2013 IL App (1st) 101825-U

SIXTH DIVISION
June 22, 2012
Modified March 29, 2013

No. 1-10-1825

IN THE
APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from the
	)	Circuit Court of
Plaintiff-Appellee,	)	Cook County.
	)	
v.	)	No. 09 CR 1711
	)	
STEVEN SNOWDEN,	)	Honorable
	)	John T. Doody, Jr.,
Defendant-Appellant.	)	Judge Presiding.

JUSTICE GORDON delivered the judgment of the court.
Presiding Justice Lampkin and Justice Palmer concurred in the judgment.

ORDER

¶ 1 *Held:* We find that no abuse of discretion occurred when defendant was denied standby counsel.

¶ 2 After defendant Steven Snowden repeatedly stated in front of the jury that

he had no defense, defendant was convicted on May 10, 2010, of delivery of a controlled substance. Defendant was then sentenced on June 7, 2010, to 3 1/2 years in the Illinois Department of Corrections. Defendant now appeals, asserting that the trial court erred by denying his request for standby counsel to assist him at trial. For the reasons discussed below, we affirm.

¶ 3 BACKGROUND

¶ 4 On January 2, 2009, defendant was arrested for an offense that allegedly occurred on September 1, 2008. The indictment, which is dated January 26, 2009, charged defendant with one count of delivery of less than one gram of a controlled substance on September 1, 2008. 720 ILCS 570/401 (West 2008).

¶ 5 On February 4, 2009, at the arraignment on the indictment the first assistant public defender (APD) was appointed to represent defendant. Between February 4, 2009, and June 5, 2009, the first APD represented defendant at approximately seven court appearances until she was assigned to another courtroom. The subject of several of those appearances was a motion for discovery which she had filed on February 4 and the State's failure to produce the requested discovery. On May 29, 2009, which was to turn out to be the first APD's last court appearance, both sides indicated that they were not ready for trial and requested that the trial court set the

case for a status conference.

¶ 6 At the next appearance on June 5, 2009, the second APD stated that she was taking over defendant's case because "it had been set for jury and since it had been taken off the jury call it has become my case." She then asked defendant, on the record and in front of the court, "what is going on with" an alleged violation of probation. The violation had been dismissed. The second APD then asked the trial court "for a short date to prep this," stating that she needed a week. When the court suggested June 12, she replied: "Can we go to the next week, I am off all next week." So the case was set for a status conference on June 15. At the very brief status conference on June 15, the trial court set the case by agreement of the parties for another status conference on July 8, 2009.

¶ 7 All of defendant's prior court appearances had been before Judge John Thomas Doody, except for the very brief status conference on June 15. However, on July 8, 2009, defendant appeared before Judge Maria Slatterly Boyle, and a lengthy discussion occurred about defendant's dissatisfaction with his new APD. As both defense counsel and counsel for the State discussed scheduling the case for a jury trial, defendant interrupted to ask the court: "Your Honor, is there any way I can get a new PD?" The trial court then informed him that he had to contact

the public defender. The second APD then offered this explanation to the trial court about the nature of their problem:

> "Judge, it appears that Mr. Snowden has a disagreement with my choice of trial strategies. And I indicated that if he wants to proceed with something differently, he certainly is more than able to hire his own lawyer or represent himself, but he does not get to pick and choose his public defender."

Defendant then reiterated his desire for the trial court to appoint a different attorney. The trial court responded:

> "You can write to the public defender and discuss your matter[,] otherwise get another attorney. Hire the attorney."

¶ 8 The second APD Hendrickson then indicated to the trial court that the case had already been set for trial on August 25 and 26. However, the prosecutor then corrected her to state that it had not been set for those dates. Then she explained that it was her "misunderstanding" and that it had only been set "between ourselves."

¶ 9 At the next court appearance on August 25, 2009, which occurred before a different judge and with a different prosecutor, the second APD was mistaken as to what had occurred at the prior conference.

¶ 10 After the second APD stated that defendant was ready for jury trial, defendant stated that he was seeking a way to fire his APD and hire an attorney. The prosecutor, who had not been present at the prior court appearance, stated: "Judge, there is no indication on the last court date, which was July 8th of 2009, that the defendant wanted another attorney."

¶ 11 The prosecutor then explained that the case had been previously set for trial on May 27, 2009, but that it did not go forward on that date because he had a funeral to attend. We observe that, if it had gone forward, it would have gone to trial with the original APD, since the second APD stated that she did not become the attorney until June 5.

