Circuit Court for Caroline County
Case No. C-05-CR-20-000060

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

Nos. 737 & 1510

September Term, 2021

RUSBEL EMIDELIO GALVEZ-MAZARIEGOS

v.

STATE OF MARYLAND

Graeff,
Ripken,
Raker, J.,
(Senior Judge, Specially Assigned),

JJ.

Opinion by Raker, J.

Filed: July 19, 2022

Appellant was convicted in a bench trial, Judge Jonathan G. Newell presiding, in the Circuit Court for Caroline County of sexual offense in the second degree, sexual offense in the third degree, and assault in the second degree.[1] In this consolidated appeal, we consider two questions:

> "1. Did the circuit court err in limiting cross-examination of K.A.'s mother about whether, approximately a year before the charges in this case, she threatened to make allegations against appellant?
>
> 2. Did the circuit court err in summarily denying appellant's motion for a new trial without holding a hearing?"

We shall hold that the circuit court did not err in limiting the cross-examination of K.A.'s[2] mother. We shall vacate the judgment of the circuit court denying appellant's motion for a new trial and remand the case to enable the court to hold a hearing on the motion for a new trial.

I.

The Grand Jury for Caroline County indicted appellant for the offenses of first-degree rape, attempted first-degree rape, second-degree rape, attempted second-degree rape, second-degree sex offense, third degree sex-offense and second-degree assault.

[1] The jury acquitted appellant of the following: one count of rape in the second degree, one count of attempted rape in the second degree, and five counts of sexual offense in the third degree. The trial court granted appellant a judgment of acquittal on the following: one count of rape in the first degree and one count of attempted rape in the first degree.

[2] Because the victim is a minor, and to protect her privacy, we shall refer to her by her initials.

Appellant waived his right to a jury trial and elected to proceed to trial before Judge Jonathan G. Newell. Judge Newell found appellant guilty of sexual offense in the second degree, sexual offense in the third degree, and assault in the second degree. The court sentenced appellant to a term of incarceration of twenty years, ten years suspended, followed by five years' supervised probation.[3]

The State accused appellant of sexually assaulting his niece K.A. over a span of approximately two years in the town of Marydel. During that time, K.A. was between the ages of six and eight.

K.A., who was in high school at the time of trial, testified that she used to live in a house in Marydel with her Aunt Blanca, Blanca's husband (appellant), her mother Eva, her younger brother Daniel, her cousin Marcos, and her cousin Shanee. At the home, she stayed in a room with her mother and brother.

K.A. testified that the incidents involving sexual contact by appellant started when she was six or seven years old. She indicated that there were multiple incidents, but she described two in detail. She testified that the first incident occurred at night, when she went downstairs to prepare a milk bottle for her little brother. She stated that after she finished preparing the bottle, appellant pulled her over to a couch, put a blanket over them, pulled

[3] The trial judge imposed the following sentences of incarceration: twenty years, ten years suspended, for the sexual offense in the second degree and five years, concurrent, for the sexual offense in the third degree. The trial judge merged for sentencing purposes the assault in the second degree into the above-listed crimes.

down her pants and underwear, and touched an area near her vagina with something wet. K.A. asserted that she broke away, pulled up her pants and underwear, and ran upstairs.

K.A. described a second incident that happened when Aunt Blanca, K.A.'s mother, and appellant were downstairs with her. She testified that, when she went upstairs to retrieve a shoe for someone her aunt was caring for, appellant followed her. She stated that, after she found the shoe in her aunt's bedroom, appellant shut the door, sat on the bed, placed her on top of him, "started moving [her] around to where his penis was located," and placed his fingers in her vagina. She recalled that Aunt Blanca entered the room while she was on appellant's lap, took her by the wrists, and led her out of the room. K.A. testified that incidents similar to this one happened multiple times. K.A. also stated that appellant threatened to get her and her family kicked out of the house if she told anyone, and that he tried to bribe her with candy to get her to stay quiet. She testified that the abuse stopped when she started going to school.

