

MEMORANDUM DECISION

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IN THE COURT OF APPEALS OF INDIANA

Jaquell L. Dixon,
Appellant-Defendant,

v.

State of Indiana,
Appellee-Plaintiff.

May 1, 2023

Court of Appeals Case No.
22A-CR-2487

Appeal from the Marion Superior
Court

The Honorable Amy M. Jones,
Judge

The Honorable Richard E.
Hagenmaier, Magistrate

Trial Court Cause No.
49D34-2007-F6-23021

Memorandum Decision by Judge Tavitias
Judges Vaidik and Foley concur.

Tavitas, Judge.

Case Summary

- [1] Following a jury trial, Jaquell Dixon was convicted of battery resulting in moderate bodily injury, a Level 6 felony. Dixon appeals and claims that the trial court abused its discretion by denying Dixon’s motion for a continuance. Finding no abuse of discretion, we affirm.

Issue

- [2] Dixon presents one issue, which we restate as whether the trial court abused its discretion by denying Dixon’s motion for a continuance.

Facts

- [3] On July 22, 2020, Hugo Morales Luna (“Morales”), a maintenance worker at the Village Circle apartment complex in Marion County, was performing work outside a ground-floor apartment unit at the complex. As Morales walked toward the unit, he noticed a man, later identified as Dixon, approaching him and yelling. Morales, who does not speak fluent English, did not understand Dixon, so he told Dixon to contact the main office. Dixon then picked up a gray rock¹ and threw it at Morales. The rock hit Morales’s face and caused

¹ Morales was not sure if the object was a rock or a piece of concrete.

Morales to fall down. Dixon then hit and kicked Morales as Morales lay on the ground. After the attack, Morales telephoned the police.

[4] Officer Dustin Pruitt of the Indianapolis Metropolitan Police Department arrived with his partner to investigate the attack. Officer Pruitt spoke to Morales and noticed a large laceration on Morales's face near his chin that was still bleeding. Officer Pruitt also observed a cut on Morales's arm and that Morales's face was swollen. The police took photos of Morales's injuries. The attack also damaged Morales's teeth, which required several dental visits.

[5] On July 24, 2020, the State charged Dixon with: Count I, criminal recklessness with a deadly weapon, a Level 6 felony, and Count II, battery resulting in moderate bodily injury, a Level 6 felony. On July 27, 2020, the trial court appointed the Marion County Public Defender Agency to represent Dixon, and on July 30, 2020, an attorney from that Agency filed an appearance on Dixon's behalf. Dixon was released on bond on July 31, 2020. Dixon later failed to appear at two pretrial conferences. On June 1, 2022, the Marion County Public Defender Agency assigned a new public defender to represent Dixon. The following day, the State filed a notice with the trial court, indicating that all discovery materials had been made available to Dixon's counsel.

[6] At a pretrial conference on June 23, 2022, the trial court scheduled a jury trial for August 22, 2022. Dixon did not object to this trial date, nor did he move for a continuance. At the final pretrial conference on August 18, 2022, just four days before the jury trial, Dixon's public defender orally moved the trial court

to continue the trial and claimed that discovery was still ongoing. Dixon's counsel stated that he was scheduled to take a taped statement from Morales on September 1, 2022, and claimed that he only recently received discovery. Further, Dixon's counsel reported that he had gone to the scene of the incident to investigate and stated that "four days was not enough [time] to complete the discovery process." Tr. Vol. II p. 32. Dixon's counsel also stated that he had been unable to consult with Dixon's previously-assigned counsel. Noting the age of the case, the trial court denied Dixon's motion to continue but did direct the State to have Morales arrive early on the day of trial so that Dixon's counsel would have at least twenty minutes to talk to Morales before the trial began.

[7] Before the trial began on August 22, 2022, Dixon's counsel again orally moved the trial court to continue the trial and claimed he had not had enough time to prepare. Again, the trial court denied the motion and ordered the State to permit Dixon's counsel to speak with Morales for at least twenty minutes before the trial began. The State agreed and noted that Dixon's counsel had already spoken with Morales. Dixon's counsel acknowledged that he had spoken with Morales but claimed that certain matters required further investigation. One such matter included Morales's immigration status, but the trial court determined that Morales's immigration status was irrelevant. Dixon's counsel also objected to the trial court's grant of the State's motion in limine preventing witnesses from testifying that Dixon believed Morales had been taking photos of Dixon's daughter. Morales told the police that he thought Dixon attacked

him because Dixon believed Morales had taken photos of Dixon's dog.²

According to the prosecuting attorney, however, Morales claimed he had actually taken a photo of a tree as part of his maintenance duties.

- [8] At the conclusion of the trial, the jury found Dixon not guilty of criminal recklessness with a deadly weapon but guilty of battery resulting in moderate bodily injury. The trial court held a sentencing hearing on September 21, 2022, and sentenced Dixon to 910 days in the Department of Correction. Dixon now appeals.

