UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 1188

September Term, 2014

AKIL DARNELL INGS

v.

STATE OF MARYLAND

Leahy,
*Zarnoch,
Rodowsky, Lawrence F.
(Retired, Specially Assigned),

JJ.

Opinion by Leahy, J.

Filed: January 28, 2016

*Zarnoch, Robert A., J. participated in the conference of this case while an active member of this Court; he participated in the adoption of this opinion as a retired, specially assigned member of this Court.

Tragically, this case arises out of the shooting death of Marcus Antonio Jones—another gang-related fatality springing from the illegal possession of guns by our youth. Akil Darnell Ings ("Appellant") was indicted and tried for Marcus's murder, which occurred on January 20, 2013, at a party in Fort Washington, Maryland. At the conclusion of his trial in the Circuit Court for Prince George's County, a jury convicted Appellant of both the depraved heart and intent to kill modalities of second-degree murder, use of a handgun in the commission of a crime of violence, reckless endangerment, possession of a regulated firearm while under twenty-one years of age, and wearing, carrying, or transporting a handgun in a vehicle. He was sentenced to incarceration for a term of thirty years for the second-degree murder convictions, a consecutive term of twenty years for the use of a handgun in the commission of a crime of violence, and a concurrent term of five years for possession of a regulated firearm while under twenty-one years of age. The remaining convictions merged for sentencing purposes.

Appellant filed a motion for a new trial on the basis of new evidence discovered after the trial; specifically, that a witness who testified at trial, Kimani Newby, had been arrested for a gun charge and released before the trial held on February 10-12, 2014. The circuit court denied the motion on April 11, 2014, after oral argument just before the sentencing hearing. This timely appeal followed on April 29, 2014.

Appellant presents the following question for our review: "Did the court err in denying appellant's motion for a new trial?"

We hold that the circuit court did not abuse its discretion by declining to grant a new trial because we cannot say that there was a "substantial or significant possibility" that the

newly discovered evidence would have produced a different result. *Jackson v. State*, 164 Md. App. 679, 711 (2005).

BACKGROUND

At trial, the parties stipulated that, just after midnight on January 20, 2013, police responded to an incident at 7714 Webster Lane in Fort Washington, where they found Marcus Jones suffering from a gunshot wound. Mr. Jones was transported to Southern Maryland Hospital, where he was pronounced dead. The Deputy Chief Medical Examiner for the State of Maryland, who testified as an expert in the field of pathology and forensic pathology, opined that Mr. Jones's death was a homicide resulting from a gunshot wound to the chest.

Making Their Way to a Party

Samantha Overton testified for the State that, on the night of January 19, 2013, before the shooting of Marcus Jones, she drove to an apartment complex to pick up her friend, Kimani Newby, for a night out**.** At the same time that Newby was entering the front passenger seat of Overton's car, Newby's 17-year old boyfriend, Appellant, walked up to the car and asked Overton to take him and two other young men to a party at 7714 Webster Lane. Ms. Overton agreed to do so, and Appellant and the two young men, Kquantae Fisher and another person known only as "Quet" got into the back seat.

According to Overton, when they arrived at the party, Appellant, Fisher, and Quet got out of the car and talked to some acquaintances for a few minutes. The young men decided to get some alcohol, so they re-entered Overton's car, and she drove them to a nearby drive-through liquor store and bought some tequila. When they returned to the

party, Overton parked behind another vehicle, and then Newby and the three young men drank the tequila, while all of the vehicle's occupants, including Overton, smoked marijuana. Shortly before midnight, Appellant, Fisher, and Quet got out of the car and started to walk towards the house where the party was being held. Overton and Newby remained in the car.

