Circuit Court for Kent County
Case No. C–14–CR–23–000150
Case No. C–14–CR–23–000156

UNREPORTED*

IN THE APPELLATE COURT

OF MARYLAND

Nos. 790 & 791

September Term, 2024

ON MOTION FOR PARTIAL RECONSIDERATION

TROY LAMOTTE RUSH

v.

STATE OF MARYLAND

Nazarian,
Kehoe, S.
Raker, Irma S.
(Senior Judge, Specially Assigned),

JJ.

Opinion by Nazarian, J.

Filed: May 21, 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 persuasive value only if the citation conforms to Maryland Rule 1-104(a)(2)(B).

Sometimes lawyers find themselves trapped between bad choices. Troy Rush's counsel in his trial for the shooting of William "Billy" Godfrey Black, Jr. in the Circuit Court for Kent County faced a choice between asking Mr. Black if their client shot him or avoiding a question to which they didn't know the answer, which could lock in an adverse identification of their client. Counsel chose the latter, perhaps the better of bad choices based on what they knew at the time.

Counsel learned later that if they had asked Mr. Black that question, he would have testified that Mr. Rush was not the shooter. Mr. Black said so to a Maryland State Trooper before trial, but the Trooper never disclosed the exculpatory statement. Counsel only learned of this after trial when Mr. Black wrote to the circuit court judge protesting that Mr. Rush was not the one. This left Mr. Rush to move for a new trial, and the circuit court denied the motion because, it found, counsel could have uncovered the evidence with due diligence if they had just asked Mr. Black.

We hold that the due diligence standard was the wrong standard to apply in this instance. Because Mr. Rush filed his motion within the ten-day deadline under Maryland Rule 4-331(a), he could argue that a new trial served "the interests of justice" without having to demonstrate due diligence. As such, we vacate the judgment and remand for further proceedings consistent with this opinion. We also address an evidentiary issue that may recur on remand and Mr. Rush's now-moot challenge to a period of probation in his sentence.

I. BACKGROUND

A. The Shooting Case

On August 11, 2023, Mr. Black was shot in the arm in the parking lot of the Brittany Bay apartment complex in Kent County. Mr. Black and all other eyewitnesses were unable or unwilling to identify the shooter at trial. The Kent County Sheriff's Office and the Rock Hall Police Department investigated the scene and found poor-quality security camera footage that captured the shooting. From the video, they identified Mr. Rush as the shooter and secured warrants to search various locations related to Mr. Rush, including one of the apartments at Brittany Bay. In one of those searches, they recovered distinctive clothing worn by the shooter in the footage. An arrest warrant was issued for Mr. Rush in relation to this case (the "Shooting Case") in November of 2023.[1]

Mr. Rush would eventually be arrested under that warrant at an unrelated traffic stop initiated by Trooper Graef.[2] Mr. Rush was a passenger in the stopped car. The record is imprecise on the exact particulars of the stop. After identifying Mr. Rush through unclear means, Trooper Graef saw or remembered the outstanding warrant and somehow informed or contacted the Kent County Sheriff's Office. Corporal Nate Blazejack, a deputy from that office, drove over to the traffic stop and arrested Mr. Rush under the warrant. Trooper Graef was not part of the team that investigated the shooting, and the parties stipulated that "there is no indication" the investigating team "directed" the stop.

[1] This warrant would give rise to the other case addressed in this opinion, *see* sections I.C *and* II.C below.

[2] The record does not contain Trooper Graef's first name.

The State charged Mr. Rush with ten counts in connection with the Shooting Case:[3]

- Attempted second degree murder
- First degree assault
- Second degree assault
- Reckless endangerment
- Use of a firearm in a felony or crime of violence
- Handgun on person
- Loaded handgun on person
- Illegal possession of ammunition
- Firearm possession with a felony conviction
- Illegal possession of a regulated firearm

Again, no eyewitness was able or willing to identify the shooter affirmatively at trial. That included Mr. Black, who claimed on the stand that he saw the shooter and did not recognize them. And neither the State nor Mr. Rush ever asked Mr. Black outright if Mr. Rush was the shooter. Rather, the State's case revolved mainly around identifying Mr. Rush from the poor-quality surveillance footage.

The court held a two-day trial on April 29 and 30, 2024, and the jury rendered a same-day verdict on the 30th.[4] The surveillance video was admitted into evidence during the State's case-in-chief. After both sides sparred over a few objections, Detective Sergeant Sean Maloney gave lay opinion testimony that the shooter depicted in the surveillance was Mr. Rush. He testified at first that he had met Mr. Rush three or four times before the shooting and would "routinely see him in the complex at Brittany Bay while on patrol." After laying that foundation, the circuit court allowed Sergeant Maloney to testify, over

[3] Case No. C–14–CR–23–000150.

