

No. 46077-7-II

COURT OF APPEALS, DIVISION II
STATE OF WASHINGTON

STATE OF WASHINGTON,

Respondent,

vs.

LAMONT MATEO BROUSSARD,

Appellant.

On Appeal from the Pierce County Superior Court
Cause No. 13-1-02973-3
The Honorable Edmund Murphy, Judge (Trial)
The Honorable Frank Cuthbertson, Judge (Pretrial)

OPENING BRIEF OF APPELLANT

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I. ASSIGNMENTS OF ERROR

1. The trial court erred when it denied Lamont Broussard's motion for a continuance.
2. The trial court denied Lamont Broussard his constitutional right to due process, to call witnesses in his defense, and to effective assistance of counsel.

II. ISSUES PERTAINING TO THE ASSIGNMENTS OF ERROR

1. Did the trial court deny Lamont Broussard his constitutional right to due process, to call witnesses in his defense, and to effective assistance of counsel when it denied Broussard's motion for a continuance, where the request was made so that defense counsel could obtain a written report concerning Broussard's mental health at the time of the alleged offense, and so that defense counsel would have time to adequately prepare and to call the psychologist as a witness at trial? (Assignment of Error 1 & 2)

III. STATEMENT OF THE CASE

A. PROCEDURAL HISTORY

The State charged Lamont Mateo Broussard with one count of failure to register as a sex offender (third offense), pursuant to RCW 9A.44.132(1)(b). (CP 1) Broussard was evaluated before

trial and determined to be competent at that time to assist in his own defense. (12/02/13 RP 4-5; CP 12-13)¹ Broussard waived his right to a jury trial, and was found guilty following a bench trial. (RP 10-11, 89-96; CP 29, 51-58) The trial court imposed a standard range sentence of 43 months, and imposed \$800.00 in mandatory Legal Financial Obligations. (RP 110-11; CP 38, 40) This appeal timely follows. (CP 30)

B. SUBSTANTIVE FACTS

In 1994, a then 17-year old Broussard was adjudicated guilty of third degree rape, and as a result was required to register as a sex offender. (RP 23-24, 68; Exh. 4) In 2012, Broussard was convicted twice of failure to register as a sex offender. (RP 25-27; Exhs. 5, 6)

On June 5, 2013, after being released from confinement, Broussard reported to the Pierce County Sheriff and completed a full registration packet. At that time, he listed his current residence as a house on East K Street in Tacoma. (RP 28-30; Exh. 2) Broussard returned on June 11, 2013, and re-registered as transient. (RP 32-33; Exh. 3) Broussard was told that, as a

¹ The transcript labeled Volume I will be referred to simply as "RP." The remaining transcripts will be referred to by the date of the proceeding contained therein.

transient, he was required to report weekly, and he was given a card reminding him that he should return to the Sheriff's office on June 18, 2013. (RP 34-35, 43) Broussard did not return after June 11th. (RP 35-36)

Broussard testified that he suffers from numerous mental conditions, including schizophrenia, bipolar disorder, attention deficit disorder, and psychotic disorder. (RP 58) He suffers severe mood swings, and hears demonic voices. (RP 58-59) He has struggled with these conditions for about 18 years, since he was 18 years old. (RP 59) He repeatedly tried to get treatment and medications while he was incarcerated and after release, but no facility would treat him. (RP 60-64)

The voices and delusions became increasingly worse as time passed. (RP 63, 66-67) By mid-June of 2013, the voices were telling him to kill himself, and he came to believe that he was a CIA or DEA detective. (RP 66-67, 78) He testified he was "scatterbrained" and he "wasn't thinking right [and] wasn't balanced," so he did not realize he should report and did not mean to violate the registration statute. (RP 67)

IV. ARGUMENT & AUTHORITIES

Broussard received medications to treat his mental disorders

after he was arrested and held in custody at the Pierce County Jail on the current charge. (12/02/13 RP 5; RP 65) He was evaluated by a psychiatrist on November 26, 2013 and found competent to stand trial. (CP 14-26) The trial court entered an order determining competency on December 2, 2013. (CP 12-13) Though he was stable at that time, defense counsel indicated that he intended to pursue a mental health defense, because he was not properly medicated and stable when he failed to report. (12/02/13 RP 5)

