Circuit Court for Anne Arundel County
Case No. C-02-CR-17-001145

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 73

September Term, 2018

TYRONE DARRELL MANN

v.

STATE OF MARYLAND

Graeff,
Beachley,
Eyler, Deborah S.
(Senior Judge, Specially Assigned),

JJ.

Opinion by Eyler, Deborah S., J.

Filed: January 28, 2019

A jury in the Circuit Court for Anne Arundel County convicted Tyrone Darrell Mann, the appellant, of attempted second-degree murder and reckless endangerment against victim James Boone; second-degree assault and reckless endangerment against victim Jasmine Parker; and use of a handgun in the commission of a crime of violence and various handgun-related offenses. After merging certain convictions for purposes of sentencing, the court imposed sentences totaling forty years in prison.

In this timely appeal, Mann poses three questions for review, which we have rephrased slightly:

I. Did the circuit court abuse its discretion by granting a postponement beyond the *Hicks* date?

II. Did the trial court abuse its discretion by not allowing defense counsel to use a police report to refresh witness Jasmine Parker's recollection?

III. Was the evidence legally insufficient to support the convictions?

For the reasons to follow, we conclude that there was no abuse of discretion and the evidence was legally sufficient, and therefore shall affirm the judgments.

FACTS AND PROCEEDINGS

The pertinent events took place on the evening of April 27, 2017, in Severn. That night, Jasmine Parker and James Boone went to the apartment of Toya Bond, Parker's cousin. Parker and Boone had two children together. Parker recently had learned that Bond was pregnant and that she was claiming that Boone was the father. Mann was friends with all of them. Apparently, Boone was upset about Bond's claim and wanted to have a DNA test performed. Boone also was upset with Mann for posting comments on Facebook

about Bond's pregnancy. To add to the mix, Mann was claiming – falsely, according to Parker – that he and Parker were involved in a sexual relationship.

When Parker and Boone arrived at Bond's apartment, arguments quickly ensued among them, Bond, and Mann. Parker and Boone, who were not armed, were standing outside the apartment on the sidewalk; Mann was standing at the doorway of the apartment; and Bond was standing inside the apartment by an open window. Parker and Bond were arguing through the window. At the same time, Boone and Mann were arguing near the door, with Boone challenging Mann to "come outside," and "be a man." When Parker started to move closer to the window Bond was standing behind, Mann went inside the apartment and closed the door behind him.

The shooting began moments later. Parker, who was called by the State at trial, testified: "As I was going to the window, that's when [Mann] reached for the gun out of the cabinet, and had came running [sic], shooting the gun." Parker clarified that she could see inside the apartment because the window was open and the blinds were pulled up. She then saw Mann exit the apartment, shooting a black gun, while Bond and Terrell Rollins (another person inside the apartment) yelled, "Empty the whole clip in 'em." Parker further testified that, at around the same time the shooting started, the glass window where Bond had been standing shattered.

After the gunshots started, Boone grabbed Parker from behind and told her to run. Mann shot at them as they tried to get away. Mann ran past Parker and continued to shoot at Boone, who was by that point in front of Parker. Parker testified that she heard two

gunshots when Mann was behind both her and Boone, and another four gunshots after Mann had passed her and was shooting at Boone.

Boone fell to the ground. Mann stopped shooting and ran off, getting inside the rear passenger seat of a car, behind the driver. According to Parker, the car had four doors and was either silver, black, or gray. Parker realized that Boone had suffered a gunshot wound to his back.[1] She used her cell phone to call 911 for help. The call came into the police station at 10:16 p.m. Detective Kevin King, of the Anne Arundel County Police Department, responded to the scene and called for assistance for Boone right away. Parker identified the shooter as "Tyrone," *i.e.*, Mann, and described him as a black male, 28 years old. Fire personnel also arrived.

Corporal Devon Simmons, also of the Anne Arundel County Police Department, was on Elvaton Drive, driving to the scene, when he heard the dispatcher report that "a light colored vehicle had been seen leaving the area that was possibly connected to the shooting." He saw a light colored four door vehicle "going a lot faster than all of the other cars in the area." The driver turned right without stopping at a stop sign and then pulled over, turning on the car's hazard lights. Corporal Simmons, who had not yet initiated a traffic stop, decided to pull in behind the car, a gold Buick. He then activated the emergency lights on his marked patrol car to signal that he was behind the Buick. A

[1] Parker testified that Boone survived the shooting, but was paralyzed from the waist down. Boone did not testify at trial.