[4] These dates are important, *see* sections I.B *and* II.A below.

Mr. Rush's objections, that he recognized the shooter depicted in the admitted surveillance video as Mr. Rush.

The jury convicted Mr. Rush on eight counts: second-degree assault, reckless endangerment, use of a firearm in a felony or crime of violence, handgun on person, loaded handgun on person, illegal possession of ammunition, possession of a firearm with a disqualifying conviction, and illegal possession of a regulated firearm. The jury acquitted him on two counts: attempted second-degree murder and first-degree assault. The court then struck the conviction for use of a firearm in a felony or crime of violence on the grounds that the two acquittals removed the necessary predicate crimes for that charge.

B. A Conversation with Trooper Graef and a Letter from Mr. Black

Although he testified at trial that he didn't know who shot him, both before and after trial Mr. Black expressed more definitive views on Mr. Rush's involvement. In October 2023, Trooper Graef transported Mr. Black from Kent County to Queen Anne's County for unrelated criminal matters. As captured by Trooper Graef's body camera, Trooper Graef started up a casual conversation with Mr. Black. There is no indication in the record that the investigating team or the prosecution directed this transport and conversation or was even aware of either occurring. During this conversation, Trooper Graef told Mr. Black that he was the one who pulled over Mr. Rush initially. Mr. Black, in turn, told Trooper Graef that Mr. Rush was not the shooter. For reasons unknown to the court, the State, or Mr. Rush, Trooper Graef decided not to disclose this conversation to anyone on the investigation team. Mr. Black apparently believed Trooper Graef disclosed the

conversation to the prosecution. And because Trooper Graef never documented or disclosed this conversation with Mr. Black, the prosecution never disclosed it to Mr. Rush during pre-trial discovery as otherwise required.

Compounding the issue, Mr. Black waited until after trial to handwrite a letter to the circuit court (he had it hand notarized), stating that he knew Mr. Rush personally and that Mr. Rush was not the shooter. He informed the court about his conversation with Trooper Graef as well. The court forwarded a copy of this letter to the State, who forwarded a copy to Mr. Rush's counsel. This is apparently the first time the prosecution learned of Trooper Graef's conversation. The State then tracked down the body camera footage from the conversation and turned it over to the defense.

Mr. Rush moved for a new trial under Maryland Rule 4-331(a) on May 10, 2023—within ten days of his verdict on April 30. Later, he supplemented the motion with the court's permission. He sought a new trial based on the newly discovered evidence in Mr. Black's letter and, in the alternative, as a remedy for the discovery violation that occurred when the State failed to disclose Trooper Graef's conversation. The circuit court held a hearing on the motion and denied it. In an oral ruling, the court said that it could not grant a new trial under Rule 4–331 because the newly discovered evidence—Mr. Black's exculpatory testimony—could have been discovered with due diligence if Mr. Rush's counsel had interviewed Mr. Black. The court also said that it couldn't grant a new trial

under the *Brady*[5] doctrine. Despite Trooper Graef's two connections to this case, the court found that he didn't count as part of the investigating team, and the court declined to charge the investigation team with knowledge of Trooper Graef's conversation.

C. The Resisting Case and Joint Sentencing Hearing

Mr. Rush's troubles didn't end there. As mentioned above, an arrest warrant was issued for Mr. Rush in connection with the shooting. Before his first encounter with Trooper Graef at the traffic stop, another officer, Deputy Sheriff David Nolan, attempted to arrest Mr. Rush under the warrant on August 17, 2023. Mr. Rush disobeyed multiple verbal commands from Deputy Nolan and fled the scene. The State charged Mr. Rush with second-degree assault and resisting arrest (the "Resisting Case").[6] After a one-day trial, the jury in that case acquitted Mr. Rush of the assault and convicted him of resisting arrest.

After the trials for both the Shooting Case and the Resisting Case, and after the circuit court orally denied the motion for a new trial in the Shooting Case, the court held a joint sentencing hearing. As relevant to this appeal, the court imposed a split sentence on Count III of the Shooting Case (second-degree assault) with some time suspended and a flat sentence for the Resisting Case with no time suspended. The court also attached a period of probation to the split sentence in the Shooting Case. However, the court made a few verbal slips when referencing the numbers for each case due to labelling errors in its handwritten notes.

[5] *Brady v. Maryland*, 373 U.S. 83, 87 (1963) (due process requires prosecution to turn over favorable evidence to defense).

