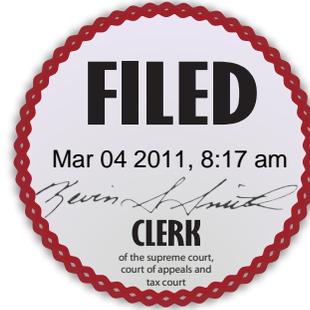


Pursuant to Ind.Appellate Rule 65(D), this Memorandum Decision shall not be regarded as precedent or cited before any court except for the purpose of establishing the defense of res judicata, collateral estoppel, or the law of the case.



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**IN THE  
COURT OF APPEALS OF INDIANA**

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D.M., )  
 )  
Appellant-Respondent, )  
 )  
vs. ) No. 49A05-1008-JV-513  
 )  
STATE OF INDIANA, )  
 )  
Appellee-Petitioner. )

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APPEAL FROM THE MARION SUPERIOR COURT  
The Honorable Gary Chavers, Judge Pro Tempore  
The Honorable Scott B. Stowers, Magistrate  
Cause No. 49D09-0905-JD-1411

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**March 4, 2011**

**MEMORANDUM DECISION - NOT FOR PUBLICATION**

**NAJAM, Judge**

## STATEMENT OF THE CASE

D.M. appeals his adjudication as a delinquent child for having committed intimidation, as a Class D felony if committed by an adult; battery on a police officer, as a Class A misdemeanor if committed by an adult; and resisting law enforcement, as a Class A misdemeanor if committed by an adult. D.M. raises a single issue for our review, which we restate as whether the trial court abused its discretion when it denied his motion for a continuance.<sup>1</sup>

We affirm.

## FACTS AND PROCEDURAL HISTORY

On April 18, 2009, Indianapolis Metropolitan Police Department (“IMPD”) Officer Michael Leepper<sup>2</sup> responded to a car-jacking report near the 600 block of North Parker Avenue. Officer Leepper parked his patrol car in a manner to block traffic and began taking a report from the car-jacking victim. While taking that report, a white van pulled up behind him. The van was driven by D.M.’s mother (“Mother”), with D.M., Yvonne Tyler, and three other passengers inside.

Mother began honking the van’s horn at Officer Leepper and yelling at him out the window. Officer Leepper ignored her and continued to take the victim’s statement. Mother then drove the van onto the sidewalk with half of the vehicle on someone’s lawn,

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<sup>1</sup> D.M. styled his motion to the trial court as a motion to either continue “or bifurcate” his trial, which he repeats in passing on appeal. See Transcript at 88. The trial court treated D.M.’s motion as one for a continuance and the substance of D.M.’s argument on appeal confirms that treatment. D.M.’s argument does not address when bifurcation is appropriate or why it may have been here. As such, we consider D.M.’s motion as a motion for a continuance only and we do not discuss whether D.M. asked for, or the trial court should have granted, a motion to bifurcate his trial. See Ind. Appellate Rule 46(A)(8)(a).

<sup>2</sup> The State spells Officer Leepper’s last name “Lepper,” while D.M. spells it “Leeper.” According to the transcript, the officer spelled his last name “Leepper.” Transcript at 4.

shouting obscenities at Officer Leepper. Officer Leepper “told her to stop.” Transcript at 7. Officer Leepper decided he needed “to deal with her,” but she “sped off, up onto the sidewalk, through grass, back down onto the street and through a stop sign.” Id. at 8. Officer Leepper returned to his patrol car, followed Mother, and initiated a traffic stop.

As Officer Leepper approached the van, Mother began rolling up the driver’s side window. Officer Leepper told her to keep the window down and asked for her license and registration, which she refused to provide. Mother then started to make a phone call, and Officer Leepper told her to hang up the phone and get out of the van. Mother initially refused but then exited the vehicle.

Meanwhile, D.M., who was inside the van, “became very irate.” Id. at 9. He said various versions of “don’t touch my mom” and “I’m gonna [mess] you up” to Officer Leepper. Id. at 10. D.M. remained in the van while Officer Leepper placed Mother in custody, having her sit on the sidewalk in handcuffs. Officer Leepper then returned to the van and asked Tyler, the only other adult, to remove the smaller children from the van. D.M. was shouting obscenities at Officer Leepper throughout this time and ignored Officer Leepper’s multiple requests to exit the van. D.M. told Officer Leepper that “if I touch him or try to come in there and get him, he’s gonna [mess] me up. . . . He lunged at me a couple of times, [and he] tried to punch at me while I was trying to get his mother to go back and sit back down on the sidewalk.” Id. at 11.

The third time D.M. threw a punch at Officer Leepper, Officer Leepper grabbed D.M.’s arm and pinned him down inside the van. Officer Leepper then radioed for help. Mother, undeterred by her handcuffs, managed to free herself enough to start hitting

Officer Leepper with the handcuffs. And then Tyler snuck up on Officer Leepper from behind and grabbed his gun belt. Officer Leepper struck her and peppersprayed Mother.

