Circuit Court for Montgomery County
Case No. C-15-CR-23-000301

UNREPORTED*

IN THE APPELLATE COURT

OF MARYLAND

Nos. 2096 & 0151

September Term, 2023 & 2024

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DASHON ANTONIO KORNEGAY

v.

STATE OF MARYLAND

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Nazarian,
Reed,
Albright,

JJ.

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Opinion by Reed, J.

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Filed: April 29, 2026

* 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 empaneled in the Circuit Court for Montgomery County convicted Appellant Dashon Kornegay of first-degree assault by strangulation and second-degree assault of his domestic partner, Rebecca Spillman. After trial, Appellant twice moved for a new trial on separate grounds. The court denied both motions and Appellant filed separate appeals after each denial. We consolidated both appeals for consideration and slightly rephrase Appellant's questions presented:

I. Whether the court erred by excluding evidence of the victim's pending charges;

II. Whether the court erred by excluding evidence of a peace order against the victim obtained by an unrelated third party;

III. Whether the State's late disclosure of body camera footage was a violation of *Brady v. Maryland*, 373 U.S. 83 (1963).

For the reasons discussed below, we shall affirm the circuit court.

## FACTUAL AND PROCEDURAL BACKGROUND

Several dates are of importance in this opinion. On February 5, 2023, Appellant got into a physical altercation with his partner, Ms. Spillman.[1] He was charged with first-degree assault with a firearm, first-degree assault by strangulation, using a firearm in the commission of a crime of violence, and second-degree assault.

The circuit court held a hearing to consider pretrial motions. At the hearing, Appellant sought to admit evidence that Ms. Spillman had charges pending against her for possessing child pornography in a separate criminal case. Appellant also sought to admit

[1] Appellant and Ms. Spillman are not married, but they have one child together and they lived together during some periods since they first began dating in 2019.

evidence of a peace order an unrelated third-party obtained against Ms. Spillman in yet another case. The trial judge denied both requests.

The case proceeded to a three-day jury trial that began on October 2, 2023. The jury convicted Appellant of first-degree assault by strangulation and second-degree assault of Ms. Spillman. The jury acquitted him of the two firearms charges.

After trial, Appellant moved for a new trial arguing that evidence regarding Ms. Spillman's child pornography charges and the circumstances surrounding her plea was improperly excluded at the pretrial motions hearing. The circuit court denied Appellant's motion for a new trial. Appellant appealed that ruling in Case No. 2096 of the September 2023 Term.

Later, at Appellant's request, the State provided Appellant's trial counsel with police body camera footage captured during an earlier dispute between Appellant and Ms. Spillman in November of 2022—approximately three months prior to the assault underlying this appeal. Appellant again moved for a new trial, this time arguing that the State's late disclosure of the body camera footage was a discovery violation, and the body camera footage constituted newly discovered evidence. The trial judge denied this motion as well and Appellant appealed in Case No. 151 of the September 2024 Term.

Between the two consolidated appeals, Appellant alleges the court erred in not allowing Appellant to present evidence surrounding Ms. Spillman's child pornography case or the peace order granted against her and claims the late-disclosed body camera evidence was *Brady* material requiring reversal. We begin by outlining the evidence Appellant sought to admit at trial and why.

**Ms. Spillman's Child Pornography Charge**

In October 2022, the Montgomery County Police seized Ms. Spillman's phone on suspicion of possessing child pornography. On March 30, 2023, Ms. Spillman was charged in the District Court of Maryland for Montgomery County with one count of possession of child pornography. On May 17, 2023, her case was transferred to the Circuit Court for Montgomery County where she was charged via criminal information with possession of child pornography.[2]

On January 8, 2024—roughly three months after the guilty verdicts in Appellant's assault case—Ms. Spillman entered a plea agreement in her own case. On February 16, 2024, she agreed to plead guilty to a lesser charge, possession of obscene material. Pursuant to the plea agreement, she avoided incarceration and instead received a one-year suspended sentence and five years of supervised probation.

As mentioned, the circuit court declined to admit this evidence against Ms. Spillman in Appellant's assault case. Appellant's theory was that Ms. Spillman had cut a deal with the State to testify against him in return for leniency in her own case. Supposedly bolstering this theory is Appellant's observation that Ms. Spillman was aware she was being investigated when she called the police on him in February 2023 because her phone had been seized since October 2022. And by the time she testified against Appellant, she had been formally charged. Then, Appellant notes, shortly after testifying against Appellant, she accepted a plea deal to a lesser offense.

