

UNREPORTED
IN THE COURT OF SPECIAL APPEALS
OF MARYLAND

No. 1328

September Term, 2020

THERESA LYNN COLLINS

v.

STATE OF MARYLAND

Reed,
Wells,
Zarnoch, Robert A.
(Senior Judge, Specially Assigned),

JJ.

Opinion by Zarnoch, J.

Filed: February 1, 2022

*This is an unreported opinion, and it may not be cited in any paper, brief, motion, or other document filed in this Court or any other Maryland Court as either precedent within the rule of stare decisis or as persuasive authority. Md. Rule 1-104.

In 2008, a jury sitting in the Circuit Court for Dorchester County found Theresa Lynn Collins, appellant, guilty of first-degree felony murder, second-degree murder, two counts of first-degree arson, three counts of reckless endangerment, and malicious destruction of property. The court imposed a sentence of life imprisonment for felony murder and a consecutive term of 30 years' imprisonment for arson of an apartment adjacent to that where the murder occurred, merging the remaining counts for sentencing purposes. Those judgments were affirmed on direct appeal. *Collins v. State*, No. 1621, Sept. Term, 2008 (filed Jun. 21, 2010) (“*Collins I*”).

In 2018, appellant filed a postconviction petition, alleging ineffective assistance of trial counsel on grounds unrelated to the 2010 appeal. The following year, she filed a supplemental petition, raising additional claims of ineffective assistance based on trial counsel's failure to move for a *Frye/Reed* hearing,¹ to move to exclude testimony of the State's expert on the origin and cause of the fire at issue, and to call a competing expert. In support of her claims, appellant offered Craig Beyler, Ph.D., as an expert in fire scene investigations and origin and causes of fire. The postconviction court found that Dr. Beyler was not qualified as an expert in those fields. After an evidentiary hearing, where the

¹ The proceedings in this case took place prior to the Court of Appeals's decision in *Rochkind v. Stevenson*, 471 Md. 1 (2020), adopting the *Daubert* standard for admissibility of scientific evidence and overruling *Reed v. State*, 283 Md. 374 (1978), which defined the standard at all relevant times in this case.

circuit court heard from Collins and her trial counsel, the postconviction judge rejected the above ineffective assistance of counsel claims in a written decision.²

She filed an application for leave to appeal, which we granted, and the matter was transferred to the regular appellate docket so that we could address the following question:

Did the postconviction court abuse its discretion by finding that Dr. Beyler was not qualified to testify as an expert at the postconviction hearing?

Finding no abuse of discretion, we shall affirm.

BACKGROUND

We quote our unreported opinion in the direct appeal for background:

On January 17, 2008, Collins and Milton Crate were drinking and socializing with friends in [Daniel] Love’s second-floor apartment . . . in Cambridge, Maryland. At one point during the evening, Collins and Love argued about the fact that Love would not give Collins a key to his apartment. Two witnesses testified that, during the course of the argument, Collins threatened to burn Love’s house down with Love in it. After everyone except Collins, Crate, and Love had left, Crate went to the bathroom. While in the bathroom, Crate heard “a slam.” He exited the bathroom and saw Love holding Collins against a wall. Crate separated them and told Love that it “was enough.” Crate sat down with another drink, and then the group was “sitting there [and] laughing” and “everything seemed to be cool.” At some point, Crate re-visited the bathroom and, from the bathroom, heard a noise that he believed was Collins “tumb[ing]” down stairs. When he emerged from the bathroom, Crate observed Collins downstairs, and he went outside with her to smoke cigarettes.

² The circuit court placed principal reliance on the testimony of Collins’s trial counsel that he did not see a need to consult an expert in light of his trial strategy:

His defense strategy was not to challenge that an arson occurred, but that his client was not the one to start the fire. It was gleaned during the hearing that presenting additional arguments beyond identity of the arsonist could be a risk to defense objectives[.]

Postconviction Memorandum Opinion at 13-14.

After exiting the apartment, Crate lit the cigarettes with a green lighter. Crate testified that, while outside, Collins appeared extremely angry and referred to Love as an “asshole.” Collins then re-entered Love’s apartment. After a period of five to ten minutes, Collins emerged from the residence, ready to leave. Crate wanted to retrieve the liquor he had left inside. When he began to walk toward the door, Collins grabbed him by the jacket and told him not to go inside. Despite Collins’s warning, Crate opened the door and discovered that the apartment was on fire. Crate was shocked by what he saw and “just kind of stood there.” Collins led him away from the scene. As Collins and Crate walked away, Collins said, “I guess now he won’t be putting his hands on me now.” After leaving the apartment, the pair walked towards the home of a friend of Crate’s, but he was too drunk to be able to find the home. While walking, Collins fell off the sidewalk and injured herself and Crate called an ambulance.

