UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 2476

September Term, 2014

JOCORI MARECE SCARBOROUGH

v.

STATE OF MARYLAND

Woodward,
Arthur,
Zarnoch, Robert A.
(Senior Judge, Specially Assigned),

JJ.

Opinion by Woodward, J.

Filed: March 15, 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.

After a two-day trial in the Circuit Court for Wicomico County, appellant, Jocori Marece Scarborough, was convicted by jury on October 21, 2014, of second degree rape, false imprisonment, second degree assault, reckless endangerment, and molesting a student on school grounds. The offenses stemmed from an alleged rape of the victim, C.B., that occurred at Parkside High School on May 5, 2014. Thereafter, appellant was sentenced to twenty years' imprisonment, with all but ten years suspended.

On appeal, appellant presents three questions for our review, which we have rephrased:[1]

1. Did the trial court abuse its discretion in denying appellant's motion for a new trial based on newly discovered evidence under Maryland Rule 4-331(c)?

2. Did the trial court err in instructing the jury that the complaining witness was a "victim of a sexual assault"?

3. Did the trial court err in denying appellant's pretrial motion to transfer venue?

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[1] Appellant's questions, as set forth in his brief, are as follows:

1. Does a pre[ ]trial Facebook conversation between [C.B.] and a third-party acquaintance of [appellant]—in which [C.B.] denied that a rape occurred—constitute "newly discovered evidence" under Maryland Rule 4-331(c), such that the trial court abused its discretion in denying [appellant] a new trial?

2. Did the trial court err in instructing the jury that the complaining witness was a "victim of sexual assault?"

3. Did the trial court err in denying [appellant's] pretrial motion to transfer venue?

We answer each of the questions in the negative and affirm the judgments of the circuit court.

BACKGROUND

On May 19, 2014, appellant was indicted by a grand jury on one count each of second degree rape, false imprisonment, second degree assault, reckless endangerment, molesting a student on school grounds, and possession of a regulated firearm by an individual under the age of 21.[2]

A two-day jury trial was held in the circuit court on October 20-21, 2014. C.B. testified that she was fifteen years old at the time of trial and that she attended both Parkside High School and Wicomico High School at the time of the incident. When asked, C.B. agreed that she had a previous "physical relationship" with appellant that ended a month or two before the incident. C.B. testified that she traveled by school bus from Wicomico High School to Parkside High School each day to participate in the Career and Technology Education ("CTE") program. C.B. stated that on May 5, 2014, she and appellant rode the bus together from Wicomico High School to Parkside High School. On that ride, appellant asked C.B. to sit with him, and when she did, appellant inquired as to whether she would have sexual intercourse with him. C.B. declined, and when she stood up from her seat to move to sit with a friend, appellant grabbed her leg. C.B. was able to get away from appellant and sit with the friend.

[2] Count Six, possession of a regulated firearm by an individual under the age of 21, was severed from the other five counts before trial. Appellant pleaded guilty to count six on November 10, 2014.

When appellant and C.B. disembarked from the bus and entered Parkside High School, appellant asked C.B. if she would walk to class with him, and she agreed. While walking through the school hallway, appellant asked C.B. to kiss him, and she did. When they reached the point of the hallway where they would normally part ways, appellant started to follow behind her. Appellant then began pushing on bathroom doors checking to see if the doors were locked, which C.B. understood to mean that he wanted her to join him inside. The Dean of Students observed appellant and C.B. in the hallway and instructed them to go to class. Upon attempting to enter her classroom, C.B. discovered that, because she was late, she needed to obtain a late pass from the CTE office. C.B. then went to the CTE office to obtain a late pass.

On her way to the CTE office, appellant and a young man began walking behind her, with appellant repeatedly calling her name. C.B. stopped to talk to the youth, but when he walked away, C.B. was left standing alone with appellant. Appellant then grabbed C.B.'s hand and led her down the hallway. C.B. pulled away and started walking back towards the CTE office. Appellant then grabbed her by the waist and started guiding her down the hallway. C.B. "told him [she] wasn't going down that hallway with him" seven or eight times. Appellant pulled her to the end of the hallway and into a vestibule between two sets of double doors. She told appellant to stop, but he pinned her against the wall, stood behind her, pulled her skirt up, and put his penis inside her vagina. After ejaculating inside C.B., appellant told her that she "was going to have his baby."

