

No. 1-12-2169

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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. 06 C6 60886
)	
SCOTT ROBINSON,)	Honorable
)	Luciano Panici,
Defendant-Appellant.)	Judge Presiding.

JUSTICE NEVILLE delivered the judgment of the court.
Presiding Justice Simon and Justice Pierce concurred in the judgment.

O R D E R

¶ 1 *Held:* Trial court did not err in denying defendant's motion for new counsel or trial counsel's motion to withdraw during jury trial; court could reasonably conclude that defendant made false allegation of impropriety to provoke withdrawal and obtain new trial, and that counsel would provide zealous representation despite allegation.

¶ 2 Following a jury trial, Scott Robinson, the defendant, was convicted of reckless discharge of a firearm and sentenced to two years' imprisonment. Defendant contends on appeal that the

court erred in refusing to allow defense counsel to withdraw during trial unless defendant proceeded *pro se*. For the reasons stated below, we conclude that the court did not abuse its discretion when it denied defense counsel's motion to withdraw.

¶ 3 Defendant was charged (as amended) with reckless discharge of a firearm, domestic battery, and interference with the reporting of domestic violence for allegedly, on or about August 15, 2006, discharging a firearm and thus recklessly endangering his niece P.K., pulling her hair and pushing her, and then preventing her from phoning the police.

¶ 4 At the January 2012 trial, P.K. testified that, as of August 15, 2006, she was 17 years old and lived with her mother Christina Smith, defendant (Smith's brother and thus P.K.'s uncle), his girlfriend Jennifer Vestal, and their infant child. P.K. "never had any problems" with defendant until the day in question. P.K. had her own bedroom, and on the morning in question she was in bed watching television (after briefly going out to register for school) while defendant was in the living room. Defendant entered her bedroom without knocking on the closed door, then put a bottle of alcohol on the dresser and leaned a shotgun against the wall near the door. Without saying anything, though P.K. asked him what he was doing, defendant crawled into her bed and straddled her. As he tried to pull the bedcovers off of P.K., while still saying nothing, she tried to push him away. He grabbed her arms and pushed her down into the bed. She scratched and hit defendant until she broke free and ran for a corner of the room. He followed her, grabbed her by the hair, and repeatedly told her to "get in the bed." As she pulled away from him and he pulled harder on her hair, she saw that he was pointing the shotgun at her face. As she continued to pull away from defendant, she pushed the shotgun away from her face twice. Just after she pushed it away the second time, the shotgun discharged; the shot struck the bed.

¶ 5 Defendant sat down on the bed, still holding the shotgun, and said "look what you made me do." When P.K. picked up her mobile phone to call 911, defendant grabbed the phone from her hand and threw it across the room. She then tried to "talk him out of the gun," and was eventually successful in that defendant gave her the gun. P.K. ran to Smith's bedroom and tried to close the door, but defendant was just behind her. In the bedroom, defendant "jumped right on top of my back" and took the shotgun from P.K., then left the room and went to his own bedroom. She then noticed that, though he had shorts on when he first entered her bedroom, he was no longer wearing shorts. She shut defendant's bedroom door, then left the home and went to the home of neighbor Sara Cooper; she told Cooper to "call 911 because my uncle was trying to rape and kill me." Cooper made the call, and gave P.K. the phone to speak to the operator.

¶ 6 When the police arrived at Cooper's home, they took P.K. back to her home; defendant was gone, as was his car. After giving her account of events at the police station, naming defendant as her assailant, she went home. Smith was home by then, and in P.K.'s bedroom, they saw defendant's shorts. Smith picked up the shorts, found a condom in one of the pockets; she returned the condom to the pocket, put the shorts in a plastic bag, and brought them to the police station where police Corporal Paul Winfrey took possession of the shorts. P.K. identified the shorts, condom, and liquor bottle introduced by the State as those described in her testimony.

