MEMORANDUM DECISION

IN THE
Court of Appeals of Indiana

Antoinette Green,
Appellant-Defendant

v.

State of Indiana,
Appellee-Plaintiff

April 9, 2024

Court of Appeals Case No.
23A-CR-684

Appeal from the Tippecanoe Superior Court

The Honorable Steven P. Meyer, Judge

Trial Court Cause No.
79D02-2208-F1-8

Memorandum Decision by Judge Pyle
Judges Tavitas and Foley concur.

Pyle, Judge.

Statement of the Case

Antoinette Green ("Green") appeals, following a jury trial, her conviction for Level 1 felony attempted murder.[1] Green argues that: (1) the trial court abused its discretion when it denied her motion to continue; and (2) the trial court erred when it held Green's second day of trial in absentia. Concluding that the trial court did not err, we affirm the trial court's judgment.

We affirm.

Issues

1. Whether the trial court abused its discretion when it denied Green's motion to continue.

2. Whether the trial court erred when it held Green's second day of trial in absentia.

Facts

In May 2022, Green was living at the Spring Garden Apartments ("the apartments"). Harley Loveall ("Loveall") was a maintenance technician for the apartments. Green's lease with the apartments ended April 30, 2022, and Loveall went to her apartment to make sure that it was vacant.

When Loveall entered the apartment, he found Green sleeping in one of the bedrooms. Loveall immediately left the apartment and called management to

[1] IND. CODE § 35-42-1-1; I.C. § 35-41-5-1.

inform them that Green had not vacated the apartment. While Loveall was standing outside, Green left her apartment and drove up to him in her silver car. Green accused Loveall of taking something out of her apartment and then reached under her driver's seat. Loveall fled the parking lot and rushed into the management office. In June 2022, after Green had left the apartment, the police called Loveall to inform him that they had found death threats written about him in Green's apartment.

On August 25, 2022, around 11:00 a.m., Loveall returned to the apartments to do some maintenance work. Loveall, who was in his work van, reached down to grab his tape measure. When Loveall looked up, he saw Green driving her silver car up to his work van. Green exited her vehicle about three feet away from Loveall's van. Green then reached under her driver's seat and retrieved a black revolver. Loveall, after seeing the gun, ducked down, drove his car in reverse, and fled the parking lot. Green fired her revolver at Loveall's car at least three times, striking the driver's side of the van once. Loveall called 911.

The State charged Green with Level 1 felony attempted murder.[2] In December 2022, the trial court held a pre-trial conference, during which the trial court informed Green of her trial date and her right to be present at trial. The trial

[2] The State also charged Green with Level 3 felony attempted aggravated battery with a substantial risk of death, Level 5 felony attempted battery with a deadly weapon, Level 5 felony criminal recklessness, and Level 6 felony pointing a firearm. The jury found Green guilty of these charges, but the trial court did not enter judgments of conviction on these offenses. Instead, the trial court merged them into Green's Level 1 felony attempted murder conviction.

court held a two-day jury trial in January 2023. The trial court heard the facts as set forth above. Additionally, during the testimony of one of the State's witnesses, there was "some dialogue from [Green] that was kind of out loud." (Tr. Vol. 2 at 215). After a lunch break, the State brought this dialogue to the trial court's attention before the jury re-entered the courtroom. The following exchange between the trial court and Green occurred:

> [Green]: (Inaudible) they refused to do what I asked them to do.
>
> THE COURT: Well, please try to restrain your emotions.
>
> [Green]: Yes, sir.
>
> THE COURT: This is a Court of law, and we expect everyone to act professionally –
>
> [Green]: Yes, sir.
>
> * * * * *
>
> [Green]: Put me on the stand so I can tell it to you. I want to get on the stand. I want to get on the stand.
>
> THE COURT: Well, I understand but you, you can have that discussion with your attorneys-
>
> [Green]: Yes, sir.
>
> THE COURT: -at the appropriate time. But while you're listening to the testimony, I expect you to be calm and polite . . .

> and any questions . . . or comments you have, direct them directly to your attorney. Okay?

(Tr. Vol. 2 at 215-16).

At the beginning of the second day of trial, jail staff informed the trial court that Green "refused to come" to her second day of trial. (Tr. Vol. 3 at 20). Green had told jail staff that "she didn't feel well" and that she thought that her jury trial "was a waste of time[.]" (Tr. Vol. 3 at 20). Green also told jail staff that she believed that the jury "ha[d] already found her guilty" and that she "[did not] want to participate." (Tr. Vol. 3 at 20). In response, Green's counsel told the trial court the following:

> I guess that the caselaw that we found, Judge, said that the Court could delay the proceedings . . . to give [Green] an opportunity to come. But it's our understanding that [Green]'s not coming. [Green] was here yesterday. [Green] knows she can be here. [Green]'s choosing not to. I guess we would object to continuing the trial without her.

(Tr. Vol. 3 at 20).

The State argued that Green's trial should proceed without her. Specifically, the State argued that Green had been present at her final pre-trial conference hearing and had been advised about her rights. Additionally, the State argued that it only had "a handful of witnesses" left and anticipated being done presenting its case by mid-morning. (Tr. Vol. 3 at 20).

The trial court stated that "it is [Green's] right not to appear at trial. If she chooses not to be here, that's her right." (Tr. Vol. 3 at 21). The trial court denied Green's motion to continue "[b]ased upon [Green's] failure to be here because we have witnesses ready, we [have] the jury[,] and we're ready." (Tr. Vol. 3 at 21). When the jury returned to the courtroom, the trial court instructed the jury not to consider Green's absence from trial in any way. The trial court then held the second day of Green's trial.

