FOURTH DIVISION
September 30, 2015

No. 1-13-1639



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IN THE
APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

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| THE PEOPLE OF THE STATE OF ILLINOIS, | ) | Appeal from the |
| | ) | Circuit Court of |
| Plaintiff-Appellee, | ) | Cook County. |
| | ) | |
| v. | ) | No. 10 CR 21391 |
| | ) | |
| JIMMIE HAYNES, | ) | Honorable |
| | ) | Jorge Luis Alonso, |
| Defendant-Appellant. | ) | Judge Presiding. |

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JUSTICE ELLIS delivered the judgment of the court.
Justices Howse and Cobbs concurred in the judgment.

**ORDER**

¶ 1 *Held*: Trial court did not abuse its discretion when it did not appoint standby counsel where it considered complexity of charges and evidence, defendant's education and background, and defendant's mental capacity. Trial court did not err in declining to substitute public defender representing defendant with appointed private counsel where defendant showed no good cause for substitution or prejudice resulting from public defender's representation.

¶ 2 Following a 2012 jury trial, defendant Jimmie Haynes was convicted of aggravated battery and sentenced to four years' imprisonment. Defendant contends on appeal that the trial court erred by not appointing standby or substitute defense counsel other than the Public Defender of Cook County, and particularly that the court erroneously believed it had no discretion to make such an appointment.

¶ 3 We affirm defendant's conviction. Before declining to appoint standby counsel, the trial court inquired into the complexity of the charges and evidence against defendant, defendant's experience representing himself, defendant's education, and defendant's mental capacity. Similarly, the trial court was not obliged to substitute the appointed public defender representing defendant with an appointed private attorney where defendant made no showing of good cause or prejudice.

¶ 4 I. BACKGROUND

¶ 5 A. Pretrial Proceedings

¶ 6 The State charged defendant with aggravated battery, alleging that, on October 1, 2010, he struck Andrew Dooley in the face with an aluminum crutch on North Clark Street in Chicago.

¶ 7 At his arraignment, defendant, who was nearly 65 years old at the time, told the court that he wanted to represent himself. The court admonished defendant of the charges against him, the applicable Class 3 felony sentencing range, and his right to counsel. When defendant asked, "A public defender?", the court responded that defendant had "a right to hire any lawyer [he wanted]." Defendant replied that he was indigent, and the court then told defendant that he had the right to have a public defender appointed. Defendant responded, "No, your Honor, that won't do."

¶ 8 After defendant confirmed that he understood that he had the right to appointed counsel, he said that he wanted to act *pro se* but needed law library access and to "straighten out" a prior robbery case so that it would not be used against him in this case. Defendant told the court that he had represented himself in a 2009 misdemeanor case in Mississippi but had no legal training, though he had a college degree. The court admonished him that the State would be represented by experienced attorneys who would have him "at quite a disadvantage," but defendant replied,

"I still would have more advantage than taking a public defender."

¶ 9 Defendant then asked if he could work with the public defender as standby counsel. The State told the court that it did not anticipate the evidence against defendant being particularly complex, as it consisted mostly of eyewitness testimony and medical, but not DNA, evidence. The court admonished defendant that he had the right to counsel and to represent himself, but that defendant would "not be provided standby counsel." The court told defendant that the Assistant Public Defender (APD) in court was "a wonderful attorney." Defendant replied, "I *** know who writes [the APD's] checks" but agreed to "try" to be represented by the APD. The court assigned the public defender to the case, and the APD appeared for defendant.

¶ 10 At a later status hearing, defendant told the court that the APD was "not [his] attorney" and alleged that the APD gave information to the State, "who [paid] his costs." The APD said that he had not yet met with defendant and asked for a behavioral clinical examination (BCX) of defendant because defendant had previously been found not guilty by reason of insanity (NGRI) in an earlier case. Defendant objected that the APD should have met with him and said, "I do not wish to have him. Maybe I should ask for a new judge, too." The court decided to order a BCX on its own motion as well as the APD's motion, and defendant said, "I am also asking for a new judge, too. I think you are prejudiced." The court ordered a BCX of defendant's fitness and sanity, over defendant's objection.

¶ 11 In March 2011, Dr. Nishad Nadkarni, a psychiatrist with Cook County's forensic clinical services (FCS) reported to the court that he tried to examine defendant on February 28, 2011, but defendant "refused to cooperate" and "verbalized a number of paranoid delusions about this examiner and the courtroom process." Dr. Nadkarni concluded from the unsuccessful examination and a review of the record that defendant was unfit to stand trial. While he had

adequate capacity to understand the nature of the charges and the courtroom proceeding and personnel, he "appeared psychiatrically unstable" with "an acute exacerbation of his long-standing Schizophrenic illness, manifesting paranoid and persecutory delusions which would preclude him from rationally assisting counsel in his defense." Dr. Nadkarni found it substantially probable that secure inpatient treatment, including psychotropic medication, would restore defendant to fitness within one year. Nadkarni could not form an opinion as to defendant's sanity at the time of the alleged offense.

