Circuit Court for Baltimore County
Case No. C-03-CR-20-003377

UNREPORTED*

IN THE APPELLATE COURT

OF MARYLAND

No. 2344

September Term, 2022

KEONTA ADRIAN SKIPWITH

v.

STATE OF MARYLAND

Reed,
Wells, C.J.,
Battaglia, Lynne A.
(Senior Judge, Specially Assigned),

JJ.

Opinion by Battaglia, J.

Filed: February 24, 2025

*This is an unreported opinion. The opinion may not be cited as precedent within the rule of stare decisis. It may be cited for its persuasive value only if the citation conforms to Rule 1-104(a)(2)(B).

Keonta Adrian Skipwith, the Appellant herein, was convicted, after a six-day jury trial in Baltimore County Circuit Court, of murder in the first degree; armed robbery; robbery; use of a firearm in the commission of a felony/violent crime; two counts of attempted armed robbery; two counts of attempted robbery; wearing, carrying, or transporting a loaded handgun on a person and in a vehicle; illegal possession of a regulated firearm; conspiracy to commit armed robbery; and conspiracy to commit robbery, related to the incident that occurred on October 9, 2020 in Middle River. [1]

The questions queued up in this case involve whether Judge Robert E. Cahill, then the Administrative Judge of the Baltimore County Circuit Court, erred in denying Skipwith's Motion to Postpone Trial, styled to secure the testimony of a witness, as well as a Motion to Reconsider the denial of the postponement, which also was filed pretrial.

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[1] Keonta Skipwith was indicted in the Circuit Court of Baltimore County on December 7, 2020 in Count One with Murder in the First Degree, in Count Two with Assault in the First Degree, in Count Three with Armed Robbery, in Count Four with Robbery, in Count Five with Theft: $1,500 to Under $25,000, in Count Six with Use of a Firearm in the Commission of a Felony/Violent Crime, in Count Seven with Attempted Armed Robbery, in Count Eight with Attempted Armed Robbery, in Count Nine with Assault in the First Degree, in Count Ten with Attempted Theft of less than $100, in Count Eleven with Use of a Firearm in a Felony/Violent Crime, in Count Twelve with Attempted Armed Robbery, in Count Thirteen with Attempted Robbery, in Count Fourteen with Assault in the First Degree, in Count Fifteen with Attempted Theft of Less than $100, in Count Sixteen with Use of a Firearm in a Felony or Violent Crime, in Count Seventeen with Wearing, Carrying, or Transporting Handgun on a Person, in Count Eighteen with Wearing, Carrying, or Transporting Loaded Handgun on Person, in Count Nineteen with Wearing, Carrying, or Transporting Handgun in a Vehicle, in Count Twenty with Wearing, Carrying, or Transporting a Loaded Handgun in Vehicle, in Count Twenty-One with Illegal Possession of a Regulated Firearm, in Count Twenty-Two with Minor in Possession of a Firearm, in Count Twenty-Three with Conspiracy to Commit Armed Robbery, and in Count Twenty-Four with Conspiracy to Commit Robbery. Counts Two, Five, Nine, Ten, Eleven, Fourteen, Fifteen, Sixteen, Seventeen, Nineteen, and Twenty-Two were nolle prossed on August 29, 2022, the first day of trial.

Skipwith's question on appeal is "Did the lower court abuse its discretion by denying Mr. Skipwith's motion for a postponement to obtain a defense witness?" For the reasons stated herein, we shall hold that Judge Cahill did not err in denying the motion for postponement and its reconsideration.

On December 7, 2020, Keonta Skipwith was charged in the Baltimore County Circuit Court in a 24-count indictment for crimes related to an armed robbery that occurred in Middle River, Maryland during which Zeshaan Toppa was fatally shot. The trial on the matter was scheduled for February 2022 and postponed to August 23, 2022, because of the unavailability of a judge or jury. In July of 2022, Skipwith filed a Notice of Expert Testimony of Markisha Bennett, Ph.D., a clinical psychologist, in which he averred that, "Dr. Bennett's testimony will include – but may not be limited to – providing education regarding [Skipwith's] childhood and adolescent trauma and how that provides context for Mr. Skipwith's functioning and actions as an adult." The notice was coupled with a request to postpone the August 2022 trial.

