FILED
MAR 31 1986
CLERK SUPREME COURT

IN THE COURT OF APPEALS OF IOWA

STATE OF IOWA,)

Plaintiff-Appellee,)

vs.)

EDDIE BUCKLEY,)

Defendant-Appellant.)

Filed March 31, 1986

5-706
85-548

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Appeal from the Iowa District Court for Linn County (No. CRF 8970) Thomas M. Horan, Judge.

Defendant appeals from his simultaneous convictions for the crimes of robbery in the first degree and assault with intent to commit sexual abuse, contending that the trial court erred in denying his petition for further evaluation and a continuance. **AFFIRMED.**

Charles Harrington, Chief Appellate Defendant, and Linda Del Gallo, Assistant Appellate Defendant, for the defendant-appellant.

Thomas J. Miller, Attorney General, and Lona Hansen, Assistant Attorney General, for the plaintiff-appellee.

Considered by Oxberger, C.J., and Hayden and Sackett, JJ.

The defendant appeals from his simultaneous convictions for the crimes of robbery in the first degree and assault with intent to commit sexual abuse contending that the trial court erred in denying his petition for further evaluation and a continuance. We affirm.

On the morning of his trial, defendant moved for further psychiatric examination and, a continuance to receive the examination. Both motions were denied and the court proceeded to trial before a jury. The defendant was convicted of Robbery in the first degree, Assault with intent to commit sexual abuse, and theft in the second degree. He was sentenced to serve concurrent terms of imprisonment on the respective charges not to exceed twenty-five, two, and five years.

Defendant seeks to have these convictions reversed on grounds that he was not competent to stand trial and that the trial court abused its discretion in denying the motion for continuance.

Defendant's original motion for psychiatric evaluation was granted and the trial court, on the basis of this examination, determined that defendant was competent to stand trial by the standards of Iowa Code section 812.3 (2983) which provides that a defendant's due process rights require that he not be suffering from any mental disorder which prevents him from appreciating the charge, understanding the proceedings, or assisting effectively in the defense.

The record includes the conclusions of Dr. Nygard, the defendant's examining physician in the first psychological review. Dr. Nygard's report concluded that the defendant was not psychotic though he was considered unwilling to assist in his defense at that stage of the process. Nygard opined that the defendant's reluctance to assist his attorney would subside as the trial proceeded.

In the pre-trial hearing, defendant demonstrated an understanding of why he was in court, a knowledge of the prosecutor's function, and an awareness of the potential consequences of the trial.

Nothing in the record indicates that the defendant could not assist and communicate with his attorney or that he failed to understand the trial process.

No new evidence has been produced to contradict Dr. Nygard's initial conclusion that the defendant was competent to stand trial. Therefore, the trial court's finding of competency will not be disputed. State v. Jackson, 305 N.W.2d at 425.

The trial court's denial of defendant's motion for a continuance to seek further psychological review was within the court's wide discretion. State v. Ware, 338 N.W.2d 707, 714 (Iowa 1983). We find no sign that the trial court's denial of the motion was unreasonable, or that the denial was based on untenable grounds. See State v. Trudo, 253 N.W.2d 101, 106 (Iowa 1977). Nor do we find any indication that a continuance for further review would have allowed defendant more nearly to receive substantial justice. Ware, 338 N.W.2d at 714.

The trial court did not abuse its discretion.

AFFIRMED.