Circuit Court for Baltimore City
Case No. 115363026

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 2369
September Term, 2016
and
No. 222
September Term 2017

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RONALD CORNISH

v.

STATE OF MARYLAND

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CONSOLIDATED CASES

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Berger,
Arthur,
Eyler, James R.,
(Senior Judge, specially assigned)

JJ.

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Opinion by Eyler, James R., J.

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Filed: January 8, 2018

After a jury trial in the Circuit Court for Baltimore City, Ronald Cornish, appellant, was found guilty of first-degree murder, use of a firearm in the commission of a crime of violence; wearing, carrying, or transporting a handgun in a vehicle; wearing, carrying, or transporting a handgun on his person; and, possession of a regulated firearm after having been convicted of a disqualifying crime. After the verdict, Cornish filed, in proper person, a motion for new trial. Appellant's attorney later filed an "addendum" to that motion.

On January 9, 2017, appellant was sentenced to life for the first-degree murder conviction, to run consecutive to a life sentence he was serving in Georgia, a consecutive term of twenty years for use of a firearm in the commission of a crime of violence, and five years without the possibility of parole for possession of a regulated firearm. The sentences for the wearing, carrying, or transporting convictions were merged. At the sentencing hearing on January 9, 2017, the court denied the motion for new trial. A notice of appeal was filed on the same day as the sentencing.

On January 20, 2017, appellant filed, in proper person, a "Motion for Reconsideration For New Trial." Six days later, his attorney filed a motion for new trial pursuant to Maryland Rule 4-331(b) and (c) and *Brady v. Maryland*.[1] In a written order filed on March 16, 2017, the circuit court denied that request for a new trial. A second notice of appeal was filed on March 28, 2017. Both appeals were consolidated.

## QUESTIONS PRESENTED

Cornish presents the following four questions for our consideration:

[1] *See Brady v. Maryland*, 373 U.S. 83 (1963).

I. Did the circuit court err in excluding relevant evidence and in admitting irrelevant and unfairly prejudicial evidence?

II. Is the evidence sufficient to sustain the convictions where the testimony of the accomplice was not adequately corroborated?

III. Did the circuit court abuse its discretion in denying defense counsel's motion to postpone the sentencing?

IV. Did the circuit court err in denying defense counsel's motion for a new trial without a hearing?

For the reasons set forth below, we shall affirm.

## FACTUAL BACKGROUND

On November 8, 2012, the body of Warren Boone was found in a wooded area behind an apartment building located in the 5100 block of Goodnow Road in Baltimore City. From information discovered near Mr. Boone's body, the police contacted Rachelle Bellot, Mr. Boone's girlfriend and the mother of his child. Ms. Bellot, who shared a home with Mr. Boone, acknowledged that he sold drugs. On the night of November 7, 2012, Mr. Boone told Ms. Bellot that he was going to meet a person named Black for the purpose of conducting a drug transaction and would then return home. Although Ms. Bellot did not know Mr. Black, she had met him on a prior occasion.

Mr. Boone had two cell phones, one of which was used for arranging drug transactions. According to Ms. Bellot, Mr. Boone kept his cell phone near him or in his car. Mr. Boone drove a silver Lexus that was registered to his mother.

Mr. Boone did not return home on the night of November 7th and did not respond to Ms. Bellot's calls and text messages. The following day, Ms. Bellot called Mr. Boone, but

again he did not answer. Starting at about 2 p.m., Ms. Bellot's calls to Mr. Boone went directly to his voice mail box.

Later on November 8th, Mr. Boone's mother was advised by Baltimore County police officers that Mr. Boone's car had been found "engulfed in flames" a couple of miles from her house. Ms. Bellot went to the home of Mr. Boone's mother, and while there, detectives arrived and informed them that Mr. Boone was dead and his body had been found. Mr. Boone's mother advised the officers about Mr. Boone's car.

Ms. Bellot eventually returned to her home and saw that it had been ransacked. According to Ms. Bellot, Mr. Boone kept a key to their house on his key chain. Ms. Bellot provided detectives with a photograph of Mr. Black that she had obtained from Facebook.

