2d 1318, 1320 (CA 5, 1985). In *United States v Oreye,* 263 F3d 669, 672 (CA 7, 2001), the Seventh Circuit Court of Appeals found that even though a defendant never said he wanted to proceed *pro se,* he waived his right to counsel through his conduct after the district court informed him, on defendant's motion for his attorney to withdraw six days before trial, that he had to choose between working with his current attorney, hiring a new attorney that would be ready to proceed to trial in six days, or representing himself, and he did not keep his attorney or hire a replacement. Several other decisions concur that defendants may waive their right to counsel via conduct.[4] See also *United States v Fazzini,* 871 F2d 635, 642 (CA 7, 1989) (holding that defendant waived his right to counsel where, after being warned that he could lose the right if he failed to cooperate, defendant continued to refuse to cooperate with numerous court-appointed lawyers); *United States v Kelm,* 827 F2d 1319, 1322 (CA 9, 1987) (holding that defendant implicitly waived the right to counsel where, to delay the trial, defendant refused to accept appointed counsel or hire his own attorney); *United States v Mitchell,* 777 F2d 248, 256–57 (CA 5, 1985) (holding defendant waived his right to counsel when, in bad

[4] The Tenth Circuit Court of Appeals in *Vreeland*, 906 F3d at 876, uses the phrase "implied waiver" to refer to a defendant's waiver of a particular right via some action or inaction other than a written or oral waiver. ("we further distinguish between two potential types of implied waivers: (1) scenarios in which a court has expressly informed a defendant that a certain action or inaction will result in the loss of a particular right and (2) scenarios in which a court has not expressly informed a defendant that a particular action or inaction will result in such a loss, but the circumstances nevertheless demonstrate that the defendant is aware that it will.")

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faith and for purpose of delay, he retained counsel known to have a conflict of interest and failed to retain other counsel); *Richardson v Lucas,* 741 F2d 753, 756 (CA 5, 1984) (holding that defendant's refusal to allow any public defender, regardless of competence, to represent him constituted a waiver of the right to counsel); *United States v Moore,* 706 F2d 538, 540 (CA 5, 1983) (holding that defendant's "persistent, unreasonable demand for dismissal of counsel and appointment of new counsel . . . is the functional equivalent of a knowing and voluntary waiver of counsel); *Brickert v State,* 673 NE2d 493, 496 (Ind Ct App, 1997) (holding that defendant waived his right to counsel by engaging in conduct designed to frustrate the judicial process and avoid or delay a trial); *Painter v State,* 762 P2d 990, 992 (Okla Ct Crim App, 1992), (holding that defendant waived his right to counsel when he failed to secure counsel or request appointed counsel so that he could delay his hearing); *State v Boykin,* 478 SE2d 689, 690 (S C Ct App, 1996) (recognizing that a defendant may implicitly waive the right to counsel by misconduct, but finding no implicit waiver because no warnings had been given the defendant).

This case is similar to *King*, 433 F3d at 493, in which the trial court was faced with "reining in a defendant who was attempting to manipulate the system by first refusing to retain an attorney, then by refusing to work with his attorney," and therefore was justified in letting the defendant proceed in pro se. In this case, Haupt first retained an attorney who twice asked to withdraw, the first time for lack of communication for nearly three months and the second based on a strained

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relationship in which Haupt threatened the attorney's bar card and accused him of being biased. (4/9/2018 Hr'g Tr, pp 3–5; 6/21/2018 Hr'g Tr, pp 10–11.) Importantly, during the hearing regarding counsel's first request to withdraw, Haupt *admitted that he was at fault* for failing to communicate with counsel and would be better, but during the hearing regarding the second request to withdraw, counsel indicated that he attempted to contact Haupt multiple times leading up to the status conference but was unable to speak with Haupt until the morning of the status conference. (4/9/2018 Hr'g Tr, pp 5–6; 6/21/2018 Hr'g Tr, p 8.) Haupt's refusal to communicate continued throughout the nearly *two years* that this case remained pending.