A postponement hearing was then scheduled for July 27, 2022, in front of the Administrative Judge, who at the time was Judge Robert E. Cahill. No written motion was filed in advance of the July 27, 2022, hearing.

During the postponement hearing, Judge Robert Cahill inquired about the bases for Skipwith's request to which his counsel responded that Dr. Bennett was out of the country and her testimony would be essential to understanding Skipwith's mental state at the time of the offense, allegedly a critical element of Skipwith's defense.

The State's Attorney demurred and questioned the relevancy of Dr. Bennett's testimony, because the felony-murder count, count one, did not require proof of intent for conviction, and there was no relationship between the proffer of Dr. Bennett's testimony and any other counts. In response, without elucidation of any specifics, Skipwith's counsel argued:

> Nothing to do with the armed robbery, but if we're going forward on a shooting and a murder, the psychologist has a lot to say to about Mr. Skipwith's history and the fact that he may have felt threatened himself, if this was an altercation. And the allegations are that the person who was killed pulled a gun out first and tried to fire it. And then he was shot. We still don't know that the State can prove that Mr. Skipwith even did the shooting. But in the context of this incident, and given Mr. Skipwith's extensive trauma history, that's what the psychologist would be talking about. And talk about how he might have felt more threatened than the average person, reasonable person. And so, that's the kind of thing that the psychologist would testify to. It took quite a while to get that person on the case, and then to have her see Mr. Skipwith enough to know whether we were able to use her in this way, that she would have evidence that we could present. So, while it may not be relevant to the felony murder charge, if the State is able to prove that, it certainly would be relevant to the level of culpability that Mr. Skipwith might have if they were able to show that he was the shooter.

Skipwith's counsel also addressed why the postponement request had been filed within forty-five days of trial, rather than during the scheduling conference held in February of 2022. According to Skipwith's counsel, he had not known the Dr. Bennett would be unavailable in August when the trial date was established. Skipwith's counsel explained that Dr. Bennett had emailed him about her unavailability at the time of the scheduling conference, but due to a "glitch," he missed the email. Nothing, however, was filed by Skipwith's counsel regarding Dr. Bennett's unavailability for the August trial in the interval after the scheduling conference in February of 2022, until the filing of the notice in July of 2022.

Judge Cahill, after having heard arguments, orally denied Skipwith's request for postponement:

> All Right. So, I cannot and will not find that this witness is critical to the Defense in the case. There's been enormous amounts of time for this work to have been done previously. We've given this case high priority after the COVID closures, and I simply will not and cannot find good cause to postpone the case beyond the assigned trial date. So, the postponement request respectfully is denied.

Skipwith immediately filed a Motion to Reconsider the Denial of the Postponement Request under Md. Rule 2-534[2] and asserted that:

> Dr. Bennett met with Mr. Skipwith multiple times during the pendency of this case before coming to her opinion that would be helpful to his defense. Dr. Bennett gathered Mr. Skipwith's history, examined his education and mental health records, and did extensive psychological testing. All of that was paid for by the State of Maryland. Dr. Bennett would be able to testify in great detail about Mr. Skipwith's mental state at the time of the incident and how that could affect his level of criminal responsibility.[3] Such testimony is a critical component of Mr. Skipwith's defense.

