Circuit Court for Howard County
Case No. C-13-CR-22-000319

UNREPORTED

IN THE APPELLATE COURT

OF MARYLAND*

No. 1698

September Term, 2022

DOMINIC COLE DAVIS

v.

STATE OF MARYLAND

Graeff,
Shaw,
McDonald, Robert N.
(Senior Judge, Specially Assigned),

JJ.

Opinion by Graeff, J.

Filed: June 5, 2024

A jury in the Circuit Court for Howard County convicted Dominic Cole Davis, appellant, of two counts of first-degree assault, two counts of second-degree assault, and two counts of use of a handgun in a crime of violence. The court sentenced appellant to eight years, all but five years suspended, for each of the first-degree assault convictions, eight years, all but five years suspended, for each of the second-degree assault convictions, and five years without the possibility of parole for each count of using a handgun in a crime of violence. The court ordered all the sentences to be served concurrently.

On appeal, appellant presents two questions for this Court's review, which we have rephrased slightly, as follows:

1. Did the circuit court abuse its discretion in limiting appellant's right to cross-examine the victims regarding prior convictions?

2. Did the circuit court abuse its discretion in denying appellant's request for a postponement?

For the reasons set forth below, we shall affirm the judgments of the circuit court.

FACTUAL AND PROCEDURAL BACKGROUND

I.

Motion for Postponement

In connection with a road rage incident that occurred on May 31, 2022, the State charged appellant with first-degree and second-degree assault, as well as two counts of use of a handgun in a crime of violence. A two-day jury trial began on October 25, 2022.

On the first day of trial, defense counsel requested a postponement from the administrative judge "as a result of late disclosure of impeachment evidence of

complaining witnesses." Counsel stated that, the day before, the State disclosed that Robert Warner and Jerry Gollick, the two victims of the alleged assault, had prior convictions that were more than 15 years old. The prosecutor advised that Mr. Gollick and Mr. Warner each had a prior conviction for theft, and Mr. Gollick had a prior conviction for giving a false statement to a police officer.

The State argued that it was not required to investigate the criminal record of a witness when, as here, it had no reason to believe the witness had a criminal record. It ran a background check just prior to trial "out of an abundance of caution," in case defense counsel asked "one of the witnesses whether or not they had a criminal conviction without a good faith basis." Without sufficient information to object to such a question, the State was concerned that one of the witnesses would improperly answer, at which point "the State can't unring the bell." After conducting the background check, the State emailed defense counsel, asking whether she planned to inquire about these convictions at trial. If she did, the State planned to file a motion in limine.

Defense counsel argued that, although the State may not have acted in bad faith, "due process and protection of Mr. Davis's Constitutional right to a fair trial trump[ed] everything" and required a continuance. When defense counsel stated, in response to the court's question, that she had been in the case since May 31, the court noted that the State "provided the evidence when they became aware of it," and defense counsel had been in the case for five months. The court then denied the postponement request.

II.

Motion in Limine

Later that day, prior to the start of the trial, the State filed a motion in limine to prevent the defense from asking witnesses about convictions that occurred more than 15 years earlier. Defense counsel argued that the State's witnesses had convictions of false statements to a police officer and theft, and these convictions, although outside the 15-year window set forth in Md. Rule 5-609(b), were admissible under Md. Rules 5-608 and 5-404(a)(2)(B) because they were related to the witness's credibility. Defense counsel stated that she would not question either witness on the conviction itself; rather, she would limit her cross-examination to the conduct underlying the convictions, the prior bad act.

The State argued that Rule 5-609 precludes evidence of prior convictions that occurred more than 15 years ago, and Rule 5-608 addresses conduct not resulting in a conviction. It argued that the defense was attempting to improperly "back-door in the conviction through 5-608," and Rule 5-608(b) did not apply to conduct underlying a conviction.