The Shooting

Several people testified at trial to what they witnessed during the shooting. Furman Durham testified that he and his wife were picking up their daughter from the party on January 19, 2013. Mr. Durham arrived at the party at 11:30 p.m. but had to wait for his daughter to leave the party. At 11:45 p.m., while he was waiting outside the party, he observed a white car park across the street from him and several people—a different group of people from those described *supra*—exit the car and walk into the party. He testified to witnessing many of the same people leave the party and smoke cigarettes as they leaned against the car. As the party began to empty, Furman Durham heard popping sounds. Mr. Durham testified that, after he heard the pops, he saw a "heavy set individual with dread locks" wearing "a white sweatshirt" and "blue jeans" in the smoking group "loading a gun or [] cocking it," before shooting it, in what "appeared like retaliation." That man then jumped in the white car, and the car fled the area. On cross-examination, Mr. Durham stated that he did not hear any dispute between people before the gunfire, nor did he identify any particular person involved in the shooting.

Ms. Overton testified that she was getting ready to drive away from the house when she "saw sparks in the air" and heard "about three" gunshots. Newby testified that she

heard a gunshot and told Overton to start the car and go. As Overton was pulling away, the young men ran back to the car and got in. Overton heard Appellant say, "I think I got one," before they drove off. Newby also testified that Appellant had a revolver in the pocket of the jacket he was wearing, and she heard him say, "I think I got one." Overton testified that, as they were pulling away, she saw another young man on the ground getting up from a kneeling position and reaching for a gun in his waistband. According to Overton, the young man looked like he was getting ready to pull out the gun "[a]nd face it towards [her] car."

Travis Holloman and Eric Datcher, Jr., two friends of Marcus Jones, were with him the night of his murder and testified at trial. Holloman testified that he was at the party for about ten minutes when the party ended and guests started to move outside. Holloman heard three gunshots, at which point he and Jones ran. After running about ten feet, Holloman stopped, but Marcus Jones continued running, only to fall to the ground in a nearby yard. Holloman ran over to Jones and saw that he had been shot. The police and an ambulance arrived 25 minutes later.

Eric Datcher, Jr., testified that he drove to the party with Marcus Jones and three other people, including Holloman. Marcus Jones, Holloman, and Datcher went inside the party, but then Datcher left the party and smoked a cigarette outside. Datcher testified that he then heard people he did not know arguing with Marcus Jones about gang reputation as people were exiting the house. Soon after, Datcher heard gunshots and saw Jones hand a gun to Derrick Wilson, also known as "Beans." Datcher could not see who had fired the

gun because it was too dark, but he observed Beans try to fire the gun that Marcus Jones had handed him. Beans could not fire the gun because it had jammed.

Datcher and Beans got back in Datcher's car and drove away. While Datcher was driving, Beans stuck the gun out the car window and fired it two times "straight up" in the air. Moments later, Datcher received a phone call informing him that Marcus Jones was shot. In response to the call, Datcher and Beans made a U-turn and drove back toward Webster Lane. There they found Marcus Jones on the ground in the back yard of a home near where the party had been held. Beans tossed the gun he was carrying into a yard.

Officer Anthony Oliver, of the Prince George's County Police Department, testified that, on January 19, 2013, he was 10 to 15 blocks away from the party, when he heard gunshots and responded to the call from dispatch regarding the party. He and another officer stopped around nine teenagers but let them go so that the officers could proceed to the victim.

The Gang Connection

Prince George's County Police Corporal Denise Shapiro, the lead homicide detective assigned to the case, testified at trial that "Baby Haiti" was a gang associated with Crossland High School, which Appellant attended. She further explained that "Danger Boyz" was a gang associated with Friendly High School, which Marcus Jones, Holloman, and Datcher attended. Corporal Shapiro also explained that Appellant's electronic signature line, recovered from Fisher's phone, contained the phrase "Baby Haiti 3430." Travis Holloman also testified that Marcus and he were in a group called "Danger Boyz." As stated *supra*, Datcher testified that, before the shooting, he was outside when he heard

people whom he did not know arguing with Marcus Jones about gang reputation as people were exiting the house.

