



Fourth Court of Appeals
San Antonio, Texas

MEMORANDUM OPINION

No. 04-16-00763-CR

Oscar Cesar **ARTEAGA**,
Appellant

v.

The **STATE** of Texas,
Appellee

From the 175th Judicial District Court, Bexar County, Texas
Trial Court No. 2016CR4777B
Honorable Mary D. Roman, Judge Presiding

Opinion by: Marialyn Barnard, Justice

Sitting: Karen Angelini, Justice
Marialyn Barnard, Justice
Luz Elena D. Chapa, Justice

Delivered and Filed: June 7, 2017

AFFIRMED

Pursuant to a plea agreement, appellant Oscar Cesar Arteaga pled guilty to the offense of aggravated robbery. In a single point of error, Arteaga contends the trial court abused its discretion in denying his motion for continuance. We affirm the trial court's judgment.

BACKGROUND

Arteaga was charged with one count of aggravated robbery and one count of possession of a controlled substance, more than four grams but less than 200 grams. On the day of trial, the State announced it intended to call the co-defendant as a cooperating witness to testify on its behalf.

Arteaga then filed a motion for continuance, arguing the State was in possession of material evidence it had not disclosed to the defense and the State did not provide defense counsel with notice of any agreement between the State and the co-defendant. The trial court denied Arteaga's motion. Arteaga subsequently pled guilty to one count of aggravated robbery and was sentenced to thirteen years' imprisonment. He reserved his right to appeal the trial court's ruling on his motion for continuance and timely filed this appeal.

ANALYSIS

In his sole point of error, Arteaga contends the trial court abused its discretion by denying his motion for continuance. According to Arteaga, he needed more time to prepare adequately for trial because the State withheld material evidence and did not disclose its intent to call the co-defendant as a cooperating witness on behalf of the State.

Standard of Review and Applicable Law

Article 29.13 of the Texas Code of Criminal Procedure provides that the trial court may grant a continuance "when it is made to appear to the satisfaction of the court that by some unexpected occurrence since the trial began, which no reasonable diligence could have anticipated, the applicant is so taken by surprise that a fair trial cannot be had." TEX. CODE CRIM. PROC. ANN. art. 29.13 (West 2014). We review a trial court's ruling on a motion for continuance under an abuse of discretion standard. *Gonzales v. State*, 304 S.W.3d 838, 842 (Tex. Crim. App. 2010); *Renteria v. State*, 206 S.W.3d 689, 702 (Tex. Crim. App. 2006); *Nwosoucha v. State*, 325 S.W.3d 816, 825 (Tex. App.—Houston [14th Dist.] 2010, pet. ref'd). To show the trial court abused its discretion in denying the motion, the movant must show (1) the trial court erred in denying the motion, and (2) he was prejudiced by the denial of the motion. *Gonzales*, 304 S.W.3d at 842–43; *Nwosoucha*, 325 S.W.3d at 825–26. If the trial court's ruling falls within the zone of reasonable

disagreement, we will not reverse the trial court's ruling on the motion. *Salazar v. State*, 38 S.W.3d 141, 153–54 (Tex. Crim. App. 2001).

An appellate court will conclude the trial court's denial of a motion for continuance was an abuse of discretion “only if the record shows with considerable specificity how the defendant was harmed by the absence of more preparation time than he actually had.” *Gonzales*, 304 S.W.3d at 842 (quoting George E. Dix & Robert O. Dawson, 42 *Texas Practice: Criminal Practice and Procedure* § 28.56 (2d ed. 2001)); *Nwosoucha*, 325 S.W.3d at 825. A defendant can ordinarily make such a showing only at a hearing on a motion for new trial because only then will he be able to produce evidence regarding what additional information, evidence, or witnesses the defense would have had available if the trial court had granted the motion. *Gonzales*, 304 S.W.3d at 842–43; *Nwosoucha*, 325 S.W.3d at 825–26.

Application

After reviewing the record, we conclude that even if the trial court erroneously denied the motion for continuance, such error is not reversible because Arteaga failed to establish how he was prejudiced by the denial of the motion. *See Gonzales*, 304 S.W.3d at 842; *Nwosoucha*, 325 S.W.3d at 825. Arteaga complains the State withheld material evidence, which precluded him from hiring experts to assist him in providing an adequate defense. Yet, nowhere in his motion or brief, does Arteaga explain with considerable specificity how the lack of additional time to prepare resulted in harm. *See Gonzales*, 304 S.W.3d at 842–43; *Nwosoucha*, 325 S.W.3d at 825–26. At no point does he explain what material evidence was withheld by the State or why expert assistance would be helpful. Moreover, at no point does he suggest the trial court's denial of his motion for continuance influenced his decision to plead guilty.

Arteaga also complains the State's announcement that it intended to call the co-defendant as a cooperating witness precluded him from investigating any testimony the co-defendant may have provided. Yet, the record reflects the State disclosed to Arteaga that it had interviewed the co-defendant prior to trial; thus, Arteaga was aware the co-defendant was a potential witness for the State and he had the opportunity to interview him prior to trial. We also note Arteaga did not file a motion for new trial, thus there was no hearing at which such information could have been provided. *See Gonzales*, 304 S.W.3d at 842–43; *Nwosoucha*, 325 S.W.3d at 825–26. Accordingly, we conclude that even if the trial court erred in denying the motion, such error did not prejudice the defendant. We therefore conclude the trial court did not abuse its discretion in denying the motion for continuance.

CONCLUSION

Based on the foregoing, we overrule Arteaga's sole complaint and affirm the judgment of the trial court.

Marialyn Barnard, Justice

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