Circuit Court for Baltimore City
Case No.: 118239020

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 307

September Term, 2021

NIAJUL MILLER

v.

STATE OF MARYLAND

Kehoe,
Leahy,
Beachley,

JJ.

Opinion by Kehoe, J.

Filed: June 30, 2022

After a jury trial in the Circuit Court for Baltimore City, Niajul[1] Miller was convicted of three counts of sexual abuse of a minor,[2] whom we will refer to as "W."[3] Mr. Miller contends the court abused its discretion and violated his constitutional rights in denying his motions to postpone his trial and to require the appearance at trial of an investigator for the Baltimore City Department of Social Services (the "Department"), who he argues was an essential witness to his case. Mr. Miller presents one question:

> Whether Appellant's right to a fair trial guaranteed by the Sixth Amendment and Article 21 of the Maryland Declaration of Rights were violated when the administrative court refused his postponement request to secure the testimony of a properly served material witness, when the trial court refused to permit Appellant to renew his request for a postponement and then refused

[1] Mr. Miller's first name is spelled inconsistently in the record, so we will use the spelling provided by his appellate counsel.

[2] Md. Code, Crim. Law § 3-602 states in pertinent part:

> [(a)](4)(i) "Sexual abuse" means an act that involves sexual molestation or exploitation of a minor, whether physical injuries are sustained or not.
>
> (ii) "Sexual abuse" includes:
>
> 1. incest;
>
> 2. rape;
>
> 3. sexual offense in any degree; and
>
> 4. unnatural or perverted sexual practices.
>
> (b)(1) A parent or other person who has permanent or temporary care or custody or responsibility for the supervision of a minor may not cause sexual abuse to the minor.
>
> * * *

[3] To protect the privacy of the victim, we will refer to him as "W." and his mother as "Ms. Y." Neither the victim's nor his mother's first names or surnames begin with these letters.

to issue a body attachment at trial or declare a mistrial or grant a new trial when it was clear her testimony was material?

We will affirm the judgments of the circuit court.

BACKGROUND

The substance of Mr. Miller's appellate contentions is that he was deprived of his right to have a fair trial because he was not able to call Monica Haskins as a witness. Ms. Haskins was a social worker for the Department who investigated the initial report of child sexual abuse against Mr. Miller. He obtained a subpoena requiring her presence to testify at his trial but did not serve it on the Department until three days prior to trial. But by then, Ms. Haskins was on leave, caring for a sick relative in North Carolina.

Mr. Miller does not contest the sufficiency of the evidence against him. In summary, the evidence showed that he sexually abused W. on repeated occasions starting when W. was seven years old and continuing until he was ten. W. resided with his mother, Ms. Y., and his younger sister in Baltimore. Mr. Miller resided with Ms. Y. on a periodic basis beginning when W. was four years old and ending when he was ten. At the time of W.'s birth, Mr. Miller and Ms. Y. thought that Mr. Miller was W.'s biological father. They later learned through DNA testing that he was not, although they disagree as to when they learned this.[4] Mr. Miller's and Ms. Y.'s domestic relationship was a troubled one—both

[4] Mr. Miller testified that he learned W. was not his biological son when W. was four. Ms. Y. testified that she had the DNA test done when W. was seven or eight.

adults testified that there were periodic incidents of domestic violence between them. W. sometimes intervened in efforts to protect his mother.

W. testified that he told his mother about Mr. Miller's abuse when he was ten years old. In addition to Ms. Y., W. discussed the abuse with "Mr. Burke,"[5] the prosecutor assigned to the case; "Ms. Julia," W.'s therapist; "Ms. Cassandra," *i.e.*, Cassandra Chavez, LCSW, who interviewed W. at the Baltimore Child Abuse Center; a member of the Baltimore City Police Department; and Ms. Haskins.

W.'s testimony to the jury was very graphic: He recounted that a few months after his seventh birthday, Mr. Miller entered the bathroom while W. was taking a shower and began to touch W.'s private parts before pulling him from the shower and anally raping him. He testified that afterwards, there was "white stuff" "[f]rom what [Mr. Miller] did" on his "butt." W. further testified that Mr. Miller raped him on other occasions and also forced him to perform fellatio. W. also related that Mr. Miller told W. that if W. told anyone of the abuse, Mr. Miller would kill W. and his family. No other adult was home during these incidents. This pattern—sexual assault and abuse coupled with threats to kill W., Ms. Y., and W.'s younger sister if W. told anyone—continued until sometime after W.'s tenth birthday, when he disclosed the abuse to Ms. Y.