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[2] Md. Rule 2-534, Motion to Alter or Amend a Judgment-Court Decision, provides:

> In an action decided by the court, on motion of any party filed within ten days after entry of judgment, the court may open the judgment to receive additional evidence, may amend its findings or its statement of reasons for the decision, may set forth additional findings or reasons, may enter new findings or new reasons, may amend the judgment, or may enter a new judgment. A motion to alter or amend a judgment may be joined with a motion for new trial. A motion to alter or amend a judgment filed after the announcement or signing by the trial court of a judgment but before entry of the judgment on the docket shall be treated as filed on the same day as, but after, the entry on the docket.

[3] A claim regarding "Criminal Responsibility" is governed by Section 3-110 of the Maryland Criminal Procedure Code, which provides:

> (a) *Time and manner of pleading.* -- (1) If a defendant intends to rely on a plea of not criminally responsible, the defendant or defense counsel shall file a written plea alleging, in substance, that when the alleged crime was committed, the defendant was not criminally responsible by reason of a mental disorder or an

(continued…)

Moreover, Skipwith alleged that the trial court erred in precluding a witness that Skipwith deemed necessary to his defense, and the proper time for a trial court's determination of relevance would have been at trial, rather than before, without any elucidation of how a motion to postpone trial could ever be heard anytime other than prior to trial. Further, he alleged that Judge Cahill also erred by considering "trial scheduling and other administrative concerns," as "the determining factor" in the denial.[4]

Thereafter, within 10 days of trial, Judge Sherrie R. Bailey, who had been specially assigned to the trial, facilitated a pre-trial conference, during which she also explored the bases for reconsidering the postponement request. Skipwith's attorney reasserted Dr. Bennett's unavailability because of personal travel outside of the United States during the August trial and counsel's error made during the February scheduling conference, due to an email "glitch". Judge Bailey then offered an option that Dr. Bennett

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> intellectual disability under the test for criminal responsibility in § 3-109 of this title.
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> (2) A written plea of not criminally responsible by reason of a mental disorder or an intellectual disability shall be filed at the time provided for initial pleading, unless, for good cause shown, the court allows the plea to be filed later.

No written plea of not criminally responsible was filed in the instant case.

[4] Before the motion for reconsideration of postponement was decided, Skipwith filed an Application for Leave to Appeal under Md. Rule 8-204, asserting even in the denial of the postponement, "Dr. Bennett's testimony is central to Mr. Skipwith's defense in that it is not only relevant to determining his culpability, but it is crucial for establishing his mens rea at the time of the alleged crime." The Application was denied pursuant to Maryland Rule 8-602(b)(1), which states, "when [m]andatory[, the] Court shall dismiss an appeal if the appeal is not allowed by these Rules or other law" and Md. Rule. 8-204(f)(1), in pertinent part, states "on review of the application…without the submission of briefs or the hearing of argument, the Court shall: (1) deny the application."

could testify remotely and encouraged Skipwith's counsel to communicate with Dr. Bennett about that possibility, especially since she had experienced other circumstances where witnesses had successfully testified remotely when they were outside of the country in similar regions of the world.

Several days later, Judge Cahill held a hearing on the motion for reconsideration in which he inquired about the possibility of Dr. Bennett's testifying remotely. Skipwith's counsel admitted that he had not contacted Dr. Bennett, indicating that:

> SKIPWITH'S COUNSEL: I don't think that's a good way for an expert to testify, and I'm not yet sure that she would even be available to do that. She's in – on the other side of the world.
>
> THE COURT: Okay. But, in any event, that was your judgment that it's not such a great way to testify, and you have not explored the idea of whether or not she's willing to testify in that matter.
>
> SKIPWITH'S COUNSEL: I have not been able to determine that. No, Judge.

Skipwith's counsel also did not offer an alternative date for trial. The State's Attorney remonstrated that he "received no report, no examinations, [and] no results of any type to even state what … Dr. Bennett would be testifying to."

Judge Cahill further explored whether Skipwith retained Dr. Bennett as an expert witness prior to the incident in question as well as the circumstances of the crime and the bases for her testimony. In addition, Judge Cahill inquired into Skipwith's counsel's contact with Dr. Bennett.