After the incident, C.B. ran outside in front of the school to leave, but when she saw two administrators standing in her path, she changed course and went to the CTE office to

obtain a late pass. After obtaining a late pass, C.B. went to the bathroom to wash up and then went to class. After class, C.B. got on the bus to return to Wicomico High School. During the bus ride, a friend of C.B. continually asked her what was wrong because C.B. was crying, but C.B. did not tell her what was wrong. Upon arriving at Wicomico High School, C.B. went to the guidance office and told her school counselor, Larry Aldridge, about the incident. Aldridge testified that C.B. came into his office crying and told him that she had been raped in a hallway at Parkside High School. Aldridge contacted the police and shortly thereafter, C.B. was interviewed by detectives. Afterward, C.B. was taken to the hospital where a nurse performed a gynecological examination.

Detective Tom Funk testified that he was assigned to the instant case. After responding to the call of a reported sexual assault, Detective Funk was briefed by the School Resource Officer at Wicomico High School and obtained a statement from C.B. Detective Funk then traveled to Parkside High School to speak to the administrators and review surveillance video footage of the pertinent areas of the school. The video footage reviewed by Detective Funk corresponded with C.B.'s account of the incident, but the rape itself could not be confirmed by the video footage, because it occurred outside the view of the cameras. Video footage showed C.B. running out from the hallway doors and then walking into the CTE office.

Tiffany Keener, a forensic scientist, performed forensic analysis from swabs from appellant and C.B.'s vagina, underwear, and fingernails. Keener testified that "to a reasonable degree of scientific certainty [appellant was] the source of the partial profile that was obtained from the sperm fraction from [C.B.'s] underwear . . . ."

On October 21, 2014, appellant was convicted of all five counts. Appellant filed a motion for a new trial on December 23, 2014, which was argued on the same day as his sentencing on January 9, 2015. At appellant's sentencing, appellant's motion for new trial was denied, and he was sentenced to twenty years' imprisonment, with all but ten years suspended.[3]

On January 22, 2015, appellant filed a timely notice of appeal. Additional facts are set forth below as necessary to the resolution of this appeal.

DISCUSSION

I. Motion for a New Trial

After his conviction but prior to the sentencing hearing, appellant filed a motion for new trial on December 23, 2014. In the motion, defense counsel claimed to have been provided with newly discovered evidence by a third party named Ashley Taylor.[4] Defense counsel stated that Taylor approached him on December 11, 2014, fifty-one days after appellant was convicted, and produced a screenshot of a Facebook conversation ("Facebook communication"). The Facebook communication allegedly took place in July 2014 between Taylor and an individual referred to as "Lay Lay." Although not clearly stated in a letter given to defense counsel, Taylor indicated that the Facebook account user going by the name of "Lay Lay" was C.B. Because C.B. denied being raped by appellant in the Facebook communication, appellant argued that this newly discovered evidence

[3] Appellant was also sentenced to one year and one day for Count Six to run consecutive to the term of twenty years' imprisonment, with all but ten years suspended.

[4] Taylor was mistakenly referred to as Ashley Robbins in the motion.

warranted the granting of a new trial.

Attached to the motion was a copy of the Facebook communication and a signed letter from Taylor. The Facebook communication reads:

> ASHLEY TAYLOR: Hey I got ask u sum
>
> LAY LAY: yeaa
>
> ASHLEY TAYLOR: Did you tell lala and them [appellant] raped u
>
> LAY LAY: no tf I don't talk to nobody in Pokomoke tf
>
> ASHLEY TAYLOR: **OK chill so he didn't rape u**
>
> LAY LAY: **nooo**
>
> ASHLEY TAYLOR: OK thanks

(Emphasis added).

Taylor's letter, which is not signed under oath, states:[5]

> My name is Ashley Taylor, I am 16 years old, I go to Pocomoke High and Worcster County Tech High. I am a friend Jocori Scarborough. In July Chanise Cousin Amia had told me that I could get up with from her friend "Lay Lay" facebook page. I had inboxed her asking why did she tell a few girl in Pocomoke that Jocori had raped her and she inboxed back and said she didn't tell nobody that and that he did not raped. I didn't realize I had the screenshot at the time until December 10th. I am willing to testify she told me he did not rape her.
>
> Ashley Taylor
> Dec. 11 2014

[5] No attempt was made to correct the grammar, spelling, or punctuation in Taylor's letter.

