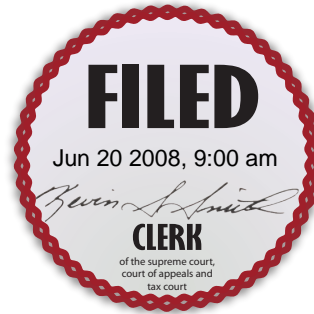


Pursuant to Ind.Appellate Rule 65(D), this Memorandum Decision shall not be regarded as precedent or cited before any court except for the purpose of establishing the defense of res judicata, collateral estoppel, or the law of the case.



ATTORNEY FOR APPELLANT:

KAREN JENSEN
Indianapolis, Indiana

ATTORNEYS FOR APPELLEE:

STEPHEN R. CARTER
Attorney General of Indiana
Indianapolis, Indiana

ANN L. GOODWIN
Special Deputy Attorney General
Indianapolis, Indiana

**IN THE
COURT OF APPEALS OF INDIANA**

D.J.,)
)
Appellant-Defendant,)
)
vs.) No. 49A04-0712-JV-724
)
STATE OF INDIANA,)
)
Appellee-Plaintiff.)

APPEAL FROM THE MARION SUPERIOR COURT
The Honorable Scott Stowers, Judge
Cause No. 49D09-0707-JD-002106

JUNE 20, 2008

MEMORANDUM DECISION - NOT FOR PUBLICATION

GARRARD, Senior Judge

D.J. appeals from a true finding for a delinquent act that would have constituted a Class B misdemeanor of criminal mischief if committed by an adult.

He asserts that the court erred when it excluded his witness, Dewanda Gillespie.

Our review of the record discloses that the court did not exclude any witnesses. What the court did do was deny a continuance or bifurcation of the hearing, requested by D.J., when the witness Gillespie was not present to be called as a witness.

Ind. Code § 35-36-7-1 provides the statutory basis for granting continuances. It is well settled that when the statutory requirements are not met, and here they were not, the decision to grant or deny a continuance is within the trial court's discretion. *See G.N. v. State*, 833 N.E.2d 1071, 1074 (Ind. Ct. App. 2005). The decision will only be reversed for an abuse of discretion and resulting prejudice. *Id.* An abuse of discretion occurs only where the decision is clearly against the logic and effect of the facts and circumstances. *Id.*

The petition against D.J. was filed July 10, 2007, concerning an incident that had occurred on May 4, 2007. The denial hearing was conducted on October 29, 2007, commencing at 9:30 a.m.

At the commencement of the hearing, counsel for D.J. was asked if she was ready to proceed, and she replied that she was. At 10:30 a.m. the court ordered a five-minute recess and asked defense counsel if that was enough for her business. She responded that she did not have any business. At approximately 11:48 a.m. defense counsel requested a five-minute recess because her witness, Gillespie, was not present. Counsel then reported the witness was "confused about the date" and was "about a forty minute drive from

here.” Tr. at 108. She then requested a short continuance or a bifurcation of the proceeding to permit the witness to testify. The court denied these requests, noting that the matter had been pending since July and everyone else seemed aware of the date.

Counsel then made an offer of proof. The witness would essentially testify to the version of events that D.J. had testified to.

It was then determined that there were no more witnesses. After argument the court noted that two versions of what had occurred had been testified to. It concluded that the state had met its burden and entered a true finding concerning the lesser-included offense of the Class B misdemeanor.

Our review of the record leads us to conclude that the court’s denial of the request for continuance or bifurcation was not clearly against the logic and effect of the facts and circumstances before it. It appears that defense counsel did not utilize opportunities to determine the whereabouts of the witness either before the actual commencement of the hearing or during a recess an hour later. Moreover, it appears the witness would simply have reiterated D.J.’s version of the events in question. It follows that no abuse of discretion has been shown.

Affirmed.

NAJAM, J., and MATHIAS, J., concur.