

Circuit Court for Wicomico County
Case No.: C-22-CR-22-000388

UNREPORTED
IN THE APPELLATE COURT
OF MARYLAND*

No. 262

September Term, 2023

JEAN DUMIS

v.

STATE OF MARYLAND

Wells, C.J.,
Tang,
Ausby, Kendra Y.
(Specially Assigned),

JJ.

Opinion by Tang, J.

Filed: April 25, 2024

*This is an unreported opinion. This 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).

A jury in the Circuit Court for Wicomico County convicted Jean Dumis, the appellant, of second-degree assault on his former girlfriend, Mikelynn Johnson. The court sentenced the appellant to eight years' incarceration. The sole question on appeal is whether the circuit court erred in denying the appellant's request for a continuance to secure a witness, Roosevelt Fekurere, whose testimony would have contradicted the State's evidence of the crime. For the reasons set forth below, we shall affirm the judgment of the circuit court.

FACTS

The appellant, Ms. Johnson, and Mr. Fekurere lived together in a house in Salisbury, Maryland. Ms. Johnson testified that on August 8, 2022, she and the appellant were inside the house when they got into a “fight” and an argument about the “[r]elationship and leaving.” The appellant put his hands on her and “[l]ike . . . slung or pushed” her into a closed bedroom door. When Ms. Johnson got up, she continued to argue with the appellant and told him to leave her alone.

Ms. Johnson went outside to get away from the appellant, but they “started fighting again[.]” She told the appellant she “was going to leave” and called 911. She explained to the dispatcher that the two were arguing, and the appellant had put his hands on her. The appellant then grabbed her cell phone and proceeded to hit her “[e]verywhere[.]” including the top of her head and sides of her face. At some point, Ms. Johnson was on the ground while the appellant was sitting on her back, hitting her. She told the appellant that if he stopped hitting her, she would not leave him and that she loved him. The appellant got up and walked Ms. Johnson back to the house. As she got up, she noticed that she was bleeding

from lacerations on her face. The appellant was also bleeding because Ms. Johnson had struck him in the face with a padlock while he had been assaulting her.

The appellant testified in his defense. He denied assaulting Ms. Johnson or taking her phone. He testified that, as a favor to a friend, he had given a woman a ride when Ms. Johnson ran out and started fighting with the woman. He was trying to hold them to stop them from fighting. Once he separated them, he took the woman to his cousin's house nearby and then returned to the house, where police and paramedics eventually arrived.

DISCUSSION

The appellant argues that the trial court abused its discretion when it denied his request for a postponement of the trial and refused to carry the trial over to a second day so that Mr. Fekurere, a subpoenaed witness, could appear to testify.

The State responds that the court did not abuse its discretion. The appellant failed to show that there was a reasonable expectation of securing Mr. Fekurere's appearance within a reasonable time. This failure alone, the State argues, means the appellant has failed to show that the court abused its discretion. We agree with the State.

A.

Background

In April 2022, the appellant was charged by a statement of charges filed in the District Court of Maryland for Wicomico County. In August, he prayed for a jury trial scheduled for one day on November 15, 2022, in the Circuit Court. At a pretrial conference a few days before the scheduled trial date, the defense moved to postpone the trial to locate and secure Mr. Fekurere as a defense witness. The court granted the motion for good cause

and noted the need for two Haitian-Creole interpreters for trial. The new trial date was scheduled for January 25, 2023.

On January 25, 2023, the defense moved for a second postponement because Mr. Fekurere did not appear for trial despite being personally served with a subpoena about a month earlier. The prosecutor noted five State witnesses, including Ms. Johnson, were present. Nevertheless, the court granted the postponement request and rescheduled the trial for March 13, 2023.

At the start of the trial on March 13, 2023, the defense moved for a postponement because Mr. Fekurere failed to appear for trial again. Defense counsel explained that Mr. Fekurere was personally served with a subpoena on February 23, 2023. Counsel later added that he had spoken to Mr. Fekurere after January 25 when he failed to appear: “I did reinform him as the subpoena already did of the [March 13 trial] date[,] and he indicated he would be here today.” The State opposed the motion, explaining that the court had twice postponed the trial to deal with the witness’s appearance. The court denied the motion to postpone the trial for lack of good cause. It issued a body attachment for Mr. Fekurere and proceeded with jury selection.

After Ms. Johnson testified, the court asked for an update on Mr. Fekurere’s status. Defense counsel responded that Mr. Fekurere’s brother said that Mr. Fekurere was out of state that day but that Mr. Fekurere “could be available for court tomorrow.” Defense counsel acknowledged that Mr. Fekurere had previously failed to appear for trial despite being subpoenaed and was never required to show cause. Because this was another attempt to get Mr. Fekurere to appear for trial, the court wanted assurance from him that he would

show up if the trial were postponed until the next day. Defense counsel then called Mr. Fekurere and informed the court that Mr. Fekurere “assured [counsel] that he would be in court tomorrow at 8:30.” The court went on to hear testimony from other State witnesses.

