

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON
DIVISION ONE

THE STATE OF WASHINGTON,)	No. 80448-1-I
)	
)	
Respondent,)	
)	
v.)	UNPUBLISHED OPINION
)	
JONNATHAN RAY HOSKINS,)	
)	
Appellant.)	

BOWMAN, J. — Jonnathan Ray Hoskins appeals his conviction for one count of residential burglary. He claims the trial court abused its discretion and deprived him of his constitutional rights to a fair trial and the effective assistance of counsel when it denied his motion to continue the morning of his jury trial. He also argues insufficient evidence supports finding that he entered or remained unlawfully in a “dwelling.” We reject his claims and affirm.

FACTS

At around 10:00 p.m. on August 27, 2018, Seattle police officers responded to a burglary in progress. Neighbors reported seeing several people break in through the front door of Dongyi Huang’s Beacon Hill home. Police set up a containment barrier around the house, announced themselves multiple times, and sent a K-9 search dog inside the house. Nobody came out. Eventually, police went in the house to search for suspects. They encountered a

locked bathroom door. Officers broke into the bathroom and saw one man standing in the bathtub with Hoskins lying flat within it. Hoskins was sweating profusely. He reacted lethargically to questions while police detained him in a squad car and seemed to lose consciousness more than once. Medics transported Hoskins to the hospital. Doctors medically cleared Hoskins a couple of hours later.

Huang arrived on the scene shortly after officers and learned that someone broke into his house. Huang owns two homes in the area and splits his time between them. He uses the Beacon Hill home mostly as a commercial marijuana growing facility. Huang also works at the Washington State Convention Center in downtown Seattle. When Huang works a night shift at the convention center, he sleeps at his second house. But when he works a day shift at the convention center, he sleeps at the Beacon Hill home. Huang testified that he sometimes sleeps in the Beacon Hill house “consecutively for a whole month.”

On the day of the burglary, Huang worked an early shift at the convention center then headed to his Beacon Hill house. He stayed there until around 8:00 p.m., then went to his second home to eat dinner and shower. No one was in the house when he left it at 8:00 p.m. and no one had permission to enter it in his absence. He returned to the Beacon Hill home around 10:30 p.m. to find it “surrounded” by officers. There was a crowbar outside near the front door that did not belong to him. When officers allowed Huang back inside his home, he noticed damage to the security screen door, the front door, and the bathroom.

Many of his things were in disarray and “mess[ed] around with.” Several marijuana plants had been cut and put into large plastic bags, one of which police found inside the bathroom.

On October 17, 2018, the State charged Hoskins with one count of residential burglary. His attorneys moved to continue his case five times to review exhibits and discovery, consult with Hoskins, conduct witness interviews, “track” the codefendants’ cases, explore a “global negotiation” to resolve this case and his other pending cases, and finally, because “the investigation needs to be completed” and defense counsel was on vacation. The court granted the continuances.

On June 17, 2019, the morning of trial, Hoskins’ attorney again moved to continue. His attorney argued he needed more time to confer with the three defense attorneys on Hoskins’ other pending cases to understand the impact each case would have on the other and “to allow this defendant to receive effective assistance of counsel by all three of his attorneys.” He also wanted to continue to explore whether the attorneys could simultaneously resolve their cases with the State, and he needed more time to interview Huang with help from an interpreter. The trial court denied the motion to continue.

Hoskins asserted a “voluntary intoxication” defense at trial. A jury convicted Hoskins of residential burglary. The court sentenced him to a standard-range sentence of 74 months of confinement. Hoskins appeals.

ANALYSIS

Trial Continuance

Hoskins argues the trial court abused its discretion and violated his constitutional rights to a fair trial and the effective assistance of counsel by denying his attorney's request to continue trial. We disagree.

We review a trial court's decision to deny a continuance for manifest abuse of discretion. State v. Downing, 151 Wn.2d 265, 272-73, 87 P.3d 1169 (2004). This same standard applies “even when it is argued that a refusal to grant a continuance deprives a defendant of the right to due process and right to representation.” State v. Quy Dinh Nguyen, 179 Wn. App. 271, 281, 319 P.3d 53 (2013). A trial court abuses its discretion when its decision is manifestly unreasonable or based on untenable grounds or reasons. Quy Dinh Nguyen, 179 Wn. App. at 281-82. A trial court acts reasonably where its decision falls within a range of acceptable choices. State v. Sisouvanh, 175 Wn.2d 607, 623, 290 P.3d 942 (2012) (citing State v. Rohrich, 149 Wn.2d 647, 654, 71 P.3d 638 (2003)).

