

Circuit Court for Baltimore City
Case No: 122206007

UNREPORTED*
IN THE APPELLATE COURT
OF MARYLAND

No. 1195

September Term, 2024

JOSEPH DANIEL BLACK

v.

STATE OF MARYLAND

Leahy,
Friedman,
Eyler, James R.
(Senior Judge, Specially Assigned),

JJ.

Opinion by Eyler, J.
Concurring Opinion by Friedman, J.

Filed: May 27, 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 Rule 1-104(a)(2)(B).

A jury in the Circuit Court for Baltimore City convicted Joseph Daniel Black, appellant, of second-degree assault. The circuit court imposed a sentence of ten years' imprisonment. In this appeal, appellant presents the following questions for our review, which we have rephrased slightly:

1. Is the evidence insufficient to sustain appellant's conviction?
2. Did the trial court err and abuse its discretion by precluding the defense from questioning a police witness regarding alleged prior violations of police department policies?
3. Did the trial court abuse its discretion in denying appellant's motion for a new trial based on newly discovery evidence?

For the reasons set forth below, we affirm the judgment of the circuit court.

BACKGROUND

In the early evening of June 28, 2022, Detective James Dow of the Baltimore City Police Department (BPD) Northwest District Action Team (DAT)¹ was on patrol in the Park Heights community with Detective Sergeant Kenneth Ramberg, who was driving. They were working with Detectives Cesar Gonzalez and Israel Lopez, who were in a separate vehicle.

That same day, appellant was in the Panyard, an area in Park Heights where people gather to socialize, wash cars, and play dominoes. At trial, appellant testified that he was counting money under a tent when he noticed a police car parked in front of the Panyard on Palmer Avenue. According to appellant, he made eye contact with the detectives, who

¹ According to Detective Sergeant Ramberg, DAT is comprised of squads of six to seven police officers and a sergeant that investigate mid to low-level narcotics and firearms violations.

then turned around and began following him as he left the Panyard in his vehicle. Appellant stated that he made a right turn using his turn signal because he had noticed the police officers behind him.

Detective Dow testified at trial that he observed appellant turn right onto Park Heights Avenue without using a turn signal. Based on this observation, Detective Dow and Detective Sergeant Ramberg initiated a traffic stop. The traffic stop was captured on Detective Dow’s body-worn camera footage (State’s Exhibit 2) and Detective Sergeant Ramberg’s body-worn camera footage (State’s Exhibit 4), both of which were played for the jury and admitted into evidence.

Detective Dow approached the passenger’s side of appellant’s vehicle while Detective Sergeant Ramberg approached the driver’s side of the vehicle. Detective Sergeant Ramberg requested appellant’s license and registration, and appellant complied. Detective Sergeant Ramberg immediately alerted Detective Dow to the presence of a firearm in the vehicle using the code word “Minyanyo.” Upon hearing the code word for firearm, Detective Dow unholstered his firearm and held it to his side while he spoke with appellant and waited for backup units to arrive. Detective Dow testified that he did not observe a firearm in the vehicle.

Detective Sergeant Ramberg returned to his vehicle and called for backup, instructing responding officers to position their vehicles to block appellant’s vehicle. Detectives Lopez and Gonzalez arrived and used their patrol car to box in appellant’s vehicle. Detective Sergeant Ramberg returned to the driver’s side of appellant’s vehicle and ordered him to step out. At that point, the occupant of a non-police vehicle that had

been parked in front of appellant’s vehicle drove away. Appellant then put his vehicle in drive and moved forward.

Appellant’s vehicle remained boxed in by the patrol car, however. Detective Sergeant Ramberg opened appellant’s door and attempted to turn the steering wheel to redirect the vehicle away from pedestrians and traffic on the 5100 block of Park Heights Avenue, as he believed that appellant was “aiming towards them and attempting to kill me.” Detective Sergeant Ramberg reached for the ignition keys to try to remove appellant from the vehicle and recover the firearm that he had observed on the floorboard. When Detective Sergeant Ramberg told appellant to stop the vehicle, he heard appellant say: “No, no, nah.” Detective Dow testified that he observed Detective Sergeant Ramberg being “crushed” against the patrol car. As a result of the incident, Detective Sergeant Ramberg sustained multiple injuries, including a traumatic brain injury, and was on medical leave at the time of trial.