At the sentencing hearing on January 9, 2015, the trial court first heard argument on the motion for a new trial. Defense counsel asserted that he was not approached by Taylor until after the trial; he had no idea who Taylor was prior to this meeting; and he had no knowledge of the communication between Taylor and C.B. He further claimed that he had no way of knowing Taylor existed. Defense counsel also argued that had this evidence been obtained prior to the trial, it could have affected the outcome of the verdict.

The motion hearing consisted of only arguments by counsel. Although defense counsel stated that Taylor would be willing to testify, she did not testify at the hearing. Indeed, appellant adduced no evidence in support of his motion at the hearing. Near the conclusion of the hearing, the trial court expressed skepticism with regard to the admissibility of appellant's proffered evidence, and its ability to persuade a jury. The court also stated that such evidence "could have been ascertained by due diligence prior to [trial.]" The court concluded that the Facebook communication was not newly discovered evidence and denied appellant's motion for a new trial.

On appeal, appellant contends that the trial court abused its discretion in denying appellant's motion for a new trial, because the Facebook communication constituted newly discovered evidence. Appellant argues first that the Facebook communication could not have been discovered prior to trial with due diligence. According to appellant, there was no notice or reason to know that the conversation between Taylor and C.B. took place, and even if appellant did conduct a search, such as by compelling C.B.'s private digital communications, the court would have labeled the request a "fishing expedition" and denied it. Second, appellant asserts that the Facebook communication would have been

admissible at trial and would have had a material effect on the outcome of appellant's case, because it was directly exculpatory.

The State responds that appellant's argument is not preserved for appellate review, because appellant's argument on appeal, that the newly discovered evidence would have been admissible as substantive evidence, is different from the argument raised in the trial court, that the evidence could have been used to impeach C.B. on cross-examination. The State argues that, if this Court reaches the merits of the issue, the trial court did not abuse its discretion in denying the motion for a new trial for two reasons. First, according to the State, appellant failed to meet his burden of proving that the evidence was, in fact, newly discovered.[6] Second, appellant offered no proof that the proffered newly discovered evidence could be authenticated and admitted into evidence and thus failed to show that such evidence was material.[7]

We will first address the State's argument that appellant failed to preserve this issue because appellant argued in the trial court that the Facebook communication could be used to confront C.B. on cross-examination, whereas on appeal, appellant argues that the evidence would have been admissible as substantive evidence of appellant's innocence.

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[6] The State asserts that the evidence was not newly discovered within the meaning of the rule, because appellant did not use due diligence. The State contends that appellant could have acquired the evidence prior to trial by making an effort to obtain C.B.'s computer records. According to the State, "such an investigation could have been conducted by . . . social media; [and] it would not have been 'Herculean.'"

[7] The State notes that no witnesses testified in support of the motion, the screenshot of the Facebook communication did not include the date or any other indicia that it was a Facebook conversation, C.B.'s name is not "Lay Lay," and C.B. had a different Facebook account under her legal name.

We agree with the State that appellant's argument on appeal was not made before the trial court and thus is waived. Md. Rule 8-131(a); *Ware v. State*, 360 Md. 650, 675 (2000), *cert. denied*, 531 U.S. 1115 (2001). Even if preserved, appellant's argument fails. We shall explain.

Maryland Rule 4-331(c) provides, in relevant part:

> 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 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[.]

In addition to the timeliness requirements set forth under Md. Rule 4-331(c)(1), there are two elements that a defendant must satisfy in order to obtain relief. First, the evidence "must not have been discovered, or been discoverable by the exercise of due diligence, within ten days after the jury has returned a verdict." *Argyrou v. State*, 349 Md. 587, 600-01 (1998) (footnote omitted). Second, "in order for newly discovered evidence to warrant a new trial, it must be both material and persuasive." *Mack v. State*, 166 Md. App. 670, 685, *cert. denied*, 392 Md. 725 (2006).

A denial of a motion for a new trial is reviewed for abuse of discretion. *Cooley v. State*, 385 Md. 165, 175 (2005). "Because so much depends on the inherent 'sense' of justice of the trial judge, the only judicial figure who had his thumb on the actual pulse of the trial, the judge's exercise of discretion in evaluating credibility is indispensable."

