

IN THE COURT OF APPEALS
TWELFTH APPELLATE DISTRICT OF OHIO
BROWN COUNTY

STATE OF OHIO, :
 :
 Plaintiff-Appellee, : CASE NO. CA2009-07-025
 :
 - vs - : OPINION
 : 6/28/2010
 :
 MICHAEL G. HAYNES, :
 :
 Defendant-Appellant. :

CRIMINAL APPEAL FROM BROWN COUNTY COURT OF COMMON PLEAS
Case No. 2008-2170

Jessica A. Little, Brown County Prosecuting Attorney, Mary McMullen, 200 East Cherry Street, Georgetown, Ohio 45121, for plaintiff-appellee

R. Aaron Maus, Brown County Public Defender, Julie D. Steddom, 134 North Front Street, Ripley, Ohio 45167, for defendant-appellant

RINGLAND, J.

{¶1} Defendant-appellant, Michael G. Haynes, appeals his convictions in the Brown County Court of Common Pleas for breaking and entering, safe cracking, and possessing criminal tools. We affirm the convictions.

{¶2} In mid-April 2008, Jerry Jones, the owner of Snapper's Saloon in Ripley, Ohio, hired appellant as a landscaper. In addition to landscaping, appellant would carry ice and empty the trash for the bartenders inside the Saloon. At approximately 4:30 a.m. on May 31, 2008, Mr. Jones entered the Saloon to discover appellant standing

near the Saloon's safe, surrounded by knives and screwdrivers. Upon seeing Mr. Jones, appellant exclaimed "I'm in trouble. I'm in trouble. You don't understand." Upon further inspection, the safe showed signs of recent tampering.¹

{¶13} On July 10, 2008, Appellant was indicted on one count each of breaking and entering in violation of R.C. 2911.13(A), a felony in the fifth degree, safe cracking in violation of R.C. 2911.31(A), a felony in the fourth degree, and possessing criminal tools in violation of R.C. 2923.24(A), a felony in the fifth degree.

{¶14} On the day of trial, appellant's counsel requested a continuance in order to track down unidentified witnesses whom appellant insisted could assist in his defense. In denying the request, the trial court noted that there had been "multiple, multiple pretrials" in this case and that the attorneys "had ample opportunity to get prepared."

{¶15} After a jury trial, appellant was found guilty on all three counts and was sentenced to six months in prison for each count, to be served consecutively.

{¶16} Appellant timely appeals, raising one assignment of error:

{¶17} "THE TRIAL COURT ERRED TO THE PREJUDICE OF DEFENDANT-APPELLANT IN OVER-RULING [SIC] HIS MOTION FOR A CONTINUANCE MADE FOR THE PURPOSE OF SECURING WITNESSES."

{¶18} A trial court has broad discretion in determining whether to grant or deny a continuance. *State v. Gorham*, Butler App. No. CA2006-08-195, 2007-Ohio-6028, ¶10; *State v. Unger* (1981), 67 Ohio St.2d 65, 67. An appellate court may not reverse the denial of a continuance absent an abuse of discretion. *Gorham* at ¶10. When a continuance is requested, the competing interests to be considered are: (1) the court's right to control its own docket; (2) the public's interest in the prompt and efficient

1. Mr. Jones testified that he had seen the safe eight to ten hours before the incident, and at that time, it had "no dents or anything in it."

administration of justice; and (3) the potential prejudice that could result to the moving party if the request is denied. *Id.* In balancing these interests, a court considers such things as: the length of the delay requested; whether other continuances have been requested and received; the inconvenience to litigants, witnesses, opposing counsel and the court; whether the requested delay is for legitimate reasons or whether it is dilatory, purposeful, or contrived; whether the defendant contributed to the circumstance that gave rise to the request; and any other factors relevant to the particular circumstances of the case. *Id.*; *Unger*, 67 Ohio St.2d at 67-68.

{¶19} After careful examination of the record, we find that the trial court did not abuse its discretion in denying appellant's request for a continuance. The record clearly shows that appellant's counsel was not deprived of an opportunity to prepare for trial. Eleven months had passed since appellant's indictment. During that time, appellant made no attempt to identify the alleged witnesses. The trial court had an interest in controlling its own docket and ensuring the prompt and efficient administration of justice. See *Unger*, 67 Ohio St.2d at 67; *Gorham*, 2007-Ohio-6028 at ¶12. The trial court clearly felt that it was not acceptable to wait until the day of trial to seek leave to search for unidentified witnesses, "despite repeated requests" by appellant's attorney for more information. We agree. As such, we find that the trial court did not abuse its discretion when it denied the motion to continue the trial.

{¶10} Appellant's sole assignment of error is overruled.

{¶11} Judgment affirmed.

YOUNG, P.J., and POWELL, J., concur.