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2011 IL App (3d) 090620-U

Order filed July 20, 2011

IN THE
APPELLATE COURT OF ILLINOIS
THIRD DISTRICT

A.D., 2011

THE PEOPLE OF THE STATE OF ILLINOIS,)	Appeal from the Circuit Court
)	of the 12th Judicial Circuit,
Plaintiff-Appellee,)	Will County, Illinois,
)	
v.)	Appeal No. 3-09-0620
)	Circuit No. 08-CM-4608
)	
ANTHONY RICE,)	Honorable
)	Marilee Viola,
Defendant-Appellant.)	Judge, Presiding.

PRESIDING JUSTICE CARTER delivered the judgment of the court.
Justices Lytton and Schmidt concurred in the judgment.

ORDER

¶ 1 *Held:* The trial court erred in granting private defense counsel's motion to withdraw and in denying the public defender's motion to continue the case; however, this error was not plain error.

¶ 2 The defendant, Anthony Rice, was serving a 24-month term of conditional discharge when the State filed a petition to revoke. Prior to the petition hearing, the trial court permitted the defendant's private counsel to withdraw, and the public defender's office was appointed.

Before the hearing, the public defender filed a motion to continue. The court denied the motion,

that she had a conversation with the defendant and "[h]e does not want to accept the State's offer." She further explained "we are at odds in terms of how to defend [the case]" and asked that the public defender's office be appointed. The court then instructed the defendant to fill out an affidavit of assets and liabilities to determine if he qualified for appointment of the public defender. The defendant filled out the affidavit, and the case was passed until later in the call. The later proceedings were not recorded, but the court granted Schroeder's motion and appointed the public defender in a written order. The case was continued to June 25, 2009, for a hearing on the State's petition to revoke.

¶ 9 At the June 25, 2009, hearing, the defendant was represented by two public defenders. Public Defender Kate Flynn filed a written motion to continue the case. Flynn alleged that she had been unable to prepare for the following reasons: she had received the defendant's case on the afternoon of June 23, 2009, she had problems with the discovery tendered to her by defendant's private counsel, and she had been covering other court calls days before the hearing. The State objected to Flynn's motion, arguing that the victim, who took the day off work to testify, would be substantially inconvenienced if the case were continued. The court then announced "[w]e are going to hearing on [the defendant's case] today" and passed the case for an unrecorded amount of time.

¶ 10 During the hearing, the victim testified that while the defendant was serving his conditional discharge, he had placed his hands around her neck in an attempt to choke her, physically fought with her, and threatened to kill her. Additionally, she alleged that the defendant had inappropriate telephone and text messaging contact with her.

¶ 11 On cross-examination, Flynn elicited from the victim that she did not photograph her

injuries and did not go to the hospital after the defendant had allegedly assaulted her. Flynn also inquired whether the calls and messages were all from the defendant or another individual. The victim responded that some of the text messages were from telephone numbers that did not belong to the defendant. In its case, the defense called two witnesses who were examined by the second public defender. The defendant did not testify.

¶ 12 At the close of proofs, the trial court found the defendant in violation of the terms of his conditional release. The defendant was later sentenced to 240 days in jail. However, this sentence was reduced to 200 days in jail following the defendant's motion to reconsider. The defendant appeals.

¶ 13 ANALYSIS

¶ 14 We preliminarily note that the defendant waived review of Schroeder's motion to withdraw and Flynn's motion to continue. Instead, he urges us to conduct a plain error analysis. See Ill. S. Ct. R. 615(a) (eff. Aug. 27, 1999). Therefore, we apply the two prong plain error test. See *People v. Thompson*, 238 Ill. 2d 598 (2010). However, the defendant does not argue, and we do not find, that the first prong of the plain error analysis applies, as the evidence was not closely balanced. Thus, our analysis is limited to the second prong of the plain error test, which concerns whether the error substantially affected the fairness and integrity of the defendant's trial. See *Thompson*, 238 Ill. 2d 598.

¶ 15 I. Motion to Withdraw

¶ 16 The defendant contends that the trial court failed to exercise discretion in granting Schroeder's oral motion to withdraw without ascertaining the defendant's position, thereby committing plain error.

¶ 17 The decision to grant an attorney's motion to withdraw lies within the sound discretion of the trial court and will not be overturned absent an abuse of discretion. *People v. Segoviano*, 189 Ill. 2d 228 (2000). In evaluating a trial court's exercise of discretion, we consider the diligence of the movant, the right of the defendant to a speedy, fair, and impartial trial, and the interest of justice in evaluating a trial court's exercise of discretion. *Id.*

¶ 18 An attorney's motion to withdraw must comply with Illinois Supreme Court Rule 13(c) (eff. Feb. 16, 2011). The rule denotes that an attorney may not withdraw his appearance without leave of the court and notice to all parties of record. Ill. S. Ct. R. 13(c)(2) (eff. Feb. 16, 2011). Furthermore, the motion must be in writing. Ill. S. Ct. R. 13(c)(3) (eff. Feb. 16, 2011). However, these procedures may be waived "if it appears that the court has considered the merits of the motion." *People v. Bowman*, 138 Ill. 2d 131, 146 (1990). The trial court has discretion to balance a defendant's right to counsel of his choice against the needs of ensuring that the defendant receives a fair trial. *People v. Howard*, 376 Ill. App. 3d 322 (2007).