Jackson v. State, 164 Md. App. 679, 713 (2005), *cert. denied*, 390 Md. 501 (2006). "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." *Id.* at 712.

1. Due Diligence

"[W]hether the proffered [newly discovered] evidence is, in fact, 'newly discovered evidence which could not have been discovered by due diligence,' is a threshold question." *Argyrou*, 349 Md. at 602. "The question of whether evidence is newly discovered has two aspects, a temporal one, *i.e.*, when was the evidence discovered?, and a predictive one, *i.e.*, when should or could it have been discovered? It is to the latter that the requirement of 'due diligence' has relevance." *Id.* In the context of Rule 4-331(c), "'due diligence' contemplates that the defendant act reasonably and in good faith to obtain the evidence, in light of the totality of the circumstances and the facts known to him or her." *Id*. at 605.

The discovery of the Facebook communication was brought to the court's attention within one year of sentencing and thus meets the timeliness requirement under Maryland Rule 4-331(c)(1). As a result, we shall determine if such evidence "could not have been discovered, or been discoverable by the exercise of due diligence, within ten days after the jury returned a verdict." *Argyrou*, 349 Md. at 600-01 (footnote omitted).

We conclude that appellant did not meet his burden to show the trial court that he exercised due diligence such that the Facebook communication could not have been discovered within ten days of the return of the jury verdict. Appellant failed to show the trial court that he took any action to investigate what communications C.B. had about the

alleged rape, on social media or otherwise, which could have uncovered the Facebook communication. Instead, appellant attempted to justify his inaction by claiming (1) that any investigation to discover the Facebook communication would be "Herculean" and thus not "reasonable" and likely "ineffective[,]" and (2) that any effort to compel disclosure of C.B.'s private digital communications would have been denied by the trial court as a "fishing expedition." Such arguments are pure speculation, because appellant did nothing to discover the Facebook communication. Given the lack of witnesses or video footage of the alleged rape, some investigation of what statements, if any, C.B. made about the rape after it occurred would have been warranted. As the State suggests, such investigation could have included an effort to obtain C.B.'s computer records (limited to her communications, if any, about the alleged rape) and to find other high school students who might have talked to C.B. about the rape. In our view, the failure of appellant to conduct *any* investigation dooms his claim that the Facebook communication "could not have been discovered, or been discoverable, by the exercise of due diligence." *Argyrou*, 349 Md. at 600-01 (footnote omitted).

2. Materiality and Persuasiveness

As for the second element of materiality and persuasiveness, materiality is a threshold question. *Mack*, 166 Md. App. at 685. "To be material the evidence cannot be 'merely cumulative or impeaching.'" *Campbell v. State*, 373 Md. 637, 670 (2003). "Merely impeaching" includes "[n]ewly discovered evidence that . . . might have a bearing on that witness's testimonial credibility, but would not have a direct bearing on the merits of the trial under review." *Jackson*, 164 Md. App. at 697-98. "If the newly discovered

evidence, on the other hand, was that the State's witness had actually testified falsely on the core merits of the case under review, that evidence . . . would be directly exculpatory evidence on the merits and could not, therefore, be dismissed as 'merely impeaching.'" *Id.* at 698. Here, the Facebook communication is material, because it is directly exculpatory and could show that the State's witness testified falsely on the core merits of the case.

For evidence to be persuasive, it must be likely to "have produced a different result, that is, there was a substantial or significant possibility that the verdict of the trier of fact would have been affected." *Yorke v. State*, 315 Md. 578, 588 (1989). It logically follows that for newly discovered evidence to be persuasive to the fact finder, the defendant must show that the evidence actually would be admissible at trial. In the instant case, the major problem regarding the admissibility of the Facebook communication is authentication.[8] First, the screenshot of the Facebook communication does not contain a date, which means that the trial court had no clear idea when this conversation took place. Second, Taylor never testified, by affidavit or at the hearing, that the Facebook communication was what she claimed it to be. Third, appellant adduced no evidence at the hearing showing that the speaker identified as "Lay Lay" in the Facebook communication was indeed C.B. In sum, appellant failed to establish the authentication of the Facebook communication, and thus failed to prove that such document would have been admissible evidence at trial.

