Circuit Court for Cecil County
Case No. 07-K-14-1735

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 473

September Term, 2017

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HENRY ERIC HAMILTON

v.

STATE OF MARYLAND

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Woodward, C.J.,
Kehoe,
Moylan, Charles E., Jr.
(Senior Judge, Specially Assigned),

JJ.

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PER CURIAM

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Filed: June 12, 2018

A jury, in the Circuit Court for Cecil County, convicted Henry Hamilton, appellant, of conspiracy to commit first-degree assault. Hamilton was sentenced to a term of twenty-five years' imprisonment. After noting an appeal, Hamilton filed a *pro se* "Motion to Strike Judgment Due to Evidence Fabrication." Following a hearing, the court denied Hamilton's motion. In this appeal, Hamilton asks whether the court erred in denying his motion. For reasons to follow, we affirm.

## BACKGROUND

On September 24, 2014, an individual, later identified as Hamilton's son, opened fire on a vehicle that was parked outside of Hamilton's home, killing one of the vehicle's occupants. Following the shooting, the police conducted several interviews with a witness, Alexander Maran, who was Spanish-speaking. During one of those interviews, which was recorded, Maran gave several statements in Spanish that were later translated into English and summarized by a police officer, Deputy Angel Valle. That summary included a statement attributed to Maran that implicated Hamilton as having been involved in the shooting.

Prior to trial, the State provided Hamilton an audio copy of Maran's interviews with the police. The State also provided Deputy Valle's summary of Maran's statements. Because a transcript of the interviews was not provided, Hamilton asked that one be provided by either the State or the Office of the Public Defender. Both the State and the Public Defender denied Hamilton's request. The State reasoned that it was not required to provide transcripts. The Public Defender, which was representing Hamilton at trial, did not acquire the transcripts due to "budgetary concerns."

At trial, the State's theory of the case was that Hamilton had directed his son to fire at the victim's car by providing a "signal" to his son. In support, the State called Maran, who testified that, just prior to the shooting, he saw the victim speaking with Hamilton at the victim's car. According to Maran, at some point during the conversation Hamilton "turned around and went to the house, started sweeping, and that's when the bullets started flying." That testimony was consistent with some of the statements made by Maran in his interviews with police; however, the testimony was also inconsistent with other statements Maran made in those same interviews. On cross-examination, defense counsel challenged Maran with those inconsistent statements, which, presumably, had been disclosed as part of the summary of Maran's interviews.

On March 27, 2015, Hamilton was convicted, and, on June 5, 2015, he was sentenced.[1] In July of 2016, Hamilton filed a *pro se* "Motion to Strike Judgment Due to Evidence Fabrication," which he later amended. In that amended motion, Hamilton alleged that, on August 30, 2016, he had obtained a transcript of Maran's interviews and had the transcript translated into English. Upon doing so, Hamilton discovered that some of the statements attributed to Maran by the police were not reflected in the transcript he had obtained. Hamilton also averred that the transcripts included additional exculpatory statements that had not been previously disclosed. According to Hamilton, those various discrepancies constituted evidence that Maran's pre-trial statements had been "fabricated

[1] Hamilton noted a direct appeal of his conviction, which we ultimately affirmed. *Henry Eric Hamilton v. State of Maryland*, No. 736 September Term, 2015 (filed February 14, 2018).

by law enforcement," and, as a result, Hamilton's ability to obtain a fair trial had been compromised.

Although the circuit court initially denied Hamilton's motion without a hearing, the court later agreed to hold an evidentiary hearing after Hamilton filed a motion to reconsider. At that hearing, Hamilton, representing himself, reiterated the arguments raised in his amended motion to strike. In the end, the court denied Hamilton's motion on the ground that the court was "unable to find extrinsic fraud."