Linda Jones,^[3] who lived in the first-floor apartment, was awakened by her son telling her that there was a fire in the building. She called 911 and told the operator that she thought Love had set fire to the building. The fire department arrived and removed Love from the residence. Medical personnel performed CPR on Love, who was unconscious and in cardiac arrest, and unsuccessfully attempted advanced life support while they transported Love to the hospital. Love suffered second or third degree burns to more than eighty percent of his body, and he died from smoke inhalation and thermal injuries.

The Cambridge Police Department also arrived at the scene and, after speaking with Jones and other witnesses, identified Theresa Collins as a person who had left the scene of the fire. Acting on this information, Sergeant Charles Bennett of the Cambridge Police Department told his officers to look for Collins. Corporal Ronald Hinson was dispatched to assist an ambulance with a sick or injured person call at the 300 block of Mill Street in Cambridge. When he arrived, Hinson observed a woman sitting on the sidewalk, complaining of a leg injury, and a man with her. When the emergency medical services personnel arrived, Collins gave them a false name. Hinson looked at the woman’s leg and noticed that the lower portion of her pants was covered in a black substance that appeared to be soot. When another police officer, Greg McCray, arrived, he identified the woman as Theresa Collins.

Collins was taken to Dorchester General Hospital’s emergency room (“ER”), where she was verbally advised of her Miranda rights. While in the

³ At some places in the record, Ms. Jones is referred to as “Linder” Jones.

ER, Collins told Detective Chris Flynn that she and Crate had been at Love's apartment, and that she and Love had quarreled. During the discussion, Flynn noticed that Collins's pants were covered with soot and smelled like smoke. Flynn took the pants and packaged them as evidence. The detective also confiscated a pink cigarette lighter. Detective Flynn testified that Collins appeared intoxicated when he met with her at the hospital. Later, while being questioned at the police station, Collins claimed that Crate went back into the hallway of the apartment building after smoking and she saw the fire in the hallway as she was pulling Crate out to leave.

While Collins was in the hospital, Crate was taken to the police station for questioning, at which point he told police that Collins set the fire with a pink cigarette lighter. During the trial, Crate testified that he did not remember giving that statement. When he was brought in for questioning, Crate had with him a pack of cigarettes, but no lighter.

Collins was tried in the Circuit Court for Dorchester County on June 30-July 2, 2008. The jury found her guilty of first-degree felony murder, two counts of first-degree arson, three counts of reckless endangerment, and malicious destruction of property valued over \$500. She was acquitted of first-degree murder.

Collins I, slip op. at 1-4 (footnotes omitted).⁴

In appellant's direct appeal, the only issue raised concerned the scope of the State's closing argument. *Id.* at 1. For purposes of this appeal, the principal issue concerns the State's theory as to the cause of the fire.

At trial, the State offered Kirby Travers, a Deputy State Fire Marshal, as an expert in the field of the origin and cause of fires. Travers had obtained an undergraduate degree in accounting and subsequently gained his knowledge of fires through experiential training. He had worked three years investigating fires while employed by the Office of the State Fire Marshall, had served fifteen years at a volunteer fire department, had attended a

⁴ Crate pleaded guilty to lesser charges and testified at Collins's trial as a witness for the State. *Collins I*, slip op. at 4 & nn.5-6.

two-week course on arson held at Emmitsburg National Fire Academy, and attended annual training courses. At the time of trial, he had been the primary investigator in 94 fires, including both structure fires and vehicle fires. After a perfunctory cross-examination, Travers was accepted by the trial court (without defense objection) as an expert in the field of origin and cause of fires.

Travers testified that he arrived at the scene while the building was still smoldering. He entered the building, took photographs of the interior, and examined both the exterior and interior. Because there was extensive charring in the foyer but not in the downstairs apartment on the other side from it, he concluded that the fire had originated in the foyer, not the downstairs apartment. Travers further theorized, based upon the fire damage to the door to the upstairs apartment, that the fire had traveled up the stairway “kind of like a chimney, and burnt the top down.”

Travers next described how he attempted to rule out any accidental causes of the fire, focusing primarily on whether it had been caused by an electrical failure. After examining the electrical outlets and wires in the vicinity where the fire had originated, Travers ruled out an electrical cause. Acknowledging that smoking also could have been an accidental cause, Travers ruled that out based upon witness statements, and he ultimately concluded that the fire had been set intentionally.

In closing argument, the State asserted that appellant intentionally had set the fire because she was angry at the victim, Love. The defense theory was that Crate had set the fire and then blamed appellant for doing so.

