UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

No. 24-2836

UNITED STATES OF AMERICA

v.

JASON MATTIS,
Appellant

On Appeal from the U.S. District Court, E.D. Pa.
Judge Gerald J. Pappert, No. 2:22-cr-00461-001

Before: KRAUSE, PORTER, and AMBRO, *Circuit Judges*
Submitted Sept. 23, 2026; Decided November 4, 2026

NONPRECEDENTIAL OPINION*

KRAUSE, *Circuit Judge*. After a jury trial, Jason Mattis was convicted of one count of possession of an unregistered destructive device, in violation of 26 U.S.C. § 5861(d), in relation to the throwing of a flaming bottle of gasoline at a residence on Keystone Street in Philadelphia. Mattis challenges his conviction on four grounds: (1) that the District Court erred under Federal Rule of Evidence 702 and *Daubert v. Merrell Dow Pharmaceuticals, Inc.*, 509 U.S. 579 (1993), by admitting certain expert evidence without a hearing; (2) that his Sixth Amendment rights were violated when the District Court denied his request to proceed *pro se*; (3) that the District Court failed to instruct the jury correctly on the knowledge element of the offense of conviction; and (4) that the evidence at trial was not

* This disposition is not an opinion of the full Court and, under I.O.P. 5.7, is not binding precedent.

sufficient to sustain his conviction. Because Mattis's arguments are unpersuasive, we will affirm his conviction.

I. DISCUSSION[1]

A. Admission of Expert Evidence

Mattis first argues that the District Court erred in admitting the expert testimony of Benjamin Levin, a forensic DNA analyst employed by the Philadelphia Police Department, without a *Daubert* hearing. A hearing was required to evaluate Levin's reliability, according to Mattis, because although Levin testified that it was 10.2 million times more likely that the DNA came from Mattis and an unrelated individual than from two unrelated individuals, he also testified that the results of the DNA analysis fell below certain analytical thresholds of significance.

Because Mattis did not raise this objection in the District Court, we review his argument for plain error.[2] *United States v. Mornan*, 413 F.3d 372, 379 (3d Cir. 2005); Fed. R. Crim. P. 52(b). But Mattis has not demonstrated the District Court erred, let alone plainly erred. Under Rule 702, as interpreted by *Daubert*, a district court "has an obligation to evaluate

[1] The District Court had jurisdiction pursuant to 18 U.S.C. § 3231, and we have jurisdiction pursuant to 28 U.S.C. § 1291.

[2] To satisfy the plain-error standard, Mattis must establish that (1) the District Court erred; (2) the error was clear or obvious under the law at the time; and (3) the error affected his substantial rights, that is, the error affected the outcome of the proceedings. *See Johnson v. United States*, 520 U.S. 461, 467-68 (1997); *Greer v. United States*, 593 U.S. 503, 507 (2021). And even if these three conditions are satisfied, we will exercise our discretion to award relief "only if (4) the error seriously affects the fairness, integrity, or public reputation of judicial proceedings." *Johnson*, 520 U.S. at 467 (citation modified) (quoting *United States v. Olano*, 507 U.S. 725, 732 (1993)).

the reliability of expert testimony 'where such testimony's factual basis, data, principles, methods, or their application are called sufficiently into question.'" *Mornan*, 413 F.3d at 380 (quoting *Kumho Tire Co. v. Carmichael*, 526 U.S. 137, 149 (1999)). However, "where the defendant does not object to the admissibility of the expert's testimony" and thus "does not sufficiently call these issues into question, we will not find plain error merely because the District Court did not conduct an extensive *Daubert* analysis on the record." *Id.*

That is the case here. Because Mattis did not object to Levin's testimony or otherwise raise sufficient doubt as to its reliability, the District Court was not required to conduct a *sua sponte Daubert* hearing.[3] Accordingly, its failure to do so was not plain error.

