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2013 IL App (3d) 110392-U

Order filed February 22, 2013

IN THE APPELLATE COURT OF ILLINOIS

THIRD DISTRICT

A.D., 2013

THE PEOPLE OF THE STATE OF)	Appeal from the Circuit Court
ILLINOIS,)	of the 10th Judicial Circuit,
)	Peoria County, Illinois,
Plaintiff-Appellee,)	
)	
v.)	Appeal No. 3-11-0392
)	Circuit No. 10-CF-937
)	
MARCUS T. ALEXANDER,)	Honorable
)	Glenn H. Collier,
Defendant-Appellant.)	Judge, Presiding.

PRESIDING JUSTICE WRIGHT delivered the judgment of the court.
Justice Lytton concurred in the judgment.
Justice Carter dissented.

ORDER

¶ 1 *Held:* The trial court improperly denied counsel's motions to withdraw and defendant's request to retain different counsel.

¶ 2 A public defender represented defendant Marcus T. Alexander during a jury trial that resulted in a hung jury on December 29, 2010. Following this mistrial, private counsel entered an appearance on behalf of defendant. The second jury trial was scheduled to begin on March 21, 2011, but on March 8, 2011, private counsel filed a motion to withdraw. The court denied

this request on March 11, 2011.

¶ 3 On March 18, 2011, private counsel filed a second motion to withdraw indicating defendant terminated his representation. An exhibit attached to counsel's second motion to withdraw alleged defendant paid some funds to another private attorney. On the day of trial, March 21, 2011, the court denied private counsel's second motion to withdraw. Following a jury trial, the jury found defendant guilty of unlawful possession of a controlled substance (720 ILCS 570/402(c) (West 2010)).

¶ 4 On appeal, defendant contends the circuit court abused its discretion by denying private counsel's motions to withdraw to allow defendant to retain a different attorney and erroneously ordered defendant to pay a \$200 DNA fee. Based on the first issue, we reverse and remand.

¶ 5 **BACKGROUND**

¶ 6 On September 21, 2010, a grand jury returned an indictment against defendant charging him with unlawful possession of a controlled substance (720 ILCS 570/402(c) (West 2010)), a Class 4 felony. The circuit court appointed the public defender to represent defendant.

Defendant's first trial resulted in a mistrial on December 28, 2010, due to a hung jury.

¶ 7 After the first trial, defendant's family paid money to an attorney Smith on behalf of defendant, but attorney Smith's license to practice law was suspended and he did not enter his appearance on behalf of defendant. On February 4, 2011, attorney Charles L. Danner filed a written appearance as counsel for the defendant which stated Danner was representing defendant "on a pro bono basis."¹ Also on February 4, Danner requested the court to continue the

¹ The transcripts in the record reflect that Smith did not refund the money to defendant's family and defendant's family had to arrange to pay additional money to a different private attorney, Zalcman, to represent defendant.

previously scheduled jury trial for an additional month so he would have time to prepare for trial. The State objected to a continuance. The circuit court, over the State's objection, continued the case for a scheduling conference on March 11, 2011, and a jury trial on March 21, 2011.

¶ 8 On March 5, defendant told Danner he was terminating the attorney-client relationship after paying money to attorney Zalcman to take over his defense. On March 8, 2011, Danner filed a motion for leave to withdraw from the case. In that motion, Danner stated defendant's family retained him as defendant's attorney on January 26, 2011, but defendant failed to compensate Danner, as agreed. On this basis, Danner claimed he could no longer represent defendant due to his lack of cooperation.

¶ 9 On March 11, 2011, the court held a hearing on Danner's motion to withdraw. Danner told the court that he met with the defendant on March 5, 2011, to discuss fees and a potential motion to withdraw. Danner also told the court that the defendant did not pay any of the retainer he promised to pay, and that his temporary office staff erroneously typed, in the notice of appearance, that he was taking the case on a *pro bono* basis. During that meeting with defendant on March 5, defendant advised Danner that he had already paid money to attorney Zalcman, who was going to represent him, and defendant terminated Danner's services as his attorney.

¶ 10 The State objected to Danner's request to withdraw claiming it would delay the second trial, and argued that nonpayment of attorney fees is not a legally cognizable reason to withdraw from a case. The State informed the court that Danner also currently represented defendant in an unrelated criminal case, and that Danner's motion to withdraw from that case was denied by

Judge Kouri.² The State further commented that, just prior to Danner entering his appearance in this case, defendant's family paid money to an attorney Smith, who was going to represent the defendant, but could not enter his appearance because he had been suspended from the practice of law. Finally, the State argued that defendant does not have an absolute right to counsel of his choosing.