A search of cell phone records connected Mr. Boone's cell phone to Richard Pope who lived on Bessemer Avenue in Dundalk. In 2012, Mr. Pope was dating appellant's sister, Sheena Eaton. For some time, Mr. Pope, Ms. Eaton, and appellant lived together in a house on Bessemer Drive in Dundalk. At some point prior to the events in this case, Mr. Pope moved out and stayed with a friend near the Bumper to Bumper auto shop at the intersection of West Belvedere and St. Charles Avenues in Baltimore City. Mr. Pope was friends with Mr. Boone, and they sold marijuana together. On November 7, 2012, Mr. Pope contacted Mr. Boone and told him that appellant, whom he referred to as "Ro," had some marijuana to sell. Mr. Pope made arrangements for appellant and Mr. Boone to meet at the Bumper to Bumper auto shop between 7 and 7:30 p.m.

Prior to trial, Mr. Pope told police that his involvement in the events giving rise to this case ended when he introduced appellant and Mr. Boone. At trial, however, he

acknowledged that he was present when Mr. Boone was killed. He testified that he and appellant left Dundalk in a burgundy colored van driven by Melissa Malott, a friend of appellant's. They drove to the location to meet Mr. Boone. Mr. Boone arrived in a silver Lexus. The three shook hands, shared a drink, and then drove in Mr. Boone's Lexus to the place where the drug transaction was to take place. Mr. Boone drove, Mr. Pope sat in the front passenger seat, and appellant sat behind Mr. Pope. Appellant told Mr. Boone where to go. They eventually arrived at the parking lot of an apartment complex that had a wooded area behind it. After Mr. Boone parked the car, Mr. Pope exited the vehicle. As he did, he heard a fight or struggle and then two gunshots. Appellant then got out of the car and Mr. Pope saw that he had a silver revolver. Appellant asked Mr. Pope to help him, and the two dragged Mr. Boone's body out of the car and into the wooded area. Appellant went through Mr. Boone's pockets and took some money. Mr. Pope and appellant then jumped into the Lexus and drove back to appellant's home on Bessemer Avenue. Later that night, Mr. Pope took a bus back to the Bumper to Bumper auto shop.

The next day, appellant picked up Mr. Pope in the Lexus with another car following him. Mr. Pope did not know who was driving the vehicle that was following the Lexus. Mr. Pope, who testified that he "was scared," got in the car that was following appellant, and the three drove to Mr. Boone's apartment. They knew Mr. Boone's address from mail that was in the Lexus. They entered the apartment using Mr. Boone's key. They searched for drugs and money, but did not find any. After leaving the apartment, they drove past the crime scene, saw the police, and decided to get rid of the Lexus. They retrieved the Lexus, drove to a gas station and purchased gasoline, and then went to a wooded area in

West Baltimore and set the Lexus on fire. The following day, appellant told Mr. Pope that he was going back to Atlanta, Georgia.

At the time of trial, Mr. Pope was incarcerated for robbery with a deadly weapon and possession with intent to distribute in another case. He claimed that he decided to tell the truth about what happened because it was the "[r]ight thing to do." He acknowledged that the prosecutor had advised him that the State had no intention of prosecuting him for anything that he said on the stand during Cornish's trial.

Baltimore City Police Detective Brian Kershaw obtained appellant's phone number from Mr. Pope. At trial, Baltimore City Police Detective Albert Rotell, an expert in the field of call detail records, call analysis, and cell phone plotting, plotted the times of calls, and the locations of certain cell phone towers, using Mr. Boone's phone number ending in 4363, Mr. Pope's phone number ending in 7819, and the phone number Mr. Pope had for appellant, which ended in 6693 but had a subscriber named Jessica Griffith from South Carolina. Detective Rotell's testimony established, *inter alia*, that, on November 7, 2012, the three cell phones communicated with cell phone towers near the Goodnow Road apartment complex.

The parties stipulated that, in November 2012, appellant had a prior conviction that prohibited him from possessing a regulated firearm.

We shall include additional facts as necessary in our discussion of the questions presented.

## DISCUSSION

### I.

Appellant contends that the circuit court erred in prohibiting him from questioning Mr. Pope about the length of a sentence he was serving for robbery with a dangerous weapon and in allowing Mr. Pope's testimony that he was not the person who possessed the weapon in that crime. On direct examination, the State preemptively offered evidence that Mr. Pope was serving sentences for robbery with a deadly weapon and possession with intent to distribute a controlled dangerous substance. On cross-examination, defense counsel sought to challenge Mr. Pope's character and his propensity "[t]o be in the game." The trial judge cautioned defense counsel, as follows:

