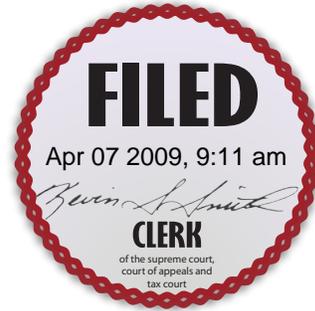


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ATTORNEY FOR APPELLANT:

DAVID A. HAPPE
Lockwood Williams & Happe
Anderson, Indiana

ATTORNEYS FOR APPELLEE:

GREGORY F. ZOELLER
Attorney General of Indiana

JOBY D. JERRELLS
Deputy Attorney General
Indianapolis, Indiana

**IN THE
COURT OF APPEALS OF INDIANA**

D.R.,)
)
Appellant-Defendant,)
)
vs.) No. 49A04-0808-JV-503
)
STATE OF INDIANA,)
)
Appellee-Plaintiff.)

APPEAL FROM THE MARION SUPERIOR COURT
The Honorable Marilyn Moores, Judge
The Honorable Beth Jansen, Magistrate
Cause No. 49D09-0802-JD-000339

April 7, 2009

MEMORANDUM DECISION – NOT FOR PUBLICATION

MATHIAS, Judge

D.R. was adjudicated a delinquent child in Marion Superior Court for committing battery resulting in serious bodily injury, a Class C felony if committed by an adult. D.R. appeals arguing that the evidence was insufficient to prove that the victim suffered serious bodily injury to enhance the offense from a Class A misdemeanor to a Class C felony. D.R. also argues that the trial court abused its discretion by denying a defense motion for continuance to obtain the attendance of a witness. We affirm.

Facts and Procedural History

On January 24, 2008, at the end of the school day, fifteen-year-old J.R. left the in-school suspension room at Lincoln Middle School to go to his locker. Other students came up to him and told him that D.R. wanted to fight him. J.R. responded “forget him” but other students told D.R. that J.R. said “f**k him.” Tr. p. 5. D.R. approached J.R. and asked if he was “talking stuff?” Id. At that point, J.R. backed up to the locker and D.R. swung before J.R. could duck. D.R. was angry and hit J.R. in the jaw, knocking him down. When J.R. got up from the floor he attempted to swing back but D.R. was already swinging his fists and hit J.R. four or five times in the head, including blows to the lip, eye and jaw. J.R. “blacked out” for about five minutes and woke up in a classroom on the other side of the hallway. Tr. pp. 8-9. The teacher carried J.R. to the nurse’s office to put ice on his lip. J.R. took the bus home.

When J.R.’s mother arrived home, J.R.’s lip and jaw were swollen, he had a lump on his left eye, and he was “bleeding nonstop” from his lip. Tr. p. 21. J.R.’s mother took

him to the emergency room to be examined. The hospital did not administer stitches but gave him Tylenol for pain.

On February 5, 2008, the State filed a petition alleging that D.R. was a delinquent child for committing battery, which would be a Class C felony if committed by an adult. The court conducted an initial hearing on February 5, 2008. On May 20, 2008, the court scheduled a denial hearing for May 27, 2008. On May 27, 2008, D.R. requested and was granted a continuance of the denial hearing, which was then set for July 8, 2008. On July 8, 2008, the court denied D.R.'s second request for a continuance and held the denial hearing. On August 5, 2008, the court issued its dispositional order, finding D.R. to have committed the acts alleged. Additionally, the court ordered D.R. to be placed on probation with the following conditions: complete twenty-eight hours of community service, write a one-page apology to the victim, and to pay restitution. D.R. now appeals.