¶ 11 Danner informed the court that defendant told Danner he terminated his services because he could not communicate with, or get a hold of, Danner despite defendant's attempts to contact him. The court commented that it had presided over the first trial and that transcripts could be made available and this was not a complicated case. The court stated that, since the case had already been tried once, this "isn't something you are going to have to do a whole bunch of strategizing about." Further, the court said defendant testified at the first trial and defendant was bound by that testimony.

¶ 12 Defendant told the court that Danner did not communicate with him when defendant called Danner's office, and that he did not want Danner to represent him. Defendant stated, "as far as me paying, having private counsel, I hired one and the one got suspended and he haven't [*sic*] been able to give me my money back, so that's the only reason why I couldn't [*sic*] able to get my money paid to retain another lawyer." Defendant also stated that he had only spoken with Danner once, and not about the case itself, but only about their contract.

¶ 13 Next, Danner argued that defendant testified he did not want Danner as counsel and it would be unethical for Danner to continue representing defendant under these circumstances.

² Danner interjected that he had a pending motion to reconsider in that case and Judge Kouri reserved ruling on the motion to reconsider pending the outcome of this motion to withdraw.

Thereafter, the following exchange took place, during which the court denied Danner's motion to withdraw:

"THE COURT: All right, and let me say this, it's not infrequent that counsel and defendant don't see eye to eye on a case. I have to determine whether that impairs your ability to represent him zealously, that is give him every measure of effort that you would give. I'm assuming, Mr. Danner, that you wouldn't fail in those efforts simply because he hasn't paid you?"

MR. DANNER: Correct, Your Honor, I would do the best job I could --

THE COURT: All right.

MR. DANNER: -- if [defendant] would allow me.

THE COURT: All right, and as I indicated already, this is not that complicated a case, I think you two can, you know, you will have an opportunity prior to the trial date to communicate. That's his only problem with you is that there's been, he says, no communication. So I'm going to deny the motion.

[THE PROSECUTOR]: And Judge, I didn't clear this up, but just to supplement the record, Mr. Zalzman was contacted by members of our office this morning, and he did represent to them that he had not been retained by the defendant and had not been paid any money.

THE COURT: All right.

[THE PROSECUTOR]: And in addition, Mr. Danner did represent to the Court [Judge Kouri] in Courtroom 222 on the murder case that he had, in fact, visited the defendant this past weekend at the county jail.

MR. DANNER: Oh, that's, I think, what I said, that he told me Saturday that he no longer needed my services.

THE COURT: Then why can't you two communicate about this case then?

MR. DANNER: We could have, Your Honor; however, he told me - -

THE COURT: All right, you two have that opportunity.

THE DEFENDANT: Your Honor, I paid Mark Zalzman \$1,000.00 already, I got the receipt. I paid him \$1,000.00 to come out and talk to me about my case. He has been paid some money.

THE COURT: All right.

THE DEFENDANT: It ain't that he ain't been paid no money.

THE COURT: All right.

THE DEFENDANT: I have the receipt myself.

THE COURT: Then I suggest you get a refund."

¶ 14 On March 18, 2011, Danner filed a second motion for leave to withdraw as defense counsel which emphasized that defendant instructed Danner not to "bother his files" or contact defendant following the outcome of the hearing on March 11, 2011. According to the second motion for leave to withdraw, Danner attempted to meet with defendant on March 12, but defendant refused to see him. Danner's motion said that defendant instructed Danner not to speak on his behalf because defendant terminated Danner's services as his attorney, and argued it would be a violation of attorney ethics for Danner to continue to represent defendant based on these communications from his client.

¶ 15 Danner also attached a copy of a letter Danner wrote to defendant, dated March 14, 2011,

as an exhibit. In that letter, Danner advised his client that Danner contacted attorney Zalzman, who admitted to Danner that defendant made a partial payment to Zalzman for his defense on or about February 6, 2011. However, according to this letter, Zalzman denied he agreed to represent defendant.

¶ 16 On March 21, 2011, during the hearing on Danner's second motion for leave to withdraw, Danner stated that this case was not “that old of a case,” and reminded the court that defendant requested to change attorneys only once. Danner argued that defendant had an absolute right to discharge Danner as his attorney, and proceed to trial either *pro se* or with substitute counsel. Danner stated he found himself in an “ethical dilemma” because his client would not authorize him to speak on his behalf and the court ordered Danner to continue to act as defense counsel. The court responded, “Then you need to proceed the best you can.”

