Circuit Court for Howard County
Case No. C-13-CR-19-000330

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 1327

September Term, 2020

SHAWN TYREE CROSTON

v.

STATE OF MARYLAND

Graeff,
Zic,
Raker, Irma S.
(Senior Judge, Specially Assigned),

JJ.

Opinion by Raker, J.

Filed: October 21, 2021

Appellant, Shawn Croston, was convicted, following a bench trial in the Circuit Court for Howard County, of robbery, second-degree assault, and theft between $100 and $1500. The circuit court denied his motion for a new trial. Appellant presents one issue for our review:

> "Did the circuit court abuse its discretion in denying [appellant's] motion for a new trial?"

As we explain below, we agree with appellant that the circuit court should have considered whether the interest of justice required the grant of a new trial. We shall vacate the judgment of the circuit court remand the matter to that court for further proceedings consistent with this opinion.

I.

Appellant was indicted by the Grand Jury for Howard County for robbery, second-degree assault, and theft, and he was convicted of all offenses. The court imposed a term of incarceration of five years, with all but twelve months suspended, for the robbery and a term of incarceration of five years, with all but twelve months suspended, for the second-degree assault. The court ordered that both terms be served concurrently. The court denied appellant's motion for a new trial.

These charges and convictions arose from an altercation between appellant and Jimmondrea Fleeks on April 15, 2019 at Union Jack's, which is a bar located in Columbia, Howard County, Maryland. At a bench trial, Mr. Fleeks, the only witness, testified that, without provocation, appellant punched him in the face, pulled his dreadlocks, and pulled

off his chain necklace. Appellant presented no witnesses. In closing argument, defense counsel argued that Mr. Fleeks and appellant "[had] an ongoing feud and . . . this was just some way of the victim sort of getting even."

Nine days after the trial court's verdict, appellant filed a motion for a new trial, pursuant to Md. Rule 4-331, which stated that "[s]hortly after the trial, counsel came into possession of a cellphone video showing the assault in this case." Counsel attached to the motion two still photos, which he claimed:

> "undoubtedly show the alleged victim in this case attempting to punch the Defendant in the face. This shows a scenario completely different from that which Mr. Fleeks testified to under oath. Given that the verdict in this case hinged on the credibility of Mr. Fleeks and the video shows that he was untruthful about the incident—fairness due process and justice dictate that the Defendant be granted a new trial."

The State opposed the motion, claiming that the video was not newly discovered evidence and that appellant took a gamble by not presenting it at trial, a gamble that failed.

The court held an evidentiary hearing on the motion. As the primary basis for the new trial, counsel called as witnesses appellant and his girlfriend, Warrenika Evans. Ms. Evans testified that she had been unable to find the video prior to the trial and had not realized its significance.

In denying the motion, the court reasoned as follows:

> "I guess the difficulty I'm having with this is when I look at Rule 4-331, 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.

> I'm not sure that the Defendant—I'm having trouble with the concept that he didn't know about the video. That he was riding in the car with Ms. Evans and she's looking on her phone for the video, but she's not saying a word about it. She never said a word about it. It certainly would have been handy for Counsel to have that to confront the witness with. You know, and today [appellant] testified, I didn't know she was there. Ms. Evans testified we rode together with his brother, we were there together, we were still in a relationship. And I understand some people view things differently.
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> ****
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> So if [appellant] was aware and certainly could have told Counsel about Ms. Evans being a witness to what happened since she says they went to the bar together that night and he says he didn't know she was even there that night—then he kind of forgot whether she was in court with him until Ms. Cecil reminded him, that there were so many people here.
>
> I'm sorry, I can't find that this is newly discovered evidence. I know you didn't know about it, [defense counsel], but I really can't find that it's newly discovered evidence. It's just—it just strains credulity that something like that could happen. That he happened to bring his ex-girlfriend to court with him that day or she happened to come and stay for the whole hearing, never mentioning the video, comes up with it later. He doesn't even know she was there, she says they rode together. There's just too many inconsistencies for me to believe that it's newly discovered evidence. So I'm going to have to deny the motion. We need to set a date for disposition."

Following sentencing, appellant noted this timely appeal.

II.

Before this Court, appellant argues that the circuit court erred as a matter of law in denying appellant's motion for a new trial because, in evaluating appellant's motion, the court applied the wrong standard, and failed to exercise its discretion under the proper

standard. The court denied the motion because it found that the video was not newly discovered evidence. Appellant's claim of error is that the basis for his new trial motion was Rule 4-331(a), a motion filed within ten days of verdict based upon "the interest of justice," not Rule 4-331(b), "newly discovered evidence." The trial court, according to appellant, based its ruling solely on Rule 4-331(b). Because the court denied the motion on the grounds that the video was not newly discovered, and failed to consider any Rule 4-331(a) basis for granting that motion, the trial court (by not exercising its discretion), abused its discretion. Appellant requests this Court either reverse the judgment or order a limited remand.

Appellee argues that we should reject appellant's contentions because even though the new trial motion was filed within ten days of the verdict, the motion was predicated upon a claim of newly discovered evidence. Appellee concludes that once the trial court concluded that the video was not newly discovered evidence, there was no basis for the court to find that granting a new trial would serve the interest of justice.

III.

Rule 4-331 provides, in pertinent part, as follows:

> "(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) 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 more for a new trial pursuant to section (a) of this Rule."