¶ 12 The following colloquy then occurred between the trial court and defendant about his request for new counsel:

"THE COURT: So she has been working with you over two months correct?

DEFENDANT: Yes, two court dates, yes. I say

two court dates.

THE COURT: When did you decide you wanted a lawyer?

DEFENDANT: The very last court date.

THE COURT: How did you make that fact known?

DEFENDANT: She set it for this date which would have been ...

THE COURT: Did you tell Judge Doody that you wanted another ...

DEFENDANT: That was the thing.

THE COURT: Listen to me. Did you tell Judge Doody last time that you wanted another laywer?

DEFENDANT: It was a substitute judge. That was the thing.

THE COURT: Did you tell that judge?"

Defendant then truthfully replied: "Yes, I did."

¶ 13 Then the second APD, who had been at the prior court appearance,

inaccurately told the court what had happened at that prior appearance:

> "Judge, I did step up on that court date, and the defendant did not indicate in front of myself or on the record that he wanted a new lawyer in front of Judge Wilson."

As shown by the transcript from the prior court date, the above statement is completely inaccurate.

¶ 14 However, the trial court, who did not have the benefit of a transcript at that time, believed counsel. The following colloquy ensued between the trial court and defendant, in which the trial court was clearly exasperated with defendant who was actually telling the truth:

> "THE COURT: I don't think Judge Wilson would have continued this case with subpoenas and have these officers come in, if you had made that statement last time, sir. Do you?
>
> DEFENDANT: Yes.
>
> THE COURT: Do you think that makes sense for a judge to have all these people come here knowing that

you weren't going to be ready today? Does that make sense to you?

DEFENDANT: The thing was ...

THE COURT: Does it make sense to you?"

Defendant then explained that it made sense to him because the thinking was that he could bring the matter before the original judge, Judge Doody.

¶ 15 The trial court then asked defendant at least six more times how this could make sense. For example, the trial court stated: "Why does it make sense to you to have people come for nothing? That's my question. I'm just curious." After asking a number of times, the trial court stated: "My point is that both you and I know that doesn't make sense, if you won't admit it or not." The irony, of course, is that defendant was telling the truth.

¶ 16 The second APD then stated to the trial court that "it wasn't until I came out here that I found" out that defendant wanted to fire her. She made this statement, despite the fact that she had been present at the prior court date when defendant had requested another attorney.

¶ 17 Defendant then indicated that, if he had no other choice, he would proceed *pro se*, and the following exchange occurred between defendant and the trial court:

"THE COURT: You been to law school?

DEFENDANT: No.

THE COURT: And you want to represent yourself?

DEFENDANT: I will take that chance.

THE COURT: What chance is that? What chance do you have? Do you have a chance?

DEFENDANT: To represent myself, yes, I do. I feel I do.

THE COURT: You do?

DEFENDANT: Yes.

THE COURT: You have handled cases before?

DEFENDANT: I have been in this predicament before.

THE COURT: You handled cases before?

DEFENDANT: Not personally, without assistance from someone else.

THE COURT: You have represented yourself with

assistance from someone else?

DEFENDANT: Um-hum.

THE COURT: Yes?

DEFENDANT: Yes.

THE COURT: Okay. All right."

¶ 18 The trial court then asked defendant how much time he would need to obtain a private attorney:

"DEFENDANT: I believe that 30 days would be enough.

THE COURT: I believe two weeks should be enough."

¶ 19 The trial court then continued the case until September 11, 2009. The second APD's motion to withdraw was entered and continued. The prosecutor then asked whether it was "correct that once the public defender's office withdraws, your Honor, Judge Doody cannot appoint another public defender." The trial court stated that it was "not sure what the procedure" was. The APD stated that it was the policy of her office not to let clients have a choice. The trial court then informed defendant:

> "THE COURT: Okay, Mr. Snowden, you can solve a lot of problems by having a private lawyer here next time. If you don't have a private lawyer here next time, then you also can present Judge Doody with the notion of you representing yourself if you so desire."

¶ 20 On September 11, 2009, private counsel appeared. The trial court stated that "the case has been set four times for jury." Actually, the record indicates that it had been set twice: once it was put off because the prosecutor had a funeral; and once it was set despite the fact that defendant had just asked for new counsel.