I. Insufficient Evidence

D.R. argues that the evidence is insufficient to support the delinquency adjudication—specifically that the evidence is insufficient to prove serious bodily injury. When the State seeks to have a juvenile adjudicated as a delinquent for committing an act which would be a crime if a committed by an adult, the State must prove every element of the crime beyond a reasonable doubt. J.S. v. State, 843 N.E.2d 1013, 1016 (Ind. Ct. App. 2006), trans. denied. In reviewing a juvenile adjudication, this court will consider only the evidence and reasonable inferences supporting the judgment and will neither

reweigh evidence nor judge the credibility of the witnesses. Id. If there is substantial evidence of probative value from which a reasonable trier of fact could conclude that the juvenile was guilty beyond a reasonable doubt, we will affirm the adjudication. Id.

The State was required to establish that D.R. knowingly or intentionally touched J.R. in a rude, insolent, or angry manner resulting in serious bodily injury. See Ind. Code § 35-42-2-1 (2004 & Supp. 2008). “Serious bodily injury” includes loss of consciousness. See Ind. Code § 35-41-1-25 (2004 & Supp. 2008).

First, D.R. asserts that the evidence is insufficient to show that his actions resulted in serious bodily injury. Whether bodily injury is “serious” has been held to be a matter of degree and therefore a question reserved for the factfinder. Jones v. State, 810 N.E.2d 777, 780 (Ind. Ct. App. 2004) (finding sufficient evidence based on one minute loss of consciousness and subsequent pain for approximately one week). D.R. hit J.R. four or five times in the head, including blows to the lip, eye, and jaw. J.R. testified that he “blacked out” for about five minutes and woke up in a classroom on the other side of the hallway. Tr. p. 8. This evidence is sufficient to establish that J.R. suffered serious bodily injury.

D.R. also argues that this court should set aside the delinquency finding even though the evidence may still support a finding of a lesser-included offense. This is an invitation to the court to reweigh the evidence, which we will not do.

II. Motion for Continuance

D.R. also argues that the court abused its discretion when it failed to grant his second oral motion for a continuance to secure a witness disclosed to the State the day of the denial hearing. A motion for a continuance based upon non-statutory grounds may be granted in the trial court's discretion, Drave v. State, 442 N.E.2d 1055, 1057 (Ind. 1982). In reviewing the denial of a juvenile's oral motion for continuance, the Court reviews for abuse of discretion. Flake v. State, 767 N.E.2d 1004, 1008 (Ind. Ct. App. 2002). An abuse of discretion occurs when the ruling is against the logic and effect of facts and circumstances before the court or where the record demonstrates prejudice from denial of the continuance. Anderson v. State, 695 N.E.2d 156, 157 (Ind. Ct. App. 1998). We will not disturb the trial court's decision absent a clear demonstration that the trial court abused its discretion. Arhelger v. State, 714 N.E.2d 659, 665 (Ind. Ct. App. 1999).

D.R.'s first request for a continuance on May 27, 2008 was granted and the denial hearing was rescheduled for July 8, 2008. On July 8, 2008, D.R. requested a second continuance to secure the attendance of a witness. D.R. asserts that the witness would have established that D.R. acted in his own defense.

In Arhelger, the defendant failed to subpoena a witness he claimed was "crucial" to his case. Id. at 667. The Court held that the defendant made no showing to the trial court, or on appeal, that he was prejudiced by the denial of a continuance. Id. Furthermore, the defendant failed to exercise due diligence to subpoena the "crucial" witness.

Here, the court granted D.R.'s first motion for a continuance, and his denial hearing was continued from May 27th to July 8th, giving D.R. over forty days to locate and subpoena witnesses and to prepare for the denial hearing. We therefore conclude that the trial court did not abuse its discretion by refusing to grant a continuance. See G.N. v. State, 833 N.E.2d 1071, 1075 (Ind. Ct. App. 2005) (holding that the trial court did not abuse its discretion when it denied the juvenile's request for a continuance after noting that trial counsel had more than one month to prepare for trial).

Conclusion

The evidence is sufficient to support the true finding that D.R. committed a delinquent act, battery resulting in serious bodily injury, a Class C felony if committed by an adult. Further, the juvenile court did not abuse its discretion when it denied D.R.'s motion for continuance.

Affirmed.

BAILEY, J., and BARNES, J., concur.