Evidence Collected

Prince George's County Police Officers located three cartridge casings, one complete cartridge, a fired bullet, and a small bag of a substance suspected to be marijuana in the area around the Webster Lane house where the party had been held. They also recovered a handgun from the backyard of a nearby house, but it was later determined that it was not the gun used to shoot Marcus Jones. The gun used to shoot Mr. Jones was never recovered. Officer Latoya Holmes took photographs of the crime scene, and these photographs were admitted into evidence without objection.

Mr. Durham also testified that, the day after the party, he discovered a bullet hole in his truck's bumper and called the police. The State moved, without objection, to admit pictures of the Mr. Durham's truck, with the bumper damage, into evidence. Mr. Durham testified that, because of the positioning of his car and the damage on the rear bumper, the bullet hole was the result of the popping sound, discussed *supra*, rather than from the group of people smoking cigarettes that he observed.

Overton testified that she told a family friend about what had happened at the party. The friend reported the incident to the police, who called Overton and set up a meeting at the police station in Landover. Overton used her telephone to obtain a photograph of Appellant from Instagram, which she gave to the police. Corporal Denise Shapiro testified that following an investigation, which included information Overton provided, the police obtained an arrest warrant for Appellant.

A Prince George's County Homicide Investigator, Officer Michael Delaney, testified that he and other officers obtained consent from Appellant's aunt to search her Washington, D.C. home. They recovered a cell phone from a toilet and a SIM card from under a bedroom baseboard. The police found Appellant in the bedroom where the SIM card was recovered. Police then took Appellant into custody. On January 24, 2015, Corporal Shapiro and Detective Spencer Harris, interviewed Appellant, and this interview was recorded. Detective Harris testified that, during the interview, Appellant told the police that he did not have a cell phone and that he had never heard of Baby Haiti. Corporal Shapiro also testified that Appellant stated that he did not have a cell phone and that Appellant responded "what the fuck is a Baby Haiti?" when he was asked about his gang affiliation. However, Corporal Shapiro testified that, later in the interview, Appellant admitted to having a cell phone. Detective Harris testified that Appellant denied being at the scene of the crime and claimed that he was in a music studio in Forestville, Maryland, but he could not provide any details concerning the studio. Corporal Shapiro also testified that Appellant denied shooting Marcus Jones.

According to Corporal Shapiro, Appellant said "[m]an, I fucked up" and "I ain't going to beat this joun" after the detectives left the room. Portions of this interview, as well as statements Appellant made when he was alone in the interview room, were played for the jury.

Ryan Miller, a communications specialist with the narcotic enforcement division of the Prince George's County Police Department, testified that he was able to download the data from Appellant's phone. The State moved a compact disc containing data recovered

from the phone into evidence, without objection. Mr. Miller testified that the data extracted from the phone contained multiple web searches and bookmarks for news articles concerning the shooting at the party. Miller also recovered many pictures of guns, taken from the internet, from Appellant's phone.

The parties agreed and stipulated that Kquantae Fisher would be unavailable to testify, and that his unavailability was not the fault of either Appellant or the State. Unfortunately, Fisher had been murdered, but the jury was not privy to this information.

After the close of the State's case, Appellant presented no evidence.

The jury found Appellant not guilty of first-degree murder, but found him guilty of second-degree murder, both with intent to kill and depraved heart; use of a handgun in the commission of a crime of violence; reckless endangerment; wearing, carrying, or transporting a handgun in a vehicle; and possession of a regulated firearm while under 21 years of age.

Motion for New Trial

On February 21, 2014─nine days after the trial, but before sentencing—Appellant filed a motion for new trial. In the motion, Appellant claimed that "[n]ew evidence has arisen which would have supported a verdict of not guilty had it been made available to the Defense prior to trial by the State of Maryland." The circuit court heard oral argument on the motion for a new trial at the sentencing hearing on April 11, 2014.

