

Circuit Court for Prince George's County
Case No. CT180128X

UNREPORTED
IN THE COURT OF SPECIAL APPEALS
OF MARYLAND

No. 841

September Term, 2019

OTIS THOMAS WOOD, III,

v.

STATE OF MARYLAND

Nazarian,
Beachley,
Battaglia, Lynne A.
(Senior Judge, Specially Assigned),

JJ.

Opinion by Nazarian, J.

Filed: September 4, 2020

* 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.

Otis Wood was charged and convicted in the Circuit Court for Prince George’s County of first-degree assault, one count of second-degree assault, unauthorized removal of property, and theft—charges that arose from separate incidents on November 22 and 23, 2017. He was sentenced to twenty-five years of incarceration (all but ten suspended) for first-degree assault, four concurrent years of incarceration for the unauthorized removal of property, and five years of supervised probation.

After the trial, his victim gave a statement to the police as part of an investigation into an unrelated attempted murder case. In the course of the interview, she told officers about a number of incidents involving Mr. Wood. Some of the new information predated the November 2017 assaults, but she also offered details about the November incidents beyond those to which she had testified at trial. Mr. Wood argues that this interview qualifies as newly discovered evidence and that he is entitled to a new trial because, he says, an opportunity to cross-examine the victim on the discrepancies between the events she recounted in the interview and her trial testimony would have damaged her credibility and altered the outcome of the case. Although this post-trial interview was indeed newly discovered, we disagree that it entitles Mr. Wood to a new trial, and we affirm the convictions.

I. BACKGROUND

A. The November 2017 Assaults.

Mr. Wood and the victim had known one another for approximately five years before the events at issue. Although never formally a couple, she described their relationship as “friends with benefits.” On the morning of November 22, 2017, she realized

her Nissan Sentra was not outside of her house. She suspected that Mr. Wood, who spent the night at her house, had taken the car. She called Mr. Wood to confront him, and he responded that he would return the car later that same day. In the afternoon, Mr. Wood returned the car while she was not home. When she arrived home on the evening of November 22, she discovered the hinges on the front door of her house had been broken, indicating a forced entry. She called the police and told them that two televisions were missing from her home and that she suspected Mr. Wood had taken them.

The police arrived but left after not finding Mr. Wood there. Later in the evening, Mr. Wood returned, banging on her window with what she thought was a firearm. Mr. Wood threatened to shoot her if she didn't open the front door. She did, and she gave him permission to spend the night in her home while she left to spend the night elsewhere.

The following morning, November 23, 2017, the victim returned to her house at approximately 8:00 a.m. Mr. Wood was not there when she arrived but showed up shortly after. In response to seeing Mr. Wood outside of her home, she ran upstairs to the bathroom and attempted to call the police. She was unable to reach an operator, and the call went to a recording. Mr. Wood broke into the bathroom, pushed her into the shower, and began to choke her. She repeatedly told Mr. Wood that she had called the police. She noticed a gun present in his waistband during the incident. She was able to escape the bathroom and make it to the area in her living room near the front door. She continued to fight back against Mr. Wood and got outside on her front lawn. Mr. Wood grabbed her hair and dragged her back inside. Then, he pushed her onto her couch and continued to apply pressure to her neck.

When the police arrived, the victim was sitting in her car. According to Officer Abraham Albanez, she was “shaken up visibly.” He also observed redness on her neck, although she did not seek medical attention.

Mr. Wood was charged with first-degree burglary, third-degree burglary, fourth-degree burglary, first-degree assault, two counts of second-degree assault (one for November 22, 2017 and the other for November 23, 2017), unauthorized removal of property, and theft. A jury trial was held on August 23 and 27, 2018. Mr. Wood was acquitted of the burglary charges and the count of second-degree assault for November 22, 2017. He was convicted of first-degree assault, the count of second-degree assault for November 23, 2017, unauthorized removal of property, and theft.