¶ 17 Citing relevant case law supporting the contention that defendant had a right to proceed to trial with counsel of defendant’s choice or to appear *pro se*, Danner suggested the court should make specific findings regarding whether defendant’s request to discharge Danner as his attorney would “thwart the administration of justice” by causing unnecessary delays.

¶ 18 After hearing arguments, the court stated, in part:

"At that time [when ruling on Danner’s initial motion for leave to withdraw] I indicated when I ordered you to remain on the case because you were pro bono and you weren't going to get paid and there was no basis for you to be discharged, I indicated that this was not a very difficult case, that this case had been tried before, that there is a transcript on this case, that all you had to do was simply read it to let you know what the facts and the evidence were at that time of the trial and that you take

that time to talk to Mr. [Alexander], between now -- between then and now that you and Mr. Alexander talk. If that was Mr. Alexander's problem that you wouldn't talk to him, you had plenty of time to talk to him.

Now, Mr. Alexander doesn't want to talk to you. That's not the Court's problem. I gave him -- if his problem and that was my inquiry, by the way -- if his problem was that you don't talk to him, then he should have been more than welcome - - you should have been more than welcome when you appeared out there to talk to him. So that addressed that problem.

* * *

I don't have to expressly state that the reason that I'm denying the motion is because, because when I find that neither of those bases upon which the motion was made holds any water, now whatever else I am missing, you know, you didn't argue at that time, but I addressed those issues and I ordered that this case go on as scheduled so that justice would not be thwarted and that we would have an orderly administration of justice. That's all implied.

*** The inquiry was why are you asking to be discharged? It was on the basis of no compensation. Why does the defendant want to discharge you? And if the only thing was I want -- if the only reason was I want another attorney because this one won't talk to me --"

¶ 19 Defendant then stated in open court, "Ineffective." The court asked defendant how his attorney could be effective when defendant refused to speak with his attorney. In response, defendant explained he attempted to speak with Danner initially, but Danner did not accept his

phone calls or discuss defendant's case in person before Danner requested permission to withdraw on March 5, 2011. The court stated defendant did not give Danner the opportunity to speak with defendant, after March 11, to prepare for the March 21 jury trial. The court stated:

"So what this comes down to for me is this is a case of the defendant saying I don't care what the Court has ordered. I'm going to do things my way, and the Court is going to have to deal with it. Well, that's not exactly the way it works. You were given counsel, Mr. Alexander. Whether you want to cooperate with that counsel or not, your claim is that he is ineffective but you won't talk to him so that he can be effective. You are the one who retained him in the first instance.

* * *

Okay. Again, there has been no basis, no showing made by defendant's argument today that this matter ought to be delayed except for the sole purpose of delay. To use the metaphor that the State used about the defendant taking his ball and going home, you know, for the defendant to say that he has no counsel now would be like him taking a knife and stabbing the ball and letting the air out of it and then complaining he has no ball. So you do have an attorney, Mr. Alexander. I suggest you utilize it. He is trying to do his job if you just let it."

¶ 20 The court denied Danner's second motion to withdraw and conducted the jury trial on the same day, with Danner acting as defendant's *pro bono* attorney. At the conclusion of the trial, the jury found defendant guilty.

¶ 21 The record reflects that defendant was in the custody of the sheriff from the time of his arrest on September 2, 2010, until his sentencing hearing which took place on May 13, 2011. On

that date, the court sentenced defendant to serve six years of imprisonment and also ordered defendant to pay various fees and court costs including a \$200 DNA testing fee. The presentence investigation report submitted to the court indicated that defendant had previously submitted a DNA sample which was already on file. Defendant filed a timely notice of appeal.

¶ 22

ANALYSIS

¶ 23 On appeal, defendant challenges the trial court's denial of Danner's second motion to withdraw, thereby denying defendant of his right to be represented by counsel of his choice, and also challenges the propriety of the DNA analysis fee ordered by the court.