(Continued…)

black male – later identified as Mann – immediately jumped out of the driver's side rear door of the Buick and ran across the road. He was wearing a white shirt and jeans.[2] When Corporal Simmons got out of his police car to chase Mann, the Buick drove off. Mann was running, holding his left arm near his waistband. Corporal Simmons testified that, in his experience, that indicated that "there is something in that general area that they are trying to keep from falling out. Most times it is some sort of contraband." Mann jumped over a fence near a pumping station and ran into the woods. Officers in a helicopter responded within five to six minutes and detected a heat source approximately 15 to 20 yards from the wood line near the fence. Several officers, with a K-9 assistant, entered the woods, tracked Mann down, and placed him in custody. The police located a revolver containing five spent shell casings next to the fence Mann had jumped over.

On the night of these events, one of Bond's neighbors was inside her apartment when she heard loud arguing outside. She held her cell phone up to the window and recorded what was happening outside, to show her husband why she did not feel safe living in that neighborhood. Although the neighbor was not able to identify anyone in the video, the video captured images of a man shooting a gun.[3]

[2] Parker testified that Mann was wearing a white "wife-beater" shirt and blue jeans at the scene. Detective Keith Doyle testified that he spoke to another witness to the crime, Brittany Smith, who informed him that she heard three gunshots and saw two men chasing Boone, and that one of the men was wearing a white shirt. Smith did not testify at trial.

[3] The exhibit was not included with the record on appeal.

DNA evidence obtained from the revolver revealed a mixture of DNA from at least two people, with Mann being the major contributor. There was no forensic or ballistics evidence recovered to compare with the revolver.

We shall include additional facts as necessary to our discussion of the issues.

DISCUSSION

I.

Postponement Beyond *Hicks* Date

Under Md. Code (2001, 2018 Repl. Vol.), section 6-103 of the Criminal Procedure Article ("CP"), and Rule 4-271, in a criminal case, a trial date must be scheduled no later than 180 days after the earlier of the defendant's initial appearance in circuit court or the appearance of counsel. CP section 6-103 and the rule both require that changes to the trial date only be made by the administrative judge, or that judge's designee, and for "good cause shown." This 180-day rule is called the "*Hicks* date," from *State v. Hicks*, 285 Md. 310 (1979). The critical postponement for purposes of determining whether there has been a *Hicks* date violation is the postponement that took the trial date beyond the 180 days. *State v. Brown*, 355 Md. 89, 98 (1999); *accord Thompson v. State*, 229 Md. App. 385, 398 (2016). An administrative judge's decision to grant a postponement beyond the *Hicks* date is reviewed for abuse of discretion. *State v. Brown*, 355 Md. at 98; *see also Thompson*, 229 Md. App. at 398 ("[T]he appellant has the burden to demonstrate '"either a clear abuse of discretion or a lack of good cause as a matter of law."'") (citations omitted).

Mann contends the circuit court abused its discretion by postponing his trial beyond the *Hicks* date. The facts relevant to that issue are as follows. On May 19, 2017, Mann was indicted in the Circuit Court for Anne Arundel County. His attorney entered his appearance in the circuit court on May 23, 2017. Mann did not appear in the circuit court before then. Thus, the 180th day after May 23, 2017 was November 19, 2017. But, because November 19, 2017 was a Sunday, the *Hicks* date was November 20, 2017. *See* Md. Rule 1-203 (computation of time).[4]

Trial originally was scheduled to begin in the circuit court on October 3, 2017. On September 29, 2017, the State moved to postpone the trial date because Corporal Simmons, a State's witness, was out on medical leave and would not be back by then. The motion was granted and trial was reset for November 9, 2017, which was still before the *Hicks* date.

On November 9, 2017, the parties appeared in court and the State requested another postponement. The court held a hearing on that request. The prosecutor explained that the injury Corporal Simmons had suffered – which was why the trial date previously had been postponed – was a ruptured disk in his back. He was still on medication and for that reason it was impossible for him to testify that day (November 9). The prosecutor proffered that

[4] In his brief, Mann incorrectly calculates the *Hicks* date. He starts the 180 days on April 28, 2017, the date he made his first appearance in District Court. Because that date preceded his indictment and his first appearance in the circuit court, it is not the proper triggering date for *Hicks*. *See White v. State*, 223 Md. App. 353, 374 (2015) ("[O]nly proceedings in the circuit court – not the district court – trigger the 180-day clock") (emphasis and citations omitted).