Detective Cesar Mohamed assisted the lead investigator, Detective John Amato, in the investigation. Detective Mohamed interviewed appellant following his apprehension on June 29, 2022. The recording of appellant’s interview was played for the jury and introduced into evidence. Detective Mohamed ensured that appellant’s vehicle was towed to the crime lab. Upon arrival of the vehicle, Detective Mohamed noted damage on the driver’s side of the vehicle.

Appellant testified in his own defense. He stated that he was familiar with the DAT team from prior encounters. He recognized Detective Dow as “White Boy” or “Dope,” names by which Detective Dow is known in the Park Heights community. Appellant

testified that he had met Detective Sergeant Ramberg several times in the Park Heights neighborhood. Appellant described his experience with Detective Sergeant Ramberg, stating: “I mean, he was extorting us. ... We was giving him our money to just – to leave us alone to do what we want in the neighborhood[.]” Detective Sergeant Ramberg testified that he had no previous contact with appellant prior to the traffic stop.

Appellant testified that when he saw Detective Dow, he believed the detectives intended to take his money and release him, as his license and registration were valid. Appellant explained that once he realized that the detectives were not planning to take his money, his perception shifted, and he began to fear for his life. Appellant observed that the detectives’ demeanor changed after Detective Sergeant Ramberg used a code word for firearm, and the situation became more tense. Appellant focused his attention on Detective Dow, who had unholstered his firearm at his side.

When asked why he drove away, appellant stated: “I just, man, everything happened so fast. I just didn’t want to die, and I just – I panicked.” Appellant testified that he did not intend to harm Detective Sergeant Ramberg. He explained that: “I knew if I stopped, they was going to kill me. I wanted to stop, but I felt like I had no control because [Detective Sergeant Ramberg] was trying to crash the car.” Appellant stated that he thought that if he had stopped his car, “I would have died. We all know that. He said it himself, ‘I would have killed him.’”²

² Detective Dow acknowledged that he told another officer at the scene that he “should have shot the motherfucker[.]”

The jury found appellant not guilty of the charges of first-degree assault and possession of a regulated firearm after a disqualifying conviction. He was found guilty of second-degree assault. Following sentencing, he noted an appeal.

DISCUSSION

I.

Sufficiency of the Evidence

Appellant contends that the evidence was insufficient to permit a rational trier of fact to find the essential elements of second-degree assault. He argues that the evidence failed to show: (1) that he, as distinguished from Detective Sergeant Ramberg, caused an offensive physical contact with, or physical harm to, Detective Sergeant Ramberg; (2) that his conduct was intentional or reckless; and (3) that Detective Sergeant Ramberg did not consent to the assault.

The State counters that appellant’s challenge to the sufficiency of the evidence is unpreserved because he did not renew his motion for judgment of acquittal at the close of all of the evidence. Even if preserved, the State argues that his challenge is limited to his argument made at trial that there was insufficient evidence that he intended to inflict serious physical injury on Detective Sergeant Ramberg. The State further asserts that the evidence was sufficient to support appellant’s conviction for second-degree assault.

Appellant’s issue has not been preserved for our review. Maryland Rule 4-324 provides that a defendant who has “move[d] for judgment of acquittal at the close of evidence offered by the State may offer evidence in the event the motion is not granted, without having reserved the right to do so and to the same extent as if the motion had not

been made[,]” however, “[i]n doing so, the defendant withdraws the motion.” Md. Rule 4-324(c); *see also* Md. Code (2001, 2018 Repl. Vol.) § 6-104(a)(3) of the Criminal Procedure Article (“If the defendant offers evidence after making a motion for judgment of acquittal, the motion is deemed withdrawn.”). A motion for judgment of acquittal at the end of the State’s case in chief “has no viability unless it is renewed, if counsel moves, again, for judgment of acquittal after the close of all [the] evidence.” *Haile v. State*, 431 Md. 448, 464 (2013).

