

IN THE COURT OF APPEALS OF IOWA

No. 9-188 / 08-1171
Filed May 6, 2009

STATE OF IOWA,
Plaintiff-Appellee,

vs.

CURTIS LLOYD,
Defendant-Appellant.

Appeal from the Iowa District Court for Black Hawk County, Jon Fister,
Judge.

Curtis Lloyd appeals his conviction, following jury trial, for conspiracy to
possess a controlled substance (crack cocaine) with intent to deliver.

AFFIRMED.

Mark C. Smith, State Appellate Defender, and Robert P. Ranschau,
Assistant State Appellate Defender, for appellant.

Thomas J. Miller, Attorney General, Cristen Douglass, Assistant Attorney
General, Thomas J. Ferguson, County Attorney, and Brad Walz, Assistant
County Attorney, for appellee.

Considered by Miller, P.J., and Potterfield and Doyle, JJ.

MILLER, J.

Curtis Lloyd appeals his conviction, following jury trial, for conspiracy to possess a controlled substance (crack cocaine) with intent to deliver. He contends the district court erred in overruling his motion for continuance of trial and in granting the State's motion to amend the minutes of evidence. We affirm.

I. BACKGROUND FACTS AND PROCEEDINGS.

From the testimony presented at trial a jury could find the following facts. In mid-January 2008 Tessa Steimel met and began dating Lloyd. By late January 2008 Steimel was involved with Lloyd in the purchasing, packaging, and selling of crack cocaine. Steimel testified at trial that on several occasions she went on trips out of state with Lloyd to purchase crack cocaine, and that she would always drive the car when they were selling the drugs and Lloyd would always make the sales. On March 12, 2008, Steimel and Lloyd were arrested while driving around making crack cocaine sales. They were arrested following a tip from Theodore Burt, a friend of Lloyd's who was also a confidential informant working with the Waterloo Police Department. Burt was with Lloyd and Steimel on March 12 and telephoned the police about the location of the car. The stop and arrest followed. The police found three cell phones on Lloyd, one of which was Steimel's, and \$425 in cash in his pocket. During the consent search of the vehicle police also found a small digital scale with white residue on it consistent with residue from crack cocaine.

Lloyd and Steimel were then placed in the back of a police vehicle where their conversation was recorded. During that conversation Lloyd told Steimel not

to say anything to the police. At the police station following their arrest, Steimel was interviewed by officers and eventually strip searched. She told the officers she had drugs hidden in her vaginal area and a plastic baggie with six individually wrapped rocks of cocaine was recovered from her vagina.

On March 24, 2008, the State filed a joint trial information charging Lloyd and Steimel with possession of a controlled substance with the intent to deliver and/or conspiracy to possess a controlled substance with the intent to deliver, to wit: cocaine base (crack cocaine), in violation of Iowa Code section 124.401(1)(c) (2007). At his arraignment on April 8, 2008, Lloyd pled not guilty and demanded speedy trial. Trial was set for Tuesday, June 3, 2008. In two additional pretrial conference orders the district court noted that Lloyd continued to insist on trial as scheduled and did not waive his speedy trial right.

On Friday, May 30, 2008, co-defendant Steimel and her attorney met with the State and accepted a plea offer that required her to testify truthfully against Lloyd at trial in exchange for a suspended sentence and probation following her guilty plea to the charge. On that same date both the prosecutor and Steimel's attorney called and informed Lloyd's attorney that Steimel would now be an additional witness for the State. On Monday, June 2, 2008, the State filed a motion to amend the minutes of evidence. The proposed amendment added Steimel as a witness and gave a summary of her expected testimony. The proposed amendment included evidence that had not been presented in the minutes prior to her addition as a witness, testimony about trips out of town Steimel had taken with Lloyd to purchase drugs, as well as other drug activity in

which she and Lloyd had engaged. On the same date the State also filed an amended trial information adding second offense and habitual offender sentencing enhancements against Lloyd.

On the morning of trial, prior to jury selection, Lloyd orally moved for a continuance of trial for one week to enable him to depose Steimel and investigate her allegations. He argued that based on Steimel's testimony, as set out in the amended minutes of evidence, his defense strategy had to be completely changed. Lloyd's counsel stated the defense strategy was "going to be sort of making the State prove it because their case was very thin against Mr. Lloyd," but with the addition of Steimel as a witness he now had to try to rebut the testimony of a co-conspirator which "completely changes our strategy."

The district court denied the continuance because due to previously scheduled county attorney and judicial conferences the next available trial date would be beyond Lloyd's speedy trial deadline and Lloyd still refused any waiver of a speedy trial. The court, however, allowed a brief continuance so that defense counsel could depose Steimel after jury selection. The court stated he would be allowed to finish the deposition before Steimel testified.

Lloyd's counsel deposed Steimel, largely that afternoon and then briefly finishing the next morning. On Wednesday, June 4, 2008, prior to further proceedings Lloyd orally resisted the State's motion to amend the minutes of evidence to add Steimel, raising the same arguments as in his motion for continuance, and asking that Steimel's testimony be excluded. The court

granted the State's motion to amend and denied Lloyd's request to exclude Steimel.