¶ 12 When the court received Dr. Nadkarni's BCX report on March 9, 2011, defendant stated that the APD was not his counsel and that he would not speak to anyone conducting the BCX. When the court found a *bona fide* doubt of defendant's fitness, defendant demanded a change of venue, which the court denied. The court scheduled a hearing for Dr. Nadkarni to testify, and defendant objected that "I did not speak to this guy so I don't know how he could make an assessment." The court noted that it was defendant's right not to speak with the BCX examiner and that defendant wanted to represent himself. Defendant responded that "I'm not anxious to represent myself but I want someone to represent me in a way that's going to get me some justice." The court continued the case for a fitness hearing.

¶ 13 At the fitness hearing on April 6, 2011, defendant said that he wanted the case to go to trial and that the APD had not met with him. Dr. Nadkarni testified to his BCX report and to his opinion that defendant was unfit but could be restored to fitness within a year with secure inpatient treatment. The trial court found defendant mentally unfit to stand trial and ordered secure inpatient treatment by the Department.

¶ 14 In June 2011, Dr. Nadkarni reported to the court that he had again examined defendant and found him fit to stand trial. In addition to properly describing the charges against him and

identifying courtroom procedures and personnel, he "denie[d] any previously expressed paranoia about his attorney, and indicate[d] a willingness to assist counsel in his defense." When the court received the report on June 24, defendant stated that he was discharging counsel and wanted to represent himself. However, the court found that, because defendant had been found unfit, the public defender had to continue representing defendant until the fitness hearing.

¶ 15 On July 14, 2011, Dr. Nadkarni testified that defendant initially refused to participate in the June 2011 examination, but that he cooperated once he learned that he would be returned to Department custody if he did not. Dr. Nadkarni found defendant had above-average intelligence and was still demonstrating "paranoid delusions but they were not active and he did not endorse them." Defendant objected, the APD noted that he was represented by counsel, and defendant replied, "I have no representation at all." The APD noted that defendant spoke against his advice and that the fitness hearing would likely result in the case proceeding to trial. Defendant persisted in his objection, which the court disregarded because he had counsel. Dr. Nadkarni further testified that defendant demonstrated knowledge of his case and the criminal justice system, was not taking medication while in Department custody, was able to represent himself or assist counsel if he so chose, and was fit for trial despite his paranoid schizophrenia.

¶ 16 On the APD's cross-examination, Dr. Nadkarni added that defendant was not subject to involuntary medication because his schizophrenia-related behavior did not present an imminent danger to himself or others. While defendant expressed delusions that he had devices implanted in his body that could be activated wirelessly, those delusions did not affect his ability to cooperate with counsel if he chose. The court learned from the APD that defendant wanted to be found fit and filed a *pro se* motion to that effect. Following arguments where both the State and the APD advocated for a finding of fitness, the court found defendant fit to stand trial.

¶ 17 The APD, though willing to represent defendant, reminded the court of defendant's repeated desire to represent himself rather than have counsel. Defendant reiterated that he wanted to act *pro se*, and the court admonished him of the charges against him. When defendant expressed confusion at facing multiple charges for the same incident, the court noted that counsel could explain that to him. Defendant replied that the APD had not met with him to discuss his case, and the court asked if he wanted the APD to represent him if the APD met with him. Defendant replied, "I would like to have an attorney that would help me with this trial." The court asked if defendant did not want to proceed *pro se*, and he answered that he did not want to act *pro se* if he could have "an attorney to help [him] with the trial," but not the APD, as he had not met with defendant. The APD noted that the case had until then focused on fitness and reiterated his willingness to represent defendant and to meet with him immediately. Defendant agreed to a continuance to meet with the APD, and the case was continued a week to July 20, 2011.

¶ 18 On that day, the APD told the court that he met with defendant to discuss his case and, having successfully explained to defendant the need for release of records for a BCX, asked the court for a BCX of defendant's sanity at the time of the offense. The APD also told the court that, despite the APD's "impression that everything was okay" after the last court session, defendant had prepared a motion to proceed *pro se*. Against the APD's advice not to address the court, defendant presented his motion "to proceed *pro se* seeking elbow counsel" and explained that he wanted to act as his own lead counsel. The court said, "I am not inclined to give you standby counsel or elbow counsel."

¶ 19 The court then admonished defendant of the charges against him, the applicable sentencing range, and his right to appointed counsel. Defendant said that he understood. The

court asked defendant if he was giving up his right to an attorney and asking to represent himself, and defendant replied that he was. The court reminded defendant that presenting a defense was not easy and required knowledge of the rules of procedure. The court admonished him that the State is represented by experienced attorneys, he could not claim ineffective assistance if he lost while acting *pro se*, the court would not act as his counsel, and he could not change his decision once trial began.

¶ 20 Defendant told the court that he had represented himself in a 2009 case where he was found guilty. Defendant said that he had a college degree. The State again told the court that the case did not involve scientific evidence or expert testimony.

