

Circuit Court for Montgomery County  
Case No: 131730C

UNREPORTED  
IN THE COURT OF SPECIAL APPEALS  
OF MARYLAND

No. 1397

September Term, 2019

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SEBASTIAN ALBERT CAMPBELL

v.

STATE OF MARYLAND

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Fader, C.J.,  
Ripken,  
Kenney, James A., III  
(Senior Judge, Specially Assigned),

JJ.

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PER CURIAM

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Filed: September 9, 2021

\*This is an unreported opinion, and it may not be cited in any paper, brief, motion, or other document filed in this Court or any other Maryland Court as either precedent within the rule of stare decisis or as persuasive authority. Md. Rule 1-104.

In 2017, a jury in the Circuit Court for Montgomery County found Sebastian Albert Campbell, appellant, guilty of two counts of sex abuse of a minor and four counts of second-degree rape. The victim was his biological daughter, who began living with Campbell in 2012 when she was 11 years old. In August 2013, the victim gave birth to a daughter. DNA evidence presented at trial indicated that Campbell was the father of the victim’s child, a fact Campbell did not dispute.<sup>1</sup> The court sentenced Campbell to a total term of 130 years’ imprisonment. On direct appeal, this Court affirmed the judgments. *Campbell v. State*, 243 Md. App. 507 (2019).

In 2019, Campbell—representing himself—filed a motion for a new trial based on the victim’s alleged recantation of her trial testimony. Campbell also moved to have the judge who presided over the trial, the Honorable Cheryl McCally, recuse herself. The motion to recuse was denied. On May 8, 2019, the court convened a hearing on the motion for new trial and permitted the victim, who resides in Michigan, to testify via telephone. The victim testified that Campbell had not sexually abused her and asserted that her trial testimony to the contrary was untruthful. She claimed, instead, that she had impregnated herself with a used condom discarded by Campbell, which she had retrieved from a trash bin.

In a 52-page Opinion and Order, the court denied Campbell’s motion for a new trial finding, among other things, that the victim’s recantation testimony was not credible.

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<sup>1</sup> A DNA expert testified at trial that it was her expert opinion to a reasonable degree of scientific certainty that there is a 99.99999 percent probability that Campbell is the father of the victim’s child.

Campbell appealed and asserts that the court erred in denying his motion for a new trial and erred in denying his motion for recusal. We disagree and shall affirm the judgments.

Rather than reiterate the sordid facts of this case and the evidence presented both at the trial and subsequent motions hearing, we shall adopt and incorporate herein the Opinion and Order filed by the circuit court on August 20, 2019 which summarizes the evidence in both proceedings. We emphasize, however, that we did read the relevant transcripts.

We turn our attention to the issues before us: whether Judge McCally abused her discretion in failing to recuse herself from the motion for a new trial and whether the circuit court abused its discretion in denying the relief Campbell sought.

#### Failure to Recuse

Campbell requested that Judge McCally recuse herself from ruling on his motion for a new trial claiming, in short, that the judge was biased against him. On appeal, he claims the court erred in denying his recusal request.

Maryland Rule 18-102.11(a)(1) provides that a judge “shall disqualify himself or herself in any proceeding in which the judge’s impartiality might reasonably be questioned,” including where the “judge has a personal bias or prejudice concerning a party[.]” However, ““there is a strong presumption . . . that judges are impartial participants in the legal process, whose duty to preside when qualified is as strong as their duty to refrain from presiding when not qualified.”” *Conner v. State*, 472 Md. 722, 738 (2021) (quoting *Jefferson-El*, 330 Md. 99, 107 (1993) (other citations omitted). “Consequently, ‘the decision to recuse oneself ordinarily is discretionary and will not be overturned except for abuse.’” *Id.* (quoting *Attorney Grievance Commission v. Shaw*, 363 Md. 1, 11 (2001)).

“The party requesting recusal has a heavy burden to overcome the presumption of impartiality and must prove that the judge has a personal bias or prejudice against him or her or has personal knowledge of disputed evidentiary facts concerning the proceedings.” *Shaw*, 363 Md. at 11.

In asserting that Judge McCally was biased against him, Campbell points to certain comments the judge made at sentencing, including that Campbell’s defense theory that the victim had impregnated herself was “preposterous and offensive.” Campbell maintains that that and other comments made at sentencing, and the court’s sustaining of certain objections lodged by the State during the motions hearing, shows that Judge McCally was predisposed to deny his motion for a new trial and was likely to ignore relevant evidence. Having reviewed the transcripts, we are not persuaded that Campbell overcame the strong presumption of impartiality on Judge McCally’s part. Accordingly, we hold that the court did not abuse its discretion in denying Campbell’s motion for recusal.

#### Denial of Motion for New Trial

Campbell filed his motion for a new trial pursuant to Rule 4-331(c), which provides that a 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” within ten days of the verdict. The “newly discovered evidence” must be “material to the result,” that is, it “must be more than merely cumulative or impeaching” and there must be “a substantial or significant possibility that the verdict of the trier of fact would have been affected.” *Cornish v. State*, 461 Md. 518, 529-30 (2018)

(quotation marks and citations omitted). The burden of proof is on the moving party. *Jackson v. State*, 164 Md. App. 679, 686 (2005).

On appeal, we review a court’s denial of a motion for a new trial for an abuse of discretion. *Argyrou v. State*, 349 Md. 587, 600 (1998). Credibility determinations and the weight of legal significance is left to the discretion of the motion’s judge. *Jackson*, 164 Md. App. at 712 (“Both evaluating the credibility of the [newly discovered] evidence, in the first place, and then weighing the significance of the evidence, in the second place, remain within the broad discretion of the trial judge[]” when ruling on a motion for a new trial.)

Campbell’s motion centered on the victim’s recantation of her trial testimony. A witness’s post-trial recantation of testimony, however, is regarded “with the utmost suspicion.” *Yonga v. State*, 221 Md. App. 45, 91 (2015), *aff’d*, 446 Md. 183 (2016). Based on a well-reasoned and factually supported analysis, the circuit court concluded that the victim’s recantation testimony was “simply improbable and not credible.” The court also concluded that, given the evidence presented at trial, the victim’s recantation testimony would not have affected the jury’s verdict. We see no reason to disturb those findings. The court, having heard both the victim’s trial testimony (including several hours of cross-examination by the self-represented Campbell) and her recantation testimony at the motions hearing, was in the best position to determine the victim’s credibility and assess

its weight. Accordingly, we hold that the circuit court did not abuse its discretion in denying Campbell’s motion for a new trial.

**JUDGMENTS OF THE CIRCUIT COURT  
FOR MONTGOMERY COUNTY AFFIRMED.  
COSTS TO BE PAID BY APPELLANT.**