¶ 21 Private counsel appeared at only three status conferences and filed no motions before asking to withdraw. On the first occasion, October 5, 2009, the State was not able to answer the trial court's question of whether discovery was complete. The case was set down for a status conference on discovery on October 23, 2009. On October 23, private counsel acknowledged receipt of the State's discovery but asked that the case be continued so that he could "have a chance to sit" and talk to his client. The case was then set for status on October 27, 2009. On October 27, 2009, private counsel asked for a continuance to file a motion to suppress a photographic identification due to suggestiveness. Although private

counsel stated that no prior motions had been filed, the record contains previously filed pretrial motions. The case was then set for November 17, 2009, for pretrial motions.

¶ 22 On November 17, 2009, another lawyer appeared for defense counsel who had not yet filed a motion. By agreement, the case was set for a further status conference. On December 1, 2009, private counsel appeared and asked to speak to the trial court before defendant was brought out and off the record, a request which the trial court granted. On the record but not in the presence of defendant, private counsel moved to withdraw, stating that he had "two bounced checks from the family" and that defendant wanted him to file a number of motions. However, counsel offered: "If you want me to stay on it, I will, Judge." The trial court replied that it would not "force" counsel "to stay on the case." Defense counsel offered again, stating: "Judge, I'm not going to stiff you on it. I've been on it a couple of months." But the trial court again said no, and another discussion was held off the record.

¶ 23 Then defendant was brought out and, in defendant's presence and on the record, the trial court granted counsel's motion to withdraw and gave defendant a week to obtain another attorney. On December 8, 2009, defendant informed the

trial court that he was not able to obtain an attorney in that time, and the trial court reappointed the second APD, and a status was set for January 14, 2010.

¶ 24 On January 14, 2010, defendant repeated that he was dissatisfied with the second APD who had, on at least one prior occasion, mistakenly represented defendant's statements to the trial court. Defendant indicated that he would rather go *pro se*. The trial court set it for another status, stating that if defendant still desired to go *pro se*, he would give defendant the full admonishments at that time.

¶ 25 On January 20, 2010, defendant indicated his intent to proceed *pro se* and the trial court admonished defendant concerning: (1) the nature of the charge; (2) the minimum and maximum sentence, including a possible extended term sentence; and (3) his right to counsel. The second APD was present. The prosecutor requested a January 25 status date to make sure that the State had completed all its discovery. On January 25, the State provided defendant with a copy of discovery and the case was set by agreement for a status on February 17, 2010. On February 17, the State completed its discovery and defendant asked for a status date in April, since he had just received discovery. The trial court denied that request and set the case for a status conference one week later. On February 25, the State made defendant a plea offer of four years in the Illinois Department

of Corrections, with credit for time served since January 1, 2009; and the trial court indicated that it thought it was a favorable offer and stated that it was going to set another court date so that defendant could consider it. On March 4, 2010, defendant declined the plea offer. After a couple of status conferences, the trial court stated that "we'll set it for May 10th" after the prosecutor inquired whether this case was still a jury case.

¶ 26 On May 10, 2010, the following exchange occurred between defendant and the trial court:

> "DEFENDANT: I wanted to say one thing before I go in the back, your Honor. Is there any way I can get any counsel to make sure I got a proper defense set up?
>
> THE COURT: If you could have what?
>
> DEFENDANT: A proper counsel, someone to assist me.
>
> THE COURT: You mean a standby counsel?
>
> DEFENDANT: Yes, to assist me.
>
> THE COURT: No. If you're doing this, you do this on your own. We went over this before on the 401

admonishments. There will be no standby counsel."

Actually, on January 20 when the admonishments were provided, there was no discussion of standby counsel.

¶ 27 The trial court then observed that defendant made the decision to represent himself, and defendant replied: "Right, because you gave me the same public defender twice that I was having problems with." The trial court countered that defendant had "fired several lawyers," including one private attorney. Although defendant was actually correct that he had fired only one attorney, the trial court denied his request for standby counsel. The State then offered defendant a suit of clothes, a statute book, a legal pad and a pen.

¶ 28 Defendant stated that he was not ready, and the trial court responded "[w]hat do you mean you're not ready?" stating that the case had been set for trial a number of times and "[y]ou have gone through at least four lawyers." As previously noted above, the case had been set for trial only twice before, and it was put off once at the request of the prosecutor who sought to attend a funeral, and the other time it was set for trial despite defendant's request for new counsel.