¶ 21 Defendant then added that he felt as though standby counsel "would really be helpful" for research and law library access. Defendant explained that he did not trust the public defender because, during the case where he was found not guilty by reason of insanity, his public defender refused to look for a witness who could have exonerated him. The court told defendant that he would "not have standby counsel," and defendant replied that he still wanted to waive his right to counsel because "[t]hat's the best that [he had]." The court allowed the APD to withdraw.

¶ 22 As the case proceeded through discovery, defendant filed numerous motions. On August 11 and September 1, 2011, the court denied defendant's requests for a court order on law library access. At those hearings, defendant reiterated that he wanted to represent himself. Also in September 2011, defendant moved for substitution of judge, arguing that the court showed prejudice by denying him standby counsel, more law library access, and leave to appeal the fitness finding. In denying the motion, the court (with a different judge presiding) told defendant that the admonishments for waiver of counsel were proper and not intimidating as he claimed, that a finding of fitness is not appealable, that self-representation is very difficult, and that he

could still have the public defender appointed.

¶ 23 On September 14, 2011, defendant sought an independent psychological examination (IPE) but did not articulate the purpose for which he would use it. He refused to cooperate with an FCS examiner, saying, "[I]n 2002 they decided I was insane because the Public Defender and the State conspired to get me sent to this mental hospital." The court denied the IPE motion as vague.

¶ 24 In late September 2011, defendant filed a motion for appointment of counsel other than the Cook County public defender, stating that "the legal maneuvering [that was] going on [was] way, way above [his] head." In October 2011, the court granted defendant's motion for more law library visits, ordering that he be allowed weekly, one-hour visits. Defendant filed a motion for change of venue to Kane County on the grounds that he could not get a fair trial in "ruthlessly corrupt" Cook County, as evidenced by the public defender and State conspiring to have him found unfit.

¶ 25 On November 1, 2011, defendant asked the court why he did not have standby counsel. The court reminded him that it had "denied [his] request for standby counsel" and that defendant had the right to counsel. Defendant replied that "the public defender is not an attorney, he's just a liaison to the State's Attorney's Office," and argued in support of his motion for a change of venue. When defendant expressed his desire for a new judge, the court reminded him that his prior substitution motion had been denied. The court denied the venue motion and asked defendant if he was ready to go to trial. Defendant replied, "I want to go to trial in a place where I can get a fair trial." When the court asked again if defendant wanted to go to trial, defendant answered that he was not ready without "some assistance" of more library time and subpoena power. The court asked defendant if he wanted the APD as counsel, and defendant replied that he

did not want the APD but wanted to have subpoena power and more access to the law library.

¶ 26 On November 21, 2011, the court (with a different judge presiding) and parties discussed discovery, including defendant's request for any security video of his alleged offense. The court told defendant that he could issue subpoenas, but the court could not advise him on how to do so, and defendant asked for standby counsel. The court noted its earlier denial of standby counsel and observed that the case involved allegations of aggravated battery and did not "appear to be anything complicated." The State asserted that discovery was complete except for the 911 recordings and that, to its knowledge, there was no video. Defendant asserted that all other discovery documents, including police, ambulance, and medical reports, were "fraudulent" and "just a made-up case." The court concluded, "[I]n my discretion, I am going to deny your motion for standby counsel." Defendant demanded a jury trial "and an attorney." The court asked defendant if he wanted the public defender, and he answered, "I don't want anything to do with the Public Defender's Office." He said that he wanted either *pro bono* counsel or standby counsel. The court denied both requests.

¶ 27 On December 7, 2011, the State tendered the 911 log but said that the recording itself had been destroyed. Defendant objected, but the court found that the State could not produce a recording that no longer existed because it was not timely requested. Defendant replied that he sought the 911 recording earlier, but that the APD "was not interested in doing this" and that the APD and the court had defendant committed "in an effort to keep [defendant] from bringing this type of evidence forward." Defendant argued that if he had the 911 recording, he "would have been able to prove that the people that the State has put forth as the people involved in this incident *** are not the people." Defendant said, "[I]t's evident that I don't know what I'm doing," and again requested standby counsel. The court denied the request, noting that it had

denied similar requests at previous hearings. The State asserted that discovery was complete, and the court continued the case for pretrial motions.

¶ 28 On December 20, 2011, defendant challenged the notion that discovery was complete, reiterating that he had not received the 911 recording and that the APD "was serving [him] up to the State." The court told defendant that, if he chose to be represented by counsel, his attorney could conduct an investigation and that defendant would be better off with counsel. Defendant agreed but reiterated at length his dissatisfaction with the APD and, after a discussion of the discovery limitations of self-representation, asked the court to "revisit this attorney thing again." The court replied that "based upon your very strong feelings, I could appoint a private attorney to represent you." Defendant agreed, and the court continued the case to January 5, 2012, to "figure out the procedure for doing that" and for defendant to consider whether he wanted to continue *pro se*. At a subsequent court date, the court informed defendant, "I looked into it, and I cannot get you a private attorney." The court again told defendant that his choices were self-representation or the public defender. Defendant replied, "I can't do a public defender."