> THE COURT: Okay. If I let you go into this, just be aware, when you start to open the door, and she then comes back to try and rehabilitate him, you may be opening the door to more – if you're going to say that this is the defense, maybe then you're going to open the door in terms of okay, so he's so scared of the Defendant because this, this and this because now we're going into the practice of drug dealing, and I can't – I mean, I'll try – but once you start opening it be –
>
> DEFENSE COUNSEL: Okay.
>
> THE COURT: -- just be careful. Okay?
>
> PROSECUTOR: Your Honor, there wasn't really a foundation set for her to go into this line of questioning. I understand that she can use it, but she still hasn't –
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> THE COURT: I'm going to let her –
>
> PROSECUTOR: Okay.
>
> THE COURT: -- give her some leeway because he did give three statements. Okay. But if you try –
>
> DEFENSE COUNSEL: I don't know if he can read –

THE COURT: -- to impeach him – she – you come -- you can come right back and rehab, and then all this stuff – I'm fearful in terms of opening the door –

DEFENSE COUNSEL: Okay.

THE COURT: -- why he's really scared. And you're going to have to accept whatever answers then. Okay?

DEFENSE COUNSEL: Okay. But why would I open the door to why he's really scared if I'm asking him a question about what his practice is about getting drugs from people?

THE COURT: Okay. I'll let you. Thank you.

Defense counsel proceeded to ask Mr. Pope a series of questions about statements he had made to the police, including the following:

[DEFENSE COUNSEL]: And do you recall telling the detectives that sometimes if your back was up against a wall, you would sort of talk people out of their drugs so that you could sell them and then pay them later?

[Pope]: Yes. I recall telling them that. That was me as a hustler. When I say talk people out of their drugs, talk them out of their money for real.

Q. Talking them out of their money.

A. Yeah.

Q. Okay. Okay. Now do you remember another time when you were interviewed by the detectives stating that you were really not built for jail?

A. Yeah. I could remember saying that.

Q. And that you were not built for robbery?

A. Right.

Q. Okay. But you are in – actually, you're in prison now?

A. Yes.

Q. And you got locked up in 2014; does that sound – or excuse me, 2012?

A. No.

Q. Have you been out since 2012?

A. I got locked up in 2013.

Q. 2013. Okay. And you're doing a 10-year

[PROSECUTOR]: Objection.

THE COURT: Sustained.

Thereafter, on redirect examination, the following occurred:

[PROSECUTOR]: And [Defense Counsel] also mentioned that you're not built for robberies [sic]. Did you make that statement to the police back in 2012?

[Pope]: I probably have. Yes.

[PROSECUTOR]: Okay. Now Mr. Pope, this is – I only want a yes or no answer to this question. You are currently doing time for robbery with a deadly weapon meaning that you used a weapon in some manner to rob someone. In that case, were you the person who had the weapon that you got convicted with –

[DEFENSE COUNSEL]: Objection.

THE COURT: Overruled.

[PROSECUTOR]: Yes or no?

[Pope]: No.

Appellant argues that the trial court erred in excluding evidence of the length of Mr. Pope's sentence and in admitting Mr. Pope's testimony that he was not the person who had the weapon in the robbery with a deadly weapon case for which he was serving a prison sentence. In support of those arguments, appellant directs our attention to *State v. Giddens*,

335 Md. 205 (1994), for the proposition that "only the name of the conviction, the date of the conviction, and the sentence imposed may be introduced to impeach a witness." *Giddens*, 335 Md. at 222. Also relying on *Giddens*, appellant argues that in deciding whether to admit a conviction for impeachment purposes, a trial court "should never conduct a mini-trial by examining the circumstances underlying the prior conviction." *Id.* Appellant contends that the jury should not have been permitted to consider Mr. Pope's "minimization of his role in the armed robbery" and that the error in admitting that testimony "was not harmless because it tended to unfairly corroborate the picture he was trying to paint of himself throughout this case[,]" specifically, that he "was not 'built for robbery,' he did not set up Mr. Boone to be robbed, he did not know there was a gun, and he was shocked when Mr. Cornish shot Mr. Boone." We disagree and explain.