¶ 7 A sidebar was held at this point at defense counsel's behest, and he told the court that defendant was "accusing me of misconduct, that I gave the shorts to the State." Defendant so alleged, and added that he was "recording the date that I turned them in to him." The court, State, and defense counsel concurred that the shorts in defendant's video were not the same shorts as the State produced, and the court noted that "they're a different color altogether." Defendant and defense counsel stated nearly simultaneously that counsel could no longer

represent defendant and that "I need a new lawyer." The court responded that defendant's request "is a joke" and the court did not "know what you're trying to pull," noting P.K.'s testimony regarding custody of the shorts in State possession. As the State accused defendant of making a "bogus claim in the middle of trial" in order to obtain a new trial, defense counsel reiterated that "I cannot represent a man [who] is accusing me of misconduct."

¶ 8 The court called a recess, after which defense counsel told the court that defendant indeed gave him shorts but counsel did not believe that they were the shorts defendant was wearing on the day in question so he kept the shorts in his office without using them at trial. Defense counsel produced the shorts in his possession and noted for the record that the shorts in the State's possession were in court simultaneously. Defense counsel expressed his anger with defendant's false accusation and stated that "right now I want him to lose." The State argued that counsel had ably represented defendant to this point, and that his duty requires him to diligently defend his client even if he believes him to be guilty, and opined that counsel would be able to continue doing so. The State also argued that defendant was trying "to get a do-over" and should not be allowed "to subvert justice," especially when the already-delayed trial (2012 on a 2006 charge) would be even further delayed. Counsel replied that, while he has represented clients he believed to be guilty, he has "never represented anybody that I wanted to lose" until now "and I can't put that aside." He argued that he would be fulfilling his duty by not representing someone when he cannot do so to the best of his ability. The court decided that counsel "is to continue representing the defendant unless the defendant doesn't want him. In that case, the defendant can go *pro se*." The court found that defendant's allegation against defense counsel was unsubstantiated and that counsel "always is a man of his word, and he always represents his clients to the best of his ability and within the law and zealously."

¶ 9 Defense counsel filed a written motion to withdraw. He alleged that his relationship with defendant was "strained at best" though he met frequently with defendant, filed several pre-trial motions on his behalf, and made multiple demands for trial. When Corporal Winfrey alleged that a search of P.K.'s bedroom on the day of the incident found shorts containing a condom that the police alleged to be defendant's, counsel noted that the police inventory for that day did not include shorts or a condom. When defense counsel pointed this out to defendant, he told counsel that he had the shorts, and supported this by (1) Vestal's statement that Corporal Winfrey was given the shorts and condom two days after the incident (that is, the 17th) and did not see him take the shorts from the house, and (2) giving defense counsel a pair of shorts. However, defense counsel concluded after considering these matters and the police reports that Corporal Winfrey did take and inventory the shorts, though defendant repeatedly maintained that the shorts he gave counsel were the shorts at issue and thus could not have been inventoried. As counsel believed that defendant "was lying and attempting to perpetrate a fraud upon the court" but was bound by attorney-client privilege, he kept the shorts without disclosing them to the State but also without using them as evidence.

¶ 10 Defense counsel's motion went on to state that, when the State displayed the inventoried shorts to P.K. during her trial testimony, defendant grabbed counsel, called him a liar, and claimed (in profane language) that counsel had tendered the shorts to the State so that defendant demanded new counsel. Because defense counsel feared this would "taint the jury," he asked for a sidebar. During the sidebar, defendant reiterated his allegation that counsel tendered the shorts to the State and supported it with a video of him giving the shorts to counsel. Defense counsel denied the allegation, and after a continuance brought to court the shorts defendant gave him so that they and the shorts inventoried by Corporal Winfrey could be seen by the court

simultaneously. Defense counsel claimed that the attorney-client relationship was irreparably harmed by defendant's grave and false allegations against counsel, and that he believed defendant to be guilty and wanted him to be convicted, so that he could no longer represent him. Defense counsel also alleged that he recommended a bench trial due to the sexual allegations regarding P.K. but defendant invoked his right to a jury trial, so that counsel believed that defendant was challenging counsel's behavior "for the purpose of discharging the jury" upon "see[ing] that the jury is upset by the victim's testimony."

¶ 11 Following arguments, the court denied the motion to withdraw. The court noted that "this is a case that's five and a half years old" and trial had begun, and reiterated that counsel "can put his differences aside" and that defendant "has the choice to go *pro se*." The court asked defendant "which do you want?" and defendant named his existing trial counsel.