At oral argument, Appellant stated that, on February 15, 2014, after his trial ended, he learned that Ms. Newby, the only witness to testify that she saw him with a gun, had been arrested by Detective Harris and other members of the Prince George's County Police

Department for possession of two revolvers. She was arrested before the start of his trial and, on February 7, 2014, released on $5,000.00 bond. One of the revolvers was a .357 revolver, which was the same type of handgun suspected to be the murder weapon in the case. Appellant explained to the court that Newby did not affirmatively testify that she saw Appellant with a gun during her grand jury testimony, but that she only testified that she had seen Appellant with the gun after her arrest on gun charges and release, thereby implying that she changed her story after the grand jury testimony. Appellant maintained that, although the State's Attorney was not aware of Newby's arrest, the police department knew about it. On February 11, 2014, Newby testified at Appellant's trial.

Appellant argued that, if he had known this information, he would have sought a continuance "to investigate the situation further" to determine whether one of the guns Newby possessed fired the bullet that killed Marcus Jones. The following exchange occurred between Appellant and the court:

> [DEFENSE COUNSEL]: After all, out of all the witnesses that testified, only Miss Newby was the one who said she found – she saw this particular gun.
>
> THE COURT: Was an alleged allegation, the same gun.
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> [DEFENSE COUNSEL]: That would be our allegation. However, when . . . the State, the police department, to which my understanding, they don't cross-reference guns unless someone asks them to, okay, so not as, hey, we have the gun, let's cross-reference . . . . We don't know. So at the very least, I can't tell you that I would make that argument, because I'm not certain, but at the very least I would have delayed, asked for a delay of trial to find out, because that evidence is absolutely crucial.
>
> Obviously, it provides motive for Miss Newby to fabricate the truth as to whether my client had a gun or not, based on the fact that she commits a crime with a similar type revolver a day after she was there, according to the State.

> THE COURT: That's where I'm not getting the connection. I mean, why, the fact that she – I mean, truthfully this area, there are thousands of guns. Why would the allegation that she had a gun in her possession make her more or less likely to say that your client had a gun in his possession?
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> [DEFENSE COUNSEL]: Because in actuality, Your Honor, that could be the very same gun that was used. My client continues to maintain that he never shot a gun. No one else in this case has ever said my client shot a gun, except the one particular time, who, coincidentally, has the same gun we've all been looking for.
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> THE COURT: But those two things are not [mutually] exclusive, but go ahead.
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> [DEFENSE COUNSEL]: We believe that they are, Your Honor. We believe there is a causal connection, and that would be for, if the Court would allow that evidence to come forward, would be something that the jury would weigh or not weigh. The point of the matter is the jury didn't have the opportunity to weigh or not weigh that information.

Appellant also argued that the evidence would "become admissible if she was found guilty of [the gun charge]." The State responded that the motion should be denied because the fact that Newby possessed a gun is "not mutually exclusive" of the fact that Appellant shot Marcus Jones and that, in any event, the evidence would be inadmissible. Appellant did not explicitly argue that Newby's arrest for the gun charge gave her motive to testify falsely because she expected leniency from the State in her own criminal proceeding.

The court denied Appellant's motion for new trial stating, in part:

> I am going to deny the motion for new trial in this case. I . . . don't see it as either or. The allegation was that [Appellant] used this gun January 2013. The fact that the witness was in possession, even if it was this gun or a year later, is not exculpable, and additionally it doesn't go to credibility. I'm not sure how it would be admissible if I did grant the motion for new trial. So I'm going to deny the motion for new trial.

The court then sentenced Appellant to incarceration for a term of thirty years for the second-degree murder convictions, a consecutive term of twenty years for use of a handgun in the commission of a crime of violence, and a concurrent term of five years for possession of a regulated firearm while under twenty-one years of age. The remaining convictions merged for sentencing purposes. This timely appeal followed on April 29, 2014.

Discussion

I. Preservation

Appellant argues on appeal that the circuit court erred by denying his motion for a new trial and that the newly discovered evidence would have been admissible at trial. He contends that the evidence of Newby's arrest could have been used to cross-examine Newby concerning her expectation of leniency from State and that this expectation gave her a motive to testify falsely.