Ms. Y. testified that W. had been a lively, outgoing child but his behavior changed after his seventh birthday. She told the jury that W. "never wanted to go outside[;] he didn't want to be around [his] peers or no one else beside me and his sister." In early 2018, W.

[5] Burke Miller, Esquire, was the prosecutor at the trial.

told Ms. Y. that Mr. Miller had "done something" to him. Ms. Y. testified that she informed her therapist who in turn contacted the police.

Cassandra Chavez, a social worker with the Baltimore Child Abuse Center, testified as a witness for the State. She related that she conducted a forensic interview of W. that consisted of open-ended questions. An audio/visual recording of the interview was entered into evidence and played to the jury. In the interview, W. described Mr. Miller's abusive conduct. In this recording, W. described a pattern of recurring abuse to Ms. Chavez but his narrative differed from his trial testimony in several respects. Specifically, in the interview, W. did not specifically describe semen or anal rape, but spoke of being touched and fondled by Mr. Miller. He also stated that Mr. Miller "tried to get me to suck his private part" but that W. "pushed it away." W. emphasized Mr. Miller's threats to harm W., his sister, and Ms. Y. if W. disclosed his behavior to anyone.

Ms. Chavez also testified about "delayed" and "continuing" disclosures. A delayed disclosure occurs when a victim "does not provide an immediate account of what allegedly happened to them" and a "continuing disclosure" occurs when a child "may not feel fully comfortable disclosing all the details when they are initially interviewed." Ms. Chavez testified that, in her experience as a forensic child abuse interviewer, delayed responses occurred in "about 40% of the cases that I've interviewed" and continuing disclosures occurred in approximately 20% of cases.

W. was also interviewed by Monica Haskins, a social worker with the Baltimore City Department of Social Services. Ms. Haskins conducted the Department's investigation of

the alleged abuse pursuant to Md. Code., Fam. Law § 5-706. In a written report dated February 28, 2018, Ms. Haskins summarized W.'s description of Mr. Miller's conduct in terms similar to what W. told Ms. Chavez. Additionally, Ms. Haskins reported that Ms. Y. told her that she had first learned of the abuse from W.'s therapist, and not from W. himself (as both she and W. testified at trial). Ms. Haskins also related that Mr. Miller had failed to keep an appointment with the Baltimore City Police detective assigned to the case and that the detective "had been trying to reach [Mr. Miller] without success." Ms. Haskins reported that Ms. Y. played voicemail messages left by Mr. Miller on Ms. Y.'s telephone threatening to "blow her head off" and harm her if she did not return his phone calls. On the same day, Ms. Haskins issued a letter finding that the report of sexual abuse was "unsubstantiated."[6]

Mr. Miller was the sole witness called by the defense. He testified that he had never sexually abused W. but had "[w]hipped his ass quite a few times" as a form of discipline. He also testified that he and Ms. Y. had physical confrontations in W.'s presence. Mr. Miller testified that W. would grab him to get him off of his mother when Mr. Miller and Ms. Y. were fighting and that W. constantly saw the two of them fighting. The prosecutor elected not to cross-examine Mr. Miller.

Mr. Miller was arrested on July 29, 2018 and was charged with four counts of sexual abuse of a minor, spanning one-year increments from December 7, 2014 to December 6, 2017. The relevant procedural history is as follows:

[6] *See* Fam. Law § 5-701(aa) defining "unsubstantiated" as "a finding that there is an insufficient amount of evidence to support a finding [that the reported sexual abuse was] indicated or ruled out."

Trial was first set to begin in December 2018 but was postponed at the mutual agreement of the parties. On December 12, 2018, defense counsel filed a subpoena for the production of the Department's records concerning its investigation of the allegations against Mr. Miller. The Department filed a motion for a protective order opposing issuance of a subpoena until such time that counsel obtained a court order permitting it to disclose the records, citing Md. Code, Hum. Servs. § 1-201.[7] The circuit court issued such an order in January 2019. It is not clear from the record when defense counsel actually received the records, but there is no dispute that defense counsel received them and that the records included Ms. Haskins' February 28, 2018 report of her investigation as well as her written finding that the reported abuse was "unsubstantiated." Trial was rescheduled for April 2, 2019.

