

NEBRASKA SUPREME COURT ADVANCE SHEETS
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court found that Jerel was competent to stand trial. Shortly thereafter, Jerel entered a denial to the allegations of the petition and the juvenile court scheduled the petition for an adjudication hearing.

2. MOTIONS TO DISQUALIFY, CONTINUE

On the morning the adjudication hearing was to begin, Jerel's counsel filed a motion to disqualify the juvenile court judge assigned to the case. Jerel claimed disqualification was warranted because the juvenile court judge had previously decided a motion for approval of an emergency placement involving Jerel in another case, brought pursuant to § 43-247(3)(a). Jerel's counsel argued that because the motion for approval of emergency placement contained information about the same incident upon which the allegations in the State's petition were based, the juvenile court judge could not be fair and impartial.

The juvenile court judge overruled the motion to disqualify. The juvenile court judge explained that he would not consider information he had been exposed to in other proceedings involving Jerel in deciding the adjudication petition and that the fact that he had been exposed to such information did not call into question his ability to be fair and impartial. The juvenile court judge also commented on the fact that, although Jerel's counsel had been appointed months earlier, the motion to disqualify was not filed until just prior to the adjudication hearing.

Immediately after the motion to disqualify was overruled, Jerel's counsel moved for a continuance. In support, Jerel's counsel stated, "This is the first time I've met with Jerel in person and he's not had an opportunity to fully go over all the discovery in this case . . ." Counsel also asked that "certain documentation . . . about the alleged incident be provided to [her] office in order for [her] to review" and appeared to assert that Jerel was entitled to such information under *Brady v. Maryland*, 373 U.S. 83, 83 S. Ct. 1194, 10 L. Ed. 2d 215

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(1963). After the juvenile court asked Jerel's counsel why the documents had not been sought earlier, counsel responded that she had only recently discovered the existence of the case involving Jerel brought pursuant to § 43-247(3)(a).

The juvenile court found that good cause for a continuance was lacking and denied the motion. Then the adjudication hearing began.

3. ADJUDICATION HEARING

The State's primary witness at the adjudication hearing was Lanslot Pyne, a foster parent, with whom Jerel had once been temporarily placed. Pyne testified that just after 2 o'clock one morning while Jerel was placed with him, Jerel entered the living room of Pyne's apartment, where Pyne was watching a movie. According to Pyne, Jerel then said that he was "gonna make [the weekend] exciting" for Pyne. Jerel walked to the room where he was staying and initially returned with a lighter. Jerel ignited the lighter and placed it near a tree in Pyne's living room. When Pyne did not react, Jerel returned to his room and retrieved medication, a flashlight, and a knife.

Pyne testified that the agency that placed Jerel in his care had directed that he secure medications and sharp objects and keep them away from Jerel. Following that direction, Pyne had secured knives, medication, and other objects in a safe in his bedroom. When Jerel appeared with the medication, flashlight, and knife, Pyne walked to his room, where he found the safe broken open and several objects, including knives and the medication, missing.

Pyne testified that he then asked Jerel why he took the items, and he recounted Jerel's response:

He said he was about to make my night exciting. He been thinking about way to get rid of me but he wanted to do something really quick because I'm a big person so he don't wanna do something and then I get to attack him and overpower him, so he rather take me out and do it very quick.

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This, however, is not a criminal proceeding. In addition, the State made no argument in this case that the specificity requirement for assigning ineffective assistance of counsel should extend to this juvenile delinquency proceeding. For purposes of this case, we therefore assume without deciding that the specificity requirement does not apply and will consider Jerel’s assignment of ineffective assistance of counsel notwithstanding its general nature.

(b) Resolution Based on
Existing Record?

Another question posed by the assertion of ineffective assistance of counsel in a juvenile case is whether such a claim should be resolved based solely on the existing record. In criminal direct appeals, we routinely decline to rule on claims of ineffective assistance because the record is insufficient to assess them. See *State v. Filholm*, 287 Neb. 763, 768-69, 848 N.W.2d 571, 577 (2014) (“[w]e have held in countless cases that the record on direct appeal was insufficient for assessing ineffective assistance of counsel claims”). When the record on direct appeal is found to be insufficient to resolve a claim of ineffective assistance in a criminal case, the defendant can raise that ineffective assistance claim in a subsequent motion for postconviction relief. See, e.g., *State v. Nolan*, 292 Neb. 118, 870 N.W.2d 806 (2015) (finding defendant was entitled to evidentiary hearing in postconviction proceeding on claims asserted in direct appeal but on which record was insufficient to resolve). But see *State v. Stelly*, 304 Neb. 33, 64, 932 N.W.2d 857, 879-80 (2019) (“just because an appellate court finds the record on direct appeal is insufficient to resolve a claim of ineffective assistance, it does not mean that a postconviction court will necessarily be precluded from later finding the existing record affirmatively refutes the same claim”).