[6] Case No. C–14–CR–23–000156.

Mr. Rush noted a timely appeal in both the Shooting and Resisting Cases and the State had them partially consolidated for consideration before the same appellate panel. Additional facts will be supplied as they apply to the issues.

II. DISCUSSION

Mr. Rush raises three questions in his two appeals, which we rephrase slightly:

1. Did the circuit court err in denying Mr. Rush's motion for a new trial?
2. Did the circuit court err in allowing testimony identifying Mr. Rush as the shooter depicted in admitted surveillance footage?
3. Did the circuit court impose probation properly in connection with the split sentence in the Shooting Case, despite a brief verbal slip that referenced the Resisting Case?[7]

First, we hold that the circuit court applied the wrong standard to the motion for a new trial, and therefore erred denying it. We vacate the judgment and remand for

[7] Mr. Rush phrased the Questions Presented as:

- Did the trial court err in denying Appellant's motion for new trial?
- Did the trial court err in admitting opinion evidence that Appellant was an individual depicted in video evidence?
- Did the trial court impose an illegal sentence in imposing a period of probation in the absence of a suspended sentence?

The State, in turn, phrased the Questions Presented as:

- Did the trial court properly deny Rush's motion for a new trial?
- Did the trial court properly admit testimony of Detective Sergeant Sean Maloney identifying Rush in security camera video?
- Did the trial court properly impose a period of probation in connection with the split sentence in the -150 Case, not the -156 Case?

reconsideration on those grounds. *Second*, we hold that the court correctly admitted the identification testimony, as the State met the requirements for authentication and admission under our case-law for surveillance-narration identification. *Third*, we hold that Mr. Rush's probation issue is moot because we are vacating the judgment that contains the challenged span of probation.

First, whether to grant a new trial under Rule 4-331(a) is reviewed for an abuse of discretion. *Williams v. State*, 462 Md. 335, 344–45 (2019) "'Abuse occurs when a trial judge exercises discretion in an arbitrary or capricious manner or when [they] act[] beyond the letter or reason of law.'" *Id.* at 45 (*quoting Campbell v. State*, 373 Md. 637, 666 (2003)). Applying the wrong standard to any kind of motion is considered an abuse of discretion and requires the reviewing court to vacate the grant or denial of that motion and remand it for reconsideration under the correct standard. *Cf. Sexton v. State*, 258 Md. App. 525, 541–42, 546. (2018) ("'[T]rial judges do not have discretion to apply inappropriate legal standards, even when making decisions that are regarded as discretionary in nature.'" (*quoting Wilson-X v. Dep't of Human Res.*, 403 Md. 667, 675 (2008)) (vacating denial of a motion due to application of wrong legal standard and remanding for reconsideration). Selection of the correct standard to apply is a legal issue we review *de novo*. *Cf. id.*

Second, "[t]he admissibility of evidence ordinarily is left to the sound discretion of the trial court." *Moreland v. State*, 207 Md. App. 563, 568 (2012). "We will not disturb a trial court's evidentiary ruling unless the evidence is plainly inadmissible under a specific rule or principle of law or there is a clear showing of an abuse of discretion. A court's

decision is an abuse of discretion when it is well removed from any center mark imagined by the reviewing court and beyond the fringe of what that court deems minimally acceptable." *Id.* at 568-69 (cleaned up).

Third, "a substantively illegal sentence is subject to correction at any time. Whether a sentence is an illegal sentence under Maryland Rule 4-345(a) is a question of law that is subject to de novo review." *State v. Crawley*, 455 Md. 52, 66 (2017) (internal citation omitted).

A. Mr. Rush Moved For a New Trial Within The Ten-Day Deadline And the Court Should have Applied the Interests of Justice Standard

When Mr. Rush moved for a new trial after receiving a copy of Mr. Black's letter, he met the deadline established by Maryland Rule 4-331(a) on May 10, 2024. He invoked section (a) explicitly in both the caption of the motion and the first paragraph. Although Mr. Rush explained why his counsel never pressed Mr. Black on whether Mr. Rush shot him, he never actually argued due diligence in the motion—only materiality. The State, however, couched its argument in terms of due diligence under section (c), and the circuit court ruled on the motion by applying that standard. The circuit court denied the motion because it found that diligence was lacking—that if counsel had interviewed Mr. Black, they would have gotten the evidence they needed.[8]

[8] The circuit court and the parties agreed that the other two elements for relief under Maryland Rule 4-331(c) were met otherwise. No one contested that the evidence is "material[,]" *Stevenson v. State*, 299 Md. 297, 302 (1984), nor that it "may well have produced a different result, that is, there was a substantial or significant possibility that

