

Circuit Court for Baltimore City
Case No. 207094012

UNREPORTED
IN THE COURT OF SPECIAL APPEALS
OF MARYLAND

No. 1917

September Term, 2016

MARK HANDY

v.

STATE OF MARYLAND

Woodward, C.J.,
Kehoe,
Moylan, Charles E., Jr.
(Senior Judge, Specially Assigned),

JJ.

PER CURIAM

Filed: December 29, 2017

*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.

On February 5, 2008, a jury in the Circuit Court for Baltimore City convicted Mark Gregory Handy, appellant, of attempted first-degree murder, attempted second-degree murder, first-degree assault, and second-degree assault. In an unreported opinion, we affirmed appellant’s convictions, but held that the sentences for attempted second-degree murder and second-degree assault should have merged with their respective greater offenses. *See Handy v. State*, No. 456, Sept. Term 2008 (filed Apr. 14, 2010).

Since that time, appellant has filed numerous post-judgment motions. Relative to this appeal, on September 15, 2016, appellant filed a motion for new trial pursuant to Rule 4-331(b). On September 26th, the court denied appellant’s motion without a hearing, which appellant contends was error. We disagree and affirm.

Rule 4-331(b)(1)(B) provides that a defendant may file a motion for a new trial within 90 days of the imposition of sentence. After that time, “the court has revisory power and control over the judgment in case of fraud, mistake, or irregularity.” *Id.* Rule 4-331(f) states that a court “may hold a hearing” on a motion filed pursuant to the rule. The rule requires a hearing for motions filed pursuant to subsection (c) of the rule if certain conditions are met, but that is inapplicable to this case. *Id.* Accordingly, we perceive no error in the court’s failure to hold a hearing.

Moreover, we are not persuaded that appellant presented a meritorious reason for the grant of a new trial. When invoking the revisory power of the court, this Court has noted that “the phrase ‘fraud, mistake, or irregularity’ has a well established meaning” as

the phrase is used in Rule 4-331(b)'s civil counterpart, Rule 2-535(b).¹ *Minger v. State*, 157 Md. App. 157, 172 (2004). To establish fraud sufficient for a court to exercise its revisory power, a litigant must demonstrate “extrinsic” fraud, rather than “intrinsic” fraud. *See Pelletier v. Burson*, 213 Md. App. 284, 290 (2013). “Fraud is extrinsic when it actually prevents an adversarial trial but is intrinsic when it is employed during the course of the hearing which provides the forum for the truth to appear, albeit, the truth was distorted by the complained of fraud.” *Id.* at 290-91 (quoting *Jones v. Rosenberg*, 178 Md. App. 54, 73 (2008)).

In this case, appellant claims that the prosecutor fraudulently misled the court in his trial. When the prosecutor introduced the victim’s medical records, the court asked if there were any notations as to the type of weapon used to stab the victim. The prosecutor replied that there were none. Appellant maintains that the medical records actually contain two references to the wounds being caused by a machete. The prosecutor’s statement, however, does not constitute extrinsic fraud. Accordingly, the court properly denied appellant’s motion for a new trial.

**JUDGMENT OF THE CIRCUIT COURT
FOR BALTIMORE CITY AFFIRMED.
COSTS TO BE PAID BY APPELLANT.**

¹ Rule 2-535(b) provides: “On motion of any party filed at any time, the court may exercise revisory power and control over the judgment in case of fraud, mistake, or irregularity.”