Circuit Court for Prince George's County
Case No. CT220244X

UNREPORTED

IN THE APPELLATE COURT

OF MARYLAND

No. 1961

September Term, 2024

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TROY VINCENT CLEVELAND, JR.

v.

STATE OF MARYLAND

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Wells, C.J.,
Albright,
Meredith, Timothy E.
(Senior Judge, Specially Assigned),

JJ.

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PER CURIAM

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Filed: February 25, 2026

*This is a per curiam opinion. Under Rule 1-104, the opinion is not precedent within the rule of stare decisis, nor may it be cited as persuasive authority.

Convicted by a jury in the Circuit Court for Prince George's County of second degree murder of Sean Spence, first degree assault of Mr. Spence's wife Buffie West, and related offenses, Troy Vincent Cleveland, Jr., appellant, presents for our review two issues: whether the evidence is insufficient to sustain the convictions, and whether the court erred "in implicitly denying Mr. Cleveland's request for a continuance of the hearing on his criminal responsibility and . . . precluding the designated . . . defense expert . . . from testifying at the hearing." For the reasons that follow, we shall affirm the judgments of the circuit court.

At trial, the State produced evidence that Mr. Spence died of two gunshot wounds to his chest. The State called Ms. West, who testified that at approximately 6:45-7:00 p.m. on November 20, 2019, she arrived at her residence at 5704 Rollins Lane in Capitol Heights and saw Mr. Spence standing on the steps of the residence. As Ms. West exited her car, a man approached and held a gun in her face. The man then ran to the passenger side of Ms. West's car and up to Mr. Spence. Ms. West heard two gunshots, after which she heard the shooter say: "What you gonna do now, bitch." Ms. West identified Mr. Cleveland in court as the shooter. Ms. West testified that "around [the] Thanksgiving" before the shooting, she was at the home of a woman named Lauren, who had been dating Ms. West's son, Jaron Gillespie. Lauren introduced Mr. Cleveland to Ms. West and stated that he is Lauren's brother.

The State also called Mr. Gillespie, who testified that he dated Mr. Cleveland's sister, Lauren Johnson, for "[b]etween a year and a half to two years." Prior to the shooting, Mr. Gillespie, his brother Miquan, and a friend went to "a homecoming pep rally event,"

where Mr. Gillespie saw Ms. Johnson. Mr. Gillespie stayed away from Ms. Johnson, because at that time, they "didn't talk." Miquan "walked away to get some food," but approximately five to seven minutes later, Mr. Gillespie saw Miquan "being pushed by Lauren, her mother, and her sister." Miquan walked back to Mr. Gillespie, followed by the women. After speaking with Miquan, Mr. Gillespie told him: "We don't disrespect women. What you say? [A]pologize to them now." Miquan apologized, and he and Mr. Gillespie departed.

On January 9, 2022, Prince George's County Police Officer Jon Rasmussen and Sergeant Melvin Fulton went to the Forestville barrack of the Maryland State Police in response to a call for "a person who wanted to turn themselves in for a homicide." Arriving at the barrack, the officers observed Mr. Cleveland. During a subsequent interview with Prince George's County Police Sergeant Lisa Sheppard, which was recorded, Mr. Cleveland, who was upset and crying, stated

> that there had been an altercation or an argument between his sister and a male associate. He wasn't sure if it was a friend or boyfriend, and that it happened at a football game about a month prior to, and he remembered his sister was crying and he wanted to do something about it.
>
> So he said that he went to the residence, where the murder happened, and that he had shot the wrong person.

Mr. Cleveland stated that his sister's name was Lauren Johnson, and that he went to the "residence" because "he was looking for his sister's male associate." When Sergeant Sheppard asked "what address [Mr. Cleveland] went to, he gave . . . a very close numerical street address." Mr. Cleveland further stated that "he found" the gun that he used, and that

"it was already loaded." Mr. Cleveland further stated that after the shooting, he "ran back towards" Rollins Avenue, "threw [the gun] in water in the woods," and "ran back home."

