STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM CHESTER COUNTY
The Honorable J. Derham Cole, Circuit Court Judge

Appellate Case No. 2021-001033

THE STATE, Respondent,

v.

MICHAEL A. WILLIAMS, Appellant.

FINAL BRIEF OF RESPONDENT

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ATTORNEYS FOR RESPONDENT

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STATEMENT OF ISSUE ON APPEAL

The trial judge did not abuse his discretion in denying Appellant's motion to continue.

STATEMENT OF THE CASE

Appellant was indicted in June of 2020 for one count of Distribution of Cocaine Base, Second Offense. Appellant proceeded to a jury trial on September 7, 2021, in the Chester County Court of General Sessions before the Honorable J. Derham Cole. The State was represented by William Frick. Devon Nielson represented the Appellant. The jury found Appellant guilty and he was sentenced to fifteen years` imprisonment. This appeal follows.

STATEMENT OF FACTS

On November 13, 2019, a controlled buy of cocaine was set up between Teddy Murphy, a confidential informant, and Michael A. Williams (Appellant). (R. 47). On the day of the buy Murph, and Millie Agrawal, an undercover agent for SLED, drove to Appellant's house, picked him up and took him to a secondary location for him to pick up the cocaine from someone else. (R. 81). After a few minutes, Agrawal and Murphy returned and picked Appellant up from the secondary location and drove him back to his house. (R. 81). Appellant and Murphy entered Appellant's house to find a scale to measure the cocaine. (R. 83). Murphy and Appellant returned to the car where Appellant placed the bag of cocaine on the center console and Agrawal took possession of it. (R. 83).

Agrawal and Murphy drove back to the predetermined location and Agrawal gave the drugs to Agent Johnson, a narcotics officer with SLED. The vehicle, Murphy, and Agrawal were searched both before and after the buy and no contraband was found. There was a camera in the vehicle that recorded the entire ride and buy. (State's Exhibit 2). The drugs were given to Maribeth McCormack, an expert in chemical drug analysis, who testified that there was 4.75 grams of cocaine.

Prior to trial, defense counsel requested a continuance due to Appellant having had a heart attack the previous Monday. The trial judge stated that in order to consider the motion to continue, an affidavit from his attending physician needed to be provided to state that Appellant "was not able to appear in court because of a medical condition or that requiring him to go forward with the trial in this case would result in significant health risk to him should he be required to continue." (R. 24-25). Defense counsel informed the court that he had not heard about the heart attack until the previous Friday afternoon and did not get a chance to speak with Appellant until the morning of trial. (R. 25).

The court recessed the case until the next morning to allow defense counsel an opportunity to obtain the requested affidavit. (R. 25). The next morning defense counsel informed the court that they were unable to obtain an affidavit, but did provide the court with medical records.[1] The State argued that although Appellant did have a heart attack the previous week, at t[hat] time he was still medically and mentally able to assist his public defender. (R. 29). The trial judge ruled that "an affidavit from his attending physician telling me what his condition is, then I certainly will consider that. But until I have that I'm not. So motion for continuance is denied." (R. 29).

[1] The medical records indicated that Appellant suffered a myocardial infarction (R. 28) The records were not made a court exhibit and therefore are not included in the record on appeal. The trial judge did note that Appellant suffered a health issue and the State admitted that he did have a heart attack on the record. (R. 28-29)

STANDARD OF REVIEW

"The trial court's denial of a motion for a continuance will not be disturbed on appeal absent a clear abuse of discretion." State v. Morris, 376 S.C. 189, 208, 656 S.E.2d 359, 369 (2008) (citing State v. McMillian, 349 S.C. 17, 21, 561 S.E.2d 602, 604 (2002)). "An abuse of discretion arises from an error of law or a factual conclusion that is without evidentiary support." State v. Meggett, 398 S.C. 516, 523, 728 S.E.2d 492, 496 (Ct. App. 2012). "Reversals of refusal of a continuance are about as rare as the proverbial hens' teeth." State v. McMillian, 349 S.C. 17, 21, 561 S.E.2d 602, 604 (2002). "In order for an error to warrant reversal, the error must result in prejudice to the appellant." State v. Preslar, 364 S.C. 466, 473, 613 S.E.2d 381, 385 (Ct. App. 2005).

ARGUMENT

The trial judge did not abuse his discretion in denying Appellant's motion to continue.

Appellant argues that the trial court erred when it denied Appellant's motion for a continuance. Specifically, Appellant argues that the trial judge abused his discretion by denying Appellant's motion for a continuance without considering Appellant's medical records or physical state where Appellant suffered a heart attack the week before trial, was unwell, confused, and unable to effectively assist his attorney. Appellant's argument lacks merit. The trial judge did consider Appellant's physical state and his medical records and even if the judge didn't consider them, the denial of the motion to continue did not result in prejudice to Appellant. However, the trial judge did not abuse his broad discretion in denying Appellant's motion to continue.

"Continuances may be granted by a presiding judge during a term of court at which he presides...upon a showing of good and sufficient legal cause." Rule 7, SCRCrimP. Appellant requested a continuance based on a health condition. Our Supreme Court has held that there was no abuse of discretion in refusing to continue the cases because of a defendant's physical condition. State v. Lee, 58 S.C. 335, 36 S.E.2d 706; State v. Francis, 152 S.C. 17, 149 S.E. 348 (1929); State v. Rickenbacker, 138 S.C. 24, 135 S.E. 651; State v. Whitener, 228 S.C. 244, 89 S.E.2d 701 (1955); State v. Young, 243 S.C. 187, 133 S.E.2d 210 (1963); and State v. Queen, 264 S.C. 515, 216 S.E.2d 182 (1975).

