UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 0371

September Term, 2014

LARRY JEROME JOHNSON

v.

STATE OF MARYLAND

Meredith,
Reed,
*Hotten, Michele D.,

JJ.

Opinion by Reed, J.

Filed: August 24, 2016

*Michele D. Hotten, J., participated in the hearing of this case while still an active member of this Court but did not participate in either the preparation or adoption of this opinion.

The present appeal arises out of a confluence of bad acts and bad luck. Appellant, Larry Jerome Johnson, an inmate at the Western Correctional Institution in Cumberland, Maryland, spent hours becoming intoxicated on phencyclidine, commonly known as PCP, and alcohol before going to work as part of a road clean-up crew on September 4, 2012. On the way to the road crew's work site that morning, appellant was feeling the euphoric effects of the drugs and alcohol.

As the day progressed, however, the intoxicants overwhelmed him. He flew into a rage and assaulted his supervising correctional officer before attempting to flee in the van that had transported him and several other inmates on the road crew. After appellant's initial attempt to escape in the van was unsuccessful, he flagged down a passing motorist, who slowed and rolled down his window to see what the problem was. Unfortunately, that good citizen received a stab wound to the head from a pair of needle-nose pliers as appellant grabbed him from the driver's seat, threw him to the ground, and absconded with that driver's vehicle.

Appellant then led the troopers of the Maryland State Police on a thirteen-mile, high-speed chase down Route 495 in Garrett County before crashing the stolen vehicle into a tree. Appellant was subsequently charged with and convicted of attempted first-degree murder, armed carjacking, and escape in the Circuit Court for Garrett County. Appellant was sentenced to two consecutive life terms with an additional forty years' imprisonment consecutive to the life sentences for the convictions that arose from this

drug-fueled episode. That sentence was imposed consecutively to the existing sentence he was serving at the correctional facility.

Appellant now appeals his convictions and presents two related questions for our review, which we have slightly rephrased:[1]

> I. Did the trial court abuse its discretion where it quashed appellant's subpoena that sought the expert testimony of his competency examiner?
>
> II. Did the trial court abuse its discretion where it denied the appellant's motion for a continuance to allow him to retain an expert witness on the subject of intoxication?

We answer both of these questions in the negative and, therefore, shall affirm appellant's convictions. We explain.

FACTUAL AND PROCEDURAL BACKGROUND

What began as a relatively mundane day for the correctional staff of the Western Correctional Institution ("WCI") in Cumberland, Maryland, ended in a nightmarish scenario. Appellant, Larry Jerome Johnson, was a minimum security inmate at WCI, where he was assigned to a "road crew" comprised of several other minimum security

[1] Appellant presented the following questions:

> I. Did the circuit court abuse its discretion in quashing defense counsel's subpoena seeking the testimony of Dr. Monica Chawla?
>
> II. Did the circuit court abuse its discretion in denying defense counsel's motion for a continuance in order to retain an expert to testify in support of Mr. Johnson's voluntary intoxication defense?

inmates. This road crew was tasked with cutting grass and picking up trash along Interstate 68 ("I-68") for the State Highway Administration ("SHA").

Before going to work with the road crew on September 4, 2012, appellant had been up the entire night drinking alcohol and smoking cigarettes laced with phencyclidine, or PCP.[2] Having become highly intoxicated at this point and seeking to preserve his "high," appellant smoked a standard cigarette before breakfast. He then went to breakfast at 4:00 a.m. in this intoxicated state and, after eating, proceeded to the changing area to get ready for his work day. Appellant explained that his fellow inmates thought he appeared to be high, and one of them suggested he splash some water on his face to mask any signs of intoxication. This apparently worked because he was able to conceal his condition sufficiently from his road crew supervisor, Robert Goss, Sr.