On cross-examination, K.A. testified that her stepfather Alfredo abused her sexually and physically, that Alfredo had been deported, and that Alfredo tried to contact her in 2015 and 2017. She remembered that when she was in the fourth grade, she moved to Barclay Road, in Queen Anne's County, where her mother's boyfriend (Juan Suar), brother, and a cousin lived. She denied being abused by Suar or anyone else when she lived on Barclay Road. She denied telling Blanca in 2018 that she wanted to move back in with her because Mr. Suar, who had been fighting with K.A.'s mother, was abusing her. She acknowledged, however, that, after moving to the residence on Barclay Road, they

moved back in with appellant and Aunt Blanca a second time. K.A. testified that, although Mr. Suar would sometimes beat her mother, she did not call police because "they loved each other and . . . they would resolve it later."

Eva A., K.A's mother, testified for the State. At the time of trial, she lived with Juan (her boyfriend of seven years) and her brother-in-law, Jose. She verified that Blanca is her sister, that Blanca is appellant's wife, and that she and K.A. lived with appellant and Blanca in a home in Marydel for "a while." She testified that K.A. received therapy because she was cutting herself, but K.A. would not tell her mother why she did so. Eva did not learn about the charged abuse from her daughter but learned about the abuse allegations involving appellant and Alfredo (K.A.'s stepfather) from a detective. After speaking to the detective, Eva spoke to K.A., who said that the perpetrators threatened to kill Eva or force them out of the house if K.A. disclosed the abuse. Eva testified also that while living with appellant, K.A. would make bottles for her baby brother at night after Eva returned home from work.

On cross-examination, Eva denied that her boyfriend Juan committed any abuse, that she threatened to call immigration authorities on Blanca for not paying a phone bill, and that she ever moved back in with her sister and the appellant after leaving their home. When defense counsel confronted Eva with alleged text messages suggesting to the contrary, Eva claimed that the messages in question were not hers. Finally, defense counsel questioned Eva about her immigration status and whether she was trying to stay in the country by either obtaining a special visa or by getting help from appellant.

Eva testified further on cross-examination that appellant raped her at work by "put[ting] something in her drinking water," that her workplace supervisors saw that appellant treated her "very badly," and that, overall, her supervisors were "afraid" of appellant because he was "very aggressive." After defense counsel questioned Eva about her relationship with Blanca, the State objected when defense counsel asked: "Ma'am, what's your current immigration status in this country?" The court sustained the objection but followed with a bench conference for defense counsel to proffer why he wanted to ask that question. At the bench, defense counsel proffered that Eva was "undocumented," that she was subject to a final order of removal, that she had an order of supervision, that her asylum case had been denied, and that she was pending deportation.

Defense counsel argued to the court as follows:

> "The only way that [Eva] can stay in this country is this U-VISA, being a victim of a crime or having her daughter being the victim of a crime. There's no other way for her to be in this country. She has ample motive to continue with this case, to get a conviction in this case, Your Honor."

The following exchange then occurred:

> "THE COURT: Well, I mean basically aside from whatever incident happened at work or what the cocaine and the pictures, I haven't seen any of that, but really the only thing she's testified to is I have a daughter and we lived here at one point and then some policemen came and talked to me about something and that's pretty much it. I don't see her as being any particularly involved . . . .
>
> [DEFENSE COUNSEL]: Your Honor, it . . .
>
> THE COURT: Oh, thank you. Thank you.

> [DEFENSE COUNSEL]: It interests, it interests her for this case to continue. It interests her to have pushed this case in the very beginning, Your Honor, because as Your Honor's aware, the parent of a victim can become legal through this case.
>
> THE COURT: It, it may be, but I haven't heard about her pushing anything. So, if you want to establish, honestly she seems about as uninterested and uninvolved and as I can imagine just from what I've heard so far . . . . "

The State argued that Eva's immigration status "doesn't have any relevance as far as [K.A.]'s status, what happened to her." Defense counsel countered that his immigration-related inquiry was probative of K.A.'s motive to lie. He explained that "the motive in this case is the fact that this mother has no status. The child knows that the mother has no status." The trial court responded, "Well, you didn't ask [K.A.] about that."