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The court's inquiry was incorrect. So long as the movant files within ten days of the verdict, Maryland Rule 4-331(a) applies. *See* Md. Rule 4–331(a) (". . . within ten days of verdict . . ."). Unlike section (c) of that rule, section (a) has no strict requirement for due diligence; instead, its standard is for courts to consider the interests of justice. *Compare* Md. Rule 4-331(a) (". . . the court, in the interest of justice, may order a new trial.") *with* Md. Rule 4-331(c) ("[t]he court may grant a new trial . . . on the ground of newly discovered evidence *which could not have been discovered by due diligence in time to move for a new trial* [*within ten days after the verdict*] *pursuant to section (a)*." (emphasis added)). The court erred, then, when it applied the section (c) standard and denied the motion solely on diligence grounds. For that reason, we vacate the judgment and remand for the circuit court to consider the motion against the interests of justice standard.[9]

the verdict of the trier of fact would have been affected." *Yorke v. State*, 315 Md. 578, 588 (1989); *but see Hunt v. State*, 474 Md. 89, 114 (2021) (modifying this two-part test for actual innocence proceedings).

[9] Mr. Rush also raised a claim under *Brady v. Maryland*, 373 U.S. 83 (1963). He contended that the prosecution had suppressed the conversation with Trooper Graef, if perhaps inadvertently, by not disclosing the statement in discovery when the State should have known the conversation had taken place. *See Kyles v. Whitley*, 514 U.S. 419, 436–38, 439–40 (1995) (*Brady* obligation extends to information gathered by government agents, including the police, of which prosecutor should have known). The circuit court denied this as grounds for a new trial as well. The court found that the outer circumference of *Brady* obligation couldn't reach a Trooper who had touched the case tangentially and wasn't involved with the investigation team otherwise. The knowledge just couldn't be imputed to the prosecutor, and the prosecutor couldn't be expected to interview every state actor in the Eastern Shore just because it's a small community.

Continued . . .

B. The Circuit Court Allowed Lay Opinion Testimony Identifying Mr. Rush In The Surveillance Video Correctly Because The Testifying Witness Knew Him Independently.

Mr. Rush also contends that in the original Shooting Case trial, the circuit court improperly allowed lay opinion testimony that identified him in surveillance. Because this issue could recur if Mr. Rush were granted a new trial, we will address that contention here and hold that the testimony was admissible.

Courts treat witness testimony identifying a figure in surveillance video as lay opinion testimony when the witness has substantial familiarity with the defendant. *Cf. Moreland v. State*, 207 Md. App. 563, 569-574 (2012) (citations omitted); *see id.* at 572 ("A lay witness may testify regarding the identity of a person depicted in a surveillance photograph if there is some basis for concluding that the witness is more likely to correctly identify the defendant from the photograph than the jury"); *see also* Md. Rules 5-602 *and* 5-701. "'The intimacy level of the witness' familiarity with the defendant goes to the weight to be given to the witness' testimony, not the admissibility of such

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Mr. Rush presses his *Brady* claim before us as well. And the State presses on appeal that *Brady* cannot remedy Trooper Graef's decision not to reveal or document his conversation with Mr. Black. We need not answer the *Brady* question to resolve this appeal, but we do have real concerns with the argument that an officer—especially in a smaller department who knows the connection between the defendant and the other case—can simply decline to document and reveal an exculpatory conversation and be insulated from scrutiny under *Brady*. The circuit court should consider on remand both the *Brady* implications of Trooper Graef's withholding of the exculpatory conversation and the prosecution's failure to reveal it and, even if it might not rise to a formal *Brady* violation, whether Mr. Black's trial was compromised without that information such that the interests of justice weigh in favor of granting him a new trial. Put another way, even if the court decides that *Brady* can't provide that remedy, Md. Rule 4-331(a) could and the court should consider that question on remand.

testimony.'" *Moreland*, 207 Md. App. at 572 (*quoting Robinson v. Colorado*, 927 P.2d 381, 384 (Colo. 1996)). "'[A]lthough the witness must be in a better position than the jurors to determine whether the image captured by the camera is indeed that of the defendant, this requires neither the witness be 'intimately familiar' with the defendant nor the defendant to have changed his appearance." *Id.* at 572-73.

The bar for admitting surveillance identification testimony into evidence is a low one under *Moreland*. The witness needs to have only personal knowledge of the defendant's appearance from before the crime. *See Moreland*, 207 Md. App. at 573 (surveillance identification testimony admissible so long as "not based on speculation or conjecture" and not "a mere conclusion or inference that the jury was capable of making on its own").