We review decisions to admit or exclude evidence under an abuse of discretion standard. *Ruffin Hotel Corp. of Md. v. Gasper*, 418 Md. 594, 619-20 (2011). Relevant evidence is "evidence having any tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence." Md. Rule 5-401. Whether a particular item of evidence should be admitted or excluded "is committed to the considerable and sound discretion of the trial court." *Ruffin*, 418 Md. at 619 (internal quotation marks omitted). A trial court abuses its discretion only when its decision lies outside the zone of reasonable disagreement. *Brown v. Daniel Realty Co.*, 409 Md. 565, 601 (2009). We review a trial court's determination of relevancy for abuse of discretion. *Ruffin*, 418 Md. at 619. Relevant evidence is generally admissible, however, "trial judges do not have discretion to admit irrelevant evidence."

*State v. Simms*, 420 Md. 705, 724 (2011); Md. Rule 5-402. Whether evidence is relevant is a legal question that we review *de novo*. *Id.* at 725. Evidence may be excluded if "the danger of unfair prejudice, confusion of the issues, or misleading the jury, or by considerations of undue delay, waste of time, or needless presentation of cumulative evidence" substantially outweighs its probative value. Md. Rule 5-403.

**A. Length of Sentence**

Appellant's contention that the trial court abused its discretion in refusing to allow him to question Mr. Pope about the length of the sentence he was serving is without merit. In *Giddens*, the Court of Appeals merely recognized that "only the name of the conviction, the date of the conviction, and the sentence imposed may be introduced to impeach a witness." *Giddens*, 335 Md. at 222. Although *Giddens* permits such questioning, there is nothing in that case that requires a trial judge to permit questioning about the length of a sentence. In the instant case, the trial judge exercised, and did not abuse, her discretion in refusing to admit testimony that Mr. Pope was serving a ten year sentence which, as the State points out, is just half of the maximum sentence of twenty years. *See generally* Md. Code (2012 Repl. Vol.), § 3-403(b) of the Criminal Law Article. Even if that decision was an abuse of discretion, however, our review of the record convinces us that such error is harmless beyond a reasonable doubt because evidence of the sentence, which was unremarkable, would not have affected the verdict. *Dorsey v. State*, 276 Md. 638, 659 (1976)("unless a reviewing court, upon its own independent review of the record, is able to declare a belief, beyond a reasonable doubt, that the error in no way influenced the verdict, such error cannot be deemed 'harmless' and a reversal is mandated.").

### B. Redirect Examination

Nor did the trial court abuse its discretion in allowing Mr. Pope's testimony that he was not the person who carried the deadly weapon. A trial judge has broad discretion to regulate redirect examination. *Daniel v. State*, 132 Md. App. 576, 583 (2000). During cross-examination, defense counsel interrogated Mr. Pope about his statement that he was not "built" for armed robberies and contrasted that statement with his conviction for robbery with a deadly weapon. In doing so, defense counsel opened the door for the State to rehabilitate Mr. Pope by explaining the apparent inconsistency between his statement and his criminal record. *See Mitchell v. State*, 408 Md. 368, 388 (2009)("The 'opened door' doctrine is based on principles of fairness and permits a party to introduce evidence that otherwise might not be admissible . . . to respond to certain evidence put forth by opposing counsel.").

## II.

Appellant next contends that Mr. Pope was an accomplice to the crimes committed against Mr. Boone and that his testimony was not sufficiently corroborated to warrant submission of the case to the jury. Appellant argues that cell phone records for the phone number ending in 6993 were connected to a subscriber named Jessica Griffith, there was no evidence to connect him to Ms. Griffith, and only Mr. Pope identified that number as belonging to appellant. Moreover, he claims that although maps showed that phone number communicating with cell phone towers in the general vicinity of addresses pertinent to the investigation, there was no evidence that it communicated with any tower close to the Goodnow apartment complex around the time of the murder. Our review of the record suggests otherwise.

It is well established that a person accused of a crime may not be convicted on the uncorroborated testimony of an accomplice. *Ayers v. State*, 335 Md. 602, 637 (1994). The Court of Appeals has commented that

> [n]ot much in the way of evidence corroborative of the accomplice's testimony has been required by our cases. We have, however, consistently held the view that while the corroborative evidence need not be sufficient in itself to convict, it must relate to material facts tending either (1) to identify the accused with the perpetrators of the crime or (2) to show the participation of the accused in the crime itself. If with some degree of cogency the corroborative evidence tends to establish either of these matters, the trier of fact may credit the accomplice's testimony even with respect to matters as to which no corroboration was adduced.

*Woods v. State*, 315 Md. 591, 616-17 (1989)(quoting *Brown v. State*, 281 Md. 241, 244 (1977)).