¶ 29 On May 10, defendant again stated that the problem was with only one APD, whom the trial court appointed twice. The trial court then stated defendant

could plead guilty or the jury trial was starting. The trial court stated that "offers have been made" and "[a]ttorneys have been appointed, fired, appointed, fired, hired, fired."

¶ 30 The trial court stated there would be no continuance "based on the record in this case, the number of times it's been up, [and] the number of attorneys that have represented and been fired by [the defendant]." The trial court stated: "If you want to make a plea today, I'll accept that but, otherwise, we're bringing" the jury in.

¶ 31 After the State's opening statement, the following exchange took place:

> "THE COURT: Mr. Snowden, do you wish to make an opening statement?
>
> DEFENDANT: I already told you, your honor, I'm not ready for trial, but no, I don't have anything to say. I'm not ready – I don't have any defense."

Thus, in front of the jury, defendant announced that he had no defense.

¶ 32 The State then presented the testimony of five police officers and a stipulation from a forensic chemist. The testimony established that, on September 1, 2008, a team of officers with the Chicago Police Department was working on an

ongoing narcotics investigation. During surveillance, one of the officers observed two men – one of which was established to be defendant – "loitering" in front of a house.

¶ 33 An undercover officer testified that he then approached the men and said "yo, yo, yo, who's got them blows, Joe." Defendant then replied, "yeah, go around to the back of the alley." Defendant met the undercover officer in the alley and exchanged a bag of heroin for $10.

¶ 34 The surveillance officers testified that, after the transaction, defendant was interviewed but not immediately arrested because the investigation was ongoing.

¶ 35 At trial, defendant cross-examined two of the officers, eliciting testimony that these two officers had lost sight of him during the undercover operation and that they did not witness the hand-to-hand transaction with the undercover officer. Defendant also elicited on cross-examination that he was the only one arrested in the investigation.

¶ 36 After being offered a chance to cross-examine other witnesses, defendant stated a second time in front of the jury: "I have no defense, your Honor." Defendant did not testify, nor did he call any witnesses. Defendant did not present a closing argument.

¶ 37 On May 10, 2010, the jury delivered a verdict of guilty after deliberating for 20 minutes. The trial court asked defendant if he intended to continue representing himself or if he wanted the court to reappoint the public defender for purposes of posttrial motions and sentencing, and defendant replied "no, man, no."

¶ 38 The presentence report revealed that defendant completed only the 10th grade. His criminal record includes, among other offenses, a couple of domestic-related charges, a possession of cannabis conviction and a manufacture and delivery of cannabis conviction. The case at bar was the most serious charge and potential prison sentence defendant had faced. Defendant was sentenced on June 7, 2010, to 3 1/2 years in the Illinois Department of Corrections. This appeal followed.

¶ 39 ANALYSIS

¶ 40 On appeal, defendant claims that the trial court abused its discretion when it denied his request for standby counsel to assist him at trial.

¶ 41 Whether the trial court erred in refusing to appoint standby counsel is reviewed under an abuse of discretion standard. *People v. Gibson*, 136 Ill. 2d 362, 379 (1990). “A circuit court abuses its discretion when its ruling is arbitrary, fanciful, unreasonable, or where no reasonable person would take the view

adopted by the trial court." *Taylor v. County of Cook*, 2011 IL App (1st) 093085, ¶ 23.

¶ 42 "A defendant who decides to proceed *pro se* must be prepared to do so." *People v. Phillips*, 392 Ill. App. 3d 243, 265 (2009); *People v. Smith*, 377 Ill. App. 3d 458, 461 (2007); *People v. Williams*, 277 Ill. App. 3d 1053, 1058 (1996). "However, a trial court has the discretion to appoint standby counsel to assist him." *Phillips*, 392 Ill. App. 3d at 265; *Smith*, 377 Ill. App. 3d at 461. A *pro se* defendant does not have a right to standby counsel, but since there is no state statute or court rule to the contrary, such appointment is permissible. *Gibson*, 136 Ill. 2d at 383; *McKaskle v. Wiggins*, 464 U.S. 168, 170 (1984). If the trial court appoints standby counsel, it retains broad discretion to determine the scope of standby counsel's involvement. *People v. Redd*, 173 Ill. 2d 1, 38 (1996); *Smith*, 370 Ill. App. 3d at 470-71. However, a *pro se* defendant maintains the right to control the case presented, and standby counsel's participation should not be allowed to destroy the perception that defendant is representing himself. *Gibson*, 136 Ill. 2d at 376; *McKaskle*, 465 U.S. at 178. "Thus, standby counsel may assist a *pro se* defendant 'in overcoming routine procedural or evidentiary obstacles to the completion of some specific task, such as introducing evidence or objecting to

testimony, that the defendant has clearly shown he wishes to complete,' and may also help 'ensure the defendant's basic rules of courtroom protocol and procedure.' " *Gibson*, 136 Ill. 2d 378 (quoting *McKaskle*, 465 U.S. at 183).