Corporal Simmons was the officer who, in the course of driving to the scene of the shooting, had seen a vehicle speeding in the direction away from the scene and had seen Mann emerge from that vehicle, flee, and jump over a fence at the location where a recently used handgun was found.

The court granted the postponement request. It found good cause, noting that Corporal Simmons was a "crucial witness" for the State and that of course the State had not anticipated that he would be injured. The judge cautioned that the trial date should not be moved too far out, and the prosecutor remarked, ". . . if this happens again, if this officer is still out, I will go forward without him at the next trial date. But I, the hope is that within the next couple of weeks." Mann himself started to complain that that must mean there was no basis for a postponement to begin with, and defense counsel joined in, saying the same. The prosecutor explained that she had hoped that on November 8 (the day before trial), Corporal Simmons would be cleared by his doctor to testify, but that had not happened; the prosecutor further explained that he should be available for the next trial date, however. For that reason, the prosecutor did not expect to be asking for another postponement if for some reason the officer remained unavailable.

The court set the new trial date for December 12, 2017 – 22 days after the *Hicks* date. Ultimately, the trial began on December 12, as scheduled, when the jury was selected. *See Markham v. State*, 189 Md. App. 140, 167 (2009) (for purposes of Rule 4-271 and CP § 6-103 (a), the trial begins upon the start of *voir dire*).

Mann argues that the court abused its discretion by postponing his trial beyond the *Hicks* date because, "If the prosecutor was willing and able to proceed to trial without the witness at a future date, then she should have been able to proceed without him on the November 9, 2017 date." The State responds that the brief postponement that was granted was rationally based and was not an abuse of discretion. We agree with the State.

In evaluating good cause, the Court of Appeals has explained that "the trial judge (as well as an appellate court) shall not find an absence of good cause unless the defendant meets the burden of demonstrating either a clear abuse of discretion or a lack of good cause as a matter of law." *State v. Fisher*, 353 Md. 297, 310 (1999) (quoting *State v. Frazier*, 298 Md. 422, 454 (1984)). Moreover, "a determination of what constitutes good cause is dependent upon the facts and circumstances of each case as the administrative judge, in the exercise of his discretion, finds them to be." *State v. Toney*, 315 Md. 122, 132 (1989). A court abuses its discretion

> "where no reasonable person would take the view adopted by the [trial] court, or when the court acts without reference to any guiding rules or principles. It has also been said to exist when the ruling under consideration appears to have been made on untenable grounds, when the ruling is clearly against the logic and effect of facts and inferences before the court, when the ruling is clearly untenable, unfairly depriving a litigant of a substantial right and denying a just result, when the ruling is violative of fact and logic, or when it constitutes an untenable judicial act that defies reason and works an injustice."

Nash v. State, 439 Md. 53, 67 (quoting *North v. North*, 102 Md. App. 1, 13-14 (1994)), *cert. denied*, 135 S. Ct. 284 (2014) (some quotations omitted).

It is well established that a postponement due to the unavailability of a State's witness may be with good cause. *See Choate v. State*, 214 Md. App. 118, 139-40 (concluding that the acting administrative judge did not abuse his discretion in finding good cause to postpone trial due to the unavailability of a DNA analyst), *cert. denied*, 436 Md. 328 (2013). "Even when continuances were subject to a more stringent standard, 'extraordinary cause' as opposed to 'good cause,' this Court recognized that continuances could be granted when a necessary witness is absent because the fact that a witness is missing constitutes an extraordinary cause for delaying a trial." *Marks v. State*, 84 Md. App. 269, 278 (1990), *cert. denied*, 321 Md. 502 (1991).

In this case, Corporal Simmons was unavailable to testify on the November 9, 2017 trial date because he had sustained a back injury, was taking medications for his injury, and had not yet been cleared by his doctor to return to work, including to testify at trial. The State's proffer was that Corporal Simmons had seen Mann exit a car from the back seat on the driver's side, flee, and jump over a fence during a foot pursuit; and that the handgun with Mann's DNA was found at the location where Corporal Simmons saw Mann climb over the fence. We are persuaded that the court reasonably found that Corporal Simmons was a crucial witness for the State and that there was good cause for the postponement. The prosecutor's surmise that she might go forward with the trial without Corporal Simmons if he remained unavailable to testify does not mean he was not an important witness whose unavailability was good cause for the November 9, 2017 postponement.

