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**IN THE
COURT OF APPEALS OF INDIANA**

REGINA JACKSON,)
)
 Appellant-Defendant,)
)
 vs.) No. 49A04-0909-CR-505
)
 STATE OF INDIANA,)
)
 Appellee-Plaintiff.)

APPEAL FROM THE MARION SUPERIOR COURT
The Honorable Rebekah F. Pierson-Treacy, Judge
The Honorable Steven Rubick, Magistrate
Cause No. 49F19-0903-CM-32501

April 14, 2010

MEMORANDUM DECISION - NOT FOR PUBLICATION

CRONE, Judge

Case Summary

Regina Jackson appeals her convictions for class A misdemeanor resisting law enforcement and class B misdemeanor disorderly conduct. Jackson presents several issues for our review, one of which we find dispositive: Whether the trial court abused its discretion when it denied Jackson's motion for a continuance.

We vacate Jackson's convictions and remand for a new trial.

Facts and Procedural History

The facts relevant to this appeal indicate that the State charged Jackson with class A misdemeanor resisting law enforcement and class B misdemeanor disorderly conduct after Jackson loudly protested the arrest of her sister outside of an Indianapolis dance club. On the day of trial, August 10, 2009, Jackson's counsel, who was just "filling in for the day," realized that the defense witness list had not been file stamped and, thus, had apparently not been provided to the State. Tr. at 4. Other than testify herself, Jackson intended to call one witness, Rita Richardson, in her defense at trial. When Jackson's counsel realized the disclosure error, counsel immediately informed the State. The prosecutor had a few moments before the beginning of the trial to speak with Richardson. When the trial began, the State moved to exclude Richardson as a witness. The trial court granted the State's motion. Jackson's counsel then moved for a continuance or, in the alternative, to bifurcate the trial in order to avoid the exclusion of the witness. Although the State did not object to the continuance, the trial court denied the motion for continuance. Following a bench trial, the court found Jackson guilty as charged. This appeal ensued.

Discussion and Decision

Jackson contends that the trial court abused its discretion when, under the circumstances presented, it denied her motion for continuance. We agree.

Rulings on non-statutory motions for continuance lie within the discretion of the trial court, and we will reverse only for an abuse of that discretion and resultant prejudice. *Maxey v. State*, 730 N.E.2d 158, 160 (Ind. 2000). An abuse of discretion occurs only where the decision is clearly against the logic and effect of the facts and circumstances. *Stafford v. State*, 890 N.E.2d 744, 750 (Ind. Ct. App. 2008). Continuances to allow more time for preparation are not favored and are granted only by a showing of good cause and in furtherance of justice. *Id.*

The Sixth Amendment to the United States Constitution and Article 1, Section 13 of the Indiana Constitution guarantee a criminal defendant the right to have compulsory process for obtaining witnesses in his or her favor. *Washington v. State*, 840 N.E.2d 873, 880 (Ind. Ct. App. 2006), *trans. denied*. Although a criminal defendant's right to present witnesses on his or her behalf is of critical importance, it is not absolute and must sometimes yield to other legitimate interests in the criminal trial process. *Id.* Our supreme court has stated that “[t]here is no question that trial courts have the discretion to exclude belatedly disclosed witnesses.” *S.T. v. State*, 764 N.E.2d 632, 635 (Ind. 2002). However, the trial court's discretion “is limited to instances where there is evidence of bad faith on the part of counsel or a showing of substantial prejudice to the State.” *Id.* at 635-36 (citations omitted). Moreover, in light of a defendant's right to compulsory process under the federal and state

constitutions, in cases where a party fails to timely disclose a witness, “courts generally remedy the situation by providing a continuance rather than disallowing the testimony.” *Id.* at 636; *Rohr v. State*, 866 N.E.2d 242, 246 (Ind. 2007); *Fields v. State*, 679 N.E.2d 1315, 1319 (Ind. 1997).

Here, nothing in the record suggests that Jackson’s counsel acted in bad faith in failing to timely file a witness list. Instead, this appears to be a case of plain and simple oversight. When the State moved to exclude Richardson as a witness, the prosecutor did not argue that the State would suffer substantial prejudice. The prosecutor merely pointed out that she had only had a brief opportunity to speak with Richardson. Jackson’s counsel specifically requested a continuance, or in the alternative a bifurcated trial, in order to remedy the situation and avoid unnecessary prejudice to Jackson due to counsel’s oversight. Indeed, the State did not object to Jackson’s motion for continuance.

Other than Jackson herself, Richardson was the only defense witness and would have presumably reinforced Jackson’s version of events for the night in question. In light of the fact that this was a bench trial, a short continuance to allow the State to speak with Richardson would have been appropriate under the circumstances and in the furtherance of justice.¹ We conclude that the trial court abused its discretion when it denied Jackson’s

¹ The State concedes that a continuance is a proper remedy for a discovery violation such as the one at issue here. Appellee’s Br. at 7.

motion for continuance. Accordingly, we vacate Jackson's convictions and remand for a new trial.

Vacated and remanded.

BAKER, C.J., and DARDEN, J., concur.