¶ 29 On February 23, 2012, defendant asked the court whether, if he chose to be represented by counsel, he could later reconsider that decision. The court replied that defendant could reconsider but that the court could deny a motion to proceed *pro se* if the court "thought that [he was] playing games or trying to put off trial." Defendant asked the court to appoint the public defender and the court did so, with the original APD appearing for defendant.

¶ 30 The APD told the court on March 21, 2012 that he was investigating a potential witness suggested by defendant. On April 23, 2012, after the APD had completed the investigation, the APD told the court that defendant wanted to address the court against the APD's advice. Defendant expressed at length his belief that the APD was working against him and for the State.

Defendant asked the court to "appoint another attorney." When the court denied that request, defendant asked to proceed *pro se*. After the court told defendant that the APD was a qualified and experienced attorney, and defendant maintained that the APD was not representing his interests, defendant asked the court to assign someone else from the public defender's office. The court denied defendant's request, and defendant reiterated his request to proceed *pro se*. The court granted that request and allowed the public defender to withdraw.

¶ 31 Defendant filed a written motion for "court appointed assistance of counsel" seeking either standby or "lead" counsel from either within or outside the Public Defender. Defendant argued that he could have counsel other than the APD if there was a conflict. But the court found that there was no conflict, and that the APD was willing and able to represent defendant. The court reiterated that defendant's choices were to represent himself or accept the APD's representation. Defendant restated his criticisms of the APD, including that he was found unfit at the APD's behest. The court denied the motion for appointment of counsel.

¶ 32 In July 2012, defendant again asked for standby counsel. The court again asked the State about the difficulty of the case, and the State again said that there would be no DNA or other scientific evidence in the case. After defendant reiterated his criticisms of the APD, the court stated that this was not the kind of case where defendant would be entitled to standby counsel.

¶ 33 Prior to trial, the State filed a motion to introduce other-crimes evidence. Specifically, it sought to prove that defendant swung his crutch at Anajanette McGee shortly before, and a short distance away from, the alleged aggravated battery of Dooley. The State further alleged that McGee phoned 911, saw defendant attack Dooley, and saw and reported defendant's subsequent movements. The State also sought to introduce evidence that defendant struck Arun Bhattacharya with his crutches on the morning of March 25, 2010. The State argued that the

other-crimes evidence would show defendant's identity, knowledge, intent, and the absence of mistake or accident.

¶ 34 On August 7, 2012, the court heard the State's other-crimes motion. The court allowed evidence of the McGee incident on the same day as the instant offense, but did not allow evidence of the March 2010 incident with Bhattacharya. However, defendant told the court that he wanted to cross-examine Bhattacharya to "show that the police picked me up on the same type of crime" previously. When the court asked defendant if he wanted evidence of the March 2010 incident admitted at his trial, defendant replied that he wanted counsel—but not the APD—to advise him on the matter. The court reiterated its belief that the APD was qualified and willing to represent defendant, and defendant reiterated his belief that the APD would not represent his interests. The court denied defendant's request for counsel. The State provided defendant the discovery in the March 2010 case, and the case was continued for defendant's decision whether to challenge the other-crimes evidence.

¶ 35 At the next session later in August, defendant reiterated his request for substitute counsel and the court denied it, explaining that the court could not decide which APD would be appointed to defendant's case.

¶ 36 On October 1, 2012, the State answered not ready for trial because McGee was not available to testify. Defendant asked the court to subpoena certain witnesses to the March 2010 incident, prompting the court to ask if defendant wanted to "bring in" the March 2010 incident. He answered that he wanted the witnesses to testify. The court granted the State's earlier other-crimes motion as to the March 2010 incident.

¶ 37 Just before trial commenced in October 2012, defendant requested a continuance to find *pro bono* counsel. The court denied the motion.

¶ 38 B. Trial

¶ 39 Andrew Dooley testified that, at about 4:30 p.m. on October 1, 2010, he stepped out of a building onto the sidewalk of Clark Street in downtown Chicago when he was struck on the left side of his jaw. Dooley saw defendant standing in front of him, holding a metal crutch like a baseball bat. Eventually, Dooley was helped back inside the building.

¶ 40 A building security guard called the police and paramedics, and Dooley was taken by ambulance to a hospital where he was diagnosed with a fractured jaw. After consulting a surgeon the following Monday, Dooley's jaw was wired shut for eight weeks. He had not seen defendant before that day. On cross-examination, Dooley testified that he saw in his peripheral vision defendant walk past him in the flow of pedestrian traffic pushing a cart or "what I thought was a cart at the time" before he was struck.

¶ 41 Alex Gomez testified to seeing defendant standing over Dooley, holding a bent or broken metal crutch like a baseball bat, and Dooley holding his cheek. Gomez did not see defendant strike Dooley. Defendant had a wheelchair in an alley just off the sidewalk, loaded with "a bunch of stuff." Defendant walked back and forth between the wheelchair and Dooley for up to a minute, screaming incoherently at Dooley. Defendant then went south along Clark Street, pushing his wheelchair and carrying his crutches. Gomez had not seen defendant or Dooley before that day.