**DISCUSSION**

We hold that the circuit court did not err in denying Hamilton's motion. Maryland Rule 4-331 provides that, "[o]n motion of the defendant filed within ten days after a verdict, the court, in the interest of justice, may order a new trial."[2] Md. Rule 4-331(a). When a motion for new trial is filed within that time frame, "[t]he list of possible grounds for the granting of a new trial…is virtually open-ended." *Love v. State*, 95 Md. App. 420, 427 (1993). When, however, a motion for new trial is filed beyond the ten-day time limit, the list of possible grounds for granting the motion narrows considerably and is dependent upon the procedural posture of the case. *Id.* at 428-29. Here, Hamilton's motion was filed more than 90 days after the imposition of sentence, but before disposition of his direct appeal. Consequently, the grounds on which the court could have granted Hamilton's

[2] Although styled as a "motion to strike," Hamilton's motion was, in essence, a request for the court to exercise its revisory powers pursuant to Maryland Rule 4-331.

(continued)

motion were limited to: 1) "fraud," pursuant to Maryland Rule 4-331(b); and 2) "newly discovered evidence," pursuant to Maryland Rule 4-331(c).[3]

Hamilton's motion fails under either ground. To establish fraud sufficient to warrant a new trial pursuant to Rule 4-331(b), "'a movant must show extrinsic fraud, not intrinsic fraud.'" *Pelletier v. Burson*, 213 Md. App. 284, 290 (2013) (citations omitted). Fraud is intrinsic when it "pertains to issues involved in the original action or where acts constituting fraud were, or could have been, litigated therein." *Das v. Das*, 133 Md. App. 1, 18 (2000) (citations and quotations omitted). In other words, fraud is intrinsic "'when it is employed during the course of the hearing which provides the forum for the truth to appear, albeit, the truth was distorted by the complained of fraud.'" *Pelletier*, 213 Md. App. at 290-91 (citations omitted). Extrinsic fraud, on the other hand, is collateral to the issues in the case and "actually prevents an adversarial trial[.]'" *Id.* at 290 (citations omitted). "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 whether the fraud prevented the actual dispute from being submitted to the fact finder at all." *Das*, 133 Md. App. at 18 (citations omitted). As the Supreme Court explained in *U.S. v. Throckmorton*, 98 U.S. 61 (1878), extrinsic fraud exists

> [w]here the unsuccessful party has been prevented from exhibiting fully his case, by fraud or deception practiced on him by his opponent, as by keeping him away from court, a false promise of a compromise; or where the defendant never had knowledge of the suit, being kept in ignorance by the acts of the plaintiff; or where an attorney fraudulently or without authority assumed to represent a party and connives at his defeat; or where the attorney

[3] Maryland Rule 4-331(b) also permits a court to revise its judgment on the basis of "mistake" or "irregularity." Hamilton does not argue that either ground is applicable here.

> regularly employed corruptly sells out his client's interest to the other side; these, and similar cases which show that there has never been a real contest in the trial or hearing of the case, are reasons for which a new suit may be sustained to set aside and annul the former judgment or decree, and open the case for a new and fair hearing.

*Id.* at 65-66 (cited by *Schwartz v. Merchants Mortg. Co.*, 272 Md. 305, 309 (1974)).

Assuming without deciding that Deputy Valle's summary of Maran's statements constituted a "fraud," we are not persuaded that the circuit court erred in determining that said fraud was intrinsic rather than extrinsic. *See Davis v. Attorney General*, 187 Md. App. 110, 124 (2009) ("We review the circuit court's determination of whether there was fraud, mistake, or irregularity for clear error or legal correctness."); *See also Thacker v. Hale*, 146 Md. App. 203, 217 (2002) ("Maryland courts 'have narrowly defined and strictly applied the terms fraud, mistake, [and] irregularity,' in order to ensure finality of judgments.") (citation omitted). There is no evidence that Deputy Valle's summary of Maran's statements, even if incorrect, prevented an adversarial trial or thwarted Hamilton from fully defending his case. Moreover, because Hamilton had the recordings of Maran's interviews prior to trial, any "fraud" in Deputy Valle's interpretation of those recordings could have been raised then. *See Reid v. State*, 305 Md. 9, 17 (1985) ("Intrinsic fraud, which includes forged documents and perjured testimony, is not a basis for vacating an enrolled decree[.]").

