

2017 IL App (1st) 142602-U

No. 1-14-2602

Order filed March 27, 2017

First Division

NOTICE: This order was filed under Supreme Court Rule 23 and may not be cited as precedent by any party except in the limited circumstances allowed under Rule 23(e)(1).

IN THE
APPELLATE COURT OF ILLINOIS
FIRST DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS,)	Appeal from the
)	Circuit Court of
Plaintiff-Appellee,)	Cook County.
)	
v.)	No. 10 CR 18875
)	
CHARLES MILES,)	Honorable
)	Stanley J. Sacks,
Defendant-Appellant.)	Judge Presiding.

JUSTICE MIKVA delivered the judgment of the court.
Presiding Justice Connors and Justice Harris concurred in the judgment.

ORDER

¶ 1 *Held:* Defendant's conviction for burglary is affirmed as the trial court did not abuse its discretion by denying defendant's motion for a continuance to retain private counsel on the day of trial.

¶ 2 Following a bench trial, defendant Charles Miles was convicted of burglary (720 ILCS 5/19-1(a) (West 2010)) and sentenced to 13 years' imprisonment. Mr. Miles appeals his conviction, arguing that he was denied his constitutional right to the counsel of his choice when the trial court denied his request for a continuance to retain private counsel on the day of trial.

Because we do not believe that the trial court abused its discretion, we affirm Mr. Miles's conviction.

¶ 3

BACKGROUND

¶ 4 On October 3, 2010, Mr. Miles was arrested following a burglary that occurred at Tavern On Rush, a restaurant and bar in Chicago. He was charged with one count of burglary (720 ILCS 5/19-1(a) (West 2010)) and two counts of theft (720 ILCS 5/16-1(a) (West 2010)). He was simultaneously charged with similar offenses at two other restaurants located nearby Tavern On Rush that occurred on October 2, 2010. On November 9, 2010, a public defender was appointed to represent Mr. Miles in all three cases.

¶ 5 On April 29, 2011, Mr. Miles appeared in court and advised the judge that due to a death in his family, he was able to post the required \$15,000 bond. The trial court judge responded that, in light of the amount of the bond posted, Mr. Miles was no longer eligible to be represented by the public defender and he would need to retain private counsel or, if he did not, the court could use the bond to repay the public defender's office for its services. On May 27, 2011, Mr. Miles returned to court with private counsel, and the public defender withdrew from the cases.

¶ 6 On September 2, 2011, the private counsel that Mr. Miles had retained informed the trial court that Mr. Miles was being held without bond on a new residential burglary charge. At that point, the lawyer requested and Mr. Miles agreed to have the \$15,000 bond that had been posted for Mr. Miles's release exonerated and given to his private counsel to represent him on the three 2010 burglary cases.

¶ 7 On October 27, 2011, the State elected to proceed first on the 2011 residential burglary charge and, on January 23, 2012, that case proceeded to a jury trial, with Mr. Miles being represented by the same private lawyer that he had retained to represent him on the three 2010 burglary charges. At the start of the trial on the residential burglary charge, after showing up quite late, Mr. Miles's private lawyer answered not ready and requested a continuance. The trial court denied his request. After a two day trial, the jury found Mr. Miles guilty of residential burglary.

¶ 8 On April 20, 2012, Mr. Miles's private lawyer attempted to arrange a plea agreement with regard to the sentence to be imposed in the 2011 residential burglary case and the three 2010 burglary cases. Mr. Miles rejected the proposed agreement and the trial court sentenced Mr. Miles to 12 years in prison on the 2011 residential burglary.

¶ 9 Mr. Miles filed a motion to reconsider his sentence, which the trial court denied on June 15, 2012. That same day, Mr. Miles's private counsel informed the court that Mr. Miles no longer wanted to be represented by his office. The trial court allowed Mr. Miles's private counsel to withdraw, rejected any claim about ineffective assistance of counsel, and reappointed the public defender to represent Mr. Miles in his remaining burglary cases. The following exchange then took place:

“THE COURT: What did you want to say about the bond?”