On April 2, 2019, trial was rescheduled again to June 26, 2019. On that date, defense counsel informed the court that the case was being re-assigned to a panel attorney because of a conflict of interest within the Office of the Public Defender. The circuit court set a new trial date for September 19 and 20, 2019. The case was specially assigned to the Honorable Marcus Z. Shar for trial.

On September 12, 2019, that is, seven days before the scheduled trial date, Mr. Miller's new trial counsel obtained a subpoena for Ms. Haskins to testify at trial. The subpoena was

[7] In relevant part, Md. Code, Hum. Servs. § 1-201(a) prohibits disclosure over "any information concerning . . . a recipient of . . . child welfare services." Subsection (b)(1) of the statute permits disclosure "in accordance with a court order."

served on the Department on September 16th, three days before the start of trial.[8] On the same day, defense counsel was notified by a paralegal for the Department that Ms. Haskins was "out of town." This brings us to the events that give rise to Mr. Miller's appellate contentions.

A. The trial court's hearing on September 19th

On the morning of trial, the issue of Ms. Haskins' availability to testify was first presented to the trial court. A lawyer for the Department informed the trial court and counsel that the agency had accepted service of the subpoena on Ms. Haskins' behalf. The Department's lawyer also told the court and the parties that Ms. Haskins was out of state caring for a sick relative and would not be back at work until October 7, 2019.[9]

The trial court asked defense counsel what he anticipated the testimony from Ms. Haskins would be. Defense counsel proffered that the witness would testify that the

[8] The subpoena also sought production of Ms. Haskins' investigative notes and reports, even though these documents had been previously disclosed by the Department. Defense counsel later stated that he included the document request "out of an abundance of caution."

[9] The Department also filed a motion for a protective order in which it sought to limit Ms. Haskins' testimony to:

> [her] knowledge of the incident underlying the current charges against the Defendant. Identifying information regarding reporters of abuse and neglect, surnames of minor children committed to the Department, any information that would endanger the lives of individuals, identifying information on persons not relevant to this case, personal information regarding the Defendant, and any attorney-client privilege communications, shall not be disclosed in testimony.

The court granted the motion. The court's order also directed Ms. Haskins to comply with the subpoena and to testify at trial.

Department's investigation resulted in a conclusion that the allegations of abuse were "unsubstantiated" and would explain "how they arrived at that conclusion through their investigation." Defense counsel proffered that he would not otherwise be able to adequately show that an investigation into these accusations had already been conducted which had delivered an "unsubstantiated" conclusion.

The State took no position on Mr. Miller's request for a postponement. However, the prosecutor asserted that if Mr. Miller offered Ms. Haskins' report into evidence as a business or public record (which appeared to be what he intended to do), the State would object to the admission of the report because Mr. Miller failed to timely file notice pursuant to Md. Rule 5-902(b). Further, the prosecutor stated that it would be "very objectionable" for Ms. Haskins to "offer [an] opinion as to what happened." Defense counsel responded that he did not want to introduce the report but wanted Ms. Haskins to testify about her investigation and her conclusions.

Although the court expressed reservations as to the relevancy of the Department's investigation, it concluded that it was "satisfied that what had been presented [was] sufficient" to refer the case to the reception court for the latter court to rule on the motion for a postponement.

2. The reception court denies the request for a postponement

Later that same day, the parties appeared before the reception court, the Honorable Melissa K. Copeland, presiding. Defense counsel explained to the court that Ms. Haskins, whom he characterized as an "essential" witness without providing any further explanation,

had been subpoenaed but was on leave and in North Carolina. Counsel acknowledged that he had neither spoken to nor had any direct contact with Ms. Haskins but stated that she was "made aware of the subpoena prior to leaving town[.]" He stated that he had received an email that Ms. Haskins was on leave and unavailable, but that he did not learn that she was out-of-state until that day.

Ultimately, the reception court denied the request for a postponement. Judge Copeland explained:

> I'm not really too sure I'm finding good cause for this postponement. And here's my problem, [it] is that I have someone who was . . . properly summoned, the witness is in North Carolina and out of the State, that [defense counsel was] aware earlier that she was on leave. There was nothing done to explain to her that . . . I've summoned you for a case on that day [and because] you have been properly summonsed you need to understand I could request a body attachment for you to be brought to the court.
>
> * * *
>
> I think at this point I'm going to send you back up to trial [and] you need to ask for a body attachment [from the trial court], if you want to get her here.
>
> * * *
>
> I think at the very least somebody from the [Department] needs to call [Ms. Haskins] and say you were properly summonsed to Court. That when you land your feet in Maryland, they're going to take you into custody because you failed to adhere to a summons.