After the State’s case-in-chief, the appellant was advised of his right not to testify. He indicated that he would be “okay” to testify without having Mr. Fekurere testify first, and then he asked a question about the order of the testimony. The court explained that it would allow the appellant to testify before Mr. Fekurere. This was because Mr. Fekurere had previously failed to appear for trial, and the court was unsure if he would appear this time. The court noted that Mr. Fekurere had been aware since February that he was required to appear, and his only explanation for his absence was that he was out of state.

The appellant testified, and the State offered rebuttal testimony. At around 3:30 p.m., the court noted that the case “was at the point of going to instructions and closing argument.” The court faced logistical challenges with carrying the trial over to the next day due to the lack of necessary interpreters and other scheduled jury trials. The court also considered, among other things, whether there was a reasonable expectation of securing Mr. Fekurere within a reasonable time. The court reiterated that Mr. Fekurere had failed to appear at the last scheduled trial, and there was no explanation for Mr. Fekurere’s failure to appear for the current trial other than that he was out of state.

After taking a recess, the court asked defense counsel to call Mr. Fekurere so he could proffer what he would say at trial. Mr. Fekurere, through a court interpreter, stated under oath that he saw the woman who called the police try to hit another “girl” with a

bottle; the woman was ready to hit her “boyfriend” with a bottle; and the “gentleman” tried to separate the women.

As for his appearance in court, Mr. Fekurere said he had gone to Florida but was driving in South Carolina and was “coming up to Salisbury.” When the court informed Mr. Fekurere that he was required to appear the next day at 8:30 a.m., Mr. Fekurere said he would “get to Salisbury at 12:00” and that “[i]f the Court is at 2 o’clock, I will be here.” When the court reiterated that he needed to appear at the courthouse at 8:30 a.m., Mr. Fekurere responded that he was having car trouble and would “try to see if [he could] make it.”

After hearing from Mr. Fekurere, the court decided not to carry the trial over to the next day. The court acknowledged that Mr. Fekurere’s testimony would be “meaningful.” It also stated that it and defense counsel had “done everything within reason to procure [Mr. Fekurere’s] attendance in a timely way to allow the trial to proceed without interruption.” But the court was not convinced that Mr. Fekurere would show up the next day if the trial were allowed to carry over:

So it sounds to me that this is not a reliable witness for his appearance. He didn’t appear today despite having been subpoenaed. It strikes me that he doesn’t understand the import of his appearance on time tomorrow. And he has left the door open about whether he could even be here tomorrow at 8:30, which I think he told [counsel] earlier that he could be[.]

The court went on to instruct the jury, counsel presented closing arguments, and the jury deliberated, returning its verdict of guilty on second-degree assault.

B.

Analysis

Maryland Rule 2-508(a) provides: “On 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 whether to grant a request for continuance, however, is committed to the sound discretion of the trial court. *Abeokuto v. State*, 391 Md. 289, 329 (2006). The Supreme Court of Maryland explained that an abuse of discretion has been said to occur

where no reasonable person would take the view adopted by the [trial] court, or when the court acts without reference to any guiding rules or principles. It has also been said to exist when the ruling under consideration appears to have been made on untenable grounds, when the ruling is clearly against the logic and effect of facts and inferences before the court, when the ruling is clearly untenable, unfairly depriving a litigant of a substantial right and denying a just result, when the ruling is violative of fact and logic, or when it constitutes an untenable judicial act that defies reason and works an injustice.

North v. North, 102 Md. App. 1, 478 (1994) (cleaned up); *see also Fontaine v. State*, 134 Md. App. 275, 288 (2000) (An abuse of discretion occurs “where no reasonable person would take the view adopted by the [trial] court” and “where a trial court’s ruling is reasonable, even if we believe it might have gone the other way, we will not disturb it on appeal.”) (cleaned up).

The burden of demonstrating an abuse of discretion on a motion for a postponement is on the party challenging the ruling. *State v. Taylor*, 431 Md. 615, 646 (2013) (citation omitted). To show an abuse of discretion in a decision not to continue a case due to the absence of a witness, the party requesting the continuance must show: (1) there was a “reasonable expectation” of securing the witness “within some reasonable time;” (2) the

witness’s testimony was competent, material, and the case could not be “fairly tried” without it; and (3) “diligent and proper efforts” were made to secure the witness. *Jackson v. State*, 288 Md. 191, 194 (1980); *Wright v. State*, 70 Md. App. 616, 623 (1987).

We conclude that the first requirement was not satisfied, and thus, we need not address the other two. Based on the information available to the court, we do not find the court’s ruling to be violative of facts and logic or an untenable judicial act. Mr. Fekurere had previously failed to appear for trial even after being personally served with a subpoena, which resulted in a postponement. Despite being personally served with another subpoena and telling counsel that he would appear, Mr. Fekurere failed to show up again for the current trial. Then, during trial, Mr. Fekurere told defense counsel that he would be in court by 8:30 a.m. the next day. Later, when asked under oath by the court, Mr. Fekurere expressed uncertainty about his appearance the following day at 8:30 a.m. Based on the information available to the court, we find no abuse of discretion in the court’s denial of the requested postponement and refusal to carry the trial to the next day.

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