After hearing argument, the judge reversed his earlier ruling and permitted defense counsel to explore Eva's immigration status, stating as follows:

> "THE COURT: . . . I mean, look, I guess at this point I've heard. This is a court trial. So I don't know that there's any harm either way. Well, I'm going to, and I will note that at the moment it does not appear anybody in the entire country much is getting deported these days. But, in any event, I will, I will overrule the objection and allow you to discuss it, but again, I've got to tell you aside from what frankly until a minute ago I assumed was surprising news that there was a rape allegation involving your client.
>
> [DEFENSE COUNSEL]: Yes.
>
> THE COURT: So, if that was in fact a surprise it runs afoul of the old adage of knowing the answer before you ask the question, although I will concede that pulling answers out of this particular witness is about like pulling teeth and I understand that that happens. So, I don't know how much

> weight I'm going to give any of that, but I will allow you to follow up the best you can.
>
> [THE STATE]: We, how, so how far are we going into this line of questioning? Because I don't want it to go too over the rails if Your Honor's (unintelligible).
>
> THE COURT: Well, I just don't, you know, like, I said, I mean she is not exactly, I mean she hasn't even testified that she had anything disclosed to her by her daughter or that she saw anything, so honestly her relevance with regard to the charges that I'm hearing today is fairly limited to some items that don't appear controversial other than maybe if they went back for another stay or something."

Defense counsel continued with cross-examination. Eva acknowledged that, at the time of trial, she had "a permit" and "a final order of deportation against her," but that she was still represented by a lawyer in the matter. She claimed that she did not know the status of her appeal and that she was unaware that she could try to get a new VISA that would help her stay in the country. Eva denied believing that appellant would help her get "papers" if he stayed in a relationship with her.

Defense counsel turned then to questions suggesting that Eva pursued a relationship with appellant to stay in the country:

> "[DEFENSE COUNSEL]: Isn't it true that you thought Mr. Emidelio would leave his wife and be with you?
>
> [EVA]: I would be crazy to go with him the way he beats people. He's crazy.
>
> ***
>
> [DEFENSE COUNSEL]: You understand, you know that Mr. Emidelio is here on a permanent residence, correct?
>
> [EVA]: I know that he got his papers, but that's all I know. I don't know anything else.

> [DEFENSE COUNSEL]: And isn't it true that you thought that he would give you your papers if he was with you?
>
> [EVA]: No, not at any point.
>
> [DEFENSE COUNSEL]: Isn't it true that you threatened Mr. Emidelio back in 2018 if he didn't stay with you?
>
> [EVA]: No, not at all. Not ever."

Defense Counsel then asked another question about whether Eva "threatened" appellant:

> "[DEFENSE COUNSEL]: You never threatened, you never threatened to . . .
>
> [EVA]: No, no.
>
> [DEFENSE COUNSEL]: If you could allow me to ask the question.
>
> [EVA]: Okay.
>
> [DEFENSE COUNSEL]: *Isn't it true that you threatened to make allegations against him in 2018 if he didn't return to you?*
>
> [THE STATE]: Objection.
>
> THE COURT: I'm going to sustain. I think we've gone about as far down that rabbit hole as we're going to get.
>
> [DEFENSE COUNSEL]: No further questions, Your Honor."

The defense called two witnesses in appellant's behalf—Gennie Ramirez and Blanca A. The court found appellant guilty. In announcing his verdict, Judge Newell noted the following regarding his assessment of Eva's testimony:

> ". . . . I did not find that her testimony was all that particularly damning with regard to this Defendant. I don't think she said that she observed any type of drinking or physical abuse or didn't note any inappropriate, whatever that might mean, physical contact, so honestly she didn't do too much more than establish that she and her daughter lived [in the appellant's house] for several years and that Mr., you know, the relative relationships of everybody. But I honestly did not get a whole lot out of her. *So, impeached she may have been, but it didn't really detract a whole lot from the State's case or anybody's case as far as the Court is concerned."*

The court imposed sentence and on July 22, 2021, appellant noted an appeal. That appeal was docketed in this Court as Case No. 737 in the September 2021 Term.