Skipwith's counsel replied that Dr. Bennett was retained after Skipwith's indictment. He also confirmed that the bases for her testimony were stated in the Motion

for Reconsideration, and he further emphasized that trial scheduling should not overcome Skipwith's ability to call Dr. Bennett as a witness.

At the end of the hearing, Judge Cahill orally denied the motion for reconsideration on the following bases:

> All right. Again, I see no good -- especially with the advent of the offer that Judge Bailey made to allow this witness to testify remotely, I see no good reason to revisit my prior ruling. I am going to deny the request for postponement, respectfully, and order that the case go forward tomorrow with jury selection. Thank you.

During the first day of the jury-trial on August 23, 2022, Judge Bailey asked about Dr. Bennett's remote testimony:

> THE COURT: Do we know where we're at on the witness situation that we need the virtual?
>
> SKIPWITH'S COUNSEL: I have – I have not received any communication back from Dr. Bennett actually, so I don't know.

A six-day jury trial ensued, and on December 2, 2022, Skipwith was sentenced to life with all but sixty years' suspended.[5]

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[5] Life with all but sixty years' suspended was the total sentence. Skipwith was sentenced to life imprisonment on Count One (first-degree murder), with all but sixty years suspended; twenty years' imprisonment on Count Six (use of a firearm in the commission of a felony), to run concurrent with the sentence on Count One; twenty years' of imprisonment on Count Seven, to run concurrent with sentences on Count One and Six; twenty years' imprisonment on Count Twelve (armed robbery), to run concurrent with Counts One, Six, and Seven; three years' imprisonment on Count Eighteen (loaded handgun on person), to run concurrent with sentences on Counts One, Six, Seven, and Twelve; three years' imprisonment on Count Twenty (loaded handgun in vehicle), to run concurrent with sentences on Counts One, Six, Seven, Twelve, and Eighteen; three years' imprisonment on Count Twenty-One (illegal possession of a regulated firearm), to run concurrent with sentences on Counts One, Six, Seven, Twelve, Eighteen, and Twenty;

(continued…)

Standard of Review

A postponement of trial generally is governed by Md. Rule 2-508 which provides that, "[o]n motion of any party or on its own initiative, the court may continue or postpone a trial or other proceeding as justice may require." The decision to grant or deny a postponement "is within the sound discretion of the trial judge." *Ware v. State*, 360 Md. 650, 706 (2000). Only "upon a finding that this discretion has been abused" will the ruling of a trial court be reversed. *Wilson v. State*, 345 Md. 437, 451 (1997).

Whether Judge Cahill abused his discretion in denying Skipwith's motion to postpone and its reconsideration is the issue. Essentially, he denied the two motions not only because of the lack of relevancy of Dr. Bennett's testimony relative to all the counts in issue but also because of a lack of diligence on the part of Skipwith's counsel in pursuing a postponement. In *Wright v. State,* 70 Md. App. 616, 623 (1987), this Court iterated a three-prong test established by the Supreme Court of Maryland to assess

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twenty years' imprisonment on Count Twenty-Three (conspiracy to commit armed robbery), to run concurrent with sentences on Counts One, Six, Seven, Twelve, Eighteen, Twenty, and Twenty-One.

At sentencing, Count Three (armed robbery) and Count Four (robbery) were merged with Count One (first-degree murder); Count Eight (robbery) was merged with Count Seven (armed robbery); Count Thirteen (robbery) was merged with Count Twelve (armed robbery); Count Twenty-Four (conspiracy to commit robbery) was merged with Count Twenty-Three (conspiracy to commit armed robbery).

whether a trial judge abused their discretion when denying a party's request to continue a case in order to secure the testimony of an absent witness:[6]

> To show such an abuse of discretion, the party who requests the continuance must show: (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 would not be fairly tried without it; and (3) that he made diligent and proper efforts to secure the evidence.

