Circuit Court for Baltimore County
Case No.: 03-K-97-005134

UNREPORTED

IN THE APPELLATE COURT

OF MARYLAND*

No. 2214

September Term, 2023

EDWARD McCORKLE

v.

STATE OF MARYLAND

Nazarian,
Beachley,
Kenney, James A., III
(Senior Judge, Specially Assigned),

JJ.

Opinion by Beachley, J.

Filed: May 21, 2025

Kevin Reynolds was shot and killed at approximately 1:00 p.m. on December 1, 1997, in Baltimore County. Appellant, Edward McCorkle, was charged with the murder and use of a handgun in the commission of a crime of violence. The State prosecuted the charges before a jury in the Circuit Court for Baltimore County in a trial held over several days in December 1998. Appellant's defense, in large part, was based on an alibi that placed him at the Baltimore Gas & Electric ("BGE") company store at Mondawmin Mall in Baltimore City about the time the crime took place. The jury convicted him of the offenses.

In 2016, eighteen years after his conviction, Appellant filed a petition for writ of actual innocence based on "newly discovered evidence," which included a proffer that a woman could testify that she saw Appellant at the BGE store on the day of the murder "sometime shortly after 1:30 p.m." The circuit court denied the petition, without a hearing. On appeal, this Court held that Appellant was entitled to a hearing on his petition and, thus, reversed and remanded for a hearing. *McCorkle v. State*, No. 1183, Sept. Term, 2016 (filed January 26, 2018). Following a hearing held on December 12, 2023, the circuit court again denied relief. On appeal, Mr. McCorkle argues that the court based its decision on a clearly erroneous factual finding, applied an incorrect legal standard when considering the petition, and abused its discretion in denying relief.

For the reasons to be discussed, we shall affirm.

BACKGROUND

Trial

The State's first witness was Cynthia McKinney, who at the time of trial was the mother of four children ranging in age from four to sixteen years old. Appellant was the father of her children, but Cynthia ended their relationship around October 1994 due to domestic violence. Ms. McKinney had also learned that Appellant was involved with another woman, Cornetta James, with whom he had fathered children. After leaving the relationship, Ms. McKinney moved from Baltimore City to the Owings Manor apartment complex in the Reisterstown area of Baltimore County.

After moving to Owings Manor, Ms. McKinney became acquainted with Kevin Reynolds, a maintenance employee at the apartment complex, and they subsequently began dating. When she went on dates with Mr. Reynolds, she informed the babysitter not to give Appellant information about where she was if he called or showed up at her apartment. She explained that Appellant would pepper her with questions about who she was seeing and whether she had a new boyfriend.

On one occasion in April 1997, Appellant confronted Ms. McKinney as she (and her two sons) got out of Mr. Reynolds' car after an outing to Walmart. Appellant also had words with Mr. Reynolds, who ultimately drove away.

Roland Beck testified that he also worked in the maintenance department at the Owings Manor apartment complex. He related that around April 1997 he was walking his dog around 8:00 p.m. and observed Mr. Reynolds pull into the complex followed by

another vehicle. He observed Appellant exit the second vehicle and walk over to Mr. Reynolds' car. Ms. McKinney and two of her children were also there. Mr. Beck observed Appellant and Mr. Reynolds "talking back and forth" and then Mr. Reynolds left. Appellant, who Mr. Beck described as "upset," and Ms. McKinney then "were kind of like arguing back and forth." Mr. Beck testified that at approximately 4:30 p.m. the next afternoon, Appellant appeared at the maintenance shop and asked for Mr. Reynolds, but Mr. Reynolds was not there. About an hour later, Mr. Beck observed Appellant standing next to Mr. Reynolds' vehicle in an area where Mr. Reynolds always parked his car. Appellant and Mr. Reynolds were "just talking" and when Mr. Beck stopped and asked Mr. Reynolds if he was okay, the latter replied "yeah," and Mr. Beck continued on his way.

The next month, on the evening of May 13, 1997, Mr. Reynolds visited with Ms. McKinney in her apartment. When he left, he took with him a plate of cookies Ms. McKinney's daughter had given him. About the same time that Ms. McKinney walked Mr. Reynolds outside, Appellant pulled up in front of her apartment with their son. Appellant approached Ms. McKinney and Mr. Reynolds and confronted them about "what type of relationship" they had. Ultimately, Ms. McKinney retreated to her apartment and Mr. Reynolds headed towards his apartment. Sometime thereafter, Ms. McKinney went back outside and observed Appellant's car "up towards Kevin's house" and "police and ambulance all over the place."

