Circuit Court for Baltimore City
Case No. 119175017

UNREPORTED

IN THE APPELLATE COURT

OF MARYLAND

No. 801

September Term, 2022

QUARRAN ALLEN

v.

STATE OF MARYLAND

Nazarian,
Tang,
Wright, Alexander, Jr.
(Senior Judge, Specially Assigned),

JJ.

PER CURIAM

Filed: April 26, 2023

*At the November 8, 2022, general election, the voters of Maryland ratified a constitutional amendment changing the name of the Court of Special Appeals of Maryland to the Appellate Court of Maryland. The name change took effect on December 14, 2022.

Following a bench trial in the Circuit Court for Baltimore City, Quarran Allen, appellant, was convicted of second-degree murder, first-degree child abuse resulting in the death of a child under thirteen years of age, first-degree assault, and reckless endangerment. His sole claim on appeal is that the court abused its discretion in denying his motion for a new trial. For the reasons that follow, we shall affirm.

At trial, the State presented evidence that while appellant was caring for his infant daughter, she sustained multiple injuries, resulting in her death. Appellant's convictions were based primarily on: (1) his inconsistent statements to the police about the cause of the child's injuries, and (2) the testimony of Dr. Pamela Ferreira, who conducted the autopsy of the child and concluded that the manner of her death was a homicide, and not consistent with appellant's explanation that he had accidentally dropped her when he fell down the stairs.

Fourteen days after the court rendered its verdict, and prior to sentencing, appellant filed a motion for new trial. In that motion he claimed that the trial judge's actions during the trial had given rise to an appearance of "bias and prejudice."[1] First, appellant noted that after Dr. Ferreira had concluded her testimony, the court asked her to "approach the bench" regarding a matter "unrelated to your testimony." Appellant acknowledged that he

[1] Appellant raised several other contentions in this motion for a new trial, including that the verdict was against the weight of the evidence and that the trial court had abused its discretion by allowing Dr. Ferreira to testify that the victim's injuries were due to the victim being assaulted by appellant. Appellant does not contend that the court erred in denying his motion for a new trial for these reasons. Therefore, we do not address those claims on appeal. *See Diallo v. State*, 413 Md. 678, 692-93 (2010) (noting that arguments that are "not presented in a brief or not presented with particularity will not be considered on appeal" (quotation marks and citation omitted)).

did not know what was said at the bench, but he claimed that this constituted an "improper ex-parte communication between a crucial state's witness and the trial judge."

Appellant then contrasted that exchange with the court's interaction with his mother, who testified as a defense witness. Specifically, during cross-examination, appellant's mother testified that she would not be able to remember certain statements that she had made to one of the investigating detectives, even if she was shown a video of that conversation to refresh her recollection. Because of that testimony, the court did not allow the State to play the video. The court noted, however, that "there is an issue if you may understand as to credibility." Although it was not a jury trial, appellant nevertheless argued that this created an appearance of bias against his mother as a witness. Appellant further contended that the appearance of bias was strengthened by the fact that, after his mother got off the stand, the court refused her request to be allowed to remain in the courtroom, because it was conceivable that she could be recalled as a witness, despite the State giving no indication that it might need to do so. Following a hearing, the court denied appellant's motion for a new trial. This appeal followed.

On appeal, appellant contends that the court abused its discretion in denying his motion for a new trial because the "trial court's conduct gave rise to an appearance of impropriety, denying [him] a fair trial." The State counters that this issue is not preserved for appeal. The State further asserts that even if preserved, the court properly exercised its discretion in denying the motion because it was untimely and because appellant failed to establish a sufficient factual basis to overcome the strong presumption of impartiality in Maryland. We agree with the State.

Maryland Rule 4-331, governing motions for a new trial, is structured so that relief "is available on three progressively narrower sets of grounds but over the course of three progressively longer time periods." *Isley v. State*, 129 Md. App. 611, 623 (2000) (quotation marks and citation omitted), *overruled on other grounds, Merritt v. State*, 367 Md. 17, 24 (2001). The Rule provides, in pertinent part:

> (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.** The court has revisory power and control over the judgment to set aside an unjust or improper verdict and grant a new trial:
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> * * *
>
> (2) in 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:
>
> (1) on motion filed within one year after the later of (A) the date the court imposed sentence or (B) the date the court received a mandate issued by the final appellate court to consider a direct appeal from the judgment or a belated appeal permitted as post-conviction relief[.]

Md. Rule 4-331 (a–c).

Here, appellant filed his motion for a new trial fourteen days after the verdict. Consequently, to the extent he was requesting a new trial pursuant to Maryland Rule 4-331(a), the motion was untimely. *See Jeffries v. State*, 113 Md. App. 322, 332 (1997) (noting that "[e]xcept for the special case of newly discovered evidence, the ten-day filing

deadline [in Rule 4-331(a)] is an absolute"). Moreover, subsection (c) of the Rule, only applies in situations where newly discovered evidence is alleged, which it was not in this case. This leaves only subsection (b), which is also inapplicable. That subsection authorizes a court "to set aside an unjust or improper verdict" on a motion filed within 90 days of sentencing. But it is generally limited to errors that occur "on the face of the record (the pleadings, the form of the verdict) and not with the evidence or the trial proceedings[.]" *Ramirez v. State*, 178 Md. App. 257, 280 (2008) (quotation marks and citation omitted), *cert. denied*, 410 Md. 561 (2009). *See also Isley*, 129 Md. App. at 624–629 (discussing in detail the limited concerns under which a person may bring a new trial motion under Rule 4-331(b)). Appellant's motion was not based on errors on the face of the record. Rather, it addressed alleged errors that occurred during the trial proceedings.[2] Consequently, the trial court did not abuse its discretion in denying appellant's motion for a new trial, as it was not properly filed under any of the foregoing subsections of the Rule.

In any event, the claims raised in appellant's motion for a new trial are not preserved for appeal. Appellant did not object when the court asked to speak with Dr. Ferreira following her testimony; when the court made the comment regarding his mother's credibility; or when the court asked his mother to remain sequestered following her testimony.[3] And appellant never alleged that the court was acting in a biased manner or

[2] Notably, appellant has never claimed that he was seeking a new trial pursuant to subsection (b) of Rule 4-331.

[3] At most, defense counsel indicated that appellant's mother wanted to remain in the courtroom to watch the rest of the trial. However, when the court stated that it was asking

requested the judge to recuse himself at any point prior to the verdict. In short, the contentions appellant raises on appeal were all raised for the first time in his motion for a new trial.

This Court has recognized that raising an error for the first time in a motion for a new trial is not a substitute for preservation. *Isley*, 129 Md. App. at 619 (noting that if trial errors are "not preserved for appellate review by timely objection at trial, raising them in a Motion for a New Trial and then appealing the denial of that motion is not a way of outflanking the preservation requirement"); *Torres v. State*, 95 Md. App. 126, 134 (1993) ("A post-trial motion cannot be permitted to serve as a device by which a defendant may avoid the sanction for nonpreservation."). Consequently, even if the motion for a new trial had been properly filed, we would not consider his claims, raised for the first time in that motion, on appeal.

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

her to remain sequestered because she might be recalled as a witness, defense counsel did not object or make any further argument. Rather, he stated "understand."