3. The trial court denies Mr. Miller's request to return to the reception court

At the beginning of the day's proceedings on September 20th, Judge Shar stated that he was aware that defense counsel wished to return to the reception court to renew his request for a continuance. The court repeatedly asked defense counsel to state his reasons

for the request. Defense counsel's responses were somewhat discursive but the dialogue between the court and counsel can be summarized as follows:

Defense counsel first stated that, after the hearing before the reception court, he had watched "the video again"[10] and had realized that Ms. Haskins' absence would be "very, very prejudicial" and that she was an "essential" witness "because of the testimony that she could give [and] because she [had spoken to] essentially all of the State's witnesses." In response to a question from the court, counsel conceded that he had never spoken to Ms. Haskins. The court again asked for a proffer of what counsel thought her testimony might be "that would be crucial to [Mr. Miller's] case." Counsel responded:

> [W]ithout strategy to be laid out, I know that I have reports in my possession. They were not, I mean they were written because they have her signature on it, Ms. Haskins, about the facts of the case, about when it was reported, who it was reported to, what allegations were alleged. That is the information I think that could get crossed [sic] when we are or could differ when witnesses testify as to when it was reported, who it was reported to first, what the extent of the investigation was.
>
> Essentially, what came closer to my attention was in the video where [W.] was asked about, you know when he reported and I think that's a possibility that there was a difference in when or who it was reported [to.] I think that is very essential with regards to when this whole allegation started to, to start to come to light.

After further questions from the court, counsel stated that he believed that W.'s and Ms. Y.'s testimony as to when the alleged abuse was reported and to whom it was reported

[10] Context suggests that counsel was referring to the video of Ms. Chavez's interview of W. that was later introduced into evidence and played to the jury.

would be inconsistent with the information contained in Ms. Haskins' report and, without her presence, it would be difficult to admit the report into evidence.

For his part, the prosecutor told the court that:

> [I]t is extremely likely that we hear testimony that the State would characterize as a gradual disclosure whereas [defense counsel] may go along and characterize it [as an] inconsistent statement. . . . I don't know what directly was told to Ms. Haskins, but . . . I think we would hear something that we are going to characterize differently [than would defense counsel].

After further discussion, the court stated:

> I believe I understand the situation. [I]t seems to me that . . . . the change from when you were in front of Reception Court until now, [is that] you viewed the, the statement given by the alleged victim and there is something in that statement that you realized made it contradictory to something that [Ms. Haskins] would contribute to the case.
>
> Yesterday was not the first time . . . that you saw the statement. So yesterday, I sent you [to the reception court and that court] sent you back here. I'm not going to be able to send you back based on . . . what you're saying. [A]nd I do want to have it on the record, but I'm not going to send you back to Reception Court. . . . And, and we'll see what . . . develops during the case if it becomes a critical issue, then we may have to do something else.

4. Mr. Miller's request for a body attachment and motion for a mistrial

After the State presented its case-in-chief, Mr. Miller moved for a judgment of acquittal on the basis that the State had failed to present legally sufficient evidence as to any of the charges against him. The court denied the motion.

Defense counsel told the court that Ms. Haskins "would have been the first witness that we would call." The court asked for a proffer of her anticipated testimony. In substance, defense counsel responded:

(1) If Ms. Haskins were called, her testimony would be used to rebut the trial testimony of Ms. Y. and W., who both testified that W. first reported the "incident" to Ms. Y. This was because Ms. Haskins' report stated that Ms. Y. had learned of W.'s allegations from a therapist;

(2) Ms. Haskins would also rebut Ms. Y.'s trial testimony that W. had not been in therapy when he first alleged that Mr. Miller had abused him;

(3) Defense counsel was intending to call her to discuss the letters that were sent to [Ms. Y] and [Mr. Miller] about the DSS's finding that the investigation into the allegations was deemed to be "unsubstantiated"; and

(4) Conceding that he did not "know what other information she might provide," counsel believed that Ms. Haskins might "provide additional information that would [be] helpful to Mr. Miller's defense."