The court properly exercised its discretion to find good cause to grant the postponement beyond the *Hicks* date.

II.

Present Recollection Refreshed

Jasmine Parker was a State's witness. As recited above, she testified on direct that immediately before the shooting she looked through the apartment window, from the outside, and saw Mann, who was inside, grab a gun from a cabinet. On cross-examination, she acknowledged that, in fact, she did not know what object Mann had grabbed. However, immediately after he grabbed an object from the cabinet she heard someone say, "he has a gun," and she saw him "with the gun as he was coming past me shooting, and we locked eyes with each other, that's when I seen [sic] the gun." On further cross-examination, Parker reiterated that she did not actually see Mann grab a gun from the cabinet, but she saw the gun "when he came outside."

As noted above, when Parker was arguing with Bond, she (and Boone) were outside and Bond was inside, next to a window that then shattered. On direct, Parker testified that she had not kicked the window. On cross, she acknowledged that she had given the police a written statement in which she had said she "did not know if I kicked the window." Defense counsel showed Parker her statement and she testified that it said, "as Mr. Boone had grabbed me, my foot had hit the window, and it had broke [sic]." Parker further testified that she had never indicated that the window had been shattered by gunfire, explaining: "[A]s Mr. Mann had come out of the building shooting the gun I said that's

when I heard the glass shatter, as I was being grabbed by Mr. Boone saying that he has a gun." Parker disagreed that her written statement was inaccurate, testifying that she was "not sure if I hit the window."[5]

Defense counsel then questioned Parker about the conversation she had had with Detective King at the scene:

> [DEFENSE COUNSEL]: One moment, Your Honor. Do you remember telling an officer, speaking to [Detective] King at the scene?
>
> [PARKER]: Yes.
>
> [DEFENSE COUNSEL]: Do you remember him asking you what happened?
>
> [PARKER]: Yes.
>
> [DEFENSE COUNSEL]: And that, you told him that you were having an argument with [Bond] through the window. That you kicked the window and it shattered. And then, you guys started to talk [sic] about?
>
> [PARKER]: No, we didn't walk away, we ran away. Because that's when they yelled Mr. – he has a gun. And we ran as he was shooting.

At that point, defense counsel approached the bench holding Detective King's police report. The following took place:

> [DEFENSE COUNSEL]: This is the police report not written by the witness. But, it does say what the witness said. I'm asking to show her this to refresh her recollection, to see if she remembers actually saying what she said to the police officer is different than what she is saying right now.
>
> [PROSECUTOR]: And that's –
>
> [DEFENSE COUNSEL]: It's impeachment.

[5] Detective King later testified that he spoke to Bond and Parker, and Parker said she had shattered the glass window. He also testified that Parker never told him the blinds were up or that she had seen Mann pull a gun out of a cabinet.

[PROSECUTOR]: – Your Honor, I think that to refresh her recollection is only if she says she doesn't remember.

THE COURT: Yeah.

[PROSECUTOR]: And this isn't a –

THE COURT: Yeah.

[PROSECUTOR]: – I mean, he's asked her about the statement she made. But, this is a report written by someone else.

THE COURT: I don't think that's allowed.

[DEFENSE COUNSEL]: Even for impeachment purposes?

THE COURT: Yeah, um-um, um-um.

[DEFENSE COUNSEL]: Okay.

THE COURT: No.

On appeal, Mann contends the trial court abused its discretion by not allowing defense counsel to use Detective King's police report to refresh Parker's recollection. He argues that anything can be used to refresh a witness's recollection, and the thing that is used is not admitted into evidence, and here the trial court "apparently failed to recognize that [Mann's] defense counsel was trying to" use the police report to refresh Parker's recollection and ruled that just because the report was written by someone else (i.e., not by Parker) it could not be used to refresh her recollection.

The problem with this argument, as the State points out, is that it ignores the actual basis for the court's present recollection refreshed ruling. The court accepted the argument advanced by the prosecutor, which was that although virtually anything can be used to

refresh a witness's recollection, it first must be established that the witness has exhausted his or her memory, that is, cannot recall the subject matter to be able to answer the question posed.

