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UNDER ARIZONA RULE OF THE SUPREME COURT 111(c), THIS DECISION IS NOT PRECEDENTIAL
AND MAY BE CITED ONLY AS AUTHORIZED BY RULE.

IN THE
ARIZONA COURT OF APPEALS
DIVISION ONE

STATE OF ARIZONA, *Appellee*,

v.

BENJAMIN BLANCHARD, *Appellant*.

No. 1 CA-CR 15-0307
FILED 5-26-2016

Appeal from the Superior Court in Navajo County
No. S0900CR201200016
The Honorable Donna J. Grimsley, Judge

AFFIRMED

COUNSEL

Arizona Attorney General's Office, Phoenix
By Eliza C. Ybarra
Counsel for Appellee

Criss Candelaria Law Office, PC, Pinetop
By Criss E. Candelaria
Counsel for Appellant

STATE v. BLANCHARD
Decision of the Court

MEMORANDUM DECISION

Presiding Judge Margaret H. Downie delivered the decision of the Court, in which Judge Kent E. Cattani and Judge Donn Kessler joined.

D O W N I E, Judge:

¶1 Benjamin Blanchard appeals his convictions and sentences for three drug-related offenses. For the reasons that follow, we affirm.

FACTS AND PROCEDURAL HISTORY

¶2 In December 2011, Blanchard turned his vehicle into an apartment complex and was stopped by police officers for traffic infractions. The officers became suspicious when they asked Blanchard to exit the vehicle, and he first removed his jacket, despite the fact it was late at night and approximately 20 degrees outside. Blanchard was “acting unusually nervous.” During the stop, Blanchard’s wife emerged from the apartment complex, and Blanchard called to her to “[g]et my jacket.” Officers conducted a search and found methamphetamine and two glass pipes in the jacket Blanchard left in the vehicle, as well as marijuana on Blanchard’s person.

¶3 Blanchard was charged with possession of dangerous drugs, methamphetamine; possession of marijuana; and possession of drug paraphernalia. When Blanchard failed to appear for his May 2014 jury trial, the trial proceeded in his absence after the court determined he had been present in court when the trial date was set and had been warned of the consequences of failing to appear.¹

¶4 Near the end of jury selection, Blanchard telephoned the court and stated he was on his way. He called again after the lunch break, once again stating he would be appearing, but asking to appear telephonically in the meantime because he did not realize “the trial would take place right now,” and he had gone to pick up his witnesses.

¹ Blanchard had previously failed to appear for numerous hearings.

STATE v. BLANCHARD
Decision of the Court

Blanchard also stated his mother-in-law was “really sick” and unable to appear.² He requested a continuance.

¶5 The prosecutor objected to Blanchard appearing telephonically and stated that she had seen Blanchard in the courthouse “a little while ago.” The court allowed Blanchard to listen to the proceedings by telephone but denied his request for a continuance, stating:

This case is since 2011. . . . I’m getting the motion to continue at five after 1:00, when we’ve had already half of a day of a jury trial. If it had come at 8:00 in the morning, maybe I could have considered it, but we’ve already spent a lot of time picking the jury, and your lawyer was here for that, and so I’m denying the motion to continue.

...

[You were told in] March, that this was the day and time set for the jury trial at 8:30, so the witnesses should have been prepared, and you should have got those before the last minute, all right. So now we’ll go ahead.

¶6 The trial ended later that day without Blanchard ever appearing in person. The jury returned guilty verdicts, and the court sentenced Blanchard after he initially failed to appear for sentencing and was arrested on a warrant. Blanchard timely appealed. We have jurisdiction pursuant to Arizona Revised Statutes section 12-120.21(A)(1).

DISCUSSION

¶7 Blanchard challenges only the denial of his continuance request. He contends “there was an extraordinary circumstance presented to the court that at least justified a delay of such duration to investigate one witness’s health.” We disagree.

¶8 “A motion for continuance is not granted as a matter of right. It is solely within the sound discretion of the trial judge whose decision will not be disturbed unless there is a clear abuse of discretion, and unless denial of the motion is shown to be prejudicial.” *State v. Ortiz*,

² Blanchard’s mother-in-law was the registered owner of the vehicle, and the defense had earlier advised the court that it planned to have her testify about possible other owners of the jacket.

STATE v. BLANCHARD
Decision of the Court

117 Ariz. 264, 266 (App. 1977). Whether a court has abused its discretion depends on the particular facts and circumstances of the case. *See State v. Lamar*, 205 Ariz. 431, 437, ¶ 28 (2003). A continuance in the middle of trial should be granted “only under the most exigent circumstances.” *State v. Eisenlord*, 137 Ariz. 385, 391 (App. 1983).

¶9 Blanchard’s oral motion to continue after his jury trial had commenced did not establish exigent circumstances requiring a continuance. He offered conflicting information about his mother-in-law – initially stating she was hospitalized with “IVs and stuff,” but later stating he was heading to pick up his wife and, hopefully, his mother-in-law too, before returning to court. Moreover, a motion seeking a continuance must be “more than just a mere allegation of a witness’s unavailability.” *State v. Vasko*, 193 Ariz. 142, 145, ¶ 14 (App. 1998).

¶10 Blanchard’s history of failing to appear and his refusal to appear for trial – with or without his witnesses – were also factors the trial court could consider in exercising its discretion. After being advised two months before trial of the trial date and of the fact that the trial would go forward in his absence if he failed to appear, Blanchard expressly stated that he understood what would happen and that he would be present for trial. Yet on the day of his trial, Blanchard professed unawareness that his trial would occur that day.

¶11 Based on the record before it, the trial court did not abuse its discretion in denying Blanchard’s continuance request.

CONCLUSION

¶12 We affirm Blanchard’s convictions and sentences.



Ruth A. Willingham · Clerk of the Court
FILED : ama