[2] *See* Circuit Court Case No. C-15-CR-23-000544.

**The Peace Order Against Ms. Spillman**

On July 8, 2023, Ms. Israel Jackson[3] petitioned for a peace order against Ms. Spillman in the District Court of Maryland for Montgomery County.[4] The court granted Ms. Jackson an interim peace order that day, and a final peace order on July 11, 2023.

The allegations in Ms. Jackson's petition for a peace order were extensive, but Appellant's argument centers on just one. Ms. Jackson's petition alleged that Ms. Spillman threatened to file false criminal charges against Ms. Jackson as a means of sabotaging Ms. Jackson's career.

At his October 2023 trial, Appellant sought to introduce evidence of the peace order as character evidence demonstrating Ms. Spillman's propensity for dishonesty. The trial judge declined to admit evidence of the peace order.

**The November 2022 Incident and Related Body Camera Footage**

Previously, Appellant and Ms. Spillman had another dispute in November of 2022. Both parties called 911. Though police became involved, they did not file an incident report and neither party was charged.

Some evidence of this dispute was admitted at Appellant's trial for the February 2023 incident. Specifically, Ms. Spillman's 911 call was admitted, though redacted to exclude her discussion of her being investigated for child pornography. Appellant's trial counsel briefly cross-examined Ms. Spillman about this November 2022 dispute.

[3] Ms. Jackson's name is spelled as both "Isreal" and "Israel" throughout the record.

[4] *See* District Court Case No. D-06-CV-23-002148.

Prior to trial, Appellant sought to discover information related to the November 2022 incident, including any police body-worn camera footage. The State did not provide Appellant's counsel with the footage until after the jury rendered verdicts in Appellant's trial for the February 2023 incident. According to Appellant, Ms. Spillman's statements in the body camera footage from November 2022 contradicted her later statements in a 911 recording from February 2023. Specifically, Appellant points out that she claimed he threatened her with a gun in the 911 call from 2023, but she said in the body-worn camera footage from 2022 that he was unarmed.

## STANDARDS OF REVIEW

### Excluded Evidence

Appellate review of allegations of evidentiary error is guided by three principles:

> First, Maryland Rule 5–103(a) provides that error may not be predicated upon a ruling that admits or excludes evidence unless the party is prejudiced by the ruling. Second, the admission or exclusion of evidence is a function of the trial court which, on appeal, is traditionally viewed with great latitude. And third, an appellate court will only reverse upon finding that the trial judge's determination was both manifestly wrong and substantially injurious.

*Angelakis v. Teimourian*, 150 Md. App. 507, 525 (2003) (internal citations omitted) (cleaned up).

### Newly Discovered Evidence

When a trial court denies a motion for a new trial, the denial is reviewed for abuse of discretion. *Brewer v. State*, 220 Md. App. 89, 112 (2014) ("Whether to grant a new trial lies within the sound discretion of the trial court, whose decision will not be disturbed on appeal absent an abuse of discretion."). A trial judge only abuses their discretion by ruling

"in an arbitrary or capricious manner or when he or she acts beyond the letter or reason of the law." *Id*.

Five factors must be fulfilled to grant a new trial based on newly discovered evidence:

> [1] The evidence must be in fact, newly discovered, i.e., discovered since the trial; [2] facts must be alleged from which the court may infer diligence on the part of the movant; [3] the evidence relied on, must not be merely cumulative or impeaching; [4] it must be material to the issues involved; and [5] it must be such, and of such nature, as that, on a new trial, the newly discovered evidence would probably produce an acquittal.

*Jones v. State*, 16 Md. App. 472, 477 (1973) (internal citation omitted). Evidence is material when its admission "may well have produced a different result, that is, there was a substantial or significant possibility that the verdict of the trier of fact would have been affected." *Argyrou v. State*, 349 Md. 587, 601 (1998) (quoting *Yorke v. State*, 315 Md. 578, 588 (1989)).

## DISCUSSION

### I. The Trial Judge Properly Excluded Evidence of Ms. Spillman's Pending Charge.

Appellant argues that the trial court improperly excluded evidence that Ms. Spillman had been charged with possessing child pornography. Appellant's theory is that Ms. Spillman testified against him in return for the State giving her lenient treatment in her child pornography case. Specifically, he argues the State permitted Ms. Spillman to plead guilty to the lesser charge of possessing obscene material and receive a suspended sentence after she testified as a prosecution witness in Appellant's case. Appellant contends he should have been permitted to question Ms. Spillman about her desire for leniency in her

then-pending case.