Defense counsel then argued that Rule 5-404(a)(2)(B) – Character of Victim – permitted "evidence of an alleged crime victim's pertinent trait of character," and honesty is "always a relevant character trait." Thus, defense counsel argued that it should be able to cross-examine the witnesses regarding those prior bad acts.

The State argued that the defense was required to make a 5-404(b) motion "well in advance." It asserted that there were "no motions that were raised on that."

The court stated its view that the prior convictions were inadmissible based on a plain reading of Md. Rule 5-608(b), which permits "any witness to be examined regarding the witness's own prior conduct that did not result in a conviction, but the court finds probative." Because the theft and false statement "ended in convictions," they were excluded by Rule 5-608(b), and the convictions were "too aged to be appropriate" under Rule 5-609(b). Defense counsel stated that she would do additional research over lunch and let the court know if she found anything.[1]

III.

Motion to Exclude Testimony of State's Witnesses as Sanction

Defense counsel then renewed her objection to the administrative judge's denial of her earlier motion to postpone. Counsel alleged that "the main witness is racist and violent," and given the new information about prior convictions and arrests, she needed additional time to investigate this witness. Counsel asked that the court impose a sanction for the late disclosure, and in the absence of a continuance, strike the testimony of Mr. Warner and Mr. Gollick.

[1] The record does not reflect any further discussion in this regard.

The State explained that, pursuant to Md. Code. Ann., Crim. Proc. ("CP") §§ 10-219 and 10-201 (2022 Supp.), it was prohibited from disclosing NCIC records,[2] but that it did disclose the convictions to defense counsel once they were discovered. The State asserted that there was no discovery violation under Rule 4-263 because the State is "not required to investigate the criminal record of the witness unless the State's Attorney knows or has reason to believe that the witness has a criminal record," and in this case, the State "didn't have any knowledge that either of the[] witnesses had criminal records." The State reiterated that it only checked the witnesses' records "out of an abundance of caution" in anticipation that defense counsel might question the witnesses about prior convictions. The prosecutor, after discovering the convictions, arranged for defense counsel to look at the NCIC records in court the morning of the trial. The prosecutor stated that a sanction was not appropriate because he provided the information, and there was no prejudice because the convictions were more than 15 years old.

Defense counsel argued that she was asking for a sanction, not for a discovery violation, "but for a violation of the State's obligation to provide impeachment evidence using due diligence pursuant to *Brady*."[3] The court denied defense counsel's request to strike the testimony of Mr. Warner and Mr. Gollick. It noted that the administrative judge

[2] The NCIC, National Crime Information Center, is a database that contains criminal justice records that are accessible to law enforcement agencies across the nation. *See Dep't of Pub. Safety and Corr. Servs. v. Doe*, 439 Md. 201, 236 (2014).

[3] *Brady v. Maryland*, 373 U.S. 83, 87 (1963).

had denied a postponement, and the State did not violate any rules in disclosing the convictions when it did.

IV.

Trial Testimony

Trial began on October 25, 2022. Robert Warner testified that, on May 31, 2022, he and his co-worker, Jerry Gollick, were working at Merriweather Post Pavilion ("Merriweather"), setting up for graduations. At approximately 1:00 p.m., he and Mr. Gollick left Merriweather to get snacks at a nearby Walmart. Mr. Warner was driving a black Nissan Armada ("SUV") with Mr. Gollick in the passenger seat. After purchasing snacks at Walmart, Mr. Warner and Mr. Gollick returned to the vehicle and headed back to Merriweather. As they were approaching Dobbin Road, a black Mercedes came "flying up" the road, cut in front of his vehicle, and then took off toward an exit. Mr. Warner followed behind the Mercedes toward the exit and observed the vehicle pull up next to a woman who was on the side of the road with a stroller. The driver stopped and appeared to speak to the woman. Because he was unable to go around the Mercedes, after 20 to 25 seconds, he beeped the horn "to go around him or for him to move over to one side or the other."

