

IN THE SUPREME COURT OF MISSISSIPPI

NO. 2025-KA-01355-SCT

***TONY MARKEL HOWARD JR. a/k/a
TONY HOWARD***

v.

STATE OF MISSISSIPPI

DATE OF JUDGMENT:	10/17/2025
TRIAL JUDGE:	HON. CALVIN D. TAYLOR
TRIAL COURT ATTORNEYS:	CAROLYN ANN LEWIS MICHAEL GLEN DYKES ROBERT JAMES KNOCH TAYLOR LAWRENCE LASHLEY WILLIAM CARL BARRETT CARLY JO WINSHIP DUSTIN NORMAN THOMAS ANN MORGAN SULLIVAN
COURT FROM WHICH APPEALED:	JACKSON COUNTY CIRCUIT COURT
ATTORNEY FOR APPELLANT:	OFFICE OF STATE PUBLIC DEFENDER BY: JUSTIN TAYLOR COOK
ATTORNEY FOR APPELLEE:	OFFICE OF THE ATTORNEY GENERAL BY: BARBARA WAKELAND BYRD
DISTRICT ATTORNEY:	ANGEL MYERS McILRATH
NATURE OF THE CASE:	CRIMINAL - FELONY
DISPOSITION:	AFFIRMED - 10/15/2026
MOTION FOR REHEARING FILED:	

BEFORE RANDOLPH, C.J., SULLIVAN AND BRANNING, JJ.

BRANNING, JUSTICE, FOR THE COURT:

¶1. Tony Markel Howard Jr. appeals his convictions and sentences, claiming that the circuit court erred by failing to grant his *ore tenus* motion for a continuance to obtain a second mental-health evaluation prior to trial. Finding no error, we affirm.

FACTS AND PROCEDURAL HISTORY

¶2. On September 29, 2022, a Jackson County grand jury indicted Tony Markel Howard Jr. as a violent habitual offender for aggravated assault on a law-enforcement officer, shooting into a motor vehicle, and unlawful possession of firearm or weapon by a convicted felon. The trial court entered an agreed scheduling order, which set Howard's trial for May 8, 2023. On the day of trial, Howard's counsel notified the trial court that he would be filing a motion for a mental-health evaluation. As a result, Howard's trial was continued, and the circuit court set a status hearing for July 11, 2023.

¶3. On May 15, 2023, Howard's counsel filed a written motion for a mental-health evaluation, which the circuit court granted on July 13, 2023. Between July 2023 and May 2024, the circuit court granted multiple continuances, most of which were at Howard's request or agreed upon by Howard and the State.

¶4. Dr. John Montgomery evaluated Howard on April 7 and April 22, 2024, and submitted his report and findings to the parties and the circuit court around April 29, 2024. On May 3, 2025, the circuit court held a competency hearing in which Dr. Montgomery's report was admitted into evidence without objection. In his report, Dr. Montgomery found that Howard had "the sufficient, present ability to consult with his attorney with a reasonable degree of rational understanding in the preparation of his defense and [had] a sufficient factual and rational understanding of the nature and object of the legal proceedings against him." His report further indicated that Howard knew "the nature and quality of his actions and that his alleged acts were wrong" at the time of the crimes. On May 6, 2023, the circuit court issued

an order finding Howard competent to stand trial. Howard did not move for a new hearing on the issue of competency.

¶5. On September 9, 2024, the trial court entered an order setting Howard’s trial for February 11, 2025. On December 11, 2024, Howard filed a motion for a second independent mental-health evaluation by Dr. Gregory Fox at the expense of Jackson County. Howard’s motion did not identify a change in Howard’s condition or a deficiency in Dr. Montgomery’s assessment. The State objected to Howard’s motion, and the circuit court conducted a hearing on the matter on February 4, 2025.

¶6. As a result of the February 4, 2025, hearing, the trial court denied Howard’s motion for a second mental-health evaluation “[t]o the extent that [Howard’s] Motion requests the Court to authorize payment for a second mental evaluation by Dr. Gregory Fox by the Court and/or Jackson County, Mississippi.” The circuit court specified, however, that Howard was not precluded “from seeking a second opinion mental evaluation from Dr. Fox or another doctor of his choosing at his own expense, for the evaluation and any other expenses[.]” And at that point, the trial court denied Howard’s *ore tenus* motion to continue the trial set for February 11, 2025.

