

Opinion issued December 1, 2011.



In The
Court of Appeals
For The
First District of Texas

NO. 01-11-00149-CR

LORIE JEANE PATTERSON, Appellant
V.
THE STATE OF TEXAS, Appellee

On Appeal from the County Court at Law
Austin County, Texas
Trial Court Case No. 09-CR-28571

MEMORANDUM OPINION

A jury convicted Lorie Patterson of misdemeanor assault. The trial court sentenced Patterson to ninety days' confinement in the county jail, probated for eighteen months. Patterson appeals, contending that the trial court abused its discretion in denying her unsworn oral motion for continuance. We affirm.

Background

After a scuffle at a housewarming party, the State charged Patterson with misdemeanor assault. The trial court initially set her trial for July 2010. The State filed a sworn motion for continuance. The trial court reset the date for August 2010, but did not reach the case on its docket. The case was then set for September 2010. In September 2010, Patterson filed a sworn motion for continuance. The trial court again reset Patterson's trial, setting the new trial date in November 2010.

In November, on the day of trial, Patterson orally moved for a continuance, contending that the Sheriff's Department had made no attempt to serve subpoenas for two defense witnesses. The trial court denied Patterson's motion, commenting that the court previously had granted continuances for both sides and venirepersons were waiting in the courtroom for trial to begin.

Discussion

The Texas Code of Criminal Procedure provides that "[a] criminal action may be continued on the written motion of the State or of the defendant, upon sufficient cause shown; which cause shall be fully set forth in the motion." TEX. CODE CRIM. PROC. ANN. art. 29.03 (West 2006). Article 29.08 further provides that "[a]ll motions for continuance must be sworn to by a person having personal knowledge of the facts relied on for the continuance." TEX. CODE CRIM. PROC. ANN. art. 29.08. To preserve error from a ruling denying a motion for continuance,

a defendant must comply with these statutory requirements. *Anderson v. State*, 301 S.W.3d 276, 278–81 (Tex. Crim. App. 2009). A motion for continuance that is neither in writing nor sworn presents nothing for review. *Id.*; *Montoya v. State*, 810 S.W.2d 160, 176 (Tex. Crim. App. 1989) (en banc). Patterson’s motion is neither in writing nor verified, and therefore presents nothing for review. Accordingly, we hold that Patterson waived her sole issue on appeal.

Conclusion

We hold that Patterson failed to preserve her claim that the trial court erred in denying her motion for a continuance, because her motion in the trial court was neither sworn nor written. We therefore affirm the judgment of the trial court.

Jane Bland
Justice

Panel consists of Chief Justice Radack and Justices Bland and Huddle.

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