

Circuit Court for Baltimore County
Case No: 03-K-08-001836

UNREPORTED
IN THE COURT OF SPECIAL APPEALS
OF MARYLAND

No. 714

September Term, 2020

JEREL CARLOS HUNTER

v.

STATE OF MARYLAND

Wells,
Gould,
Zarnoch, Robert A.
(Senior Judge, Specially Assigned),

JJ.

PER CURIAM

Filed: July 9, 2021

*This is an unreported opinion, and it may not be cited in any paper, brief, motion, or other document filed in this Court or any other Maryland Court as either precedent within the rule of stare decisis or as persuasive authority. Md. Rule 1-104.

In 2009, a jury in the Circuit Court for Baltimore County found Jerel Carlos Hunter, appellant, guilty of attempted second-degree murder. The court sentenced him to 25 years' imprisonment. This Court affirmed the judgment on direct appeal. *Hunter v. State*, No. 1895, September Term, 2009 (filed February 9, 2011).

The conviction was based on a stabbing at a McDonald's restaurant on April 11, 2008 where Mr. Hunter and the victim, Jonathan Hebron, were working. Several other McDonald's employees were also working the night of the incident, including Quiana Gray. Pre-trial, the State's Attorney, in a supplemental answer to the defense's motion for discovery and inspection, made available to the defense a "DVD, labeled: Interviewee: Quiana Gray, Dated 4/11/08, Times: 0623 to 0956." The State did not call Ms. Gray as a witness at trial, and no witnesses testified for the defense.

In 2020, Mr. Hunter filed a motion for a new trial pursuant to Md. Rule 4-331(c) based on "newly discovered evidence," that is, a 2019 affidavit of Ms. Gray asserting that she had witnessed the brawl between Mr. Hunter and the victim and that she had informed an Assistant State's Attorney before trial that the victim had instigated the fight and Mr. Hunter was only defending himself. The circuit court summarily denied the motion. We shall affirm the judgment because, as the State points out, the motion was untimely filed and, moreover, Ms. Gray's eye-witness account was not "newly discovered" evidence.

Rule 4-331, governing motions for a new trial, provides in relevant part:

- (a) **Within Ten Days of Verdict.** On motion of the defendant filed within ten days after a verdict, the court, in the interest of justice, may order a new trial.

(c) **Newly Discovered Evidence.** The court may grant a new trial or other appropriate relief on the ground of newly discovered evidence which could not have been discovered by due diligence in time to move for a new trial pursuant to section (a) of this Rule:

- (1) on motion filed within one year after the later of (A) the date the court imposed sentence or (B) the date the court received a mandate issued by the final appellate court to consider a direct appeal from the judgment or a belated appeal permitted as post conviction relief[.]

This Court’s mandate following Mr. Hunter’s direct appeal was issued on March 11, 2011. His motion for a new trial was filed on August 2, 2020. Consequently, his motion was untimely. For that reason alone, the circuit court did not err in denying Mr. Hunter’s motion.

Moreover, given that, before trial, the State had disclosed to the defense an interview of Ms. Gray with the State’s Attorney’s Office, the “newly discovered evidence” relied upon by Mr. Hunter in his motion is not “newly discovered” as any eye-witness account by Ms. Gray was known—or certainly discoverable in an exercise of due diligence—prior to trial or in time to move for a new trial.

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