After Mr. Warner honked the horn, the driver of the Mercedes put his hand up outside the window "and gave [him] the finger." The Mercedes then proceeded toward the traffic light, where the road widened to two lanes, and Mr. Warner pulled up next to him. When he looked over at the driver of the Mercedes, the driver again gave him the finger,

and Mr. Warner laughed at him. When the cars got to the traffic light, the Mercedes was to the right of Mr. Warner, and the window was down. Mr. Warner again looked over at the Mercedes, and the driver again gave him the middle finger. Mr. Warner testified that he "wound up giving him the finger back," and when the light turned green, both cars pulled off onto Little Patuxent Parkway. The Mercedes then came "flying around" Mr. Warner, pulled over in front of Mr. Warner, and put on the brakes. Mr. Warner stopped his vehicle, sat for a minute, and contemplated opening the door to "ask him what was going on." When he opened the door, Mr. Gollick told him not to get out of the car because "it's not worth it."

Mr. Warner shut the door and started to pull away to go around the Mercedes. The driver of the Mercedes, however, "kept on slowly pushing [him] over toward the shoulder" until Mr. Warner "floored it and went around him." A quarter to a half mile later, the Mercedes pulled up on the left side of his vehicle, and the driver pointed a gun out the passenger side window at him. Mr. Warner was scared, so he sped up in front of the Mercedes and called 911. While he was on the phone with 911, he hit maybe "eight to ten lights" on Little Patuxent Parkway. The Mercedes "never . . . pulled up next to [him] again," but it stayed on the "back of our right passenger seat tire," pulling up behind him and to the right. As Mr. Warner pulled over at Merriweather Drive, he saw a police officer

and yelled out to him that a gentleman with a gun was following him. Shortly after pulling over, Mr. Warner lost sight of the vehicle.[4]

Officer Brian Maurantonio testified that he responded to a call regarding a possible road rage incident on May 31, 2022, in the area of Little Patuxent Parkway. He was looking for a "Mercedes with dark window tint and no front license plate." He noticed a vehicle matching that description making evasive maneuvers near the Columbia Mall, and he began to follow appellant's Mercedes. PFC Hamrick, another officer in the area responding to the call, pulled over appellant, and the officers conducted a high-risk traffic stop, drawing their service weapons. Officer Hamrick gave appellant verbal commands to step out of the vehicle, which appellant followed with no issues. The officers detained appellant and then "went to clear the vehicle to make sure it was safe." Officer Maurantonio asked appellant if there were any weapons in the vehicle, and appellant advised that there was a gun in a black bookbag in the passenger seat. Officer Maurantonio located the handgun, took photographs of where it was located, and proceeded with his investigation. Officer Maurantonio did not observe any damage to the exterior of the Mercedes.

During the defense case, Appellant testified that, on May 31, 2022, he had driven to the Walmart in his Mercedes Benz four-door sedan to purchase water, Powerade, and laundry detergent. After making his purchases, appellant put the water in the front

[4] Mr. Gollick also testified to the events that occurred on May 31, 2022. His testimony was consistent with that of Mr. Warner.

passenger side on the floor and placed the Powerade and laundry detergent on top of his black bookbag, which contained a 9-millimeter firearm. Appellant possessed a concealed carry permit at the time of his arrest, which was introduced into evidence. Prior to leaving the Walmart shopping center, appellant stopped his car to ask a woman holding a "help needed sign" if she and her child needed any food or water. Appellant explained that, as he was offering aid to the woman holding the sign, someone in a black SUV behind him honked the horn a couple times. Appellant "put [his] hand out the window [to] say one minute." In response, the driver of the SUV honked "repeatedly and flicked [him] off."

