

Circuit Court for Baltimore City
Case No. 118340001

UNREPORTED*

IN THE APPELLATE COURT

OF MARYLAND

No. 1418

September Term, 2023

LIONEL PERRY

v.

STATE OF MARYLAND

Reed,
Tang,
Eyler, James R.,
(Senior Judge, Specially Assigned)

JJ.

Opinion by Reed, J.

Filed: March 25, 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 its persuasive value only if the citation conforms to Rule 1-104(a)(2)(B).

This matter is the second appeal of Appellant Lionel Perry’s criminal conviction. A jury empaneled in the Circuit Court for Baltimore City convicted him of one count of reckless endangerment. Appellant moved for a new trial, which the court denied. Appellant filed a timely appeal and presents one question for our review:

- I. Did the trial court abuse its discretion by denying Appellant’s [second] Motion for New Trial?

For the following reasons, we hold Appellant’s second motion for new trial should have been denied as untimely. Therefore, we affirm.

BACKGROUND

The Shooting and Trial

Appellant was charged with attempted murder and related charges after Appellant shot Daniel Battle. Mr. Battle died of unrelated causes before Appellant’s trial. The relevant facts underlying the charges are recounted through the testimony of Chante Fenner, the only eyewitness to the shooting to testify at trial.¹

Ms. Fenner testified that a few days before the shooting, Appellant gave her \$600 so she would not be evicted from her home. Appellant then became angry when Ms. Fenner denied his request for sex, and he demanded that she return the money. Ms. Fenner told Appellant she would pay him \$300 that week, and \$300 the following week. Ms. Fenner explained that the next day, Appellant called her at work and demanded immediate repayment. When Ms. Fenner replied that she would not receive her paycheck until later

¹ This summary of the facts is largely adapted from our previous summary in Appellant’s first appeal. *Perry v. State*, No. 936, Sept. Term, 2019, 2020 WL 5203215 (Md. Ct. Spec. App. Sept. 1, 2020).

that week, Appellant “started fussing” at her, called her a “bum,” and accused her of “using him” and “playing games.” Ms. Fenner elaborated that Appellant repeated that he wanted his money and said he was on his way to her place of employment. Ms. Fenner told Appellant to “chill out,” and said that she would give Appellant his money, but she asked him to meet her somewhere else. Appellant told Ms. Fenner he would go to her mother’s house instead.

A little while later, Ms. Fenner testified that while she was on her way to meet Appellant, she received a call from her sister, who was at her mother’s house. Ms. Fenner could hear Appellant in the background “yelling” that he wanted his money and asking where Ms. Fenner was. Ms. Fenner’s sister assured Appellant that Ms. Fenner was on her way and asked him to “chill out[,]” and then said to Ms. Fenner, “hold on, sis. I’m about to fight.” Ms. Fenner noted that when she arrived at her mother’s home, no one was there except for her sister and her sister’s boyfriend. Her sister had scratches on her face and wanted to know what Ms. Fenner had “[gotten] her into.”

As Ms. Fenner started to explain the situation, Mr. Battle—Ms. Fenner’s uncle—arrived, having been alerted by neighbors that there was a group of people at the house and that a fight had broken out. As Mr. Battle walked up to the house and onto the porch, a group consisting of about five women and three men, including Appellant, walked up behind him. Ms. Fenner stated that Appellant was “just standing there yelling” that he wanted his money and that he was not leaving until he got it. Ms. Fenner explained she saw Appellant had a gun, as did one of his companions. Ms. Fenner asked Mr. Battle to come inside the house because she “didn’t want anything to happen.”

At that point, Ms. Fenner testified that Appellant’s female cousin—who had arrived with Appellant—pulled Ms. Fenner’s sister out of the house and began fighting with her. When Ms. Fenner tried to intervene, Appellant hit Ms. Fenner in the face and spit on her. Ms. Fenner explained that she started fighting with two other women who were with Appellant. While Ms. Fenner and her sister were fighting outside, Mr. Battle exited the house through the back door and walked away. Ms. Fenner stated that she saw “a guy” walking toward Mr. Battle with a gun and then saw Mr. Battle “tussling” with “the tall guy,” who had a gun in his hand. Mr. Battle then started running. Ms. Fenner testified that “[w]hen [Mr. Battle] started running, the first two shots went off, everybody got down[.]” She did not see who fired the first two shots because she “ducked” and started running into the house. Ms. Fenner explained that just as she reached the door of the house, a “third shot went off[.]” and she heard Mr. Battle say, “I’m hit.” Ms. Fenner then saw Appellant walk up behind Battle and shoot him, striking him in the arm.