A criminal defendant is not entitled to a continuance as a matter of right. State v. Early, 70 Wn. App. 452, 457, 853 P.2d 964 (1993). In exercising discretion to grant or deny a continuance, trial courts may consider many factors, including surprise, diligence, redundancy, due process, materiality, and maintenance of orderly procedure. Downing, 151 Wn.2d at 273 (citing State v. Eller, 84 Wn.2d 90, 95, 524 P.2d 242 (1974)).

“There are no mechanical tests to determine whether the denial of a continuance inhibits a defense or otherwise deprives a defendant of a fair trial.” State v. Kelly, 32 Wn. App. 112, 114, 645 P.2d 1146 (1982). When alleging that the denial of a motion to continue violates constitutional due process rights, the appellant must show either prejudice by the denial or that the result of the trial would have likely been different if the court had granted the continuance. State v. Tatum, 74 Wn. App. 81, 86, 871 P.2d 1123, review denied, 125 Wn.2d 1002, 886 P.2d 1134 (1994). We will presume prejudice if “the magnitude of the denial makes it likely that no competent counsel could provide effective assistance.” Quy Dinh Nguyen, 179 Wn. App. at 285.

Hoskins argues that the trial court abused its discretion and violated his constitutional right to a fair trial because “it denied [his] counsel the time to interview Mr. Huang” and “prevented counsel from thoroughly investigating the facts and applicable law and providing effective assistance.” He claims the court’s decision was particularly prejudicial because “Mr. Huang’s testimony [was] material to the case.”

The record does not support Hoskins’ argument that the trial court denied his counsel the time to interview Huang. The court arraigned Hoskins on his residential burglary charge in October 2018. The trial court then granted five continuances over a period of seven months for his attorney to review discovery, investigate, negotiate, and complete “outstanding witness interviews.” When the court granted the fourth continuance on April 5, 2019, it told defense counsel that there would be “[n]o [f]urther [c]ontinuances.” Still, on May 3, 2019, Hoskins’

attorney requested a fifth continuance because “the investigation needs to be completed” and he was on vacation from May 30 to June 14. Despite its previous admonition that there would be no more continuances, the court allowed counsel another six weeks to prepare for trial.

On June 17, 2019, the morning of trial and eight months after counsel first appeared to defend Hoskins, his attorney again moved to continue the trial. He asked for a two-week continuance so he could interview Huang before trial. When the court asked why counsel had not yet interviewed the witness, he explained, “Partly, because for the last two weeks, I had been on vacation,” and “part of the reason too, Your Honor, is that there is a . . . Cantonese interpreter to interview the victim as well.” Counsel did not explain why he had not interviewed Huang in the nearly eight months before his vacation or whether he made any efforts before the day of trial to secure an interpreter for the interview.

On appeal, Hoskins argues that “[b]ecause of the complicated nature of the four interrelated cases,” his attorney “was unable to arrange for an interpreter and secure a time” to interview the witness. But again, Hoskins does not explain how the “complicated nature” of his “interrelated cases” worked to delay the interview of Huang, who was not a witness in any of Hoskins’ other cases. Hoskins’ claim that the court denied him time to interview Huang lacks merit.

Relying on State v. Burri, 87 Wn.2d 175, 550 P.2d 507 (1976), Hoskins next argues that he was denied effective assistance of counsel because the court prevented his attorney from “interviewing key witnesses before trial.” In Burri, the State charged the defendant with theft but the defendant produced alibi

witnesses. Burri, 87 Wn.2d at 176. The defense witnesses were “ ‘interrogated [by the prosecutor] at the Special Inquiry Proceeding’ ” where defense lawyers were not present. Burri, 87 Wn.2d at 179. The prosecutor then instructed the witnesses “ ‘not to discuss their testimony therein with any other person.’ ” Burri, 87 Wn.2d at 179. Because the government interfered with the defendant’s access to key witnesses, it violated his constitutional right to counsel and compulsory process. Burri, 87 Wn.2d at 182-83.

Here, the government did not interfere with Hoskins’ ability to interview Huang. Indeed, Hoskins did not try to interview Huang over the eight months before trial. Nor did he seek to interview Huang after the court denied his motion to continue the trial.¹ Hoskins also inflates the value of Huang’s testimony. While Huang owned the Beacon Hill home Hoskins broke into, he did not witness the burglary and could not identify any of the suspects. Huang’s testimony was brief and mostly cumulative of the testimony of other witnesses. His testimony was also unrelated to Hoskins’ voluntary intoxication defense.