Wright, 70 Md. App. at 616 (quoting *Jackson v. State,* 214 Md. 454, 459 (1957)).[7] Skipwith argues, however, that the absence of Dr. Bennett's testimony could be "good cause" for a postponement, seemingly without Skipwith having to meet the requirements of *Wright* and its progeny.

Good cause for postponement, however, is embodied in Section 6-103(b) of the Criminal Procedure Article (1957, 2018 Repl.) ("(b) for good cause shown, the county administrative judge or a designee of the judge may grant a change of the trial date in a

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[6]At the November 8, 2022, general election, the voters of Maryland ratified a constitutional amendment changing the name of the Court of Appeals to the Supreme Court of Maryland. The name change took effect on December 14, 2022.

See also Md. Rule 1-101.1(a) ("From and after December 14, 2022, any reference in these Rules or, in any proceedings before any court of the Maryland Judiciary, any reference in any statute, ordinance, or regulation applicable in Maryland to the Court of Appeals of Maryland shall be deemed to refer to the Supreme Court of Maryland....").

[7] The cases prior to *Wright v. State,* 70 Md. App. 616 (1987) oftentimes included the term, prejudice, in the abuse of discretion standard for review of a trial court's decision to deny a postponement. *See* Jackson v. State, 214 Md. 454, 459 (1957) (using the phrase, "to show an abuse of discretion and prejudice for failure to continue a case because of the absence of witnesses" as the standard for reviewing a trial court's decision). However, modern cases beginning with *Wright* incorporate prejudice into the abuse of direction standard.

circuit court: (1) on motion of a party; or (ii) on the initiative of the circuit court") and Maryland Rule 4-271 ("On motion of a party, or on the court's initiative, and for good cause shown, the county administrative judge or that judge's designee may grant a change of a circuit court trial date.).

The "good cause" requirements of the statute and rule have been interpreted by *Wright* and its progeny to embody the three-prong test. Even the cases cited by Skipwith that preceded Wright reflect that the "good cause" determination is dependent on finding relevance and diligence. *See* Bethea v. State, 26. Md. App. 398, 400 (1975) (finding diligence and relevance to be "viable guides" to the determination of extraordinary cause); *see also Marks v. State*, 84 Md. App. 269, 278-79 (1990) (emphasizing both the materiality of the missing witness and the diligent efforts of the state's attorney in his attempts to secure the witness, as good cause for the postponement of trial.) .[8] As a result, we turn to whether Judge Cahill appropriately found and determined a lack of "good cause".

Judge Cahill did not err in determining that the proffered testimony of Dr. Bennett was not critical to the counts to which Skipwith was indicted. Although Skipwith's counsel wanted Dr. Bennett to testify regarding Skipwith's childhood and adolescent

[8] Skipwith also cited to *Farinholt v. State*, 299 Md. 32, 40-41 (1984) to support his position. However, in *Farinholt*, the Supreme Court did not need to decide whether the statutory requirement of good cause was met because Farinholt had sought or expressly consented to the postponements of trial.

trauma, none of her testimony was ever linked to any count under consideration, neither the felony murder count nor any other count.

The crime of felony murder is codified in Section 2-201(a)(4)(ix) of the Criminal Law Article, Maryland Code (2002, 2012 Repl. Vol., 2020 Supp.).[9] Mens rea is not an element of the crime, as noted in *Fisher v. State*, 367 Md. 218, 262 (2001), when Judge Rodowsky, interpreting a precursor statute, stated:

> The modern version of the [felony murder] rule is intended to deter dangerous conduct by punishing as murder a homicide resulting from dangerous conduct in the perpetration of a felony, even if the defendant did not intend to kill. If the felonious conduct, under all of the circumstances, made death a foreseeable consequence, it is reasonable for the law to infer from the commission of the felony under those circumstances the malice that qualifies the homicide as murder.

