

Circuit Court for Baltimore County
Case No. C-03-CR-22-000459

UNREPORTED
IN THE APPELLATE COURT
OF MARYLAND

No. 1471

September Term, 2023

SHIVA BHAIRAVA

v.

STATE OF MARYLAND

Wells, C.J.,
Graeff,
Kehoe, Christopher B.
(Senior Judge, Specially Assigned),

JJ.

PER CURIAM

Filed: January 2, 2025

*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 Baltimore County of first degree assault and second degree assault, Shiva Bhairava, appellant, presents for our review a single issue: whether the court erred in denying defense counsel’s “motion for postponement.” For the reasons that follow, we shall affirm the judgments of the circuit court.

On February 7, 2022, Mr. Bhairava was charged by indictment with first degree rape, first degree assault, second degree assault, and related offenses. On March 4, 2022, Assistant Public Defender Jesse Grant Scharff entered his appearance as counsel for Mr. Bhairava. On March 23, 2022, Howard R. Greenberg entered his appearance as counsel for Mr. Bhairava. On January 31, 2023, Mr. Scharff re-entered his appearance as counsel for Mr. Bhairava. On February 9, 2023, the court scheduled trial to commence on June 14, 2023. On May 2, 2023, Assistant Public Defender Janice Footman filed a motion to strike Mr. Scharff’s appearance and enter her own as counsel for Mr. Bhairava.

On June 9, 2023, Ms. Footman filed with the court a notice in which she stated “that the Defense [would] be asking for a postponement.” On June 12, 2023, the parties appeared before the court, and the following colloquy occurred:

[THE COURT:] The first thing is a request for a postponement of the trial date. And also, Ms. Footman, when –

[MR. BHAIRAVA]: I don’t want it postponed, [Y]our Honor.

THE COURT: – when did you enter your appearance?

MS. FOOTMAN: Uh, it was, I want to say early May, but it was a week before I went out on vacation, so I was able to meet with Mr. Bhairava on the 15th of May, and then I’m – I’m talking a lot, and then I had a murder trial.

* * *

[MR. BHAIRAVA]: I want my *Hicks* upheld. I want my *Hicks* –

* * *

MS. FOOTMAN: Okay. So, Mr. Bhairava does not want to have a postponement. We've – we've had this conversation. He does not want a postponement. His case is scheduled for the 14th.

I was previously, just last week, in a murder trial, so I am not confident that I can give Mr. Bhairava exactly what he needs, as far as representation with that short turn around.

I have reviewed Mr. Scharff's notes, however, I contacted Forensics, after he and I met on the 15th, I contacted Forensics, 'cause I got the DNA information from [the prosecutor]. They told me they would work with me . . . and give me a consultation, but I told them that I needed some time and I wanted to wait until after this hearing to make – to see whether that's going to go forth.

So I – my concern, the reason why I kept this is because I believe that I need a postponement to be fully prepared, given the fact that the penalty in this case could be a life imprisonment case, if he's not found not guilty.

However –

[MR. BHAIRAVA]: I want my *Hicks* upheld.

* * *

I want my *Hicks* upheld.

* * *

MS. FOOTMAN: So the earliest available date that [the prosecutor] and I have is for October 24th through the 27th, . . . however, I anticipate that Mr. Bhairava is not going to want to wait until the next available date for it.

So while counsel would be requesting a postponement, if the [c]ourt does not grant that, and we have to go on Wednesday, then I have to start on Wednesday with what I have.

I will do the absolute best that I can, and the final choice, obviously, is yours and Mr. Bhairava will have his input, but I just wanted to lay this out . . . on the record.

THE COURT: From your standpoint is the issue exclusively DNA?

MS. FOOTMAN: Not solely. I think that DNA gives mixed results. . . . I believe one is not entirely conclusive, but is not Mr. Bhairava. And then, one is said to be Mr. Bhairava, from different samples that were taken, and that's part of the reason why I wanted to speak with . . . Forensics.