Counsel then asked for a body attachment on Ms. Haskins, which the court denied because she was out of the State.

Finally, counsel moved for a mistrial based on the fact that Ms. Haskins "had evaded service and we can't procure her." The court denied that motion was well.

5. The motion for a new trial

After the jury returned its verdicts, Mr. Miller filed a written motion for a new trial under Maryland Rule 4-331(a). In it, defense counsel reiterated his position that Ms. Haskins was an essential witness because her testimony "would have factually assisted in [his] defense and rebutted the testimony of State's witnesses." Counsel argued that Mr.

Miller's right to a fair trial and compulsory process were violated "when the case was not postponed due to the ignoring of the subpoena by the witness and the failure of the Court to issue a body attachment." The trial court denied the motion.

THE STANDARDS OF REVIEW

To this Court, Mr. Miller asserts that the trial court and the reception court erred when they denied his motions for a postponement, his request for the issuance of a writ of body attachment, his motion for a mistrial, and his motion for a new trial. As a general rule, we review these types of trial court decisions for abuse of discretion. *See Jones v. State*, 403 Md. 267, 295 (2008) (motions for postponements); *Cross v. State*, 144 Md. App. 77, 88 (2002) (request for issuance of a body attachment); *Beads v. State*, 422 Md. 1, 15 (2011) (motion for a mistrial); and *McGhie v. State*, 449 Md. 494, 509 (2016) (motion for a new trial).

Additionally, Mr. Miller argues that these rulings had the collective effect of denying him his right to have compulsory process of obtaining witnesses in his favor in violation of the Sixth Amendment to the United States Constitution and Article 21 of the Maryland Declaration of Rights.[11]

[11] The Sixth Amendment states in pertinent part:

> In all criminal prosecutions, the accused shall enjoy the right . . . to have compulsory process for obtaining witnesses in his favor[.]

Article 21 states in pertinent part:

> That in all criminal prosecutions, every man hath a right . . . to have process for his witnesses[.]

(continued)

In cases in which defendants assert that a ruling or series of rulings by the trial court have deprived them of constitutionally protected rights, we:

> make our own independent analysis, . . . based on our own judgment and application of the law to the facts of whether the State violated a [constitutionally-protected] right. Absent clear error, we defer to the [trial] court's historical findings, but we conduct our own review of the application of the law to the defendant's claim of ineffective assistance of counsel.

State v. Newton, 230 Md. App. 241, 250 (2016), *aff'd*, 455 Md. 341 (2017).

ANALYSIS

A

We will first address Mr. Miller's constitutional argument. He asserts:

> The Sixth Amendment to the U.S. Constitution includes the right of an accused in a criminal prosecution . . . to have compulsory process for obtaining witnesses in his favor. Article 21 of the Maryland Declaration of Rights guarantees a similar right. The right is a fundamental right of due process guaranteed under both federal and state constitutional provisions.
>
> * * *
>
> At a minimum, the compulsory process clause established that . . . a criminal defendant has the right to ask a court for assistance to compel the attendance of a material witness and the right to put on evidence that might influence the determination of guilt. This right is not unfettered, but requires proper service and some showing [of] how the testimony would be both material and favorable. It also requires that the defendant make a diligent search to locate the witness. Simply put, it is more than just the right to issue a subpoena.

As Judge Friedman has noted, "the Court of Appeals of Maryland has closely linked its interpretation of the protections of Article 21 to the U. S. Supreme Court's interpretation of the analogous protections of the 5th and 6th Amendments." Dan Friedman THE MARYLAND STATE CONSTITUTION A REFERENCE GUIDE 28 (2006).

(Cleaned up.)

Up to a point, we agree with Mr. Miller—the Sixth Amendment and Article 21 of the Declaration of Rights do require trial courts to assist defendants by compelling material witnesses to appear in court and to testify. *See Wilson v. State*, 345 Md. 437, 445 (1997).

But in order to demonstrate that a trial court abused its discretion in declining to continue a case until a defense witness's presence can be obtained, the defendant must satisfy a three-part test: (1) the defendant has "a reasonable expectation of securing the evidence of the absent witness or witnesses within some reasonable time"; (2) the anticipated testimony "was competent and material, and . . . the case could not be fairly tried without it"; and (3) the defendant "had made diligent and proper efforts to secure the evidence." *Davis v. State*, 207 Md. App. 298, 308 (2012) (quoting *Jackson v. State*, 214 Md. 454, 459 (1957)).