The record before us contains ample evidence corroborating Mr. Pope's testimony. Ms. Malott, who claimed to be a friend of appellant's, testified that she gave him and his friend "Black" a ride in her red minivan in November 2012. The murder occurred on or about November 7 or 8, 2012. Ms. Bellot testified that she knew Mr. Pope as "Black," and she provided Detective Kershaw with a photograph of Mr. Pope with Mr. Boone. Ms. Malott also testified, as did Mr. Pope, that after the murder appellant moved to Atlanta, Georgia. In addition, Mr. Pope testified that Mr. Boone's Lexus was set on fire, and officers discovered that vehicle just after the fire had been extinguished. This evidence was sufficient corroboration of Mr. Pope's testimony.

**III.**

Appellant next contends that the trial court abused its discretion in denying defense counsel's request to postpone the sentencing. In considering this issue, we recognize that the decision to grant a postponement is within the sound discretion of the trial judge and we shall

not disturb that decision absent an abuse of discretion. *Ware v. State*, 360 Md. 650, 706 (2000). We have described an abuse of discretion as "where no reasonable person would take the view adopted by the court," and when the court acts "without reference to any guiding rules or principles." *North v. North*, 102 Md. App. 1, 13 (1994). Accordingly, reversal of a trial court's decision to deny a postponement "occurs only in exceptional instances where there was prejudicial error." *Das v. Das*, 133 Md. App. 1, 31 (2000).

Some procedural history is helpful in considering Cornish's contention. The jury reached its verdict on November 3, 2016, and appellant's sentencing was originally set for November 30, 2016. At all times prior to the sentencing hearing, appellant was represented by a public defender. On November 16, 2016, appellant, proceeding in proper person, filed a motion for new trial. Thereafter, on November 28th, the public defender filed an addendum to appellant's motion for new trial. Appellant, who was in federal custody, was not transported to his sentencing hearing on November 30, and as a result, the hearing was rescheduled for January 9, 2017.

On December 19, 2016, a private attorney, whom we shall refer to as panel counsel, filed a notice of appearance on behalf of appellant. The notice of appearance indicated that panel counsel had been appointed by the Office of the Public Defender to represent appellant. On the same day, the Supervising Public Defender for the Felony Trial Unit filed a motion to strike the appearance of the Office of the Public Defender as counsel for appellant. A few days later, on December 21st, panel counsel filed a motion requesting the court to postpone both the hearing on the motion for new trial and the sentencing. Panel counsel again asked the trial court to enter his appearance as counsel for appellant and proffered that the Office of the Public Defender "had a conflict in continuing to represent Mr. Cornish, and paneled the case to" him.

Panel counsel stated that he received the case file on December 21st, that there was a lot of material to review, and that although he had ordered the trial transcripts they would not be completed before the January 9, 2017 sentencing date. The court did not rule on panel counsel's postponement request prior to January 9th. On that date, the parties appeared in court and panel counsel informed the judge that he was not prepared to proceed with sentencing because the trial transcripts had not been completed and he did not know the facts of the case.

The State objected to the request for postponement arguing that the court had neither stricken the appearance of the public defender originally assigned to represent appellant nor entered the appearance of panel counsel. The State also argued that the motion for new trial filed by appellant and the addendum filed by his public defender were untimely, that the original public defender should handle the sentencing, and that all of the objections made with regard to representation by the original assistant public defender involved issues of ineffective assistance of counsel that could be addressed in a post-conviction proceeding.

The court concluded that it had not "hear[d] any good reason" why the Office of the Public Defender could not continue to represent appellant or to support the decision to assign the case to panel counsel. The court determined that the assistant public defender initially assigned to represent appellant was "technically" still "the attorney of record for this disposition." The court called that attorney and asked her to come to the courtroom to represent appellant at the sentencing.

The assistant public defender arrived in the courtroom along with her supervisor, the Deputy District Public Defender for the City of Baltimore. The court advised the assistant public defender that her appearance had not been stricken. The Deputy District Public Defender explained that her office had determined that there was a conflict of interest between

appellant and the assistant public defender and that she had directed that the case be assigned to private counsel. She asserted that she neglected to tell the office secretary that the assistant public defender's appearance should be stricken, although the record reflects that a request to strike the appearance of the assistant public defender was, in fact, filed on December 19, 2016 by the Supervising Public Defender of the Felony Trial Unit.

