ARKANSAS COURT OF APPEALS

DIVISION III
No. CA12-711

	Opinion Delivered May 1, 2013
H.C. APPELLANT	APPEAL FROM THE FAULKNER COUNTY CIRCUIT COURT
V.	[NO. JV-2011-350]
STATE OF ARKANSAS APPELLEE	HONORABLE RHONDA K. WOOD, JUDGE
	AFFIRMED

BRANDON J. HARRISON, Judge

The issue before us is whether the circuit court abused its discretion when it denied H.C.'s request to continue a pre-adjudication, mental-capacity hearing in his delinquency case.

The State filed a petition for delinquency in May 2011 that alleged twelve-year-old H.C. had raped his five-year-old sister, Ka. C. The State recommended that H.C. and his family get physical, psychiatric, or psychological evaluations and treatment. In July 2011, responding to a motion by H.C.'s counsel, the circuit court ordered the Director of the Division of Mental Health Services to conduct a psychiatric evaluation on H.C. The court also suspended the proceedings in juvenile court. Ark. Code Ann. § 5-2-305 (Supp. 2011).

State forensic psychologist Dr. Paul Deyoub filed an evaluation report with the circuit clerk after he met with and tested H.C. in September 2011. The report concluded that, though H.C. had Asperger's Disorder, he had the mental capacity to form the culpable mental state for rape, the capacity to appreciate the criminality of his conduct, and the capacity to conform his conduct to the law.

In late October 2011, H.C. filed two motions asking the circuit court to reset the final-adjudication hearing that was scheduled for 2 November 2011. Though H.C. had stipulated to his fitness to proceed, he asked the court to postpone the final-adjudication hearing so it could first hold a hearing on his mental capacity. *See* Ark. Code Ann. § 9-27-502(10)(A) (Supp. 2011). The court decided to hold a mental-capacity hearing on November 2 and reset the final-adjudication hearing to March 2012.

The parties appeared at the November 2 mental-capacity hearing. H.C. renewed his request to continue the hearing, stating that his expert witnesses, three doctors, were unavailable for the hearing. The court denied the renewed motion and addressed H.C.'s mental capacity.

Dr. Paul Deyoub was the only witness who testified, and his testimony mirrored his earlier report. H.C.'s counsel cross-examined Dr. Deyoub about his opinions on H.C.'s mental capacity. After cross-examination ended, the circuit court ruled that H.C. was fit to proceed and able to assist in his defense. The court credited Dr. Deyoub's opinion that H.C. could form the necessary mental state for the charge of rape and that, as the court concluded, H.C. could "purposefully and knowingly behave and make choices." The court also found that H.C. could conform his conduct to the law and that he could

appreciate the criminality of the rape allegation. The court further found that H.C.'s disorder was not severe enough to impair his ability to understand the consequences of his actions. And it credited Dr. Deyoub's opinion that H.C. understood that his conduct toward his sister was wrong, that he knew the nature of the offense, and that he knew he could get in trouble.

H.C.'s counsel then said that he needed "some patience with setting a date" for the final-adjudication hearing because he was going to call three doctors as expert witnesses. The court explained to counsel why it was "so harsh on continuances when we've set the dates out." With that, the November 2011 hearing concluded.

The court held a final-adjudication hearing in May 2012. Three doctors testified as expert witnesses on H.C.'s behalf. A letter from medical-care providers supporting H.C. was also given to the court. During the final-adjudication hearing, H.C.'s three medical experts opined that H.C. had Asperger's Disorder, which is a mental defect or disease, and that he lacked the necessary capacity to commit rape. The State made its case primarily through the testimony of H.C.'s siblings, Ka. C. and Ke. C. Dr. Deyoub did not testify at the adjudication hearing. At the hearing's conclusion, the circuit court adjudicated H.C. delinquent, placed him on probation, and returned him to his parents' home.

We come to this appeal, where H.C. specifically argues that the circuit court erred when it denied his request to continue the November 2 mental-capacity hearing. H.C. argued before the circuit court, as he does here, that the expert witnesses he wanted to call on his behalf were unavailable for the mental-capacity hearing on that date, so the court should have continued the case.

To obtain a reversal, H.C. must show that the circuit court abused its discretion. H.C. must also show a prejudice that amounts to a denial of justice. *See Brown v. State*, 374 Ark. 341, 347, 288 S.W.3d 226, 231 (2008). At the circuit-court level, H.C. also had to show good cause for the court to grant his motion to continue the case. *See Oliver v. State*, 312 Ark. 466, 471, 851 S.W.2d 415, 417 (1993). Arkansas Rule of Criminal Procedure 27.3 supplies the good-cause standard

> The [circuit] court shall grant a continuance only upon a showing of good cause and only for so long as is necessary, taking into account not only the request or consent of the prosecuting attorney or defense counsel, but also the public interest in prompt disposition of the case.

