Circuit Court for Washington County
Case No. C-21-CR-18-000531

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 1301

September Term, 2019

JUSTIN JOMAL SEARLES

v.

STATE OF MARYLAND

Fader, C.J.,
Nazarian,
Adkins, Sally D.
(Senior Judge, Specially Assigned),

JJ.

Opinion by Adkins, Sally D., J.

Filed: January 29, 2021

The day after his conviction for his role in a robbery, Justin Jomal Searles and his wife, Victoria Darby Searles,[1] discovered a potential past feud between Victoria and the foreperson of Searles' trial. Victoria did not recognize the juror at trial, nor did the juror disclose her relationship to Victoria. Searles waited almost four months to file his motion for a new trial based on the juror's nondisclosure, which the trial court denied.

Searles presented the following questions,[2] which we rephrased:

1. Did the trial court abuse its discretion by denying Searles' motion for a new trial based on juror misconduct?

2. Was Searles properly convicted of multiple counts of conspiracy stemming from one established agreement?

We answer both questions in the negative for the reasons explained below.

FACTS AND LEGAL PROCEEDINGS

On May 23, 2018 around 10 p.m., Jamal Palmer and his daughter, I'Nez Palmer, went to a Sheetz store in Hagerstown, Maryland to buy some water.[3] Right before entering

[1] We use Victoria Darby Searles' first name going forward for clarity and mean no disrespect by the informality.

[2] Searles' questions are as follows:

1. Did the trial court commit reversible error in failing to exercise its discretion to grant a new trial?

2. Where the evidence only established a single agreement, was Mr. Searles improperly convicted of and sentenced for multiple counts of conspiracy?

[3] We use the Palmers' first names going forward for clarity and mean no disrespect by the informality.

Sheetz, Jamal made eye contact with someone in the passenger seat of a black car out front, and I'Nez noticed Searles pumping gas. Inside, the Palmers grabbed a gallon of water and waited in line behind Searles to check out.

Once the Palmers began their walk back home, they noticed the black car from Sheetz driving towards them. A man jumped out of the passenger side of the car and said: "you got a problem with me?" I'Nez recognized him from Sheetz. He pulled out a gun and asked for both of the Palmers' wallets by saying "kick that shit out." Jamal did not have money, so I'Nez handed the man around $150 before he jumped back in the car and drove off.

The Palmers hurried home and called the police. Soon after, the police began their investigation and conducted a photo lineup: I'Nez identified Searles as the man pumping gas who was in line with them at Sheetz, and Jamal recognized the car. Searles was charged with multiple counts relating to the robbery. After a trial in April 2019, the jury returned a verdict the same day finding him guilty on all counts, including nine charges of conspiracy.

The day after the verdict, Victoria discovered through a third party that Juror 41, the foreperson, was a member at One Life Gym where Victoria worked. Juror 41 and Victoria were not on good terms; the two were allegedly entangled with the same man before Victoria married Searles. When Victoria was presented as a witness during voir dire, Juror 41 did not acknowledge that the two were acquainted. Victoria did not recognize Juror 41

"due to her different attire and/or appearance" on the day of trial because she was used to a more dressed down look for the gym.

Nearly four months after the verdict, Searles filed a Motion for Mistrial, New Trial, and Other Post Hearing Relief on August 8, 2019 before his sentencing on August 22, 2019. Searles cited two instances of juror misconduct as part of his motion and claimed that Juror 41 "was dishonest in response to jury voir dire when the prospective panel members were questioned as to their knowledge of parties and witnesses."

During the hearing on his motion, Searles argued that a biased foreperson "is a violation of the process" and that he "would want to summons" Juror 41 to inquire about the bias. The court was not convinced, saying: "we are not permitted to inquire into what a juror was thinking when a juror reached their verdict. It's Rule 5-606. Doesn't permit it." Searles pressed on, arguing that he was "inquiring as to whether she perjured herself" by failing to disclose her relationship with Victoria, and that he had a third-party witness willing to speak to the animosity Juror 41 had for Victoria.

The trial judge ultimately decided that to hear from a third-party witness "will encourage me to take the next step, and then talk to this juror to see if she was biased or prejudiced against [Searles]. And I can't do it. I don't think the Rule permits me to take that last step that you want me to take." In denying the motion, the trial judge noted that the cases regarding post-verdict voir dire issues were strictly limited: "[n]one of the cases, post-verdict, deal with anything other than inappropriate conduct by a juror. Not what may or may not be in a juror's mind. And what may or may not have led a juror to reach that

decision." The court held that requesting a new trial because of a juror's relationship with Victoria "was not timely filed pursuant to Rule 4-331." This appeal followed.