See McMillan v. State, 428 Md. 333, 351-52 (2012) (declaring the actual malice of the defendant while committing the underlying felony satisfies the common law mens rea requirement for murder under the felony-murder doctrine.") *See also Nicholson v. State,* 239 Md. App. 228, 247-48 (2018).

Skipwith's proffer of relevance of Dr. Bennett proposed testimony, as broad as it was, also did not address any nexus to the underlying felonies, nor any other crimes in issue during the trial. As a result, Dr. Bennett's testimony, as proffered, was not relevant, and Judge Cahill did not err.

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[9] In pertinent part, Section 2-201 of the Criminal Law Article provides:

(a) A murder is in the first degree if it is:
(4) committed in the perpetration of or an attempt to perpetrate
(ix) robbery under § 3-402 or § 3-403 of this article[.]

Judge Cahill also denied the postponement requests because Skipwith's counsel lacked diligence in his efforts to produce Dr. Bennett at the August trial, either remotely or in person. The record supports Judge Cahill's assessment.

Even though Skipwith's counsel knew in February that Dr. Bennett was not available in August, he did not seek any accommodation for her vacation plans, until 45 days prior to trial. When offered the opportunity before trial to provide remote testimony in August, counsel also failed to confer with Dr. Bennett at all. Skipwith's counsel never offered any alternative trial dates that would have accommodated Dr. Bennett's trip and return. Skipwith's counsel, thus clearly failed to demonstrate diligence in securing Dr. Bennett's testimony and failed to establish "that he had a reasonable expectation of securing the evidence of the absent witness or witnesses within some reasonable time." *Wright*, 70 Md. App. at 623.

Skipwith, however, argues that Judge Cahill erred in determining the admissibility of Dr. Bennett's testimony in advance of trial, citing *Kelly v. State*, 392 Md. 511, 535 (2006). In that case, Kelly was on trial for attempted murder, assault, and use of a handgun in the commission of a felony. *Id.* at 515. At the close of the Government's case, when the jury was in recess, the trial judge inquired about Kelly's witnesses, two officers who had been involved in the investigation of the case. *Id*. at 519-23. Kelly's counsel explained that he had been unsuccessful in subpoenaing one of the officers, but the other was present. *Id.* at 519.

The trial court, however, in determining that Kelly's counsel could not call the officer present in court emphasized that anything he had to say was hearsay and

inadmissible. *Id.* at 532. On appeal, we affirmed. Our Supreme Court reversed, however, emphasizing that the trial court abused its discretion by precluding the witness testimony based on hearsay. *Id.* at 543. *Kelly,* obviously, is inapposite, because Dr. Bennett did not appear at trial and her testimony on a remote basis was never explored.

Skipwith's final argument is that Judge Cahill erred by prioritizing judicial economics in conducting Skipwith's trial in August of 2022, over postponing the trial to permit Dr. Bennett to testify at some undetermined date. The record does not support his assertion.

There was no showing that Judge Cahill considered "judicial economy" when deciding to deny the postponement request. Rather, Judge Cahill emphasized the Covid delay during which time Skipwith had been languishing in jail for over eighteen months as well as the nearly five months since the scheduling conference, during which his counsel had made no effort to communicate with Dr. Bennett about her testimony.

Skipwith, nevertheless, cites to a severance case, *State v. Zadeh*, 468 Md. 124, 151 (2020), to support his position, in which the Supreme Court admonished the trial court for over-emphasizing judicial economy and held that efficiency "should not outweigh the interest in ensuring that a defendant is afforded a fair trial." In *Zadeh*, however, judicial economy was a consideration not appropriately balanced against "prejudice" by the trial court *id.* at 147, while, in the instant case, judicial economy was not a consideration. The only misstep, in the instant case was Skipwith's failure to satisfy the three-prong test of *Wright*.

In summation, we conclude that Judge Cahill did not err in denying Skipwith's Motion for Postponement and the Motion for Reconsideration and affirm Skipwith's convictions.

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