B. Sixth Amendment

Mattis next argues that the District Court violated the Sixth Amendment's "corollary . . . right to proceed *pro se*" by denying his request to represent himself. *United States v. Peppers*, 302 F.3d 120, 129 (3d Cir. 2002). Because of the disadvantages of self-representation in criminal proceedings, we have set forth "three requirements that must be met" before allowing a defendant to proceed *pro se*: "(1) he must 'assert his desire to proceed *pro se* clearly and unequivocally'; (2) the court must 'inquire thoroughly to satisfy itself that' the request is knowing and intelligent; and (3) the court must 'assure itself that

[3] Mattis could not satisfy the other criteria for plain error in any event, as we have since concluded that testimony on a DNA likelihood ratio akin to the one at issue in this case was admissible under Rule 702. *See United States v. Anderson*, 171 F.4th 232, 238 (3d Cir. 2026).

the defendant is competent to stand trial.'" *United States v. Bankoff*, 613 F.3d 358, 373 (3d Cir. 2010) (quoting *Peppers*, 302 F.3d at 132).

Where a request to proceed *pro se* is made after the jury has been empaneled, the request is untimely and the district court has discretion to deny it, *see id.*, including if "it results in an unjustifiable interruption of court proceedings," *Buhl v. Cooksey*, 233 F.3d 783, 797 (3d Cir. 2000). In such circumstances, after "first conducting an adequate inquiry," *id.*, under *Peppers* and the Supreme Court case on which it drew, *Faretta v. California*, 422 U.S. 806, 819-20 (1975), the "court may conclude that a defendant who intends nothing more than disruption and delay is not actually tendering a knowing, voluntary and intelligent waiver of counsel, and has not unequivocally asserted the constitutional right to conduct his/her own defense." *Buhl*, 233 F.3d at 797. We review the denial of an untimely request to proceed *pro se* for abuse of discretion. *Bankoff*, 613 F.3d at 373-74.

Here, at the end of the first day of the jury trial, and after the jury was empaneled, Mattis stated that he wanted to fire his lawyer because she was not following his directions on how to question witnesses. At the beginning of the second day, the District Court conducted a sealed colloquy with Mattis "to understand the reasons for his dissatisfaction with counsel," found that "those reasons did not constitute good cause for appointment of new counsel," and "denied [his] request for a new lawyer." App. 255-56. After Mattis expressed his desire to proceed *pro se*, the Court conducted the colloquy on self-representation required by *Peppers* and *Faretta*: It confirmed, among other things, that Mattis understood that he was charged with three counts of possession of an unregistered firearm and that he could be sentenced to 30 years' imprisonment and $750,000 in fines.

After the District Court cautioned Mattis against representing himself, Mattis restated that he wished to proceed *pro se*.

Yet when the District Court subsequently stated, "you are very obviously suggesting to me that you would rather have [your counsel] represent you," and that "it is clear to me from what you just said and from what you said before we began this colloquy that . . . you would rather have [your counsel] represent you," Mattis responded, "I mean, I would rather have a lawyer represent me." App. 265-66. In an effort to confirm whether Mattis was, in fact, withdrawing his request, the District Court observed, "You have a lawyer. And sir, by telling me you would rather have a lawyer represent you[,] [y]ou are telling me you don't want to represent yourself. That's why I go through all this." App. 266-67. Mattis replied by stating twice, "I'll stick with my lawyer." App. 267.

Nevertheless, the next day, after Mattis interrupted his counsel's closing argument and refused the District Court's instructions to remain quiet, prompting the Court to recess the jury, Mattis reasserted his request to proceed *pro se*. The District Court denied this request: "We have had that colloquy. That colloquy resulted in you definitively telling me you didn't want to represent yourself." App. 481. After a heated back-and-forth, the District Court ordered Mattis removed from the courtroom.

Mattis now argues that the District Court violated his right to self-representation. To the extent Mattis challenges the adequacy of the District Court's colloquy on the second day of trial, any such challenge fails because the District Court conducted the requisite colloquy under *Peppers* and *Faretta*, in which Mattis straightforwardly—and twice—stated his desire to proceed with his counsel. Mattis's request to proceed *pro se* was thus

withdrawn, or, at the very least, was not expressed "unequivocally." *Peppers*, 302 F.3d at 132.

Nor did the District Court abuse its discretion by denying Mattis's request to proceed *pro se* the next day, when he disrupted his counsel's closing argument and was then removed from the courtroom. Against the backdrop of the previous day's colloquy, the District Court reasonably found that this request was not an unequivocal assertion of the right to self-representation, *see Buhl*, 233 F.3d at 797, but rather "a bad faith effort to cause a mistrial," and it denied the request "for that reason and for all of the reasons why [the Court] denied it yesterday." App. 492. We therefore reject Mattis's Sixth Amendment claim.