The State argues that Appellant has not preserved his argument because the argument he is asserting on appeal—that Newby's gun charge gives her a motive to testify falsely in an attempt to curry favor with the State—is not the same as the one argued below—that Newby's gun charge may have stemmed from the murder weapon and that that gave her a motive to testify falsely with regard to that gun.

Maryland Rule 8-131(a) provides that "[o]rdinarily, the appellate court will not decide any other issue unless it plainly appears by the record to have been raised in or decided by the trial court . . . ." Thus, an appellate court will generally not decide an issue unless the issue was preserved in the trial court proceedings below. Rule 8-131(a) serves two goals: "ensuring fairness to all parties and the promotion of the orderly administration

of the law." *Boulden v. State*, 414 Md. 284, 297 (2010) (citing Robinson v. State, 410 Md. 91, 103 (2009)).

Although the two arguments are slightly different, we conclude that each argument is merely a variation of the other and, thus, that Appellant has preserved his argument. During the sentencing hearing, Appellant argued that the gun charge could have been related to the gun Newby said she saw on Appellant and that this gave Newby a motive to testify falsely regarding that specific gun. On appeal, Appellant argues that the gun charge gave Newby a motive to testify falsely to curry favor with the State. Both arguments concern, at their core, an alleged motive for Newby to testify falsely in Appellant's trial. Therefore, we will address the merits of Appellant's argument.

II.

Standard of Review

Maryland Rule 4-331, which governs motions for new trial, 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.
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> * * *
>
> (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 or (B) the date the court received the mandate issued by the final appellate court to consider a direct appeal from the judgment or a belated appeal permitted as post conviction relief[.]

Despite the fact that the motion for a new trial in the present case concerns newly discovered evidence, Appellant filed his motion, on February 21, 2014, within ten days of the verdict; thus, this motion for a new trial falls under Maryland Rule 4-331(a), not (c). "The list of possible grounds for the granting of a new trial by the trial judge within ten days of the verdict is virtually open-ended." *Love v. State*, 95 Md. App. 420, 427 (1993). Newly discovered evidence is one such ground under Maryland Rule 4-331(a). *Id.* (citing *State v. Devers and Webster*, 260 Md. 360, 374 (1971)).

Because Appellant filed his motion within ten days of the verdict, the judge had to make the determination as to whether to order a new trial "in the interest of justice." Md. Rule 4-331(a). "The court's discretion in ruling on such a motion is broad, and the bases on which a criminal defendant may seek to have the court exercise its wide discretion are not limited." *Folk v. State*, 142 Md. App. 590, 603 (2002) (citing *Love*, 95 Md. App. at 427). We review the grant or denial of a motion under either subsection of Rule 4-331 under the abuse of discretion standard. *Jackson v. State*, 164 Md. App. 679, 700 (2005). The breadth of discretion will, however, expand or contract, depending on the ground offered for the new trial. *Id.* at 700-01 (citing *Buck v. Cam's Broadloom Rugs, Inc.*, 328 Md. 51, 58-59 (1992). The Court of Appeals has stated:

> It may be said that the breadth of a trial judge's discretion to grant or deny a new trial is not fixed and immutable, it will expand or contract depending upon the nature of the factors being considered, and the extent to which its exercise depends upon the opportunity the trial judge had to feel the pulse of the trial, and to rely on his or her own impressions in determining questions of fairness and justice. Of course, the exercise of the discretion is reviewable for abuse.

Argyrou v. State, 349 Md. 587, 600 (1998) (internal citations omitted). "[N]ecessarily inherent in the discretion to grant a new trial is the concomitant discretion to deny a new trial." *Jackson*, 164 Md. App. at 705 (citing *Butkiewicz v. State*, 127 Md. App. 412, 430 (1999)). The burden of proof is on the defendant moving for a new trial. *Id.* at 686 (citing *Argyrou*, 349 Md. at 609).

III.