[MR. MILES]: He [Mr. Miles's private counsel] promised a percentage of 7,500 for both cases. And he told me that he would turn over 6,000 to me, which he only turned over 500 to my girl friend.

[THE COURT]: I am not getting involved with your bond situation.”

¶ 10 After the June 15, 2012, court date, there were multiple continuances, of which at least some were due to Mr. Miles's medical issues and his need for surgery. On September 24, 2012, the State elected to proceed first on the October 3, 2010, burglary at Tavern On Rush, which is the case now before us on appeal. On December 5, 2012, Mr. Miles requested that the trial court appoint him a new public defender. That request was denied. At the March 5, 2013, court date, the trial court said to Mr. Miles:

“Mr. Miles, your lawyer asked for a date, not you, sir. I know what you want a date in May [for] Mr. Miles. We're not playing that game. If you get a date more than two months, you go back to where you're serving your time at. Less than two months, you stay at Stateville. I'm not playing that game.”

¶ 11 On July 1, 2013, Mr. Miles requested a date in September for status. Mr. Miles told the court that his surgery had been rescheduled for August 28, 2013, and that he was scheduled for an EKG on August 6, 2013. The court continued the case until September 9, 2013, and advised Mr. Miles that this was the last continuance it would grant for medical issues. However, on September 5, 2013, a substitute judge presided over the case. Mr. Miles's public defender explained that Mr. Miles's surgery had once again been delayed, this time until October 19, 2013. The court continued the case until November 5, 2013.

¶ 12 On November 5, 2013, the assigned trial court judge continued the case to February 3, 2014, for a jury trial. However, on that date the State presented a motion to use evidence of the other burglaries that Mr. Miles was charged with committing on October 2, 2010. The trial court granted the motion and reset the case for trial on May 5, 2014.

¶ 13 On May 5, 2014, the State answered ready for trial and informed the court that it had two or three witnesses that it needed to put on that day. The public defender answered “not ready” for trial and requested a continuance “for two reasons.” He stated that the first reason was that “Mr. Miles indicated to me his family is hiring a private attorney or seeking to hire a private attorney or has hired a private attorney.” When the trial court asked if his new attorney, whom Mr. Miles identified as “Bernard Goldstein,” would be present and ready to proceed to trial that day, Mr. Miles told the court that when his family could pay the full amount “[the attorney] will be eligible by July 5th.”

¶ 14 The public defender also informed the court that Mr. Miles had fallen during transport and was seeking medical attention for his head and collarbone. The trial court stated:

“Mr. Miles, this case has been pending since—it is a 2010 case. You have been back and forth God knows how many times on this case. Let’s forget about what God knows. Let’s talk about what the record shows. You started off on this case before me November 9, 2010. You have been here at least 31 times. Now the State has called their witnesses here finally. You indicate that your family may get you a lawyer. You have had almost four years and 31 dates to get a lawyer, sir.

I will let you make a call from back there. If the lawyer shows up today ready to go to trial, you can go to trial. I am not going to give you a date just to think about whether your family can get you a lawyer after four years and 31 court dates, sir.”

¶ 15 When Mr. Miles indicated that this private attorney would not show up to court that day, the trial court told him “I think you have played the game.” It continued, telling Mr. Miles that “your request to get an attorney in my opinion is merely a dilatory tactic on your part to avoid

going to trial.” It also stated that “[n]ow the state is ready you maintain the family may get you a lawyer. They don’t have all the money. It is pure speculation on your part if they will get the money.” The court denied Mr. Miles’s motion for a continuance and stated that if Mr. Miles needed medical care, he would be remanded to the Cook County jail for care at the end of the day.

¶ 16 The trial court asked Mr. Miles if he wanted a bench trial or a jury trial and, after some back and forth between the parties and the court, the case proceeded to a bench trial.

