

IN THE COURT OF APPEALS OF IOWA

STATE OF IOWA,

Plaintiff-Appellee,

vs.

LEONARD L. WRIEDEN,

Defendant-Appellant.

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CLERK SUPREME COURT
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Appeal from Lee District Court, D. B. Hendrickson, Judge.

Defendant appeals from his conviction of burglary in the first degree, see Iowa Code §§ 713.1, .2 (1981), and sexual abuse in the third degree, see Iowa Code §§ 709.1(1), 709.4(1)(1981). AFFIRMED.

Patrick R. Grady, Assistant Appellate Defender, for defendant-appellant.

Thomas J. Miller, Attorney General, and Shirley Ann Steffe, Assistant Attorney General, for plaintiff-appellee.

Heard en banc.

OXBERGER, C.J.

Defendant appeals from his conviction of burglary in the first degree, see Iowa Code §§ 713.1, .2 (1981), and sexual abuse in the third degree, see Iowa Code §§ 709.1(1), 709.4(1)(1981). On appeal, defendant asserts that (1) the denial of defendant's motion for continuance, filed the day of trial, five days after defendant was orally notified that the trial date would be advanced by eight days, prevented his counsel from rendering him effective assistance, a violation of his sixth amendment constitutional rights; and (2) his counsel rendered ineffective assistance, independent of the continuance issue. We affirm.

In the early afternoon of May 18, 1981, the apartment occupied by Mary Brooks was broken into, and Brooks was raped. Brooks positively identified the rapist as defendant Leonard Wrieden.

Wrieden was charged with the crimes of which he was convicted in a trial information filed on May 25, 1981. While a psychological evaluation was carried out at Wrieden's request, Wrieden filed motions for continuances.

Wrieden's attorney was evidently defending him on another charge which was scheduled for trial on February 9, 1982. Trial on the burglary and sexual abuse charges was originally scheduled for February 9. On February 4, Wrieden's counsel was informed that trial on the cases would be switched and that the instant case would be tried on February 9. Wrieden filed a motion for continuance, claiming that the time was not sufficient to enable his counsel to prepare a proper defense. This motion was denied.

After trial on February 9 and 10, the jury returned verdicts of guilty on both charges. Wrieden was sentenced to concurrent sentences of up to ten years on the sexual abuse charge and up to twenty-five years on the burglary charge. He appeals from these convictions and sentences.

I. Denial of Motion for Continuance.

Wrieden contends that denial of his request for a continuance deprived him of effective assistance of counsel because, among other things, it left him unprepared to make appropriate objections to certain testimony that was introduced at trial, because his attorney was unable to interview and procure witnesses favorable to Wrieden's defense, and because his attorney was denied time to examine evidence that might have been favorable to Wrieden.

Since Wrieden alleges that failure to grant a continuance deprived him of constitutionally effective representation, we exercise de novo review of the totality of circumstances surrounding the attorney's performance. State v. Massey, 207 N.W.2d 771, 779 (Iowa 1973); Orcutt v. State, 173 N.W.2d 66, 69 (Iowa 1969).

The decision as to whether to grant a motion for continuance is within the sound discretion of the trial court and will be disturbed only when it can be demonstrated that there is a clear abuse of that discretion and that such denial resulted in an injustice or prejudice to the defendant. State v. Kyle, 271 N.W.2d 689, 691 (Iowa 1978); State v. Hines, 225 N.W.2d 156, 160 (Iowa 1975); see also State v. Henderson, 268 N.W.2d 173, 180 (Iowa 1978); State v. McGinnis, 243 N.W.2d 583, 586 (Iowa 1976).

In response to defense counsel's request for a continuance so that he might interview and subpoena witnesses he thought might be of importance in the defense that he was preparing, the court responded that he would give defense counsel time to subpoena any witnesses. The court also clearly indicated that he would give defense counsel time to consult with the psychiatrist on the issue of diminished responsibility and would make appropriate accommodations if the

defense wanted to call him. In light of these facts, and the fact that some eight months transpired between the filing of the criminal information and the beginning of trial, we do not find that Wrieden's counsel was denied sufficient time to interview or subpoena witnesses important for his defense. On the contrary, at the hearing on Wrieden's motion for continuance, in response to the court's question as to whether counsel had had sufficient opportunity to take depositions, counsel responded: "I have, and I have taken depositions, but that doesn't change—I'm not saying that I have not concluded the discovery in this case." It is clear, then, that counsel had adequate time to prepare his case.

We do not find that the court's refusal to grant the motion for a continuance constituted an abuse of discretion or that it was in any way prejudicial to the defendant.

II. Ineffective Assistance of Counsel

From the record before us on direct appeal, we cannot determine the merits of Wrieden's claim of ineffective assistance of counsel.

We find no reason to disturb Wrieden's conviction and sentence. We therefore affirm.

AFFIRMED.