¶ 42 Police officer Robert Galassi testified that he was patrolling downtown Chicago when he received a report of a battery on Clark Street. When he arrived, he spoke with a security guard, who described the assailant and told Galassi where the assailant had gone. Officer Galassi went south a few blocks on Clark Street and found defendant, who matched the description of the assailant. Defendant was pushing a wheelchair containing crutches and several bags. Galassi

arrested defendant. When Galassi inventoried the wheelchair and its contents, he noted that one of the crutches was broken.

¶ 43 Arun Bhattacharya testified regarding the March 25, 2010 battery. He testified that, when he entered a sheltered bus stop at about 10 a.m., defendant was already in the shelter and holding a crutch in his arms. Defendant accused Bhattacharya of stalking him. Bhattacharya told defendant that he was not stalking him. Defendant struck Bhattacharya on the head with the crutch. Defendant then jumped on top of Bhattacharya and repeatedly punched him until a bus arrived and the driver reported the incident by radio.

¶ 44 Officers Tellez and Papadopoulos testified on defendant's behalf. They said that, after defendant's arrest on March 25, 2010, his property did not include a wheelchair or cart. Papadopoulos added that, when he arrived at the scene, defendant was claiming that Bhattacharya was harassing him.

¶ 45 Mary Nichols testified that she knew defendant for over 20 years. On the late morning or midday of October 1, 2010, she ran errands with him downtown. He did not have a wheelchair when she was with him that day. After a few hours, Nichols dropped off defendant at a hospital.

¶ 46 Defendant testified that, on March 25, 2010, he was waiting for a bus in the bus shelter carrying groceries that he had just purchased when Bhattacharya entered the shelter and startled defendant. When defendant asked him what was wrong, Bhattacharya repeatedly punched defendant. Defendant shoved Bhattacharya, knocking him down, when the bus arrived. Defendant said that the responding officers did not ask him for his account of events before arresting him.

¶ 47 With respect to the October 1, 2010 incident, defendant maintained that Dooley, Gomez, and the police lied. Defendant testified that he was walking down Clark Street—with neither a

wheelchair nor a cart—when he saw two men (neither of whom was Dooley) "acting like boyfriend and boyfriend" in front of the school on Clark Street. Defendant said that he "made an improper suggestion to them." In response, one of the men attacked defendant, who defended himself with his crutch. Defendant explained that he is "outspoken about *** the perpetuation of homosexuality now in our society" as well as amnesty for illegal immigrants.

¶ 48 The jury found defendant guilty of aggravated battery. After the verdicts were entered, the court asked defendant if he wished to continue representing himself in the posttrial and sentencing phases of the case. After defendant reiterated that he did not want the original APD and the court reiterated that it could not decide which APD would be assigned, defendant requested that counsel be appointed. The court appointed the public defender, and an Assistant Public Defender other than the original APD (posttrial APD) appeared for defendant.

¶ 49 C. Posttrial Proceedings

¶ 50 The posttrial APD filed a general posttrial motion in November 2012 and, in January 2013, sought and obtained a BCX of defendant's fitness for sentencing. Dr. Nadkarni reported that he could not form an opinion on fitness because defendant refused to be interviewed. Nadkarni's report expressed "significant concerns about [defendant's] mental status" based on the records of the jail hospital, showing that he manifested bodily delusions and bizarre thinking consistent with paranoid schizophrenia.

¶ 51 After receiving Dr. Nadkarni's report, the court found that defendant had last been found fit, there was no *bona fide* doubt of fitness raised, and thus the court would rely upon the presumption of fitness. After meeting with defendant, the posttrial APD agreed that she had no *bona fide* doubt of defendant's fitness because he was intelligent, respectful, cooperative and useful in her preparation of the supplemental posttrial motion. She also told the court that, after

she discussed Dr. Nadkarni's May report with defendant, he agreed that he is fit for sentencing.

¶ 52 Defendant filed a *pro se* posttrial motion alleging that the court improperly denied his motions for appointment of counsel other than the public defender because the original APD had a conflict. After providing the motion to the posttrial APD and hearing defendant's *pro se* argument, the court denied the *pro se* motion.

¶ 53 The posttrial APD filed a supplemental posttrial motion adding claims that the court erred in denying defendant's motions for standby counsel, granting part of the State's other-crimes motion, not granting a continuance for defendant to find counsel, and not raising the issue of defendant's fitness at trial. The court also denied this motion.

¶ 54 In denying the claim that the court should have considered defendant's fitness at trial, the court noted that defendant asked questions that an attorney would not ask, but he is not an attorney, and the court "saw nothing during the trial that would have forced me to again, over his objection, raise the issue of fitness."

¶ 55 At sentencing, the court merged the public way count of aggravated battery into the great bodily harm count. The court sentenced defendant to four years' imprisonment. The posttrial APD filed a motion to reconsider sentence, which the court denied. This appeal followed.

¶ 56 II. ANALYSIS

¶ 57 On appeal, defendant contends that the trial court erred by not appointing standby or substitute defense counsel other than the public defender. In particular, he contends that the court erroneously believed it had no discretion to make such an appointment and that it failed to properly consider defendant's mental health or capacity in ruling upon his requests for standby or substitute counsel.

