

**STATE OF MICHIGAN**  
**COURT OF APPEALS**

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PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

JACK LEVERN MAPP,

Defendant-Appellant.

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UNPUBLISHED

June 15, 2010

No. 291290

Kent Circuit Court

LC No. 08-010462-FH

Before: OWENS, P.J., and O'CONNELL and TALBOT, JJ.

PER CURIAM.

After a jury trial, defendant Jack Levern Mapp was convicted of one count of first-degree retail fraud, MCL 750.356c. The trial court sentenced defendant as a fourth habitual offender, MCL 769.12, to 2 to 20 years' imprisonment. Defendant appeals as of right. We affirm. This case is being decided without oral argument in accordance with MCR 7.214(E).

On September 21, 2008, defendant took possession of six bottles of cologne at a Meijer store and attempted to leave the premises without paying for them. Defendant was charged and convicted of one count of first-degree retail fraud arising from this misconduct.

Throughout the proceedings appointed counsel represented defendant. Just before jury selection, defendant personally asked the trial court to give him time to retain his own attorney. Defendant complained that he had not met his appointed counsel until trial, and that counsel had failed to indicate that no further plea offers would be forthcoming. The trial court reminded defendant that he had signed a document six weeks earlier indicating that he rejected a final plea offer and would proceed to trial. The court additionally noted that defendant was unemployed and thus not in a position to pay for retained counsel. Defendant suggested that relatives might help in that regard, but the court declared that there was no reasonable likelihood that defendant would be able to secure retained counsel and proceeded with jury selection.

Defendant's sole issue on appeal is whether the trial court erred in denying his request to delay trial so that he might retain an attorney of his choice. We review a trial court's decision affecting a defendant's right to an attorney of his choice for an abuse of discretion. *People v Akins*, 259 Mich App 545, 556; 675 NW2d 863 (2003). Likewise, we review a trial court's decision on a motion for a continuance for an abuse of discretion. *People v Steele*, 283 Mich App 472, 484; 769 NW2d 256 (2009). An abuse of discretion occurs when the trial court

chooses an outcome falling outside a principled range of outcomes. See *People v Babcock*, 469 Mich 247, 269; 666 NW2d 231 (2003).

The Sixth Amendment of the United States Constitution guarantees that “[i]n all criminal prosecutions, the accused shall enjoy the right to . . . the assistance of counsel for his defense.”<sup>1</sup> The United States Supreme Court has held that “an element of this right is the right of a defendant who does not require appointed counsel to choose who will represent him.” *United States v Gonzalez-Lopez*, 548 US 140, 144; 126 S Ct 2557; 165 L Ed 2d 409 (2006). The erroneous denial of this right is a structural error requiring reversal, with no harmless-error doctrine available to excuse the error. *Id.* at 150. However, this right is not absolute. *Id.* at 151-152. The United States Supreme Court has “recognized a trial court’s wide latitude in balancing the right to counsel of choice against the needs of fairness, and against the demands of its calendar.” *Id.* at 152 (citations omitted).

The trial court did not abuse its discretion when it refused to delay the trial so defendant might try to search for an attorney and raise the money needed to retain one. Among the criteria for evaluating a court’s decision in this regard are whether the defendant had a legitimate reason for wanting new counsel, “such as a bona fide dispute with his attorney,” and whether the defendant was negligent in asserting his rights in the matter. *People v Echavarria*, 233 Mich App 356, 369; 592 NW2d 737 (1999). Defendant articulated some dissatisfaction with the lack of in-person contact with his appointed counsel, but he failed to identify, either at trial or on appeal, the existence of a bona fide dispute with his appointed attorney. Further, although defendant attributes to counsel some confusion regarding whether he would be entertaining any further plea offers, we find this posture difficult to credit given the trial court’s observation that defendant had signed a form acknowledging that plea offers would cease and that the case would proceed to trial. Defendant asserts that he exercised due diligence in the matter, having waited in vain for appointed counsel to visit him, and then expressed in court his desire for substitute counsel at his first opportunity to do so, yet it appears that defendant failed to make any effort to search for substitute counsel in the weeks preceding his trial. We further note that defendant failed to identify a particular attorney that he wished to engage as his counsel, and the record does not indicate that any family member was present in the courtroom to assure the trial court that money for retained counsel would be provided. For these reasons, the trial court’s decision to proceed with trial, over defendant’s request for a continuance in order to shop for retained counsel, did not constitute an abuse of discretion.

Affirmed.

/s/ Donald S. Owens  
/s/ Peter D. O’Connell  
/s/ Michael J. Talbot

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<sup>1</sup> See also Const 1963, art 1, § 20.