At the end of the State’s case, defense counsel moved for judgment of acquittal arguing that “the act that [appellant] committed was not an intentional or reckless act; he was trying to get away.” He further argued that “it was Detective [Sergeant] Ramberg’s entry into the car that caused the physical injury.” The circuit court denied the motion. Appellant presented evidence in his defense. At the close of all evidence, appellant failed to renew his motion for judgment of acquittal.

By operation of law, appellant’s motion for judgment of acquittal was withdrawn when he presented evidence in his defense. Because he failed to renew his motion at the close of all evidence, his challenge to the sufficiency of the evidence is not preserved for review.

Even if appellant had preserved the issue, the State is correct in pointing out that appellant’s argument on appeal that the evidence was insufficient to satisfy the three elements of second-degree assault is different from the argument he made before the trial court. Pursuant to Md. Rule 4-324(a), a defendant who moves for judgment of acquittal is required to “state with particularity all reasons why the motion should be granted[,]’ and

is not entitled to appellate review of reasons stated for the first time on appeal.” *Starr v. State*, 405 Md. 293, 302 (2008) (quoting Md. Rule 4-324(a)).

This Court has noted that “[t]he language of the rule is mandatory, and review of a claim of insufficiency is available only for the reasons given by [the defendant] in his motion for judgment of acquittal.” *Peters v. State*, 224 Md. App. 306, 353 (quoting *Whiting v. State*, 160 Md. App. 285, 308 (2004), *aff’d*, 389 Md. 334 (2005)), *cert. denied*, 445 Md. 127 (2015). “Thus, ‘[a] defendant may not argue in the trial court that the evidence was insufficient for one reason, then urge a different reason for the insufficiency on appeal[.]’” *Hobby v. State*, 436 Md. 526, 540 (2014) (quoting *Tetso v. State*, 205 Md. App. 334, 384 (2012)). As a result, any challenge to the sufficiency of the evidence not presented to the trial court is deemed waived. *Starr*, 405 Md. at 303.

Had appellant preserved all of the arguments that he makes on appeal, he would not prevail because the evidence was sufficient to sustain his conviction. When reviewing the sufficiency of the evidence, we “‘examine the record solely to determine whether any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt’” and view the evidence and all reasonable inferences “‘in the light most favorable to the State.’” *Beckwitt v. State*, 477 Md. 398, 429 (2022) (quoting *State v. Wilson*, 471 Md. 136, 159 (2020)). This Court “does not ‘re-weigh’ the credibility of witnesses or attempt to resolve any conflicts in the evidence.” *State v. Morrison*, 470 Md. 86, 105 (2020) (quoting *Fuentes v. State*, 454 Md. 296, 307-08 (2017)). We “assess ‘whether the verdict was supported by sufficient evidence, direct or circumstantial, which

could convince a rational trier of fact of the defendant’s guilt of the offenses charged[.]”
Id. (quoting *White v. State*, 363 Md. 150, 162 (2001)).

The jury was instructed as to the intentional battery modality of second-degree assault, which required that the State prove that appellant “caused offensive physical contact or physical harm to Detective Sergeant Kenneth Ramberg, that the contact was the result of an intentional or reckless act of the Defendant and was not accidental, and that the contact was not consented to by Detective Sergeant Kenneth Ramberg.” [T3.137] *See* Md. Code (2002, 2021 Repl. Vol.), § 3-203(a) of the Criminal Law Article; Maryland Criminal Pattern Jury Instruction 4:01C. The battery modality of assault involves the “unjustified, offensive and non-consensual application of force.” *Hickman v. State*, 193 Md. App. 238, 251 (2010). To prove assault, the State must establish that: “(1) the defendant caused offensive physical contact with, or harm to, the victim; (2) the contact was the result of an intentional or reckless act of the defendant and was not accidental; and (3) the contact was not consented to by the victim or was not legally justified.” *Nicolas v. State*, 426 Md. 385, 403-04 (2012).

Proof of the intent element of a crime can be shown by circumstantial evidence. *Somers v. State*, 156 Md. App. 279, 316 (2004). “Circumstantial evidence ... is entirely sufficient to support a conviction, provided that the circumstances support rational inferences from which the trier of fact could be convinced beyond a reasonable doubt of the guilt of the accused.” *Benton v. State*, 224 Md. App. 612, 630 (2015); *see also Chilcoat v. State*, 155 Md. App. 394, 404 (2004) (holding that evidence that the defendant hit the

victim several times with a beer stein, causing serious injuries, was sufficient basis for the jury to have inferred that defendant intended to cause serious bodily injury).

