

UNREPORTED\*

IN THE APPELLATE COURT

OF MARYLAND

No. 1767

September Term, 2023

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QUANDRE SAMUEL-ANTWON DIXON

v.

STATE OF MARYLAND

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Friedman,  
Kehoe, S.  
Hotten, Michele D.  
(Senior Judge, Specially Assigned),

JJ.

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Opinion by Kehoe, J.

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Filed: December 31, 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 sitting in the Circuit Court for Baltimore County found Quandre Samuel-Antwon Dixon, appellant, guilty of second-degree assault. The court sentenced Dixon to ten years of incarceration. Appellant filed this timely appeal and presents one question for our review:

Did the circuit court abuse its discretion in granting the State’s motion to postpone trial?

For the reasons to follow, we shall affirm the judgment of the circuit court.

### **BACKGROUND**

Appellant was charged with assaulting Lanay Tavonne Harrison, the mother of his child, on July 9, 2022. According to the application for a statement of charges, on that date, police responded to an apartment in reference to a domestic dispute. Upon arrival, they encountered Ms. Harrison, who was “upset, afraid, and crying.” She had several lacerations on her face, her face and lips were swollen, and her upper lip “appeared to be busted.” She told police that appellant had forced her to the ground, punched her multiple times with his fists, struck her multiple times with a metal object, “stomped” on her head and body, and threatened to kill her. Appellant was charged with first- and second-degree assault, as well as possession of a dangerous weapon with intent to injure.

Trial was scheduled for February 22, 2023, but was postponed administratively because there was no judge and/or no jury available. Trial was rescheduled to March 29, 2023. On that date, the court granted the State’s motion to postpone because the prosecutor was tied up in another trial. Trial was rescheduled to August 15, 2023.

When the parties appeared for trial, the State made a preliminary motion for a postponement on the ground that Ms. Harrison had failed to appear. The State advised the court that a new trial date of September 12, 2023, had been cleared, therefore the postponement would be brief.

The State presented the court with an application for the issuance of a body attachment for Ms. Harrison, in which it alleged that reasonable efforts had been made to secure Ms. Harrison’s attendance, but that she was uncooperative. The State represented that a summons to appear for trial that day had been issued for Ms. Harrison at an address in Baltimore City and sent to the Baltimore City Sheriff’s Office for service. The State confirmed that the address on the trial summons was the same as that listed for Ms. Harrison as the defendant in a pending criminal case that was scheduled for trial the following month, and the same address on file with her probation agent, to whom she was then reporting in connection with a different matter.

The State obtained verification from the sheriff’s office that the summons was received and that it “went out.” The sheriff’s office could not verify that the summons was served because, according to the prosecutor, “they don’t log it[.]” The sheriff’s office advised the State, however, that, if there had been any issue with service, that fact would have been noted and the summons would have been returned to the prosecutor’s office, which was not the case.

On August 14, 2023, the day before trial, the prosecutor called Ms. Harrison at the phone number previously used to contact her. The State alleged:

A female answered the call and immediately questioned who was calling and why. [The prosecutor] identified himself . . . and asked for Ms. Harrison. The female would not provide her name, identifying information[,] or confirm or dispel if she was, in fact, Lanay Harrison. The State advised the female [that] Ms. Harrison was required to attend court for trial on [August 15, 2023], and the State was calling to make arrangements. The female again refused to identify herself or provide any information, and quickly ended the call by saying “I will have her call you”, then promptly ended the call. The State asked twice if the person . . . was Ms. Harrison, and the [person] refused to answer in the affirmative or negative. The State believes this person was Ms. Harrison.

Later that day, the prosecutor made a second call to the same number, but the call went straight to voicemail. He left a message, stating that Ms. Harrison was required to appear at trial the next day, and advising that her failure to appear would result in a request for a body attachment. He asked for a return call as soon as the message was received but she did not respond. The State confirmed that the phone number used to call Ms. Harrison was the same phone number that she had provided to her probation agent, and the same number from which she had placed a call to her probation agent on August 8, 2023, a week before trial.

The State enlisted the aid of a detective to investigate whether there had been recent contact between Ms. Harrison and appellant, who had been incarcerated for over a year in connection with a violation of probation charge. Phone records from the jail revealed that, since August 1, 2022, there had been 1,007 “attempted calls and connected calls” between appellant and Ms. Harrison. The detective listened to several of the calls to verify that Ms. Harrison was the person speaking to appellant, but there had been insufficient time to review the substance of each conversation. The most recent contact was a “completed” call on August 13, 2023, two days before the scheduled trial date and a day before the

prosecutor’s calls to her. The phone number appellant used to contact Ms. Harrison from jail was the same number used by the prosecutor to contact her.

On the morning of trial, the prosecutor left another voicemail message for Ms. Harrison, asking her to contact him. She did not respond to this voicemail.

Defense counsel objected to the postponement on grounds that there was no evidence that Ms. Harrison had been served with the summons, and no evidence that the State had made any attempt to contact her or confirm she had been served until the day before trial. He stated that the defense was ready for trial, and he reminded the court that trial had already been postponed twice. He claimed that another postponement would be prejudicial to the defense, but he did not explain the nature of the alleged prejudice.

The court commented that, if appellant wanted to avoid a postponement, he could contact Ms. Harrison, as he had “obviously” been in touch with her, and tell her to come to court. The court gave its assurance that, for that one act, appellant would not be charged with violating an order that prohibited him from having contact with Ms. Harrison.