B. The Police Interview And The Alleged 2015 Assault.

On May 2, 2019, nine months after trial but before Mr. Wood had been sentenced, the victim provided a statement to police regarding an unrelated investigation into an attempted murder that occurred in 2015, in which Mr. Wood was implicated. She told the police that in 2015, she allowed Mr. Wood to borrow her car. Later that day, when he returned the vehicle, he told her that he had shot someone and needed to store the gun in her home. At her request, her friend “Cash” removed the weapon from her house. When Mr. Wood returned and discovered the gun was no longer there, he became angry and threatened her, demanding money for the gun. He then got violent, threw the victim against the wall, and assaulted her with the gun:

[DETECTIVE HARVEY]: And [Wood] becomes really upset because Cash took the gun?

[THE VICTIM]: Right.

[DETECTIVE HARVEY]: So [] take me through that.

[THE VICTIM]: When he became upset because Cash took the gun, he threw [me] up against the wall and he had another gun. He stuffed that gun up in my vagina and told me that he should pull the trigger. So [] that's when he was like if you don't get the money, you better get that handle or you better get this money.

The victim also discussed the 2017 assaults during the interview, and her description of those events offered additional details that she hadn't included in her trial testimony:

- During the altercation, Mr. Wood threatened to burn her house down.
- Mr. Wood threatened to kill her kids.
- She suffered injury to her ankle as a result of the altercation.

The victim told the police that he “[t]ook all the kids’ TVs,” took her new car, broke her ankle, threw her against the bathroom tub, pointed a gun at her, and threatened to shoot her. The attempted murder case went to trial but ended in a mistrial on May 13, 2019.

Mr. Wood filed a motion for a new trial under Maryland Rule 4-311(c) on June 13, 2019, and asserted that the victim's May 2019 statement to police was newly discovered evidence that warranted a new trial. On August 9, 2019, the circuit court held a hearing on the motion. The court denied the motion on the grounds that the newly discovered evidence was not material and would not have influenced the outcome of the case. On June 20, 2019, the court sentenced Mr. Wood to twenty-five years of incarceration, all but ten years suspended, for first-degree assault, four concurrent years of incarceration for the

unauthorized removal of property, and five years of supervised probation. Mr. Wood filed a timely appeal.

II. DISCUSSION

Mr. Wood contends on appeal that the trial court abused its discretion in denying his motion for a new trial.¹ We review denials of motions for a new trial for abuse of discretion. *Jackson v. State*, 164 Md. App. 679, 700 (2005); *see Grandison v. State*, 425 Md. 34, 76 (2012). In this particular context, though, the deference we give to the trial court's decision depends on the trial court's ability to assess the evidence directly:

[I]t may be said that the breadth of a trial judge's discretion to grant or deny a new trial is not fixed and immutable; rather, it will expand or contract depending upon the nature of the factors being considered, and the extent to which the exercise of that discretion depends upon the opportunity the trial judge had to feel the pulse of the trial and to rely on his own impressions in determining questions of fairness and justice.

Buck v. Cam's Broadloom Rugs, Inc., 328 Md. 51, 58–59 (1992) (emphasis added).

Mr. Wood's argument sounds simple at first, but it's not a conventional application of the newly discovered evidence principle. He contends that the victim's May 2019 police interview diverged from her trial account and that the differences demonstrated a motive to lie and cast doubt on the validity of the testimony she gave at trial. But because the

¹ Mr. Wood raised the following Question Presented:

Did the circuit court err in denying the motion for a new trial based on newly discovered evidence?

The State rephrased the Question Presented as:

Did the circuit court properly exercise its discretion in denying Wood's motion for a new trial?

interview took place nine months after the trial, there was no opportunity to cross-examine her at the time. Instead, his theory is that because the case turned substantially on credibility, the differences between her two accounts and the opportunity to cross her on them at a *new* trial would lead to a different outcome at a second trial. The State responds that the newly discovered evidence is not material and would not have altered the outcome of the case. We agree with the State.