The court explained its decision to deny the request for postponement as follows:

> THE COURT: So I understand your argument and I think that [Cornish] has more than adequate – I think he has one of the best assistant public defenders your office has. So – and she's the one that has known this case and has lived with this case since – for more than a year. January 28th, 2016 was the arraignment date. So in terms of disposition, no one knows this case better than [the assistant public defender].
>
> In terms of what some assistant public defender thinks about the transcript that he read regarding this case. I don't know – I don't think they were here every day of this trial and watched this trial from the inception to the conclusion. [The assistant public defender] did. She's been here from the very beginning. She is a great attorney and even if this issue arose November 23rd, that's even before our first disposition date which was November 30, 2016.
>
> If it was of utmost importance, then that assistant federal public defender could have filed something way before. I mean, this is the second disposition date. The first one was November 30th. You have –not you, but the Office or the Federal Public Defender found this so – so all important. If it had been filed in November, even the beginning of December. I'm sure we wouldn't be at this juncture but this is now the eleventh hour and everyone is present. So – and we have the most well informed public defender here for disposition.
>
> [DEPUTY DISTRICT PUBLIC DEFENDER]: The only thing I can tell the Court is to the extent that it was not properly vetted before that or that [the assistant public defender] was not given the opportunity for adequate supervision to vet this issue once the pro se motion was filed, that falls upon my office and ultimately on me.
>
> And so – Your Honor, I was ineffective in getting that done, I was. And if that caused the situation now to be, you know, an unacceptable delay, obviously, you know the Court's going to make a ruling but I'm asking the Court to please err on the side of caution in this matter.

> THE COURT: Right. Well, so that's what makes you such a great supervisor because you take – you take the responsibility when it's not even yours. But I think at this juncture, I am going to have to decline. Okay. And if after I sentence – if the higher courts find, you know, they'll remand it back. It's find. It's completely fine.
>
> But at this juncture, because everyone has been present. Everybody has had so much notice about this, I am going to deny your request and have [the assistant public defender] represent Mr. Cornish. Just for purposes of this disposition today.

The assistant public defender proceeded to represent appellant at the sentencing hearing. She began by advising the court that she was "unqualified in representing" appellant, that she had a conflict in the case, and requested that her appearance be withdrawn. The judge denied that request, found that it did not see any conflict, that there was "no attorney in the State of Maryland that knows this particular case better," and that it was "only fair" for counsel to continue to represent appellant until the conclusion of the disposition. The assistant public defender began to present argument in mitigation, but was interrupted by appellant who spoke on his own behalf. Thereafter, the assistant public defender declined the court's invitation to say more, and the judge imposed sentence.

We reject appellant's contention that the trial court's refusal to postpone the sentencing hearing to allow panel counsel time to prepare constituted an abuse of discretion. The record is clear that the court did not grant a motion to strike the appearance of the assistant public defender. The court heard argument about the decision to panel the case to a private attorney, but also considered that it was the second date for the sentencing and that five members of the victim's family were present in the courtroom. The assistant public defender, who had tried the case, was present in the courtroom. As the State recognizes, "it would have been highly inappropriate for the trial court to have interfered" with the relationship between appellant and

his assistant public defender "at that stage of the proceedings." *Ware v. State*, 360 Md. 650, 706 (2000). Notwithstanding appellant's contention that there was a conflict of interest that required the case to be paneled to private counsel, there is nothing in the record before us to suggest that the trial court abused its discretion in denying the request to postpone the sentencing hearing.

**IV.**

Appellant's final contention is that the circuit court erred in denying his motion for new trial without a hearing as required by Maryland Rule 4-331(c) and (f).[2] On November 16,

[2] Maryland Rule 4-331 provides, in relevant 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.** (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:
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> * * *
>
> (B) in the circuit courts, on motion filed within 90 days after its imposition of sentence 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 of (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; and

2016, appellant filed, in proper person, a motion for new trial arguing, in part, that he was denied due process because the State withheld favorable evidence in violation of *Brady v. Maryland*, 373 U.S. 83 (1963), specifically, a plea agreement or deal with Mr. Pope that was made prior to appellant's trial. Appellant's assistant public defender filed an addendum to his motion for new trial in which she asserted that, on the morning of the first day of trial, she became aware that Mr. Pope was changing his testimony and offering an entirely different version of events than had been disclosed previously, but failed to request a postponement for the purpose of preparing properly to cross-examine him.

At the hearing on January 9, 2017, the court declined to postpone the hearing on the motion for new trial and denied the motion for new trial. The court offered to reconsider the motion for new trial if the defense refiled it, but announced that "[t]oday is the day for disposition."