We conclude that Mr. Miller failed to satisfy the second of these requirements.[12] In the context of his requests for continuances, the forum in which he needed to satisfy them was

[12] The State also asserts that Mr. Miller failed to show that he had made diligent efforts to secure Ms. Haskins' testimony. Based on the record, and employing the non-deferential standard of review for assessing claims of violations of constitutionally protected rights, we do not agree.

As we have related, defense counsel subpoenaed the Department's records regarding its investigation of the alleged child abuse in December 2018. At some point (exactly when is unclear from the trial record), defense counsel obtained the relevant documents. The case was scheduled for trial in December 2018. At that time, the defense counsel did not have the Department's records. Trial was rescheduled to April 2, 2019, rescheduled again to June 26th, and rescheduled a third time for September 19th and 20th. In its brief, the State points out that defense counsel did not obtain a subpoena for Ms. Haskins until September

(continued)

the reception court because only the reception court judge had the authority to grant a postponement.

In the hearing before Judge Shar on September 19th, defense counsel stated that Ms. Haskins would testify that the Department's investigation into the allegations resulted in a conclusion that the allegations of abuse were "unsubstantiated" and would explain "how they arrived at that conclusion through their investigation." Defense counsel proffered that he would not otherwise be able to adequately show that an investigation into these accusations had already been conducted which had delivered an "unsubstantiated" conclusion. Assuming for purposes of analysis that these statements were sufficient to satisfy the requirement that a defendant demonstrate that the witness's testimony was

12, 2019, seven days before trial, and did not serve it on the Department until three days before trial. This is correct insofar as it goes but the State does not point to anything in the record that states *when* defense counsel received the materials responsive to the subpoena.

It is significant that the Department accepted service on Ms. Haskins' behalf. From what we can tell from the record, this was the Department's normal practice. Moreover, but for the fact that Ms. Haskins was out of the state, she would have been subject to a body attachment if she refused to testify. *See Wilson v. State*, 345 Md. 437, 452 (1997) (serving a subpoena during the afternoon for a witness to appear and testify the next day was sufficient to establish a diligent effort to obtain the witness's testimony).

The State attempts to buttress its position by asserting that defense counsel rejected "out of hand" the Department's offer to contact Ms. Haskins' former supervisor to assess her ability to testify in Ms. Haskins' place. The rhetorical flourish is misplaced. Defense counsel told the court that in his view the supervisor was not an adequate substitute for Ms. Haskins. This was after the Department's counsel told the court that supervisors "would not be ideal witnesses." Moreover, the prosecutor told the court that he would "very likely" object to the supervisor's testimony.

The State's lack-of-diligence argument is not persuasive.

competent, material, and necessary for a fair trial, defense counsel did not present these arguments to Judge Copeland in the reception court. In that hearing, defense counsel characterized Ms. Haskins as an "essential witness" but did not explain what evidence he anticipated eliciting from her much less why that evidence was competent and material to Mr. Miller's defense. Judge Copeland did not err by not considering what was not presented to her.[13] Nor does it matter that defense counsel later provided more specific proffers as to Ms. Haskins' anticipated testimony because only the reception court could grant a continuance.

For these reasons, we conclude that the various rulings by the trial court and the reception court did not violate Mr. Miller's constitutionally-protected right to obtain Ms. Haskins' testimony.

B

We now turn to whether the trial court and the reception court abused their respective discretions in any of the rulings that Mr. Miller now challenges. The wellspring of Maryland's approach to the review of a court's discretionary decisions is Judge Wilner's

[13] In his reply brief, Mr. Miller levels two additional criticisms at the proceedings before the reception court. The first is that "[t]here was no discussion about diligence, materiality, or the like" at the hearing. This is correct but it was incumbent upon Mr. Miller to raise these issues and he did not. The second is that "the only issue was whether the court was going to find 'good cause' for the postponement because the [Department] was not at the hearing." This is a mischaracterization of the court's comments. We have previously summarized Judge Copeland's reasoning. She did not deny Mr. Miller's request for a continuance because the Department was not present at the hearing before the reception court.