Mr. Cleveland first contends that the evidence is insufficient to sustain the convictions, because he "was not the person who was there and shot [Mr.] Spence," he "took the facts that he knew about this offense and fashioned them into a false confession," and "the evidence presented by the prosecution witnesses was so inconsistent as to render it unbelievable." Acknowledging that defense counsel's motion for judgment of acquittal was "not sufficient to preserve the issue of sufficiency on appeal," Mr. Cleveland asks us to "find that defense counsel committed ineffective assistance."

We decline to do so. The Supreme Court of Maryland has stated that "[p]ost-conviction proceedings are preferred with respect to ineffective assistance of counsel claims because the trial record rarely reveals why counsel . . . omitted to act, and such proceedings allow for fact-finding and the introduction of testimony and evidence directly related to the allegations of the counsel's ineffectiveness." *Mosley v. State*, 378 Md. 548, 560 (2003) (citations and footnote omitted). Here, like in *Mosley*, the record does not reveal why defense counsel failed to move for judgment of acquittal on the grounds that Mr. Cleveland now seeks. A post-conviction proceeding will allow for the introduction of testimony and evidence, and fact-finding, directly related to Mr. Cleveland's contention, and hence, the contention should be addressed in such a proceeding.

Mr. Cleveland next contends that the court "erred in implicitly denying [his] request for a continuance of [a] hearing on his criminal responsibility and . . . in precluding the designated . . . defense expert . . . from testifying at the hearing." On March 8, 2022, Mr.

Cleveland was charged by indictment. On January 5, 2024, defense counsel entered his appearance. On February 23, 2024, Mr. Cleveland submitted a plea of not criminally responsible due to mental illness. On May 24, 2024, the Maryland Department of Health submitted a report in which two forensic psychiatrists opined that Mr. Cleveland was criminally responsible. On August 2, 2024, the State moved "to bifurcate the guilty/not guilty phase of the trial from the Not Criminally Responsible phase." On August 5, 2024, the court granted the motion. Trial commenced immediately thereafter, and on August 8, 2024, the jury reached its verdict.

On August 22, 2024, the parties appeared for a status conference. Defense counsel stated:

> I've been speaking with a Dr. David Williamson who is a doctor of neuro-psychiatry, brain injury medicine, diplomat of the American Board of Psychiatry and Neurology, sub-specialty certification in brain injury medicine, behavioral neurology, and neuro-psychiatry, and sub-specialty certification in forensic psychiatry.
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> I spoke to him on Tuesday. I've been going through a number of doctors, and I will just tell you that it's been extremely difficult because a lot of doctors, they do psychiatry, but they don't do forensic psychiatry, so they tend to not want to get involved. But this particular doctor has indicated that he would look the case over, and he's supposed to report back to me at least by tomorrow.

The court continued the hearing until September 6, 2024.

On that date, Mr. Cleveland filed an "Identification of Expert," in which he stated his "plan[] to introduce the expert testimony of" Dr. Williamson. Later that day, the parties appeared before the court. Defense counsel stated that he had "a letter that was written by

Dr. . . . Williamson" in which he "indicated that he can assist in this matter." Defense counsel further stated:

> [O]ne of the things that [Dr. Williamson] was critical about with the mental health experts that examined [Mr. Cleveland], was the fact that there was not any real development of his thought disorganization, which is one of the elements that they looked to in determining the diagnosis of schizophrenia. And so the minutes worth of interviews that they had with mom and dad is, in his opinion, insufficient.
>
> In addition to that, he also indicated that, and I'm proffering this to the Court based on our consultation, he also indicated that my client was on medication. In fact, in some instances he was forcefully on medication at the time he was evaluated by these – by the State evaluators. So it's impossible for them to render an opinion as to how he was on November 20, 2019, when he's been medicated, which suggests that he's better at that time than he was back then when he committed these offenses.