Finally, Hoskins fails to identify how his trial would have likely been different had the court granted his motion to continue. He suggests that an interview of Huang may have revealed more information about Huang’s use of the house as a marijuana business. But the certification for determination of probable cause provided to Hoskins in discovery specifically identified Huang’s

¹ We note that the State called Huang to testify just minutes before the lunch break on the second day of trial. After a few general questions about Huang’s use of the Beacon Hill property, the court recessed for lunch. With the witness, the interpreter, and both the prosecutor and defense counsel present, Hoskins had the opportunity for at least a brief interview over the 90-minute lunch break.

house as a marijuana grow facility.² And at trial, Hoskins chose not to question Huang about how he used the home. Instead, he pursued a defense of voluntary intoxication. The trial court's decision to deny Hoskins' motion to continue was within the range of acceptable choices and did not deprive Hoskins of a constitutionally fair trial.

Sufficiency of the Evidence

Hoskins argues the State produced insufficient evidence that he entered or remained unlawfully in a "dwelling." We disagree.

When reviewing a challenge to the sufficiency of the evidence, we must determine whether, after examining the facts in the light most favorable to the State, any rational trier of fact could have found the essential elements of the charged crime beyond a reasonable doubt. State v. Joy, 121 Wn.2d 333, 338, 851 P.2d 654 (1993); State v. Salinas, 119 Wn.2d 192, 201, 829 P.2d 1068 (1992). Such a challenge admits the truth of the State's evidence and all reasonable inferences from it. Salinas, 119 Wn.2d at 201. Circumstantial evidence is as equally reliable as direct evidence. State v. Delmarter, 94 Wn.2d 634, 638, 618 P.2d 99 (1980).

"A person is guilty of residential burglary if, with intent to commit a crime against a person or property therein, the person enters or remains unlawfully in a dwelling other than a vehicle." RCW 9A.52.025(1). RCW 9A.04.110(7) defines a "dwelling" as "any building or structure . . . which is used or ordinarily used by a person for lodging." The question of what constitutes a "dwelling" is primarily a

² Pretrial, Hoskins agreed the certification "sufficiently sets out the facts of this case."

fact question for the jury. State v. McDonald, 123 Wn. App. 85, 90-91, 96 P.3d 468 (2004).

Hoskins contends the evidence at trial was insufficient to show Huang's home was a "dwelling" because Huang used the home mostly for growing marijuana, "not as a dwelling or for lodging." Citing State v. Joseph, 189 Wn.2d 645, 405 P.3d 993 (2017), Hoskins argues that "[a] space is not considered a dwelling simply because a person slept there." In Joseph, police arrested a homeless man for prowling vehicles after he broke into a car and fell asleep inside. Joseph, 189 Wn.2d at 646-47. In a footnote, the Supreme Court rejected the State's argument that the vehicle also amounted to a "dwelling" because Joseph used it as "lodging" to sleep in. Joseph, 189 Wn.2d at 653 n.4. Unlike in Joseph, the court here tasked the jury with deciding whether Huang's home, not his car, was a dwelling.

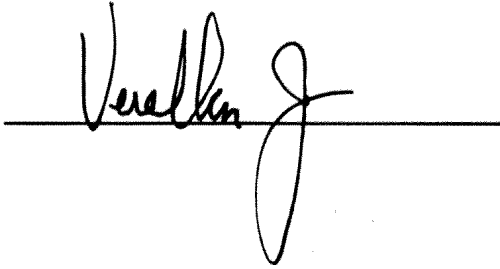
This case is more like State v. McPherson, 186 Wn. App. 114, 344 P.3d 1283 (2015). In McPherson, Division Two of this court found sufficient evidence of a "dwelling" existed where the victim used a portion of a building for lodging and used the rest of the building for commercial purposes or left it vacant. McPherson, 186 Wn. App. at 118-19. Division Two concluded a jury could reasonably find that both uses were contained within one building and that the resident had unlimited access to all the various areas inside. McPherson, 186 Wn. App. at 119. Here, the evidence showed that Huang's home had multiple levels with laundry and bathroom facilities as well as partitioned areas. Huang testified that the house had separate rooms, including a sitting room with a sofa

where he slept every time he was not working a night shift. At times, he slept there continually for a month. Viewing the evidence in the light most favorable to the State, a reasonable trier of fact could conclude Huang's Beacon Hill home was a "dwelling."

We affirm Hoskins' conviction for one count of residential burglary.

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WE CONCUR:

A handwritten signature in cursive script, appearing to read "Verellen, J.", written over a horizontal line.

A handwritten signature in cursive script, appearing to read "Appelwick, J.", written over a horizontal line.