After the trial court finally granted retained counsel's second request to withdraw, Haupt went for months without retaining an attorney. When the trial court asked Haupt whether he wanted appointed counsel, Haupt told the trial court he did not want an appointed attorney because he believed he could better represent himself. (8/1/2018 Hr'g Tr, pp 3–4; 10/23/2018 Hr'g Tr, pp 6–8.)

Haupt only wanted a court-appointed attorney when the request would further prolong the case – not to actually assist him in the case. This is evidenced by Haupt's request to remand the case to the district court. Haupt was *not* going to request a remand to the district court while he thought the prosecutor was going to stay the case; he only requested the remand when the trial court and prosecutor made it very clear that no motion to stay was going to be made. (10/23/2018 Hr'g

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Tr. at 13 –14.) It was not until the trial court denied Haupt's request to remand[5] and was intending to proceed to trial the following Tuesday that Haupt requested an appointed attorney, delaying the case even more. (10/23/2018 Hr'g Tr, pp 17, 19–20, 22; 10/26/2018 Request for Court-Appointed Attorney and Order.)

Yet even after being appointed an attorney, Haupt did not communicate with his attorney in the three weeks leading up to the next hearing, but instead the attorney was forced to communicate with Haupt's father. (11/20/2018 Hr'g Tr, pp 3–4.) Six months later, during a misdemeanor case in which appointed counsel was also appointed to, again it was made clear that appointed counsel had attempted multiple times to have Haupt come into the office to discuss his cases to no avail. (Appendix A 17-0929-SM 5/22/2018 Hr'g Tr, p 4.) Appointed counsel then attempted to withdraw in this case via an ex-parte motion that was denied. (6/4/2019 Clare Cir Ct Order.)

During a status conference six days later, appointed counsel indicated that he had requested to withdraw based on representations made by Haupt during a district court hearing on a separate, but simultaneous, stalking case that

[5] Specifically, when addressing the months that Haupt could have file the motion, the trial court noted, "But, see, this is the problem for you not hiring an attorney or asking for an attorney . . . . Because as an attorney, you can schedule court dates. You could -- it was on your responsibility. And that is your risk of self-representation, not knowing what you can do and when you can do it. An attorney knows that they can file and ask for a hearing at any time on any kind of motion, and this is your problem, and this is a problem that you're now creating, and I don't see any good reason for a reason for a prelim at this point . . . at some point things go too far, and you've gone too far. You've waited too long." (10/23/2019 Hr'g Tr, pp 19–20.)

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questioned appointed counsel's truthfulness and accused appointed counsel of colluding with the prosecutor. (6/10/2019 Hr'g Tr, p 3-4.) Appointed counsel also indicated that his phone records would support that he did indeed speak with the private investigator that Haupt accused him of lying about. (6/10/2019 Hr'g Tr, p 5.)

In denying counsel's request to completely withdraw and requiring Haupt to proceed pro se, the trial court touched on Haupt's prior experience with his attorneys, as well as his indication that he could represent himself better than an appointed attorney when he previously waived his right to an attorney. (6/10/2019 Hr'g Tr, pp 5–6.) Haupt did not object, he did not claim that he did not want to represent himself, he did not ask for additional appointed counsel, but he indicated that he understood. (6/101/2019 Hr'g Tr, p 6.) In the time leading up to trial, Haupt did not reach out to then-advisory counsel for any advice or counsel even though the trial court had previously directed him that he could. (6/10/2019 Hr'g Tr, p 6; 7/23/2019 Hr'g Tr, p 9.)

Combined, Haupt's ongoing conduct demonstrated a waiver of counsel. "Waiver of the right to counsel . . . must be a 'knowing, intelligent ac[t] done with sufficient awareness of the relevant circumstances.' " *Tovar,* 541 US at 81, quoting *Brady v United States,* 397 US 742, 748 (1970). A waiver is sufficient if the defendant "knows what he is doing and his choice is made with eyes open." *Adams v United States ex rel McCann,* 317 US 269, 279 (1942); *Godinez v Moran,* 509 US 389, 401 n. 12 (1993). "[T]he 'ultimate test' of whether a defendant's choice is

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knowing is not the adequacy of the trial court's warning but 'the defendant's understanding.' " *Jones v Walker*, 540 F3d 1277, 1293 (CA 11, 2008) (citing cases).