Discussion and Decision

- [9] Dixon presents one issue for our review: whether the trial court abused its discretion by denying his requests for a continuance so that his counsel could take Morales's statement.
- [10] Regarding a trial court's ruling on a defendant's motion for a continuance, our Supreme Court has stated:

Courts are generally reluctant to grant continuances in criminal cases merely to allow for additional preparation. But [pursuant to Indiana Code Section 35-36-7-1] a defendant is statutorily entitled to a continuance where there is an absence of material evidence, absence of a material witness, or illness of the defendant, and the specially enumerated statutory criteria are satisfied. If none of those conditions are present, however, a trial

² According to the probable cause affidavit supporting the charging information, Morales told the police that Dixon "appeared to be upset about Morales possibly taking a picture of [Dixon's] dog." Appellant's App. Vol. II p. 22. The reason Dixon was angry at Morales was not adduced at trial.

court has wide discretion to deny a motion to continue. We will only find an abuse of that discretion where a defendant was prejudiced as a result of not getting a continuance. To demonstrate such prejudice, a party must make a specific showing as to how the additional time requested would have aided counsel.

Gibson v. State, 43 N.E.3d 231, 235-36 (Ind. 2015) (internal citations and quotations omitted).

[11] Dixon does not argue that he was entitled to a continuance pursuant to Indiana Code section 35-36-7-1. We therefore review the trial court's decision only for an abuse of discretion. *Gibson*, 43 N.E.3d at 236. "There is a strong presumption that the trial court properly exercised its discretion." *Robinson v. State*, 91 N.E.3d 574, 577 (Ind. 2018) (quoting *Warner v. State*, 773 N.E.2d 239, 247 (Ind. 2002)).

[12] Dixon claims that his counsel had inadequate time to prepare for trial. Our Supreme Court has long held that the right to counsel includes reasonable time for counsel to prepare for trial under the circumstances in each particular case. *Marshall v. State*, 438 N.E.2d 986, 988 (Ind. 1982) (citing *Hoy v. State*, 225 Ind. 428, 436, 75 N.E.2d 915, 918 (1947)). "The adequacy of time allowed for preparation must be determined on a case by case basis, considering the totality of the circumstances, including the complexity of the issues, the necessity for pretrial motions, the necessity to interview witnesses and whether the defendant is able to assist in the preparation." *Id.* (quoting *Jones v. State*, 175 Ind. App. 343, 345, 371 N.E.2d 1314, 1316 (1978)).

[13] Here, Dixon's trial counsel was assigned to this case on June 1, 2022. The next day, the State filed a notice of discovery compliance, which indicated that all discovery materials had been made available to Dixon's counsel. On June 23, 2022, the trial court scheduled a jury trial for August 22, 2022, which gave Dixon's counsel sixty days to prepare for trial. This was not a particularly complex case; it involved only two witnesses, one of which was the victim. Dixon's counsel was able to speak with Morales briefly before the trial date and then spoke with Morales the day of trial. Counsel explained that he wanted to look further into Morales's immigration status, which counsel claimed was relevant to Morales's character for truthfulness; the trial court, however, found that Morales's immigration status was irrelevant, which Dixon does not challenge on appeal.

[14] Dixon also claims that, had his request for a continuance been granted, his counsel could have investigated the cause of the attack on Morales and whether Morales had been taking photos of Dixon's daughter and not Dixon's dog or a tree. Dixon fails to explain why he could not inquire into these matters either before the trial date or on the morning of trial when his counsel interviewed Morales. Moreover, even if Morales had taken a photo of Dixon's dog, or even his daughter, it would not be a legal defense to Dixon's brutal attack on Morales.

[15] In addition, Dixon notes that the trial court was concerned about the age of his case, but notes that much of this delay was attributable to the Covid-19 pandemic and turnover in the public defender's office. None of this, however,

changes the fact that Dixon’s counsel had over two months to prepare and was able to interview Morales before the jury trial began.

[16] Under these facts and circumstances, we cannot say that the trial court abused its discretion by concluding that Dixon’s counsel had adequate time to prepare for trial in this case. *See Marshall*, 438 N.E.2d at 988-89 (concluding that six days was sufficient for defense counsel to prepare for burglary trial where both sides agreed to immediate reciprocal discovery, the State called only three witnesses whose statements were available to defense before trial, and defense counsel adequately cross-examined the State’s witnesses). Although Dixon’s counsel claimed to need more time to interview Morales and had arranged to take a statement from Morales on September 1, 2022, nothing in the record indicates that this statement could not have been scheduled earlier. *See Jackson v. State*, 758 N.E.2d 1030, 1033 (Ind. Ct. App. 2001) (holding that trial court did not abuse its discretion by denying defendant’s motion for continuance to depose a witness when defense counsel had over thirty days before trial in which to depose the witness), *trans. denied*. Additionally, Dixon waited until four days before trial to move for a continuance. At that point, Dixon’s counsel had been assigned to this case for over eleven weeks. Requests for a continuance shortly before trial are disfavored. *See Cox v. State*, 696 N.E.2d 853, 862 (Ind. 1998) (“Last minute continuances are not favored[.]”); *see also Robinson*, 91 N.E.3d at 577 (holding that trial court did not abuse its discretion by denying defendant’s last-minute request to continue sentencing hearing so that he could “get his ducks in line”).

Conclusion

[17] The trial court did not abuse its discretion by denying Dixon's request for a continuance. Accordingly, we affirm the judgment of the trial court.

[18] Affirmed.

Vaidik, J., and Foley, J., concur.