Rule 5-612 governs the use of "a writing or other item to refresh memory[.]" *See Farewell v. State*, 150 Md. App. 540, 576 ("Present recollection refreshed or revived is the use of a writing or object to refresh a witness'[s] recollection so that person may testify about prior events from present recollection") (citation omitted), *cert. denied*, 376 Md. 544 (2003). A witness's recollection may be refreshed by a report prepared by someone other than the witness, even if the witness has never before seen the report. *See Baker v. State*, 35 Md. App. 593, 601-02 (1977). As long as the report "ignite[s] the flash of accurate recall," it may be used to "accomplish the revival which is sought." *Id*. at 602.

"Whether a witness's recollection may be refreshed by a writing or some other means depends on the particular facts and circumstances of the individual case." *Germain v. State*, 363 Md. 511, 531 (2001). This determination "is committed to the sound discretion of the trial judge." *Oken v. State*, 327 Md. 628, 672, *cert. denied*, 507 U.S. 931 (1992). A party seeking to refresh a witness's recollection typically lays a foundation by establishing both the need to do so and that the material used to refresh reasonably can be expected to accomplish that goal. *See generally* 6 McLain, *Maryland Evidence* § 612:1, at 744-45 (3d ed. 2013) ("Because whether there appears to have been some memory lapse depends upon the circumstances of each case, it is in the court's discretion whether to permit refreshing recollection"). In the absence of such justification, the trial court may

exercise its discretion to preclude the inquiry.

Here, that foundation was not laid. It was clear from the answers Parker was giving that she was not suffering a failure of memory. She remembered what had happened and what she had said to Detective King, but her testimony was, to defense counsel's thinking, inconsistent with what Detective King had written in his report. Without this foundation of lack of memory, nothing could be used as present recollection refreshed because there was no recollection that needed to be refreshed.

As the State also points out, given the discrepancy that defense counsel was complaining about between Parker's testimony and Detective King's report, defense counsel in fact was trying to use the report to impeach Parker, not to refresh her memory. Though counsel enjoys wide berth when seeking to refresh a witness's recollection, any attempt to do so must be reasonably calculated to elicit relevant testimony. Counsel may not, under the guise of refreshing a witness's recollection, deliberately attempt either (i) "'to arouse the passions of the jurors, so that an objective appraisal of the evidence [i]s unlikely'" or (ii) to introduce that memory stimulant as *de facto* evidence. *Germain*, 363 Md. at 537 (citation omitted); *see also Elmer v. State*, 353 Md. 1, 13 (1999) ("It is misconduct for a lawyer to inject inadmissible matters before a jury by asking a question that suggests its own otherwise inadmissible answer, 'hoping that the jury will draw the intended meaning from the question itself . . . .'" (citation omitted)). "'If the record show[s] that the refreshing material was deliberately [so] used . . . , there would be reversible error.'" *Germain*, 363 Md. at 537 (quoting *United States v. Socony-Vacuum Oil Co.*, 310

U.S. 150, 234 (1940)). It is in that context that the court added, beyond its ruling on present recollection refreshed, that Detective King's report could not be used because it was not prepared by Parker. That ruling is not even raised as an issue on appeal.

The trial court did not abuse its discretion by ruling that Detective King's report could not be used to refresh Parker's recollection.

III.

Sufficiency of the Evidence

Finally, Mann contends the evidence at trial was legally insufficient to establish that he was the person who shot the gun, and therefore to support any of his convictions. The State responds that any inconsistencies merely affected the weight of the evidence and not its sufficiency. Again, we agree with the State.

When considering a challenge to the sufficiency of the evidence, we ask "'whether after viewing the evidence in the light most favorable to the prosecution, any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt.'" *Grimm v. State*, 447 Md. 482, 494-95 (2016) (quoting *Cox v. State*, 421 Md. 630, 656-57 (2011)); *accord Jackson v. Virginia*, 443 U.S. 307, 319 (1979). "[W]e defer to the fact finder's 'resolution of conflicting evidence, and, significantly, its opportunity to observe and assess the credibility of witnesses.'" *Riley v. State*, 227 Md. App. 249, 256 (quoting *State v. Suddith*, 379 Md. 425, 430 (2004)), *cert. denied*, 448 Md. 726 (2016). Moreover, it is "the role of the jury to resolve any conflicts in the evidence and assess the credibility of the witnesses." *Gupta v. State*, 227 Md. App. 718, 746 (2016) (citations omitted), *aff'd*,

452 Md. 103, *cert. denied*, 138 S.Ct. 201 (2017). In doing so, the jury is free to "accept all, some, or none" of a witness's testimony. *Correll v. State*, 215 Md. App. 483, 502 (2013), *cert. denied*, 437 Md. 638 (2014).