¶ 24 A trial court's ruling concerning a request to discharge counsel is subject to an abuse of discretion standard of review. *People v. Tucker*, 382 Ill. App. 3d 916, 920 (2008); *People v. Bingham*, 364 Ill. App. 3d 642, 645 (2006); *People v. Burrell*, 228 Ill. App. 3d 133, 142 (1992). It is within the trial court's discretion to determine whether the defendant's right to selection of counsel unduly interferes with the orderly process of judicial administration. *Id.* An abuse of discretion will be found only where the court's ruling is "arbitrary, fanciful, unreasonable," or where "no reasonable person would take the view adopted by the trial court." *People v. Baez*, 241 Ill. 2d 44, 106 (2011).

¶ 25 Both the United States Constitution (U.S. Const., amend. VI) and the Illinois Constitution (Ill. Const. 1970, art. I, § 8) provide that a criminal defendant has the right to counsel of choice. See also *Baez*, 241 Ill. 2d at 104-05. Improper denial of the right to counsel is a structural error and not subject to harmless error analysis. *United States v. Gonzalez-Lopez*, 548 U.S. 140, 150 (2006); *Baez*, 241 Ill. 2d at 105. Thus, a defendant's right to counsel exists independently of whether he received a fair trial or was prejudiced by counsel's representation. *Gonzalez-Lopez*,

548 U.S. at 146; *Tucker*, 382 Ill. App. 3d at 919-20. However, a defendant who abuses the right to counsel "in an attempt to delay trial and the effective administration of justice may forfeit his right to counsel of choice." *People v. Howard*, 376 Ill. App. 3d 322, 335 (2007).

¶ 26 When considering a defendant's request to obtain new counsel, the court must balance the right of a defendant to choose his or her counsel against the public need for efficient and effective administration of justice. *Baez*, 241 Ill. 2d at 106; *Tucker*, 382 Ill. App. 3d at 920; *People v. Childress*, 276 Ill. App. 3d 402, 410 (1995). To properly balance these competing interests, the court must determine whether the defendant's request is solely a tactic of delay. *Tucker*, 382 Ill. App. 3d at 920; *Burrell*, 228 Ill. App. 3d at 142; *Bingham*, 364 Ill. App. 3d at 645; *People v. Washington*, 195 Ill. App. 3d 520, 525 (1990); see also Ill. S. Ct. R. 13(c)(3) (eff. July 1, 1982) (the trial court may deny the attorney's motion to withdraw if the granting of it would delay the trial of the case, or would otherwise be inequitable).

¶ 27 Case law provides that the court should consider the following factors before denying a request for leave to retain another attorney which may result in some delay: "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." *Tucker*, 382 Ill. App. 3d at 920.

¶ 28 A trial court's decision to elect not to make any inquiries into the truth or falsity of a defendant's assertion that he is not satisfied with the representation of current counsel has consequences founded on this well-accepted case law. For example, in *People v. Little*, 207 Ill.App.3d 720 (1990), the appellate court reversed the defendant's conviction because the trial

court did not conduct any inquiry into the truth or falsity of defendant's assertions that his private attorney was misinformed of the trial date and was not present on the date of trial. In that case, the court did not ask how long a continuance would be needed to allow counsel of choice to be present at trial. In addition, Little told the court the private attorney had been paid for his services but, since he was in custody, defendant relied on his family to retain and communicate with his counsel of choice. *Little*, 207 Ill.App.3d at 727.

¶ 29 Similarly, in the case at bar, defendant was in continuous custody since his arrest on September 2, 2010. The first trial, with a public defender, took place within four months of his arrest but resulted in a hung jury and mistrial on December 29, 2010. Thereafter, the trial court reset the matter for a February 4, 2011 scheduling conference and a February 14, 2011 jury trial. According to the record, after the mistrial in late December, defendant's family paid an attorney Smith to represent defendant, but Smith did not enter his appearance because his law license was suspended. However, Smith did not refund the money paid by defendant's family so they could retain substitute counsel.

¶ 30 Next, Danner filed his appearance on February 4, 2011, the date of defendant's first pretrial conference, on a "*pro bono*" basis, and requested a continuance of the February 14 trial in order to prepare for the jury trial scheduled for 10 days later. On March 5, defendant told Danner he was terminating the attorney-client relationship, after paying attorney Zalcman \$1,000 to take over his defense. Attorney Danner filed the first motion to withdraw on March 8, 2011, which alleged defendant had not honored the agreement to pay Danner for legal services. At the March 11 hearing, on Danner's first motion to withdraw, defendant told the court his reason for requesting substitute counsel was that Danner was not returning his phone calls or

communicating with defendant.