Mr. Goss drove the crew to their work site near Exit 19 on eastbound I-68 in a van with a trailer attached. Appellant testified to the continuing effects of his high as Mr. Goss drove the crew to the work site, stating that he was "feeling good." But, the cumulative effects of the intoxicants would soon overwhelm appellant. Upon their arrival, appellant began to feel dizzy. He then leaned up against the trailer and, at that point, experienced a blackout.

During this blackout period, appellant approached Mr. Goss, who was sitting in the van preparing to complete a billing sheet for the SHA, and asked him for weed-

[2] Appellant describes these cigarettes as "dippers," which he explained were tobacco cigarettes dipped in liquid PCP.

whacker string. Although appellant testified that he rarely cut grass when at a work site, Mr. Goss stated that appellant's request was not unusual because he was assigned to weed-whacking duties that day. Thinking nothing of the request, Mr. Goss told appellant that the string was in the rear of the van.

As Mr. Goss turned his attention back to the billing sheet, appellant began striking Mr. Goss in the back of the head with a pair of needle-nose pliers. Mr. Goss defended himself, and, in the ensuing struggle, the two men fell out of the van. Appellant jumped back up, quickly got into the driver's seat, and attempted to take control of the already running van. He only succeeded in putting the van in a neutral gear, however, which allowed Mr. Goss the opportunity to stop appellant. Mr. Goss used both physical force and pepper spray in an attempt to neutralize appellant, but to no avail. As the struggle continued, the van drifted backwards and eventually stopped when the trailer jack-knifed. By this point in the struggle, the other inmates on the crew were aware that something was amiss, and Leo Potocki, a crewmember, came to Mr. Goss' aid. Mr. Goss told Potocki to help him immobilize appellant, but appellant was nevertheless able to break free from the two men. Appellant then tried to stab Potocki, but was unsuccessful. While he tried to pull appellant out of the van, Mr. Goss told Potocki to run to the trailer to find some implement that could stop appellant. Mr. Goss was successful in removing appellant from the van, but appellant managed to break free from Mr. Goss' grip and stabbed him in the chest with the pliers. Mr. Goss suffered a punctured lung, and the van,

which was partially blocking the exit ramp where the vehicle was located, was rendered inoperable.

During this inopportune moment, Alan Gnegy was driving onto the exit ramp. Appellant flagged down Mr. Gnegy, and as soon as Mr. Gnegy rolled down his window, appellant stabbed Mr. Gnegy several times with the needle-nose pliers. Appellant then pulled Mr. Gnegy from the driver's seat and drove off in his car. Meanwhile, while the carjacking was in progress, Mr. Goss called emergency responders to summon assistance and to inform them of appellant's impending escape.

Appellant then led several troopers from the Maryland State Police on a thirteen-mile, high-speed chase down the interstate. The pursuit ultimately ended with appellant crashing into a tree and subsequently being arrested by the troopers. Appellant testified, however, that he did not recall any of the altercations or the pursuit. He explained that all he could recall after leaning against the trailer was coming "to" in the barracks of the Maryland State Police, handcuffed to a bench and wearing nothing but his boxer shorts.

Appellant was charged by criminal information filed in the trial court for the assaults on Messrs. Goss[3] and Gnegy,[4] as well as for first-degree escape and second-

[3] With respect to Mr. Goss, appellant was charged with attempted first-degree murder; first-degree assault on a Department of Corrections ("DOC") employee; second-degree assault on a DOC employee; armed carjacking; carjacking; and unlawful taking of a motor vehicle.

[4] With respect to Mr. Gnegy, appellant was charged with attempted first-degree murder; first-degree assault; second-degree assault; armed carjacking; carjacking; and unlawful taking of a motor vehicle.

degree assault on a Department of Corrections ("DOC") inmate.[5] Appellant's defense counsel, relying on appellant's purported intoxication, filed a plea of not criminally responsible and not competent to stand trial. The trial court promptly ordered an evaluation of appellant, and he was evaluated by Dr. Monica Chawla, M.D. of the Clifton T. Perkins Hospital Center.