On September 9, 2021, a federal complaint filed in United States District Court for the District of Maryland accused Judge Newell of committing one count of "sexual exploitation of a child" "on or about" September 28, 2014. When federal authorities went to Judge Newell's residence on September 10 to arrest him, they discovered that he had died by apparent "self-inflicted gunshot."

On September 28, 2021, trial counsel filed a "Motion for New Trial Based on Newly Discovered Evidence," stating as follows:

> "[T]he Defendant . . . pursuant to Maryland Rule 4-331(c), hereby respectfully requests a new trial in the above-captioned matter and for reasons states:
>
> 1. That on June 28, 2021, Defendant was convicted of Sex Offense—2nd degree, Sex Offense 3rd Degree, and Assault—2nd degree;
>
> 2. That said conviction[s] came after a one-day Bench Trial;
>
> 3. That Judge Jonathan G. Newell (hereinafter "Judge Newell") was the presiding Judge;

4. That Defendant was sentenced to 20 years (suspend all [but] 10 years);

5. That unbeknownst to undersigned counsel and Defendant, at the same time Judge Newell was also allegedly recording and fondling underage children as well as other lewd acts; See Exhibit A.[4]

6. That said allegations are similar to the charges of which Defendant was convicted;

7. That such information would have been critical in such a case;

8. That neither undersigned counsel nor Defendant had any reasonable means of knowing the aforementioned alarming information concerning Judge Newell;

9. That it is unreasonable to conclude that Judge Newell was able to fairly preside over said case as required under law.

WHEREFORE, the Defendant, by and through counsel hereby respectfully request:

A. That the Court grant Defense['s] Motion for New Trial;

B. Schedule this matter for a hearing; and

C. For such other and further relief as the nature of his cause may require."

[4] Defense counsel attached a September 11, 2021 Washington Post article, including the following timeline of events. On the morning of July 23, a teenage boy saw a camera in a shower at Judge Newell 's fishing cabin. The boy told another teenager, and he then saw Judge Newell "go into the bathroom and retreat to his bedroom with several items in his hand." When the boys went into the bathroom, "the camera was gone." The boys called their parents, who contacted the police.

On September 30, 2021, the State responded to appellant's motion for a new trial, arguing first that that the motion for a new trial was untimely. The State proffered that it "did not have knowledge" of Judge Newell's misconduct. The State noted that a public statement issued by the U.S. Attorney's Office after Judge Newell 's death, which coincided with the unsealing of the criminal complaint against him, stated that the "criminal complaint is not a finding of guilty." The State further argued that the charges against Judge Newell were different from the allegations against appellant, that the allegations in the complaint did not constitute "newly discovered evidence" under Rule 4-331(c), and that defense counsel was merely speculating that Judge Newell could not have presided over the trial fairly.

The State attached two exhibits to its response. As its Exhibit A, the State attached the criminal complaint and an affidavit filed against Judge Newell. As its Exhibit B, the State attached a one-page, September 10, 2021 statement, issued by the U.S. Attorney's Office, regarding Judge Newell 's death.[5]

[5] State's Exhibit A, the federal criminal complaint against Judge Newell, was submitted in the Federal District Court by F.B.I. Special Agent Rachel S. Corn. The first page of the complaint alleges that on or about September 28, 2014, Judge Newell committed the offense of sexual exploitation of a child (18 U.S.C. § 2251(a)).