¶ 43 In *Gibson*, the Illinois Supreme Court outlined several criteria for a trial court to consider when deciding whether to appoint standby counsel: 1) the nature and gravity of the charge; 2) the expected factual and legal complexity of the proceedings; and 3) the abilities and experience of the defendant. *Gibson*, 136 Ill. 2d at 380; *Phillips*, 392 Ill. App. 3d at 265; *Smith*, 377 Ill. App. 3d at 461.

¶ 44 In this case, the State argues defendant has forfeited this issue by failing to raise it in his posttrial motions. Defendant acknowledges he did not raise the issue in his posttrial motions but argues the issue may still be reviewed under the plain error doctrine. Ill. S. Ct. R. 615(a) (eff. Aug. 27, 1999). "The plain-error doctrine allows a reviewing court to consider unpreserved error when (1) a clear or obvious error occurred and the evidence is so closely balanced that the error alone threatened to tip the scales of justice against the defendant, regardless of the seriousness of the error, or (2) a clear or obvious error occurred and that error is so serious that it affected the fairness of the defendant's trial and challenged the integrity of the judicial process, regardless of the closeness of the evidence."

People v. Piatkowski, 255 Ill. 2d 551, 565 (2007). Before we reach the issue of plain error, we must first determine whether any error occurred at all. *People v. Walker*, 392 Ill. App. 3d 277, 294 (2009) ("[I]n a plain error analysis, 'the first step' for a reviewing court is to determine whether any error at all occurred.")

¶ 45 Here, we find that there were clear and obvious errors. The trial court had a mistaken belief about "the number of attorneys that have represented and been fired by [the defendant]." To be sure, defendant "fired" only one attorney, the second APD assigned to him. The first APD he was appointed was transferred to another courtroom. Although private counsel stated that he sought to withdraw because defendant "want[ed] to file a host of frivolous motions," he also admitted that he had not been paid. It can hardly be said that this amounts to defendant's decision to fire that counsel, especially when the record indicates that private counsel would have been willing to remain in the case if the trial court so chose.

¶ 46 Second, the trial court was mistaken when it stated it "went over" the issue of standby counsel during admonishments. The issue of standby counsel was never previously raised or discussed.

¶ 47 Third, we cannot overlook the misrepresentation by the APD – the one attorney whom defendant did not want – that "defendant did not indicate in front

of myself or on the record that he wanted a new lawyer," when defendant had done just that. It was this inaccurate statement that led to the trial court's erroneous impression that defendant had caused the case to be set for trial a number of times before. On the day of trial, when defendant stated that he was not ready, the trial court responded "[w]hat do you mean you're not ready?" stating that the case had been set for trial a number of times before. Actually, the case had been set for trial only twice before, and neither time was the rescheduling the fault of defendant. Once it was continued at the request of the prosecutor who sought to attend a funeral, and the other time it was set for trial despite defendant's request for new counsel. However, defendant's request for new counsel on July 8, 2009, appears to have been forgotten due to his APD's inaccurate statement on August 25 that it never occurred. Unfortunately, the APD's inaccurate statement was then mistakenly corroborated by the prosecutor who had not actually been present on July 8.

¶ 48 Because the trial court's decision to deny standby counsel may have partially relied on multiple errors of fact, we move to an analysis under the three *Gibson* factors to determine whether the denial of standby counsel was appropriate.

¶ 49 The trial court in the instant case did not recite these factors on the record; however, a trial court is presumed to know the law and to apply it properly. *People v. Baugh*, 358 Ill. App. 3d 718, 730 (2005). First, the charge defendant was facing was serious, as it resulted in a potential sentence of up to 14 years' imprisonment. See *Phillips*, 392 Ill. App. 3d at 265 (finding that a potential sentence of nine years' imprisonment was serious). However, second, neither the facts nor the law was complex. It was a simple drug case, defendant was charged with delivery of a controlled substance. Potential witnesses largely consisted of police officers. The case did not involve expert testimony or scientific evidence. See *Smith*, 377 Ill. App. 3d at 461 (holding that trial court did not abuse its discretion by refusing *pro se* defendant's request for standby counsel because, in part, the case was factually simple and no expert testimony or scientific evidence was involved at trial); *Phillips*, 392 Ill. App. 3d at 266. The second *Gibson* factor weighs in favor of the State.

