

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

City of Toledo

Court of Appeals No. L-10-1009

Appellee

Trial Court No. CRB-09-10098

v.

Terry O'Conner

DECISION AND JUDGMENT

Appellant

Decided: December 10, 2010

* * * * *

David Toska, Chief Prosecutor, and Michelle S. Turvey-Albert,
Assistant City Prosecutor, for appellee.

Neil S. McElroy, for appellant.

* * * * *

OSOWIK, P.J.

{¶ 1} This is an appeal from the Toledo Municipal Court, which found appellant, Terry O'Conner, guilty of one count of assault, in violation of T.M.C. 537.03(A), a misdemeanor of the first degree, and one count of menacing, in violation of T.M.C.

537.06, a misdemeanor of the fourth degree. For the reasons below, this court affirms the judgment of the trial court.

{¶ 2} Appellant sets forth the following two assignments of error:

{¶ 3} "A. Mr. O'Conner's rights under the 6th Amendment to the United States Constitution and under Article 1 § 10 of the Ohio Constitution were violated when the court denied a request for continuance of the trial date so he could secure witnesses on his behalf.

{¶ 4} "B. Mr. O'Conner was denied the right to counsel of his own choosing guaranteed by the 6th Amendment to the United States Constitution."

{¶ 5} The following undisputed facts are relevant to the issues raised on appeal. On June 25, 2009, a complaint was filed charging appellant with assault and menacing. On June 29, 2009, appellant requested and received a public defender to represent him at trial. On July 6, 2009, appellant entered not guilty pleas on both charges. The first trial date of October 30, 2009, was continued until December 16, 2009, at appellant's request.

{¶ 6} On the second trial date, a witness subpoenaed by appellant left the courthouse upon learning of an outstanding warrant out for his arrest. Upon the departure of the witness, appellant requested another trial continuance. It was denied. Appellant then asked for a continuance to retain private counsel. It was denied. The matter then proceeded to trial. Appellant was found guilty on both counts. An appeal was filed.

{¶ 7} Appellant's assignments of error are substantively related and will be addressed simultaneously. In support of his arguments, appellant claims that the trial

court abused its discretion in violating his Sixth Amendment rights in denying a second continuance of the trial based upon the witness arrest warrant issue and appellant's decision just prior to trial to seek private counsel in lieu of appointed counsel.

{¶ 8} It is well-settled in Ohio that the grant or denial of a continuance lies within the sound discretion of the trial court. *State v. Unger* (1981), 67 Ohio St.2d 65, 67. Because of this, our review of the lower court's decision is conducted pursuant to the abuse of discretion standard of review. The term abuse of discretion connotes an unreasonable, arbitrary or unconscionable attitude by the trial court. *Blakemore v. Blakemore* (1983), 5 Ohio St.3d 217, 219. Evidence must show that the trial court acted with extreme prejudice. Because of the trial court's broad discretion on such matters, evidentiary rulings will not be disturbed absent an abuse of discretion.

{¶ 9} In evaluating a motion for continuance, the trial court should note, inter alia: length of the delay requested; whether other continuances have been requested or received; inconvenience to the litigants, witnesses, opposing counsel and the court; whether the requested delay is for legitimate reasons or for other factors relevant to the case. *State v. Unger* (1981), 67 Ohio St.2d 65, 67. We have evaluated the evidence submitted by appellant in support of overruling the trial court and find no persuasive evidence showing that the trial court's attitude was unreasonable, arbitrary, or unconscionable.

{¶ 10} Regardless of whether a witness left the courthouse due to an outstanding arrest warrant, appellant failed to articulate any details regarding previous attempts to

secure the absent witnesses. The record shows that given the previous trial continuance at appellant's request, appellant was furnished adequate time and consideration to be prepared to proceed by the second trial date.

{¶ 11} With regards to the trial continuance request to retain private counsel, appellant had ample opportunity to retain counsel prior to the second trial date. Again, appellant himself asked to have appointed counsel. Given these facts and circumstances, the record lacks any indicia of an abuse of discretion in denying an additional trial continuance. Both of appellant's assignments of error are not well-taken.

{¶ 12} On consideration whereof, 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.

Peter M. Handwork, J.

JUDGE

Thomas J. Osowik, P.J.

JUDGE

Keila D. Cosme, 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:
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