The jury reviewed the body-worn camera footage of Detective Sergeant Ramberg and Detective Dow and heard their testimony regarding the incident. The jury could reasonably find that appellant committed second-degree assault based on the evidence that appellant drove his car away while Detective Sergeant Ramberg was standing at the driver's window, “crush[ing]” Detective Sergeant Ramberg against the adjacent patrol car, and ultimately dragging him down the street. The jury could also find that the detective pleaded with appellant to stop the car, but he refused, and that, as a result of the incident, Detective Sergeant Ramberg suffered multiple serious injuries, including a traumatic brain injury.

The evidence presented at trial, viewed in the light most favorable to the prosecution, was sufficient to support all elements of second-degree assault and, thus, appellant's conviction.

II.

Cross-examination of Detective Sergeant Ramberg

Appellant contends that the circuit court erred by limiting his cross-examination of Detective Sergeant Ramberg regarding his prior violations of BPD policies. He asserts that evidence of Detective Sergeant Ramberg's three “disciplinary proceedings” before the

“Trial Board”³ was relevant to show that Detective Sergeant Ramberg had a history of escalating encounters in violation of BPD policies and that he failed to follow police protocol in this case. Appellant did not specifically identify the three proceedings to which he referred. Appellant argues that Detective Sergeant Ramberg’s disciplinary proceedings were relevant to establish his motive to testify falsely that he followed BPD procedure in this case.

The State responds that there were three pending administrative proceedings but appellant failed to establish a factual foundation for the admissibility of those proceedings. The State contends that the circuit court properly excluded the evidence because appellant failed to demonstrate that Detective Sergeant Ramberg’s testimony regarding “three pending” disciplinary charges would reveal bias or a motive for him to testify falsely in this case.

The Sixth Amendment to the United States Constitution and Article 21 of the Maryland Declaration of Rights guarantee criminal defendants the right to cross-examine witnesses against them. *Manchame-Guerra v. State*, 457 Md. 300, 309 (2018). The right of confrontation requires that defense counsel be afforded wide latitude to cross-examine a witness as to any potential bias or prejudice. *Id.* “To comply with the Confrontation Clause, a trial court must allow a defendant a ‘threshold level of inquiry’ that ‘expose[s] to

³ At trial and on appeal, appellant refers generally to Detective Sergeant Ramberg’s disciplinary proceedings as “Trial Board hearings” or “Trial Boards.” Pursuant to Md. Code (2003, 2022 Repl. Vol.), § 3-106(a) of the Public Safety Article, each law enforcement agency must establish a “trial board process ... to adjudicate all matters for which a police officer is subject to discipline.” There is no evidence that Detective Sergeant Ramberg appeared before any Trial Board.

the jury the facts from which jurors, as the sole triers of fact and credibility, could appropriately draw inferences relating to the reliability of the witnesses.” *Peterson v. State*, 444 Md. 105, 122 (2015) (quoting *Martinez v. State*, 416 Md. 418, 428 (2010), in turn quoting *Davis v. Alaska*, 415 U.S. 308, 318 (1974)).

A defendant’s right to cross-examination, however, is not boundless. *Pantazes v. State*, 376 Md. 661, 680 (2003). Trial courts “have wide latitude to establish reasonable limits on cross-examination based on concerns about, among other things, harassment, prejudice, confusion of the issues, the witness’ safety, or interrogation that is repetitive or only marginally relevant.” *Id.* Thus, the scope of the cross-examination lies largely within the discretion of the trial judge. *Id.* at 681. Additionally, this Court “reviews without deference a trial court’s restriction of cross-examination where that restriction is based on the trial court’s ‘understanding of the legal rules that may limit particular questions or areas of inquiry.’” *Kazadi v. State*, 467 Md. 1, 49 (2020) (quoting *Peterson*, 444 Md. at 124).