The prosecutor "object[ed] to any further continuances." Defense counsel replied:

> So, with regard to the evaluation, it took the State at least two times to get someone to evaluate the case, even after the Judge signed the Order to have him evaluated. It's taken us days.
>
> As you can see, this is no easy task. There's an outlay of money that's required to do this. The Court can certainly find good cause. I've stated for the record the reasons why. We are in a different place than we were last week. And every time we come to the Court we're in a much different place because, now, not only do I have an expert, but I also have a tentative opinion that's not going to change because it's in black and white. And when I say it's in black and white, his criticisms of the prior reports, their reports aren't going to change. So, he's been through that. He gave me that. And the reason why I'm able to discuss it with you today is because I've talked to him.
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> Now, there's some additional work that he has to do. I think that he indicated that it would take 20 hours for him to do it. There's no harm. Justice is sometimes inconvenient. And we've been inconvenienced for years to take us to even get to trial in this matter, but in the interest of justice, and in the interest of a gentleman that clearly, based upon their own experts, has some mental health issues, based upon their experts, that was medicated at the time that they saw him, so how can they even make a determination as

> to how he was back in November when he's been medicated at the time that the so-called experts evaluated him?
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> And so with that into place, I think that in order to ensure that justice prevails and not just what the State wants as an advocate, but as justice requires in light of the circumstances, it's not going to take much. We are in place, we are fired up, we're ready to go, we're ready to move on this thing.

The court asked defense counsel: "When would [Dr. Williamson] have an opinion to give you?" Defense counsel replied: "I would say thirty days." When the court stated that the State would "need time for [an] expert to review" Dr. Williamson's opinion, defense counsel replied: "I'm not going to fight that position from the Court." When the court asked whether defense counsel was "talking about [Dr. Williamson's] availability for trial," defense counsel replied: "Well, he said November, so if that's where we're going, that going [to] be right in concert with what he told me." The court then asked: "Besides Dr. Williamson, what other witnesses' evidence would you have . . . for you to prove NCR?" Defense counsel replied: "I don't even know that I'll have any other witnesses."

Following argument, the court stated, in pertinent part:

> So both parties agreed on the trial date to a bifurcated trial. So, at the beginning of this trial, you know, after, I think the record speaks for itself, and then the arguments and proffers of the parties, that at the beginning of this trial, no medical person, no expert was identified by the Defense in support of NCR, if we got to an NCR defense. That as of date, the Defense has identified a doctor who is competent, able, and willing to be retained so he can review all the necessary documentation and clients and whatever work efforts those professionals need to do to opine on this issue. As of yet, he has not completed that task. He is not able, as of today, to opine in support of the NCR defense.
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> So we're in mid-trial. So the Defense is essentially requesting to call an expert that has not been identified prior to trial to testify in this case. And as both parties know and as the State just said, the rules require that the jury – if it's bifurcated, that the jury be – that the case not be recessed without a

good cause, and so, you know, trial should resume as soon as practical I mean, August, mid-August, early August, just if the jury had reached a verdict on the, I[']ll call it the liability as to the charges in this case. And I think a best case scenario, we already talked about your two schedules, my schedule, and the doctor's schedule. The best case scenario, I think, the trial would not res[ume] until November. So, you're talking about a three month gap. The Court does find that that's as soon as practical.

* * *

Also, because of the issue of the bifurcation was presented to the Court by both parties, the Court went on and, again, we empaneled the jury. However, the issue of bifurcation – I'm sorry, the issue of not criminally responsible can be, as far as the sufficiency of evidence, can be addressed in a preliminary manner by the Court, and if the Court determines there's not sufficient evidence to raise doubt in the reasonable minds of people, then the question of sanity is not to be submitted to the jury in this case, in any case. And that that sufficiency of evidence can only be presented through competent medical evidence and testimony that was found in this case, that the Defendant lacked the, because of mental disorder, he lacked the capacity, substantial capacity to appreciate the criminality of his conduct and to perform the conduct to the crimes of law [sic].