The Merits

Appellant argues that the trial court erred in denying the motion for a new trial and that it incorrectly found that the newly discovered evidence would be inadmissible. He contends that this evidence could have been used to cross-examine Newby regarding her "expectation or hope of leniency from the State" concerning her gun charge and to argue how this gave her a motive to testify falsely. He relies on *Calloway v. State*, 414 Md. 616 (2010) and *Martinez v. State*, 416 Md. 418 (2010) for the proposition that Maryland Rule 5-616(a)(4) provides him with the ability to cross-examine Newby regarding her subjective understanding of potential State leniency. He maintains that this impeachment could have changed the jury's evaluation of Newby's credibility.

In response to this, the State argues that the circuit court did not abuse its discretion because the evidence was "merely impeaching." The State contends that, to warrant a new trial, newly discovered evidence must be "material," which, in turn requires that it be more than merely impeaching. Because this evidence would be presented only for impeachment purposes, the State maintains that it does not meet the materiality threshold for newly discovered evidence.

Although it is true that a person moving for a new trial under Maryland Rule 4-331(c) must meet the materiality and due diligence threshold,[1] we determine that, because Appellant filed his motion for a new trial on February 21, 2014, within ten days of the February 12, 2014 verdict, this motion falls under Maryland Rule 4-331(a), which allows for a new trial to be granted "in the interest of justice," and the materiality and due diligence threshold does not apply. *Cf. Argyrou*, 349 Md. at 601 (stating materiality and due diligence thresholds under Maryland Rule 4-331(c), not 4-331(a)).

As discussed *supra*, a denial of a motion for a new trial filed under Maryland Rule 4-331(a) is still reviewed under an abuse of discretion standard. *Jackson*, 164 Md. App. at 700. "A trial court has wide latitude in considering a motion for a new trial [under Maryland Rule 4-331(a)] and may consider many factors, including the weighing of evidence and the credibility of witnesses." *Ruth v. State*, 133 Md. App. 358, 365 (2000) (citing *Argyrou*, 349 Md. at 599-600). "Both evaluating the credibility of the 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." *Jackson*, 164 Md. App. at 712.

Appellant is correct that Newby's gun charge, if introduced at trial, would have been admissible to impeach Newby. Maryland Rule 5-616 provides, in pertinent part:

[1] For the trial court to grant a motion for a new trial under Maryland Rule 4-331(c), the newly discovered evidence "must be material" and "must not be merely cumulative or impeaching." *Love*, 95 Md. App. at 431 (citation and internal quotation marks omitted). In the context of subsection c, "[t]o justify the extended one-year filing deadline, it is required that the new evidence could not, with diligence have been discovered within the first ten days after the verdict." *Jackson*, 164 Md. App. at 689.

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

In *Martinez*, the Court of Appeals, applying Maryland Rule 5-616, held that it was reversible error for the trial court to restrict the defendant from attempting to impeach, for bias, a witness who had had charges *nolle prossed* six days before his testimony. 416 Md. at 431-32. The Court explained that whether there was an actual deal between the State and the witness was irrelevant; it is the witness's subjective understanding of the situation that gives him potential bias. *Id.* at 431; *see also Calloway*, 414 Md. at 619, 639 (holding that it was reversible error for the circuit court to grant the State's motion *in limine* restricting cross examination of a witness as to the hope of leniency from the State, in exchange for favorable testimony, when the State had *nolle prossed* several charges of the witness before the defendant's trial).

The holdings of *Calloway* and *Martinez*, however, do not end the inquiry as to whether, in the case at bar, it was an abuse of discretion for the circuit court to deny a motion for a new trial. Neither *Calloway* nor *Martinez* addressed *the grant of a new trial* to impeach a witness for bias through cross-examination. *See Calloway*, 414 Md. at 619 (circuit court granted State's motion *in limine* to restrict cross-examination); *Martinez*, 416 Md. at 426 (circuit court disallows defense from cross-examining witness about bias relating to *nolle prossed* charges *at trial*). Instead, for newly discovered evidence to qualify

for the grant of a new trial, the circuit court must find that there is a "substantial or significant possibility" that the newly discovered evidence would have produced a different result. *Jackson*, 164 Md. App. at 712 (citations omitted). It is the duty of the trial judge to determine the relative persuasiveness of the newly discovered evidence. *Id.* at 713-14.