DISCUSSION

Motion For A New Trial

We look to see whether the trial court acted within its discretion when granting or denying a motion for a new trial: "denials of motions for new trials are reviewable on appeal and rulings on such motions are subject to reversal when there is an abuse of discretion." *Campbell v. State*, 373 Md. 637, 665 (2003). While trial courts have wide discretion, "it is not boundless." *Id.* (cleaned up). Abuse of discretion occurs "when a trial [court] exercises discretion in an arbitrary or capricious manner or when [it] acts beyond the letter or reason of the law." *Id.* at 666 (cleaned up). The amount of discretion afforded the trial court in deciding a motion for a new trial depends on the circumstances:

> It may be said that the breadth of a trial [court's] discretion to grant or deny a new trial is not fixed or 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 [court] had to feel the pulse of the trial and to rely on [its] own impressions in determining questions of fairness and justice.

Jenkins v. State, 375 Md. 284, 296 (2003) (cleaned up).

Searles argues that the trial court "did not recognize that it had the authority to consider and grant a new trial" because it "did not consider its revisory power under Rule

4-331(b)." Searles based his motion on juror misconduct, largely Juror 41's non-disclosure of her prior relationship with Victoria.[4]

Maryland Rule 4-331 provides three different grounds for a new trial:

> **(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.
>
> (**b) Revisory Power.**
>
> (1) *Generally*. The court has revisory power and control over the judgment to set aside an unjust or improper verdict and grant a new trial:
>
> ***
>
> (B) the circuit courts, on motion filed within 90 days after its imposition of sentence. Thereafter, the court has revisory power and control over the judgment in case of fraud, mistake, or irregularity.
>
> ***
>
> **(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[.]

Searles filed his Motion for Mistrial, New Trial and Other Post Hearing Relief on August 8, 2019, almost four full months after his trial and subsequent verdict on April 18,

[4] Searles raised a second juror misconduct allegation against Juror 41, saying that she failed to disclose her prior employment at the Department of Parole and Probation in Baltimore. He cites the court's question of whether any juror had "been trained or employed as a . . . parole or probation officer or investigator[.]" In his motion, Searles failed to explain the nature of Juror 41's employment and admitted that he had "not been able to secure verification" of it. Searles did "not know whether she had been a parole agent, or an intern." Such speculation about her prior employment was insufficient foundation for granting a new trial under these circumstances.

2019. He did not file his motion within the strict ten-day period of subsection (a) and therefore did not invoke the broad "in the interests of justice" criteria set forth therein.

Searles also failed to meet the requirements for "newly discovered evidence which could not have been discovered by due diligence" set forth in Rule 4-331(c), Searles first discovered Juror 41's relationship to Victoria the "day after trial." This revelation gave Searles more than sufficient time to file for a new trial under subsection (a), and therefore his motion could not qualify under subsection (c).[5]

The bulk of Searles' argument is that the court had revisory power under Rule 4-331(b) to order a new trial and failed to exercise it. The State argues that, even if Searles preserved his argument regarding Rule 4-331(b), he fails to make a cognizable argument because Rule 4-331(b) derived from a prior rule pertaining to motions in arrest of judgment.

Rule 4-331(b) derives "from former Rule 759b, titled 'Motion in Arrest of Judgment,' an archaic term of art." *Ramirez v. State*, 178 Md. App. 257, 280 (2008) (cleaned up). A Motion in Arrest of Judgment "is concerned only with matters on the face of the record (the pleadings, the form of the verdict) and not with the evidence or the trial proceedings[.]" *Id.* (cleaned up). A "critical requirement is that a judgment can be arrested only on the basis of error appearing on the face of the record, and not on the basis of proof offered at trial[.]" *Id.* (cleaned up).

[5] The State argues that the trial court properly exercised its discretion in denying a new trial because Searles did not affirmatively ask the court to exercise its revisory power under Rule 4-331(b), and therefore did not preserve that claim for appeal. Because we ultimately rule in favor of the State, we elect not to address this preservation argument.