Ten other officers arrived within two minutes of Officer Leepper's call for help. Officer Bradley<sup>3</sup> was one of the officers who arrived and assisted on the scene. Officer Leepper and another officer pulled D.M. out of the van and D.M. became compliant. Id. at 26-27. Later, Officer Leepper went to a hospital after he urinated blood. He suffered a fractured thumb and bruised kidney during the day's scuffle.

On May 12, 2009, the State filed a petition against D.M. alleging him to be a delinquent. More than a year later, on June 17, 2010, the court held the first day of D.M.'s evidentiary hearing. At the beginning of that hearing, the State disclosed that it would not call Officer Bradley as a witness, though it had subpoenaed him. D.M.'s counsel informed the court that she had intended to use Officer Bradley's testimony to impeach Officer Leepper's, even though she had not subpoenaed Officer Bradley on D.M.'s behalf. D.M.'s counsel then moved for a continuance so she could procure Officer Bradley's testimony, and she made an offer of proof as to the contents of Officer Bradley's testimony. According to D.M.'s counsel, Officer Bradley would have testified to the following: (1) that he did not see D.M. punch Officer Leepper; (2) that, when he arrived on the scene, Officer Leepper was in the van with D.M.; (3) that D.M. exited the van of his own volition, albeit with Officer Lanley near enough to grab him, and was compliant; and (4) that Officer Bradley was first on the scene (with Officer Brezik), and

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<sup>3</sup> The full names of Officer Bradley and the other responding officers are not in the record on appeal.

that Officer Schweers handed D.M. off to Officer Lanley. The court denied the motion for a continuance and entered true findings against D.M. This appeal ensued.

### **DISCUSSION AND DECISION**

D.M. appeals the trial court's denial of his motion for a continuance. As this court has stated:

Rulings on non-statutory<sup>[4]</sup> motions for continuance lie within the discretion of the trial court and will be reversed only for an abuse of that discretion and resultant prejudice. An abuse of discretion occurs where the decision is clearly against the logic and effect of the facts and circumstances before the trial court.

Every defendant has the fundamental right to present witnesses in his or her own defense. This right is in plain terms the right to present a defense, the right to present the defendant's version of the facts as well as the prosecutor's to the jury so it may decide where the truth lies. At the same time, while the right to present witnesses is of the utmost importance, it is not absolute. In the exercise of this right, the accused, as is required of the State, must comply with established rules of procedure and evidence designed to assure both fairness and reliability in the ascertainment of guilt and innocence.

Tolliver v. State, 922 N.E.2d 1272, 1281-82 (Ind. Ct. App. 2010) (citations and quotations omitted), trans. denied.

The trial court did not abuse its discretion when it denied D.M.'s motion to continue. In essence, D.M. contends on appeal that Officer Bradley's testimony would have impeached Officer Leepper, thereby casting doubt on Officer Leepper's testimony and, by extension, the legitimacy of the State's evidence. But D.M.'s offer of proof shows otherwise. Had Officer Bradley testified as D.M. claims he would have, he would have stated that he did not witness D.M. throw a punch at Officer Leepper. That is

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<sup>4</sup> "Indiana Code section 35-36-7-1 (2008) provides for motions by defendants to postpone a trial due to, inter alia, the absence of a witness." Tolliver v. State, 922 N.E.2d 1272, 1281 n.4 (Ind. Ct. App. 2010), trans. denied. D.M. does not claim that I.C. § 35-36-7-1 applied to his motion.

consistent with Officer Leepper's testimony that other officers, including Officer Bradley, did not arrive until after Officer Leepper had pinned D.M. inside the van. Officer Bradley also would have testified that D.M. and Officer Leepper were both in the van when he arrived on the scene, and that Officer Bradley was one of the first officers to respond to Officer Leepper's request for assistance. That testimony also corroborates Officer Leepper's testimony.

Still, Officer Leepper testified that he and another officer pulled D.M. from the van, although Officer Leepper could not clearly recall who the other officer was. Officer Bradley, on the other hand, would have testified that D.M. left the van of his own volition. But the discrepancy over how D.M. exited the van is immaterial. It does not, as D.M. contends, cast doubt "not only regarding how the incident ended[] but whether any of it happened the way Leep[p]er said it did." Appellant's Br. at 6. To the contrary, by the time Officer Bradley had arrived on the scene, all of D.M.'s offenses had been committed, and nothing in Officer Bradley's testimony would have aided the court in the determination of the facts at the time of D.M.'s alleged offenses.

Thus, having received D.M.'s offer of proof, it was not against the facts and circumstances before the trial court for the court to deny D.M.'s motion for a continuance. Officer Bradley was not on the scene at the time of D.M.'s offenses, and the only testimony he would have provided that was inconsistent with Officer Leepper's testimony was immaterial. Accordingly, the court did not abuse its discretion in denying D.M.'s motion, and we must affirm its decision.

Affirmed.

DARDEN, J., and BAILEY, J., concur.