This Court has indicated that it "recognizes and sympathizes with the Catch 22 judges face in the waiver of counsel setting. On the one hand, defendants have a right to counsel. On the other hand, defendants have a right to self-representation. We realize the potential for savvy defendants to use these competing rights as a means of securing an appellate parachute." *People v Adkins*, 452 Mich 702, 724, (1996), abrogated by *People v Williams*, 470 Mich 634 (2004).

For over a year, Haupt refused to communicate and work with both his retained and appointed counsels, and either threatened their professional license or accused them of misconduct. From the delays in the process to the breakdowns in the attorney-client relationships, the trial court made clear findings that Haupt had caused his own undoing. Haupt was well aware that he had the right to an attorney, but he purposefully chose not to avail himself of that right in order to continue to delay the case. Thus, when the entire record is taken into consideration, Haupt's actions, after already verbally waiving his right to counsel, showed that he intelligently, voluntarily, and knowingly *again* waived his right to counsel through his own conduct.

Regardless of whether this Court chooses to consider this case as a forfeiture, waiver-by-conduct, implied waiver, or something else entirely given the uniqueness of this case, the result should be the same – Haupt relinquished his right to an attorney through his conduct. He was well aware of and accepted the dangers of

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self-representation, believed he could do a better job, and only requested an attorney to further delay the process. When given that attorney, he did everything he could to sabotage his representation. He should not be rewarded for this behavior.

III. The Court of Appeals correctly determined that Haupt was not denied counsel at any critical stage in the proceedings.

Should this Court find that Haupt did not extinguish his right to counsel, this Court should then find that Haupt was not denied his right to counsel at any *critical* stage in the proceedings. As the Court of Appeals noted, Haupt was without counsel for a period of less than two months and the only hearings that occurred were a final pretrial hearing, a defense motion hearing, and a prosecution motion hearing. Haupt was not without counsel for preliminary examination, trial, or sentencing.

A critical stage of the proceedings is any stage where the absence of counsel may harm a defendant's right to a fair trial and "applies to preliminary proceedings where rights may be sacrificed or defenses lost." *People v Green,* 260 Mich App 392, 399 (2004), overruled on other grounds by *People v Anstey,* 476 Mich 436, 447 n 9 (2006). "Whether it was a critical stage depends on whether there was a reasonable probability that [defendant's] case could suffer significant consequences from his total denial of counsel at the stage. Perhaps the best way of reaching an answer to that query is to ask whether [defendant] had any opportunity, subsequent to the consolidation hearing, to recover or exercise whatever privilege he lost at the

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hearing." *Van v Jones*, 475 F3d 292, 313 (CA 6, 2007). Critical stages include, in part, the preliminary examination, *Coleman v Alabama,* 399 US 1, 9 (1970), a pretrial lineup, *People v Frazier,* 478 Mich 231, 249 n. 20 (2007), and the entry of a plea, *People v Pubrat,* 451 Mich 589, 593–594 (1996). The People have been unable to locate a case in which this Court determined that a motion hearing, regardless of defense or prosecution, or a pretrial hearing in which a defendant refused a plea offer constituted a critical stage.

However, the Court of Appeals in *People v Holden*, unpublished opinion per curiam of the Court of Appeals, issued November 19, 2009 (Docket No. 284830) (attached as Appendix B), found that a hearing on a motion to strike was not a critical stage of the proceedings because the defendant failed to demonstrate that the motion hearing was a step in the proceedings that significantly impacted his prosecution or the determination of his guilt or innocence. Particularly, the defendant failed to support his claim with any fact or offer any evidence to indicate the substance of the proposed witnesses would have provided relevant and exculpatory testimony.

Similarly, in this case, the trial court specifically found that Haupt's proposed witnesses that the prosecution moved to strike "had nothing to do with this case. And to allow them to testify would only confuse the jury, confuse the issues. Nobody did a motion to consolidate all these cases for trial, so it will still be -- continue to be treated as separate cases." (7/23/2019 Hr'g Tr, p 4.) Thus, similar to *Holden*, Haupt cannot show that the witnesses would have provided relevant and

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exculpatory testimony, and thus, cannot show that the motion to strike significantly impacted his prosecution or the determination of his guilt or innocence.