The evidence viewed in the light most favorable to the State showed the following. When Parker and Boone went to Boyd's apartment, Mann met them at the doorway. An argument ensued, culminating in Mann's act of retrieving an item from a cabinet. Whether or not Parker actually saw that that item was a handgun, at the moment of its retrieval, was inconsequential because Mann immediately emerged from the apartment firing a black revolver. Parker was unequivocal in her testimony that she witnessed Mann fire several shots at her and at Boone, striking Boone in the back. The evidence of a single eyewitness is sufficient to sustain a conviction. *See Branch v. State*, 305 Md. 177, 184 (1986) ("The issue of credibility, of course, is one for the trier of fact"); *Braxton v. State*, 123 Md. App. 599, 671 (1998) ("Maryland courts have long recognized that an 'identification by the victim is ample evidence to sustain a conviction.'") (citing *Branch, supra*); *accord Reeves v. State*, 192 Md. App. 277, 306 (2010).

The evidence further showed that Mann immediately fled the scene in the backseat, driver's side, of a nearby vehicle. At a location close to the scene, Corporal Simmons saw a speeding vehicle close in description to the getaway car come to a stop, and witnessed a man wearing clothes nearly matching those Mann had been wearing exit the backseat, driver's side, and run into the nearby woods, jumping a fence. Mann was found hiding in those woods. Mann's flight from the scene and from law enforcement was relevant

evidence of his consciousness of guilt. *See State v. Coleman*, 423 Md. 666, 674 (2011) ("Flight by itself is not sufficient to establish the guilt of the defendant, but is merely a circumstance to be considered with other factors as tending to show a consciousness of guilt and therefore guilt itself") (citation omitted). A revolver containing DNA matching Mann's profile was found along the path of his flight, by the fence he had jumped over. That revolver contained five spent shell casings, suggesting that it had been recently fired.

All of this evidence was sufficient to sustain all of Mann's convictions.

In disputing the sufficiency of the evidence, Mann primarily relies on *Kucharczyk v. State*, 235 Md. 334 (1964). There, the victim and the key witness for the State at trial was "a mentally deficient 16-year-old boy." *Id.* at 336. At times, his testimony supported the State's theory that he had been sodomized; at other times, his testimony contradicted the State's theory, and suggested that no crime had occurred. (Twice on direct examination he testified that "nothing happened in the public lavatory" and once on cross-examination he testified that "nothing happened in the garage." *Id.* at 336-37). The defendant was convicted of assault and battery, but the Court of Appeals reversed, holding that where a witness testifies about a critical fact and then gives directly contradictory testimony about the same critical fact, the fact finder should not be allowed to speculate and select one or the opposite version of that fact.

We have characterized the holding in *Kucharczyk* as "an extreme one which will be applied but rarely." *Fuget v. State*, 70 Md. App. 643, 654 (1987). *See also Smith v. State*, 302 Md. 175, 183 (1985) (ruling that "[t]he type of confusion and inconsistency contained

in [the testimony given] at trial neither rises to, nor even approaches, the level of unreliability which would place it within the narrow ambit of the principle set forth by the Court in *Kucharczyk*").

As Judge Moylan wrote eight years after *Kucharczyk* was decided:

> Trial testimony frequently is replete with contradictions and inconsistencies, major and minor. It is the quintessential approach of the Anglo-American trial system to rely fundamentally upon cross-examination, upon the introduction of prior inconsistent statements, upon impeachment devices generally, upon sequestration, upon oral argument to ferret out and to highlight such contradictions if and when they exist. . . . The extreme and peculiar facts of *Kucharczyk* produced a limited departure from that fundamental approach. Some appreciation of the limited utility of the so-called *Kucharczyk* doctrine may be gathered from the fact that it was never applied pre-*Kucharczyk* in a criminal appeal and it has never been applied post-*Kucharczyk* in a criminal appeal.

Bailey v. State, 16 Md. App. 83, 93-94 (1972). Indeed, in the close to fifty years since *Bailey* was written, there still has not been another case in which the *Kucharczyk* holding has been applied. If ever there is another such case, the case at bar – in which a victim gave eyewitness testimony that the defendant, a person she knew, shot her and another victim, the defendant fled the scene, and DNA evidence linked the defendant to the gun he was seen using – is not that case.

JUDGMENTS AFFIRMED.
COSTS TO BE PAID BY THE APPELLANT.