Maryland Rule 5-616(a)(4) addresses impeachment testimony and provides in pertinent part that “[t]he credibility of a witness may be attacked through questions asked of the witness, including questions that are directed at ... [p]roving that the witness is biased, prejudiced, interested in the outcome of the proceeding, or has a motive to testify falsely[.]” In the case of a jury trial, questions designed to reveal a witness’s motive to testify falsely “should be permitted unless they lack a factual foundation, or their probative value is substantially outweighed by the danger of undue prejudice or confusion of the jury.” *Calloway v. State*, 258 Md. App. 198, 217 (2023). A defendant must demonstrate that “the cross-examination will likely reveal information nominally relevant to the

proceeding.” *Grandison v. State*, 341 Md. 175, 208 (1995); *see also Peterson*, 444 Md. at 125 (explaining that, “when challenged, counsel must be able to describe the relevance of, and factual foundation for, a line of questioning”). It follows that evidence lacking probative value for impeachment should not be admitted. *Calloway*, 258 Md. App. at 217.

At trial, defense counsel questioned Detective Sergeant Ramberg about the BPD protocol for situations involving police pursuit of a subject fleeing a traffic stop. Detective Sergeant Ramberg responded that there was no BPD protocol applicable to the facts at issue in this case because the detectives were not in their police vehicles and there was no pursuit. Defense counsel followed up by questioning Detective Sergeant Ramberg about “[P]olicy 1503[.]” The prosecutor objected, arguing that Policy 1503 did not apply because it addressed police chases, and there was no police chase in this case. The prosecutor further argued that Policy 1503 was not relevant because it became effective in March 2024, two years after the encounter in this case. The court ruled that defense counsel could inquire as to whether there existed a department policy of de-escalation at the time of the encounter, without referencing Policy 1503.

Defense counsel proceeded to question Detective Sergeant Ramberg generally about BPD protocol as follows:

Q. Now, we talked a little bit about what does and doesn’t – does not exist as a protocol, the Baltimore City Police Department protocols. Would you say that you generally follow the police department, the police protocols?

A. Yes, ma’am.

Q. Okay.

A. I’m sorry. Yes, ma’am.

Q. Okay. And so, at the time that this incident occurred. You were pending three –

The State objected, and the following colloquy occurred:

THE COURT: What is the question?

[DEFENSE COUNSEL]: Disciplinary proceedings –

THE COURT: Okay.

[DEFENSE COUNSEL]: – in front of the Trial Board, and if I may –

THE COURT: Okay, a little lower, please.

[DEFENSE COUNSEL]: Okay, so –

THE COURT: How is this possibly admissible?

[DEFENSE COUNSEL]: Because he – these Trial Board hearings have been indefinitely postponed while he’s not – no longer working for the police department. I think it shows under 5-616, I think, it’s (a)(4) that he has a motive to lie. He has an interest in the – or he has a bias. He has an interest in the outcome of the case because should he – should it be found that he was not in – you know, not in the wrong, that he was following procedure, et cetera, et cetera. You know, it’s with – it’s to his benefit not to return to work. It’s in his benefit not to face the Trial Board because he was seriously –

(Cross talk)

THE COURT: Okay, just a little lower, thank you.

[DEFENSE COUNSEL]: – disciplined.

* * *

[PROSECUTOR]: – Counsel’s argument taken to its extreme. Is that this officer benefited from being dragged down the street and being medically retired because he’s pending three Trial Boards? Which were not adjudicated, which; by the way, Your Honor, we had a several-day hearing in front of the Honorable Judge Charlie Peters. Where counsel brought in her – [co-counsel] and an entire group of public defenders to go pouring through

this man’s IAB files. What was determined, Your Honor, was that not one of them had any relevance at this.

The circuit court sustained the State’s objection and ruled that evidence regarding pending Trial Boards was inadmissible “for many, many, many, many reasons[.]”

Appellant’s assertion that the court erred in excluding Detective Sergeant Ramberg’s pending administrative proceedings to show that he has a history of escalating encounters and violating BPD policies is incorrect. Our Supreme Court has explained that “pending charges themselves are not admissible to attack credibility.” *Peterson*, 444 Md. at 135. Though a witness’s credibility may be impeached with evidence of certain types of prior convictions, the same is not true for impeachment evidence based on pending charges. *Id.* See Md. Code (1974, 2020 Repl. Vol.), § 10-905 of the Courts & Judicial Proceedings Article; Md. Rule 5-609.