¶7. On February 10, 2025, Howard filed a motion for a continuance, advising the trial court that Dr. Fox’s earliest available appointment for a second mental-health evaluation would be on March 12, 2025. As a result, the circuit court continued Howard’s trial until July 15, 2025, and the court entered an order of transport for Howard’s evaluation with Dr. Fox.

Then, upon agreement of the parties, Howard’s trial was later continued until October 14, 2025. Howard did not attempt to enter Dr. Fox’s report into evidence at trial.

¶8. At trial, the jury found him guilty on all three counts—aggravated assault on a law-enforcement officer, shooting into a motor vehicle, and unlawful possession of a firearm or weapon by a convicted felon—and he was sentenced as a habitual offender to serve three concurrent life sentences.

¶9. On appeal, Howard expressly challenges the trial court’s denial of his February 4, 2025, *ore tenus* motion for continuance and argues that the trial court erroneously denied him the opportunity to obtain a second mental-health evaluation.

STANDARD OF REVIEW

¶10. This Court reviews a trial court’s decision to deny a defendant’s motion for a continuance using an abuse-of-discretion standard. *Miles v. State*, 249 So. 3d 362, 367 (Miss. 2018) (citing *Mouton v. State*, 227 So. 3d 1079, 1083 (Miss. 2017)).

DISCUSSION

¶11. Mississippi law recognizes a “presumption of mental competency” for all criminal defendants. *Robinson v. State*, 301 So. 3d 577, 580 (Miss. 2020) (internal quotation mark omitted) (quoting MRCrP 12.1(a)). This Court has “consistently . . . placed the burden on the defendant to show his incompetence.” *Hutto v. State*, 227 So. 3d 963, 973 (Miss. 2017). The Court has further acknowledged that:

Trial courts are afforded broad discretion in determining whether to order a mental evaluation and competency hearing. *Harden v. State*, 59 So. 3d 594, 603 (Miss. 2011). In determining whether an abuse of discretion occurred, this Court considers whether “the trial judge received information which,

objectively considered, should reasonably have raised a doubt about the defendant's competence and alerted the judge to the possibility that the defendant could neither understand the proceedings, appreciate their significance, nor rationally aid his attorney in his defense.” **Goff v. State**, 14 So. 3d 625, 644 (Miss. 2009).

King v. State, 269 So. 3d 98, 100 (Miss. 2018).

¶12. This Court has also held that a defendant has no guaranteed right to a favorable mental-health evaluation; instead, the law only requires that a defendant receive an appropriate examination by a competent psychiatrist. **Garcia v. State**, 369 So. 3d 511, 524 (Miss. 2023); *see also* **Hill v. State**, 432 So. 2d 427, 437 (Miss. 1983) (finding that the circuit court had no obligation to provide the defendant with another psychiatric evaluation based on defendant's dissatisfaction with his first evaluation). As such, Howard “had no right to an expert who would, at his attorney's insistence, conjure up a mental-health disorder, or otherwise simply fashion an opinion to lend him a helping hand in defense or mitigation.”

Id.

¶13. In addition, we recognize that “[t]rial judges have wide latitude in deciding whether to grant continuances, and that decision is left to the sound discretion of the trial judge.” **Miles**, 249 So. 3d at 368 (citing **Lambert v. State**, 654 So. 2d 17, 22 (Miss. 1995)). But any such denial will be subject to reversal if manifest injustice results. *Id.*

¶14. Howard argues that the trial court erroneously denied his *ore tenus* motion for continuance, which resulted in his trial proceeding as scheduled. Specifically, he argues that the trial court “required [him] to proceed to trial without any realistic opportunity to obtain the independent evaluation [from Dr. Fox that] the court itself acknowledged he could

pursue.” He contends that the trial court, therefore, “substantially prejudiced Howard’s ability to investigate, prepare, and present mental-health evidence central to the constitutional reliability of the proceedings.” We disagree.