The circuit court, in this case, denied the motion for a new trial after hearing extensive evidence during the trial inculpating Appellant for the murder of Marcus Jones. Both Overton and Newby testified that Appellant left the car to walk to the party right before Marcus Jones was shot. *Both* women testified that, after they heard gunshots, Appellant got back in the car and said, "I think I got one." Newby also testified that Appellant had a revolver in his jacket pocket upon reentering the car.

The circuit court also heard Corporal Shapiro testify concerning the gang Baby Haiti's association with Appellant's school, Crossland High School, and the association of Friendly High School, which Marcus Jones attended, with Danger Boyz. Corporal Shapiro also testified that Appellant's signature line contained the phrase "Baby Haiti 3430." The court further heard Eric Datcher's testimony that Marcus Jones was arguing with several people whom Datcher did not know about gang reputation right before Mr. Jones was shot.

The court and jury also heard Corporal Shapiro and Detective Harris testify concerning Appellant's suspicious behavior in denying, before later admitting, that he had a cell phone, or that he even knew what Baby Haiti was. Detective Harris further testified that Appellant attempted to provide an alibi but could not specify details concerning the alibi.

The court also heard communications specialist Ryan Miller testify that he was able to download data from Appellant's phone, and the State moved a compact disc of this data into evidence. He also testified that the data extracted from the phone contained multiple web searches and bookmarks for news articles concerning the shooting at the party, as well as many pictures of guns taken captured from the internet.

Against all this, Appellant's newly discovered evidence was only that Newby had been arrested by the Prince George's County Police Department and released on bail shortly before trial. After Appellant moved for a new trial, the circuit court stated that it did not think this new evidence, Newby's gun charge a year after the murder of Marcus Jones, was exculpable:

> I am going to deny the motion for new trial in this case. I . . . don't see it as either or. The allegation was that [Appellant] used this gun January 2013. **The fact that the witness was in possession, even if it was this gun or a year later, is not exculpable, and additionally it doesn't go to credibility.** I'm not sure how it would be admissible if I did grant the motion for new trial. So I'm going to deny the motion for new trial.

(Emphasis supplied).

In these circumstances, we cannot hold that it was an abuse of discretion for the circuit court not to grant Appellant's motion for a new trial. We cannot say that there was a "substantial or significant possibility" that the evidence—Newby's gun charge—would have produced a different result. *Jackson*, 164 Md. App. at 712. Even if Newby was the only witness to testify that she saw Appellant in possession of a gun immediately after the murder of Marcus Jones, both Newby and Overton testified that they heard Appellant say

"I think I got one" after they heard gunshots. Appellant has no evidence with which to impeach Overton.

Further, the court and jury heard the rest of the State's case, including the testimony of Corporal Shapiro, Detective Harris, Ryan Miller, Eric Datcher, Jr., and Travis Holloman. Although, *if introduced during the trial*, evidence of Newby's gun charge would have been admissible, as impeachment for bias through cross-examination, *see Martinez*, 416 Md. at 431-32, we cannot say that it was an abuse of discretion not to grant a new trial, *see Jackson*, 164 Md. App. at 718-20. The evidentiary weight of Newby's year-old gun charge does not create "substantial or significant possibility" that the newly discovered evidence would have produced a different result. *Jackson*, 164 Md. App. at 712. Therefore, "being appropriately deferential," *id.* at 720, we hold that the circuit court did not abuse its discretion in not granting Appellant a new trial.

JUDGMENT OF THE CIRCUIT COURT FOR PRINCE GEORGE'S COUNTY AFFIRMED; COSTS TO BE PAID BY APPELLANT.