

**STATE OF MICHIGAN**  
**COURT OF APPEALS**

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PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

CHARLES HENRY ARTHUR,

Defendant-Appellant.

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UNPUBLISHED

January 29, 2008

No. 273577

Saginaw Circuit Court

LC No. 03-022744-FC

Before: Schuette, P.J., and Borrello and Gleicher, JJ.

PER CURIAM.

Following a jury trial, defendant was convicted of armed robbery, MCL 750.529, assault with intent to murder, MCL 750.83, kidnapping, MCL 750.349, extortion, MCL 750.213, carjacking, MCL 750.529a, felon in possession of a firearm, MCL 750.224f, carrying a dangerous weapon with unlawful intent, MCL 750.226, and possession of a firearm during the commission of a felony, MCL 750.227b. Defendant was sentenced to terms of life in prison for armed robbery, assault with intent to murder, kidnapping, and carjacking; ten to 20 years for extortion; three to five years for felon in possession of a firearm and carrying a dangerous weapon with unlawful intent; and two years for felony-firearm. Defendant appeals as of right. We affirm. We decide this appeal without oral argument under MCR 7.214(E).

**I. FACTS**

The victim testified that defendant pulled out a gun and took \$130 to \$140 dollars from him. Subsequently, defendant ordered the victim to drive into an alley where, consistent with defendant's demands, he got out of the car, stripped to his underwear and socks, and got into the trunk. Defendant then closed the trunk. While the car was being driven, defendant again asked about some money, and then shot the victim two to four times. When the car stopped, defendant opened the trunk and again asked about the money. The trunk again closed, and defendant drove to another location where he shot the victim four to five more times while he was lying in a fetal position in the trunk.

**II. RIGHT OF SELF REPRESENTATION**

Defendant first argues that he was denied his constitutional right to represent himself. We disagree.

### A. Standard of Review

This Court reviews for clear error and the trial court's factual findings surrounding a defendant's waiver. *People v Russell*, 471 Mich 182, 187; 684 NW2d 745 (2004). "However, to the extent a ruling involves an interpretation of the law or the application of a constitutional standard to uncontested facts, our review is de novo." *Id.*

### B. Analysis

A criminal defendant has a right to represent himself, Const 1963, art 1, § 13; MCL 763.1, but the right is not absolute. *People v Anderson*, 398 Mich 361, 366; 247 NW2d 857 (1976). The trial court must determine that: "(1) the defendant's request is unequivocal, (2) the defendant is asserting the right knowingly, intelligently, and voluntarily after being informed of the dangers and disadvantages of self-representation, and (3) the defendant's self-representation will not disrupt, unduly inconvenience, and burden the court and the administration of the court's business." *People v Willing*, 267 Mich App 208, 219-220; 704 NW2d 472 (2005); *Anderson, supra*. Moreover, the requirements of MCR 6.005(D) must be met.

We conclude that defendant failed to assert his desire to represent himself unequivocally. He made the request during two hearings on motions to adjourn, at which a motion for self-representation was not before the court. He was advised to file a motion, but failed to do so. He submitted an affidavit in which he summarized what transpired at the first motion to adjourn, but did *not* bring a motion and did not again request self-representation. Moreover, he subsequently requested that his attorney be allowed to withdraw and then *repeatedly* requested a different attorney, but never renewed his request to represent himself. The record indicates that defendant wanted counsel. Therefore, we find no error requiring reversal.

## III. PROSECUTORIAL MISCONDUCT

Defendant next argues that the trial court erred in allowing the prosecutor to refer to him as "Frank Nitty." Again, we disagree.

### A. Standard of Review

Preserved issues of prosecutorial misconduct are reviewed de novo to determine if the defendant was denied a fair and impartial trial. *People v Thomas*, 260 Mich App 450, 453; 678 NW2d 631 (2004).

### B. Analysis

This same issue was raised and rejected in defendant's earlier appeal of other, unrelated convictions. See *People v Arthur*, unpublished opinion per curiam of the Court of Appeals, issued September 29, 2005 (Docket No 254056). While the victim in this case learned defendant's actual name after the fact, he knew defendant as "Frank Nitty" at the time of the crime. Moreover, he had identified defendant to others immediately after the crime using this name. Thus, use of this alias "was necessary to show that defendant was the person to whom the testimony pertained." *Arthur, supra*, quoting *People v Pointer*, 133 Mich App 313, 316; 349

NW2d 174 (1984). Accordingly, the use of this alias did not deny defendant a fair trial.

Affirmed.

/s/ Bill Schuette

/s/ Stephen L. Borrello