**Analysis**

On cross examination, a witness may be subjected to questions designed to prove they are "biased, prejudiced, interested in the outcome of the proceeding, or [have] a motive to testify falsely." Maryland Rule 5-616(a)(4). Cross-examination under Rule 5-616(a)(4) may only be prohibited if "(1) there is no factual foundation for such an inquiry in the presence of the jury, or (2) the probative value of such an inquiry is substantially outweighed by the danger of undue prejudice or confusion." *Manchame-Guerra v. State*, 457 Md. 300, 312 (cleaned up).

Simply because a witness has been charged by the same prosecutors is not itself impeachment evidence, contrary to what Appellant argues. There must be some factual basis, apart from the charges, to suggest that the witness' testimony would later secure leniency. The Supreme Court of Maryland has held that when

> suggesting that a witness is biased or has a motive to testify falsely, there must be a factual foundation for the question. The pending charges are not the impeachment evidence; rather, they are part of the factual predicate for asking the permitted question about bias or motive. But the existence of pending charges alone is not a sufficient predicate for such a question.

*Peterson v. State*, 444 Md. 105, 135 (2015). There must be some additional evidence that the witness' current testimony is colored by a desire for leniency or a benefit in their own case:

> There must be some evidence—either direct (e.g., an agreement with the prosecution to resolve charges in return for testimony) or circumstantial (e.g., release of witness from custody, dismissal of charges, a decision to forgo charges, postponement of disposition of a violation of probation charge) that

> the witness has an expectation of benefitting from the testimony with respect to the pending charges.

*Id*. at 135–36. Whether the circumstantial evidence establishes an expectation of a benefit is viewed from the witness' perspective. *Manchame-Guerra*, 457 Md. at 318–19. The circumstantial evidence is sufficient if it "could have led the witness to expect or hope for a benefit in exchange for [the] testimony." *Gonzalez v. State*, 487 Md. 136, 169 (2024).

Here, the record does not contain any evidence of an agreement between the prosecution and Ms. Spillman. Further, we cannot identify any circumstantial evidence to support Appellant's theory either. As we read the trial record, Ms. Spillman hardly needed an incentive to testify against Appellant when she was the victim of his violent assault. From Ms. Spillman's perspective, she could not have reasonably expected a benefit for her testimony.

For completeness' sake we also note Ms. Spillman's charges were not dismissed, and she ultimately plead guilty. Most glaring is the fact that Ms. Spillman had not entered a plea agreement at the time of Appellant's trial underlying these appeals. She agreed to plead guilty three months afterward. Further, Ms. Spillman was not formally charged until after she reported the assault in this case. As the trial judge pointed out, Ms. Spillman did not reference her pending charge at all in her conversations with police following the assault which resulted in this case. As we see it, the State conferred absolutely no benefit on Ms. Spillman before Appellant's trial. The circuit court properly excluded cross-examination of Ms. Spillman's pending criminal case.

## II. The Circuit Court Properly Excluded Evidence of the Peace Order.

Appellant argues that the court improperly excluded evidence of the peace order Ms. Jackson sought against Ms. Spillman in a completely different case. Appellant argues that under Rule 5-608(a)(1), the peace order was evidence which supported his theory that Ms. Spillman had a "reputation for untruthfulness." At the pretrial motions hearing, Appellant's counsel sought to admit Ms. Jackson's petition for a peace order and the peace order itself. Alternatively, Appellant argued he could call Ms. Jackson as a witness, or question Ms. Spillman on the circumstances surrounding the peace order. As noted, the circuit court denied Appellant's requests.

### Analysis

We explain why neither Ms. Jackson nor Ms. Spillman could have testified regarding the peace order. In explaining why neither witness could have testified, we also explain why the petition for a peace order and the final peace order were also inadmissible.

Questioning Ms. Jackson

Rule 5-608(a)(3) places important limitations on the form that character witness testimony may take. Relevant to this case, a character witness "may not testify to specific instances of truthfulness or untruthfulness by the witness." Rule 5-608(a)(3)(B).

Appellant's trial counsel made the following proffer:

> And the allegations in Ms. Jackson's petition are absolutely relevant. I mean, she talks about how Ms. Spillman was going to put false charges on her because her mother worked at the police department.

> It's a petition for a peace order . . . . [I]f the Court is not inclined to admit the actual petition itself, I would seek to admit a copy of the final protective order.

Appellant's proffer was a blatant attempt to introduce a specific instance of Ms. Spillman's alleged dishonesty. Therefore, her testimony as proffered was properly excluded under Rule 5-608(a)(3)(B).

