

Circuit Court for Montgomery County
Case No. 131730C

UNREPORTED
IN THE COURT OF SPECIAL APPEALS
OF MARYLAND

No. 1436

September Term, 2020

SEBASTIAN A. C.

v.

STATE OF MARYLAND

Fader, C.J.,
Leahy,
Moylan, Charles E., Jr.
(Senior Judge, Specially Assigned),

JJ.

PER CURIAM

Filed: November 19, 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.

Sebastian A. C., appellant, contends that the Circuit Court for Montgomery County erred in denying his most recent motion for new trial. For the reasons that follow, we shall affirm the judgment of the circuit court.

We recount some of the pertinent facts from our most recent opinion in appellant's case:

In 2017, a jury in the Circuit Court for Montgomery County found [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 [appellant] 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 [appellant] was the father of the victim's child, a fact [appellant] did not dispute. The court sentenced [appellant] to a total term of 130 years' imprisonment. On direct appeal, this Court affirmed the judgments. *C. v. State*, 243 Md. App. 507 (2019).

In [January] 2019, [appellant] – representing himself – filed a motion for a new trial based on the victim's alleged recantation of her trial testimony. [Appellant] 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 [appellant] 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 [appellant], which she had retrieved from a trash bin.

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

C. v. State, No. 1397, September Term, 2019, 2021 WL 4123372 (filed September 9, 2021), at *1 (footnote omitted).

Appellant subsequently appealed from the court's judgments. While the appeal was pending, appellant filed, in January 2021, another motion for new trial, in which he

requested a hearing “based on . . . newly discovered evidence.” Appellant attached to the motion a purported “affidavit” of the victim, in which she again recanted her trial testimony and stated that the prosecutor “knew [that the victim] was lying and . . . just didn’t care.” In February 2021, the court denied the motion without a hearing.

In September 2021, we affirmed the circuit court’s denial of appellant’s January 2019 motion for new trial, stating:

[Appellant’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 [appellant]) and her recantation testimony at the motions hearing, was in the best position to determine the victim’s credibility and assess its weight.

C., 2021 WL 4123372 at *2.

Appellant now contends that, for numerous reasons, the court erred in denying his January 2021 motion for new trial. We disagree. The Court of Appeals has stated that the “doctrine of res judicata bars the relitigation of a claim if there is a final judgment in a previous litigation where the parties, the subject matter[,] and causes of action are identical or substantially identical as to issues actually litigated and as to those which could have or should have been raised in the previous litigation.” *Board of Ed v. Norville*, 390 Md. 93, 106-07 (2005). Here, the parties, subject matter, and causes of action cited within the January 2019 and January 2021 motions for new trial are identical or substantially identical

to issues actually litigated at the hearing on the January 2019 motion for new trial, and any issue as to prosecutorial misconduct related to the recantation could have, and should have, been raised at the hearing. The relitigation of the recantation is barred by the doctrine of res judicata, and hence, the court did not err in denying the January 2021 motion for new trial.

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