

**IN THE COURT OF APPEALS OF IOWA**

No. 3-1079 / 10-1592  
Filed December 18, 2013

**STATE OF IOWA,**  
Plaintiff-Appellee,

**vs.**

**TYSON DAVIS KIDD,**  
Defendant-Appellant.

---

Appeal from the Iowa District Court for Poweshiek County, Joel D. Yates,  
Judge.

A defendant contends the district court abused its discretion in denying his  
request for substitute counsel and argues his attorney was ineffective in  
investigating the case. **AFFIRMED.**

Geneva L. Williams of Williams Law Office, P.L.L.C., Cedar Rapids, for  
appellant.

Thomas J. Miller, Attorney General, Elisabeth S. Reynoldson, Assistant  
Attorney General, Michael Mahaffey, until retirement, and Becky Petig, County  
Attorneys.

Considered by Danilson, C.J., and Vaitheswaran and Potterfield, JJ.

**VAITHESWARAN, J.**

Tyson Kidd appeals his judgment and sentence for second-degree theft. He contends the district court abused its discretion in denying his request for substitute counsel and his attorney was ineffective in investigating the case.

***I. Background Facts and Proceedings***

The State charged Kidd with second-degree theft and conspiracy in connection with the removal of laptop computers and iPhones from the Grinnell Wal-Mart store. Trial was scheduled for the week before the expiration of the one-year speedy trial deadline. See Iowa R. Crim. P. 2.33(2)(c). On the day of trial, Kidd twice expressed concerns about his attorney's preparedness, first in chambers and then after the jury was impaneled. He asked for substitute counsel and said he would waive the speedy trial deadline if his request was granted. The court considered his assertion, his mother's comment that an approach to the trial had not been discussed with the attorney "until a minute ago," and the attorneys' responses. The court decided to proceed with trial as scheduled. Shortly thereafter, Kidd reiterated his wish to fire his attorney and have substitute counsel appointed. The court again questioned Kidd before denying his request.

The jury found Kidd guilty as charged. The district court merged conspiracy with theft and imposed sentence on the theft count. This appeal followed.

***II. Request for Substitute Counsel***

Kidd argues the district court abused its discretion in denying his request for substitute counsel. See *State v. Lopez*, 633 N.W.2d 774, 778 (Iowa 2001)

(setting forth the standard of review).<sup>1</sup> He acknowledges the issue was not raised prior to the date of trial but argues a motorcycle accident and his placement on pain medications may have impeded his efforts.

A defendant wishing to secure substitute counsel must show sufficient cause for substitution. *Id.* at 778–79. “Sufficient cause includes a conflict of interest, irreconcilable conflict, or a complete breakdown in communication between the attorney and the defendant.” *Id.* at 779 (quoting *State v. Martin*, 608 N.W.2d 445, 449 (Iowa 2009)).

When a court receives a request for substitute counsel based on a claimed breakdown in communication between the defendant and present counsel, the court has a duty to inquire about the nature of the breakdown. *Tejeda*, 677 N.W.2d at 750–51. After making the inquiry, the court must balance “the defendant’s right to counsel of his choice and the public’s interest in the prompt and efficient administration of justice.” *Lopez*, 633 N.W.2d at 779 (internal quotation marks and citation omitted). The court should not allow a defendant to use last-minute requests for substitute counsel as a tactic to delay trial. *Id.*

The district court made the required inquiry. Initially, the court asked Kidd to tell the court “concretely” why he felt he should have an attorney other than the one he had. Kidd responded, “I live in Cedar Rapids and transportation isn’t a problem. I haven’t met with this guy, and we don’t have no strategy. It’s hard to explain. I can’t explain.” As noted, the court proceeded to receive statements

---

<sup>1</sup> In *State v. Tejeda*, 677 N.W.2d 744, 749 (Iowa 2004), the Iowa Supreme Court applied a de novo standard of review where the district court did not rule on the defendant’s request for substitute counsel. Here, the court ruled on the issue.

from Kidd's mother, the prosecutor, and Kidd's attorney. His attorney stated they had taken depositions, filed appropriate motions, had a strategy, and were ready for trial. After considering these statements, the court ruled as follows:

Mr. Kidd, I understand the concerns and issues raised by you, but based on the record made by [the prosecutor and defense attorney,] we are going to proceed today.