Questioning Ms. Spillman

Allowing Appellant's trial counsel to cross-examine Ms. Spillman about the peace order would have raised two problems. First, the peace order and Ms. Jackson's petition for the peace order would not be admissible. Under Rule 5-608(b), a witness may be impeached with past untruthful acts which did not result in a conviction. However, Rule 5-608(b) prohibits the use of extrinsic evidence to prove this conduct. The peace order petition and resulting peace order are extrinsic to this case and would have been prohibited under Rule5-608(b).

Second, any evidence of Ms. Spillman's untruthfulness would be entangled with irrelevant and inadmissible evidence regarding Ms. Spillman's other conduct in the peace order case. Rule 5-403 provides that, "although relevant, evidence may be excluded if its probative value is substantially outweighed by the danger of unfair prejudice, confusion of the issues, or misleading the jury, or by considerations of undue delay, waste of time, or needless presentation of cumulative evidence."

To provide the jury the context needed to understand Ms. Spillman's allegedly dishonest conduct, the trial would have become embroiled in a separate trial concerning the conflict between Ms. Spillman and Ms. Jackson. This detour would risk undue

prejudice by focusing the jury's attention on irrelevant bad acts committed by Ms. Spillman other than the alleged dishonesty. The court did not err in declining to allow Appellant to introduce evidence of the peace order

## III. Late Disclosure of Body Camera Footage Did Not Violate *Brady*.

Appellant claims the State suppressed the body camera footage in this case. The State contends that before trial, they made multiple requests from the police department for the requested footage. The State further argues that Appellant could have acquired the body camera footage through his own due diligence.

### Analysis

"Suppression by the prosecution of evidence favorable to an accused upon request violates due process where the evidence is material either to guilt or to punishment, irrespective of the good faith or bad faith of the prosecution." *Brady v. Maryland*, 373 U.S. 83, 87 (1963). "To establish a *Brady* violation, the defendant must establish (1) that the prosecutor suppressed or withheld evidence that is (2) favorable to the defense—either because it is exculpatory, provides a basis for mitigation of sentence, or because it provides grounds for impeaching a witness—and (3) that the suppressed evidence is material." *Ware v. State*, 348 Md. 19, 38 (1997).

To prove evidence was suppressed, "the defendant need only demonstrate that the evidence was in the possession of the prosecution, or someone working on its behalf, and that the prosecution did not produce the evidence to the defense." *Diallo v. State*, 413 Md. 678, 705 (2010). Good-faith efforts are no substitute for providing the evidence—the State can be found to have suppressed evidence "irrespective of the good faith or bad faith[.]"

*Brady*, 373 U.S. at 87. Moreover, "the *Brady* rule encompasses evidence known only to police investigators and not to the prosecutor." *Strickler v. Greene*, 527 U.S. 263, 280–81 (1999). Failures of a police department to produce records to the State does not extinguish the State's obligations under *Brady*. *See State v. Williams*, 392 Md. 194, 226 (2006) ("It is not good enough to claim that another part of the State failed in its duty, and this failing resulted in the prosecutor being unable to fulfill his or her personal obligation.").

It is true that "*Brady* offers a defendant no relief when the defendant knew or should have known facts permitting him or her to take advantage of the evidence in question or when a reasonable defendant would have found the evidence." *Ware*, 348 Md. at 39. However, the record here shows that Appellant diligently sought the footage. Appellant first requested all impeachment evidence in March 2023—more than six months before trial. Appellant then followed up in June 2023, specifying his request to include any 911 calls and body camera footage relating to disputes between Appellant and Ms. Spillman. By September 2023, Appellant had provided the State with the exact date and address of a specific dispute. On balance, we conclude the body cam footage was within the State's control and Appellant made a timely request for it.

But significantly, the body camera footage was not material to the outcome of the trial. In order to show the undisclosed evidence is material, Appellant "must demonstrate that there is a substantial possibility that had the evidence been disclosed to the defense his sentence would have been different." *State v. Thomas*, 325 Md. 160, 180 (1992). We conclude the body camera evidence would not have led to a different result.

Ms. Spillman's credibility was damaged even without the body camera footage. We can reasonably conclude that the jury did not believe Ms. Spillman's testimony that Appellant was armed because the jury acquitted him of both gun charges. The jury convicted Appellant of second-degree assault and assault by strangulation. There was ample evidence to support those verdicts, specifically evidence showing the extent of Ms. Spillman's injuries which included testimony of hospital staff who treated her. On balance, we determine the body camera footage would not have made a material difference in the outcome. Therefore, no *Brady* violation occurred.