In the section of the complaint titled "Probable Cause," Agent Corn averred that, on July 23, 2021, investigators from the Maryland State Police responded to Judge Newell 's cabin in Fishing Creek, MD, "regarding a minor who located a video camera in the bathroom of the cabin." Agent Corn represented that, while staying at the cabin on July 22, a boy photographed what he believed to be a video camera in a bathroom used to shower, observed that Judge Newell seemed to remove the camera from the bathroom, and stated that both he and another boy staying at the cabin told their parents about the incident. Agent Corn then noted that, after waiving his Miranda rights on June 23, Judge Newell told police that ten "members" had access to the cabin and denied having ever seen a

Without a hearing, Judge Bowman denied the motion for a new trial. Trial counsel filed a second notice of appeal on November 24, 2021. That appeal was docketed in this Court as Case No. 1510 in the September 2021 Term. On December 2, 2021, this Court consolidated both appeals for briefing.

II.

We turn to whether the circuit court erred in limiting the cross-examination of K.A.'s mother about whether, approximately a year before the charges in this case, she threatened to make allegations against appellant. We answer 'no.'

camera depicted in a photograph taken the previous day by one of the boys who stayed at the cabin.

Agent Corn averred that, after the interview, when Judge Newell was ostensibly trying to charge his cell phone, investigators heard two loud "crunch" sounds after Judge Newell placed his hand over his phone and mouth. After hearing the crunch sounds, an investigator then saw Judge Newell drink from a cup of water on a dresser. Subsequently, Judge Newell retrieved from underneath his bed what appeared to be a device similar to the camera photographed by the boy on July 22. The "SD card slot" for the device was empty. On July 24, police brought Judge Newell to the hospital. They had a warrant to obtain CT scans of his chest and abdominal area. The "After Visit Summary" for those scans included the following notes: "IMPRESSION: 18mm linear possibly metallic foreign body within the small bowel . . . Diagnosis: Foreign Body Ingestion."

Investigators searched the cabin, Judge Newell 's home, Judge Newell 's truck, and Judge Newell's office. Agent Corn documented that that search and subsequent investigation revealed that, over a period of several years, several minor boys stayed at the cabin, showered there, and had their naked bodies and genitalia observed or touched by Judge Newell. He claimed he was "check[ing] their bodies for ticks." Agent Corn represented that an external hard drive seized from Judge Newell 's residence included several videos of underage boys removing their clothes, showering, and having their bodies examined by Judge Newell. The agent represented that, in some of the videos, Judge Newell could be seen setting up the camera. At least two of the videos included titles containing the date of "2014-09-28."

We review the trial court's ruling for abuse of discretion. *See Pantazes v. State*, 376 Md. 661, 681 (2003). We will not disturb the exercise of that discretion in the absence of clear abuse. *See Manchame-Guerra v. State*, 457 Md. 300, 311 (2018). Although abuse of discretion is often defined to be where no reasonable person would take the view adopted by the court, Judge Glenn Harrell, writing for the Court of Appeals in *Nash v. State*, noted as follows:

> "Part of the difficulty in defining and parsing the abuse of discretion standard stems from the lack of fixed channels through which we can squeeze the Play-Doh of each trial judge's discretionary decision into the same analytical shape or mold. *See Alexis*, 437 Md. at 479) ('The notion of a range of discretion . . . is not an immutable and invariable criterion in all of its myriad applications.' (quoting *Canterbury Riding Condo. v. Chesapeake Investors, Inc.*, 66 Md. App. 635, 648, 505 A.2d 858, 864 (1986))). Rather, the standard represents a flexible model whose range is dependent on the type of discretionary decision a trial judge is called upon to make and the relevant circumstances of the case. *See Washington v. State*, 424 Md. 632, 668, 37 A.3d 932, 952-53 (2012) (noting that, with respect to a motion for a new trial, a trial judge's discretion ''is not fixed and immutable'' but ''will expand or contract'' based on the circumstances of the case (quoting *Merritt v. State*, 367 Md. 17, 30, 785 A.2d 756, 764 (2001)))."