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> (2) on motion filed at any time if the motion is based on DNA identification testing not subject to the procedures of Code, Criminal Procedure Article, § 8-201 or other generally accepted scientific techniques the results of which, if proved, would show that the defendant is innocent of the crime of which the defendant was convicted.
>
> * * *
>
> (f) **Disposition.** The court may hold a hearing on any motion filed under this Rule. Subject to section (d) of this Rule, the court shall hold a hearing on a motion filed under section (c) if a hearing was requested and the court finds that: (1) if the motion was filed pursuant to subsection (c)(1) of this Rule, it was timely filed, (2) the motion satisfies the requirements of section (e) of this Rule, and (3) the movant has established a prima facie basis for granting a new trial. The court may revise a judgment or set aside a verdict prior to entry of a judgment only on the record in open court. The court shall state its reasons for setting aside a judgment or verdict and granting a new trial.

On January 26, 2017, panel counsel filed a motion for new trial pursuant to Maryland Rule 4-331(b) and (c) and *Brady*. Thereafter, the defense filed a motion to disqualify the State's Attorney, a reply to the State's response to the motion for new trial, and a motion to supplement with newly discovered evidence. The defense requested a hearing on those motions and made clear that it was not asking the court to reconsider its denial of appellant's *pro se* motion, but was seeking relief pursuant to Md. Rule 4-331(b) and (c). By order dated March 15, 2017, the court, without a hearing, denied appellant's motion for new trial, motion to disqualify the State's Attorney, and motion to supplement with newly discovered evidence.

Maryland Rule 4-331(f) provides that a hearing on a motion for new trial is mandatory if certain criteria are met:

> [T]he court shall hold a hearing on a motion filed under section (c) ["newly discovered evidence"] if a hearing was requested and the court finds that: (1) . . . [the motion] was timely filed, (2) the motion satisfies the requirements of section (e) of this Rule, and (3) the movant has established a prima facie basis for granting a new trial.

Appellant argues that his motion was filed within one year of the sentencing, was in writing; was based on newly discovered evidence; contained a description of that evidence, specifically, the circumstances under which Mr. Pope changed his statement; included a request for a hearing; and set forth a prima facie basis for the grant of a new trial. In light of those facts, he maintains that he was entitled to a hearing on his motion. We disagree and explain.

Maryland Rule 4-331(c) provides for the grant of a new trial on the basis of newly discovered evidence only if certain prescribed requirements are met. *Argyrou v. State*, 349 Md. 587, 600-01 (1998). 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

returned a verdict. *Id.* In addition, the evidence offered as newly discovered must be material to the result and that inquiry is a threshold question. *Id.* at 601 (citing *Stevenson v. State*, 299 Md. 297, 302 (1984)). Thus, it must be more than "merely cumulative or impeaching." *Id.* (and cases cited therein). It must be shown that the newly discovered evidence may well have produced a different result, that is, there was a substantial or significant possibility that the jury's verdict would have been affected. *Id.* (quoting *Yorke v. State*, 315 Md. 578, 588 (1989)).

In the case at hand, the motion for new trial was timely filed, satisfied the requirements of section (e), and included a request for a hearing. The "newly discovered evidence" referenced by appellant did not, however, establish a prima facie basis for granting a new trial as there was no substantial or significant possibility that the jury's verdict would have been affected. After appellant's trial, panel counsel discovered that Mr. Pope had been interviewed by police on three occasions prior to trial although the State had disclosed to defense counsel notes from only two of those interviews. The undisclosed third interview contained substantially the same information as the other two interviews, specifically, an acknowledgement by Mr. Pope that he had arranged for Mr. Cornish and Mr. Boone to meet for the purpose of engaging in a marijuana deal. Until the first day of trial, Mr. Pope consistently denied that he was present when the drug transaction or the murder took place. In addition, appellant's claim of newly discovered evidence based on Mr. Pope's change in his version of events on the day of trial, which arguably impeached the testimony of the lead detective and Mr. Pope, did not constitute "newly discovered evidence" under Md. Rule 4-

331(c). As a result, the circuit court did not err in denying the motion for new trial.

**IN APPEAL NOS. 2369 AND 222, JUDGMENTS OF THE CIRCUIT COURT FOR BALTIMORE CITY AFFIRMED; COSTS IN BOTH CASES TO BE PAID BY APPELLANT.**