It is clear a trial judge has the authority in a Maryland criminal case to grant a motion for a new trial and that those discretionary rulings are subject to reversal where there is an abuse of discretion. *Argyrou v. State*, 349 Md. 587, 599 (1998); *Mack v. State*, 300 Md. 583, 600 (1984); *Wernsing v. General Motors Corp.*, 298 Md. 406, 420 (1984). Rule 4-331 provides for three situations in which a defendant in a criminal case may file a motion for a new trial. The broader the recognized grounds for filing the motion for a new trial, the stricter are the timeliness filing requirements. *Campbell v. State*, 373 Md. 637, 655 (2002). Judge John F. McAuliffe, writing for the Court of Appeals in *Buck v. Cam's Rugs*, 328 Md. 51 (1992), noted as follows:

> "Accordingly, it 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."

Id. at 58-59. The trial judge's discretion is broadest when a motion for a new trial is filed under subsection (a), is filed within ten days of the verdict, and is based upon the "interest of justice."

Ordinarily, we review the decision of a trial judge in denying a motion for a new trial under the abuse of discretion standard. *Williams v. State*, 462 Md. 335, 344 (2019). Generally, an appellate court does not disturb a trial judge's exercise of discretion in denying a motion for a new trial. *Mack*, 300 Md. 583, 600. We have recognized that whether to grant or deny a new trial "depends . . . heavily upon the unique opportunity the

trial judge has to closely observe the entire trial, complete with nuances, inflections, and impressions never to be gained from a cold record." *Buck*, 328 Md. 51, 57.

Appellant does not appear to contest the trial judge's finding that the evidence was not newly discovered. 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 its verdict. Said evidence must be material to the verdict and more than cumulative or impeaching. *Stevenson v. State*, 299 Md. 297, 302 (1984); *Jones v. State*, 16 Md. App. 472, 477 (1973). And, the trial judge must find 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). Clearly, here, the trial judge concluded that the evidence was not newly discovered and denied the motion on that basis.

Appellant's argument is that section (a) of Rule 4-331, "in the interest of justice," and section (b) of Rule 4-331, "newly discovered evidence," are different concepts and that a new trial could be warranted under section (a) even if it is not under section (b). We agree with appellant that a motion for a new trial filed under section (a) of Rule 4-331 is different and broader than a motion filed under section (b) of Rule 4-331. To be considered grounds for a new trial under section (a), the basis does not have to satisfy the more stringent requirements for newly discovered evidence. The grounds for a new trial under subsection (a) are more permissive than under subsection (b) or subsection (c). *Love v. State*, 95 Md. App. 420, 437 (1992).

The trial judge denied the motion for a new trial on the sole ground that the video was not newly discovered evidence. But, the judge never considered whether, notwithstanding that that evidence was not newly discovered, a new trial was required "in the interest of justice."

It remains as true today as it was when Judge Charles E. Moylan wrote in 1998 that

> "As to how a trial judge weighs or measures the 'interest of justice' in the context of ruling on a Motion for New Trial, there is little guidance in the case law. One thing, however, is clear. The measurement must be made in terms of the impact the phenomenon in question had on the defense of the case."

Isley v. State, 129 Md. App. 611, 673 (1998) (overruled on other grounds, *Merritt v. State*, 367 Md. 17 (2001)). As noted in *Love*, 95 Md. App. 420, 426, 4-331(a) provides "[t]he shortest of time periods but the broadest of predicates" and "[t]he list of possible grounds for the granting of a new trial by the trial judge within ten days of the verdict is virtually open-ended." "This broader latitude is in keeping with the provision of [Rule 4-331(a)] that a judge may order a new trial 'in the interest of justice.'" *Id.* at 427.

In *United States v. Wheeler*, 753 F.3d 200, 208 (D.C. Cir. 2014), the United States Court of Appeals for the D.C. Circuit commented that the rules do not define 'interest of justice' and that "courts have had little success in trying to generalize its meaning." That court concluded that granting a new trial motion is warranted only in those limited circumstances where "a serious miscarriage of justice may have occurred." *Id.* The Court of Appeals for the District of Columbia, in *Green v. United States*, 164 A.3d 86, 93 (D.C.

2017), considered D.C. Superior Court Rule 33 and a motion for new trial based upon the interest of justice. That court noted as follows:

> "[O]ur precedents do not cabin or clearly describe the 'exceptional circumstances' that will justify granting a new trial in the interests of justice. 'The facts are of critical importance to our consideration of the appeal[,] particularly if we are not limited to the 'newly discovered evidence' standards for granting a new trial.'"

Id. (quoting *Brodie v. United States*, 295 F.2d 157, 158 (D.C. Cir. 1961)).

We agree with appellant that appellant's motion for a new trial was filed under section (a) of the Rule, and the test to be applied was whether the motion should be granted "in the interest of justice." The circuit court had the power to consider the video and to determine whether a new trial should be granted after viewing and considering that video, even if it was not newly discovered evidence. The circuit court never did so, and in failing to do so and to exercise its discretion under section (a) of Rule 4-331, the court abused its discretion.

We vacate the judgment of the circuit court and remand this matter to that court for proceedings consistent with this opinion. In so doing, we in no way intimate in which direction the trial judge should exercise his or her discretion. That remains the role of the trial judge.

JUDGMENTS OF THE CIRCUIT COURT FOR HOWARD COUNTY VACATED. CASE REMANDED TO THAT COURT FOR FURTHER PROCEEDINGS CONSISTENT WITH THIS OPINION. COSTS TO BE PAID BY HOWARD COUNTY.