There was no further interaction between appellant and the driver of the SUV until both vehicles proceeded down Little Patuxent Parkway, at which time appellant drove slowly in response to aggression by the SUV driver, who was "honking repeatedly." The SUV then sped up to the left lane to go around him, and cut him off to "where [he was] on the right shoulder and there [wa]s a little bit of grass in between." Appellant testified that the SUV driver then parked parallel to his vehicle so that there was "no point of exit" and appellant had to "swerve just to avoid being hit." The driver of the SUV then got out of his car with a tire iron, approached the driver's side of appellant's Mercedes, and scratched the front panel of the car.[5] Appellant further stated that the SUV driver was yanking on the door, and he said: "[F]ucking n****r I'll kill you."

[5] Appellant introduced into evidence undated photographs of scratches on his car. On cross-examination, he testified that could not provide an exact time or date as to when he took the photographs, and he did not know where he took the photographs. On re-direct, he estimated that he took the photographs the day following the incident.

Appellant then rolled down his window and told the SUV driver that he was "licensed to carry in the state of Maryland." The SUV driver replied: "[G]reat, all I have to do is call the police and tell them a Black man has a gun." Appellant testified that he did not pull the firearm out because he did not think that he needed it. He did not call the police when the SUV driver came at him with a tire iron because his phone was dead.

After the confrontation, appellant "proceeded to go to a safe place" toward the Columbia Mall area, where he pulled into the mall parking lot, took a U-turn, and looped around the mall to make sure no one was following his vehicle. Appellant acknowledged during cross-examination that, in attempting to reach a safe space, he followed the SUV involved in the confrontation.

The police stopped appellant on Symphony Woods Road. Appellant immediately stopped and put his hands outside the window to show the officers that he "didn't have anything." He also informed the officers that his phone was charging so they "didn't mistake it for anything else." On cross-examination, appellant testified that, after being pulled over, he did not tell the police that the SUV driver threatened his life, damaged his car, or called him a racial slur. He did not inform the police of the alleged confrontation after he was placed in custody, or at a later time, and he did not tell any other organization of the alleged incident. On re-direct, appellant stated that, at the time the police pulled him

over, he "was afraid for [his] life and just more so trying to make it out alive with 13 guns in [his] face." [6]

After appellant was detained, a police officer picked up Mr. Warner, drove him to a new development behind Merriweather, and asked if Mr. Warner could identify appellant. Mr. Warner testified that he pointed out appellant as "the gentleman in the car that pointed the gun at me."

At the conclusion of the trial, defense counsel made a motion for judgment of acquittal regarding the charges relating to Mr. Gollick, arguing that Mr. Gollick never identified appellant on the record as the driver of the Mercedes and Mr. Gollick was never "in fear of immediate danger" based on his testimony that "[h]e was a little bit scared but he thought it was stupid." The court denied the motion, noting that there was other testimony identifying appellant as the driver of the Mercedes, there were no allegations that there was any other individual in appellant's car at the time of the incident, and Mr. Gollick "did say he was in a little bit of fear." After two days of deliberation, the jury convicted appellant of two counts of first-degree assault, two counts of second-degree assault, and two counts of use of a firearm in the commission of a crime of violence.

Appellant subsequently retained new counsel, who filed a motion for a new trial, alleging that the jury verdict was against the weight of the evidence because the court did not allow evidence of the victims' prior bad acts and convictions. Counsel also argued that

[6] The record does not reflect how many officers were involved in the stop, other than that there were "several" or "multiple" officers.

there were *Brady* violations, that he had newly discovered evidence, and that appellant was not told of a plea offer by his former counsel. In the alternative, appellant's new counsel asked for a postponement of sentencing to allow him time to obtain the trial transcript and investigate potential new evidence and prior bad act evidence disclosed on the eve of trial.

The court denied the motion for a new trial after finding that it had placed the plea offer on the record at trial. The court further found that the photographs appellant offered as newly discovered evidence were substantially the same as those introduced as evidence at the trial, and the court properly excluded the evidence of the prior convictions because they were outside the 15-year time limit set forth in Rule 5-609. The court also denied the postponement request and sentenced appellant, as discussed, *supra*.

This appeal followed.

DISCUSSION

I.

