

No. 1-15-3335

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. 15 DV6 0022
)	
MAURICE DOTSON,)	Honorable
)	Laurence J. Dunford,
Defendant-Appellant.)	Judge Presiding.

JUSTICE REYES delivered the judgment of the court.
Justices Hall and Lampkin concurred in the judgment.

O R D E R

- ¶ 1 *Held:* The trial court did not abuse its discretion when it denied defendant's request for a continuance.
- ¶ 2 Following a bench trial, defendant Maurice Dotson was found guilty of the offense of domestic battery and sentenced to 18 months of conditional discharge and domestic violence counseling. On appeal, defendant contends that the trial court abused its discretion when, after it granted the State's motion to amend the complaint to change the word "smacked" to "struck," it denied defendant's motion for a continuance. For the reasons below, we affirm.

¶ 3 Defendant's conviction arose from events which occurred on January 1, 2015, and involved the victim, Croshana Floyd. Later on that same day, Floyd signed a complaint against defendant, which stated that he "knowingly made physical contact of an insulting nature with Croshana Floyd, the girlfriend of the defendant, in that he smacked her in the face." Prior to trial, the complaint was amended to delete "of an insulting nature" and to add "which caused injury." After defense counsel filed an appearance, the case was continued several times. On July 6, 2015, admonishments under Supreme Court Rule 402 were given to the defendant and the case was continued to July 20, 2015, for defendant to consider the results of the Rule 402 conference. Later on that same day, the case was set for trial on October 1, 2015.

¶ 4 At trial, prior to calling the first witness, the State requested to amend the complaint to change the language from "smacked" to "struck." The trial court granted the State's motion, over defendant's objection. Thereafter, defendant made a motion to continue the trial based on the amendment, which the trial court denied.

¶ 5 Floyd testified that defendant was her ex-fiancé. On January 1, 2015, at approximately 3 a.m., after going to a casino and attending a party at the residence of one of defendant's friends, Floyd and defendant drove to a hotel and got into an argument on the way. Once they were in their hotel room, Floyd told defendant that she did not want to be with him and took off her engagement ring and the necklace he had given her. Defendant then started to break the furniture in the room, including a table and chair. After he attempted to take off her boots which he had purchased for her, he struck her on the left side of her face with a closed handed punch. Floyd lost her balance and fell to the floor between the door and a television console. After she

fell, she "balled up," and he continued to strike her with a closed fist. No one else was present during the incident. Defendant took her home.

¶ 6 When Floyd arrived home, she immediately informed her grandmother what had happened and then filed a report at a police station. Floyd further testified that she sustained injuries from the incident, including a headache, a bald spot which resulted when defendant pulled her braids out, a black and blue left eye, a bruise on her arm, a knot on her forehead, and bleeding on her lip. She identified photographs depicting her injuries which were admitted into evidence. After the incident, Floyd went to the emergency room and received an injection of Torodol for her pain.

¶ 7 Defendant testified that he knew Floyd for two years and they had been engaged for approximately six months. On December 31, 2014, he and Floyd went to a casino for about two hours and then went to a New Year's party. They left the party early in the morning. During their commute to a hotel, defendant and Floyd started arguing and they continued to argue at the hotel. While in the hotel room, after Floyd told defendant that she did not want anything from him, he took her ring and necklace off a table and grabbed her boots which were next to the table. Floyd tried to grab the boots from him but he did not let them go and she punched him in the face with a closed fist. His glasses broke and left a mark on the bridge of his nose. Thereafter, she continued to hit him and he tried to deflect her punches with the open palm of his left hand. While he was deflecting Floyd's punches, he hit her in the lip and on her face. She continued to hit him and he pushed her. Floyd then tripped over the boots and she hit her arm on the door knob.

¶ 8 On cross-examination, defendant testified that when he was deflecting Floyd's punches, he hit her with an open hand on the left side of her mouth and that his hand also made contact with her face a second time on the temple area of her left side. He testified that the blood on her lips was from the contact he made with her face and that earlier that evening, she did not have any bruising on her face or a cut on her lip.

¶ 9 Following closing arguments, the trial court noted that "[a]s Counsel for the Defense stated, this is a question of credibility as are most of these cases." The trial court found defendant's testimony not credible, found him guilty, and sentenced him to 18 months conditional discharge and domestic violence counseling.

