

IN THE COURT OF APPEALS OF CLARK COUNTY, OHIO

STATE OF OHIO :  
Plaintiff-Appellee : C.A. CASE NO. 09CA0035  
vs. : T.C. CASE NO. 08TRC7493  
VINCENT HARMON : (Criminal Appeal from  
Defendant-Appellant : Municipal Court)

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O P I N I O N

Rendered on the 5<sup>th</sup> day of March, 2010.

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Michael F. Sheils, Atty. Reg. No. 0021678, Springfield City  
Prosecutor; Christopher Hickey, Atty. Reg. No. 0071274, Asst. City  
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Attorneys for Plaintiff-Appellee

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Attorney for Defendant-Appellant

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GRADY, J.:

{¶ 1} Defendant, Vincent Harmon, appeals from his convictions  
for operating motor vehicle while under the influence of alcohol,  
R.C. 4511.19(A)(2), and driving under suspension, R.C. 4510.11.  
Those convictions were entered on Harmon's pleas of no contest,

following the trial court's denial of Harmon's motion to continue his trial. Harmon was sentenced pursuant to law.

ASSIGNMENT OF ERROR

{¶ 2} "APPELLANT'S GUILTY PLEA WAS NOT ENTERED VOLUNTARILY, KNOWINGLY, OR INTELLIGENTLY, AS REQUIRED BY LAW."

{¶ 3} Defendant argues that his no contest pleas were involuntary because they were induced by the trial court's improper denial of his motion to continue his trial. Defendant's court-appointed counsel moved for a continuance on the day of trial.

She contended that she needed additional time to prepare for trial, which included contacting a witness whose identity Defendant had only just provided.

{¶ 4} Defendant's attorney was his second court-appointed counsel. His prior attorney, a public defender, was permitted to withdraw following Defendant's request for a new attorney. The court granted a continuance to accommodate that request. Defendant's current attorney had been appointed several weeks prior to the trial date on which Defendant again moved for a continuance.

{¶ 5} The trial court heard Defendant and his counsel and denied the requested continuance, ordering Defendant to proceed to trial. The court concluded that Defendant was using his request as a delaying tactic. Defendant then decided to accept the State's plea bargain, and he entered the no contest pleas to the two offenses

of which he was convicted.

{¶ 6} "The matter of continuance is traditionally within the discretion of the trial judge, and it is not every denial of a request for more time that violates due process even if the party fails to offer evidence or is compelled to defend without counsel.

Contrariwise, a myopic insistence upon expeditiousness in the face of a justifiable request for delay can render the right to defend with counsel an empty formality. There are no mechanical tests for deciding when a denial of a continuance is so arbitrary as to violate due process. The answer must be found in the circumstances present in every case, particularly in the reasons presented to the trial judge at the time the request is denied."

*Ungar v. Sarafite* (1964), 376 U.S. 575, 589, 84 S.Ct. 841, 11 L.Ed.2d 921. (internal citations omitted.)

{¶ 7} "The grant or denial of a continuance is a matter that is entrusted to the broad, sound discretion of the trial judge.

When a continuance is denied as a consequence of defense counsel's tactical design, a trial court is under no duty to adapt its schedule to accommodate this strategy." *State v. Unger* (1981), 67 Ohio St.2d 65, syllabus.

{¶ 8} Defendant's counsel contended that she needed additional time to obtain a videotape of Defendant's arrest in the possession of the sheriff's department. The State represented that no

videotape recording had been made. The court discounted defense counsel's contention as a basis for the continuance requested.

{¶ 9} Defendant's counsel also contended that she needed additional time to review a computer database showing when Defendant's citations were served. The court reviewed its file containing the original documents concerned, concluding that those original sources demonstrate substantial compliance with the service requirements of the Traffic Rules.

{¶ 10} Defendant's counsel further contended that she needed additional time to subpoena a prospective witness, Dean Duncan.

However, counsel did not explain how Duncan's testimony would aid Defendant or proffer what she expected the witness's testimony would be.

{¶ 11} Defendant supported his counsel's request, complaining that "we haven't had the time to have a relationship as attorney and client." (T. 11). Defendant did not explain what more he would wish to have. The court pointed out that counsel had been appointed the month before, and that approximately twenty days had passed since then. The court then stated:

{¶ 12} "Well, it's up to you. You tell me. The hearing is going forward this afternoon, Mr. Harmon, and it's just about to begin and if you want to have representation, you've got it and if you don't want to have it, you don't have to have it. That's

up to you." (T. 12).

{¶ 13} Following that, Defendant's attorney inquired whether the State's plea bargain offer was yet available. After learning that it was, Defendant entered his no contest pleas and was convicted.

{¶ 14} "In evaluating a motion for a continuance, a court should note, *inter alia*: the length of the delay requested; whether other continuances have been requested and received; the inconvenience to litigants, witnesses, opposing counsel and the court; whether the requested delay is for legitimate reasons or whether it is dilatory, purposeful, or contrived; whether the defendant contributed to the circumstance which gives rise to the request for a continuance; and other relevant factors, depending on the unique facts of each case." *State v. Unger*, p. 67-68. (internal citations omitted.)

{¶ 15} An OMVI charge was filed against Defendant in 2008. He failed to appear for the 2008 charges. Additional DUS charges were filed following his arrest in 2009 on an outstanding warrant.

{¶ 16} Defendant had been granted one prior continuance when his prior counsel was permitted to withdraw. The request that his counsel made was not made until the day of trial. (Dkt. 27).

It is reasonable to find, absent any indication to the contrary, that the State was then ready to proceed with its proof.

{¶ 17} The justifications for the continuance that Defendant's counsel offered could reasonably be viewed as contrived to bootstrap the request for a continuance. They offered virtually no prospect of any benefit to Defendant. His own contention that he and his counsel needed more time to develop an attorney-client "relationship" demonstrates no basis to find a lack of the necessary trust and confidence that relationship involves. It could be viewed as an effort to exploit to his own benefit the delays resulting from Defendant's misconduct in failing to appear.

{¶ 18} Defendant no doubt felt some pressure resulting from the denial of the continuance he requested that induced him to enter no contest pleas. However, nothing in the law guarantees freedom from such pressures, which are inherent in the adversarial criminal justice process. To paraphrase Mr. Dooley's remark about politics, it ain't beanbag. In any event, Defendant cannot complain of a denial of due process resulting from an abuse of discretion on the part of the trial court in denying the continuance Defendant requested, because no abuse of discretion occurred.

{¶ 19} Defendant further argues that his no contest pleas were not knowing, intelligent, and voluntary because the trial court failed to comply with Crim.R. 11(C) (2) before accepting his pleas.

That rule applies to felony offenses. Defendant was charged with and entered pleas of no contest to two misdemeanor offenses, R.C.

4511.19(A)(2) and 4510.11. Crim.R. 11(C)(2) had no application to the court's acceptance of Defendant's pleas.

{¶ 20} The assignment of error is overruled. The judgment of the trial court will be affirmed.

Donovan, P.J., And BROGAN, J., concur.

Copies mailed to:

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Hon. Eugene S. Nevius