There's also a lot of factual issues that are involved here . . . outside of solely the DNA. But, and then a jail call that I do think is in our favor, as to the rape count, however, . . . it's a mix.

THE COURT: Okay. State, anything on this?

[PROSECUTOR]: Your Honor, I would just, you know, I understand Ms. Footman's position. She's not, you know, had this case for very long. The State is ready to go forward on Wednesday, but we would not oppose Ms. Footman's request.

THE COURT: Okay. . . . Mr. Bhairava, what do you want to tell me?

[MR. BHAIRAVA]: Your Honor, I've been – I've been locked up for 18 months. My *Hicks* is being violated. [T]he State doesn't have any [] more postponements.

It seems as if the [c]ourt is on my side. I had Howard Greenberg postponing three times, I believe in the State's favor, but I'm ready to go to court.

I don't – it doesn't matter how ready . . . Ms. Footman is. She came on my case early May. I told her I didn't want a postponement. I'm ready to go to court. The evidence, . . . I feel like the evidence is self-explanatory, and I want to go to court. I want my *Hicks* upheld.

THE COURT: All right. [Y]ou don't understand *Hicks*, obviously, . . . however, you must understand this. A professional has looked at me in the eye and told me that she can't be fully prepared to give you effective assistance of counsel if this case goes forward on Wednesday. She's a very good lawyer.

* * *

She has . . . appeared before me on many, many occasions, and she knows what she's doing. So she has told me she can't give you effective representation possibly if the case goes forward; do you understand this?

[MR. BHAIRAVA]: Yes, I understand very well. I want to – and I still want to move forward and the State doesn't have any [] more postponements. I'm ready to go to court. I've been in here 18, . . . over a year. I'm ready to go to court.

THE COURT: Okay.

[MR. BHAIRAVA]: No matter what, no matter what, I'm ready to go.

* * *

THE COURT: All right. And you – you fully and completely understand what Ms. Footman said?

* * *

[MR. BHAIRAVA]: Yes, yes, [Y]our Honor.

THE COURT: All right.

MS. FOOTMAN: Your Honor, I – I will make the 14th, if that's what it is. But if he's fully understanding on the record exactly what I laid out for him.

* * *

THE COURT: . . . I'm going to deny the postponement request.

. . . I have every reason to think Mr. Bhairava is in full possession of his faculties, there's no question about his competence, . . . there's some questions about his wisdom but . . . that's for him.

I believe . . . that Ms. Footman's request is well-grounded but . . . this is a defendant who wishes to go to trial, . . . he is going to get his wish. . . . I'm going to respectfully deny the postponement request.

(Italics added.)

Mr. Bhairava now contends that “it was error for the court to defer to [his] wish to move forward despite his counsel’s proffered lack of preparation.” The State counters that Mr. Bhairava “affirmatively waived appellate review of his claim after [he] expressed his desire to go to trial, and his counsel confirmed that she would ‘make’ the trial date.” Alternatively, the State contends that the court “properly exercised its discretion in conceding to [Mr. Bhairava’s] request to proceed with his scheduled trial.”

We agree with the State that Mr. Bhairava’s contention is waived. “Both the [Supreme Court of Maryland] and this Court have held that when a party acquiesces in the court’s ruling, there is no basis to appeal from that ruling.” *Green v. State*, 127 Md. App. 758, 769 (1999) (citations omitted). Here, Mr. Bhairava clearly acquiesced in the court’s denial of defense counsel’s request for postponement, and hence, he has no basis to appeal. Even if the contention was not waived, Mr. Bhairava would not prevail. The Supreme Court of Maryland has recognized that “where a party invites the trial court to commit error, he cannot later cry foul on appeal.” *State v. Rich*, 415 Md. 567, 575 (2010) (internal citation and quotations omitted). Here, Mr. Bhairava clearly invited the court to reject defense counsel’s request for postponement, and hence, he cannot now cry foul.

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