COURT OF APPEALS
DECISION
DATED AND FILED

August 18, 1999

Marilyn L. Graves
Clerk, Court of Appeals
of Wisconsin

No. 98-3616

STATE OF WISCONSIN **IN COURT OF APPEALS**
DISTRICT II

COUNTY OF WALWORTH,

PLAINTIFF-RESPONDENT,

v.

ROBERT E. RYAN,

DEFENDANT-APPELLANT.

APPEAL from a judgment of the circuit court for Walworth County: JAMES L. CARLSON, Judge. *Affirmed.*

BROWN, P.J. Robert E. Ryan appeals from a judgment of conviction for operating while intoxicated, alleging that the trial court failed to exercise its discretion when it refused to grant him a continuance on his trial. We conclude that the court properly denied Ryan's request because the basis for the request was unreasonable and a continuance would have been inconvenient to the court and the prosecution.

The facts are as follows. Ryan was cited for OWI on June 29, 1998. He pled not guilty and made a timely demand for a jury trial. On August 27, 1998, the trial court set the trial for December 7 and 8, 1998. On November 25, 1998, defense counsel wrote the trial court and requested that the trial be rescheduled. Counsel reiterated this request at a status conference held on December 1, 1998. At that time, the court stated that "[d]ue to the late request here, the case will remain on for trial." Then, at a second status conference on December 3, 1998, defense counsel again requested a continuance and the court again denied this request. Defense counsel wrote the trial court the next day to inform the judge that he would not be able to attend the trial. When neither Ryan nor his counsel appeared for the jury trial, the trial court entered judgment against Ryan, finding him guilty of operating while intoxicated.[1]

The reason defense counsel wanted a continuance and failed to appear at trial was because he had another trial scheduled in another county. According to defense counsel, the other trial had been scheduled on August 25, two days before Ryan's trial was set. But defense counsel mentioned no conflict when the December 7 jury trial was set.

The decision whether to grant a motion for continuance is within the discretion of the trial court. *See* ***Phifer v. State***, 64 Wis.2d 24, 30, 218 N.W.2d 354, 357 (1974). In making its decision, the trial court must weigh the defendant's right to a fair trial against the public's interest in the efficient administration of justice. *See* ***id.*** at 31, 218 N.W.2d at 358. When conducting this balancing test, appropriate factors for the court to consider include: the length of delay requested;

[1] The trial court also found Ryan guilty of operating with a prohibited alcohol content, but "only enter[ed] one disposition." Ryan was not convicted of operating with a PAC.

whether a continuance has been requested previously; the convenience or inconvenience to the parties, witnesses and court; and the legitimacy of the reasons for the request. *See* ***id.***

Here, the court was well within its bounds in denying Ryan's request. Counsel knew of the conflict when the case was set for trial but did not mention it. Instead, counsel waited until just two weeks before trial. The State had already subpoenaed all its witnesses. Apparently, counsel had counted on the other scheduled case not actually going to trial on that date.[2] We wholeheartedly agree with the trial court that this is "not a valid ground for requesting a continuance." The judge runs the court, not the lawyers. Lawyers should not schedule multiple trials for the same day, speculating that one will settle or not otherwise go to trial, and then expect the other party, the witnesses and the court to scramble their schedules when the plan goes awry.

By the Court.—Judgment affirmed.

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[2] At the December 3 status hearing defense counsel stated:

> We did notice it, your Honor, but the case in which we entered a plea on Monday would have had priority, and the case would have proceeded. So until we knew that that case was not going, we didn't know that we weren't available. So we were operating under the belief that we would be here, because there was no agreement reached in that other case. And so that is the reason why we didn't ask for an adjournment until we knew for sure that we wouldn't be appearing here.

This opinion will not be published. *See* RULE 809.23(1)(b)4, STATS.