Cross-Examination

Appellant contends that the circuit court abused its discretion in prohibiting him from cross-examining Mr. Gollick about his prior convictions based on Rule 5-404(a)(2)(B).[7] The State contends that the "court properly exercised its discretion in

[7] As the State notes, although the question presented refers to "the two alleged victims," appellant's argument in the brief and at oral argument was limited to Mr. Gollick, and, therefore, we will limit our analysis as well. *See Diallo v. State*, 413 Md. 678, 692-93 (2010) ("[A]rguments not presented in a brief or not presented with particularity will not be considered on appeal.") (quoting *Klauenberg v. State,* 355 Md. 528, 552 (1999)).

precluding Davis from cross-examining a State's witness using two convictions that were nearly thirty years old."

A.

Relevant Rules

Several Rules are related to appellant's contention in this regard. Rule 5-608(b) addresses impeachment of a witness by "prior conduct that did not result in a conviction." It provides, in relevant part, as follows: "The court may permit any witness to be examined regarding the witness's own prior conduct that did not result in a conviction but that the court finds probative of a character trait of untruthfulness." Rule 5-608(b).

Rule 5-609 permits impeachment of a witness by evidence of a prior conviction. It provides, in pertinent part, as follows:

> (a) **Generally.** – For the purpose of attacking the credibility of a witness, evidence that the witness has been convicted of a crime shall be admitted if elicited from the witness or established by public record during examination of the witness, but only if (i) the crime was an infamous crime or other crime relevant to the witness's credibility and (2) the court determines that the probative value of admitting this evidence outweighs the danger of unfair prejudice to the witness or the objecting party.
>
> (b) **Time limit.** – Evidence of a conviction is not admissible under this Rule if a period of more than 15 years has elapsed since the date of the conviction, except as to a conviction for perjury for which no time limit applies.

Rule 5-609.

Rule 5-616(a) provides that the "credibility of a witness may be attacked through questions asked of the witness, including questions that are directed at:

* * *

> (6) Proving the character of the witness for untruthfulness by (i) establishing prior bad acts as permitted under Rule 5-608(b) or (ii) establishing prior convictions as permitted under Rule 5-609."

At oral argument, counsel for appellant conceded, appropriately, that the evidence of Mr. Gollick's prior conduct was not admissible, under either Rule 5-608 or 5-609, because the prior conduct resulted in convictions, and the convictions were more than 15 years old. Counsel argued, however, that the evidence was admissible under Md. Rule 5-404(a). Rule 5-404(a)(1) provides that "evidence of a person's character or character trait is not admissible to prove that the person acted in accordance with the character trait on a particular occasion." There are, however, exceptions to this rule. For example, in a criminal case, subject to limitations not applicable here, "an accused may offer evidence of an alleged crime victim's pertinent trait of character. If the evidence is admitted, the prosecution may offer evidence to rebut it." Rule 5-404(a)(2)(B). Rule 5-404(a)(3) provides: "Evidence of the character of a witness with regard to credibility may be admitted under Rules 5-607, 5-608, and 5-609."

B.

Parties' Contentions

Appellant argues that Mr. Gollick's convictions for making a false statement to a police officer and theft establish a "pertinent character trait for not telling the truth," and he "should have been allowed to use these serious crimes to cross-examine Mr. Gollick as to his credibility." Specifically, appellant argues that the prior convictions show Mr.

Gollick's character trait of lying to police, which was relevant to show that, in this case, he acted in conformity with that trait.

The State contends that the convictions were not admissible under Rule 5-404(a)(2)(B) because that rule applies only to substantive evidence, not impeachment evidence relevant to a witness's credibility. It argues that the admissibility of prior convictions for credibility purposes is governed by Rule 5-609, which allows the use of a prior conviction to impeach a witness's credibility, unless the conviction occurred more than 15 years ago.[8] Because appellant maintains that the convictions are relevant to the alleged victims' credibility, and the convictions occurred outside the 15-year window, the State asserts that the circuit court properly excluded them under the plain language of Rule 5-609(b).

