

THIRD DIVISION
December 23, 2015

No. 1-13-3514

NOTICE: This order was filed under Supreme Court Rule 23 and may not be cited as precedent by any party except in the limited circumstances allowed under Rule 23(e)(1).

IN THE
APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS,)	Appeal from the
)	Circuit Court of
Plaintiff-Appellee,)	Cook County.
)	
v.)	No. 09 CR 13922
)	
WALTER WYLIE,)	Honorable
)	Anna Helen Demacopoulos,
Defendant-Appellant.)	Judge Presiding.

PRESIDING JUSTICE MASON delivered the judgment of the court.
Justices Fitzgerald Smith and Lavin concurred in the judgment.

O R D E R

¶ 1 *Held:* The trial court did not err when it denied defendant's motion for a continuance to obtain a handwriting expert after a jury had been impaneled to hear his case, and his convictions for unlawful use of a weapon by a felon and possession of cannabis with intent to deliver are affirmed; mittimus amended to reflect the correct offense.

¶ 2 Following a jury trial, defendant Walter Wylie was convicted of unlawful use of a weapon by a felon and possession of cannabis with intent to deliver, and sentenced to concurrent terms of five years' imprisonment. On appeal, Wylie contends that the trial court erred when it denied his motion for a continuance to obtain a handwriting expert on the day of trial because

the State did not disclose the statement allegedly written by him until that day, Wylie denied that it was his handwriting, and counsel had no opportunity to rebut the State's claim that it was his handwriting. Wylie also contends that his mittimus should be amended to reflect the correct name of the offense of which he was convicted.

¶ 3 Wylie was arrested on May 11, 2009, and later charged with two counts of unlawful use of a weapon by a felon, and one count each of possession of cannabis with intent to deliver and simple possession of cannabis. The record shows that defense counsel represented Wylie throughout all proceedings in this case.

¶ 4 At the arraignment on August 18, 2009, the State tendered a packet of discovery to defense counsel, who acknowledged receipt and made an oral motion for discovery, stating that he would file a written motion for discovery at a later date. Counsel pointed out that the only item he noticed missing from the discovery at that time was a copy of the affidavit from the search warrant, and the prosecutor stated that he would order that document. The court then conducted a bond hearing, during which the prosecutor stated "Witness gave a handwritten statement. Defendant said everything was his." The record does not contain a written motion for discovery filed by the defense.

¶ 5 At the next court date on September 21, 2009, counsel stated "[y]our Honor, there's an allegation in the police report that there's a written statement of my client, which I don't have." Counsel also requested a copy of the complaint for the search warrant. The court stated that the case was continued for the search warrant, and counsel specifically clarified "[t]he complaint for search warrant and a written – there was a written statement." On November 16, 2009, the court noted that the parties were "waiting for the search warrant and police report," and the prosecutor stated that the documents had been ordered but not yet received.

¶ 6 On March 24, 2010, counsel stated that he had received the affidavit for the search warrant and stated "[t]hat is what I have been waiting for up to this point." The court then set a date for counsel to file motions. On May 17, 2010, defense counsel acknowledged that he had received the search warrant on the last court date. The court then asked counsel if he now had all of the discovery, and counsel confirmed "[y]es, I do, Judge."

¶ 7 The case was continued numerous times over the next three years, all at the request of defense counsel to file a motion to quash the search warrant and affidavits in support of that motion, which was ultimately denied by the trial court in March 2013. Counsel later filed a motion to disclose a confidential informant, and on May 17, 2013, the court denied that motion, finding that the defense presented no good faith basis to warrant disclosure of the informant's identity.

¶ 8 On June 12, 2013, the case was called for trial, and the prosecutor handed defense counsel laboratory notes he had recently received for the cannabis testing conducted in 2009. The case was passed for counsel to review those notes, and when recalled, defense counsel requested a continuance to have a chemist review the findings from 2009. The court pointed out that the findings had been provided to defense counsel in 2009, and after a lengthy inquiry, the court found that counsel's request was merely a "delay tactic," and denied his motion for a continuance. The jury was then selected.

¶ 9 The next day, as trial was set to begin, defense counsel stated that the assistant State's Attorney (ASA) had just handed him a copy of a handwritten statement allegedly made by Wylie the day he was arrested, and counsel claimed he had never been given a copy of that statement. The ASA then clarified that earlier that morning, defense counsel told him that he did not have a copy of the handwritten statement mentioned in the police report, and he then made a copy for

counsel. The ASA said that he believed, but was not certain, that the statement was tendered during discovery, then pointed out that a felony review summary of the statement and police reports were tendered, all of which referred to a handwritten statement. The ASA explained that Cook County sheriff's investigator James Scannell wrote a summary of Wylie's oral statement, and while reviewing it with Wylie, Wylie added at the end, in his own handwriting, "[m]e and friends personally used!" The ASA expected the investigator to testify that the last sentence was in Wylie's handwriting, and that Wylie refused to sign the statement.