Ark. R. Crim. P. Rule 27.3 (2012). *See also* Ark. Code Ann. § 9-27-325(f) (Supp. 2011) (rules of criminal procedure apply to juvenile-delinquency proceedings). According to our supreme court, several additional factors should be considered when deciding whether good cause for a continuance exists, including

- the diligence of the movant
- the probable effect of the testimony at trial
- the likelihood of procuring the attendance of the witness in the event of a postponement, and
- the filing of an affidavit, stating not only what facts the witness would prove but also that the appellant believes them to be true

Brown, 374 Ark. at 347, 288 S.W.3d at 232. But we do not have to weigh each of these factors equally. *Oliver*, 312 Ark. at 471, 851 S.W.2d at 417.

H.C.'s counsel moved for a continuance days before the November 2 delinquency-adjudication hearing though he knew about it for months. The State's mental evaluation, which H.C. requested, was filed in circuit court in accordance with law more than a

month before the November hearing. Ark. Code Ann. § 5-2-305(f)(1)(Supp. 2011). Finally, the November setting, which morphed from a final-adjudication hearing to a mental-capacity hearing, met the minimum statutory requirements for a mental-capacity hearing under the juvenile code. Ark. Code Ann. § 9-27-502(10)(A).

We acknowledge H.C.'s argument that he was unfairly prejudiced by his three expert witnesses' absence from the November mental-capacity hearing. But as the State correctly points out, a juvenile does not have a statutory right to have a qualified physician, or some other expert, testify on his behalf at a mental-capacity hearing. H.C. did not provide any explanation to the circuit court on why it should continue the case except that the three doctors he wanted to call were out-of-state and unavailable on November 2. More importantly, H.C.'s counsel did not tell the court what his experts were expected to say, how their absence would prejudice the mental-capacity hearing, or that postponing the November hearing would ensure their availability at a future date. Finally, H.C.'s counsel conceded to the circuit court during the November 2 hearing that he could raise the same mental-capacity issues as an affirmative defense during the subsequent final-adjudication proceedings. We are not persuaded that the court abused its discretion when it declined to reschedule the mental-capacity hearing on short notice.

H.C. also makes other fairness arguments. First, he says that the court's comments during the adjudication hearing that "prematurely stated that H.C. had committed the crime of rape before H.C. had even finished presenting his case regarding capacity," prejudiced H.C. He argues that the court's prejudice came in the wake of its denial of his motion to continue the November hearing because, at the final-adjudication hearing, the

court was "hearing the issue of capacity at the same time as the facts of the case." H.C. also argues that the court should have continued the mental-capacity hearing because he had never asked for one previously and the State did not object. And he contends that the court treated the State's motion to continue, which came two days before the final-adjudication hearing in March, much differently than it did his motions. Specifically, H.C. argues that the circuit court's reason for denying his motions—that the court "want[s] juveniles to experience immediate consequences"—conflicted with the court's subsequent decision to reset, at the State's request, the delinquency-adjudication date two days before it was scheduled to occur.

We disagree. The court did not commit a reversible error when it denied H.C.'s motion but granted the State's subsequent motion. *See Martin v. State*, 316 Ark. 715, 722, 875 S.W.2d 81, 85 (1994) (trial courts are not required to grant continuances *quid pro quo*). The State gave the court (in an email) detailed reasons why the case needed to be continued. The State told the court that its primary witness, H.C.'s sister, was having difficulty communicating with the lead prosecutor and more time would allow her to become more comfortable with the situation. For this reason, the circuit court continued the case from March to May.

"[A] denial of justice" is what H.C. has to establish before we may reverse the circuit court's decision to deny his request to continue the November 2 mental-capacity hearing. *Brown*, 374 Ark. at 347, 288 S.W.3d at 232. We hold that the court did not prejudice H.C.'s case to this degree, if at all, especially given that H.C. was allowed to press the same defensive issues through his experts during the May final-adjudication

hearing that he could not make at the November capacity hearing. H.C. was able to meaningfully challenge the State's evaluation of him, and his own expert witnesses were allowed to tell the court why the Asperger's diagnosis adversely affected his mental capacity. H.C. was not denied a fair and full defense on the material issues this case presented.

Affirmed.

GRUBER and BROWN, JJ., agree.

David Hogue, for appellant.

Dustin McDaniel, Att'y Gen., by: *Leaann J. Adams*, Ass't Att'y Gen., for appellee.