The jury found Lloyd guilty as charged and the court sentenced him to imprisonment. Lloyd appeals, contending the district court erred in overruling his motion for continuance of trial and in allowing the State to amend the minutes of evidence to add Steimel as a witness.¹

II. MERITS.

A. Motion to Amend the Minutes of Evidence.

The State is required to file minutes of evidence of each witness expected to testify at trial and a full and fair statement of the witness's expected testimony. Iowa R. Crim. P. 2.5(3). These minutes are filed with the trial information to "eliminate claims of foul play and provide an accused meaningful information from which a defense may be prepared." *State v. Wells*, 522 N.W.2d 304, 307 (Iowa Ct. App. 1994). The court may allow the State to amend the minutes before or during trial unless "substantial rights of the defendant are prejudiced by the amendment, or if a wholly new and different offense is charged." Iowa R. Crim. P. 2.4(8)(a), (e). The parties agree appellate review of a ruling allowing amendment of minutes of evidence is for correction of errors at law. See Iowa R. App. P. 6.4.

The State may file additional minutes of evidence and add witnesses up to ten days before the commencement of trial. Iowa R. Crim. P. 2.19(2). If the

¹ We believe that the question of a longer continuance and the question of amendment of the minutes to add Steimel are closely and inextricably related. However, Lloyd and the State have chosen to address them separately and independently, and we will therefore do the same.

prosecutor does not give notice to the defendant of all witnesses at least ten days prior to trial, the court may order the State to permit the discovery of such witnesses, grant a continuance, enter such other order as it deems just, or order the exclusion of the testimony if necessary to protect the defendant from undue prejudice. Iowa R. Crim. P. 2.19(3).

Prejudice does not arise simply because an amendment to the minutes is allowed. Prejudice generally looks to the existence of some legitimate surprise visited upon the defendant which undermines an aspect of the defense to the charge or renders defendant's evidence inapplicable. A claim of prejudice must find support in the record.

Wells, 522 N.W.2d at 307 (citations omitted).

Lloyd contends he was prejudiced by the court's grant of the State's motion to amend the minutes of evidence. More specifically, he contends the addition of Steimel as a witness necessitated a wholesale change in his trial strategy on the eve of trial because he now had to attempt to rebut the testimony of a co-conspirator and this "severely prejudiced" his case. Lloyd argues the district court should have found Steimel's testimony was unduly prejudicial and thus excluded her testimony pursuant to rule 2.19(3).

Initially, we note that Steimel accepted the plea offer requiring her to testify against Lloyd and gave her statement to the prosecutor on Friday, May, 30, 2008, two business days and a weekend before trial. Lloyd does not allege the State lacked due diligence in informing him that Steimel was going to be a witness. Prior to jury selection on Tuesday, June 3, 2008, defense counsel conceded that the news of Steimel's addition as a witness was not "coming as a

surprise” because both the prosecutor and Steimel’s attorney alerted him to that fact on May 30 as soon as she accepted the plea agreement.

Consistent with the remedies provided in rule 2.19(3) for a late addition to the minutes, the district court granted Lloyd the opportunity to depose Steimel prior to opening statements and the presentation of any evidence. Defense counsel deposed Steimel prior to opening statements, and during trial subjected her to a thorough cross-examination that spans forty-six pages of transcript. Lloyd has not shown how this remedy was inadequate to dispel any potential prejudice to him. As the court noted, the State may be allowed to amend the minutes and add witnesses even during trial as long as the substantial rights of the defendant are not prejudiced by the amendment. Iowa R. Crim. P. 2.4(8)(a), (e). Because Lloyd was allowed to depose Steimel prior to opening statements and any presentation of evidence, and Lloyd has not shown how this remedy was inadequate, we conclude the court did not err in determining he was not prejudiced by the court’s grant of the State’s motion to amend the minutes of evidence.

B. Continuance.

As set forth above, on the morning trial was scheduled to commence Lloyd moved for a continuance of one week in light of Steimel agreeing to testify against him and the State seeking to amend its minutes of evidence to add Steimel as a witness. The district court offered Lloyd a continuance if he agreed to a waiver of speedy trial. Lloyd chose not to waive his right to speedy trial and the court denied the motion for continuance of trial, but did order a brief

continuance so defense counsel could depose Steimel prior to opening statements and evidence. Lloyd contends the district court erred in denying his motion for continuance.

Motions for continuance of trial are discouraged and shall not be granted “except upon a showing of good and compelling cause.” Iowa R. Crim. P. 2.9(2). The decision to grant or deny a continuance of a criminal trial lies within the broad discretion of the trial court. *State v. Leutfaimany*, 585 N.W.2d 200, 209 (Iowa 1998). Such a ruling will not be disturbed on appeal unless “an injustice has resulted.” *Id.* “This standard recognizes the interest of the State and the defendant in a speedy and fair trial.” *Id.*

Because the prosecuting attorneys would be unavailable the following week, and judges would be unavailable the week after that, a continuance of trial to a later date was not possible without violating Lloyd’s right to speedy trial as the next available trial date was beyond the speedy trial deadline. The district court stated that if Lloyd insisted on speedy trial “he’s going to get it and it will start in about twenty minutes.” Having allowed Lloyd an opportunity to depose Steimel before opening statements, the court opted for the most efficient and fair remedy given the next available date for a trial and the impending speedy trial deadline. No injustice to Lloyd has been shown and we conclude the district court did not abuse its broad discretion in denying his motion to continue.

III. CONCLUSION.

For the reasons set forth above, we conclude the district court did not err in granting the State’s motion to amend the minutes of evidence to add Steimel

as an additional witness, and did not abuse its broad discretion in denying his motion to continue.

AFFIRMED.