¶ 10 In response to the court's questioning, the ASA quoted the police report, which stated "Subject Wiley gave a handwritten statement indicating that he needed the gun for protection, and the drugs were his for his personal use." The court found that a summary of the statement was contained in the police report, and thus, the statement was not a surprise and the defense had sufficient notice. The court allowed the State to introduce the statement, and gave counsel time to discuss it with Wylie.

¶ 11 When court resumed, counsel stated that Wylie denied that the last line was in his handwriting, and requested a continuance to have a handwriting expert analyze the statement. The court denied the request, and counsel again claimed that he had never received the statement. The court pointed out that counsel never filed a written motion for discovery, the statement was mentioned in the police reports, and that counsel had asked the ASA for a copy of the statement rather than claiming that he never received it. In response to the court's questioning, counsel confirmed that he never requested the statement, even though it was mentioned in the police reports. The court again denied counsel's motion for a continuance, and when counsel persisted, denied his request a third time.

¶ 12 At trial, Brian Bonarek, an investigator with the Cook County sheriff's police gang narcotics unit, testified that on May 10, 2009, he conducted surveillance of a home at 13524 South Sawyer in Robbins, Illinois, and observed a confidential informant approach the door to the house, converse with Wylie, make an exchange with him, and leave. The following day, Kimberly Brown, an investigator with the Cook County sheriff's police narcotics unit, went with a team of 16 officers went to the home to execute a search warrant. Upon arriving, they immediately detained Wylie as he exited the home, then detained and removed Debbie Hughes from inside the home. The officers searched a bedroom and recovered a blue shoebox that contained a plastic bag of cannabis and \$732 cash. Inside the bedroom closet, police recovered another bag of cannabis, additional cannabis cigarettes, and rounds of 9-millimeter ammunition. Inside a safe, they found another large plastic bag that contained several smaller packages of cannabis.

¶ 13 Brown further testified that she recovered narcotics paraphernalia from a bedroom dresser which included four digital scales, a crusher used to crush marijuana buds, rolling papers and a pipe. Underneath the mattress in the bedroom, police also recovered a loaded TEC-9 automatic firearm, which is similar to a machine gun, and a silencer. They also recovered from the bedroom closet several rounds of 9-millimeter ammunition in a separate cartridge. Brown found a letter from the Illinois Department of Public Aid addressed to Wylie at the South Sawyer address, postmarked several months earlier, which was recovered as proof that he resided there. Following the search, Wylie and Hughes were both arrested. Hughes was later released.

¶ 14 Scannell, an investigator with the Cook County sheriff's police gang narcotics unit, testified that he was a member of the team that executed the search warrant, and following the arrests, he and Investigator Brown interviewed Wylie at the sheriff's lockup in Markham. After

waiving his *Miranda* rights, Wylie told the investigators that the recovered firearm and cannabis belonged to him. While Wylie spoke, Scannell drafted a handwritten statement summarizing Wylie's oral statement:

"I like to smoke weed. I went half on the weed with my close circle of friends. The gun I keep for protection. I bought the gun a year or two ago and the silencer came with it. I bought the gun from a guy in Indiana (flea market) for \$450.00. The weed and the gun is mine."

After reviewing the statement with Wylie, Scannell asked him if he wanted to add anything to it. Wylie said yes, and wrote at the end "Me and friends persoal [*sic*] use!" Scannell asked Wylie to sign the statement, but he refused.

¶ 15 Angela Nealand, a forensic scientist specializing in drug chemistry at the Illinois State Police crime laboratory, testified that she tested two of the recovered items and found them positive for 53.3 grams of cannabis. The parties then stipulated that Wylie had a prior felony conviction.

¶ 16 The jury found Wylie guilty of two counts of unlawful use of a weapon by a felon for possessing the firearm and ammunition, possession with intent to deliver cannabis, and possession of cannabis. At sentencing, the trial court merged the two weapons charges and the two cannabis charges, and sentenced Wylie to concurrent terms of five years' imprisonment for unlawful use of a weapon by a felon and possession with intent to deliver cannabis.

¶ 17 On appeal, Wylie contends that the trial court erred when it denied his motion for a continuance to obtain a handwriting expert on the day of trial and after the jury had been impaneled. Wylie claims that the State waited until the day of trial to disclose the handwritten statement, a portion of which was allegedly written by him, that had been in the State's

possession for years. Wylie notes that he denied that the last sentence was in his handwriting, and argues that counsel had no opportunity to rebut the State's claim he wrote it. Wylie further argues that the court failed to consider relevant factors before denying the continuance, including counsel's diligence in making his request, and that the handwriting expert's testimony would have been material because, if the handwriting was not Wylie's, such testimony would have rebutted the State's primary evidence.

¶ 18 The decision whether to grant or deny a request for a continuance is within the sound discretion of the trial court, and on review, this court will not disturb that decision absent a clear abuse of discretion. *People v. Walker*, 232 Ill. 2d 113, 125 (2009). An abuse of discretion will be found only where the trial court's decision is unreasonable, arbitrary or fanciful, or where no reasonable person would agree with the trial court's view. *People v. Weeks*, 2011 IL App (1st) 100395, ¶ 30. Where the denial of a continuance appears to have encumbered the defendant in the preparation of his defense, and thus, prejudiced his rights, the conviction will be reversed. *Walker*, 232 Ill. 2d at 125, citing *People v. Lewis*, 165 Ill. 2d 305, 327 (1995).