C.

Analysis

Rule 5-404(a)(2)(B) provides an exception to the general rule that character evidence is not admissible to show that a person acted in accordance with that character trait. As indicated, it provides that "an accused may offer evidence of an alleged victim's **pertinent** trait of character." Rule 5-404(a)(2)(B) (emphasis added).

The Supreme Court of Maryland has noted that character questions arise in two ways: (1) as an element of a crime, claim, or defense; or (2) as circumstantial evidence to

[8] The 15-year time limit does not apply to convictions for perjury. *See* Rule 5-609(b).

show that a person acted consistently with his character. *Vigna v. State*, 470 Md. 418, 439 (2020), *cert. denied*, 141 S. Ct. 1690 (2021) (citing Advisory Comm. Note to Fed. Rule of Evid. 404(a)). When character is an essential element in a cause of action, such as a person's poor driving ability in an action for negligent entrustment of a motor vehicle, the evidence is relevant. *Id.* With respect to circumstantial character evidence, it may be used, if relevant, to suggest that a person acted consistently with his or her character, such as evidence that the victim has a violent temper to show that the victim was the aggressor in a fight. *Id.*

Appellant sought to use the evidence of the prior convictions for theft and for making a false statement to a police officer to suggest that, because Mr. Gollick had a tendency to lie to the police, he acted in conformity with that trait and lied to the police in this case. The evidence, however, did not involve an essential element in the cause of action or constitute circumstantial evidence relating to the crime itself, i.e., assault. Rather, appellant was seeking to use Mr. Gollick's prior convictions to impeach Mr. Gollick's credibility. Under these circumstances, the evidence was not admissible under Rule 5-404(a)(2)(B). Rather, it was governed by Rule 5-404(a)(3), which states that "[e]vidence of the character of a witness with regard to credibility may be admitted" under Rules 5-608 and 5-609. As previously explained, the evidence is not admissible under Rules 5-608 and 5-609 because the conduct resulted in convictions that occurred more than 15 years ago.

Even assuming, arguendo, that evidence of a victim's character for truthfulness was admissible under Rule 5-404(a)(2)(B), the court properly precluded appellant from

impeaching Mr. Gollick with his prior convictions for theft and making a false statement to a police officer. Rule 5-405(a) provides that:

> In all cases in which evidence of character or a trait of character of a person is admissible, proof may be made by testimony as to reputation or by testimony in the form of an opinion. On cross-examination, inquiry is allowable into relevant specific instances of conduct.

If the character of a person involves "an essential element of a charge, claim, or defense," however, relevant specific instances of conduct may be introduced. Rule 5-405(b). *Accord Reyes v. State*, 257 Md. App. 596, 633 (2023).

Because dishonesty was not an essential element of the crime, even assuming that evidence of a character trait for dishonesty was admissible, appellant would have been limited to eliciting testimony as to Mr. Gollick's *reputation* for honesty or dishonesty or *opinions* about that character trait; he would not have been permitted to ask specifically about the actions leading to the convictions at issue. *See* Rule 5-405. The circuit court properly concluded that evidence of the prior conduct and prior convictions was inadmissible.

II.

Appellant's Request for Postponement

Appellant contends that the circuit court erred in denying his request for a postponement. He argues that there was good cause to postpone the trial date due to the State's belated disclosure of the victims' prior arrests. He asserts that, if he had been given the information earlier, counsel would have investigated the prior acts of these witnesses,

and because he was given the information so close to trial, denial of the request for postponement was an abuse of discretion.

The State contends that the court properly exercised its discretion in declining to grant a postponement. It asserts that appellant did not show the conditions required to show an abuse of discretion in denying the postponement.