During an interview she gave to police the same day as the shooting, Ms. Fenner identified Appellant as the person who shot Mr. Battle. Ms. Fenner conceded that she told police she did not see Appellant with a gun, but maintained at trial she may have been “overwhelmed” when she gave the interview, and that, when she said others may have seen the gun, she “actually [saw] it with [her] own eyes and [was] trying to put it in their eyes.” Three shell casings, a bullet fragment, and a cell phone belonging to Appellant were found at the scene.

Appellant told police he had loaned Ms. Fenner money and that, when Ms. Fenner failed to repay the loan as promised, he “gave the situation” to his female cousin, because

he “would not do anything to a woman.” Appellant admitted he brought other people along as a “witness intimidation thing.”

Following a four-day jury trial, Appellant was convicted of reckless endangerment. Appellant was acquitted of attempted first degree murder, attempted second degree murder, first degree assault, second degree assault, and various firearms charges.

Appellant’s First Motion for New Trial

Shortly after the jury delivered its verdict, the State sent Appellant’s counsel the following:

When informing Ms. Fenner of the verdict, sentencing date, and other issues, we ended up talking about the second guy with the gun. While I can’t remember her exact language, she told me that she’d learned about him after talking with Mr. Battle in the hospital, who gave her the full background on what’d happened. The impression I had from the conversation was that she hadn’t actually seen the guy with the gun herself, though I quickly wrapped the conversation at that point.

In light of this correspondence, Appellant moved for a new trial on May 22, 2019, under Maryland Rule 4-331(c). Appellant argued the jury would have been unable to convict for reckless endangerment had Ms. Fenner’s trial testimony been consistent with her post-trial admission. The trial court denied the motion following a hearing, stating, “I don’t believe [Ms. Fenner] did commit perjury. I believe she was inconsistent, but no one cross-examined her about it.”

Appellant appealed. In an unreported opinion, *Perry v. State*, No. 936, Sept. Term, 2019, 2020 WL 5203215 (Md. Ct. Spec. App. Sept. 1, 2020), this Court affirmed. We explained at the time that there was insufficient evidence to consider the issues Appellant raised:

Here, the alleged newly discovered evidence is the prosecutor’s admittedly inexact recollection of what Fenner said during their post-verdict discussion. We fail to see how such hearsay would be admissible at trial. Consequently, what Appellant argues is newly discovered evidence is not evidence in the first place, and, therefore, cannot be newly discovered evidence.

Had Appellant’s motion for new trial been supported with evidence that conceivably could have been presented for consideration by the trier of fact, for example, a sworn or recorded statement from Fenner to the effect that she did not actually see a second armed individual, we would continue with our examination of whether that evidence was indeed “newly discovered” and, if so, whether there was a significant possibility that the evidence would have affected the verdict.

Id. at *5.

Appellant’s Second Motion for New Trial

Taking our guidance to heart, Appellant scheduled an interview with Ms. Fenner, who voluntarily signed an affidavit on March 3, 2021, recanting portions of her testimony that indicated she had personally seen a second individual with a gun. However, it was not until November 12, 2021, that Appellant filed his second motion for a new trial with the affidavit attached. A hearing on the second motion for new trial was held on November 16, 2022. The trial court denied the motion by written order on April 20, 2023. This appeal followed.

STANDARD OF REVIEW

When a trial court denies a motion for new trial, the denial is reviewed for abuse of discretion. *Campbell v. State*, 373 Md. 637, 665 (2003). The trial court’s discretion in ruling on a motion for new trial is “broad but it is not boundless.” *Id.*

DISCUSSION

Appellant’s Second Motion for New Trial was Untimely

Appellant’s second motion for new trial based on new evidence was untimely. The circuit court properly denied it, although for a different reason.

When Appellant previously sought a new trial, the circuit court denied his motion. He then appealed to this Court. Our mandate affirming the circuit court was issued on October 4, 2020. Under Maryland Rule 4-331(c), a motion for a new trial based on newly discovered evidence must be filed within one year of either the sentence or the appellate court’s mandate, whichever is later. In this case, that deadline was October 4, 2021. The second motion for new trial, filed on November 12, 2021, was therefore untimely by over a month.

The State alerted the trial judge of the late filing at the hearing on the motion for new trial, but the trial judge’s denial was not based on the motion’s untimeliness. During the hearing, Appellant argued without referencing any authority that the appropriate start date for Maryland Rule 4-331(c)’s one year limitation is the date the appellate record is digitally transmitted back to the circuit court. We are not aware of, nor have the parties identified, any Maryland case law indicating Maryland Rule 4-331(c)’s one year limitation begins upon receipt of the record by a circuit court. We therefore see no reason to deviate from Maryland Rule 4-331(c)’s plain language, which requires a motion for new trial to be filed within one year of an appellate mandate.

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