2017 IL App (2d) 150942-U
No. 2-15-0942
Order filed December 12, 2017

IN THE

APPELLATE COURT OF ILLINOIS

SECOND DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS, Plaintiff-Appellee, v. RANDALL L. COLEMAN, Defendant-Appellant.	))))))))))	Appeal from the Circuit Court of Lake County. No. 15-CF-121 Honorable Daniel B. Shanes, Judge, Presiding.

JUSTICE ZENOFF delivered the judgment of the court.
Presiding Justice Hudson and Justice Hutchinson concurred in the judgment.

ORDER

¶ 1 *Held*: The trial court did not abuse its discretion in denying defendant's motion to substitute counsel, as, among other things, defendant did not have ready and willing substitute counsel.

¶ 2 Defendant, Randall L. Coleman, appeals from his conviction of violating an order of protection (720 ILCS 5/12-3.4(a)(1) (West 2014)). He contends that he was denied his right to counsel of choice when the trial court denied his request, made on the day of trial, to discharge his privately retained counsel and obtain new counsel. We affirm.

¶ 3 I. BACKGROUND

¶ 4 Defendant was charged on January 16, 2015, after he was found in the apartment of S.V., who had obtained an order of protection barring him from contacting her or being within 500 feet of her residence. On March 6, 2015, privately retained attorney Scott Spaulding entered an appearance on behalf of defendant. Spaulding sought a continuance in order to review the case. Meanwhile, S.V. notified the court that she would not cooperate with the State.

¶ 5 On April 9, 2015, Spaulding filed a motion to quash arrest and suppress evidence, alleging that the search of S.V.'s apartment was improper. The court stated that it would hear the motion on the day of trial after the jury was selected.

¶ 6 On April 14, 2015, a jury was empanelled. The court then heard the motion to quash and suppress. Evidence at the hearing showed that officers went to S.V.'s apartment after speaking with another person, Michael Brown, who was S.V.'s coworker. S.V. testified that she was engaged to defendant on the night of his arrest and had invited him to stay at the apartment. She said that, when the officers arrived, they entered her apartment without her permission, and she told them that defendant was under a bed when an officer commented that he might get frightened and shoot if anyone happened to jump out. One of the officers testified that S.V. voluntarily let them in the apartment and told them where defendant was hiding. The court denied the motion to quash and suppress.

¶ 7 The next morning, the court ruled that, if S.V. testified at trial that she invited defendant into the apartment, the State could introduce evidence of a prior domestic-battery conviction. There was also a discussion of a 911 call from Brown that led to the initial dispatch on January 16, 2015. The State said that Brown normally drove S.V. home from work and had her call him to assure that she had arrived safely at her apartment after he dropped her off. During the January 16, 2015, 911 call, Brown informed the 911 dispatcher of the order of protection and

said that, during a call with S.V., he heard defendant's voice in the background. He also said that S.V. told him that everything was fine. Over objection from Spaulding, the court excluded the content of the call as hearsay.

¶ 8 After a short recess, Spaulding informed the court that defendant wished to discharge him as counsel. The court asked defendant about the matter, and defendant expressed concern about the 911 tape, stating "the 911 tape is part of evidence. He's telling me it's not relevant to my case." The court explained to defendant that there were rules of law as to what evidence would come in and that the call was hearsay. The following colloquy then occurred:

"THE COURT: ***

*** Mr. Spaulding is telling me you have got a disagreement with him and you don't think he should be your lawyer anymore.

THE DEFENDANT: No, he shouldn't be my lawyer anymore.

THE COURT: So we have got a jury picked. We're going to trial. What did you think was going to happen?

THE DEFENDANT: Sir, with all due respect again, I have only been here two months. My hundred twenty days is not even in for us to be going to trial, first and foremost.

THE COURT: I know. Middle of January. About 90 days.

THE DEFENDANT: Okay.

THE COURT: So what did you think was going to happen?

It's not up to either Mr. Spaulding or you at this point whether he's going to be your lawyer. It's up to me.

Now, you have a constitutional right to have counsel of choice. You exercised that. You hired Mr. Spaulding. All that is great, no problem. But we are now during trial. We spent the entire day yesterday picking the jury. They have been here for an hour already this morning. So while I do respect your choosing who your lawyer is going to be, you know, at some point you have got to go.

So when you told him this morning that you didn't want him to be your lawyer anymore, what were you—what did you want me to do? What were you thinking was going to happen.

THE DEFENDANT: Your Honor, I'm not being represented to the best of my ability. That's what I'm saying. I have that right; right? That's in the law; right?

THE COURT: Sort of.

THE DEFENDANT: So with that being said, Mr. Scott is not—when I ask him to do something, it's this or that. I hired you. You do what I tell you to do.

THE COURT: You don't have any other lawyer here ready to try the case; right?

THE DEFENDANT: I can hire another one.

THE COURT: No. I mean now.

THE DEFENDANT: No.

THE COURT: We already picked the jury. And that other lawyer might not like this jury.

THE DEFENDANT: And that's another thing I wanted to bring up. You picked the jury before you even heard my motion.

THE COURT: I did do it that way. I do that sometimes. It's about scheduling. Had I granted your motion, I would have sent the jury home. We wouldn't have needed them probably.

THE DEFENDANT: Yeah, I understand."