C. Jury Instructions

Mattis next argues that the District Court incorrectly instructed the jury on *mens rea*, i.e., that the Government was required to prove beyond a reasonable doubt that Mattis knew that the device in question "possessed the chemical or structural attributes of a 'destructive device.'" Opening Br. 22. Because Mattis did not raise this objection with the District Court, we review this claim, too, for plain error, *see United States v. Gonzalez*, 905 F.3d 165, 182 (3d Cir. 2018), and we find none.

The statute under which Mattis was convicted makes it "unlawful for any person . . . to receive or possess a firearm which is not registered to him in the National Firearms Registration and Transfer Record." 26 U.S.C. § 5861(d). A "firearm" is defined to include a "destructive device," which is in turn defined to include "any explosive, incendiary, or poison gas (A) bomb, (B) grenade, (C) rocket having a propellant charge of more than four

ounces, (D) missile having an explosive or incendiary charge of more than one-quarter ounce, (E) mine, or (F) similar device." *Id.* § 5845(a), (f).

Here, in relevant part, the District Court instructed the jury that the Government must prove beyond a reasonable doubt that Mattis "knew of the characteristics of the firearm, that is that it was a destructive device." App. 530. It also advised that "the term destructive device means . . . any explosive, incendiary or poison gas, a) bomb, b) grenade, c) rocket having a propellant charge of more than four ounces, d) missile having an explosive or incendiary charge more than one quarter of an ounce, e) a mine, or f) a similar device." App. 531. In addition, the Court stated that the "Government must prove that [Mattis] knowingly possessed the firearm described in the indictment. This means that [Mattis] possessed the firearm purposely and voluntarily and not by accident or mistake. It also means that [Mattis] knew the object was a firearm." App. 531-32.

Together, these statements adequately instructed the jury on the element of knowledge. In *Staples v. United States*, 511 U.S. 600 (1994), the Supreme Court held that, to obtain a conviction under 26 U.S.C. § 5861(d) for possession of a machinegun (also included in the statutory definition of a "firearm"), the Government was required to prove that the defendant "knew the weapon he possessed had the characteristics that brought it within the statutory definition of a machinegun," namely, that it "shoots . . . automatically more than one shot, without manual reloading, by a single function of the trigger." *Id.* at 602 (citing 26 U.S.C. § 5845(a)(6), (b)). Here, where the firearm at issue was a "destructive device," statutorily defined to include an explosive or incendiary bomb, 26 U.S.C. § 5845(f), the District Court likewise instructed the jury that it must find that Mattis "knew of the

characteristics of the firearm, that is that it was a destructive device," and then provided that statutory definition. App. 530-31. That sufficed under *Staples*.

According to Mattis, the jury needed to find that Mattis knew the destructive device had the chemical or structural characteristics which made it a destructive device, i.e., an explosive or incendiary bomb. But we do not read *Staples* to require such specificity, particularly as "knowledge can be inferred from circumstantial evidence, including any external indications signaling the nature of the weapon," the use of which "would make the regulated characteristics of the weapon immediately apparent to its owner." *Staples*, 511 U.S. at 615 n.11.

In short, the District Court's *mens rea* instruction did not constitute plain error.

D. Sufficiency of the Evidence

Finally, Mattis argues that the evidence was insufficient for a reasonable jury to conclude, as required, that the destructive device was in operating condition. As this argument is also raised for the first time on appeal, we again review for plain error. *United States v. Abrams*, 165 F.4th 784, 797-98 (3d Cir. 2026). And again, we find it lacking.

True, the Government's explosives expert testified, in relation to a video of an incident on Hegerman Street, "I can't tell if [the destructive device] functioned or not." App. 445. But Mattis was acquitted of the charge associated with the incident on Hegerman Street, and that testimony has no bearing on the sufficiency of the evidence concerning the Keystone Street incident for which Mattis was convicted. As for the latter, there is ample evidence in the record to support the jury's finding that this device was operable.

II. CONCLUSION

For the foregoing reasons, we will affirm Mattis's conviction.