opinion for this Court in *North v. North*, 102 Md. App. 1, 12–14 (1994). "An abuse of discretion occurs where no reasonable person would take the view adopted by the circuit court." *Id.* at 13; *see also Devincentz v. State*, 460 Md. 518, 539 (2018) (same) (quoting *Williams v. State*, 457 Md. 551, 563 (2018)). This can occur when the ruling in question is "well removed from any center mark imagined by the reviewing court and beyond the fringe of what that court deems minimally acceptable." *North*, 102 Md. App. at 14; *see also Patterson v. State*, 229 Md. App. 630, 639 (2016) (same); or when the ruling "does not logically follow from the findings from which it supposedly rests or has no reasonable relationship to its announced objective." *North*, 102 Md. App. at 14; *see al*so *Anderson v. Burson*, 424 Md. 232, 243 (2011) (same). An appellate court's determination of whether a trial court abused its discretion "usually depends on the particular facts of the case and the context in which the discretion was exercised." *King v. State*, 407 Md. 682, 696 (2009) (cleaned up).

The pre-trial requests for a postponement

Mr. Miller asserts that the trial court and the reception court abused their respective discretions when they denied his pre-trial requests for a postponement. To recap the relevant events, Mr. Miller initially presented his request for a postponement to Judge Shar on September 19, 2019, the day trial was scheduled to begin. Judge Shar informed counsel that he had no authority to grant the requested postponement and referred the matter to the reception court, which held a hearing that same afternoon. Judge Copeland denied the motion. On September 20th, Mr. Miller asked to return to the reception court. Defense

counsel told Judge Shar that he had watched the video showing Ms. Chavez's interview of W. again and had gained additional insights as to why Ms. Haskins' testimony might assist his client. Judge Shar denied the motion. In arguing that the reception court and the trial court erred in their rulings Mr. Miller states:

> The materiality of Haskins' testimony similarly was not at issue. Not [only] did Miller proffer his reasons for wanting her to testify, he submitted to the court the written report of Ms. Haskins which outlines details of her investigation, which would have significantly impeached the testimony of [W.] and his mother. Ms. Haskins had the benefit of talking with both [W.] and his mother. She visited their home and met with them. Ms. Haskins report contradict[s] what was disclosed by [W.] and to whom. It was authored on February 28, 2018. As Miller told the court, the timing of the investigation and the letter reporting an unsubstantiated finding was itself helpful. That ultimate finding of the Department of Social Services, by Ms. Haskins was weeks later on March 12, 2018, was that "the Department has found that Sexual Abuse was unsubstantiated." Even if the ultimate finding would not have been itself admissible, certainly . . . the underlying facts that would have been admissible [and] would certainly have been helpful. It would seem, that if the testimony of [W.] and his mother were believed, a finding of "indicated" would have been made.

These contentions are unpersuasive for a number of reasons.

Most fundamentally, Mr. Miller does not distinguish between what arguments were made to which court and at what time. As we have explained, at the reception court hearing, which was the critical one in this sequence, defense counsel certainly did not present the cohesive and detailed argument that Mr. Miller now makes on appeal—counsel told the court only that Ms. Haskins was an "essential witness" without further explanation. Nor, for that matter, did counsel present this detailed argument to Judge Shar at either of the hearings before the trial court.

Although Mr. Miller's appellate counsel explains why the timing of the investigation and Ms. Haskins' letter reporting an unsubstantiated finding might have been useful to the defense at trial, his trial counsel did not.

Additionally, we do not agree with Mr. Miller's assertion that "[e]ven if the ultimate finding would not have been itself admissible, certainly . . . the underlying facts that would have been admissible [and] would certainly have been helpful. It would seem, that if the testimony of [W.] and [Ms. Y.] were believed, a finding of "indicated" would have been made." Although defense counsel had Ms. Haskins' report marked for identification *at trial*, it was not admitted into evidence. Mr. Miller points to nothing in the record that suggests that defense counsel presented a copy of the report to either the trial court or the reception court.

Finally, as the State points out in its brief, Mr. Miller's trial counsel was wrong when he asserted that the report or its substance would show that Ms. Haskins did not believe what W. and/or Ms. Y. told her was credible. A witness may not, as a matter of law, provide an opinion as to the credibility of another witness. *See Hunter v. State*, 397 Md. 580, 589 (2007); *Bohnert v. State*, 312 Md. 266, 277–78 (1988). We will now address the specific rulings targeted by Mr. Miller on appeal.

