

MEMORANDUM DECISION

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IN THE COURT OF APPEALS OF INDIANA

Mark Vincent Chavis, II,
Appellant-Defendant,

v.

State of Indiana,
Appellee-Plaintiff

February 27, 2024

Court of Appeals Case No. 23A-
CR-1062

Appeal from the Elkhart Superior
Court

The Honorable Kristine Osterday,
Judge

Trial Court Cause No.
20D01-2205-F6-596

Memorandum Decision by Judge May
Judges Bailey and Felix concur.

May, Judge.

[1] Mark V. Chavis appeals his convictions of Level 6 felony attempted residential entry¹ and Level 6 felony intimidation.² Chavis argues the trial court abused its discretion by admitting photographs that the State did not disclose until one week before trial. We affirm.

Facts and Procedural History

[2] At 3:00 a.m. on May 17, 2022, Maria Hurley got out of bed to investigate why her dogs were barking and she looked out her kitchen window. Under the illumination of her motion-sensor lights, Hurley saw a man, later identified as Chavis, standing in her driveway. Hurley yelled at Chavis to leave and called the police. Chavis “kept making gun gestures” with his hand and told Hurley he was going to shoot her. (Tr. Vol. 2 at 32.) Hurley used her cell phone to take four pictures of Chavis on her property. Chavis kicked Hurley’s garage door and repeatedly yelled “open the fucking door.” (*Id.* at 40.) When the police arrived at Hurley’s home, Chavis was still in the driveway. Officer Jeff Weaver recognized Chavis from previous unrelated interactions. Officer Weaver noticed the door to the garage was ajar, the wood around the lock was splintered, and a piece of drywall that previously had been propped against the interior garage wall had fallen against Hurley’s car parked inside the garage.

¹ Ind. Code § 35-43-2-1.5.

² Ind. Code § 35-45-2-1(a)(1).

[3] On May 17, 2022, the State charged Chavis with Level 6 felony attempted residential entry and Level 6 felony intimidation. Chavis waived his right to a jury trial. On March 17, 2023, seven days before the bench trial, Hurley gave prosecutors the four photographs of Chavis on her property that she had taken with her cell phone on May 17, 2022, and the State delivered copies of the four photographs to defense counsel the same day. On March 24, 2023, defense counsel objected to the State’s request to admit the four photographs from Hurley into evidence during the bench trial. Defense counsel acknowledged that the State provided them to the defense the same day the State received them, and thus did not act inappropriately, but still argued that the photographs were not timely provided. The trial court overruled the objection and admitted the four photographs after finding the photographs were disclosed in a timely manner and Chavis was not prejudiced. After all evidence was presented, the trial court found Chavis guilty of both charges. On April 17, 2023, the trial court sentenced Chavis to two-and-a-half years.

Discussion and Decision

[4] Chavis argues the trial court abused its discretion by admitting photographs that the State did not disclose until one week before trial. “The trial court has broad discretion in dealing with discovery violations and may be reversed only for an abuse of that discretion involving clear error and resulting prejudice.” *Berry v. State*, 715 N.E.2d 864, 866 (Ind. 1999). The proper remedy for a discovery violation is generally continuance. *Id.* “Failure to request a continuance, where

a continuance may be an appropriate remedy, constitutes a waiver of any alleged error pertaining to noncompliance with the trial court's discovery order." *Fleming v. State*, 833 N.E.2d 84, 91 (Ind. Ct. App. 2005) (citing *Warren v. State*, 725 N.E.2d 828, 832 (Ind. 2000)).

[5] At trial, Chavis objected to the admission of the four photographs that had been provided to the defense only seven days before the trial began. Chavis failed to cite a discovery rule that the State allegedly violated. Nor did Chavis request a continuance, despite explicitly being told by the trial judge that a continuance was the appropriate remedy, not exclusion of the evidence. (See Tr. Vol. 2 at 36.) As such, Chavis waived his argument because he did not provide a proper objection or request a continuance at trial. See, e.g., *Gaby v. State*, 949 N.E.2d 870, 874-75 (Ind. Ct. App. 2011) (failure to request continuance, when required to preserve alleged charging-amendment error for appeal, resulted in waiver on appeal).

[6] Waiver notwithstanding, Chavis cannot prove the trial court abused its discretion by admitting the four photographs because the record contained substantial other evidence of Chavis being at Hurley's house on the morning in question. Images of Chavis were captured on Officer Weaver's body cam and that footage was admitted at trial, Officer Weaver identified Chavis on Hurley's property and at trial, and Hurley witnessed the incident and was able to identify Chavis at trial. "[R]eversible error cannot be predicated upon the erroneous admission of evidence that is merely cumulative of other evidence that has already been properly admitted." *Sibbing v. Cave*, 922 N.E.2d 594, 598 (Ind.

2010). Accordingly, the trial court did not abuse its discretion when it admitted the four photographs at issue. *See Armstrong v. State*, 499 N.E.2d 189, 191-92 (Ind. 1986) (holding trial court did not abuse its discretion by admitting evidence when defendant failed to request a continuance and cannot demonstrate prejudice).

Conclusion

[7] The trial court did not abuse its discretion by admitting into evidence the four photographs of Chavis taken by Hurley. We accordingly affirm Chavis's convictions.

[8] Affirmed.

Bailey, J., and Felix, J., concur.