¶ 12 P.K.'s testimony resumed. In August 2006, she was working an evening shift five or six days per week. When she was not working, she had a midnight curfew that Smith enforced by taking P.K.'s car keys. For at least three months after the incident, she slept in Smith's bedroom rather than her own. On cross-examination, P.K. testified that she could not recall any arguments with defendant in the summer of 2006; she denied that defendant accused her on August 12 of drinking alcohol, that on August 13 they argued "regarding the men that you were dating at the time," or that on the 13th she told defendant that "revenge is sweet." P.K. also denied telling an officer on the day of the incident that defendant "made no sexual contact with [her] at all." P.K. denied telling her uncle Lonnie Robinson or his wife Bernadette on the day of the incident that she had lost her mobile phone "and hadn't found it for days." P.K. gave a written statement on August 17 in which she did not state that defendant was on the bed straddling her nor did she mention finding defendant's shorts with a condom in the pocket. After

being confronted with photographs of her bedroom, P.K. admitted that nothing was knocked over on her dresser or nightstand in her struggle with defendant in her small bedroom. P.K. denied that defendant entered her bedroom with shotgun in hand, said "don't you know I could have killed you," and she grabbed the gun from him so that it discharged in their struggle. P.K. could not explain how the shot struck her bed and not the wall when it followed immediately after she pushed the gun away from her face.

¶ 13 Sara Cooper testified that, at about 8:30 a.m. on the day in question, she was asleep on her living room couch when she heard knocking at the door. There, she found P.K., crying and screaming that "her uncle had tried to rape her and murder her." P.K. was very upset, weeping and visibly shaking, and her foot was bleeding. Cooper phoned the police, who came to her home a few minutes later. Cooper was unfamiliar with defendant, and also with P.K. before that day. On cross-examination, Cooper testified that she did not hear a gunshot or yelling that morning, and P.K. had no cuts or bruises on her face or legs nor hair visibly torn out. While Cooper had before the day in question discussed a collision with her son's car, she did not recall that defendant was the other person in that discussion.

¶ 14 Corporal Paul Winfrey testified that he responded to the phone call mentioned above. After speaking with a visibly-distraught P.K., Corporal Winfrey entered the Smith home with Smith's permission. There, he examined P.K.'s bedroom and saw the shotgun blast to her bed. On top of a dresser, he also saw a vodka bottle containing liquid that smelled like vodka. In defendant's room, he saw a box of shotgun shells consistent with the shot that struck the bed. He did not see or recover a shotgun. Later that day, P.K. and Smith came to the police station and gave Corporal Winfrey a pair of shorts with a condom in one of the pockets. Corporal Winfrey

had seen the shorts in P.K.'s bedroom earlier but was unaware of their significance so did not inventory them as he had the vodka bottle, shotgun shells, and evidence of the shotgun blast.

¶ 15 On cross-examination, Corporal Winfrey testified that he took no fingernail clippings or scrapings from P.K., nor did he send the vodka bottle for fingerprinting. P.K.'s hair was not visibly pulled out, nor did he see any hair in her bedroom. Though he received the shorts and condom on the day in question, he did not place them into evidence until two days later, the 17th, and his report did not state that he received the shorts from Smith or P.K. but instead from defendant. When P.K. gave a written statement, it did not mention the shorts or condom. When Corporal Winfrey later saw defendant, he had no visible injuries. The shotgun blast to the bed showed gunpowder stippling indicative of "close-range firing," and no shotgun pellets were found in the walls.

¶ 16 On redirect examination, Corporal Winfrey noted the shorts in a photograph of P.K.'s bedroom. He explained that he did not fingerprint the vodka bottle because P.K. had not alleged that defendant used it in the crime, and he reported that he received the shorts from defendant because they were his shorts. The pattern of shotgun pellets and stippling were not inconsistent with a blast from two feet away. On recross examination, Corporal Winfrey acknowledged that he described the shorts as defendant's based on the representations of P.K., Smith, and Vestal and that he did not order testing to confirm that defendant wore or touched the shorts or condom.

¶ 17 Defendant made a motion for directed verdict, which the court denied.

