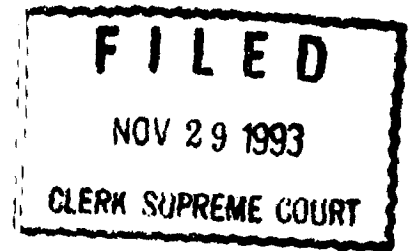


IN THE COURT OF APPEALS OF IOWA

No. 3-480 / 93-89



000701

STATE OF IOWA,

Appellee,

vs.

HEVYN LEI AKEALA,

Appellant.

Appeal from the Iowa District Court for Scott County,
James E. Kelley and Bobbi M. Alpers, Judges.

Defendant appeals her conviction following a jury trial
of first-degree theft by deception. **AFFIRMED.**

Linda Del Gallo, State Appellate Defender, and
Elizabeth E. Quinlan, Assistant State Appellate Defender,
for appellant.

Bonnie J. Campbell, Attorney General; Martha E. Boesen,
Assistant Attorney General; William E. Davis, County
Attorney; and Gerda C. Lane, Assistant County Attorney, for
appellee.

Heard by Schlegel, P.J., and Habhab, J., and Perkins,
S.J.* Donielson, J., takes no part.

*Senior judge from the 5th Judicial District serving
on this court by order of the Iowa Supreme Court.

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PERKINS, S.J.

On May 7, 1992, the State charged Hevyn Lei Akeala with first-degree theft, in violation of Iowa Code sections 714.1(3) and 714.2(1) (1991). Akeala's birth name was Teresa Lynn Connelly. She legally changed her name in February 1992. Akeala, under the names Hevyn L. Akeala and Teresa Connelly, borrowed nearly \$14,000 from the R.I.A. Federal Credit Union in Rock Island, Illinois, using false information.

At a pretrial conference on August 7, 1992, the district court ordered discovery to be completed by October 2, 1992. Trial was set for October 19, 1992.

On October 14, 1992, defense counsel filed a motion for continuance stating that Akeala had been examined by a psychiatrist from September 29, 1992, to October 1, 1992, and there was a possibility she was suffering from diminished capacity.

The district court ruled on the motion the same day, October 14, 1992. The court found defendant had not presented any evidence to show she was suffering from such a mental disability as would meet the requirements of Iowa Code section 701.4, since the psychiatric reports presented to the court raised only the issue of irresistible impulse, which is not a separate defense. The court also noted defendant had known of the trial date for some time.

Defense counsel raised the motion for continuance again at the trial on October 19, 1992. Defendant also sought

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to raise an insanity defense. The district court denied her motions on the same grounds as the earlier denial. The court noted that six months had elapsed between the date the complaint was filed and the time the insanity defense was raised.

The case then proceeded to trial. A jury found defendant guilty of theft in the first degree. Defendant filed a motion for a new trial and a motion to continue sentencing. The district court denied these motions. Defendant was sentenced to a term of imprisonment not to exceed ten years. She was also ordered to pay restitution. Defendant has appealed.

Defendant contends the district court abused its discretion in denying her motion for a continuance prior to the trial and denying her the right to present an insanity defense. She claims she needed a greater amount of time to explore the issue of whether she was mentally ill at the time of the crime.

We review the denial of a motion for continuance for abuse of discretion. State v. Simmons, 454 N.W.2d 866, 868 (Iowa 1990). Under Iowa Rule of Criminal Procedure 8.1(2), a continuance may not be granted except upon a showing of good and compelling cause. Under Iowa Rule of Civil Procedure 183(a), a continuance may be granted upon a showing that substantial justice will be more nearly obtained thereby.

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As was noted in State v. Teeters, 487 N.W.2d 346, 348 (Iowa 1992), it is far from unknown for a continuance motion to serve as a mere delaying tactic. A trial judge must sense whether a given continuance motion stems from a legitimate need, or from a wish to delay. Id. From its closer vantage point, the trial court can better sort through these matters than an appellate court can. Id.

As the district court noted, the evidence presented at the time of the hearing on the motion for continuance raised only the possibility that defendant suffered from an irresistible impulse. Irresistible impulse is not recognized as a separate defense in Iowa. State v. Craney, 347 N.W.2d 668, 680 (Iowa 1984). The entire defense of insanity is subsumed under the M'Naghten test embodied in section 701.4. Id. Therefore, there was no evidence defendant was suffering from such a mental disability as would meet the requirements of section 701.4.

Furthermore, defendant knew on August 7, 1992, that trial was scheduled for October 19, 1992. However, she waited until September 29, 1992, to voluntarily seek a psychiatric evaluation in Iowa City.

We find no abuse of discretion in the district court's denial of the motion for continuance.

Defendant also contends she was denied effective assistance of counsel. Ineffective assistance claims are generally reserved for postconviction proceedings, but can be resolved on direct appeal when the record adequately

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presents them. State v. Risdal, 404 N.W.2d 130, 131 (Iowa 1987). We find there is insufficient evidence to decide this claim based on the evidence before us, and we determine this issue should be reserved for postconviction proceedings.

We affirm Hevyn Lei Akeala's criminal conviction for theft in the first degree.

AFFIRMED.