¶ 58 We first turn to defendant's argument that the trial court should have provided him with standby counsel. We then turn to defendant's claim that he was entitled to replacement counsel.

¶ 59 A. Standby Counsel

¶ 60 The United States and Illinois Constitutions provide that a criminal defendant has the right to appointed counsel if he is indigent or otherwise cannot employ counsel. U.S. Const., Amend. VI, XIV; Ill. Const. 1970, art. I, § 8; *Gideon v. Wainwright*, 372 U.S. 335, 344 (1963); *Argersinger v. Hamlin*, 407 U.S. 25, 37 (1972). A defendant also has the constitutional right to waive his right to counsel and represent himself if he voluntarily and intelligently elects to do so. *Faretta v. California*, 422 U.S. 806, 807 (1975). Thus, when a "literate, competent, and understanding" defendant voluntarily exercises his "informed free will" to represent himself, even if "his technical legal knowledge" is lacking, the State may not compel that defendant to accept appointment of counsel. *Id.* at 835-36. But, in *Faretta*, the United States Supreme Court also noted that "a State may—even over objection by the accused—appoint a 'standby counsel' to aid the accused if and when the accused requests help, and to be available to represent the accused in the event that termination of the defendant's self-representation is necessary." *Id.* at 834 n.46; see also *McKaskle v. Wiggins*, 465 U.S. 168, 183 (1984) (defendant's right to represent himself not infringed by standby counsel helping *pro se* defendant comply with basic rules of courtroom procedure, nor by assisting in overcoming procedural or evidentiary hurdles to completion of some specific task).

¶ 61 But a *pro se* defendant does not have a right to standby counsel. *People v. Ellison*, 2013 IL App (1st) 101261, ¶ 42. "The right of self-representation does not carry with it a corresponding right to legal assistance; one choosing to represent himself must be prepared to do just that." *People v. Simpson*, 204 Ill. 2d 536, 562 (2001). That said, the trial court has the

discretion to appoint standby counsel. *Ellison*, 2013 IL App (1st) 101261, ¶ 42. The relevant criteria for deciding whether to appoint standby counsel include the nature and gravity of the charge, the expected factual and legal complexity of the proceedings, and the defendant's abilities and experience. *People v. Gibson*, 136 Ill. 2d 362, 380 (1990). The trial court is not required to appoint standby counsel merely because a defendant is making different strategic choices than an attorney might. *Ellison*, 2013 IL App (1st) 101261, ¶ 51. The court is not required to provide a detailed explanation of its denial of standby counsel because it is presumed to know and properly apply the law in the absence of an affirmative indication that it did not. *Id.* ¶ 47.

¶ 62 Whether the court erred in refusing to appoint standby counsel is reviewed under an abuse-of-discretion standard, so that reversible error will be found only where the ruling was so arbitrary or fanciful that no reasonable person would share the trial court's view. *Id.* ¶ 42. This is the most deferential of deferential standards; indeed, "[t]his court has recently reiterated that 'no trial court in Illinois has been reversed for exercising its discretion to *not* appoint standby counsel, and this absence of reversals appears consistent with nationwide experience.' " (Emphasis in original.) *People v. Ellison*, 2013 IL App (1st) 101261, ¶ 42 (quoting *People v. Pratt*, 391 Ill.App.3d 45, 57 (2009)). When a trial court fails to exercise discretion in the erroneous belief that it has no discretion, we evaluate the failure in light of the entire proceeding, and the defendant bears the burden of showing that he was prejudiced by the failure to exercise discretion. *People v. Jones*, 2015 IL App (2d) 120717, ¶ 17; *People v. Ware*, 407 Ill. App. 3d 315, 349 (2011).

¶ 63 Here, the court ruled several times on defendant's requests to appoint standby counsel. At arraignment, the court inquired into defendant's experience and abilities, including a college

education, and the complexity of the case, before denying standby counsel. Particularly, the court noted that the State would not present complicated evidence, such as DNA evidence, and that the charge was a straightforward one. The court made similar inquiries and reached the same conclusion shortly after finding defendant restored to fitness, showing that the court was well aware of defendant's mental health issues and Dr. Nadkarni's psychiatric opinion that defendant could represent himself and assist counsel if so chose. In November 2011, the court again found the case uncomplicated before denying defendant's requests for standby counsel and counsel other than the public defender. In July 2012, the court again confirmed that the case was uncomplicated before denying a request for standby counsel. In sum, the court considered the necessary factors numerous times before denying defendant's requests for standby counsel. And the court's conclusion regarding those factors was neither unreasonable nor arbitrary.

¶ 64 Defendant focuses upon the trial court's statement, "I cannot get you a private attorney," to show that the court failed to exercise its discretion in ruling on his request for standby counsel. But the appointment of counsel other than the public defender to *represent* defendant is a different matter from the appointment of standby counsel to *assist* defendant in representing himself. Here, the court suggested, "I could appoint a private attorney to *represent you*," before finding out that it lacked the procedures necessary to do so. (Emphasis added.) Thus, the trial court's statement regarding a private attorney did not show that it was unaware of its discretion to appoint *standby counsel*; that comment is unrelated to the issue of standby counsel.