We, however, are aware of no procedure similar to a motion for postconviction relief through which a juvenile could raise

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proceeding would have been different. *State v. Thomas*, 311 Neb. 989, 977 N.W.2d 258 (2022). A reasonable probability is a probability sufficient to undermine confidence in the outcome. *Id.*

Even if Jerel could establish that his counsel was deficient in any of the ways alleged, he cannot show any reasonable probability that, but for those alleged deficiencies, the adjudication hearing would have ended in a different result. While Jerel complains that his counsel should have obtained more documentation, he offers no suggestion as to what any of this documentation would have shown. While he says that his counsel should have met with him in person before the day of the adjudication hearing, he does not tell us how such a meeting would have affected the evidence presented at trial. And while he says that his counsel should have put on evidence of defenses including, “potentially,” a defense based on capacity, he points to no information that would have allowed that or any other defense to succeed. See brief for appellant at 22.

Jerel’s ineffective assistance claims would also fail under the standard he asks us to apply from the Indiana Supreme Court’s opinion in *A.M. v. State*, 134 N.E.3d 361 (Ind. 2019). While Jerel argues that his trial counsel should have done various things differently, the Indiana Supreme Court stated that under the standard it articulated, courts should focus not “on what the child’s lawyer might or might not have done to better represent the child” but on whether the hearing was fundamentally fair and whether the outcome was appropriate considering the child’s best interests. See *A.M. v. State*, 34 N.E.3d at 368.

On the record before us, we cannot conclude the hearing was fundamentally unfair or resulted in an outcome inconsistent with Jerel’s best interests. Although Jerel claims there were things his trial counsel could or should have done differently, it is not as though his trial counsel did nothing at all or abandoned the case. Counsel cross-examined the State’s

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witnesses and allowed Jerel to give his account of the incident at issue through his direct testimony. Counsel was able to use that testimony to develop an argument that the events at issue did not occur as Pyne testified. And although the juvenile court was ultimately not persuaded by this argument, we find no basis to conclude the adjudication hearing was fundamentally unfair or resulted in an outcome that was inconsistent with Jerel’s best interests. And because Jerel’s counsel did not abandon the case or prevent Jerel from being heard, his claims would also fail under a minimal procedural due process standard focused solely on fundamental fairness.

3. MOTION TO CONTINUE

Finally, we turn to Jerel’s contention that the juvenile court erred by denying his motion to continue. Jerel’s arguments that the juvenile court should have continued the case rely on much of the same material that formed the basis of his ineffective assistance of counsel claims. Jerel argues that the juvenile court should have granted his request for a continuance because his trial counsel informed the juvenile court that she had not met with Jerel in person before the day of the adjudication hearing, had not gone over all the evidence with him, and had not obtained evidence that she claimed might be relevant to the case. These comments, Jerel argues, demonstrated that counsel was not prepared to adequately represent him and were grounds for a continuance.

[8] We find no reversible error. A court does not abuse its discretion in denying a continuance unless it clearly appears that the party seeking the continuance suffered prejudice because of that denial. *State v. Ramos*, 319 Neb. 511, 23 N.W.3d 640 (2025). As previewed by our discussion of Jerel’s ineffective assistance of counsel claims, there is no basis on which we could conclude that the adjudication hearing would have ended differently had a continuance been granted so that Jerel’s counsel could meet with him personally or obtain additional documentation. We do not know what would have

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transpired differently had Jerel's counsel met with him in person, and we do not know what documents might have been obtained. Furthermore, Jerel had the benefit of a contested adjudication hearing at which his counsel cross-examined the State's witnesses, adduced testimony from Jerel, and presented an argument that he did not commit an act which would constitute terroristic threats. Jerel cannot show that he suffered prejudice from the denial of the continuance.

V. CONCLUSION

For the reasons above, we find no merit to Jerel's assignments of error and therefore affirm.

AFFIRMED.