Under Md. Rule 5-616(a)(4), “pending charges are not the impeachment evidence; rather, they are part of the factual predicate for asking the permitted question about bias or motive.” *Peterson*, 444 Md. at 135. There must be some evidence showing that the witness has an expectation of a benefit from the testimony with respect to the pending charges, *i.e.*, an agreement with the prosecution to dismiss the charges, a release of the witness from custody, or a postponement of a violation of probation hearing. *Id.* at 135-36. Even when there is a factual basis for questioning a witness about the expectation of a benefit regarding pending charges, a trial court may restrict the line of inquiry if “the probative value of such an inquiry is **substantially** outweighed by the danger of undue prejudice or

confusion.”” *Id.* at 136 (quoting *Calloway v. State*, 414 Md. 616, 638 (2010), in turn quoting *Leeks v. State*, 110 Md. App. 543, 557-58 (1996)) (emphasis in *Calloway*).

In this case, appellant failed to establish a factual foundation for cross-examining Detective Sergeant Ramberg about any expectation of a benefit in relation to the pending administrative proceedings. There was no evidence that he anticipated that the proceedings would be resolved or dismissed if he testified a certain way, nor was there any factual foundation for counsel’s assertion that a favorable outcome in this case would permit the detective to remain on leave and avoid the proceedings. Appellant failed to show that the proceedings created a motivation for Detective Sergeant Ramberg to testify falsely. Appellant failed to proffer any detail related to the administrative proceedings but, even if a factual foundation had been established, on this record, the circuit court could have determined that the probative value of such questioning would be substantially outweighed by the danger of unfair prejudice and confusion of the issues. *See Smith v. State*, 371 Md. 496, 505-06 (2002) (explaining that where an issue for cross-examination is so “marginal” that it “strain[s] any connection with bias or interest on the part of [a witness],” the trial court should “preclud[e] counsel from wandering off onto smoke-filled tangents”).

The circuit court properly concluded that the pending administrative proceedings did not meet the threshold for admissibility as impeachment evidence, and we discern no error or abuse of its discretion in the circuit court’s restriction of appellant’s cross-examination of the detective.

III.

Motion for a New Trial

Appellant argues that the circuit court abused its discretion by denying his motion for a new trial based on newly discovered evidence in the Baltimore City Police Internal Affairs Division’s File No. 2021-1071 relating to Detective Sergeant Ramberg.

The State asserts that the denial of appellant’s motion for a new trial is not properly before us because he did not file a second notice of appeal following the circuit court’s denial of his motion for a new trial. The State further asserts that the circuit court did not abuse its discretion in denying appellant’s motion for a new trial because the evidence was – at most – merely impeaching.

We agree with the State that the issue is unpreserved.

Following a three-day jury trial, appellant was convicted of second-degree assault on June 6, 2024. He was sentenced on August 7, 2024, and that same day, he noted an appeal from his conviction.

On December 6, 2024, appellant moved for a new trial, arguing that the defense had recently discovered that a file in an unrelated case, File No. 2021-1071, contained information involving Detective Sergeant Ramberg. Following a hearing on February 5, 2025, the circuit court denied appellant’s motion for a new trial by order dated February 7, 2025. Appellant did not appeal that ruling, nor did he file an amended notice of appeal. Consequently, the circuit court’s denial of his motion for a new trial is not before us, and we shall not address it. *See Crippen v. State*, 207 Md. App. 236, 249 (2012) (determining there was no jurisdictional basis to review an appeal of the denial of a motion for a new

trial where the order denying the motion for a new trial was entered after appellant filed a notice of appeal from his conviction, and he did not amend the original notice of appeal); *see also* Md. Rule 8-202(a) (requiring the filing of a notice of appeal “within 30 days after entry of the judgment or order from which the appeal is taken”).

If the issue were properly before us, we would affirm.