¶ 65 What is more, the trial court's extensive questioning about the complexity of the case, defendant's experience and education, and defendant's fitness all show that the trial court was well aware that it could appoint standby counsel if it chose to do so. We disagree that the record demonstrates that the trial court failed to exercise its discretion.

¶ 66 Defendant also argues that *Indiana v. Edwards*, 554 U.S. 164 (2008), shows that the trial court abused its discretion in declining to provide defendant with standby counsel. In *Edwards*, the United States Supreme Court considered whether the United States Constitution prohibited a state from requiring a "gray-area" defendant—a defendant who was mentally competent to stand trial, but not mentally competent to conduct that trial *pro se*—to be represented by an attorney. *Edwards*, 554 U.S. at 167. The Court held that "the Constitution permits States to insist upon representation by counsel for those competent enough to stand trial *** but who still suffer from severe mental illness to the point where they are not competent to conduct trial proceedings by themselves." *Id.* at 178.

¶ 67 Here, defendant argues that the denial of standby counsel constituted a failure to apply or consider *Edwards*. Defendant reasons that, because *Edwards* recognized that a mentally incompetent defendant may be required to have counsel, the trial court in this case should have taken additional care regarding defendant's mental competency and appointed standby counsel.

¶ 68 But defendant fails to recognize that *Edwards* did not *direct* trial courts to do anything. Instead, it merely provided that a court does not violate the Constitution if it *does* appoint counsel for a gray-area defendant who wants to represent himself; in no way did the court suggest that the appointment of counsel for a gray-area defendant is mandated. Indeed, the Court in *Edwards* recognized that a court may also allow a gray-area defendant to represent himself. *Edwards*, 554 U.S. at 173 (citing *Godinez v. Moran*, 509 U.S. 389, 400-402 (1993)). And this court has held that *Edwards* does not create a higher standard of competence, requiring additional inquiry, before a trial court may allow a gray-area defendant to represent himself. *People v. Allen*, 401 Ill. App. 3d 840, 851 (2010); *People v. Tatum*, 389 Ill. App. 3d 656, 670 (2009). As we have stated, though *Edwards allows* the appointment of counsel for a gray-area

defendant over his objection, "[n]othing in *Edwards requires* a trial court to [engage in] the forced denial by the trial court of defendant's right to proceed *pro se* although he was found mentally competent to stand trial." (Emphasis added.) *Allen*, 401 Ill. App. 3d at 852.

¶ 69 Moreover, *Edwards* does not concern standby counsel, nor does defendant cite any case applying *Edwards* to the appointment of standby counsel. Indeed, we find *Edwards* incompatible with the appointment of standby counsel. *Edwards* authorizes a court to appoint counsel for a defendant who wants to represent himself where the court has found the defendant unfit to represent himself. But a defendant who has standby counsel still fundamentally represents himself. Thus, a court following the principle embodied in *Edwards*—that a mentally incompetent defendant should not represent himself—would not allow a defendant to represent himself with the assistance of standby counsel; it would appoint counsel to represent the defendant.

¶ 70 Even assuming that *Edwards* placed an additional duty on the trial court to question defendant's capacity, the record shows that the trial court was well aware of defendant's mental illness. The court denied defendant's requests for appointment of standby and substitute counsel after it had heard Dr. Nadkarni's testimony that defendant could represent himself and assist counsel if he chose, and after the court found that defendant had been restored to fitness. Thus, contrary to defendant's claim, the trial court did not fail to consider his mental capacity when denying his requests for standby counsel.

¶ 71 Defendant argues that his decisions before and at trial illustrate that he "did not possess the competence to represent himself and would have benefited from standby counsel." Specifically, defendant notes that he chose to introduce prejudicial evidence that he had

committed a similar offense in the past—the March 2010 battery on Bhattacharya—and that he revealed his biases against homosexuals and immigrants to the jury.

¶ 72 But a *pro se* defendant's poor strategic choices do not necessarily establish his incompetence. See, *e.g.*, *Allen*, 401 Ill. App. 3d at 853 (rejecting defendant's argument that he was incompetent because his defense theory was "bizarre," finding instead that it was "his poor choice to pursue a defense that the evidence did not support *** because defendant did not understand the legal concept of self-defense"); *Tatum*, 389 Ill. App. 3d at 670 (rejecting defendant's contention "that his interruptions and comments showed paranoia, including his theory of defense that everyone had tried to frame him"). Here, defendant was able to perform the fundamental trial tasks: he questioned witnesses, pointed out inconsistencies in the State's case, testified on his own behalf, and presented arguments to the court. See *Tatum*, 389 Ill. App. 3d at 670 (*pro se* defendant's performance at trial did not show his incapacity to represent himself; he "was able to perform all the basic tasks during trial including participating in *voir dire*, presenting an opening statement, cross-examining witnesses, testifying on his own behalf and making a closing statement"). Defendant's decision not to object to other-crimes evidence relating to the March 2010 battery, while curious at best, was nevertheless the product of a reasoned (if poorly-reasoned) tactical decision. Defendant said he wanted to use the evidence of the March 2010 battery to show that the police had engaged in a pattern of framing him for similar offenses. And by revealing his bias against homosexuals, defendant explained why he made a comment to the two men who, he claimed, provoked the altercation. While defendant's strategic choice may have been poor, it was part of a theory of the case he was pursuing, and it certainly does not demonstrate that defendant was incapable of exercising his right to represent himself. And we again stress that Nadkarni found that defendant possessed the mental capacity

