

IN THE DISTRICT COURT OF APPEAL OF THE STATE OF FLORIDA
FIFTH DISTRICT

NOT FINAL UNTIL TIME EXPIRES TO
FILE MOTION FOR REHEARING AND
DISPOSITION THEREOF IF FILED

DOROTHY SINGER,

Appellant,

v.

Case No. 5D18-1783

STATE OF FLORIDA,

Appellee.

_____ /

Opinion filed November 22, 2019

Appeal from the Circuit Court
for Flagler County,
Dennis Craig, Judge.

Paula C. Coffman and Jeffrey D. Deen, Office
of Criminal Conflict and Civil Regional Counsel,
Orlando, for Appellant.

Ashley Moody, Attorney General, Tallahassee,
and L. Charlene Matthews, Assistant Attorney
General, Daytona Beach, for Appellee.

EISNAUGLE, J.

Appellant, Dorothy Singer, appeals her judgment and sentence for the first-degree premeditated murder of her husband with a firearm, arguing the trial court abused its discretion when it denied a defense motion for continuance that was prompted by the State's disclosure of an expert DNA report received shortly before trial. We agree and

reverse for a new trial on this issue. We find that Singer's other arguments lack merit without further discussion.

Just twelve days before Singer's trial, the State produced a Florida Department of Law Enforcement ("FDLE") report prepared by its newly disclosed expert witness, Molly Carter, that concluded for the first time that blood found on Singer's headboard matched her husband's DNA profile.¹ Defense counsel moved to continue the trial, arguing that this new evidence "change[d] completely" Singer's theory of defense and that counsel needed the assistance of his own expert to properly prepare for Carter's deposition and trial. Counsel informed the trial court that his expert would need Carter's laboratory notes to evaluate the report, and that pursuant to FDLE's internal procedures, it would take at least one week to receive the notes. Finally, counsel argued that he would not be able to cross-examine Carter without the benefit of his own expert because he was unfamiliar with FDLE's new DNA testing procedures.

Although the State agreed that Singer should receive a continuance, the trial court nevertheless denied the motion to continue, reasoning:

But how could the FDLE take this sample and be so wrong that not only is it not who your client said the blood should be, but that miraculously for the [S]tate, it comes up to be the victim's blood, and especially in the circumstance of the case of where we have these things that are, you know, in place.

We've got the body on the property. And all the other evidence that is attendant to it. So as far as getting another expert to test, you know, whether that's the victim's blood or not, seems to me we're wasting the [S]tate's money.

¹ Counsel for Singer represented that he believed the blood originated from Singer's kittens that the husband allegedly killed shortly before his disappearance. This theory was not "far-fetched," conceded the State, as the DNA results on two other blood samples retrieved from the same bedroom revealed no human DNA.

....

Now, it seems to me that this is even more than hitting the lottery, that that's not the victim's blood. So why should I continue the case?

....

I'm not going to continue the case for him to get a DNA expert . . . because . . . there's absolutely no chance, no chance that FDLE made a mistake and said that was the victim's blood when it actually in reality was some animal blood.

....

I understand that it would be your responsibility to try to do that, but at some point in time common sense has to reign and we shouldn't be spending money just for the sake of spending money. And, quite frankly, that's all I see here.

We review a trial court's denial of a motion to continue trial for a "palpable" abuse of discretion. *Trocola v. State*, 867 So. 2d 1229, 1230 (Fla. 5th DCA 2004). "The 'common thread' connecting cases finding a 'palpable' abuse of discretion in the denial of a continuance seems to be that defense counsel must be afforded a reasonable opportunity to investigate and prepare any applicable defenses." *Id.* at 1231 (citation omitted).

When reviewing whether the trial court's denial of a motion for continuance constituted a palpable abuse of discretion, we consider factors including, but not limited to: (1) the time actually available for preparation; (2) the likelihood of prejudice from the denial; (3) the defendant's role in shortening preparation time; (4) the complexity of the case; (5) the availability of discovery; (6) the adequacy of counsel actually provided; and (7) the skill and experience of chosen counsel and his pre-retention experience with the

defendant or the alleged crime. *Id.* (citing *McKay v. State*, 504 So. 2d 1280, 1282 (Fla. 1st DCA 1986)).

Based upon this record, we conclude that all these factors weigh in favor of reversal.

As to the time for preparation, the experience of counsel, and complexity of the case, defense counsel had only twelve days to analyze the FDLE report. Based on counsel's limited experience with DNA cases and lack of familiarity with FDLE's current procedures, combined with the complexity of the expert report at issue here, we conclude that twelve days was wholly inadequate to prepare for trial.

As to the likelihood of prejudice, we conclude that the likelihood was great because defense counsel informed the trial court that Carter's report and testimony would go unchallenged at trial without the assistance of his own expert and the report "changed drastically" Singer's theory of defense.

As to the defendant's role in shortening the preparation time, our record provides no indication that Singer caused the need for a continuance, nor does the State argue otherwise.

As to the availability of discovery, defense counsel notified the court that he could not obtain Carter's notes, which were necessary to fully evaluate her report and prepare for her deposition, for one to two weeks due to FDLE's internal procedures.

As to the adequacy of counsel actually provided, defense counsel was forced to proceed to trial unprepared, just as he predicted. Indeed, Carter's expert testimony went entirely unchallenged at trial.

We recognize the trial courts' busy dockets and the need to effectively and efficiently dispose of cases. Therefore, trial courts are often faced with a difficult balance when a party seeks to continue a long-scheduled trial. However, docket management, the expense of a continuance, and the trial court's assumption that an FDLE report is unassailable do not override a defendant's due process rights to an adequate opportunity to prepare for trial and to challenge the State's evidence. See, e.g., *D.N. v. State*, 855 So. 2d 258, 261 (Fla. 4th DCA 2003) (“[T]he due process rights of the individual triumph over these other considerations.”).

On these facts, we conclude that the denial of Singer's motion for continuance was a “palpable” abuse of discretion, and reverse and remand for a new trial.

REVERSED and REMANDED for further proceedings.

SASSO, J. and JACOBUS, B.W., Senior Judge, concur.