

IN THE COURT OF APPEALS OF IOWA

No. 7-458 / 96-1414

000423

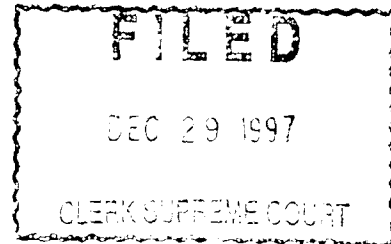
STATE OF IOWA,

Appellee,

vs.

KEVIN D. WATSON,

Appellant.



Appeal from the Iowa District Court for Scott County, Bobbie M. Alpers and David J. Sohr, Judges.

Kevin D. Watson appeals his convictions for first-degree robbery in violation of Iowa Code section 711.2 (1995) and second-degree sexual abuse in violation of Iowa Code section 709.3. **AFFIRMED.**

Kent A. Simmons, Davenport, for appellant.

Thomas J. Miller, Attorney General, Julie H. Brown, Assistant Attorney General, William E. Davis, County Attorney, and Kelly G. Raines, Assistant County Attorney, for appellee.

Heard by Cady, C.J., and Sackett, and Huitink, JJ.

CADY, C.J.

Kevin Watson appeals the judgment and sentence following his convictions of first-degree robbery and second-degree sexual abuse. He claims the trial court abused its discretion in refusing to grant a continuance and in failing to allow him to offer evidence of a codefendant's guilty plea.

The events giving rise to this case began when Kimberly Maggio Taylor met Watson at a bar. Taylor agreed to go for a ride with Watson after talking with him at the bar. At some point during the ride, David Williams and Jodi DeVoss entered the vehicle. The parties eventually stopped at a local crack house. Taylor and DeVoss were left alone, at which time Taylor hid the money she had with her in her pockets, socks, and bra. DeVoss observed her hide the money.

Taylor testified Watson and Williams returned to the car. Williams then grabbed her by the hair, put a sharp object to her throat, and demanded her money. She also testified Watson took a gun from the glove compartment and held it to the side of her face. After taking her money, Taylor said Watson forced her to take her pants off, and raped her. Watson denied the rape and claimed he was only a spectator to the robbery.

The State filed charges against Watson, Williams, and Devoss. Williams entered a plea of guilty prior to the trial and indicated he would testify for Watson at his trial. The district court, however, deferred its acceptance of the plea pending the

completion of the presentence report. The State did not want to commit to the plea agreement without a background investigation.

Watson believed Williams' testimony would be favorable to his case. On the eve of Watson's trial, however, Williams' attorney declined to permit Williams to testify because Williams had not yet been sentenced. Watson then filed a motion to continue the trial until Williams was sentenced. The motion was filed three days prior to trial. The trial court denied the motion. On the scheduled trial date, Williams filed a motion to quash the subpoena he had received to appear at Watson's trial. Williams formally invoked his Fifth Amendment right not to incriminate himself. The trial court granted Williams' motion to quash and Watson proceeded to trial without his testimony. The jury found Watson guilty of robbery in the first-degree and sexual abuse in the second-degree.

On appeal Watson claims the district court erred in failing to grant a continuance and in failing to allow him to offer evidence of Williams' guilty plea.

I. Motion for Continuance

A ruling denying a motion for continuance is discretionary and calls for reversal only upon a showing of abuse of discretion. *State v. LaGrange*, 541 N.W.2d 562, 564 (Iowa App. 1995). Continuances are discouraged, and may be granted only "upon a showing of good and compelling cause" or when necessary to obtain "substantial justice." *State v. Melk*, 543 N.W.2d 297, 300 (Iowa App. 1995).

Although Watson anticipated Williams would testify on his behalf, Williams' counsel gave every indication Williams would invoke his Fifth Amendment right not to incriminate himself unless the State granted him immunity. Williams' counsel expressed concern his client might incriminate himself prior to the acceptance of his plea and the entry of his judgment and sentence. The State was unwilling to grant Williams immunity. Furthermore, the guilty plea was only tentative, and a continuance may or may not have ultimately benefited Watson in his efforts to secure Williams' testimony. Depending on the outcome of the presentence investigation report, the plea agreement offered to Williams by the State could be withdrawn. In view of the uncertainty, we find the trial court acted within the scope of its discretion in denying Watson's motion to continue.

II. Admissibility of Guilty Plea

We review the trial court's decision on admission of evidence for an abuse of discretion. *State v. Khalsa*, 542 N.W.2d 263, 268 (Iowa App. 1995). In order to show an abuse of discretion, the claimant must show that the court exercised its discretion on grounds clearly untenable or for reasons clearly unreasonable. *Id.*

Watson maintains the trial court erred in refusing to allow him to introduce evidence that Williams had pled guilty to second-degree robbery. Specifically, Watson claims Williams' admission of guilt would have confirmed Watson and DeVoss' testimony that Williams was solely responsible for the crimes.

Even had the evidence been introduced, the jury could have convicted Watson under a theory of aiding and abetting. Moreover, at the time of Watson's trial, the State was still in the position to refuse to accept the plea, thus rendering the status of the plea questionable. We find the trial court did not abuse its discretion in refusing to allow Watson to introduce evidence of Williams' guilty plea.

AFFIRMED.

Huitink, J., concurs; Sackett, J., concurs specially without opinion.