At the postconviction hearing, after postconviction counsel called Dr. Beyler as a witness and sought to qualify him as an expert,⁵ the State challenged that attempt and cross-examined him thoroughly. Among the things disclosed during that cross-examination: (1) Dr. Beyler acknowledged that he did not hold any professional licenses; (2) Dr. Beyler was not certified as a fire scene investigator, nor did he know whether he met the necessary qualifications for certification; (3) during the preceding five years, Dr. Beyler had approximately one week of training on the origin and cause of fires; (4) Dr. Beyler lacked experience in conducting on-scene fire investigations, acknowledging that he had never been the primary investigator of a fire because he had not been employed by a governmental investigative agency; and (5) Dr. Beyler testified at the postconviction hearing that he had performed two on-scene investigations within the past year and others within the past 15 years, but he previously had testified during a trial in Carroll County that he had not performed any on-scene investigations within the past 15 years.

The postconviction court found that Dr. Beyler was not qualified as an expert in the field of origin and cause of fires. It explained its reasoning as follows:

⁵ Dr. Beyler’s curriculum vitae (“CV”) was admitted into evidence. Dr. Beyler’s CV indicated, among other things, that he had earned bachelor’s degrees in civil engineering from Cornell University and fire protection engineering from the University of Maryland; master’s degrees in mechanical engineering (focusing on combustion) from Cornell University and fire safety engineering from the University of Edinburgh; and a Ph.D. in engineering science from Harvard University. In addition, he had been the technical director at Jensen Hughes, a fire protection engineering firm, and belonged to the National Fire Protection Association, the Society of Fire Protection Engineers, the International Association for Fire Safety Science, and the Combustion Institute.

Well, I've carefully considered all of the testimony here today. My understanding is that he will ultimately be offered to express an opinion about origin and cause of a particular fire and potentially give expert opinion testimony as to critiquing a fire scene investigation. I find that by looking at his CV and by evaluating his testimony, he's certainly qualified to opine and give expert testimony in the field of fire protection engineering, fire protection design, generally you might call it fire science. I think that from the testimony that I've received, while he's served on these committees and he said it himself, thermodynamics is a subset of fire dynamics or maybe it was the other way around. I think he had something to contribute, but I do not believe that it's been proven to me that he's qualified to express an opinion about origin and cause of a particular fire. And he's not qualified, again, based on the evidence and testimony I have evidenced, to opine as a criticism or critique of a fire scene investigation.

Again, I think that he is an expert in the field of fire protection design, research and development, hazard analysis, but it just hasn't been proven to me that he's qualified to express opinions as to cause and origin of fires, of particular -- of particular fires, and also critique of fire scene investigation and that's just based upon what I've received today in the form of testimony and the impeachment by the State's Attorney by the witness as to his qualifications.

I don't know where that leaves us. I mean, he's certainly able to generally discuss fire science and engineering and safety, hazard analysis, but I just -- I just don't see where he's qualified based on what I've received to express opinion about the origin and cause of a particular fire and the review of a -- of a government fire scene investigation, I don't see where it's been proven that he has the training, knowledge, and experience to currently give a helpful opinion as to that -- that area, if that's what . . . you're intending to do.

In denying appellant's postconviction petition, the court explained:

After Dr. Beyler was examined by both Postconviction Counsel and the State, the Court remained unconvinced that Dr. Beyler was an expert in the fields of discipline in which was offered. The Court did consider fully his knowledge, skill, experience and training. After such consideration, the Court concluded that Dr. Beyler was not qualified to express an opinion concerning fire scene investigations, and origin/cause of fires. Notably, Dr. Beyler's manner of responding to the State's questions caused the Court concern. Additionally, his professed experience was impeached when the State questioned him about statements he made to another factfinder in

another Maryland jurisdiction. Moreover, the Court noted that he admitted he was not eligible to be licensed in his purported field of expertise ostensibly due to his lack of experience in certain aspects of fire scene investigation. He also had not recently attended any trainings or obtained any relevant certifications and was not a member of the National Association of Fire Investigators.

Postconviction Memorandum Opinion at 11-12.

DISCUSSION

Parties' Contentions

Appellant contends that the postconviction court abused its discretion in finding that Dr. Beyler was not qualified as an expert in the fields of fire scene investigations and origin and causes of fire. According to appellant, “the postconviction court defined the requisite specialization too narrowly.” Although the postconviction court found that Dr. Beyler was “certainly qualified to opine and give expert testimony in the field of fire protection engineering, fire protection design, generally you might call it fire science[,]” it found him not qualified to express an opinion on the origin or cause of a particular fire. This distinction, appellant avers, “was too fine because Dr. Beyler only needed to be generally conversant in fire investigations.”