¶ 18 Defendant's fiancé Jennifer Vestal testified that she spoke with Corporal Winfrey on the day after the incident, the 16th, in the home she shared with defendant, Smith, and P.K. That evening, after Corporal Winfrey left, Smith produced a pair of shorts and a condom, stating that the condom had been in the shorts. On cross-examination, Vestal admitted that she recognized

the shorts as defendant's. Linda Bailey, defendant's mother, testified that Lonnie and Bernadette Robinson, defendant's brother and sister-in-law, testified that P.K. said on the afternoon of the day in question that Lonnie was unsuccessful in phoning her because "she lost her cell phone [a] couple of days ago and she was looking for it."

¶ 19 Defendant testified that, when he lived in Smith's home with P.K., he "tried to *** make sure that [P.K.] didn't make bad decisions, as all of us did when we were teenagers," but this made their relationship "contentious." P.K. would be "fine as long as *** she was getting her way" but "very nasty" if not. On August 13, two days before the incident, he and P.K. argued over her desire to have her tongue pierced; she ended with "revenge is sweet" or the like. Defendant had a substance-abuse problem but was sober since 1998, and he denied holding a liquor bottle, drinking alcohol, or being intoxicated on the day in question. In August 2006, he would sleep in the living room after coming home from work because he did not want to disturb the sleep of his infant child. On the day in question, he was in the living room when he heard P.K. leave the home and presumed she had left for the day for school. He returned to sleep but was awakened by footsteps. He saw a shadow and, realizing someone was in the home, called out "who is that?" Receiving no response to that challenge, nor his repetition to the same effect, he retrieved his shotgun and searched the home. Hearing male voices from P.K.'s room, he opened the closed door. When he saw that it was only the television and that P.K. was sitting on her bed, he exclaimed "don't you know I could have killed you?" She "jumped up," "snatched" the shotgun, "and it discharged." Defendant explained that as he tried to keep the shotgun away from P.K., she "threw her weight on the bed," which "yanked" the shotgun and caused it to fire while the muzzle was "in the mattress." Defendant picked up the gun from the bed, and P.K. ran out of the room. He put the shotgun in the living room closet and then left the home. After

phoning Smith and his mother, he went to the home of his former girlfriend and slept on her couch until woken by his mother's phone call; she brought him to the police station. Defendant denied wearing the shorts at issue into P.K.'s bedroom, though he may have worn them the previous night, and denied having a condom in the pocket of the shorts though he did use condoms. He denied that he "g[o]t into bed with" P.K. or intended to sexually assault her, and denied pointing the gun at her face.

¶ 20 In rebuttal, Corporal Winfrey testified that P.K. and Smith brought him the shorts on the day of the incident and that, when he interviewed Vestal that evening, she acknowledged that the shorts belonged to defendant. He acknowledged on cross-examination that his reports did not reflect the date of his interview of Vestal. Christine Smith and P.K. testified that Smith found defendant's shorts in P.K.'s room on the day of the incident and, before bringing them to the police station that day, showed them to Vestal, who identified the shorts as defendant's. While Lonnie came to the home that day, his wife Bernadette did not, and P.K. denied telling Lonnie that she lost her mobile phone before the incident. P.K. added that her fingernails were short on the day in question and that she did not have an argument with defendant regarding a tongue ring because Smith had forbade her from having tattoos or piercings until she was 18 years old and she had her tongue pierced after she reached that age.

¶ 21 Following instructions¹ and deliberation, the jury found defendant guilty of reckless discharge of a firearm and not guilty of domestic battery and interference with reporting of domestic violence.

¹ The record of proceedings ends with the trial evidence and thus does not include closing arguments or any subsequent proceedings.

¶ 22 Trial counsel filed a lengthy post-trial motion challenging various pre-trial, jury selection, evidentiary, and jury-instruction rulings as well as the sufficiency of the evidence. In relevant part, the motion alleged that the court erred in denying counsel's motion to withdraw after defendant's demand for new counsel upon his allegation that counsel gave the State his shorts. New counsel was appointed for the post-trial motion and trial counsel was allowed to withdraw. A *Krankel* motion was denied and post-trial counsel adopted trial counsel's motion, which was also denied. The court sentenced defendant to two years' imprisonment and this appeal followed.