Normally, defendants must file motions for a new trial within ten days of the verdict. Md. Rule 4-331(a). After that, the motion must be grounded in evidence not discoverable within ten days after the jury returned the verdict and that is material to the result. Md. Rule 4-331(c); *Argyrou v. State*, 349 Md. 587, 601 (1998). Newly discovered evidence is evidence that “could not have been discovered by due diligence in time to move for a new trial pursuant to section (a) of this rule,” *i.e.*, within 10 days of the verdict. Md. Rule 4-331(c). From there, the court must find that the evidence would, if available and admitted, have produced a different outcome. *Id.*

Because the victim’s post-trial interview with the police occurred nine months after trial, we skip right to considering the materiality of the evidence. For newly discovered evidence to qualify as material, it “must not be merely cumulative or impeaching.” *Jackson*, 164 Md. App. at 696 (*quoting Love v. State*, 95 Md. App. 420, 431 (1992)). “Merely impeaching” evidence includes collateral impeachment and peripheral contradiction. *Campbell v. State*, 373 Md. 637, 670 (2003). Evidence is collaterally impeaching when it bears on a witness’s credibility but does not affect the merits of their

testimony. *Jackson*, 164 Md. App. at 697 (quoting *Campbell*, 373 Md. at 655). A peripheral contradiction is demonstrated when a witness is mistaken about insignificant details and is merely impeaching. *Id.* Evidence rises to the level of impeaching *and* material only when it reveals that the witness’s testimony was false as to the “core merits of the case under review.” *Id.* at 698.

The victim’s post-trial description of the assaults falls well short of this standard. Far from showing that the victim testified falsely at trial, her interview with the police added a small number of details that would have cast Mr. Wood in a worse light. She does not contend that the November 2017 assaults didn’t happen, recant any of the details that she offered at trial, or in any way mitigate the story that she told the jury. To the extent she added details absent from her trial testimony, they were inconsequential. And, we struggle to understand how allowing Mr. Wood an opportunity to cross-examine the victim about leaving out the injury to her ankle and his threats to burn her house down and kill her children could cause a jury to question her core testimony. The trial court found these additional details not to be material, and we agree.²

That ends the inquiry. But even if we were to find that this evidence was material, we agree with the circuit court that it would not have altered the outcome of the case. It’s

² Although the victim’s testimony, read quickly, conflates some of the dates and incidents, the circuit court found, and we agree that the more salacious new information she offered in the interview occurred in 2015 and was not part of the assaults at issue in this case. This includes the sexual assault with the firearm. Not only would those accusations not be admissible at a new trial on these charges (and we find it difficult to understand why Mr. Wood would *want* them admitted), they also cast him in a worse light, and we struggle to understand how they would undermine the victim’s credibility.

not enough that there was a possibility that the evidence would have changed the outcome—Mr. Wood had to prove that if this evidence had been available at trial, “there was a *substantial* or *significant possibility* that the verdict of the trier of fact would have been affected.” *Yorke v. State*, 315 Md. 578, 588 (1989) (emphasis added); see *Evans v. State*, 382 Md. 248, 265–66 (2004); see *Campbell*, 373 Md. at 667–68. And we don’t see how adding these few additional details from the police interview could create a substantial or significant possibility that the jury would have altered the verdict. To the contrary, and as the circuit court found, there was ample additional evidence corroborating the victim’s testimony. The trial evidence included, among other things, a picture of the victim’s neck with visible red marks, which corroborated her allegation that Mr. Wood repeatedly choked her; the testimony of Officer Albanez, who described the victim’s visible state of distress when he arrived at the scene; and text correspondence between the victim and Mr. Wood about the November 23 incident in which he said to her that “i never hit you i choked you never hit.” Had the police interview been admitted into evidence during trial, we see no significant or substantial possibility that it would have altered the verdict—if anything, it would have bolstered the victim’s testimony.

This is a case in which the trial court felt “the pulse of the trial” directly and had a good opportunity to assess the impressions newly discovered evidence would create. See *Buck*, 328 Md. at 58–59. The court’s assessment—that the impact of the police interview was immaterial and would not have affected the jury—is entitled to deference from us, and we hold that the circuit court did not abuse its discretion in denying Mr. Wood’s motion

for a new trial based on newly discovered evidence.

**JUDGMENTS OF THE CIRCUIT COURT
FOR PRINCE GEORGE'S COUNTY
AFFIRMED. APPELLANT TO PAY
COSTS.**