Even if the Facebook communication could have been authenticated and admitted

[8] "[I]n order to authenticate evidence derived from a social networking website, the trial judge must determine that there is proof from which a reasonable juror could find that the evidence is what the proponent claims it to be." *Sublet v. State*, 442 Md. 632, 638 (2015).

into evidence, there are additional trustworthiness and credibility issues present. *See Jackson*, 164 Md. App. at 702 ("It is clear that the judge called upon to decide the motion may assess trustworthiness and credibility for himself, even though the verdict in the case was rendered by a jury."). The Court of Appeals in *Argyrou* stated that courts that have addressed the issue of newly discovered evidence "have focused not simply on the credibility of the person offering the exculpatory evidence, but on the credibility or trustworthiness of the evidence itself, as well as the motive, or other impeaching characteristics, of those offering it." 349 Md. at 608. The trial court made a credibility determination when it stated: "I'm very skeptical as to whether or not [this proffered newly discovered evidence] would have been persuasive to [twelve] jurors." The trial court did not abuse its discretion in making this determination, because there were clear flaws regarding the subject evidence aside from admissibility, such as the late disclosure of the Facebook communication, Taylor's reasons for failing to disclose the Facebook communication sooner,[9] and the motive of Taylor, a self-acknowledged friend of appellant. Therefore, we conclude that appellant failed both to prove the exercise of due diligence and the persuasiveness of the Facebook communication and thus did not satisfy Rule 4-331(c). Accordingly, the trial court did not abuse its discretion when it denied appellant's motion for a new trial based on newly discovered evidence.

II. Jury Instruction

At the conclusion of the evidence in the instant case, the State requested that the

[9] Taylor told defense counsel, "I just forgot, I didn't think it was important."

trial court read the following jury instruction: "The testimony of a victim of a sexual offense standing alone, if believed, is sufficient evidence to support a conviction." Defense counsel objected to the instruction as "essentially overkill." The court overruled the objection and gave the jury such instruction. After instructing the jury, the court asked both appellant and the State, "Are there any additions or exceptions to the Court's instructions?" Defense counsel replied, "No, Your Honor."

On appeal, appellant argues that the instruction was erroneous, because 1) it stated that "[C.B.] was a victim of a sexual assault," instead of referring to her as an alleged victim, and 2) the instruction lessened the State's burden by failing to contain the words "beyond a reasonable doubt." Appellant, therefore, claims that his convictions should be reversed, and the case remanded for a new trial. We disagree.

"Ordinarily, 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." Md. Rule 8-131(a). Arguments not made to the trial court are not properly before the appellate court. *White v. State*, 324 Md. 626, 640 (1991).

We hold that, because appellant merely objected to the jury instruction on the ground that it was "essentially overkill," instead of articulating the reasoning appellant now presents to this Court on appeal, such issue is not preserved for our review.

III. Motion to Transfer Venue

In a non-capital case such as the instant case, "[w]hether a case should be removed is a decision that rests within the sound discretion of the trial court." *Pantazes v. State*, 376 Md. 661, 675 (2003). A trial judge's decision regarding transfer of venue "will not be

reversed absent a showing that discretion was abused." *Muhammad v. State*, 177 Md. App. 188, 300 (2007) (internal quotation marks omitted), *cert. denied*, 403 Md. 614 (2008).

The rule governing a motion to transfer venue is Maryland Rule 4-254(b)(1), which provides in part:

> When either party files a suggestion under oath[10] that the party cannot have a fair and impartial trial in the court in which the action is pending, the court shall order that the action be transferred for trial to another court having jurisdiction only if the court is satisfied that the suggestion is true or that there is reasonable ground for it.

"[T]he party seeking removal has the burden of showing that he has been prejudiced by adverse publicity and that the voir dire examination of prospective jurors, available to him, would not be adequate to assure him a fair and impartial trial." *Simms v. State*, 49 Md. App. 515, 518 (1981) (internal quotation marks and citation omitted). "A party moving for a change of venue carries a heavy burden of satisfying the court that there is so great a prejudice against him that he cannot obtain a fair and impartial trial." *Id.* at 518-19.

"It is not to be presumed, however, that an unbiased jury cannot be had." *Id.* at 518. "Voir dire examination is usually a sufficient mechanism to insure that a defendant obtains a fair and impartial trial despite the pretrial publicity." *Id.* at 519. "Only where the pretrial publicity in and of itself is so massive and widespread that it is clearly prejudicial, or where the publicity is so inherently prejudicial that it 'saturated the community' is the remedial step of voir dire meaningless." *Id.* at 518.

