

MEMORANDUM DECISION

Pursuant to Ind. Appellate Rule 65(D), this Memorandum Decision shall not be regarded as precedent or cited before any court except for the purpose of establishing the defense of res judicata, collateral estoppel, or the law of the case.



ATTORNEY FOR APPELLANT

Donald R. Shuler
Barkes, Kolbus, Rife & Shuler, LLP
Goshen, Indiana

ATTORNEYS FOR APPELLEE

Theodore E. Rokita
Attorney General for Indiana
Kelly A. Loy
Deputy Attorney General
Indianapolis, Indiana

IN THE COURT OF APPEALS OF INDIANA

Juwan Lavaile Lockhart,
Appellant-Defendant,

v.

State of Indiana,
Appellee-Plaintiff.

January 25, 2022

Court of Appeals Case No.
21A-CR-1772

Appeal from the Elkhart Superior
Court

The Honorable Gretchen S. Lund,
Judge

Trial Court Cause No.
20D04-2007-CM-905

Bailey, Judge.

Case Summary

- [1] Juwan Lockhart (“Lockhart”) appeals his conviction for Battery, as a Class B misdemeanor.¹ Lockhart presents the issue of whether the trial court abused its discretion and violated Lockhart’s Sixth Amendment right to the counsel of his choice by denying his request for a continuance on the morning of trial for the purpose of hiring private counsel. We affirm.

Facts and Procedural History

- [2] On July 7, 2020, Lockhart was charged with Battery as a result of his conduct toward a co-worker. At the initial hearing held on August 24, 2020, the trial court appointed a public defender, Christopher Crawford (“Crawford”), to represent Lockhart. On November 18, 2020, the trial court conducted a telephonic hearing, at which the State, Lockhart, and Crawford appeared. Crawford advised the trial court that he had not had the opportunity to consult with Lockhart and requested a continuance to permit a conference, which was granted.
- [3] On December 30, 2020, the trial court conducted a hearing, at which time Crawford advised the trial court that he had spoken to Lockhart, but Crawford still needed to speak with Lockhart in person and watch the victim’s video statement. Upon counsel’s request that the trial be postponed to April or May

¹ Ind. Code § 35-42-2-1(c)(1).

of 2021, the trial court set a trial date of May 4, 2021. On the eve of trial, but after the court had closed for the day, Lockhart's mother, Felicia Locke ("Locke"), filed on Lockhart's behalf a limited appearance and a motion for a continuance.

[4] When the parties convened for the bench trial the next morning, Locke asserted that Crawford was not adequately prepared for trial and advised the trial court that attorney Scott Devries ("Devries") had agreed to represent Lockhart. However, Devries was reportedly hospitalized at that time, prompting the request for a continuance. The State had five witnesses ready to testify and opposed a continuance. Crawford advised the trial court that he had met with Lockhart and a private investigator and had reviewed the discovery materials, with one exception. That is, during the prior week, the State had disclosed some evidence in support of its motion to proffer Indiana Trial Rule 404(b) evidence, which counsel had not yet reviewed. Defense counsel was afforded the opportunity to review the late-disclosed evidence and the trial court ultimately excluded that evidence. Lockhart's motion for a continuance was denied.

[5] On May 5, 2021, at the conclusion of a bench trial, Lockhart was found guilty as charged. He was sentenced to 180 days imprisonment, all suspended, with one year of probation. Lockhart now appeals.

Discussion and Decision

[6] In *Washington v. State*, 902 N.E.2d 280, 285-86 (Ind. Ct. App. 2009), we observed that “continuances are not favored and as a general rule should be granted only when the continuance is necessary in the furtherance of justice on the showing of good cause.” We reiterated that the standard of review applicable to a motion for a continuance made on the day of trial is that of abuse of discretion:

It is well-established that the determination of whether to grant a defendant’s request for a continuance for the purpose of hiring private counsel immediately before trial is a matter within the sound discretion of the trial court. *Gilliam v. State*, 650 N.E.2d 45, 50 (Ind. Ct. App. 1995), *trans. denied*. The decision of the trial court will be reversed only for an abuse of that discretion. *Stafford v. State*, 890 N.E.2d 744, 750 (Ind. Ct. App. 2008). An abuse of discretion occurs only where the decision is clearly against the logic and effect of the facts and circumstances. *Id.* We will not conclude that the trial court abused its discretion unless the defendant can demonstrate prejudice as a result of the trial court’s denial of the motion for a continuance. *Id.* “Motions for continuance to hire a new lawyer made on the morning of trial are particularly disfavored because granting them causes substantial loss of time for jurors, witnesses, lawyers, and the court.” *Gilliam*, 650 N.E.2d at 51 (quoting *Roberts v. State*, 500 N.E.2d 197, 199 (Ind. 1986)).

Washington, 902 N.E.2d at 286.

[7] Here, the trial court first learned of Lockhart’s desire to retain private counsel on the day of trial. Although Locke indicated that she had obtained consent from Devries to represent Lockhart, Devries had not filed an appearance or

personally contacted the court. No written agreement of representation was produced. The State was prepared to proceed, with all of its witnesses ready to testify. Lockhart's appointed counsel advised the trial court that he was likewise prepared to proceed once he was afforded an opportunity to review late-tendered discovery and successfully move to exclude certain related evidence. Given these facts and circumstances, we are not persuaded that the trial court abused its discretion.

[8] Lockhart also contends that the trial court's denial of his motion for a continuance to retain private counsel denied him his Sixth Amendment right to counsel of his choice. The Sixth Amendment to the United States Constitution, applied to the States through the Fourteenth Amendment, guarantees that the accused, in a criminal prosecution, shall "have the Assistance of Counsel for his defence." U.S. Const. amend. VI. A corollary of the right to counsel is the right to choose counsel when a defendant is financially able to do so. *Lewis v. State*, 730 N.E.2d 686, 688-89 (Ind. 2000). Such a right to counsel of choice "has been described as an 'essential component' of the Sixth Amendment right to counsel[.]" *Barham v. State*, 641 N.E.2d 79, 82 (Ind. Ct. App. 1994). A denial of this right is reviewed to determine if the trial court acted unreasonably and arbitrarily. *Id.* However, this right is not absolute and the right must be exercised at the appropriate stage of the proceeding. *Lewis*, 730 N.E.2d at 689.

[9] Here, the trial court did not deny an attempted appearance by Lockhart's desired private counsel, Devries. Indeed, Devries had not entered an appearance or otherwise contacted the court. Rather, the trial court denied

Lockhart a continuance filed on the eve of trial after business hours and first seen by the trial court judge on the day of trial. At that time, the case had been pending for approximately ten months, witnesses were ready to testify, and counsel for both the defense and the State represented that they were ready to try the case. We do not find the trial court acted unreasonably or arbitrarily when it denied Lockhart's motion for continuance.

Conclusion

[10] The trial court did not abuse its discretion or act unreasonably or arbitrarily to deprive Lockhart of the counsel of his choice when it denied Lockhart's motion for a continuance.

[11] Affirmed.

Mathias, J., and Altice, J., concur.