In State v. Lee, the defendant moved for a continuance and produced a doctor's certificate that his nervous system was disturbed and that he was in bad physical condition, but the court held his appearance and manner did not indicate any trouble or physical weakness and the motion was denied. State v. Lee, 58 S.C. 335, 351, 36 S.E. 706, 712 (1900). In Francis, the court held that a refusal of continuance on the ground of defendant's disabled physical condition due to a broken

thigh, was not an abuse of discretion. Francis, 152 S.C. at 24-25, 149 S.E. at 351. Appellant cites to United States v. Brown, in outlining the factors that the trial judge may consider while ruling on a motion for continuance stating that there is no requirement for an affidavit by a treating physician to be produced. Brown, 821 F.2D 986 (4th Cir. 1987). Brown also held that "for a denial of a continuance to constitute an abuse of discretion, the medical repercussions must be serious and out of the ordinary; the impending trial must pose a substantial danger to a defendant's life or health. Id at 988. In order to show that the medical repercussions would be serious and out of the ordinary, as well as posing a substantial danger to the defendant's life or health, an affidavit from the treating physician stating so would be extremely helpful to show the court that this would be the result. Without an affidavit the trial judge must use his discretion based on what was provided.

Appellant argues that the court did not question Appellant or defense counsel about Appellant's health to determine whether or not Appellant was able to proceed with trial, but actively participate in his trial. (Initial Brief of Appellant pg. 10). The trial judge could see that Appellant was in court and although there was record that Appellant had suffered some sort of health issue, he was coherent, and able to answer the trial judge's questions and present in the courtroom. Unlike State v. Nelson, where a material witness was hospitalized and unable to testify at trial, Appellant was in court both days, and was able to testify if he so chose and could assist his attorney. State v. Nelson, 431 S.C. 287, 847 S.E.2d 480 (Ct. App. 2020). Appellant was physically present in the courtroom and was mentally able to participate. He was also mentally able to participate in his own defense. Similar to a competency evaluation, "great deference is given to a trial judge who sits in a better position to ascertain the defendant's faculties." State v. Colden, 372 S.C. 428, 441, 641 S.E.2d 912, 920 (Ct. App. 2007). Prior to swearing in the jury, the trial judge addresses Appellant telling him to stand before the jury pool and take his mask off so that jurors

could see who he was. (R. 8). There is no indication in the record that Appellant had any problem understanding what the trial judge asked of him as well as any physical problems that resulted from him standing and taking off his mask. (R. 8). The trial court again addressed Appellant "Mr. Williams, you and Mr. Frick and Mr. Nielson are going to be working on getting the information for me to have in order to make a determination about any continuance." (R. 27). Appellant responded to the trial judge when the judge told him what time he needed to be back. Again, there is nothing in the record to indicate that Appellant had trouble understanding the trial judge or his instructions at any point. Further, when counsel for defense tells the trial judge that they were unable to obtain the affidavit, he states that Appellant "went to Lowry's, was informed that as a new patient they don't have any information on him because it's a referral. I think he attempted to get information from Columbia and they were unable to provide him anything." (R. 28). Appellant was clearly competent to contact these doctor's offices on his own and then convey the results of his attempts to his attorney and therefore showed the mental competence to assist his attorney in his defense. Appellant attempts to argue that "on the few occasions that the trial court interacted with Appellant he was confused and unable to follow the conversation." (Initial Brief of Appellant, p. 12). This was at the end of the trial and minutes before he completely and coherently addresses the trial court during sentencing for mitigation. (R. 133-134). Further during sentencing, counsel for Appellant addresses his health concerns, but makes no mention that Appellant was unable to assist in his defense.

Even assuming the trial judge should have granted the continuance, it is unclear what difference the additional time would have made. In Bozeman v. State, the court found no reversible error because the petitioner did not "point to any other evidence or witnesses which could have been produced if a continuance had been granted." Bozeman v. State, 307 S.C. 172, 175, 414

S.E.2d 144, 146 (1992). Our courts have repeatedly upheld denials of motions for continuance where there is no showing that any other evidence on behalf of the defendant could have been introduced, or that any other points could have been raised, if more time had been granted to prepare for trial. State v. McKennedy, 348 S.C. 270, 280, 559 S.E.2d 850, 855 (2002). Here Appellant does not refer to any difference it would have made had Appellant's continuance been granted. There was a video introduced at trial that showed the entire drug deal with Appellant in it. Even if a continuance had been granted and then Appellant ultimately testified, this video clearly showing the drug deal would have still been introduced. Therefore, the trial judge did not abuse his discretion in denying Appellant's motion to continue.

CONCLUSION

For all the foregoing reasons, it is respectfully submitted that the judgments and convictions of the lower court should be affirmed.

Respectfully submitted,

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December 6, 2022

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CERTIFICATE OF COUNSEL

The undersigned certifies that this Final Brief of Respondent complies with Rule 211(b), SCACR, and the April 15, 2014, order from the South Carolina Supreme Court entitled "Revised Order Concerning Personal Identifying Information and Other Sensitive Information in Appellate Court Filings."

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