A defendant has the burden of persuading the circuit court that a new trial should be granted. *Brewer v. State*, 220 Md. App. 89, 111 (2014). The grant or denial of the motion is within the sound discretion of the circuit court. *Id.*

Maryland Rule 4-331(c) provides for the grant of a new trial, or other appropriate relief, on the basis of newly discovered evidence, but only if the prescribed requirements are met. To qualify as “newly discovered,” evidence must not have been discovered, or been discoverable by the exercise of due diligence, within ten days after the jury has returned a verdict. In addition, the motion premised on newly discovered evidence must have been filed in the circuit court, within the later of one year after the imposition of sentence or the issuance of a mandate by the appropriate appellate court. Maryland Rule 4-331(c)(2). Case law has delineated other essential requirements. The evidence offered as newly discovered must be material to the result and that inquiry is a threshold question. *Stevenson v. State*, 299 Md. 297, 302 (1984). That means that it must be more than “merely cumulative or impeaching.” *Jones v. State*, 16 Md. App. 472, 477 (1973); *Love v. State*, 95 Md. App. 420, 432 (1993). In addition, the trial court must determine that “the 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.” [*Yorke v. State*, 315 Md. 578, 588 (1989)].

Argyrou v. State, 349 Md. 587, 600-01 (1998) (cleaned up).

Here, the circuit court assumed the evidence was newly discovered but denied the motion for new trial on the ground that the new evidence was at most merely impeaching. The new evidence was at most an unproved allegation. Moreover, the court explained that the trial did not turn on Detective Sergeant Ramberg’s credibility because the entire

interaction between the participants was recorded on body-worn camera footage, which the jury had an opportunity to see. We perceive no error.

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

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I concur in the judgment. The issues I address here are unpreserved or controlled by existing doctrine.

The *Whren* doctrine was not raised in this case, but it encourages police officers to exploit the kind of minor traffic infractions that provide a pretext for investigative stops unrelated to traffic safety — precisely the dynamic that precipitated this encounter. *Whren v. United States*, 517 U.S. 806 (1996).

In my concurrence in *Snyder v. State*, No. 1127, Sept. Term 2021, 2023 WL 1497289 (App. Ct. Md. Feb. 3, 2023) (Friedman, J., concurring), I identified four points about *Whren* that are relevant here.

First, *Whren* makes us all less free, because officers acting under its authority may stop any of us for any reason at all. *Id.* at *8.

Second, *Whren* is not compelled by the text or history of either the Fourth Amendment or Article 26 of the Maryland Declaration of Rights. *Id.* at *8-9; *see also* Akhil Reed Amar, *Fourth Amendment First Principles*, 107 HARV. L. REV. 757 (1994); Thomas Y. Davies, *Recovering the Original Fourth Amendment*, 98 MICH. L. REV. 547 (1999).

Third, I noted in *Snyder* that *Whren* has racially disparate effects and produces dangerous encounters. *Snyder*, 2023 WL 1497289, at *9 (citing, e.g., David A. Harris, “*Driving While Black*” and *All Other Traffic Offenses: The Supreme Court and Pretextual Traffic Stops*, 87 J. CRIM. L. & CRIMINOLOGY 544 (1996-1997)); *see also* Devon W. Carbado, *From Stopping Black People to Killing Black People: The Fourth Amendment Pathways to Police Violence*, 105 CALIF. L. REV. 125 (2017). The stop in *Snyder* was not dangerous, but this case illustrates how quickly such encounters can become so. Here, the

traffic stop escalated to the point that a detective sustained a traumatic brain injury, another detective acknowledged he considered shooting the appellant, and the appellant testified that he fled because he feared for his life. *Snyder*, 2023 WL 1497289, at *3-4.

Fourth, I observed in *Snyder* that other state courts have adopted more protective approaches under their own constitutions, and nothing prevents Maryland from doing the same. *Id.* at *10 n.7 (citing, e.g., *State v. Gonzales*, 257 P.3d 894 (N.M. 2011); *State v. Ladson*, 979 P.2d 833 (Wash. 1999); *State v. Ochoa*, 206 P.3d 143 (N.M. Ct. App. 2008)).

For those reasons, I continue to believe that the Supreme Court of Maryland should consider, in an appropriate case, whether Article 26 compels a different approach. Because that question was neither raised nor preserved here, I concur.