So, at this juncture, again, even as of date, the Defense still doesn't have any evidence to meet their burden in this case, so the Court finds that it does not have sufficient evidence to present to the jury in this case with regard to an NCR defense.

But even if the mother or sister and other families were allowed to testify regarding Defendant's conduct on the date of the incident – and again, it's the date of incident, not the date of the confession and he went to the police station. That still would be insufficient. Even taking that evidence in the light most favorable to the Defense, to meet that burden, you know, as to medical defect and the fact that he couldn't perform his conduct to the crimes of law [sic].

In addition to the fact, the Court doesn't find good cause to allow an unidentified expert to testify mid-trial, and therefore, the Court is going to preclude the doctor from any testimony in this case.

Defense counsel subsequently stated:

> I just want to state for the record that the reason why we did not have an expert is because we could not afford one. I want to make sure the record is very clear that it was money. The only reason, the client had to make a decision whether to hire a lawyer or hire a doctor. He couldn't do both. So that's number one.
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> Number two, I did make proffers from my expert as to what his opinion would be. The first proffer was that my client, that the State doctors did not develop his thought organization processes very well. The second proffer that's been indicated to me by my expert is that when the State doctors evaluated him, he was already on medication, so there's no way that they can make that determination two years, three years after the fact of how he was on November 20th, 2019, after they've been medicating him ever since he was incarcerated and evaluated by these doctors.

The court replied: "Your objection is noted for the record. And based upon no – again, the Defendant's burden – and no relevant evidence with regard, again, to NCR and then the Court's not going to submit it to the jury and we're not, bring the jury back in."

Mr. Cleveland contends that, for numerous reasons, the court erred in so proceeding. *Prince v. State*, 216 Md. App. 178 (2014), is instructive.

> The State charged Mr. Prince with attempted first-degree murder, first-degree assault, carrying a dangerous weapon with intent to injure, and failing to comply with a peace order. He underwent a mental health evaluation at Clifton T. Perkins Hospital Center by psychologist Inna Toller. In January 2011, Dr. Toller rendered a report in which she found him competent to stand trial and criminally responsible. Although she acknowledged that Mr. Prince suffered from post-traumatic stress disorder ("PTSD") from his military experience in Iraq as a medic, Dr. Toller concluded that it played no role in his conduct: "[T]here is no evidence that [his PTSD] symptoms caused him to have significant impairment in every day function." She opined, based on how Mr. Prince acted on the morning of the incident, that "the PTSD and the adjustment disorder did not cause him to lack substantial capacity either to appreciate the criminality of his conduct or to conform his conduct to the requirements of the law."
>
> Trial was scheduled to begin on Monday, March 26, 2012. On the afternoon of Friday, March 23, 2012, Mr. Prince moved for a continuance. He argued that he had obtained a preliminary report from a psychologist,

> Rona Fields, Ph.D. (the "Fields Report"), in which, he said, she opined that Mr. Prince "*most likely* suffered" from PTSD at the time of the incident (emphasis added). According to the motion, Mr. Prince had only recently been able to gather funds for Dr. Fields's preliminary evaluation and she needed more time to complete testing and determine whether he might suffer organic brain damage or whether his PTSD contributed to the incident. The State opposed the motion, citing the facts that the incident had taken place over a year and a half earlier, that there had already been an aborted plea deal, that the case had been continued twice already, and that [the victim] objected strongly (even at the time of trial, Mr. Prince apparently still was attempting to contact her).
>
> The trial court denied the motion on the morning of trial, explaining (over five pages of transcript) that Dr. Toller had reviewed all the relevant history and documents, and had concluded Mr. Prince's mental health issue had nothing to do with the events in question:
>
> > the PTSD and the adjustment order did not cause him to lack substantial capacity either to appreciate the criminality of his conduct or to conform his conduct to the requirements of the law. Therefore, to a reasonable degree of medical certainty, Prince was found [by Dr. Toller] to be criminally responsible.
>
> The court noted that Dr. Toller believed Mr. Prince "had a clear secondary gain to avoid incarceration and be found not criminally responsible," and, as a result, had diagnosed him with malingering. For these reasons, the court found no good cause to continue the trial and it went forward as scheduled.