¶ 50 The third factor, the experiences and abilities of defendant, also weighs in the State's favor. Although defendant has only a 10th grade education, he had prior experience in the criminal justice system even though he has never handled his own cases before without assistance. The case was set for trial at the request of

defendant after he had rejected a plea offer. Defendant proceeded *pro se* for seven continuances with no mention of a need for standby counsel; and lastly, the experienced trial judge made specific findings on two occasions that the last minute request for standby counsel was made solely for the purpose of delay.

¶ 51 On May 10, 2012, after defendant made his request for standby counsel, the following colloquy occurred between the court and defendant:

> "THE COURT: Mr. Snowden, you made the decision to proceed and represent yourself.
>
> THE DEFENDANT: Right, because you gave me the same public defender twice that I was having problems with. That's why I fired the attorney.
>
> THE COURT: You also had a private attorney which you fired. You've fired several lawyers in the process - -
>
> THE DEFENDANT: No, I only fired one.
>
> THE COURT: It was a private attorney. Didn't you have a private attorney?
>
> THE DEFENDANT: I wasn't getting the proper results. They wasn't working with me."

Later in the discussion the trial judge stated, "You have gone through at least four lawyers" and then, later, this colloquy occurred:

"THE COURT: I find what you're doing to be strictly for the purpose of delaying this further. Offers have been made. Attorneys have been appointed, fired, appointed, fired, hired, fired --

THE DEFENDANT: Your Honor, the same public defender I had problems with you gave me twice.

THE COURT: Right now we're ready to start. If you have an interest in pleading, you'd better tell the court now because once I bring them in, we're going to go through the jury trial for the next couple of days.

THE DEFENDANT: I'm not ready, your Honor.

THE COURT: I am not - - your motion for continuance is denied. I'll make a specific finding. The request for continuance is for purposes of delay, based on the record in this case, the number of times it's been up, the number of attorneys that have represented and have been fired by Mr. Snowden.

THE DEFENDANT: I only had two, your Honor. There was

only two, your Honor.

THE COURT: You had a private attorney, too."

¶ 52 In summary, what occurred in this regard was that the first APD withdrew because of a transfer of assignment, the second APD was fired by defendant when they couldn't agree on "trial strategy." Private counsel appeared and later withdrew after he noted that defendant wanted to file "a host of frivolous motions." The second APD was reappointed and then later was again fired by defendant. Defendant proceeded *pro se* for seven court appearances and only then, when his attempt at a plea bargain for probation failed, he had lost all motions *in limine*, and the deputy sheriff was sent to bring in the jury venire, only then did defendant ask for standby counsel. This would have been the fifth change in legal representation; first APD, second APD, private counsel, second APD again, *pro se*, and standby counsel. It is thus accurate that defendant "had gone through at least four lawyers," and while it is true that defendant did not fire private counsel, he forced him to withdraw, and he did fire the second APD twice. Taken in context and understood as a whole, this relatively minor "error of fact" cannot be a sufficient reason to hold that the trial court abused its discretion in light of the *Gibson* factors.

¶ 53 Although the trial court was mistaken when it stated that it had "went over" the issue of standby counsel during admonishments, defendant was before the trial court at that time and was requesting standby counsel in a case that was nearly a year and a half old, had been before the court 30 times and was set for trial for the third time. It mattered not whether the court did or did not go over the question of standby counsel before. In fact, it is more egregious that this was a last minute request as it is more likely, as the trial court found, that it was made for the purposes of delay.

¶ 54 We are troubled by the misrepresentation of the second APD on August 25, 2009, that defendant had not previously indicated that he wanted a new lawyer. While it is true that this is not an accurate representation, that statement together with the inaccuracies in the record cannot alone create an abuse of the court's discretion in denying defendant's request for standby counsel over 9 months and 16 continuances later, within which time defendant had private counsel, the second APD again, and proceeded *pro se*. After all this time, whether he had first complained about the second APD on July 8, 2009, or on August 25, 2009, is of no import on the question before us.