Appellant contends that the postconviction court’s conclusion that Dr. Beyler’s training, knowledge, and experience were outdated “was not supported by the testimony.” Moreover, appellant maintains that merely because Dr. Beyler was not a certified fire inspector did not preclude him from qualifying as an expert on fire investigations but that, in any event, the court ignored his membership in related organizations.

Appellant contends that the postconviction court did not “sufficiently” explain the basis for its finding that Dr. Beyler was not “competent” to review whether “a particular fire scene was investigated properly by a government, first responding fire scene investigator[.]” Finally, appellant attacks both the postconviction court’s misgivings about Dr. Beyler’s “manner of responding” to the State’s inquiries, and its finding that the State had effectively impeached him with purported inconsistencies between his present and prior testimony.

The State substantially adopts the reasoning of the postconviction court and contends that we should affirm on that basis. It emphasizes that the only issue before us “is whether the court abused its discretion in finding that [Dr. Beyler] was not qualified as an expert,” not “whether the postconviction court could have qualified [him] as an expert witness.”

Analysis

Maryland Rule 5-702 governs admissibility of expert testimony and provides⁶ as follows:

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,

⁶ During the pendency of this appeal, the Court of Appeals amended Rule 5-702 to include a Committee Note referring to its recent decision in *Rochkind*, adopting the *Daubert* standard for admissibility of scientific evidence. 207th Rules Order, dated Jul. 8, 2021. That change has no effect on this appeal.

- (2) the appropriateness of the expert testimony on the particular subject, and
- (3) whether a sufficient factual basis exists to support the expert testimony.^[7]

At issue here is the postconviction court’s ruling on the first step, “whether the witness is qualified as an expert by knowledge, skill[,] experience, training or education.” We review such a ruling for abuse of discretion. *Alford v. State*, 236 Md. App. 57, 71 (2018) (citation and quotations 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 guiding rules or principles.” *State v. Robertson*, 463 Md. 342, 364 (2019) (citation and quotations omitted) (cleaned up).

The scope of a circuit court’s discretion whether to admit or exclude expert testimony is broad. A court’s “action in admitting or excluding such testimony will *seldom* constitute a ground for reversal.” *Santiago v. State*, 458 Md. 140, 154 (2018) (citation and quotations omitted).

Here, there is an adequate basis in the record to support the postconviction court’s discretionary decision declining to find Dr. Beyler qualified as an expert in the field of the origin and cause of fires. The State’s cross-examination of Dr. Beyler during the postconviction hearing established that: (1) Dr. Beyler did not hold any professional licenses; (2) he was not certified as a fire scene investigator, nor did he know whether he

⁷ In this case, the circuit court judge was both the gatekeeper and the trier of fact. See John Sheldon and Peter Murray, *Rethinking the Rules of Evidentiary Admissibility in Non-Jury Trials*, 86 JUDICATURE 227, 228 (2003), where the authors contend that “[w]hen judges sit without juries, . . . there is no point either in trying to screen evidence or in issuing limiting instructions.” The judge also knew generally what Dr. Beyler’s testimony would be.

met the necessary qualifications for certification; (3) during the preceding five years, Dr. Beyler had approximately one week of training on the origin and cause of fires; and (4) Dr. Beyler lacked experience in conducting on-scene fire investigations. Moreover, the postconviction court’s finding that the State had effectively impeached Dr. Beyler with inconsistencies between his testimony at the postconviction hearing and prior testimony during a trial in Carroll County was not clearly erroneous, and that finding rested in part on a credibility determination that we are in no position to second-guess.⁸

The issue before us, as the State points out, is not whether Dr. Beyler could have been qualified as an expert in the relevant field, nor whether we would have decided the matter differently than the postconviction court. The only issue is whether “no reasonable person would take the view adopted by” the postconviction court, or whether it acted “without reference to guiding rules or principles.” *Robertson, supra*, 463 Md. at 364 (cleaned up). Applying this highly deferential standard, we hold that appellant has not met her burden to show abuse of discretion. As the Court of Appeals recently observed, a court’s “action in admitting or excluding” expert testimony “will *seldom* constitute a ground for reversal.” *Santiago, supra*, 458 Md. at 154. That is the case here as well.

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

⁸ Although the credibility of an expert witness is typically determined by the trier of fact, if the credibility issue goes to the qualifications of the witness, it becomes an issue for the court. The existence of the impeachment finding in this proceeding also distinguishes this case from the authorities relied upon by appellant.