In her evaluation, Dr. Chawla concluded that appellant was suffering the effects of PCP and alcohol intoxication at the time of the incidents. She further reported that appellant had a history of blacking out from alcohol consumption and had struggled with substance abuse in his past. She concluded that appellant was both competent to stand trial and criminally responsible.

Trial was scheduled for October 2 and 3, 2013. On September 17, 2013, appellant's trial counsel filed a Notice of Expert Witness and a Subpoena for Tangible Evidence, the latter of which sought Dr. Chawla's curriculum vitae. The following day, September 18, appellant's counsel requested a subpoena to secure Dr. Chawla's presence and testimony at trial.

The State sought to quash the subpoena in a motion filed on September 19, 2013, averring that appellant had withdrawn or would be withdrawing his plea of not criminally responsible and his challenge to his competency to stand trial. On September 23, 2013, the trial court granted the State's motion and quashed the subpoena seeking Dr. Chawla's

[5] The charge of second-degree assault on a DOC inmate was *nol prossed* by the State prior to the start of trial.

testimony. Undeterred, appellant's counsel filed a motion on September 25, 2013, seeking a continuance of the case so that he could retain an expert on voluntary intoxication.

The parties appeared before the trial court on September 30, 2013. Appellant's counsel explained that Dr. Chawla could provide expert testimony on PCP and alcohol intoxication and how both of which could have affected appellant's action. The trial court disagreed with appellant's counsel regarding the relevancy of Dr. Chawla's testimony. The court explained that the intoxication was no longer relevant given appellant's decision to withdraw his plea of not criminally responsible and his objection to his competency to stand trial.

Appellant proceeded to trial on October 2 and 3. The jury returned a verdict convicting appellant of two counts of attempted first-degree murder, two counts of armed carjacking, and one count of first-degree escape. Appellant was sentenced on April 1, 2014. The trial court imposed two consecutive life terms for the attempted first-degree murder counts, terms of twenty and thirty years consecutive for the armed carjacking counts, and ten years consecutive for the escape count. These sentences were all consecutive to the existing sentence appellant was serving at the time of the offenses.

Appellant timely noted an appeal.

DISCUSSION

A. Parties' Contentions

Appellant primarily contends the trial court erred where it did not permit him to call Dr. Chawla as an expert witness to testify to the effects of PCP and alcohol

intoxication on the specific intent to kill. Appellant argues that the trial court abused its discretion in quashing the subpoena. He explains that, by quashing the subpoena, the trial court denied him compulsory process and the right to present a defense because Dr. Chawla would have presented testimony favorable to his defense. Moreover, he avers that the trial court erred in concluding that Dr. Chawla's proposed testimony would be inadmissible hearsay. In addition to contesting the grant of the motion to quash, appellant argues that the trial court abused its discretion where it denied him a continuance so that he could secure an expert on voluntary intoxication.

The State counters that appellant's rights to compulsory process and to present a defense were not violated. According to the State, Dr. Chawla could not offer any testimony regarding intoxication because the trial court originally sought her opinion on the limited grounds of competency and criminal responsibility. The State explains that Dr. Chawla could not have testified to appellant's intoxication because she would not have qualified as an expert on that topic, and that she also would not have been able to opine on appellant's state of mind at the time of the incidents. *See Hartless v. State*, 327 Md. 558, 573 (1992) (explaining that psychiatrists lack the ability to precisely reconstruct the emotions of an individual at a specific time and, accordingly, cannot opine as to defendant's lack of a specific intent to kill). Moreover, the State avers that appellant's statements to Dr. Chawla constituted inadmissible hearsay.

Additionally, the State contends that appellant failed to demonstrate a need for a continuance. A continuance was not warranted, the State argues, because appellant made

no efforts to secure an expert until the eleventh hour, and securing another expert without significantly impacting the case's progress would be difficult.