¶ 17 The trial evidence, which is not at issue in this appeal, was briefly as follows. Ashley Simone testified that, on the morning of October 3, 2010, she was working at Tavern On Rush before it was open to the public. She entered the employee coat room and saw Mr. Miles putting items into a duffle bag. Not knowing if Mr. Miles was a delivery person or someone that another employee knew, Ms. Simone left the coat room. When she returned, she noticed that all the employee bags, including hers, were gone. Ms. Simone and her fellow employee, Athena Lerch, ran outside and observed Mr. Miles in a taxi cab with the duffle bag. Ms. Lerch testified that Mr. Miles got out of the cab and emptied the duffle bag on to the street. Ms. Simone and Ms. Lerch retrieved their belongings, and Mr. Miles got in another taxi cab, which drove away. Ms. Lerch called the police and reported what had happened and the license plate number of the cab that Mr. Miles rode away in. The State introduced security camera footage which showed Mr. Miles taking bags out of the employee coat room.

¶ 18 Chicago Police Officer Timothy Kinsella testified that, on October 3, 2010, he received a radio dispatch concerning the incident at Tavern On Rush and the license plate number of the taxi cab that drove the suspect away. Officer Kinsella located and stopped the cab. Inside,

Officer Kinsella found a man matching the description of the suspect from the incident at Tavern On Rush. He detained the suspect and drove him to the victims' location to conduct a show-up. There, Ms. Simone and Ms. Lerch identified the suspect as the man who took their belongings from Tavern On Rush. The State introduced evidence of similar crimes committed by Mr. Miles on October 2, 2010, at restaurants located near Tavern On Rush.

¶ 19 Mr. Miles testified that, during the first week of September of that year, he had spoken with a chef named Lisa who worked in the catering department at Tavern On Rush. On October 3, 2010, he went to Tavern On Rush to interview for a job with that chef. When Mr. Miles walked through the front door, a Hispanic male told him to wait while he checked to see whether the chef was downstairs. That same man then escorted Mr. Miles downstairs. The chef named Lisa told Mr. Miles that the restaurant was hiring for the holidays and told him to wait by the bar upstairs so they could talk about a position at the restaurant.

¶ 20 Mr. Miles returned to the ground level of the restaurant, but he ended up in the wrong area. He "turned into an open space and [saw] the bags standing right there," and "[saw an] opportunity." He started to put the bags in a duffle bag when he was caught by Ms. Simone. Mr. Miles apologized for taking the bags, returned to them to the area "behind the bar," and walked out of the restaurant. He then got in to a taxi cab, which was stopped by police after driving four or five blocks.

¶ 21 After being questioned by the State, Mr. Miles additionally stated that he was not guilty of burglary because he did not have the intent to steal when he entered Tavern On Rush. He simply took the bags when he saw the opportunity to do so.

¶ 22 On May 7, 2014, the trial court found Mr. Miles guilty of burglary. Mr. Miles filed a motion for a new trial, arguing that the trial court erred by not granting his continuance to retain private counsel. On August 1, 2014, the trial court denied the motion, stating that it believed Mr. Miles's motion for a continuance had been an attempt to "delay the system." After a hearing, the court sentenced Mr. Miles to 13 years' imprisonment to run consecutively with the 12-year sentence he received for the residential burglary. On August 5, 2014, the trial court denied Mr. Miles's motion to reconsider his sentence.

¶ 23 JURISDICTION

¶ 24 Mr. Miles timely filed his notice of appeal in this matter on August 28, 2014. Accordingly, this court has jurisdiction pursuant to article VI, section 6, of the Illinois Constitution (Ill. Const. 1970, art. VI, § 6) and Illinois Supreme Court Rules 603 and 606, governing appeals from a final judgment of conviction in a criminal case (Ill. S. Ct. Rs. 603, 606 (eff. Feb. 6, 2013)).

¶ 25 ANALYSIS

¶ 26 On appeal, Mr. Miles claims that the trial court erred in denying his motion for a continuance to retain private counsel in violation of his constitutional right to counsel.