¶ 10 On appeal, defendant argues that the trial court abused its discretion when, after it granted the State's motion to amend the complaint to change the word "smacked" to "struck," it denied his request for a continuance. Defendant acknowledges that he did not raise the issue in a posttrial motion but argues that if this court finds that he waived the issue, then we should review the matter under the plain-error doctrine because the trial court committed error.

¶ 11 In order to preserve a claim for review, a defendant must both object at trial and include the issue in a written posttrial motion. *People v. Thompson*, 238 Ill. 2d 598, 611 (2010). Pursuant to the plain-error doctrine, the reviewing court may review a forfeited issue affecting substantial rights if one of two circumstances are met: "(1) a clear or obvious error occurred and the evidence is so closely balanced that the error alone threatened to tip the scales of justice against the defendant, regardless of the seriousness of the error, or (2) a clear or obvious error occurred and that error is so serious that it affected the fairness of the defendant's trial and challenged the integrity of the judicial process, regardless of the closeness of the evidence." *People v.*

Piatkowski, 225 Ill. 2d 551, 565 (2007). However, before a reviewing court applies the plain-error doctrine, it must first determine whether the trial court committed error. *Thompson*, 238 Ill. 2d at 613.

¶ 12 The trial court's decision to grant or deny a continuance is a matter within the sound discretion of the trial court. *People v. Walker*, 232 Ill. 2d 113, 125 (2009). Absent a clear abuse of discretion, the reviewing court will not interfere with the trial court's ruling on a defendant's motion to continue. *Walker*, 232 Ill. 2d at 125. A trial court abuses its discretion where its "ruling is arbitrary, fanciful, or unreasonable, or where no reasonable person would take the view adopted by the trial court." *People v. Tuduj*, 2014 IL App (1st) 092536, ¶ 100. Whether the trial court abused its discretion depends upon the facts and circumstances in each case. *Walker*, 232 Ill. 2d 113 at 125. "There is no mechanical test, statutory or other, for determining the point at which the denial of a continuance in order to accelerate the judicial proceedings violates the substantive right of the accused to properly defend. The circumstances of each case must be weighed, particularly the reasons presented to the trial judge at the time the request is denied." *People v. Lott*, 66 Ill. 2d 290, 297 (1977).

¶ 13 The Illinois Supreme Court in *Walker*, listed various factors that a court "may consider" when determining whether to grant a defendant's request for continuance in a criminal matter, including the movant's diligence, defendant's right to a speedy, fair and impartial trial, and the interests of justice. Other relevant factors a court may consider include whether defendant's counsel was unable to prepare for trial due to being held to trial for a different case, the history of the case, the complexity of the matter, the seriousness of the charges, docket management,

judicial economy, and the inconvenience to the parties and witnesses. *Walker*, 232 Ill. 2d at 125-26.

¶ 14 Defendant argues that the trial court abused its discretion because it did not exercise discretion in considering the factors laid out in *Walker* and because it immediately denied his request prior to any consideration of the factors and prior to hearing his basis for the continuance. Defendant further argues that if the trial court had weighed the factors, it would have granted his request for continuance.

¶ 15 At trial, after the State requested to change the language in the complaint from "smacked" to "struck," defendant's counsel objected and stated as follows:

"Judge, my objection is the case is set for trial, I've gone over my theory of my defense based on an allegation of a smack. I know it sounds like a minute thing, changing smack to struck, but The State wants to do it for a reason. If - - and I'm prepared to try the case on smack. If your Honor is inclined to grant this, I just need time to further defend - - further prepare my defense."

After defendant's foregoing explanation, the trial court over defendant's objection granted the State's motion to amend. Immediately thereafter, defendant's counsel moved to "continue the trial based on the amendment." When the trial court denied defendant's motion, defendant's counsel stated as follows:

"With all due respect, Judge, I think it's a significant change, and I haven't prepared a theory of defense based on that allegation. The case has been up - - as the State advised in chambers, it's been up for trial three

times. The State never made a change in three times before this, and now we're actually here ready for trial and they wanna [*sic*] change the allegations in the complaint. I don't think that is fair to the defendant in the preparation of the defendant for trial."

After hearing defendant's foregoing reasons for the continuance request, the trial court responded as follows:

"In the Court's mind, the difference between smack and struck is so minute as to not be a sufficient reason to continue the trial, especially since it's been continued three times. The question in amendments and continuances based on amendments is whether or not the allegations set forth in the complaint were sufficient to give The Defendant notice of what the allegations were, and what the basis is about. Your motion is denied."