B. Standards of Review

The admissibility of expert testimony is peculiarly within the discretion of the trial court, and we are loath to reverse that court's exercise of its discretion. *See Johnson & Higgins of Pa., Inc. v. Hale Shipping Corp.*, 121 Md. App. 426, 443–44 (1998); *see also Muhammad v. State*, 177 Md. App. 188, 274 (explaining that the standard for reviewing a trial judge's control over the receipt of evidence is the abuse of discretion standard). Similarly, the trial court's decision to grant or deny a request for a continuance falls within that court's discretion. *See Green v. State*, 127 Md. App. 758, 767–68 (1999) (citations omitted).

An abuse of discretion occurs "'where no reasonable person would take the view adopted by the [trial] court[ ]' . . . or when the court acts 'without reference to any guiding principles,' and the ruling under consideration is 'clearly against the logic and effect of facts and inferences before the court[ ]' . . . or when the ruling is 'violative of fact and logic.'" *Beyond Sys., Inc. v. Realtime Gaming Holding Co., LLC*, 388 Md. 1, 28 (2005) (quoting *Wilson v. Crane*, 385 Md. 185, 198 (2005)) (alterations in original).

C. Analysis

i. Expert Witness Subpoena

The trial court did not abuse its discretion where it granted the State's motion to quash the subpoena for Dr. Chawla's testimony. Dr. Chawla was not qualified to render an opinion as to PCP and alcohol intoxication. In addition, the jury heard a stipulation

that explained the effects of PCP and alcohol intoxication, respectively. Therefore, appellant was able to present a full defense without Dr. Chawla's testimony, and his rights to compulsory process and to present a defense were not infringed upon.

Compulsory process is provided for in the Sixth Amendment to the United States Constitution, which states: "In all criminal prosecutions, the accused shall enjoy the right . . . to have compulsory process for obtaining witnesses in his favor[.]" The Maryland analogue to this federal constitutional guarantee is found in Article 21 of the State's Declaration of Rights, which similarly provides: "[I]n all criminal prosecutions, every man hath a right . . . to have process for his witnesses[.]" The United States Supreme Court has held that the federal guarantee of compulsory process is applicable to the states via the Fourteenth Amendment. *See Washington v. Texas*, 388 U.S. 14, 17–19 (1967); *accord Kelly v. State*, 392 Md. 511, 532–33 (2006) (collecting cases recognizing holding of *Washington* as applicable in Maryland).

The Court of Appeals has recognized, however, that this right is not unfettered. A defendant may not present "incompetent, privileged, or otherwise inadmissible" evidence, and a court will not err in excluding such evidence or, as is pertinent to the present case, refusing to issue a subpoena for a witness or grant a continuance to locate one. *See Kelly*, 392 Md. at 537 (citing *Taylor v. Illinois*, 484 U.S. 400, 410 (1988) and *United States v. Valenzuela-Bernal*, 458 U.S. 858, 867 (1982)). *Valenzuela-Bernal* confirmed that a defendant is required to demonstrate the materiality of the proffered testimony. *See Valenzuela-Bernal*, 458 U.S. at 867 (explaining that a defendant "must at

least make some plausible showing of how [the witness'] testimony would have been both material and favorable to his defense."); *accord Kelly*, 392 Md. at 537.

As an initial matter, we are not persuaded that the proposed expert testimony of Dr. Chawla, the forensic psychiatrist who examined appellant to determine his criminal responsibility and competency to stand trial, would be admissible. The requirements for the admissibility of expert testimony are set forth in Maryland Rule 5-702, which provides:

> Expert testimony may be admitted, in the form of an opinion or otherwise, if the court determines that the testimony will assist the trier of fact to understand the evidence or to determine a fact in issue. In making that determination, the court shall determine (1) whether the witness is qualified as an expert by knowledge, skill, experience, training, or education, (2) the appropriateness of the expert testimony on the particular subject, and (3) whether a sufficient factual basis exists to support the expert testimony.