At the conclusion of the jury trial, the jury found Green guilty of Level 1 felony attempted murder. The jury also found that Green had committed the offense with a deadly weapon. At Green's February 2023 sentencing hearing, Green gave no reason for her absence at trial. Instead, Green told the trial court that she had "rigged the gun not to fire[.]" (Tr. Vol. 3 at 124). The trial court sentenced Green to twenty-five (25) years, with twenty (20) years executed and five (5) years suspended to probation for her Level 1 felony attempted murder conviction.

Green now appeals.

Decision

Green argues that: (1) the trial court abused its discretion when it denied her motion to continue; and (2) the trial court erred when it held the second day of Green's trial in absentia. We address each argument in turn.

1. Motion to Continue

Green first argues that the trial court abused its discretion when it denied her motion to continue. "When a defendant's motion for continuance is made due to the absence of material evidence, absence of a material witness, or defendant's illness, and specially enumerated statutory criteria are satisfied, then the defendant is entitled to the continuance as a matter of right." *Laster v. State*, 956 N.E.2d 187, 192 (Ind. Ct. App. 2011) (citing *Vaughn v. State*, 590 N.E.2d 134, 135 (Ind. 1992) and IND. CODE § 35-36-7-1). Green failed to file or assert any of the statutorily required materials to warrant a continuance as of right. Because a continuance was not required by statute, we will reverse the trial court's ruling on Green's motion to continue only if the court abused its discretion. *Ramirez v. State*, 186 N.E.3d 89, 96 (Ind. 2022). There is "always a strong presumption that the trial court properly exercised its discretion." *Elmore v. State*, 657 N.E.2d 1216, 1218 (Ind. 1995). Whether there was an abuse of discretion is potentially a two-step inquiry. *Ramirez*, 186 N.E.3d at 96. First, we examine whether the trial court properly considered how the parties' diverse interests would be impacted by altering the schedule. *Id.* If it did not properly consider the impact, we then consider whether denial of the motion resulted in prejudice. *Id.* "A defendant can establish prejudice by making specific showings as to why additional time was necessary and how it would have benefited the defense." *Id.*

Our review of the record reveals that Green had been present at her final pre-trial conference and had known about her trial date. Further, Green had been present during the first day of her jury trial. On the morning of the second day,

Green refused to appear. Specifically, Green had told jail staff that "she didn't feel well" and that she thought that her jury trial "was a waste of time[.]" (Tr. Vol. 3 at 20). Green also told jail staff that she believed that the jury "ha[d] already found her guilty" and that she "[did not] want to participate." (Tr. Vol. 3 at 20).

Importantly, Green's counsel gave no argument in support of the motion to continue, aside from saying that she objected to continuing the trial without having Green present. On appeal, Green argues that the trial court "failed to perform the required analysis" before denying Green's request for a continuance. (Green's Br. 9). However, the trial court noted that the trial had already started, the jury had already been sworn and had been ready, and that the State and its witnesses were present and ready. We hold that the trial court did not abuse its discretion when it denied Green's motion to continue.

Even if the trial court had not properly balanced the interests of the parties, Green made no arguments showing prejudice or explaining why the extra time from the continuance would have helped her defense. Green's counsel only requested the continuance so that Green, who refused to attend the second day of trial, could be present at her trial. On appeal, Green attempts to argue that Green was prejudiced because she "was the only person who could have possibly answered the State's evidence." (Green's Br. 12). However, this speculative statement made for the first time on appeal is not a "specific, compelling reason" required to show prejudice. *See Ramirez*, 186 N.E.3d at 99.

2. Trial in Absentia

Green also argues that the trial court erred when it tried her in absentia. Generally, a criminal defendant has a right to be present at all stages of the trial. *Jackson v. State*, 868 N.E.2d 494, 498 (Ind. 2007). However, a defendant may waive this right and be tried in absentia if the trial court determines that the defendant knowingly and voluntarily waived that right. *Id.* "The trial court may presume a defendant voluntarily, knowingly, and intelligently waived h[er] right to be present and try the defendant in absentia upon a showing that the defendant knew the scheduled trial date but failed to appear." *Soliz v. State*, 832 N.E.2d 1022, 1029 (Ind. Ct. App. 2005), *trans. denied*. "The best evidence of this knowledge is the defendant's presence in court on the day the matter is set for trial." *Id.* (citing *Fennell v. State*, 492 N.E.2d 297, 299 (Ind. 1986)). A defendant who has been tried in absentia must be afforded an opportunity to explain her absence and thereby rebut the initial presumption of waiver. *Id.* "This does not require a sua sponte inquiry; rather, the defendant cannot be prevented from offering an explanation." *Id.* As a reviewing court, we consider the entire record to determine whether the defendant voluntarily, knowingly, and intelligently waived her right to be present at trial. *Id.*

Our review of the record reveals that Green knew about her trial date and was present at her final pre-trial conference. Furthermore, Green was present during the first day of her jury trial and chose not to appear for her second day of trial. Green's counsel also did not argue or explain any reason for Green's failure to appear. At sentencing, Green appeared and gave no explanation for

her absence during the second day of trial. As a result, we hold that the trial court did not err when it tried Green in absentia because Green was aware of her trial date, appeared for the first day of trial, and refused to appear for her second day of trial. *See Soliz*, 832 N.E.2d at 1029 (holding that a trial court may presume a defendant voluntarily, knowingly, and intelligently waived his right to be present and try the defendant in absentia upon a showing that the defendant knew the scheduled trial date but failed to appear). Therefore, we affirm the trial court's judgment.

Tavitas, J., and Foley, J., concur.

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