¶ 16 We do not find that the trial court committed error when it denied defendant's motion for a continuance. The record indicates that the trial court considered the facts and circumstances of the case when it denied defendant's motion to continue the trial. See *Walker*, 232 Ill. 2d at 125.

¶ 17 First, the trial court considered defendant's reason for his continuance request. Defendant's counsel stated that he prepared his theory of defense on an allegation of a "smack" and that he wanted to "continue the trial based on the amendment." As noted above, the trial court responded by stating that "the difference between smack and struck is so minute as to not be a sufficient reason to continue the trial, especially since it's been continued three times," and explaining that "[t]he question in amendments and continuances based on amendments is

whether or not the allegations set forth in the complaint were sufficient to give The Defendant notice of what the allegations were, and what the basis is about." Given these statements, we find that the trial court considered the significance of the change in the complaint from "smacked" to "struck" and defendant's reason for the continuance, which was based on the amendment.

¶ 18 Moreover, we cannot find that the trial court abused its discretion when it ruled that the difference between the words "smack" and "struck" was "minute." To support its argument that the change from "smack" to "struck" is "infinitesimal" and "insignificant," the State discusses the definitions of "smack" and "strike" as provided in the Merriam-Webster's Dictionary and argues that the definition of the word "strike" is part of the definition of the word "smack." We agree and find a review of the definitions instructive on this issue.

¶ 19 The Merriam-Webster's Dictionary provides a definition for "smack" as follows: "to *strike* so as to produce a smack." (Emphasis added). Merriam-Webster Dictionary, <http://www.merriam-webster.com/dictionary/smacked> (last visited October 25, 2016) (listed in the "verb" definition). It provides the definition for "struck" as the "past and past participle of strike" (Merriam-Webster Dictionary, <http://www.merriam-webster.com/dictionary/struck> (last visited October 25, 2016)) and defines "strike" as "to hit (someone or something) in a forceful way," "to cause (something) to hit something in a forceful way," and "to hit (someone or something) with your hand, a weapon, etc." (Merriam-Webster Dictionary, <http://www.merriam-webster.com/dictionary/strike> (last visited October 25, 2016) (listed in the "simple definition of strike")). Pursuant to these definitions, "struck" is the past tense of "strike," and "strike" is included in the definition of "smack." Thus, the plain meanings of "smack" and "struck" support

the trial court's reasoning that the difference between "smack" and "struck" was "minute" such that it was not sufficient to continue the trial.

¶ 20 Finally, we note that the trial court also considered judicial economy, as it noted that the trial had already been continued on three separate occasions.

¶ 21 We find *Walker*, upon which defendant relies, distinguishable from this case. In *Walker*, defendant's counsel requested a continuance because she was not prepared for trial. *Walker*, 232 Ill. 2d 113 at 117. She informed the trial court that she had the wrong trial date in her calendar and had been on trial the past two evenings in front of a different judge. *Id.* In response to defendant's counsel's request for a continuance and statement that she was not ready for trial, the trial court responded: "It is irrelevant. There isn't a private attorney in the business who hasn't tried to pull something like this." *Id.* The appellate court in *Walker* held that the trial court failed to exercise discretion in ruling on the defendant's request for continuance, noting that the record was "devoid of evidence showing that the circuit court considered *any* of the relevant factors in denying the continuance." (Emphasis added). *Id.* at 126. The court further stated that the "circuit court mechanically denied the continuance without engaging in thoughtful consideration of the specific facts and circumstances presented in this matter." *Id.*

¶ 22 Here, while the trial court initially denied defendant's motion prior to discussion on the issue, it then permitted defendant's counsel to state his reasons for why the matter should be continued. Then, after defendant had an opportunity to present his reasons, the trial court stated that it was denying the continuance because the difference between the words at issue was minute, the trial had already been continued three times, and the wording of the complaint was sufficient to give defendant notice of the allegations against him. Accordingly, unlike *Walker*,

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the record indicates that the trial court did consider the facts and circumstances of this case. In addition, while the court in *Walker* listed various factors a court "may consider" when ruling on a motion for continuance, the court did not mandate that a trial court must consider every factor. See *Walker*, 232 Ill. 2d at 125-26.

¶ 23 In sum, we find that the trial court did not err when it denied defendant's motion to continue the trial because it considered the facts and circumstances of this case. There being no error, the plain error doctrine does not apply and defendant's claim remains forfeited.

¶ 24 For the reasons explained above, we affirm the judgment of the circuit court.

¶ 25 Affirmed.