## IV. The Late Disclosure of Body Camera Footage Does Not Require Reversal.

Appellant argues that the delayed revelation of body camera footage necessitates a new trial because it is newly discovered evidence. The Supreme Court of Maryland has held that to determine whether a new trial is warranted in a criminal case based on newly discovered evidence the trial judge should apply the test formulated in *Yorke v. State*, 315 Md. 578 (1989). *Yorke* involved a motion for a new trial filed by a defendant four years after the crimes were committed. *Id.* at 580–81. The motion was based on newly discovered DNA evidence allegedly showing that the defendant was not the criminal agent. *Id.* The Court held that in order for the newly discovered evidence to warrant a new trial, the trial judge must find it to be both material and persuasive such that "[t]he newly discovered evidence may well have produced a different result, that is, there was a substantial or significant possibility that the verdict of the trier of fact would have been affected." *Id.* at 588.

Additionally, we have held that newly discovered evidence "must not be merely cumulative or impeaching." *Jones v. State*, 16 Md. App. 472, 477 (1973).[5] Some impeachment evidence may necessitate a new trial, while other impeachment evidence does not. We have explained that evidence which is "merely impeaching" does not merit reversal:

> Newly discovered evidence that a State's witness had a number of convictions for crimes involving truth and veracity or had lied on a number of occasions about other matters might have a bearing on that witness's testimonial credibility, but would not have a direct bearing on the merits of the trial under review. Such evidence would constitute impeachment and would, therefore, be "merely impeaching." If the newly discovered evidence was that the State's witness had been mistaken, or even deliberately false, about inconsequential details that did to go to the core question of guilt or innocence, such evidence would offer peripheral contradiction and would, therefore, be "merely impeaching."

*Jackson v. State*, 164 Md. App. 679, 697–98 (2005). But if the new evidence shows that a conviction rests on, for example, a lie that went to the heart of the State's case, then that evidence, while also impeaching, would be exculpatory:

> If the newly discovered evidence, on the other hand, was that the State's witness had actually testified falsely on the core merits of the case under review, that evidence, albeit coincidentally impeaching, would be directly

[5] In the past, Maryland cases have described the requirement that newly discovered evidence not be merely cumulative or impeaching as a specific inquiry into whether evidence is material. *See Campbell v. State*, 373 Md. 637, 670 (2003) ("To be material the evidence cannot be 'merely cumulative or impeaching.'"). However, other cases treat materiality as an entirely separate requirement. *See Love v. State*, 95 Md. App. 420, 432 (1993) ("It is first required that the newly discovered evidence be material. That material newly discovered evidence, moreover, must be more than 'merely cumulative or impeaching.' Even when both of these criteria are satisfied, the trial judge must go on to assess the probable impact of such newly discovered evidence.") (internal citation omitted). In this case, we consider whether evidence is merely impeaching separately from its materiality.

> exculpatory evidence on the merits and could not, therefore, be dismissed as "merely impeaching."

*Id.* at 698.

We conclude the body camera footage, at best, is merely impeaching. This is so because Appellant sought to use the footage to attack Ms. Spillman's credibility generally. The arguments presented in Appellant's brief make this point clear. There, he argues:

> The body-worn camera footage was favorable to the defense because it would have impeached Spillman by showing her character for untruthfulness.
>
> . . . [T]he defense did what it could to impeach Spillman, solely on small discrepancies in her story . . . . That cross-examination was far less effective than it would have been had the defense been able to show that Spillman had lied to the police about [Appellant's] conduct in the November 2022 dispute.
>
> [Ms. Spillman's] credibility was left largely intact, in part because the defense's cross-examination with respect to the November 2022 dispute was limited to questions confirming that she was uninjured and that [Appellant] was not arrested. That credibility could have been crushed, in jurors' eyes, with evidence showing she actually made false accusations to the police[.]

From these arguments we determine the body camera footage would not have undermined "the core merits of the case" but, if believed, only impeached Ms. Spillman's testimony as to the two gun-related charges. As discussed in the foregoing section, the body cam footage was not material so as to constitute a *Brady* violation because Appellant was acquitted of both gun-related charges that animated his impeachment theory. But there was an abundance of evidence to support the jury's findings on the assault-related charges. We hold that the body camera evidence is not admissible as newly discovered evidence because it is merely impeaching.

**JUDGMENT OF THE CIRCUIT COURT FOR MONTGOMERY COUNTY, AFFIRMED; APPELLANT TO PAY THE COSTS.**