to represent himself and assist counsel. Thus, defendant's performance does not show that the trial court's decision to deny defendant standby counsel was unreasonable or arbitrary.

¶ 73 B. Substitute Counsel

¶ 74 Defendant also argues that the trial court erred in failing to provide him with a different attorney than the APD originally assigned to the case. He claims that the trial court should have provided him with a private attorney, as opposed to a different attorney from the public defender's office.

¶ 75 While criminal defendants have a right to counsel of their choosing, "the right to counsel of choice does not extend to defendants who require counsel to be appointed for them." *U.S. v. Gonzalez-Lopez*, 548 U.S. 140, 151 (2006); see also *People v. Baez*, 241 Ill. 2d 44, 106 n.5 (2011). "A criminal defendant has no right to choose his appointed counsel or insist on representation by a particular public defender." *People v. Wanke*, 303 Ill. App. 3d 772, 782 (1999). Instead, a defendant may be entitled to the replacement of appointed counsel only if he shows "good cause" for substituting his appointed attorney. *Id.*; *People v. Royark*, 215 Ill. App. 3d 255, 266 (1991). A defendant's dissatisfaction with counsel, arguments or disagreements about tactical matters, or assertions of a deteriorated relationship are insufficient cause to substitute counsel other than the public defender. *Wanke*, 303 Ill. App. 3d at 782; see also *Royark*, 215 Ill. App. 3d at 266 ("[T]he fact that an appointed attorney and his client bicker between themselves does not require a court to grant a motion for new counsel."). A trial court's decision on a motion for substitution of counsel is reviewed for an abuse of discretion. *People v. Brisco*, 2012 IL App (1st) 101612, ¶ 41; *Wanke*, 303 Ill. App. 3d at 782.

¶ 76 In this case, defendant offered, at various court dates, numerous reasons for objecting to the APD's representation. He claimed that the public defender's office as a whole was in the

pocket of the State, and he would never agree to representation by any public defender; he claimed that the specific APD was conspiring with the State's Attorney's office against him; he claimed that the specific APD disagreed with his evaluation of the evidence and the value of potential witnesses; and he claimed that the specific APD did not confer with him sufficiently. But when pressed by the trial court, defendant could never offer specifics that were remotely sufficient to satisfy the trial court of any conflict of interest, dilatory actions, or poor performance by the APD. And as we have described above, the various reasons he gave have been deemed insufficient cause to justify substitute counsel. See *Wanke*, 303 Ill. App. 3d at 782; *Royark*, 215 Ill. App. 3d at 266.

¶ 77 Moreover, defendant not only sought a new lawyer; he sought a *private attorney* to represent him. But section 113-3(b) of the Code of Criminal Procedure of 1963 provides that, "if the court determines that the defendant is indigent and desires counsel, *the Public Defender shall be appointed as counsel*." (Emphasis added.) 725 ILCS 5/113-3(b) (West 2010). The court may appoint a licensed attorney to represent a defendant only if there is no public defender's office in the county or if "the court finds that the rights of the defendant will be prejudiced by the appointment of the Public Defender." *Id.* "A showing of prejudice is necessary under [section 113-3(b)] before the court can exercise its discretion and appoint another attorney." *People v. Adams*, 195 Ill. App. 3d 870, 872 (1990). Vague claims of dissatisfaction, or assertions that appointed counsel is working with the State's Attorney against defendant, are insufficient to establish prejudice under section 113-3(b). See, *e.g.*, *People v. Hall*, 114 Ill. 2d 376, 403-04 (1986); see also *Adams*, 195 Ill. App. 3d at 873 ("vague charges" insufficient to show prejudice).

¶ 78 While defendant suggests that his distrust of the public defender's office stemmed from his mental illness, it does not follow that he would have been prejudiced by the public defender's

representation. Nothing in the record shows that the APD could not have adequately represented defendant due to defendant's mental illness. To the contrary, Dr. Nadkarni opined that defendant would be able to assist his attorney if he chose to do so. And, during the posttrial proceedings, defendant capably worked alongside a different APD. The trial court was well aware of defendant's history of mental illness and Nadkarni's opinion. We find no abuse of discretion in the trial court's rulings.

¶ 79 III. CONCLUSION

¶ 80 For the reasons stated above, we affirm defendant's conviction. The trial court did not abuse its discretion in denying defendant's motions for standby or substitute counsel.

¶ 81 Affirmed.