¶ 55 Defendant and his private attorney parted ways on December 1, 2009, and

he fired the second APD for the second time on January 14, 2010. From that point forward defendant proceeded *pro se* for seven court appearances and not once did he indicate the need for standby counsel. In fact, defendant during those appearances discussed the status of discovery, requested and received continuances for the purpose of securing his witnesses and unsuccessfully participated in plea bargaining before the bench. On March 24, 2010, he even asked that his case be set for a jury trial on April 27, 2010, with no mention of the need for standby counsel. Finally, on the last court date before the trial, after acknowledging that he had no witnesses, defendant acquiesced in the setting of the May 10, 2010, trial date, and again while agreeing to the trial date, made no request for the appointment of standby counsel. It was not until the day of trial with the witnesses present, when all attempts at plea bargaining having failed, and the deputy sheriff on the way to bring in the jury venire, did defendant request the appointment of standby counsel. It is completely reasonable that the trial court concluded at that time that this request was only made for the purposes of delay. With regard to the exercise of discretion, the trial court made specific findings that it was denying this request as it was made "for the purposes of delay, based on the record in this case, the number of times it's been up, the number of attorneys that

have represented and been fired by Mr. Snowden." The trial court was in error when it concluded that defendant had fired three lawyers, but that fact alone does not constitute an abuse of discretion. Whatever error occurred, it did not rise to the level of plain error.

¶ 56 Defendant claims that he was actually prejudiced by the fact that he stood before the jury and declared that he had no defense, made no opening statement or closing argument and only minimally participated in the trial. Defendant supposes that standby counsel may have prevented this conduct.

¶ 57 None of defendant's attorneys nor defendant proceeding *pro se* ever disclosed any witnesses despite being ordered to do so. Further, this was an undercover narcotics purchase and because it was a continuing investigation, defendant was not immediately arrested. As a result, one might imagine that identification could be an issue. However, the purchasing officer and the arresting officers from whom defendant tried to flee several months later all testified that he had a distinguishing feature, a goatee that was tied into braids, which is readily apparent from People's Exhibit No. 2, supplemental common law record at 03. It does not appear that defendant had any real viable defense to this charge and as a result, he was trying valiantly to negotiate a plea for probation. He was unable to

do so. To surmise that standby counsel could have or even would have fashioned some defense for defendant is pure speculation, is not supported by anything in the record and frankly is not within the role of standby counsel. The supposition that standby counsel could have or would have prevented defendant's conduct before the jury is also mere speculation. To the contrary, we find that defendant's conduct was a conscious decision on his part to protest the fact that the trial went ahead despite his several protestations that he was not ready. Having failed to secure a deal for probation, defendant declared that he was ready to set the case for a jury trial only to later claim that he was not ready for trial when the judge actually sent for the jury venire. The trial court has the discretion to deny a continuance as well as a last minute request for standby counsel and a defendant cannot thereafter be allowed to sabotage his own trial and then expect plain error because he acted the way he did.

¶ 58 In People v. Williams, 277 Ill. App. 3d 1053 (1996), the Fourth District stated the following:

> "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. [Harris v.

> State, 107 MD. App. 399, 413-15 (1995) ('Most courts make clear that, because it is a discretionary call, the refusal to appoint standby counsel is not error'); 2 W. LaFave & J. Israel, Criminal Procedure § 11.5, at 17 n.7.3 (Supp. 1991) ('[I]t *** is the general rule that the trial court has no obligation to honor a request for appointment of standby counsel, and its failure to do so generally will not be reexamined by the appellate courts').]" (Emphases in original.) Williams, 277 Ill. App. 3d at 1061.

Our research finds that to this day the above statement holds true, no trial court in Illinois has been reversed, at least in a published decision, for exercising its discretion to not appoint standby counsel. Based on the procedural history of this case, we do not believe that we should depart from this well established precedent.

¶ 59 In *People v. Gibson*, 136 Ill. 2d 362, 383 (1990), the trial court's failure to appoint standby counsel in a capital case based on a "mistaken belief" that the court had no authority to do so was found to be reversible error. However, in *Gibson*, the trial court did not make a discretionary ruling as it believed it did not have the authority to appoint standby counsel.

¶ 60 CONCLUSION

¶ 61 For the foregoing reasons, we cannot say that the trial court abused its discretion when it denied defendant standby counsel. Although the trial court made errors, none rose to the level of plain error, and the evidence was not so close as to suggest that the errors tipped the scales of justice against defendant.

¶ 62 Affirmed.