¶ 19 In the present case, we note that Schroeder withdrew without filing a written motion and that the trial court granted this motion without inquiring if the defendant opposed Schroeder's withdrawal. Thus, we find that the trial court erred in granting Schroeder's motion.

¶ 20 The defendant argues that this error was so serious that it affected the fairness of his hearing and challenged the integrity of the judicial process. See *People v. Allen*, 222 Ill. 2d 340 (2006). We are not persuaded. In *Thompson*, our supreme court instructed that "automatic reversal is required only when an error is deemed 'structural.'" *Thompson*, 238 Ill. 2d at 608 (quoting *People v. Glasper*, 234 Ill. 2d 173, 179 (2009)). "Structural errors are systemic, serving to erode the integrity of the judicial process and undermine the fairness of the defendant's trial."

(Internal quotation marks omitted.) *Thompson*, 238 Ill. 2d at 608 (quoting *Glasper*, 234, Ill. 2d at 197-98).

¶ 21 We find that the errors alleged by the defendant are not structural or systemic. In support of this finding, we note that the defendant did not object to the trial court's ruling and willingly filled out an income and expense affidavit. Moreover, Schroeder stated that she was "at odds in terms of how to defend" the defendant's case. Consequently, the trial court had reason to question her ability to communicate with the defendant and ensure the defendant received a fair trial. The defendant's right to counsel of his choice was thus outweighed by the trial court's interest in ensuring that he received a fair trial. *Howard*, 376 Ill. App. 3d 322. Although Schroeder did not file a written motion, the trial court considered the merits of her motion and ruled without objection. Therefore, we find that the trial court's error did not affect the fairness of the defendant's trial or the integrity of the judicial system.

¶ 22 Although the trial court erred in granting Schroeder's oral motion to withdraw, this error was not plain error.

¶ 23 II. Motion to Continue

¶ 24 The defendant next argues that the trial court failed to exercise discretion in denying Flynn's motion to continue his hearing. The defendant asserts that the trial court failed to consider the factors relevant to ruling on a motion to continue and such a failure is an abuse of discretion. See *People v. Walker*, 232 Ill. 2d 113 (2009) (holding the trial court committed plain error in denying the defendant's motion to continue). The defendant contends that the trial court failed to exercise discretion because the application of the continuance factors would have required it to continue the case.

¶ 25 We review a trial court's decision to deny a motion to continue for an abuse of discretion. *People v. Chapman*, 194 Ill. 2d 186 (2000). We will not reverse a trial court's denial of a continuance unless it "embarrassed the accused in the preparation of his defense and thereby prejudiced his rights[.]" *People v. Lewis*, 165 Ill. 2d 305, 327 (1995).

¶ 26 The determination of whether a trial court abused its discretion depends on the facts and circumstances of each case. *Walker*, 232 Ill. 2d 113. In making this determination, a trial court may consider the following: the movant's diligence, the defendant's right to a speedy, fair, and impartial trial, and the interest of justice. *Id.* Other factors that might be considered include whether the defense counsel was unable to prepare for trial because she had been held to trial in another case, the history of the case, the complexity of the matter, the seriousness of the charges, docket management, judicial economy, and inconvenience of the parties and witnesses. *Id.*

¶ 27 The trial court's failure to give sufficient consideration to the above factors in denying Flynn's motion to continue was error. However, this error did not result in unfairness or erode the integrity of the judicial process. See *Thompson*, 238 Ill. 2d 598.

¶ 28 The defendant cites *Walker* in support of his position that the trial court abused its discretion in denying the motion to continue. *Walker*, 232 Ill. 2d 113. However, we find that *Walker* is factually distinct from the present case. In particular, *Walker* was a more complex and serious case. Defense counsel in *Walker* was defending a double murder case with little preparation as a result of trying two cases on the previous two days. Defense counsel's lack of preparation was readily apparent at trial when she made no objections, conducted a very limited cross-examination of the State's witnesses, presented only stipulated evidence on behalf of the defendant and failed to present a comprehensive closing argument.

¶ 29 In comparison, the present case is less complex. We note that the defendant was represented by two public defenders at the hearing. This allowed Flynn to focus on cross-examining the victim and conducting closing arguments while the second public defender conducted the direct examination of the defense witnesses. As a result, defense counsel actively participated in the hearing, made objections, conducted in depth cross-examinations of the victim, and called two witnesses in support of the defendant's case. Thus, we find that the trial court's error did not affect the fairness and integrity of the defendant's hearing.

¶ 30 Although the trial court erred in failing to give sufficient consideration to the relevant factors in denying defense counsel's motion to continue, this error was not plain error.

¶ 31 CONCLUSION

¶ 32 For the foregoing reasons the judgment of the circuit court of Will County is affirmed.

¶ 33 Affirmed.