¶ 31 The court denied the motion to withdraw and stated there was ample time for Danner and defendant to discuss the case before the scheduled trial date of March 21, 2011. The court stated it was not concerned with the lack of communication between Danner and defendant because the case was not complex, transcripts could be made available from the first trial, and trial preparation would not require much discussion between Danner and defendant. Due to the misunderstanding regarding fees, the court ordered Danner to continue representing defendant on a *pro bono* basis.

¶ 32 After the hearing on March 11, defendant told Danner his services were terminated and not to "bother his files" or otherwise try to contact him. Thereafter, defendant refused to discuss his case or meet with Danner. Danner then filed a second motion to withdraw on March 18, 2011, three days before trial. Danner attached a letter from Danner to defendant, dated March 14, 2011, for the court's consideration, which indicated that attorney Zalzman told Danner that Zalzman received some money from defendant, but had not yet agreed to represent the defendant in this case.

¶ 33 The court conducted a hearing on the second motion to withdraw on the morning of the jury trial, March 21, 2011. Before denying the second request to withdraw, the court stated there had been ample time for Danner and defendant to prepare the case, and any problem with Danner's representation of defendant resulted from defendant's refusal to cooperate. The court found that defendant's request for new counsel of his choice was solely to delay the proceedings. Accordingly, the court denied the motion and again ordered Danner to represent defendant throughout the jury trial that began on that same date. The court did not inquire whether

defendant would like an opportunity to proceed *pro se*.

¶ 34 In this case, the re-trial was progressing on a fairly rapid schedule. Defendant's second trial was set to begin on March 21, 2011, eight months after his arrest and less than three months after the first mistrial. Defendant was incarcerated during the entire eight months but attempted to retain three different private attorneys for the second trial. According to the record, defendant's family paid money to two of those attorneys; first, attorney Smith, who did not refund the money to the family in a timely manner, and later to attorney Zalzman. Moreover, Danner entered an appearance for defendant with "*pro bono*" language set out in his written appearance, but met with defendant to discuss his failure to pay a retainer on March 5, 2011. Within three days, Danner filed a motion to withdraw.

¶ 35 Finally, the record reveals undisputed facts that attorney Danner expected to be paid, and defendant did not pay for his services causing Danner to file a motion to withdraw weeks before the scheduled second trial. Without making any inquiries into the circumstances surrounding defendant's efforts to secure substitute counsel, presumably Zalzman, who would be paid for those services, the court simply denied Danner's second request to withdraw and ordered Danner to provide representation without any compensation. Thereafter, Danner filed a second motion to withdraw, which revealed Danner believed another private attorney had been paid, in part, to represent defendant and defendant terminated Danner as his lawyer and no longer wished to meet with Danner or discuss the case.

¶ 36 When ruling on a motion for substitution of attorney, or a motion for an attorney to withdraw as counsel for a defendant, the court must balance defendant's right to choose his counsel against the efficient and effective administration of justice. See *Bingham*, 364 Ill. App.

3d at 645. In this case, the court did not conduct a detailed inquiry into the actual request for new counsel to see if the request was being used merely as a delay tactic. *Id.*; *Washington*, 195 Ill. App. 3d at 525. The court also failed to inquire as to whether defendant wanted to represent himself or, if he obtained new counsel, how much of a delay would be required to bring the case to trial. Under these circumstances, in the absence of such an inquiry, the court's decision to deny Danner's second motion to withdraw constituted an abuse of discretion. Defendant's conviction is reversed and vacated and the matter is remanded for a new trial.

¶ 37 Based on this holding, defendant's second argument that the circuit court erred when it ordered him to pay a \$200 DNA testing fee is moot.

¶ 38 CONCLUSION

¶ 39 For the reasons stated, we reverse the trial court's judgment and vacate defendant's conviction and remand the case to the circuit court for a new trial.

¶ 40 Reversed and remanded.

¶ 41 JUSTICE CARTER, dissenting.

¶ 42 I respectfully dissent from the majority's holding that the circuit court erred when it denied private counsel's motions to withdraw to allow the defendant to retain a different attorney. Specifically, I disagree with the majority's holding that the circuit court failed to conduct a "detailed inquiry" into "the actual request for new counsel to see if the request was being used merely as a delay tactic" and into "whether defendant wanted to represent himself or, if he obtained new counsel, how much of a delay would be required to bring the case to trial." (*Supra* ¶36). I believe the circuit court did in fact conduct adequate inquiries in this case.