*Id.* at 185-86 (footnote omitted). Following trial, the "jury convicted Mr. Prince of all charges[.]" *Id.* at 191.

On appeal, Mr. Prince contended that the court "improperly denied . . . counsel's request for a continuance to allow him to develop expert testimony regarding his mental state." *Id.* at 182. Rejecting the contention, we stated:

> To establish an abuse of discretion by the trial court in denying a continuance, the requesting party 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 could not be fairly tried without it; and (3) that he had made diligent and proper efforts to secure the evidence.
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> *Smith v. State*, 103 Md. App. 310, 323, 653 A.2d 526 (1995) (citations omitted).
>
> We find no abuse of discretion here. *First*, Mr. Prince offered no information on which the circuit court could have based a "reasonable expectation" that admissible or relevant evidence would be secured; at most, he offered a hope. As Dr. Fields herself put it, "there are *reasons to believe* that [Mr. Prince] suffers from Dissociative episodes, particularly when stressed in interpersonal relationships." (Emphasis added.) But with nothing more to connect that possibility to the incident in question, her general assertion did not compel the circuit court to find that she would reach a meaningful opinion at all, much less "within some reasonable time." *Second*, Dr. Fields offered no "competent and material" evidence – again, only a prospect that she might be able to tie Mr. Prince's previously diagnosed PTSD to the crime at issue. *Finally*, the circuit court did not err in finding that Mr. Prince's efforts did not constitute "diligent and proper efforts to secure the evidence" within the meaning of that phrase under *Smith*. Mr. Prince was diagnosed at Perkins in January 2011. Dr. Fields did not complete her preliminary diagnosis until fourteen months later, on March 11, 2012, and then it took another twelve days before that preliminary opinion was provided to the State, on the Friday afternoon before the Monday of trial. The court would have been within its discretion either way, but we see no basis on this record to second-guess the court's thorough and well-thought-out explanation.

*Prince*, 216 Md. App. at 204-05.

We reach a similar conclusion here. While Mr. Cleveland proffered that Dr. Williamson, for numerous reasons, would be "critical [of] the . . . experts" that had previously examined Mr. Cleveland, he did not proffer that Dr. Williamson would opine that Mr. Cleveland was not criminally responsible. Mr. Cleveland also did not proffer when he would be able to make the "outlay of money" necessary to obtain Dr. Williamson's services. Hence, Mr. Cleveland offered no information on which the circuit court could

have based a reasonable expectation that admissible or relevant evidence would be secured within some reasonable time. For the same reasons, Mr. Cleveland offered no competent and material evidence. Finally, Mr. Cleveland did not obtain Dr. Williamson's "indicat[ion] that he can assist in this matter" until approximately two and a half years after indictment, eight months after entry of defense counsel's appearance, six and a half months after the plea of not criminally responsible, and three and a half months after the issuance of the report of the Maryland Department of Health. Also, defense counsel proffered that Dr. Williamson would render an opinion no earlier than approximately two months after the rendering of the jury's verdict, and that trial could resume no earlier than three months after the rendering. Mr. Cleveland's efforts did not constitute diligent and proper efforts to secure the evidence, and hence, the court did not err or abuse its discretion in denying the request for a continuance.

**JUDGMENTS OF THE CIRCUIT COURT FOR PRINCE GEORGE'S COUNTY AFFIRMED. COSTS TO BE PAID BY APPELLANT.**

The correction notice(s) for this opinion(s) can be found here:

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