Nevertheless, we cannot say that Deputy Valle's summary had any discernable effect on Hamilton's ability to receive a fair trial, as that evidence was not presented at trial. Instead, Maran gave direct testimony implicating Hamilton in the shooting. On cross-examination, Maran was impeached with various other inconsistent statements he had

provided to the police. Thus, the issue of Maran's credibility vis-à-vis his statements to the police was presented to the jury.

We are equally persuaded that Hamilton's evidence is 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 a verdict." *Argyrou v. State*, 349 Md. 587, 600-01 (1998) (footnotes omitted) (emphasis added); *See also Love, supra*, 95 Md. App. at 432 ("Without this definitional predicate, the relief provided by subsection (c) is not available, no matter how compelling the cry of outraged justice may be."). The burden of establishing due diligence rests with the defendant. *Id.* at 431 ("The moving party must *establish* to the satisfaction of the court that he acted with due diligence[.]") (emphasis in original). In *Argyrou, supra*, the Court of Appeals explained that

> the concept of due diligence has both a time component and a good faith component; the movant for a new trial must not only act in a timely fashion in gathering evidence in support of the motion, but he or she must act reasonably and in good faith as well. Thus, we believe that, as used in Maryland Rule 4-331(c), "due diligence" contemplates that the defendant act reasonably and in good faith to obtain the evidence, in light of the totality of the circumstances and the facts known to him or her.

*Argyrou*, 349 Md. at 604-05.

Here, the record shows that Hamilton had access to the recordings of Maran's statements prior to trial and could have had them transcribed then. Although Hamilton claims that he submitted requests to the State and the Office of the Public Defender to have the recordings transcribed, we are not persuaded that those efforts constituted "due diligence." Clearly, having the recordings transcribed by a third-party was not an

impossibility, as Hamilton did just that in preparation for his motion to strike. Hamilton has provided no explanation as to why he did not pursue that option in time to move for a new trial pursuant to Rule 4-331(a). Accordingly, Hamilton has failed to meet his burden of due diligence.

In conjunction with his general averment that the circuit court erred in denying his motion, Hamilton presents several other arguments, which we shall discuss briefly. First, Hamilton argues that the circuit court applied an "incorrect" legal standard when it relied on Maryland Rule 2-535, rather than Rule 4-331, in support of its decision. Second, Hamilton argues that the court, on two occasions during the hearing on his motion, improperly limited his cross-examination of a witness. Finally, Hamilton argues that a transcript of Maran's interviews did exist prior to trial but was not disclosed.

None of Hamilton's arguments have merit. The circuit court's reliance on Rule 2-535 was inconsequential, as "the words 'fraud, mistake or irregularity' mean the same thing in Rule 4-331(b) as in Rule 2-535(b)[.]" *Minger v. State*, 157 Md. App. 157, 172 (2004). Moreover, we cannot say that the court abused its discretion in limiting Hamilton's cross-examination at the motion's hearing, as the court found the two questions at issue to be argumentative and more appropriate for the argument portion of the hearing. *Churchfield v. State*, 137 Md. App. 668, 682 (2001) (discussing the breadth of the trial court's discretion in controlling the scope of cross-examination). Lastly, Hamilton's assertion that transcripts of Maran's interviews somehow existed prior to trial was directly refuted by the State, which, during the hearing, stated that no such transcripts existed. The court accepted the State's proffer as credible and incorporated it in its findings, and we perceive no error in

that decision. *L.W. Wolfe Enterprises, Inc. v. Maryland National Golf, L.P.*, 165 Md. App. 339, 343 (2005) (discussing the "clearly erroneous" standard of review).

**JUDGMENT OF THE CIRCUIT COURT FOR CECIL COUNTY AFFIRMED. COSTS TO BE PAID BY APPELLANT.**