The requests for postponements

As an initial matter, the trial court did not abuse its discretion at the September 19th hearing when it declined to grant Mr. Miller's request for a continuance and referred the case to the reception court. By doing so, it provided all of the relief to Mr. Miller that it could.[14]

At the reception court hearing on September 19th, the court ruled that a postponement was inappropriate unless and until defense counsel asked the trial court for a body attachment to compel Ms. Haskins' presence at trial. We believe that this was a reasonable condition to impose upon Mr. Miller, especially since the trial had already been rescheduled several times. "The decision whether to grant a request for continuance is committed to the sound discretion of the court." *Abeokuto v. State*, 391 Md. 289, 329 (2006). The reception court did not abuse its discretion in conditioning a postponement upon an effort by Mr. Miller to obtain Ms. Haskins' presence at trial.

Finally, the trial court did not abuse its discretion in declining to send the case back to the reception court on the first day of trial. As we have explained, the reception court had made it clear that it wanted to see some effort by Mr. Miller to compel Ms. Haskins' presence by asking the trial court to issue a body attachment. On the morning of trial, counsel did not ask the trial court to issue a body attachment. Instead, counsel explained to the court that, after watching the video recording of Ms. Chavez's interview of W. again,

[14] The State asserts that, under the Circuit Court for Baltimore City's Differentiated Case Management Plan, the reception court typically addresses requests for postponement. Mr. Miller does not challenge this assertion.

he could better articulate reasons why Ms. Haskins was an essential witness. In denying the request, the court stated that:

> Yesterday was not the first time . . . that you saw the statement. So yesterday, I sent you [to the reception court and that court] sent you back here. I'm not going to be able to send you back based on . . . what you're saying.

We do not believe that trial court abused its discretion in light of the fact that the reception court had imposed a specific condition upon a possible rescheduling that trial counsel did not fulfill.

The request for a body attachment and a motion for a mistrial

As we have related, at the close of the State's case, Mr. Miller moved first for a body attachment, and then for a mistrial. The court denied both motions without further explanation.

Mr. Miller does not appear to argue in his brief that the trial court abused its discretion in denying his petition for a body attachment. And, in any event, the court did not. "[T]he subpoena powers of the State of Maryland stop at the state line." *Bartell v. Bartell*, 278 Md. 12, 19 (1976). As the State points out in its brief, Mr. Miller "did not request the appropriate mechanism for serving an out-of-state witness: a certification to the state in which the witness is located." These procedures are set out in the Maryland Uniform Act to Secure the Attendance of Witnesses from Without a State in Criminal Proceedings, codified as Md. Code, Courts & Jud. Proc. § 9-301 *et seq.* We agree with the State that the trial court "did not abuse its discretion by declining to issue a body attachment that it lacked power to enforce."

Mr. Miller contends to us that

> the court should have granted a mistrial because the court's failure to take action to either postpone the case or to secure her presence put him in a position of not being able to properly defend the allegation.[15]

A mistrial "is an extreme remedy not to be ordered lightly." *Vaise v. State*, 246 Md. App. 188, 239, *cert. denied*, 471 Md. 86 (2020). "Our benchmark for appellate relief is whether the prejudice to the defendant was so substantial that he or she was deprived of a fair trial." *Id.* (quoting *Kosh v. State*, 382 Md. 218, 226 (2004)) (cleaned up).

Mr. Miller's arguments to the trial court as to why a mistrial should have been granted were a rehash of his arguments made to the court when he sought to have the trial rescheduled. As we have explained, neither the reception court nor the trial court abused their discretion in denying him that relief. The trial court did not abuse its discretion denying Mr. Miller the "extreme remedy" of a mistrial.

The motion for a new trial

Finally, and without further explanation, Mr. Miller argues that, "for the reasons previously articulated, the trial court abused its discretion once again in failing to grant a motion for new trial." We have explained why we believe that the arguments presented by

[15] Mr. Miller does not explain what "the allegation" is. We will assume that it is a reference to the State's case against him.

In his reply brief, Mr. Miller asserts that the State "told Judge Copeland that [Ms.] Haskins was 'made aware of the subpoena prior to leaving town, but still is out of town[.]'" There is nothing in the transcript of the reception court hearing that supports this contention.

Mr. Miller lack merit. We conclude that the trial court did not abuse its discretion in denying the motion for a new trial.

THE JUDGMENTS OF THE CIRCUIT COURT FOR BALTIMORE CITY ARE AFFIRMED. APPELLANT TO PAY COSTS.