In *Ramirez v. State*, when reviewing a trial in which an alternate juror was inadvertently included in deliberations under Rule 4-331, we said that Ramirez "did not explain at the motion hearing, and omits any mention now, of how the alleged error he complained of appeared on the 'face of the record.'" *Id.* We declined to review juror misconduct under Rule 4-331(b) and held that Ramirez failed to overcome the Rule's requirements to raise a cognizable claim. *Id.* at 281.

Searles admits that trial errors "are not generally cognizable under Rule 4-331(b)," but points out that we, on occasion, have looked at assertions of trial error such as admissibility rulings, jury instructions, and jury behavior. *Washington v. State*, 191 Md. App. 48, 122 (2010). Searles asserts that "the jury deliberations were infected by prejudice, and, thus, deprived him of his constitutional right to an impartial and unbiased jury." This alleged prejudice, according to Searles, is a trial error. It stems from Juror 41 allegedly knowing Victoria, and Searles argues that juror "misconduct poisons the verdict such that a new trial is warranted." Although we have "considered appeals of trial courts' denials of motions for new trials under Rule 4-331(b) based upon assertion of trial error," none of those cases support Searles' cause. *Id.* at 123.

Searles relies on *Jenkins v. State* to support his contention that the grant of a new trial is the proper way to deal with juror misconduct. In *Jenkins*, the detective on the case—one of the primary witnesses—conversed with a juror at a religious retreat they both attended during the trial. *Jenkins v. State*, 375 Md. 284, 291–92 (2003). Jenkins moved for a new trial under Rule 4-331(a) within ten days of the verdict based on the detective

and juror's improper contact. *Id.* at 288, 291. The Court of Appeals held that because of the "significant and intentional mid-trial personal conversations and contact in violation of court orders" between a witness and a juror, "there is an inherent, and given the constraints of Maryland Rule 5-606, virtually irrefutable, prejudice to the defendant when, as in the case *sub judice*, the misconduct is concealed until after the verdict has been rendered and accepted and the jury discharged." *Id.* at 340. *See* Md. Rule 5-606 (prohibiting testimony from jurors regarding their state of mind or mental processes in connection with the verdict or deliberations). Jenkins involved intentional misconduct by the police in communicating with a juror mid-trial—action that is strikingly prejudicial to a defendant. Searles' belated assertion that a juror had some negative interaction in the past with Searles' wife pales in comparison. We see no parallel to *Jenkins*.

We again looked at the intersection of Rule 4-331 and 5-606 in *Genies v. State* when holding that Rule 4-331(a) did not automatically entitle a defendant to a hearing on his motion. *Genies v. State*, 196 Md. App. 590, 616 (2010). Genies moved for a new trial on the basis that a juror "changed her vote during deliberations because she 'felt threatened' by another juror." *Id.* We reiterated that courts cannot delve into a juror's mind: "the law in Maryland is well settled that a juror cannot be heard to impeach his verdict, whether the jury conduct objected to be misbehavior or mistake." *Id.* (cleaned up).

In an effort to avoid inevitable impact of Rule 5-606, Searles cites *Williams v. State*, which addressed a juror's nondisclosure of her sister's employment in the State's Attorney's Office. *Williams v. State*, 394 Md. 98, 103 (2006). The juror failed to disclose

her relationship despite pointed voir dire questions directly soliciting that exact type of information. *Id.* The defendant moved for a new trial based on this information. *Id.* The prosecutor confirmed the juror's relationship to a secretary in his office but denied any contact with her about the case. *Id.* at 104. The trial court ruled that the remoteness of the relationship did not warrant a new trial, and the Court of Appeals reversed:

> We hold that, where there is a non-disclosure by a juror of information that a voir dire question seeks and the record does not reveal whether the non-disclosure was intentional or inadvertent, the defendant is entitled to a new trial. That the disclosure would not automatically have required a strike for cause does not matter; it is the inability of the defendant to have the benefit of a further investigation by the court, he or she being deprived of the ability to delve into the juror's state of mind for bias and of a finding in that regard, that is decisive. The perceived "remoteness" of a potential bias does not preclude bias; without a finding of fact in confirmation, it cannot be a sufficient reason to deny a new trial.

Id. at 114–15 (cleaned up).

