

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

STATE OF WASHINGTON,)
)
 Respondent,)
)
 v.)
)
 CHRISTOPHER J. COLUMBO,)
)
 Appellant.) FILED: July 26, 2010

Grosse, J. — A trial court does not abuse its discretion when it denies a continuance requested just prior to the commencement of trial. This is particularly true here where the defendant had already received eight continuances for similar reasons resulting in the trial being set almost a year after charges were filed. We affirm.

FACTS

In June 2008, Roseanna Columbo gave her brother, Christopher Columbo, permission to stay at her house in Bow, Washington while she was in Seattle caring for her mother. Upon her return a week later, Columbo called Roseanna to tell her that he had taken one of her rings to be cleaned. She had not requested that he do so and demanded that he return the \$3,000 ring. Columbo finally admitted that he had pawned the ring. After multiple phone calls failed to produce the ring or the pawn ticket, Roseanna filed a complaint with the police. The Bellingham police eventually retrieved the ring from a pawn shop. The pawn shop clerk testified that his records indicated Columbo had pawned the ring using his driver’s license as identification for the transaction. Columbo did not testify or present any witnesses in his defense. The jury

returned a guilty verdict for first degree theft and first degree trafficking in stolen property. Columbo appeals, asserting that the trial court's refusal to grant him a continuance on the morning of trial denied him his right to a fair trial because his attorney did not have sufficient time to interview witnesses.

ANALYSIS

We review a trial court's denial of a continuance for an abuse of discretion.¹ In exercising its discretion, the trial court may consider various factors, including diligence, due process, the need for an orderly procedure, the possible effect on the trial, and whether prior continuances were granted.² Here, a number of prior continuances had been granted at the request of defense counsel, resulting in a trial date almost a year after the first charges were filed.

On May 7, 2009, Columbo appeared for trial confirmation before Judge Susan Cook. Defense counsel requested a week or two to discuss the outstanding offer from the prosecution and because some witnesses had not worked out. The court denied the continuance, noting that the case had been filed in July 2008 and had been continued multiple times since arraignment for a variety of reasons: "defendant investigating case; defendant to meet with his attorney; defendant to meet with attorney; keep appointment with attorney to discuss offer; defendant to give defense attorney witness information; defendant to provide witness information; defense attorney meet with [defendant]."

On May 11, 2009, the morning trial was to commence, defense counsel renewed

¹ State v. Hurd, 127 Wn.2d 592, 594, 902 P.2d 651 (1995)

² State v. Downing, 151 Wn.2d 265, 273, 87 P.3d 1169 (2004).

his motion to continue the case, stating that Columbo had presented him with additional information just that morning that counsel needed to pursue. Defense counsel stated he had been informed there was a potential witness who might be material. In denying the continuance, Judge David Needy stated:

[T]he file shows the charges were filed in July of 2008, and there have been eight continuances since that time. This request was made Thursday in front of Judge Cook and denied. Now we are sitting morning of the trial with 35 or 36 jurors in the courtroom with a request once again to continue the trial. Under these circumstances and given all the time and the many continuances that the defense has had to be ready, the court is going to deny the motion to continue at this time.

Given these circumstances, it was reasonable for the trial judge to deny the continuance.

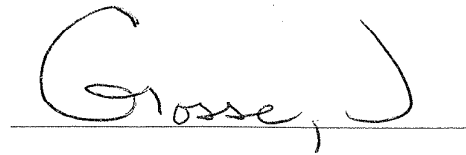
Columbo argues that he was denied a fair trial because he was not granted a continuance to secure an additional witness. There is no mechanical test to apply to determine when a denial of a continuance violates due process.³ A defendant has a right to present witnesses on his own behalf, but that right is not absolute. Even when the denial of a motion for a continuance has allegedly violated the defendant's constitutional due process rights, as alleged here, the decision will be reversed only upon a showing that the defendant was prejudiced by the denial or that the result of the trial would likely have been different had the continuance not been denied.⁴ Columbo did not proffer anything to the court that might suggest why an additional witness would have been material to his case. In State v. Eller, the court held that it was not error to deny a continuance to secure the attendance of an alibi witness where such testimony

³ State v. Eller, 84 Wn.2d 90, 95-96, 524 P.2d 242 (1974).

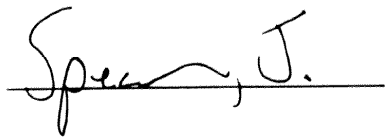
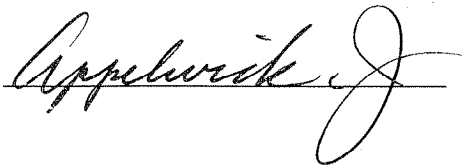
⁴ State v. Tatum, 74 Wn. App. 81, 86, 871 P.2d 1123 (1994).

would have been cumulative.⁵ Moreover, Columbo was granted multiple continuances to investigate the matter and speak with his attorney. Columbo has failed to show that he was materially prejudiced by the trial court's denial of his continuance. Nor, under the facts of this case, can he demonstrate that the result of the trial would have been different had his motion been granted.

Affirmed.

A handwritten signature in cursive script that reads "Grosse, J." is written above a horizontal line.

WE CONCUR:

A handwritten signature in cursive script that reads "Spear, J." is written above a horizontal line.A handwritten signature in cursive script that reads "Appelwick, J." is written above a horizontal line.

⁵ 84 Wn.2d 90, 95-96, 524 P.2d 242 (1974); see also State v. Kelly, 32 Wn. App. 112, 114-15, 645 P.2d 1146 (1982) (not error to deny continuance where defendant failed to show due diligence).