The court explained to defendant that the fact that the court did not always rule in Spaulding's favor did not mean that Spaulding was not doing his job. The court found the request to discharge Spaulding to be dilatory and without basis.

¶ 9 Trial resumed, and defendant was found guilty and sentenced to 33 months' incarceration. Defendant filed a posttrial motion alleging in part that the court erred when it denied his request to discharge counsel. That motion was denied, and he appeals.

¶ 10 II. ANALYSIS

¶ 11 Defendant contends that he was denied his right to counsel of choice when the trial court denied his request to discharge counsel.

¶ 12 A defendant has a constitutional right to the assistance of counsel (U.S. Const., amends. VI, XIV; Ill. Const. 1970, art. I, § 8), which includes the right to counsel of his choosing. *People v. Friedman*, 79 Ill. 2d 341, 349 (1980). A defendant may not, however, wield this right "as a weapon" to "thwart the administration of justice or to otherwise embarrass the effective prosecution of crime." *Id.* at 349. In ruling on a defendant's request for a continuance for substitution of counsel, the trial court must balance "the fundamental right of the defendant to counsel of his choice [citations], against the interests of the State, the courts and the witnesses in the efficient disposition of cases without unreasonable delay [citations]." *People v. Little*, 207 Ill. App. 3d 720, 723-24 (1990).

¶ 13 The parties disagree on the standard of review. Normally, the trial court's decision on whether to allow a continuance for a defendant to retain new counsel is a matter left to the trial court's discretion, and we will not overturn it absent an abuse of that discretion. *People v. Segoviano*, 189 Ill. 2d 228, 245 (2000); *People v. Curry*, 2013 IL App (4th) 120724, ¶ 49. However, defendant argues that, under *People v. Abernathy*, 399 Ill. App. 3d 420, 426 (2010), the *de novo* standard of review should apply because he did not seek a continuance. But, while defendant did not explicitly state that he wanted a continuance, it was clearly implied. Defendant specifically said that he did not have substitute counsel retained, nor did he seek to proceed *pro se*. As a result, his request was effectively motion for a continuance to obtain new counsel. Further, *Abernathy* is distinguishable, as it did not involve the denial of a continuance to obtain new private counsel. Instead, the defendant in *Abernathy* wished to discharge private counsel in favor of an appointed public defender. See *id*. (discussing application of the *de novo* standard instead of abuse of discretion). Other cases defendant relies on are either distinguishable or inapplicable as they did not address a defendant's request to continue trial in order to substitute counsel. See, *e.g.*, *People v. Davis*, 169 Ill. App. 3d 1, 5-6 (1988) (discussing a defendant's request to proceed *pro se*); *People v. Laffiton*, 62 Ill. App. 2d 440, 445-446 (1965) (addressing an argument that counsel had insufficient time to prepare for trial in the absence of a request for a continuance). Accordingly, we apply the abuse-of-discretion standard of review.

¶ 14 Turning to the merits, " '[i]n balancing the judicial interest of trying the case with due diligence and the defendant's constitutional right to counsel of choice, the court must inquire into the actual request to determine whether it is being used merely as a delaying tactic.' " *People v. Tucker*, 382 Ill. App. 3d 916, 920 (2008) (quoting *People v. Burrell*, 228 Ill. App. 3d 133, 142 (1992)). "Factors to be considered include: whether defendant articulates an acceptable reason

for desiring new counsel; whether the defendant has continuously been in custody; whether he has informed the trial court of his efforts to obtain counsel; whether he has cooperated with current counsel; and the length of time defendant has been represented by current counsel." *Id.*

¶ 15 Most important, our supreme court has made clear that "a trial court will not be found to have abused its discretion in denying a motion for substitution of counsel in the absence of ready and willing substitute counsel." *Segoviano,* 189 Ill. 2d at 245. Thus, if new counsel is specifically identified and stands ready, willing, and able to enter an unconditional appearance, the motion should be allowed. However, if any of those requirements is lacking, a denial of the motion is not an abuse of discretion. See *People v. Koss*, 52 Ill. App. 3d 605, 607-08 (1977).

¶ 16 Here, defendant failed to show that substitute counsel was ready, willing, and able to enter an unconditional appearance. Indeed, nothing shows that defendant had even attempted to seek new counsel before he made his request. Instead when the court inquired, he admitted that he did not have new counsel; he only said that he could hire new counsel. Further, as the court noted, trial had commenced. Indeed, it was in its second day. While defendant expressed concern that his motion to quash and suppress was not heard until after the jury was chosen, he did not cite that as the basis of his disagreement with Spaulding. Instead, his request was based on displeasure with the trial court's exclusion of the 911 call, which Spaulding attempted to get into evidence. Thus, defendant also failed to articulate an acceptable reason for desiring new counsel. As the trial court noted, the fact that it did not always rule in Spaulding's favor did not mean that he was not doing his job. As a result, the denial of defendant's request to substitute counsel was not an abuse of discretion.

¶ 17 III. CONCLUSION

¶ 18 The trial court did not abuse its discretion in denying defendant's request to discharge his privately retained counsel and hire new counsel. Accordingly, the judgment of the circuit court of Lake County is affirmed. As part of our judgment, we grant the State's request that defendant be assessed $50 as costs for this appeal. 55 ILCS 5/4-2002(a) (West 2016); see also *People v. Nicholls*, 71 Ill. 2d 166, 178 (1978).

¶ 19 Affirmed.