¶ 27 Both the United States Constitution and the Illinois Constitution guarantee criminal defendants the right to retain counsel of their choice. *People v. Adams*, 2016 IL App (1st) 141135, ¶ 13; U.S. Const., amend. VI; Ill. Const. 1970, art. 1, § 8. This right, however, is not absolute and cannot be used to "thwart the administration of justice, or to otherwise embarrass the effective prosecution of crime." *Adams*, 2016 IL App (1st) 141135, ¶ 13 (quoting *People v. Bingham*, 364 Ill. App. 3d 642, 645 (2006)).

¶ 28 The decision of whether to grant a continuance for substitution of counsel is a matter within the trial court's discretion and will not be overturned absent an abuse of discretion. *Id.* ¶ 14 (citing *People v. Segoviano*, 189 Ill. 2d 228, 245 (2002)). In assessing a trial court's denial of a continuance to retain counsel, reviewing courts consider the defendant's diligence, the defendant's right to a speedy, fair, and impartial trial, and the interests of justice. *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." (Internal quotation marks omitted.) *People v. Baez*, 241 Ill. 2d 44, 106 (2011).

¶ 29 The general rule, as articulated by our supreme court, has been "that a trial court will not be found to have abused its discretion in denying a motion for substitution of counsel in the absence of ready and willing substitute counsel." *Segoviano*, 189 Ill. 2d at 245. However, this court recently recognized that "even where new counsel is not identified, reversal of a trial court's denial of a continuance is warranted where the trial court fails to inquire into whether defendant is using the request as a delaying tactic." *Adams*, 2016 IL App (1st) 141135, ¶ 15 (citing *People v. Basler*, 304 Ill. App. 3d 230, 232-33 (2000)).

¶ 30 Here, the trial court did engage in some inquiry, albeit a limited one, before denying the request for a continuance. Specifically, the court asked Mr. Miles about the attorney, and Mr. Miles told the court that his family had only gathered half of the money for the attorney, whom he identified by name. He also informed the court that if his family were able to pay that attorney's fee in full, then this attorney would "be eligible by July 5th," a date two months later. Based on this information and the fact that Mr. Miles had, in the trial court's words, "been going back and forth for four years, 31 court dates," the trial court concluded that the request for a continuance was a dilatory tactic on the part of Mr. Miles to delay his trial. We do not believe

that no reasonable person could have reached this conclusion or that the trial court abused its discretion in denying Mr. Miles a continuance at that point.

¶ 31 Mr. Miles relies on this court's recent decision in *Adams*, 2016 IL App (1st) 141135. However, *Adams* is factually distinguishable. In *Adams*, the primary reason this court reversed and remanded the defendant's case for a new trial was that the trial court made no inquiry at all into the defendant's reasons for wanting new counsel or any efforts he had made to obtain private counsel. *Id.* ¶ 17. Instead, the court focused exclusively on the fact that it was the day set for trial and that the State had witnesses ready to testify. *Id.* ¶ 16. In addition, the *Adams* court found it significant that the defendant had only been indicted for 70 days before he made his request for a continuance to retain private counsel and that he had requested no prior continuances. *Id.* ¶ 17.

¶ 32 In this case, the trial court did inquire at least as to who the counsel was and learned that he was still waiting to be fully paid and that, even if he were paid, he would not be available for two months. As noted above, the trial court's conclusion that Mr. Miles's request for a continuance was a delaying tactic also has some factual support, and the judge made that conclusion a part of the record. In addition, the background of Mr. Miles's request is dissimilar to the background noted in *Adams*. In this case, Mr. Miles had been represented by a public defender for nearly two years, the State elected to proceed on this specific case one year and seven months prior to Mr. Miles's motion for a continuance on the day of trial, and that motion was not Mr. Miles's first request for a lengthy continuance. Based on this factual background; the trial court's discussion with Mr. Miles; and the court's finding, with some factual support,

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that Mr. Miles's request for a continuance was a delay tactic; the trial court's denial of a continuance was not an abuse of its discretion.

¶ 33

CONCLUSION

¶ 34 For the foregoing reasons, the judgment of the trial court is affirmed.

¶ 35 Affirmed.