

**SIXTH DISTRICT COURT OF APPEAL
STATE OF FLORIDA**

Case No. 6D2024-2172
Lower Tribunal No. CF23-007135-XX

JOHNNY EDWARD SIMON,

Appellant,

v.

STATE OF FLORIDA,

Appellee.

Appeal from the Circuit Court for Polk County.
Sharon M. Franklin, Judge.

May 8, 2026

PER CURIAM.

Johnny Edward Simon (“Appellant”) appeals his convictions for possession of methamphetamine, attempted tampering with evidence, possession of drug paraphernalia, and resisting officers without violence. He raises a single issue on appeal—the trial court abused its discretion by not continuing the trial so he could obtain the presence of two witnesses.

To begin, the Appellant never requested a continuance so he could obtain the presence of two witnesses. Thus, the issue was not preserved for appeal.

Even if the issue had been preserved, it is unavailing. “If the motion for continuance concerns the absence of a witness, ‘the defendant must show: (1) prior due diligence to obtain the witness’s presence; (2) substantially favorable testimony would have been forthcoming; (3) the witness was available and willing to testify; and (4) the denial of the continuance caused material prejudice.’” *Smith v. State*, 170 So. 3d 745, 758–59 (Fla. 2015) (quoting *Mosley v. State*, 46 So. 3d 510, 525 (Fla. 2009)). We review rulings on such motions for an abuse of discretion. *Middleton v. State*, 220 So. 3d 1152, 1175 (Fla. 2017).

The Appellant failed to establish each element. First, the record shows that he waited until a week before trial to inform his counsel about two witnesses that could testify in his defense. Second, while the Appellant claimed the witnesses were present when the incident occurred, he did not describe what they would say at trial. Thus, he failed to show that the witnesses would provide substantially favorable testimony. Third, the Appellant said nothing about the witnesses’ availability and willingness to testify. Finally, the Appellant did not explain how he would be materially prejudiced by the denial of his continuance. Given these failings, we find no abuse of discretion and, thus, affirm the Appellant’s convictions.

AFFIRMED.

NARDELLA, SMITH and KAMOUTSAS, JJ., concur.

Ita M. Neymotin, Regional Counsel, and Joseph Thye Sexton, Assistant Regional Counsel, of Office of Criminal Conflict and Civil Regional Counsel, Fort Myers, for Appellant.

James Uthmeier, Attorney General, Tallahassee, and Sonia C. Lawson, Assistant Attorney General, Tampa, for Appellee.

NOT FINAL UNTIL TIME EXPIRES TO FILE MOTION FOR REHEARING
AND DISPOSITION THEREOF IF TIMELY FILED