[10] Although not raised by the State in the instant case, we note that this motion was not made under oath and therefore does not comply with Maryland Rule 4-254(b)(1).

Prior to trial, appellant filed a Motion to Transfer Venue asserting that appellant could not receive a fair trial in any of the four lower shore counties, Wicomico, Worcester, Somerset, and Dorchester, due to the substantial publicity that had surrounded the case. Attached to appellant's motion were seven newspaper articles regarding the incident giving rise to the charges against appellant in the case *sub judice*. On August 28, 2014, at the hearing on the motion to transfer venue, defense counsel provided the trial court with a total of thirty-five pages of newspaper articles and blog posts about the alleged incident, the charges filed against appellant, and appellant's upcoming trial. Appellant argued that the publications seemed to conclude that appellant was guilty. The State acknowledged that there were some articles on the case but that there was nothing to show that the coverage was so massive and widespread as to be clearly prejudicial to appellant. At the conclusion of the hearing, the trial court denied the motion explaining:

> I'm further going to find that [appellant] has failed to meet the burden to justify removal. I find that voir dire is a sufficient mechanism to ensure that [appellant] obtains a fair and impartial jury, despite pretrial publicity. I have had an opportunity to read every single solitary submission of [appellant] in making this ruling. **I find the case should only be transferred if at voir dire it is revealed that there's an inability to empanel an impartial jury.** In reaching this decision I also find that [appellant] has not proven that the pretrial publicity is so in and of itself massive and widespread that is it clearly prejudicial or the publicity is so inherently prejudicial that it has saturated the community such that it would render voir dire meaningless as set forth under the standard in Simms versus State, 49 Md. App. 515. So the motion is denied.

(Emphasis added).

During *voir dire* on October 20, 2014, defense counsel did not re-raise the issue of pretrial publicity. Moreover, at the conclusion of *voir dire*, defense counsel accepted the

jury without any reservation. Because the trial court stated that *voir dire* would be sufficient unless "it is revealed that there's an inability to empanel an impartial jury" and appellant not only failed to re-raise the pretrial publicity issue but accepted the jury without reservation, appellant's objection to the denial of the motion to transfer venue is waived.

Even if there had been no waiver, we would still hold that the *voir dire* process in this case was sufficient to ensure that appellant had a fair and impartial jury. At the beginning of *voir dire*, the trial court asked the jury venire:

> [Appellant] is charged with the crime of rape as well as related offenses. This allegedly occurred on . . . May 5, 2014, at Parkside High School and involved . . . [C.B.] being the alleged victim. There has been publicity about this case and we may have to get into that further. Does anybody know anything about this case other than the small amount of the limited amount I just described to you?

Following that question, four jurors approached the bench to discuss their knowledge of the case. Near the end of *voir dire*, the court asked the jury venire again if they had any knowledge of the case, stating:

> There has been coverage about this case in the media. If any of you think you have been affected by that coverage to the extent that you would be leaning one way or the other, either for the State or for the defense, or that you would arrive at some forgone conclusions based on that coverage, come forward.

Two more jurors approached the bench after that question, with one indicating that she was unsure if she could keep an open mind about the case. Thus, by the conclusion of *voir dire*, several jurors had answered questions that they either knew about the case or knew one of the parties or witnesses. All of the jurors who revealed pretrial knowledge of the case, the parties, or the witnesses were either stricken or not selected to sit on the jury.

Consequently, at the conclusion of the jury selection process, twelve jurors and two alternates were selected to sit on the jury, none of whom had indicated during *voir dire* that they had knowledge of the case from pretrial publicity or otherwise. At this point, the trial court asked defense counsel, "Is the jury acceptable to [appellant]?" Defense counsel responded, "It is, Your Honor."

Although there was some pretrial publicity, as demonstrated by the newspaper articles and blog posts provided by defense counsel in the motion and at the motion hearing, the *voir dire* and jury selection process clearly filtered out all potential jurors who had pretrial knowledge of the case. What remained was a jury without any pretrial knowledge that might have caused bias against appellant. Accordingly, the trial court did not abuse its discretion in denying the motion to transfer venue.

JUDGMENTS OF THE CIRCUIT COURT FOR WICOMICO COUNTY AFFIRMED; COSTS TO BE PAID BY APPELLANT.