

**COURT OF APPEALS
DECISION
DATED AND FILED**

November 8, 2001

Cornelia G. Clark
Clerk of Court of Appeals

NOTICE

This opinion is subject to further editing. If published, the official version will appear in the bound volume of the Official Reports.

A party may file with the Supreme Court a petition to review an adverse decision by the Court of Appeals. See WIS. STAT. § 808.10 and RULE 809.62.

No. 00-2270-CR

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT I**

STATE OF WISCONSIN,

PLAINTIFF-RESPONDENT,

V.

LA'SHONE JACKSON,

DEFENDANT-APPELLANT.

APPEAL from a judgment of the circuit court for Milwaukee County: PATRICIA D. McMAHON, Judge. *Affirmed.*

Before Vergeront, P.J., Roggensack and Deininger, JJ.

¶1 PER CURIAM. La'Shone Jackson appeals from a judgment of conviction. The issue is whether the court erred in denying his request for a continuance on the day of trial. We affirm.

¶2 Jackson was charged with first-degree intentional homicide. On the day the trial was scheduled to begin, his attorney requested a continuance, for several reasons, including the need to locate additional witnesses, conduct further investigation, and the complexity of the case. The trial court denied a continuance. Jackson had received a continuance on the day of trial, approximately three weeks earlier, based on his former attorney's conflict of interest. That attorney was then allowed to withdraw.

¶3 The parties agree that the decision on a motion for a continuance is a discretionary one. *State v. Leighton*, 2000 WI App 156, ¶27, 237 Wis. 2d 709, 616 N.W.2d 126. They further agree that there are six factors the court is to balance, including the length of the delay; whether other counsel is prepared to try the case; whether there were other continuances requested and received by the defendant; the convenience or inconvenience to the parties, witnesses, and the court; whether the delay is for legitimate reasons or dilatory; and any other relevant factors. *Id.* at ¶28.

¶4 Jackson argues that the trial court's denial of his motion was based in part on factual findings that were clearly erroneous. One of those findings was that both continuances were caused by Jackson's failure to communicate with his attorneys. The trial court drew this inference from the fact that both continuances appeared to be caused by things that Jackson told his attorneys shortly before the trial date. Although the trial court did say in granting the first continuance that there were legitimate ethical concerns involved, that is not inconsistent with a later finding that Jackson appeared to be showing a pattern of raising concerns at the last minute in order to delay the trial. The court's finding is not clearly erroneous.

¶5 Jackson also argues that the court erred in finding that he did not timely provide information about the additional witnesses to his second attorney. He argues that there was no evidence to support this finding. However, there is also little evidence to the contrary. In requesting the continuance, his attorney was somewhat vague about when this additional information was provided by Jackson or discovered by an investigator, and did not explain why the information was not developed earlier. Based on this record, the court's finding was not clearly erroneous.

¶6 We are also satisfied that the court properly exercised its discretion in weighing the various factors. Jackson argues that the court failed to engage in a rational mental process, but we disagree. The record shows that the court viewed a number of factors as weighing against another continuance, including its belief that the defendant was being manipulative, the inconvenience to the witnesses who were ready for trial for a second time, and the interests of the public and the victim's family.

¶7 Jackson argues that the trial court denied his right to due process by not permitting him to finish making a record on his continuance request. The issue is difficult to review because Jackson did not preserve in some fashion what record his attorney intended to make. His attorney had already explained the basis for the continuance motion, and it is not possible for us to do more than speculate as to what additional factual information the attorney might have presented. On this record, there is no reversible error.

By the Court.—Judgment affirmed.

This opinion will not be published. WIS. STAT. RULE 809.23(1)(b)5 (1999-2000).