Although appellant subpoenaed and received Dr. Chawla's curriculum vitae ("CV"), the contents therein do not demonstrate how she would have been of assistance to his defense. The qualification of an expert is, ultimately, an assessment of how helpful that individual's testimony will be to the jury. *See Donati v. State*, 215 Md. App. 686, 742 (2014) ("To qualify as an expert, one need only possess such skill, knowledge, or experience in that field or calling as to make it appear that the opinion or inference will probably aid the trier of fact in his search for the truth." (citations omitted)).

Dr. Chawla is board-certified in psychiatry and neurology, and she has trained in forensic psychiatry. Her certifications and training indicate to this Court that she has no experience in the study of intoxicating substances and their abuse. Moreover, her research

is on a topic unrelated to substance abuse.[6] She has qualified as an expert in the circuit courts for Harford County and Baltimore City, but there is no indication in her CV about whether she qualified as an expert to testify regarding substance abuse and its effect on criminal behavior.

Furthermore, Dr. Chawla could not testify as to whether or not appellant possessed the specific intent to kill Messrs. Goss and Gnegy. The Court of Appeals has explained that there is nothing tending to demonstrate that psychiatrists possess the ability to "precisely reconstruct the emotions of a person at a specific time, and thus ordinarily are not competent to express an opinion as to the belief or intent which a person in fact harbored at a particular time." *Hartless*, 327 Md. at 573 (citation omitted). Notwithstanding the desire of appellant's trial counsel to call Dr. Chawla on the question of voluntary intoxication, the trial court would not have permitted her testimony because of its inherent imprecision as explained in *Hartless*. Additionally, although the evaluation report discussed appellant's use of intoxicants—both generally and on the day of the incident,—Dr. Chawla refrained from offering an opinion on the effect of the PCP and alcohol intoxication on appellant's *mens rea*. We are not persuaded that she could have qualified as an expert on the effects of substance abuse and their impact on appellant's behavior.

[6] Dr. Chawla's sole research credit is having been the lead investigator for a poster presentation on the topic of recidivism in sexual offenders. *See* Monica Chawla, MD, Jodi Bond, MD & Carmen Fulton, MD, MPH, *The Effectiveness of Modern Treatment* (continued…)

In addition to the inadmissibility of Dr. Chawla's proposed expert testimony, the statements appellant made to Dr. Chawla during their sessions would also constitute self-serving statements. In support of admissibility, however, appellant cites the following passage from the Court of Appeals' decision in *Beahm v. Shortall*, 279 Md. 321, 327 (1977):

> We hold that a physician, who examines a patient, not for the purpose of treatment, *but in order to qualify as an expert witness, may present his medical conclusions and the information*, including the history and subjective symptoms, received from the patient which provide the basis for the conclusions. The conclusions are admissible as substantive evidence. *The statements made by the patient, as narrated by the physician, are admissible*, with a qualifying charge to the jury, only as an explanation of the basis of the physician's conclusions and not as proof of the truth of those statements.

(Emphasis added).

This holding is inapplicable to the present case. Dr. Chawla's opinions were not offered to qualify her as an expert witness, but to support her determination that appellant was both criminally responsible and competent to stand trial. Moreover, appellant cannot offer the statements themselves as proof of their truth, and they did not serve as the basis of any expert conclusion. They were self-serving statements that appellant hoped to introduce in order to explain his mental state at the time of the offense. *See Conyers v. State*, 345 Md. 525, 544–45 (1997) (explaining that a defendant's own statements are "not admissible if [they are] offered for the declarant" because "[s]uch statements are

Modalities on Reducing Recidivism on Sexual Offenders: A Systematic Review and Meta-Analysis (Apr. 2011).