Similarly, in *People v White,* unpublished opinion per curiam of the Court of Appeals, issued January 26, 2016 (Docket No. 323465) at *3 (attached as Appendix C), defense counsel's absence at a hearing on defendant's motion to suppress did not constitute a denial of counsel at a "critical stage" of the proceedings because the trial court's dismissal of the motion did not result in the prosecution gaining an unfair or improper advantage without counsel present, and defendant did not lose a substantial right. The Court of Appeals found that because "defense counsel had subsequent opportunities to address the same issues that were raised in the motion to suppress, the hearing on defendant's motion was not a preliminary proceeding where rights may be sacrificed or defenses lost, a proceeding where the results might well settle the accused's fate and reduce the trial itself to a mere formality, a stage that held significant consequences for the accused, or a stage as to which potential substantial prejudice to defendant's rights inheres in the particular confrontation and the ability of counsel would help avoid that prejudice." *Id*. at 4 (cleaned up). The same can be said in this case.

The trial court specifically found, and the Court of Appeals affirmed, that the search warrant was not overbroad or unreasonable, and that the warrant sufficiently described the place to be searched. *Haupt,* unpub op at 6–9; (7/23/2019 Hr'g Tr, pp 3–4.) Trial counsel was able during trial to move to suppress the search warrants in this case, but the trial court properly denied the motion. (7/25/2019

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Hr'g Tr, pp 51–67.) Thus, Haupt was not placed into a position in which he lost any substantial rights, and the motion to suppress was not a "critical stage."

Similarly, none of Haupt's substantial rights were lost when he confirmed that he still wanted to reject the prosecution's final plea offer and both parties indicated that motions would be forthcoming. (6/25/2019 Hr'g Tr, pp 4–6.) When the trial court granted the prosecution's use of the preliminary examination transcript in lieu of the victim's testimony, it advised Haupt that he could subpoena her to testify and if she appeared, then the transcript would not be used, but Haupt did not subpoena her. (7/2/2019 Hr'g Tr, p 32.) Specifically, when granting the motion to strike Haupt's witnesses the trial court noted:

> The Court can rule on the issue without the defendant being present or making an argument. That is not considered a critical stage of the proceedings.
>
> The defendant has a constitutional right to present a defense and to confront his accusers, but he still must comply with the procedural and evidentiary rules established to ensure fairness. The right to present a defense only extends to the relevant evidence. The witnesses that you're asking to be stricken and exhibits to be stricken had no relevance to this case; they referred to other cases to which he is charged. So the Court will grant that motion.
>
> [7/12/2019 Hr'g Tr, p 4.]

Noticeably, the trial court touched on Haupt's obligation to abide by the same court rules and rules of evidence as he had been previously warned of when he expressly waived his right to an attorney. In responding to Haupt's later response that the court considered a motion for reconsideration, the trial court indicated that Haupt's witnesses would only confuse the issues as they only pertained to Haupt's other cases, not this case. (7/23/2019 Hr'g Tr, p 4.) Haupt has not even alleged that

these witnesses were critical to this case or that he needed assistance in subpoenaing witnesses and the prosecution refused, nor has he shown how the victim's preliminary examination testimony caused him to have an unfair trial. Haupt did not sacrifice or lose any defenses, the trial itself was not reduced to a mere formality, there were not any significant consequences for the accused, nor was there any potential substantial prejudice to defendant's rights. The nearly two months that Haupt was without counsel simply was not a "critical stage" in the proceedings, and thus could not be a structural error. Moreover, consistent with the Court of Appeals' opinion, Haupt has failed to show plain error and relief should be denied.

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CONCLUSION AND RELIEF REQUESTED

Wherefore, the People ask this Court to deny Haupt's application for leave to appeal.

Respectfully submitted,

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WORD COUNT STATEMENT

This **answer in opposition** contains 12,312 words.

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