This Court has explained the standard of review for the denial of a request for postponement, as follows:

> We review the decision to deny a motion for a continuance for an abuse of discretion: "[t]o grant or deny a . . . motion for continuance is 'in the sound discretion of the trial court.'" *Serio v. Baystate Props., LLC*, 209 Md. App. 545, 554, 60 A.3d 475 (2013) (quoting *Das v. Das*, 133 Md. App. 1, 31, 754 A.2d 441 (2000)); *see also* Md. Rule 2-508. Unless we conclude that the trial court acted arbitrarily, we will not review its decision on appeal, *Das*, 133 Md. App. at 16, 754 A.2d 441, and will reverse only in "exceptional instances where there was prejudicial error." *Thanos v. Mitchell*, 220 Md. 389, 392, 152 A.2d 833 (1959). We have described such an abuse of discretion as occurring only "'where no reasonable person would take the view adopted by the [trial] court,'" *North v. North*, 102 Md. App. 1, 13, 648 A.2d 1025 (1994) (quoting *In re: Marriage of Morse*, 240 Ill.App.3d 296, 180 Ill.Dec. 563, 607 N.E.2d 632, 640 (1993)), or where the court acts 'without reference to any guiding rules or principles,'" *id.* (quoting *Long John Silver's, Inc. v. Martinez*, 850 S.W.2d 773, 775 (Tex.App.1993)).

Prince v. State, 216 Md. App. 178, 203-04, *cert. denied*, 438 Md. 741 (2014). An abuse of discretion occurs when "a decision is well removed from any center mark imagined by the reviewing court and beyond the fringe of what the court deems minimally acceptable." *Easter v. State,* 223 Md. App. 65, 79 (2015) (cleaned up).

To show that a circuit court abused its discretion in denying a postponement, the party requesting the postponement must show:

(1) that he had a reasonable expectation of securing the evidence . . . 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.

Prince, 216 Md. App. at 204 (quoting *Smith v. State*, 103 Md. App. 310, 323 (1995)).

Here, appellant did not show the conditions that would require a postponement. Initially, counsel did not state that there was a reasonable expectation that she would secure admissible evidence within a reasonable time. As indicated, *supra*, when counsel stated that the late disclosure of the prior convictions required a postponement, she merely proffered that, based on that information, she determined that each witness also had multiple prior arrests that did not result in conviction. Counsel argued that the discovery of the prior arrests and convictions warranted a continuance so she could subpoena police records, go to courthouses, and further "research and investigate each of the[ ] cases."[9] Defense counsel did not offer any argument indicating that the arrests and prior convictions were admissible under any of the evidentiary rules, and therefore, appellant cannot

[9] Prior to the start of trial, defense counsel renewed her objection to the administrative judge's denial of appellant's motion to continue, arguing that she was informed just prior to trial of "12 prior arrests between the two complaints." She acknowledged, however, that "[m]any of them did not result in convictions and many of them are very old." The circuit court allowed the defense attorney to question Mr. Gollick on an arrest that occurred within the past 15 years - a 2010 arrest for manufacturing of a controlled dangerous substance. After questioning the witness and learning that the State had dropped the charge, however, defense counsel conceded that there was no basis to pursue inquiry into the conduct relating to that arrest on cross-examination.

demonstrate that the circuit court abused its discretion in denying the request for postponement.

Moreover, appellant failed to satisfy the third prong of the three-part test for showing that a postponement was warranted. Appellant has not shown that defense counsel made "diligent and proper efforts to secure the evidence." *See Prince*, 216 Md. App. at 204. The administrative judge noted that defense counsel had been involved in appellant's case for nearly five months prior to discovering that the State's principal witnesses had prior convictions and arrests. Appellant does not argue on appeal that the State violated any discovery obligations in failing to disclose the existence of the convictions earlier. Nor was there any proffer below that counsel made any effort to investigate the background of the State's main witnesses, despite her argument that the "entire case rest[ed] on the credibility of these two witnesses." Given the record in this case, we conclude that the circuit court did not abuse its discretion in denying appellant's motion for a postponement.

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