Here, the State surmounted that bar. Sergeant Maloney laid the foundation that he had both met Mr. Rush a few times previously and had seen him additionally while on patrol. He had the requisite personal knowledge. On appeal, Mr. Rush complains that "the record is silent with respect to the length of the officer's encounters with Mr. Rush, whether he was focusing his attention on Mr. Rush or elsewhere, or the other factors that juries are routinely instructed are relevant to the reliability of identification testimony." But those challenges go to the weight of the evidence, not its admissibility, *Moreland*, 207 Md. App. at 572, and it is up to the defense to cross-examine on those points.

Mr. Rush presses also that the jury had the opportunity themselves to compare the video footage to Mr. Rush's appearance as he sat at the defense table. He argues this means

Sergeant Maloney's testimony was not "helpful" to the jury under Maryland Rule 5-701. But availability of in-court comparison isn't part of the rule adopted in *Moreland*. The same opportunity to compare Mr. Moreland in the flesh to Mr. Moreland in the surveillance video was available to the jury in that case. But the surveillance identification testimony was nevertheless admissible there and was here as well. We see no abuse of discretion in the circuit court's decision to admit this testimony.

C. Mr. Rush's Challenge To The Period Of Probation Is Moot.

Finally, Mr. Rush contends that at his joint sentencing hearing, the circuit court attached a period of probation to the flat sentence in his Resisting Case improperly rather than to the split sentence in his Shooting Case. This, he argues, renders his sentence illegal because probation can attach only to split sentences that include at least some time suspended. Mr. Rush is right on the law, *see Rankin v. State*, 174 Md. App. 404, 411–12 (2007); *Benedict v. State*, 377 Md. 1, 8 (2003), but wrong on the facts.

Despite the circuit court's misstatement in the moment, we can see from the broader context that probation attached to Mr. Rush's split sentence in his Shooting Case. The circuit court began the joint sentencing by announcing the sentences for the convictions in the Shooting Case. But the judge misspoke and referenced the case number for the Resisting Case. The State brought this slip of the tongue to the court's attention almost immediately, and the court corrected itself in the moment. According to the trial judge, they "wrote [the Resisting Case's case number] on [their] notes" by mistake. After correcting this error, the circuit court gave "ten years consecutive to Count [IX], five years

suspended" for Count III in the Shooting Case. The court then attached the period of probation currently challenged: "[On Mr. Rush's] release, he's to be placed on a period of supervised probation [for Count III], and I'll get back to that in a second." The circuit court did indeed get back to that in a second. After addressing a few other sentencing matters, it returned to the terms and conditions of the probation. However, in returning to the matter, the circuit court misspoke again and referenced the case number for the Resisting Case. This time, nobody caught it or brought it to the court's attention. But we know from the earlier correction that this was the same slip of the tongue. The court misspoke from the same error in its notes as before. The five years of probation had attached already to Count III of the Shooting Case and the court merely was elaborating on the details. Normally such a slip of the tongue wouldn't be reversible error.

Later court orders and documents reflect our understanding of the sentence. When Mr. Rush himself signed a probation order at the conclusion of the sentencing hearing, that order listed the correct case number for the Shooting Case. The commitment record for the Shooting Case also reflects the correct sentence and lists the very period of probation that Mr. Rush challenges. Meanwhile, there's no probation order in the Resisting Case. There is no doubt about what really happened here despite the court's slip of the tongue.

Normally, this would mean the probation stands and we would reject Mr. Rush's challenge to the sentence. Because, however, we are vacating the judgment in the Shooting Case on other grounds, his challenge to the vacated sentence is instead moot.

* * *

In summary, we (1) vacate the judgment in the Shooting Case,[10] including the sentence, and remand the case for further proceedings consistent with this opinion; (2) hold that the circuit court admitted lay opinion testimony identifying Mr. Rush as the individual in the security camera footage correctly; and (3) vacate Mr. Rush's probation alongside the rest of the judgment for the Shooting Case. Mr. Rush's flat three-year sentence for his Resisting Case[11] remains unchallenged.

JUDGMENT OF THE CIRCUIT COURT FOR KENT COUNTY IN CASE NO. C–14–CR–23–000150 VACATED AND CASE REMANDED FOR FURTHER PROCEEDINGS CONSISTENT WITH THIS OPINION.

JUDGMENT IN CASE NO. C-14-CR-23-000156 AFFIRMED.

COSTS TO BE PAID TWO-THIRDS BY KENT COUNTY, ONE-THIRD BY APPELLANT.

[10] Case No. C–14–CR–23–000150

[11] Case No. C–14–CR–23–000156