

[Cite as *State v. Lamblin*, 2011-Ohio-1259.]

IN THE COURT OF APPEALS OF OHIO

TENTH APPELLATE DISTRICT

State of Ohio,	:	
	:	No. 10AP-711
Plaintiff-Appellee,	:	(C.P.C. No. 09CR08-5026)
v.	:	
	:	(REGULAR CALENDAR)
Mark F. Lamblin,	:	
	:	
Defendant-Appellant.	:	

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D E C I S I O N

Rendered on March 17, 2011

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*Ron O'Brien*, Prosecuting Attorney, and *Steven L. Taylor*, for appellee.

*Blaise G. Baker*, for appellant.

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APPEAL from the Franklin County Court of Common Pleas.

FRENCH, J.

{¶1} Defendant-appellant, Mark F. Lamblin ("appellant"), appeals the judgment of the Franklin County Court of Common Pleas, which entered judgment pursuant to a jury verdict finding him guilty of felonious assault and assault. Appellant filed a timely appeal, and he raises a single assignment of error:

Assignment of Error No. 1: The trial court violated Appellant's rights under the Sixth Amendment to the United

States Constitution and Article 1, Section 10 of the Ohio Constitution by failing to allow Appellant's request for new counsel.

{¶2} To consider appellant's assignment of error, we focus our attention on the pre-trial proceedings below. Appellant appeared with his counsel, Thomas F. Charlesworth, at a pre-trial hearing on December 22, 2009. He appeared again with counsel on April 20, 2010, the date set for trial. At that time, Mr. Charlesworth stated the following: "At this time I should bring to the court's attention, [appellant] has expressed the desire to waive his right to counsel and represent himself in the matter." (Tr. 8.) The trial court then engaged appellant in a discussion about his ability to represent himself, the difficulties inherent in doing so, and the parameters for waiving his right to counsel. The court did not express its ruling on appellant's request to represent himself. Later that day, the court continued the trial due to a lack of jurors. The court stated that the matter would be set for trial on May 19, 2010. Thereafter, the trial date was continued until June 1, 2010.

{¶3} Appellant appeared before the court on June 1, 2010. Mr. Charlesworth appeared on appellant's behalf. The court stated that it had received a request for a continuance by a private attorney, Joseph Landusky, whom appellant had retained a few days prior. The court noted that it had advised appellant "that there would be no more continuances and we were starting your trial on June 1st." (Tr. 24.) The court noted that there had been six continuances issued in the case. The court stated that, in its view, "the change of counsel at the last minute is a delay-of-trial tactic." (Tr. 25.)

The court also noted that four of the state's witnesses were college students who would not be available after that week.

{¶4} Mr. Landusky addressed the court. He said that appellant's stepmother had contacted him out of concern that appellant was going to represent himself. Mr. Landusky noted his belief that the request was not for the purpose of delay. He also noted his desire, should the court not grant the continuance to allow him to act as appellant's counsel, that appellant should proceed with Mr. Charlesworth, whom Mr. Landusky had "known for years as a very good lawyer," as counsel. (Tr. 26.) He also said that appellant and counsel would be willing to continue the matter in a manner that would allow the witnesses to participate.

{¶5} The court reiterated its ruling that the trial was set to begin that day and it would proceed. Mr. Charlesworth noted that the court had not signed appellant's waiver of his right to counsel; therefore, Mr. Charlesworth was still appellant's counsel of record. The court asked appellant whether he wished to represent himself. He responded, "No, Your Honor." (Tr. 29.)

{¶6} The case proceeded immediately to trial, with Mr. Charlesworth acting as appellant's counsel. As noted, the jury entered a verdict of guilty to the charges of felonious assault and assault.

{¶7} Before this court, appellant contends that the trial court violated his constitutional rights by failing to grant his request for new counsel. We disagree.

{¶8} First, appellant contends that the trial court erred by failing to inquire as to appellant's concerns about the effectiveness of his trial counsel. As appellant contends,

when an accused raises a specific complaint regarding his dissatisfaction with counsel during the course of the trial, the court must ensure that the record contains an adequate investigation of the complaint. *State v. Deal* (1969), 17 Ohio St.2d 17, 19-20.

{¶9} Here, appellant first raised concerns about the effectiveness of his representation at the April 20, 2010 pre-hearing, when appellant stated his desire to represent himself. At that point, the court inquired extensively about the basis for the request, appellant's ability to represent himself, and the dangers and difficulties of doing so. Appellant's concerns focused on the continuances that had been issued and his desire to "know what's going on, be in on the process." (Tr. 13.) The court did not indicate its agreement to the waiver at that time.

{¶10} On June 10, 2010, neither Mr. Landusky nor appellant raised a specific complaint about Mr. Charlesworth's representation. In fact, Mr. Landusky expressly stated to the court that appellant should proceed with Mr. Charlesworth as his counsel and expressed his personal opinion that Mr. Charlesworth is "a very good lawyer." (Tr. 26.) Retention of Mr. Landusky as private counsel did not arise from a concern about Mr. Charlesworth. Rather, it arose from the concern of appellant's stepmother that appellant would be representing himself. After Mr. Charlesworth stated that he was still counsel for appellant, the court asked appellant if he wished to represent himself. He said that he did not. Under these circumstances, we cannot conclude that the court failed to inquire about a specific complaint by appellant.

{¶11} Second, appellant also contends that the court should have granted the continuance to allow Mr. Landusky to investigate the matter before the court. We have

already concluded, however, that there was no specific complaint about counsel before the court; therefore, there was no need to investigate. In any event, retention of Mr. Charlesworth as counsel alleviated the only concern expressed, i.e., the concern that appellant should not represent himself.

{¶12} By our count, the court had already issued seven continuance orders, six of which were signed by appellant. At issue, too, was the availability of four state witnesses who were college students. We will not reverse a trial court's denial of a motion for continuance absent an abuse of discretion. *State v. Woods*, 10th Dist. No. 09AP-667, 2010-Ohio-1586, ¶23, citing *State v. Unger* (1981), 67 Ohio St.2d 65, 67. Given the ability and readiness of Mr. Charlesworth to proceed with trial, the numerous continuances that had been issued in the case already, and the need to proceed while the state's witnesses were available, we conclude that the trial court did not abuse its discretion by denying an eighth continuance.

{¶13} For all these reasons, we overrule appellant's sole assignment of error. We affirm the judgment of the Franklin County Court of Common Pleas.

*Judgment affirmed.*

BROWN and DORRIAN, JJ., concur.

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