We see *Williams* as inapposite. In *Williams*, a juror falsely responded to a voir dire question regarding an immediate family member working for the State's Attorney's Office—her sister worked for the exact office prosecuting Williams. *Id.* at 103. The prosecutor acknowledged the connection. *Id.* at 104. We see *Williams* as closer to *Jenkins* than this case—in both, the juror was subject to influence during the trial by a representative of the State.[6]

[6] Further, there is no indication that *Williams* involved a motion filed under Rule 4-331(b). *See Williams v. State*, 394 Md. 98 (2006). The case does not say which category of motion was relied upon, and we are not inclined to assume that the Court of Appeals was addressing the technical and narrow criteria set forth in that subsection.

Searles pursues his theory—asserting that Juror 41's alleged animosity warrants a new trial because he was deprived of evaluating her bias during voir dire. Juror 41's alleged bias did not involve any improper influence on a juror by a state actor and cannot be readily established, like a sister's employment or an improper contact during trial. Searles offered to present a third-party witness to discuss Juror 41's dislike of Victoria. The trial court, though, believed that hearing from a third party would then "encourage [it] to take the next step, and then talk to this juror to see if she was biased or prejudiced against" Searles. Juror 41 would inevitably need to testify whether she recognized Victoria, and, if she did, whether that affected her ability to serve on an unbiased jury—inevitably evaluating her mental processes regarding the verdict. We conclude that the trial court acted within its discretion in deciding that would be an impermissible inquiry into her state of mind during deliberations under any subsection of Rule 4-331.

Searles also contends that the alleged misconduct could be fraud or irregularity under Rule 4-331(b). His fraud allegation is that "the foreperson of the jury failed to disclose information that would have served as a basis for a motion to strike for cause," and his irregularity charge relates to the questionable procedure "of having a biased juror serving as the foreperson of his jury." The State counters that the fraud alleged is intrinsic, and not covered by the Rule, and that there was no irregularity in procedure or process under Rule 4-331(b).

"'[F]raud, mistake, or irregularity' should be given a narrow interpretation" in our analysis. *Minger v. State*, 157 Md. App. 157, 172 (2004) (adopting a narrow interpretation

of "fraud, mistake, or irregularity" for Rule 4-331(b) based on its civil counterpart, Rule 2-535(b)).[7] We held in *Ramirez v. State* that Ramirez could not "rely on the court's power under Rule 4-331(b) to revise a judgment in case of 'fraud, mistake, or irregularity'" for alleged juror misconduct. *Ramirez*, 178 Md. App. at 281. Mistake "has uniformly been interpreted to mean jurisdictional error only," which Ramirez did not allege. *Id.* Ramirez could not raise a claim under the irregularity prong, because it "typically means irregularity of process or procedure." *Id.* (cleaned up). Ramirez did not allege any form of fraud, so he failed to meet any requirement for Rule 4-331(b). *Id.*

Both Searles and the State agree that the type of fraud required is "extrinsic fraud," and not "fraud, which is merely intrinsic to the trial itself." *Green v. Ford Motor Credit Co.*, 152 Md. App. 32, 47 (2003) (cleaned up). Intrinsic fraud is "that which pertains to issues involved in the original action or where acts constituting fraud were, or could have been, litigated therein." *Id.* at 48 (cleaned up). Extrinsic fraud "actually prevents an adversarial trial. In determining whether or not extrinsic fraud exists, the question is not whether the fraud operated to cause the trier of fact to reach an unjust conclusion, but

[7] Maryland Rule 2-535(b) has almost identical language to Maryland Rule 4-331(b):

> **(b) Fraud, Mistake, Irregularity.** On motion of any party filed at any time, the court may exercise revisory power and control over the judgment in case of fraud, mistake, or irregularity.

Md. Rule 2-535(b).

whether the fraud prevented the actual dispute from being submitted to the fact finder at all." *Id.* (cleaned up).

Searles argues that the misconduct he alleged is fraud because of the "possibility that the case was not submitted to the factfinder for genuine deliberation" by an impartial jury. We remain unconvinced that this could be extrinsic fraud. He claims that the jury reached an unjust conclusion because of the bias. He does not complain about what evidence or questions were submitted to the jury. We see no extrinsic fraud alleged. We agree with the State that the alleged nondisclosure would be intrinsic fraud, and thus does not justify relief under Rule 4-331(b).

Even if there is no fraud, Searles contends that there was irregularity because a biased foreperson created "questionable procedural provenance" during his trial. The State disagrees, and asserts that irregularity is not error, but a procedural defect.

