

IN THE COURT OF APPEALS OF OHIO
SIXTH APPELLATE DISTRICT
LUCAS COUNTY

City of Toledo

Court of Appeals No. L-11-1314

Appellee

Trial Court No. CRB-11-05873

v.

Beth Slaughterbeck

DECISION AND JUDGMENT

Appellant

Decided: April 26, 2013

* * * * *

David L. Toska, City of Toledo Chief Prosecuting Attorney,
and Arturo Quintero, Assistant Prosecuting Attorney, for appellee.

Wesley M. Miller, Jr., for appellant.

* * * * *

OSOWIK, J.

{¶ 1} This is an appeal from a judgment of the Toledo Municipal Court, in which the appellant, Beth Slaughterbeck, was found guilty of one count of domestic violence, in violation of Toledo Municipal Code 537.19A. On appeal, appellant sets forth the following as her sole assignment of error:

1. The trial court erred in denying appellant's motion to subpoena witnesses.

{¶ 2} On April 26, 2011, an altercation between appellant and her sister, Renee Abdekarim, took place at Abdekarim's home. Abdekarim suffered lacerations, bruises and a bite wound as a result of the fight. Abdekarim called police and, that same day, a complaint was filed charging appellant with domestic violence and, alternatively, assault. Appointed counsel was assigned to assist appellant in her defense.

{¶ 3} At some point after she was charged, appellant moved to Florida. A trial date was scheduled for October 21, 2011, however, appellant retained private defense counsel shortly before that date. At defense counsel's request, the trial was rescheduled for November 22, 2011. Defense counsel and appellant, who remained in Florida, did not communicate between October and November regarding preparation for trial. Nevertheless, appellant notified defense counsel on the eve of trial that she would be in attendance, and asked counsel to issue a subpoena for a witness to testify at trial on her behalf.

{¶ 4} Before the trial commenced, defense counsel asked the trial court for a continuance to issue a subpoena for a defense witness who allegedly observed the altercation, which the trial court denied. Instead, the trial court granted a recess and moved the case to the end of that day's docket.

{¶ 5} At trial, Renee Abdekarim and appellant each gave differing accounts of the events that took place on April 26, 2011. Specifically, Abdekarim, a registered nurse,

stated that the fight began when appellant tried to remove a photo album from Abdekarim's home and Abdekarim attempted to stop her. Abdekarim said she was attacked from behind by appellant, who hit her, bit her on the arm, and head-butted her. In contrast, appellant testified that the photo album was hers, and that Abdekarim violently attacked appellant from behind when she tried to take the album home. Appellant further stated that she bit and head-butted Abdekarim in an attempt to break free from her sister's attack.

{¶ 6} After hearing testimony from both parties, the trial court found appellant guilty of domestic violence, and dismissed the alternative charge of assault. Appellant received a 180 day suspended jail sentence, and was ordered to undergo assessment and treatment for her violent tendencies at a facility near her home in Florida. A timely appeal was filed in this court on December 20, 2011.

{¶ 7} In support of her sole assignment of error, appellant argues that the trial court's denial of her motion for a continuance was unreasonable because any inconvenience caused by the delay would be to appellant, and not to the victim, the court, or any other witnesses. She further argues that the request was not made as a trial strategy or to cause undue delay, but was the result of an admitted lack of communication between herself and defense counsel. Appellant further argues that a continuance was proper since one prior continuance had been granted at the state's request when the victim failed to appear, and one additional time when she obtained new defense counsel.

{¶ 8} The Supreme Court of Ohio has held that the decision to grant or deny a continuance is within the broad discretion of the trial court. *State v. Franklin*, 97 Ohio St.3d 1, 2002-Ohio-5304, 776 N.E.2d 26; *State v. Unger*, 67 Ohio St.2d 65, 423 N.E.2d 1078, paragraph one of the syllabus (1981).

While there is no bright-line test for determining whether a continuance should be allowed, a court should be guided by consideration of several factors, including the length of the requested delay, whether other continuances have been requested and received, the inconveniences likely to result, the reasons for the delay, and whether the defendant contributed to the circumstances giving rise to the need for delay. *Franklin* at ¶18.

{¶ 9} As set forth above, the record shows that appellant received one continuance when she retained new defense counsel, in spite of the trial court's reluctance to do so. In addition, it is undisputed that appellant's lack of communication with retained counsel, and her last-minute decision to travel from Florida to attend the trial, contributed significantly to the circumstances that gave rise to the need for a continuance to locate and subpoena a witness at the last minute. In addition, the record shows that appellant made no attempt to proffer the desired testimony of the witness at trial. Finally, even though the trial court postponed the trial until the end of the day's docket, the record does not show that defense counsel attempted to locate the witness during that additional time.

{¶ 10} On consideration, we find that the trial court did not abuse its discretion by refusing to grant appellant's motion for a continuance to subpoena a witness in her own defense. Appellant's sole assignment of error is not well-taken.

{¶ 11} The judgment of the Toledo Municipal Court is affirmed. Appellant is ordered to pay the costs of this appeal pursuant to App.R. 24.

Judgment affirmed.

A certified copy of this entry shall constitute the mandate pursuant to App.R. 27. *See also* 6th Dist.Loc.App.R. 4.

Mark L. Pietrykowski, J.

JUDGE

Thomas J. Osowik, J.

JUDGE

Stephen A. Yarbrough, J.
CONCUR.

JUDGE

This decision is subject to further editing by the Supreme Court of Ohio's Reporter of Decisions. Parties interested in viewing the final reported version are advised to visit the Ohio Supreme Court's web site at:
<http://www.sconet.state.oh.us/rod/newpdf/?source=6>.