Appellant then addressed the court, against the advice of his attorney. He said that Ms. Harrison had informed the State that she did not want to “go forward” with the charges, and he argued that she could not be forced to do so. The court responded:

Today is the day. If she wants to come down here, and say whatever she wants to say, get on that witness stand and say it. If she wants to say it didn’t happen, if she wants to say, “I started it.” I don’t know anything about your case, but [what] I’m saying is[,] people need to be responsible for themselves. She has no right . . . to tell the State . . . not to do [its] job.

The court then announced a finding that Ms. Harrison had disobeyed a subpoena and stated its intent to postpone trial and grant the State’s application for a body attachment.

At that point, appellant told the court, “[w]e’ll call her and get her here today.” The court took a recess. When court reconvened, defense counsel stated that the defense was ready for trial and would not consent to a postponement, but he declined to say whether Ms. Harrison had been contacted. The court granted the motion for postponement upon a finding of good cause and issued a body attachment.

After the postponement was granted, appellant filed a motion to dismiss the charges against him based on a violation of the so-called “*Hicks*” rule, which requires that a criminal trial in the circuit court begin within 180 days of the first appearance of the defendant or counsel for the defendant, unless the court finds good cause to postpone the trial beyond that time. *See Griffin v. State*, 262 Md. App. 103, 115 (2024) (discussing *State v. Hicks*, 285 Md. 310 (1979)). The court denied the motion. Appellant does not challenge that ruling on appeal.

On September 8, 2023, Ms. Harrison was taken into custody pursuant to the order for body attachment and held without bail pending trial. The trial commenced as scheduled on September 12, 2023.

Ms. Harrison was called as a witness in the State’s case. She repeatedly stated that she did not want to testify and claimed to have no recollection of the events that occurred on the date of the alleged assault. She acknowledged, however, that she was the person in the police body camera footage and in photographs of her face that were taken that day.

The body camera footage, which was played for the jury, demonstrated that Ms. Harrison told the responding police officer that appellant had “just beat [her] up.”

As stated earlier in this opinion, appellant was found guilty of second-degree assault. This timely appeal followed. We will include additional facts in the discussion as they become relevant.

### **DISCUSSION**

Appellant contends that the court abused its discretion in granting the State’s motion to postpone the August 15, 2023, trial date based on Ms. Harrison’s failure to appear. In support of his contention, appellant claims that the State failed to demonstrate that it made diligent efforts to secure Ms. Harrison’s presence and failed to make a proffer regarding the necessity of her testimony.

The State maintains that the court was duly advised of the importance of Ms. Harrison’s testimony to the State’s case, and that the proffer regarding efforts to secure her presence at trial supported the court’s finding that Harrison had received a summons for the trial date but willfully failed to appear.<sup>1</sup> According to the State, the court “properly determined that the willful absence of a critical State’s witness in a domestic violence

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<sup>1</sup> The State’s Application for Body Attachment pursuant to Maryland Rule 4-267 did not comply with Rule 4-267(c) because it was not verified. Although it was signed by a State’s attorney, the certification that flows from Rule 1-311 is not the same as filing a verified petition. The Appellant did not object to this defect at trial, nor did he raise this issue on appeal. Accordingly, we deem any objection to the content of the State’s Application before the circuit court to have been waived.

case,” with whom appellant was in “routine contact[,]” justified a one-month postponement of the trial date. We agree with the State.

“[T]he trial court is vested with a significant amount of discretion whether to grant the necessary continuance to allow [a] missing witness to be located, subpoenaed, or apprehended[.]” *Green v. State*, 127 Md. App. 758, 767–68 (1999) (quoting *Wilson v. State*, 345 Md. 437, 451 (1997)). “[T]he granting of a continuance to locate a . . . witness . . . will not be disturbed absent a showing of abuse prejudicial to the defendant.” *Jackson v. State*, 288 Md. 191, 194 (1980) (citations omitted). “An abuse of discretion is found where the decision is ‘well removed from any center mark imagined by the reviewing court and beyond the fringe of what that court deems minimally acceptable.’” *Freeman v. State*, 487 Md. 420, 429 (2024) (quoting *Devincentz v. State*, 460 Md. 518, 550 (2018)).

We perceive no abuse of discretion. The State detailed the facts of the case and explained that Ms. Harrison’s testimony was required to establish how the assault occurred, to describe her injuries, and to identify appellant as the assailant. Her testimony was clearly material, relevant, and critical to the State’s case. Moreover, the State’s proffer supports the court’s finding that Ms. Harrison had been properly summoned to appear but was willfully absent. On these facts, the court did not abuse its discretion in granting a brief postponement so that the State could secure her attendance at trial.<sup>2</sup>

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<sup>2</sup> Even if we had been persuaded that the court’s ruling amounted to an abuse of discretion, appellant would not be entitled to relief as he demonstrated no prejudice. His only claim of prejudice is that, by postponing trial until September 12, 2023, he had to remain in pretrial incarceration for an additional month. Appellant does not dispute, however, that

Appellant also argues that the court abused its discretion in postponing the case because it “placed the burden” on him to secure the attendance of a witness for the State. His argument is unavailing. The ruling at issue did not shift the State’s burden of bringing its witness to trial onto appellant, but rather gave the State time to have Ms. Harrison detained and brought to trial pursuant to a body attachment. In any event, the record does not support appellant’s claim that the court “order[ed]” him to “make efforts to secure” Ms. Harrison’s appearance. The court simply suggested, before granting the motion, that, if appellant wanted to avoid a postponement, he would be given an opportunity to call Ms. Harrison and persuade her to come to court.

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

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he was being held without bond on a violation of probation charge that was not scheduled for trial until November of 2023.