¶ 23 On appeal, defendant contends that the trial court erred in refusing to allow trial counsel to withdraw during the trial unless defendant proceeded *pro se*.

¶ 24 Supreme Court Rule 13(c)(3) (eff. July 1, 2013) provides that counsel's motion to withdraw his appearance for a party "may be denied by the court if the granting of it would delay the trial of the case, or would otherwise be inequitable." Similarly, Illinois Rule of Professional Conduct 1.16 (eff. Jan. 1, 2010), governing when and how counsel may decline or terminate representation of a client, lists various grounds upon which counsel shall or may withdraw but also provides that "[w]hen ordered to do so by a tribunal, a lawyer shall continue representation notwithstanding good cause for terminating the representation." Ill. R. Prof'l Conduct 1.16(c).

¶ 25 While a defendant has a constitutional right to counsel of his choice, "a defendant may not employ this right 'as a weapon' to 'thwart the administration of justice or to otherwise embarrass the effective prosecution of crime,' " so that the court must balance the defendant's right to choose counsel against the need for efficient and effective administration of justice. *People v. Curry*, 2013 IL App (4th) 120724, ¶ 48, quoting *People v. Friedman*, 79 Ill. 2d 341, 349 (1980). Thus, the decision to grant or deny a continuance for substitution of counsel is a matter within the trial court's discretion, reversed only upon an abuse of that discretion. *Id.*, ¶ 49,

citing *People v. Segoviano*, 189 Ill. 2d 228, 245 (2000). The factors to consider in evaluating the court's decision include the movant's diligence, the defendant's right to a speedy, fair, and impartial trial, and the interests of justice. *Id.* A court does not abuse its discretion when it denies a motion for substitution of counsel if new counsel has not been identified or is not ready, willing, and able to appear unconditionally for the defendant. *Id.*

¶ 26 Here, defendant demanded new counsel virtually simultaneously with counsel's initial oral motion to withdraw, and both for the same reason: defendant on his allegation of counsel's impropriety regarding the shorts, and counsel on the gravity and provable falsity of that allegation. We will therefore consider the court's decision as denial of both defendant's request for new counsel and trial counsel's motion to withdraw.

¶ 27 We find that the court reached the eminently reasonable conclusion that defendant was making a false accusation of grave impropriety in the midst of trial to obtain a new trial, though he framed his request as one for new counsel. New counsel was not identified and there was no attorney ready for trial. The continuance of several days or even weeks that would be necessary for new counsel to become familiar with defendant's case would be impractical at best, and at worst detrimental to the memory of jurors and thus to justice, once the jury trial commenced. Under such circumstances, denial of defendant's motion for new counsel was proper. As to trial counsel's motion to withdraw, the court reasonably concluded on the same grounds that allowing counsel to withdraw would both delay the already-commenced jury trial of the case and be inequitable by awarding defendant a new trial for making a patently false allegation.

¶ 28 Therefore, when the court gave defendant the choice to represent himself, far from depriving him of his right to choose his representation as he contends, the court was giving him a viable third option if he was sincerely unable to proceed with trial counsel. The court was

implicitly (and provisionally, as defendant did not invoke his right to proceed *pro se* and thus was not admonished thereon) presuming that defendant would be familiar with his own case and thus able to proceed as no counsel but existing trial counsel would be.

¶ 29 Moreover, the court reasonably concluded, based on its experience with trial counsel from this and other cases, that counsel would be able to overcome his understandable reaction to defendant's grave false allegation and diligently represent him. The record bears out that counsel zealously represented defendant after denial of his withdrawal motion, cross-examining P.K. and other State witnesses at length, presenting witnesses to impeach P.K.'s testimony, arguing admissibility of evidence, and filing a detailed post-trial motion. Indeed, counsel's efforts were successful in that the jury found defendant not guilty of two of the three charges against him. We conclude that the court did not abuse its discretion when it denied defendant's request for new counsel or defense counsel's motion to withdraw.

¶ 30 Accordingly, the judgment of the circuit court is affirmed.

¶ 31 Affirmed.