¶ 43 "[W]hile the right to select and be represented by one's preferred attorney is comprehended by the Sixth Amendment, the essential aim of the Amendment is to guarantee an

effective advocate for each criminal defendant rather than to ensure that a defendant will inexorably be represented by the lawyer whom he prefers." *Wheat v. United States*, 486 U.S. 153, 159 (1988). As such, the right to counsel is limited in certain instances: "[a] criminal defendant has no right to select an attorney he cannot afford, or one who is not a member of the bar, has a conflict of interest, or declines to represent him." *Tucker*, 382 Ill. App. 3d at 920. The limitations on a defendant's right to counsel also exist to satisfy the court's interests in conducting ethical and fair proceedings. *Howard*, 376 Ill. App. 3d at 335.

¶ 44 The determination of whether a defendant has abused his or her right to counsel is a matter within the circuit court's discretion, and a reviewing court must not disturb the court's decision absent an abuse of that discretion. *Bingham*, 364 Ill. App. 3d at 645. Case law provides that a court does not abuse its discretion "where new counsel is unidentified or does not stand ready, willing, and able to make an unconditional entry of appearance on defendant's behalf." *Childress*, 276 Ill. App. 3d at 411; see generally *Baez*, 241 Ill. 2d at 106; *Tucker*, 382 Ill. App. 3d at 920; *People v. Koss*, 52 Ill. App. 3d 605, 607-08 (1977). However, the determination of whether a defendant has abused his or her right to counsel is contextual. *Tucker*, 382 Ill. App. 3d at 920.

¶ 45 In this case, the defendant had been in continuous custody since September 2, 2010. After the mistrial was declared on December 29, 2010, the case was set for a February 4, 2011, scheduling conference and a February 14 trial. Danner filed his appearance on February 4, 2011; accordingly, Danner had only been representing the defendant for just over a month when, on March 5, the defendant told Danner he was terminating the attorney-client relationship and informed Danner that he had paid another attorney to represent him. Danner was intending to

withdraw anyway, and Danner in fact filed a motion to withdraw three days later. At the March 11 hearing on the first motion to withdraw, the defendant told the court that his reason for seeking new counsel was that Danner was not communicating with him. Danner disagreed with that claim and stated that the defendant was the one not cooperating. The court stated it was not concerned with the lack of communication, pointing out that the case was not complex and would not require much discussion between Danner and the defendant. The court also stated that there was ample time for that discussion to take place before the scheduled trial date and accordingly ordered the representation to continue. After that hearing, the defendant told Danner not to "bother his files" or otherwise try to contact him anymore.

¶ 46 While the defendant stated at that hearing that he had paid another attorney to represent him in the matter, a March 14 letter from Danner to the defendant indicated that Zalcman did receive some money from the defendant but he never agreed to represent the defendant in the case.

¶ 47 Danner attempted to meet with the defendant on March 12, but the defendant refused the visit. Thus, Danner filed a second motion to withdraw on March 18. At the March 21 hearing on the motion, the court again stated that there had been ample time for Danner and the defendant to discuss the case, but the defendant was the one refusing to cooperate. The court found that the defendant was motivated solely by a desire to delay the proceedings. Accordingly, the court denied the motion and again ordered the representation to continue.

¶ 48 While it is true that Danner had not been representing the defendant for very long and the case had not been pending for a long time, I agree with the circuit court's conclusion that the defendant's motive was simply to delay the case. He hired Danner, then refused to cooperate

with him. If the problem was in fact what the defendant claimed it to be—that Danner was not communicating with him—there was ample time to rectify that problem before trial. In fact, Danner tried to meet with the defendant to discuss the case, but the defendant was the one who refused to meet. Further, there was no substitute counsel to speak of, as the record indicates that Zalcmán never agreed to represent the defendant. Under the circumstances of this case, I would hold that the circuit court did not abuse its discretion when it denied Danner's motions to withdraw, as those rulings did not have the effect of violating the defendant's constitutional right to choice of counsel.

¶ 49 Additionally, because I would affirm the circuit court's ruling on the first issue, I would also address the second issue. In that regard, under *People v. Marshall*, 242 Ill. 2d 285, 303 (2011), I would vacate that portion of the circuit court's order requiring the defendant to pay a \$200 DNA analysis fee, as the record in this case indicates that the defendant's DNA had already been indexed in the DNA database from a prior conviction.

¶ 50 For the foregoing reasons, I respectfully dissent.