We addressed a motion for a new trial under Rule 4-331(b) for irregularity relating to an erroneous or confusing jury instruction in *Minger v. State*. *Minger*, 157 Md. App. at 162. In *Minger*, we were tasked with discerning the meaning of irregularity in Rule 4-331(b). *Id.* at 167. We looked at decisions involving Rule 2-535:

> In the context of judgments, it is well settled that an irregularity is the doing or not doing that, in the conduct of a suit at law, which, conformable to the practice of the court, ought or ought not to be done . . . . Moreover, irregularity, as a ground for revising an enrolled judgment usually contemplates an irregularity of process or procedure but not an error, which in legal parlance, generally connotes a departure from truth or accuracy of which a defendant had notice and could have challenged.

Id. at 169–170 (cleaned up). We stated that "if . . . irregularity were to encompass prejudicial trial court errors, such as errors in instructions never objected to at trial or even on direct appeal, almost no criminal conviction would be safe from belated attack." *Id.* at 172 (cleaned up). Thus, irregularity must be irregularity of process or procedure, and not one of prejudicial trial errors. *Id.* at 171.

Regardless of how Searles phrases his claim, his allegations of juror misconduct are not the subject for a Rule 4-331(b) claim of irregularity. He unquestionably raises an alleged trial error, and thus remains unable to use Rule 4-331(b) for irregularity.

If Searles brought his motion for a new trial under Rule 4-331(a) as soon as he noticed the potential relationship between Victoria and Juror 41, which was within 10 days after the guilty verdict, the court would have broad jurisdiction to order a new trial—if it was "in the interest of justice[.]" Md. Rule 4-331(a). The same broad standard would apply if Searles had no way to discover the relationship within the ten-day period for Rule 4-331(a) and later brought a motion under Rule 4-331(c). Here, though, he failed to provide enough evidence to show that his motion would be proper under Rule 4-331(b).

The abuse of discretion standard requires us to uphold a trial court's decision unless its actions were arbitrary, capricious, or beyond the letter or reason of the law. *Campbell*, 373 Md. at 666. We hold that the trial court was well within its discretion to deny Searles' motion for a new trial under Rule 4-331.

Conspiracy Convictions

Searles argues that he was improperly convicted and sentenced for multiple counts of conspiracy, because the evidence only established a single agreement. The State agrees that only one conspiracy conviction is appropriate. We concur.

Under Maryland law, "[c]onspiracy is a common law crime." *Rudder v. State*, 181 Md. App. 426, 432 (2008). It can be described generally "as a combination of two or more persons, by some concerted action, to accomplish some criminal or unlawful purpose." *Id.* at 437 (cleaned up). Courts can only impose one sentence per agreement:

> It is well settled in Maryland that only one sentence can be imposed for a single common law conspiracy no matter how many criminal acts the conspirators have agreed to commit. The unit of prosecution is the agreement or combination rather than each of its criminal objectives. In *Mason v. State* . . . we stated that a "conspiracy remains one offense regardless of how many repeated violations of the law may have been the object of the conspiracy."

Tracy v. State, 319 Md. 452, 459 (1990) (citing *Mason v. State*, 302 Md. 434, 445 (1985)).

The State sought to prove an agreement to rob the victims: "[s]o conspiracy would be to commit all of these crimes even if the crimes didn't actually come to fruition. The conspiracy is the agreement to do the acts." While it alleged that "there is a conspiracy for each count," Searles asserts, and the State agrees, that the State proved the existence of only one agreement between Searles and his passenger—to rob the Palmers. Searles could not have been convicted of multiple counts of conspiracy without the State's establishment of separate agreements, and it only sought to show the agreement to rob the Palmers, not nine separate agreements. Thus, we vacate all conspiracy convictions except for Count 11.

See Jordan v. State, 323 Md. 151, 162 (1991) (vacating a conviction of conspiracy to commit robbery and keeping the conviction of conspiracy to commit murder as the "crime that carries the more severe penalty" as the greater offense).

CONCLUSION

For the reasons stated above, we affirm the trial court's denial of the motion for new trial. We vacate all conspiracy convictions except for Count 11.

JUDGMENT OF THE CIRCUIT COURT FOR WASHINGTON COUNTY AFFIRMED, EXCEPT FOR VACATING ALL BUT ONE CONSPIRACY COUNT, LEAVING ONLY COUNT 11. COSTS TO BE PAID HALF BY APPELLANT, AND HALF BY APPELLEE.