On February 11, 2014, defense counsel told the court that Broussard had been evaluated by a psychiatrist, and that counsel had been informed of the results of the evaluation. (02/11/13 RP 2-3) But counsel had not been given a written report, and was therefore not prepared for trial. (02/11/14 RP 2-3) The court denied counsel's request for a continuance, and assigned the case to a courtroom for trial. (02/11/14 RP 6) Counsel renewed his request for a continuance later that day before the assigned trial judge, again explaining that he intended to call the psychiatrist as a defense witness at trial, but needed the written report in order to adequately prepare. (RP 4, 7) The trial court denied the request, and proceeded with trial that day. (RP 8)

The grant or denial of a motion for continuance is within the

trial court's discretion and will not be disturbed absent a showing that the court abused its discretion and the defendant was prejudiced. State v. Kelly, 32 Wn. App. 112, 114, 645 P.2d 1146 (1982); State v. Sutherland, 3 Wn. App. 20, 21, 472 P.2d 584 (1970). Discretion is abused if it is exercised on untenable grounds or for untenable reasons. State ex rel. Carroll v. Junker, 79 Wn.2d 12, 26, 482 P.2d 775 (1971); Coggle v. Snow, 56 Wn. App. 499, 504-07, 784 P.2d 554 (1990).

However, the Sixth and Fourteenth Amendments to the United States Constitution, and article I, section 22 of the Washington Constitution guarantee a defendant the right to representation and to due process of law. And a defendant forced to proceed without sufficient time to prepare his defense is denied due process and the right to counsel. State v. Anderson, 23 Wn. App. 445, 448-49, 597 P.2d 417 (1979).

Thus, the "failure to grant a continuance may deprive a defendant of a fair trial and due process of law, within the circumstances of a particular case." State v. Williams, 84 Wn.2d 853, 855, 529 P.2d 1088 (1975) (citing State v. Cadena, 74 Wn.2d 185, 443 P.2d 826 (1968)). A denial of a request for a continuance may also violate a defendant's right to compulsory process if the

denial prevents the defendant from presenting a witness material to his defense. State v. Eller, 84 Wn.2d 90, 95, 524 P.2d 242 (1974). Whether the denial of a continuance rises to the level of a constitutional violation requires a case by case inquiry. Eller, 84 Wn.2d at 96.

In Eller, the Court held that the trial court's denial of the request for a continuance was not a constitutional error because the testimony of the witness sought by the defense would have been merely cumulative of the evidence already adduced at trial. 84 Wn.2d at 96, 98. Here, on the other hand, the testimony of the witness sought by the defense was not cumulative, and went directly to the heart of the defense case—that Broussard did not *knowingly* fail to report because his mental condition prevented him from understanding what was real at the time of the alleged offense.² (12/02/13 RP 4; 02/11/14 RP 3; RP 67, 86) A short continuance would have allowed Broussard's counsel to obtain the critical psychological report and to fully prepare a defense. The trial court's failure to accommodate this reasonable request was an abuse of discretion, and denied Broussard his constitutional right to

² One of the elements of the crime of failure to register is that the offender "knowingly fails to comply with any of the requirements" of the registration statute. RCW 9A.44.132(1).

prepare and present a defense.

V. CONCLUSION

Because the trial court denied his request for a continuance, Broussard was denied his constitutional right to due process, to present witnesses material to his defense, and to have counsel fully prepared to mount a defense. Accordingly, Broussard's conviction must be reversed.

DATED: August 13, 2014



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Attorney for Lamont M. Broussard

CERTIFICATE OF MAILING

I certify that on 08/13/2014, I caused to be placed in the mails of the United States, first class postage pre-paid, a copy of this document addressed to: Lamont M. Broussard DOC# 851962, Coyote Ridge Corrections Center, P.O. Box 769, Connell, WA 99326-0769.



STEPHANIE C. CUNNINGHAM, WSBA #26436

CUNNINGHAM LAW OFFICE

August 13, 2014 - 9:30 AM

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