

COURT OF APPEALS OF OHIO
EIGHTH APPELLATE DISTRICT
COUNTY OF CUYAHOGA

CITY OF CLEVELAND HEIGHTS,	:	
Plaintiff-Appellee,	:	
v.	:	No. 115980
FRANK W. HENRY,	:	
Defendant-Appellant.	:	

JOURNAL ENTRY AND OPINION

JUDGMENT: AFFIRMED

RELEASED AND JOURNALIZED: September 24, 2026

Criminal Appeal from the Cleveland Heights Municipal Court
Case No. 25-CRB-00694

Appearances:

William R. Hanna, City of Cleveland Heights Director of Law, and Pamela L. Roessner, City of Cleveland Heights Assistant Prosecutor, *for appellee*.

Cullen Sweeney, Cuyahoga County Public Defender, and Aaron T. Baker, Assistant Public Defender, *for appellant*.

SEAN C. GALLAGHER, J.:

{¶ 1} Frank Henry appeals his convictions for resisting arrest and open container claiming the trial court abused its discretion by denying an oral, day-of-trial request to continue the trial. For the following reasons, we affirm.

{¶ 2} The facts are straightforward. A Cleveland Heights police officer initiated a traffic stop on Henry, who was driving 38 m.p.h. in a 25 m.p.h. speed zone. Henry, who had an active warrant for his arrest and was driving despite a suspended license, was reluctant to identify himself. Once identified, the officer discovered the warrant. Because of that, Henry was detained while backup officers arrived to assist in arresting Henry, who briefly resisted the officers. An open bottle of tequila was discovered in the vehicle in a location within reach of Henry as he was driving.

{¶ 3} There were two case files jointly set for trial. Henry was charged with resisting arrest, failure to disclose personal information, and an open-container violation in the underlying case. In a separate case, not the subject of this appeal, Henry was charged with driving under a suspended license, speeding, and failure to wear a seatbelt. On the morning of trial, which was the second scheduled trial date because Henry failed to appear for the first, the city memorialized the global plea offered to Henry — to dismiss all but the resisting arrest and driving-under-suspension charges. Henry declined the offer and orally requested a continuance of the trial so that he could retain counsel because he was expecting a better plea offer. At no point did Henry ever express dissatisfaction with his appointed counsel. Citing the lateness of the request, Henry's failure to retain counsel earlier, and the parties' preparedness for the trial with all witnesses in attendance, the municipal court denied Henry's oral request.

{¶ 4} When asked at trial whether he had a valid driver’s license, Henry responded by saying he “just travel[s]” and because of that, he gave up his driver’s license years before the day in question, which are discredited arguments consistent with those advanced by self-proclaimed “sovereign” citizens, individuals, or nationals, however they identify themselves. *State v. Jones*, 2024-Ohio-4973, ¶ 14 (11th Dist.). He also confirmed that the tequila bottle was present. When asked at trial who owned the vehicle he was driving, Henry asserted his Fifth Amendment right to remain silent. Except for the speeding and resisting-arrest charges, Henry confirmed or did not challenge the allegations. On the evidence presented, the trial court found Henry guilty of resisting arrest and the open-container violation, as well as the traffic offenses in the separate case that is not part of this appeal.

{¶ 5} In the sole assignment of error, Henry claims the municipal court abused its discretion by denying the continuance on the morning of trial because the request was “reasonable.” Other than authority reciting the boilerplate standard of review, Henry offers no case authority favorable to his argument.

{¶ 6} “A trial court’s decision to grant or deny continuance of a trial is reviewed by this court under an abuse-of-discretion standard.” *State v. Adkisson*, 2024-Ohio-964, ¶ 11 (8th Dist.), citing *State v. Unger*, 67 Ohio St.2d 65 (1981). A trial court abuses its discretion when it “acts in an unreasonable, arbitrary, or unconscionable manner.” *State ex rel. Charvat v. Frye*, 2007-Ohio-2882, ¶ 16. As is pertinent to the argument raised, “[a] decision is unreasonable if there is no sound reasoning process that would support that decision.” *AAAA Ents., Inc. v. River*

Place Community Urban Redevelopment, 50 Ohio St.3d 157, 161 (1990). “It is not enough that the reviewing court, were it deciding the issue *de novo*, would not have found that reasoning process to be persuasive” *Id.* This is because an appellate court cannot substitute its judgment for that of the trial court. *State v. J.B.*, 2026-Ohio-1405, ¶ 13, citing *Berk v. Matthews*, 53 Ohio St.3d 161, 169 (1990).

{¶ 7} The existence of an arguably reasonable alternative to a discretionary decision of the trial court does not prove an abuse of discretion occurred. This case is illustrative of that point. Although it could be considered “reasonable” to grant the motion to continue, the rejection of that alternative does not necessarily demonstrate an unreasonableness of the decision under the abuse-of-discretion standard.

{¶ 8} By way of illustration, it has been generally concluded that the filing or orally moving for a continuance of trial immediately before the opening statements is disfavored. *State v. Nicholson*, 2007-Ohio-6653, ¶ 14 (8th Dist.). “A defendant’s request to substitute retained counsel of his choice must be timely and not disrupt the trial proceedings.” *Id.*; see also *State v. Washington*, 2025-Ohio-5755, ¶ 66 (8th Dist.). “When an accused has previous opportunities but waits until the last minute, such as, the morning of trial, to request a substitution of counsel and a continuance, the court may infer the motions were made in bad faith for the purpose of delay.” *Nicholson* at ¶ 15. This is especially evident when no reason for the failure to obtain counsel is presented. In that situation, a trial court’s decision to deny the continuance is not unreasonable and, therefore, cannot be considered

an abuse of discretion. *Id.*; see also *State v. Adkisson*, 2024-Ohio-964, ¶ 19 (8th Dist.); quoting *State v. Price*, 2015-Ohio-411, ¶ 18 (8th Dist.), quoting *State v. Haberek*, 47 Ohio App.3d 35, 41 (8th Dist. 1988).

{¶ 9} Because Henry has not addressed that general proposition of black-letter law, we must overrule the sole assignment of error presented for our review. His request for a continuance on the morning of trial because he was not satisfied with the plea offer could be reasonably construed as being made in bad faith to delay the proceedings. As a result, the record does not demonstrate that the municipal court's decision denying the continuance was unreasonable or unsupported by a sound reasoning process.

{¶ 10} The convictions are affirmed.

It is ordered that appellee recover from appellant costs herein taxed.

The court finds there were reasonable grounds for this appeal.

It is ordered that a special mandate issue out of this court directing the municipal court to carry this judgment into execution. The defendant's conviction having been affirmed, any bail pending appeal is terminated. Case remanded to the trial court for execution of sentence.

A certified copy of this entry shall constitute the mandate pursuant to Rule 27 of the Rules of Appellate Procedure.

SEAN C. GALLAGHER, JUDGE

MICHELLE J. SHEEHAN, A.J., and
EILEEN A. GALLAGHER, J., CONCUR