¶ 19 Whether the trial court abused its discretion when it denied a continuance depends on the facts and circumstances in the particular case. *Walker*, 232 Ill. 2d at 125. Our supreme court has expressly stated that there is no "mechanical test" to determine when the denial of a continuance in order to accelerate the court proceedings violates a defendant's substantive right to properly defend the case. *Id.*, citing *People v. Lott*, 66 Ill. 2d 290, 297 (1977). Factors the court may consider in making its determination include the movant's diligence, defendant's right to a fair, speedy and impartial trial, and the interests of justice. *Id.* Additional relevant factors include the history of the case, docket management, judicial economy, the complexity of the matter, the seriousness of the charges, and inconvenience to the parties and witnesses. *Id.* at 125-26.

¶ 20 In this case, the record shows that, contrary to Wylie's contention, the trial court did consider counsel's diligence when it denied the continuance. Wylie asserts that counsel was diligent because he requested the continuance as soon as he became aware that Wylie disputed the authenticity of the handwriting at the end of the statement. But this begs the question of counsel's diligence in ascertaining the content of the statement in the first place. The issue is not whether counsel was diligent in requesting the continuance, but instead, whether counsel was diligent in preparing for trial. *Weeks*, 2011 IL App (1st) 100395, ¶¶ 30-31.

¶ 21 Here, the trial court's decision to deny the continuance was based primarily on defense counsel's lack of diligence in requesting the handwritten statement. The record reflects that, in fact, counsel was aware of the statement in 2009, having specifically referred to it on the record on September 21, 2009. When the court continued the case for production of the complaint for the search warrant, counsel specifically clarified "[t]he complaint for search warrant and a written – there was a written statement." On May 17, 2010, counsel confirmed for the court that he had received all of the discovery. When in 2013 counsel claimed that he had never received the statement, the court noted that he had never filed a written motion for discovery, and therefore, never formally requested the statement. The court further noted that counsel had asked the ASA that morning for "a copy" of the statement rather than stating that he had never received it. In addition, the court pointed out that the statement was mentioned in the police reports, and expressly asked counsel "you never asked for it, even though it's mentioned in the police reports, correct?" Counsel conceded "[t]hat is correct." Under these circumstances, given counsel's lack of diligence, we cannot say the circuit court abused its discretion in refusing to continue the case yet again, particularly since a jury had already been impaneled.

¶ 22 We reject Wylie's contention that the trial court was required to consider specific factors, such as whether the handwriting expert's testimony would have been material or whether Wylie was prejudiced. Our supreme court has expressly stated that there is no mechanical test for determining if the court's denial of a continuance was proper, but instead, the court may consider various factors depending on the particular facts and circumstance in the case. *Walker*, 232 Ill. 2d at 125.

¶ 23 Viewed as a whole, the record reveals that the trial court was rightly concerned with other factors specific to this case, including the history of the case and the fact that the case had been pending on the court's docket for four years, almost exclusively due to continuances requested by defense counsel. On March 14, 2013, when defense counsel repeatedly stated that he was going to file another motion, the court told him that he could file whatever he liked, but insisted on setting a trial date. On May 17, 2013, the court denied counsel's motion to disclose a confidential informant, finding that the defense presented no good faith basis for that request. Counsel insisted that he was due an opportunity to have "someone" testify at a hearing in support of his motion, but could not articulate what that testimony would be. After denying counsel's repeated requests, the court stated "[t]his is a 2009 case. It has been on the priority list from the chief judge's office," and a trial date was set. When the case was called for trial on June 12, 2013, defense counsel requested a continuance to have a chemist review the drug findings from 2009, even though counsel had been in possession of those findings for years. After a lengthy inquiry, the court found that counsel's request was merely a "delay tactic," denied the continuance, and proceeded with jury selection. The record thus shows that the court had a legitimate, continuing concern both with the age of the case and with the bona fides of counsel's efforts to postpone trial.

¶ 24 Alternatively, Wylie contends, and the State agrees, that his mittimus should be amended to reflect the correct offense of which he was convicted. The mittimus incorrectly indicates that Wylie's conviction was for manufacture or delivery of cannabis when, in fact, he was convicted of possession of cannabis with intent to deliver. Pursuant to our authority (Ill. S. Ct. R. 615(b)(1) (eff. Aug. 27, 1999); *People v. McCray*, 273 Ill. App. 3d 396, 403 (1995)), we direct the clerk of the circuit court to amend the mittimus to reflect that Wylie was convicted of the offense of possession of cannabis with intent to deliver.

¶ 25 Accordingly, we affirm the judgment of the circuit court of Cook County and amend the mittimus.

¶ 29 Affirmed; mittimus amended.