¶15. First and most importantly, Howard’s account of the procedural facts of this case conflicts with the timeline established in the record. Howard correctly states that he filed his motion for a second mental evaluation on December 11, 2024. He then states the following, however:

At the pretrial hearing, defense counsel explained that Dr. Montgomery’s [first mental-health] evaluation process itself had consumed approximately a year and argued it was fundamentally unfair to require defense to secure an independent psychiatric evaluation with in only seven days before trial. . . . *The trial court ultimately denied the continuance and proceeded to trial.*

The record does not support this version of events.

¶16. The record clearly establishes that, on July 13, 2023, the trial court granted Howard’s first motion for a mental-health evaluation, which was conducted by Dr. Montgomery. After the first mental-health evaluation, the trial court conducted a competency hearing and found Howard competent to stand trial. Howard did not seek reconsideration of the trial court’s competency determination.

¶17. On December 11, 2024, Howard filed a motion for a second mental-health evaluation in which he requested that the circuit court require Jackson County to pay for the second evaluation. At the February 4, 2025, hearing on this motion, the circuit court did not deny Howard the opportunity to obtain a second mental-health evaluation but rather denied Howard’s request to have the county *pay for* his second evaluation.

¶18. In its order, the trial court stated that Howard was not precluded “from seeking a second opinion mental-evaluation from Dr. Fox or another doctor of his choosing at his own expense, for the evaluation and any other expenses[.]” At this time, the circuit court denied Howard’s *ore tenus* motion for a continuance of his trial, which was scheduled for February 11, 2025.

¶19. Once Howard filed his written motion for continuance, explaining that Dr. Fox’s earliest appointment for his second mental-health evaluation would be on March 12, 2025, the trial court granted the continuance. Howard’s trial ultimately took place eight months later, on October 14, 2025.

¶20. We find that the trial court did not impede Howard’s ability to obtain a second evaluation, nor did it “require [him] to secure an independent evaluation with in only seven days before trial.” While the trial court denied Howard’s request that the county pay for the second mental-health evaluation, the trial court allowed Howard the opportunity to proceed with the second mental-health evaluation at his own expense.

¶21. And while the trial court initially denied Howard’s *ore tenus* motion for a continuance, the trial court later granted a continuance. In fact, Howard was afforded an additional eight months before his trial. We see no error here.

¶22. Finally, the State argues that Howard is procedurally barred from challenging the circuit court’s denial of his motion for continuance on appeal because he failed to raise the issue in a post-trial motion for a new trial. In *Crawford v. State*, this Court explained that

The denial of a continuance is not an issue reviewable on appeal where the denial of the continuance is not assigned as a ground for a new trial in the

defendant's post-trial motion for a new trial. On motion for a new trial, certain errors must be brought to the attention of the trial judge so that he may have an opportunity to pass upon their validity before this court is called upon to review them. For example, the denial of a continuance in the trial court is not reviewable unless the party whose motion for continuance was denied makes a motion for a new trial on this ground.

Crawford v. State, 787 So. 2d 1236, 1242–43 (Miss. 2001) (citation modified).

¶23. We recognize that the record does not contain a motion for a new trial. Regardless of the procedural bar, however, “the decision to grant or deny a motion for continuance is within the sound discretion of the trial court and will not be reversed unless the decision results in manifest injustice.” ***Ross v. State***, 954 So. 2d 968, 1007 (Miss. 2007) (citing ***Cox v. State***, 849 So. 2d 1257, 1267 (Miss. 2003)).

¶24. We find that no injustice resulted from the trial court's denial of Howard's *ore tenus* motion for continuance, as a continuance was later granted. Howard obtained a second mental-health evaluation, and his trial proceeded eight months later.

CONCLUSION

¶25. Finding no error, we affirm Howard's convictions and sentences.

¶26. **AFFIRMED.**

**RANDOLPH, C.J., KING AND COLEMAN, P.JJ., ISHEE, GRIFFIS,
SULLIVAN, WILSON AND TOLLISON, JJ., CONCUR.**