inherently suspect as being self-serving."). The applicable exceptions to the admission of such evidence, the "opening the door" and "curative admissibility" doctrines, do not apply here. *See id.* at 545–46 (defining the two doctrines). "Opening the door" allows for the admission of evidence to respond either to evidence that introduced a new issue into the case or inadmissible evidence erroneously admitted. *Id.* at 545. This doctrine is inapplicable here because no evidence had yet been admitted. The "curative admissibility" doctrine permits the admission of evidence to respond to "highly prejudicial incompetent inadmissible evidence." *Id.* at 546. Like the "opening the door" doctrine, this exception also fails because no evidence had been admitted. We are not persuaded, therefore, that appellant's statements were anything but inadmissible self-serving hearsay statements. *See id.* at 544. (explaining that appellant's own statements offered by him are inadmissible hearsay).

Appellant also fails to demonstrate the materiality of Dr. Chawla's proposed testimony. In his motion seeking Dr. Chawla's CV, appellant averred that Dr. Chawla's testimony would "supply pertinent and material evidence relevant to guilt [or] innocence and mitigation questions, which evidence cannot be obtained or verified elsewhere." In subsequent filings, appellant provided no further explanation that would demonstrate the necessity of Dr. Chawla's testimony to his defense.

In *Randolph v. State*, 193 Md. App. 122, 153–55 (2010), the defendant argued that his right to compulsory process was denied because the trial court failed to ensure compliance with his subpoenas for medical records. The defendant contended that the

records would have provided a factual basis for his plea of not criminally responsible, his competency for trial, and his defense to the crime of escape. *Id.* at 155. We held that his right to compulsory process was not violated because he had neither pleaded criminally responsible nor raised the issue of competency, and the contention regarding a factual basis for his defense to the escape charge was based in "sheer speculation." *Id.*

Like the defendant in *Randolph*, appellant here made no showing of how Dr. Chawla's testimony would supply material evidence tending to demonstrate that, due to PCP and alcohol intoxication, appellant lacked the specific intent to kill. Indeed, it seems to us that his averral was "sheer speculation." *See id.*

Our decision in *White v. State*, 89 Md. App. 590, 601–03 (1991), is also helpful. There, the defendant was charged with driving while intoxicated ("DWI") and related offenses, and had a breath specimen taken from him at the time of his arrest. *Id.* at 593. The defendant sought to subpoena the trial testimony of the State Toxicologist who certified the breath sample, proffering that the Toxicologist's testimony would cast doubts on the efficacy of the testing equipment and, accordingly, undermine the State's case. *Id.* at 602 and n.4. The State, seeking to quash the subpoena, explained that the defendant was attempting to employ a State employee for free, and that permitting the Toxicologist to testify would distract him from the performance of his primary duties. *Id.* at 600. Moreover, the Toxicologist's testimony would have been of limited utility because he was not a witness to the DWI incident at issue. *Id.* The circuit court, in agreement with the State, quashed the subpoena and stated that the defendant had "failed

to establish sufficient materiality or relevancy for the issuance of a subpoena for [the State Toxicologist.]" *Id.* at 593–94. We affirmed the trial court because the defendant's attempts to "create a reasonable doubt as to his . . . guilt" did not demonstrate a "particularized need," and also because the showing was "not sufficiently material to overcome the State's request for a protective order." *Id.* at 602. Moreover, we explained that the defendant could have obtained the same testimony elsewhere from his own expert witnesses. *Id.* at 602–03.

Appellant's strategy here mirrors that of the *White* defendant, and fails for the same reasons. Like the *White* defendant, appellant sought to subpoena a State employee to provide free testimony to the detriment of that employee's duties at the Perkins Hospital Center. Furthermore, appellant's showing to the trial court was even less substantive than that made by the *White* defendant. The defendant in *White* proffered some of the proposed testimony. *See id.* at 602 n.4 (setting forth the defendant's proffer of testimony, which he contended would tend to demonstrate the faultiness of the breathalyzer equipment used by the State and the error rates in breathalyzer tests, all of which would tend to subvert the State's case). Here, appellant simply proffered that Dr. Chawla would "supply pertinent and material evidence relevant to guilt [or] innocence and mitigation questions, which evidence cannot be obtained or verified elsewhere." This provided no "particularized need" that would allow the trial court to evaluate the necessity of a subpoena for Dr. Chawla's in-court testimony. We think that the

materiality of Dr. Chawla's testimony is dubious and that the trial court was correct to quash the subpoena seeking her presence.