439 Md. 53, 68 (2014).

With respect to our review of whether the trial judge abused his discretion in imposing limitations upon cross-examination, we look to see if that limitation inhibited the ability of the defendant to receive a fair trial. We recognize that the trial judge "is in the best position to determine whether the introduction of certain impeachment evidence would enmesh the trial in confusing or collateral issues." *Merzbacher v. State*, 346 Md. 391, 413-

14 (1997). "The standard of review [of limitation on cross-examination] takes into account both the defendant's constitutional right of confrontation and the discretionary authority of the trial judge to assert 'control over the mode and order of interrogating witnesses and presenting evidence.'" *Manchame-Guerra*, 457 Md. at 311.

The Sixth Amendment to the United States Constitution provides, in pertinent part, that, "[i]n all criminal prosecutions, the accused shall enjoy the right . . . to be confronted with the witnesses against him." U.S. CONST. amend. VI. "The right of confrontation includes the opportunity to cross-examine witnesses about matters related to their biases, interests, or motives to testify falsely." *Peterson v. State*, 444 Md. 105, 122 (2015) (quoting *Martinez v. State*, 416 Md. 418, 428 (2010)). To satisfy the Constitution, a trial court must allow a defendant a "threshold level of inquiry" that "expose[s] to the jury the facts from which jurors, as the sole triers of fact and credibility, could appropriately draw inferences relating to the reliability of the witnesses." *Id.* at 122.

A criminal defendant's constitutional right to cross-examination, however, is not boundless. *See Pantazes*, 376 Md. at 680. "[T]rial courts may limit the scope of cross-examination 'when necessary for witness safety or to prevent harassment, prejudice, confusion of the issues, and inquiry that is repetitive or only marginally relevant.'" *Peterson*, 444 Md. at 122-23 (quoting *Martinez*, 416 Md. at 428); *see also* Md. Rule 5-611.[6]

[6] Maryland Rule 5-611(a) provides as follows:

"(a) The court shall exercise reasonable control over the mode and order of interrogating witnesses and presenting evidence so as to (1) make the interrogation and

Not all trial errors which violate the Constitution are *per se* reversible, and erroneous limitations on the right to cross-examination are subject to harmless error analysis. *See Delaware v. Van Arsdall*, 475 U.S. 673, 681 (1986); *Bruce v. State*, 318 Md. 706, 728 (1990). The harmless error test is well established in Maryland, and it is most often quoted from *Dorsey v. State*:

> ". . . [W]hen an appellant, in a criminal case, establishes error, 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. Such reviewing court must thus be satisfied that there is no reasonable possibility that the evidence complained of--whether erroneously admitted or excluded--may have contributed to the rendition of the guilty verdict."

276 Md. 638, 659 (1976) (footnote omitted).

Appellant argues that the circuit court committed reversible error in preventing defense counsel from exploring Eva's credibility and whether she influenced K.A. to testify favorably for the State. The court did not permit the witness to respond to the question: "[i]sn't it true that you threatened to make allegations against [Mr. Emidelio] in 2018 if he didn't return to you?" Appellant relies on Rule 5-616(a)(4),[7] which addresses impeachment of witnesses and cross-examination to challenge witness credibility.

presentation effective for the ascertainment of the truth, (2) avoid needless consumption of time, and (3) protect witnesses from harassment or undue embarrassment."

[7] Rule 5-616(a)(4) provides as follows:

"(a) Impeachment by Inquiry of the Witness. The credibility of a witness may be attacked through questions asked of the witness, including questions that are directed at:

The State argues that the trial court exercised its discretion properly in regulating the cross-examination of Eva, the victim's mother. The State maintains that the court acted within its discretion because defense counsel cross-examined Eva as to his theory of bias, Eva's limited role at trial, and lack of any link between Eva's alleged bias and the victim's state of mind. According to the State, the trial court allowed a sufficient "threshold level of inquiry" to enable the fact-finder to appropriately draw inferences relating to the reliability of the witnesses. *See Manchame-Guerra*, 457 Md. at 311. If error, the State asserts harmless error on the grounds that (1) the answer to that question would not have affected K.A.'s credibility and (2) the trial judge verbally stated that, in finding appellant guilty, Eva's testimony was unhelpful to the State's case.