There was a pretrial conference a little over a week ago. These issue[s] could have and should have been addressed at that time. They were not.

[Defense counsel] is indicating from his perspective you are ready to proceed. So we are going to proceed this morning, understanding that there will be time over the lunch hour to have additional conversations with [defense counsel] should you deem it necessary.

I also do consider myself fairly liberal throughout the trial taking breaks if necessary. Again, if you and [defense counsel] feel the need to consult—so [defense counsel] and Mr. Kidd, I'll rely on you. If you feel you need additional time to consult with one another, while I'm not promising that, I will certainly take that under consideration.

Later, when Kidd sought to fire his attorney, the court again asked Kidd to explain his concern. Kidd responded,

I couldn't explain exactly everything because it came upon me kind of fast because I know that he had to come to trial today. But I have not talked to my attorney as much—with me being in a car accident and whatnot, I've been on pain pills at home, off work and haven't talked to my attorney as much as I would have liked to have talked to him.

The court sought clarification as follows: "You're asking the Court to grant you another attorney at this time—." Kidd responded,

It's already trial time and we are at the first proceeding; but I would like to do that, like I had said before, for the simple fact he did not—I don't feel like we kept in good contact. I understand that I was in a car accident. It wasn't—I couldn't avoid that.

After receiving this explanation, the court ruled as follows:

Mr. Kidd, I've considered your motion. I'm going to deny it; and the reason I'm going to deny it is there's essentially nothing you've added at this point that has not been mentioned in chambers.

This case has been pending since August 17th of 2009. There have been no written motions or requests filed in writing by you up until this date requesting the services of a new attorney. All I have from you is an oral motion, which, again, I'm somewhat unclear as to the cause for it other than simply your desire to have another attorney.

I am hearing from your attorney that he is prepared and ready for this trial. I have seen nothing in voir dire that would lead me to the contrary, and we have already picked the jury at this time.

We are now preparing to preliminarily instruct them and proceed with opening statements; and just for those reasons, your request to have a new attorney at this stage of the case is denied. And the Court has determined that [defense counsel] can be a strong and effective advocate for you in these proceedings.

We discern no abuse of discretion in this ruling. The court gave Kidd several opportunities to explicate his disagreements with his attorney. The crux of Kidd's unease was the limited contact he had with his attorney. The attorney disputed this assertion stating, "Mr. Kidd and I have had plenty of opportunity as-needed to talk about the case." The court gave credence to the attorney's statement, as was its prerogative. See *State v. Lane*, 726 N.W.2d 371, 379 (Iowa 2007) ("While we are not bound by these determinations, we give deference to the credibility determinations by the district court."). The court also noted that trial time was "very, very precious in our district," the jury was already impaneled and ready to receive preliminary instructions, and Kidd had the opportunity, but failed, to raise the issue earlier. In sum, the court followed the letter of the *Lopez* balancing test, weighing Kidd's interest in counsel of his choice with the interest in efficient judicial administration. We affirm the district court's denial of Kidd's

request for substitute counsel and his judgment and sentence for second-degree theft.

### ***III. Ineffective Assistance of Counsel***

Kidd contends his attorney was ineffective in failing to have sufficient meetings with him and in failing to conduct a “meaningful investigation into alibi or other defense witnesses.” The State argues the record is insufficient to resolve the claim and urges us to preserve it for postconviction relief proceedings. See *State v. Truesdell*, 679 N.W.2d 611, 616 (Iowa 2004) (“Ordinarily, ineffective assistance of counsel claims are best resolved by postconviction proceedings to enable a complete record to be developed and afford trial counsel an opportunity to respond to the claim.”). We agree that the sparse record created on the eve of trial is inadequate to resolve the claim. Accordingly, we preserve this claim for postconviction relief.

**AFFIRMED.**