Appellant cannot demonstrate the admissibility of Dr. Chawla's proposed expert testimony, nor can he show that it was somehow material to his defense. Appellant put forth a full, fair, and vigorous defense with the assistance of highly competent counsel. We hold that when the trial court quashed the subpoena for Dr. Chawla's testimony, it did not infringe upon appellant's right to compulsory process or his right at large to present a defense.

ii. Defense Motion for Continuance

The trial court also acted within the bounds of its discretion in refusing to grant appellant's motion for a continuance to seek an expert witness.

In order to demonstrate that the trial court abused its discretion in denying his request for a continuance, appellant would need to demonstrate:

> (1) that he had a reasonable expectation of securing the evidence of the absent witness or witnesses within some reasonable time; (2) that the evidence was competent and material, and he believed that the case could not be fairly tried without it; and (3) that he had made diligent and proper efforts to secure the evidence.

Prince v. State, 216 Md. App. 178, 204 (2014) (citation omitted).

Appellant is unable to make this showing. First, appellant's showing regarding the need for an expert witness on intoxication was based on the references to his drug use in Dr. Chawla's report, but he could not provide any information regarding the reasonable expectation of, or timeframe for, the retention of an expert who could provide helpful

information on intoxication. Appellant's "reasonable expectation" showing based on the references in Dr. Chawla's report does not sufficiently meet this prong. *Cf. id.* (explaining that appellant's showing based on a psychiatrist's statement that appellant suffered from dissociative episodes was not sufficient to demonstrate a "reasonable expectation" that he would secure admissible or relevant evidence on the question of his mental state). Moreover, this request was made just days before trial and months after Dr. Chawla's report was issued. It is not clear to us how appellant hoped to retain an expert, allow that expert to consider the case thoroughly, and proceed to trial without an unreasonable impact on the court, attorneys, and the community members summoned to serve on a jury.

Appellant is further unable to demonstrate that the proposed expert testimony would be competent and material, or that he made diligent and proper efforts to secure it. Considering that the parties stipulated to the effects of PCP and alcohol on a person, the materiality and competence of any expert testimony on intoxication is questionable. Further, as discussed *supra*, courts have not found that psychiatrists are able to establish with precision a person's beliefs or emotions at a particular point in time. *See Hartless*, 327 Md. at 573. Notwithstanding these considerations, ultimately, appellant has no guarantees that an expert witness would even reach the desired conclusions, *i.e.*, that appellant lacked the specific intent necessary for the most serious charges against him. A competent expert will evaluate the facts according to the prevailing standards in his field and reach a conclusion—for better or for worse.

Above all else, appellant's request fails because he simply did not engage in diligent efforts to secure the testimony of an expert. As noted, appellant had more than three months before the commencement of trial to secure an expert witness. That request came just days before trial, rendering the request less diligent and more desperate. *Cf. Smith v. State*, 103 Md. App. 310, 322–24 (1995) (holding that neither the district Court nor the circuit court erred in denying appellant's request for a continuance to secure a missing witness because the record revealed no efforts by the appellant to secure that witness' presence).

We hold the trial court did not abuse its discretion in denying the motion for a continuance to seek an expert witness. Appellant had months to secure that witness, but failed to do so in a timely fashion.

JUDGMENT OF THE CIRCUIT COURT FOR GARRETT COUNTY AFFIRMED. COSTS TO BE PAID BY APPELLANT.