We hold that the trial judge did not abuse his discretion in limiting the cross-examination of the witness. This was a bench trial, the court exercised its discretion under Rule 5-611(a) in maintaining reasonable control over the presentation of evidence, and the court permitted defense counsel to reach the threshold inquiry to show the witness's bias.

Furthermore, any error was harmless beyond a reasonable doubt. In rendering his verdict, Judge Newell stated that he found Eva's testimony unhelpful to the State's case. Defense counsel successfully neutralized Eva's testimony.

III.

(4) Proving that the witness is biased, prejudiced, interested in the outcome of the proceeding, or has a motive to testify falsely."

We turn to the circuit court's summary denial of appellant's motion for a new trial, ruling on the motion without a hearing. We review the trial court's ruling for abuse of discretion. *See Buck v. Cam's Broadloom Rugs, Inc.*, 328 Md. 51, 58 (1992).

Motions for a new trial are governed by Md. Rule 4-331, which, in pertinent part, provides as follows:

> "(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.
>
> ***
>
> (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 subsection (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[.]
>
> ***
>
> (e) Form of Motion. A motion filed under this Rule shall (1) be in writing, (2) state in detail the grounds upon which it is based, (3) if filed under section (c) of this Rule, describe the newly discovered evidence, and (4) contain or be accompanied by a request for hearing if a hearing is sought.
>
> (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."

Appellant argues that the motion judge erred in summarily denying appellant's motion for a new trial without holding a hearing. Appellant argues that, under the unusual circumstances in this case, the interests of justice demand a hearing inasmuch as Judge Newell was the fact-finder in this case, that the State accused appellant of sexually assaulting his minor niece, and that Judge Newell had been charged with similar criminal activity.

The State argues that the trial court may deny a Rule 4-331(c) motion without a hearing when the motion fails to plead a prima facie basis for relief. The State defines evidence, within the meaning of Rule 4-331(c), as "testimony or an item or thing that is capable of being introduced and moved into the court record, so as to be put before the trier of fact at trial," which excludes these allegations against Judge Newell. Second, the State argues that appellant "has shown no possibility that the new information would have affected his fact-finder's verdict."

The Court of Appeals discussed Rule 4-331 in *Cornish v. State,* 461 Md. 518 (2018). In that case, like Galvez-Mazariegos, based upon allegedly newly discovered evidence, the defendant had moved for a new trial more than ten days after the verdict and was denied relief without a hearing. *Id.* at 524. The Court of Appeals noted that the Rule provides that "the trial court shall grant the movant a hearing when a hearing is requested, the motion is timely filed, the motion satisfies the requirements of subsection (e) of the Rule, and the

movant has established a prima facie basis for granting a new trial." *Id*. at 529. *Cornish* noted that the circuit court denied relief without explanation and, thus, it was not clear whether the court denied relief because the motion failed "to satisfy the prima facie pleading requirement, or for some other reason." *Id*. at 528.

Here, appellant filed his motion within one year after the circuit court ruled on his motion for a new trial. It was timely. Appellant's pleading also met the "form of motion" requirement of the Rule.

Did appellant satisfy the Rule by setting out a prima facie basis for granting a new trial? This case is a very strange one, with most unusual circumstances. Appellant is alleging judicial bias. We cannot say that Rule 4-331 excludes newly discovered evidence alleging judicial bias. Inasmuch as the new trial motion court summarily denied the motion for new trial, without stating any basis for the decision, we shall remand for a hearing on his motion. *See* Appellee Br. at 37-38, fn. 16, *Cornish*, 461 Md. at 540.

ORDER OF THE CIRCUIT COURT FOR CAROLINE COUNTY DENYING APPELLANT A NEW TRIAL VACATED. CASE REMANDED TO THAT COURT FOR FURTHER PROCEEDINGS CONSISTENT WITH THIS OPINION. ALL OTHER JUDGMENTS AFFIRMED. COSTS TO BE PAID HALF BY APPELLANT AND HALF BY CAROLINE COUNTY.