It was undisputed at trial that Appellant and Mr. Reynolds had engaged in a fight on May 13, 1997, during which both incurred stab wounds. Mr. Reynolds spent about a week

in the hospital. Appellant was arrested and charged with the attempted murder of Mr. Reynolds. About a week after the fight, Appellant sought charges against Mr. Reynolds based on the same incident. The State ultimately declined to prosecute those charges, and dismissed them after determining that the charges sought by Appellant against Mr. Reynolds were "retaliatory." Appellant subsequently sought new charges against Mr. Reynolds based on an alleged armed robbery occurring in June 1997. Both the new charges against Mr. Reynolds and the attempted murder charge against Appellant were scheduled for trial on December 2, 1997.

Ms. McKinney testified that, sometime after the May 1997 stabbing incident, Appellant told her: "Bring your boyfriend to church with you. I would love to put holes in him again."

Ms. McKinney's sister, Denise McKinney, testified that she had lived with Ms. McKinney at the Owings Manor apartment in late 1996 and early 1997. Denise helped Cynthia with her home day care business, attended community college, and worked part-time at the Ames Department store in Reisterstown. Denise testified that Appellant would often call the apartment asking to speak with Cynthia. Appellant, to the "shock[]" of Denise, also appeared once at Ames to speak to her about Cynthia.

At the end of May 1997, Cynthia McKinney moved from the Owings Manor apartment to a residence on Hanwell Road.[1] Although she had not told Appellant she was

[1] Although not made clear at trial, based on the street address, the residence appears to have been located in Randallstown.

moving, he called her that afternoon and made references to things indicating that he knew her new address and had observed her moving into the new place.

Patricia Martin testified that she cleaned apartments at the Owings Manor complex, a job she had held for about thirteen years. On a day in June or July 1997, between 12:00 and 12:30 in the afternoon, Ms. Martin observed Appellant in a red Pontiac Trans Am in the parking lot of the maintenance shop of the apartment complex. Mr. Reynolds' truck was parked nearby, and she observed Appellant slowly drive by while looking towards Mr. Reynolds' vehicle before driving off. Ms. Martin observed Appellant repeat the scenario two more times, that is, drive by slowly while looking at Mr. Reynolds' vehicle. The incident "bothered [her] enough" that she told both Mr. Reynolds and their maintenance supervisor.

Terry Blackwell testified that she and Mr. Reynolds were friends and on November 30, 1997 (the day before the murder) she visited Mr. Reynolds and his nine-year-old daughter at Mr. Reynolds' apartment in the Owings Manor complex. That evening she heard someone knock on Mr. Reynolds' door. Ms. Blackwell related that Mr. Reynolds opened the door, "remained at the opening of the door for a moment and then he went outside the door." Although she did not see who had knocked, Ms. Blackwell "heard a male voice." A few minutes later, Mr. Reynolds came back into the apartment and then went outside again through the rear patio door. About ten minutes later, Mr. Reynolds returned to the apartment. He did not say anything specific to Ms. Blackwell about the

incident, other than "don't worry about it." Ms. Blackwell also stated that Ms. McKinney had called Mr. Reynolds that evening.

Ms. McKinney testified that on November 30th, sometime after 8:00 p.m., Appellant dropped their son off at her home. At the time, Ms. McKinney had two phone lines in her home—one number for the children and one for herself. Sometime after Appellant dropped their son at the house, Appellant called the children's phone line and she spoke with him. Ms. McKinney "traced" the number that he had called from by utilizing "star 69." After Mr. Reynolds' murder on December 1st, the police determined that Appellant had called the McKinney home from a Burger King on Reisterstown Road, "[m]aybe a few miles" from the Owings Manor apartment complex.

On December 1, 1997, the State postponed the armed robbery charges pending against Mr. Reynolds after learning they were unrelated to the May 13th stabbing incident. The State intended, however, to move forward with trial scheduled for the next day on the attempted murder charges against Appellant.

Ann Harrell, a secretary in the victim witness unit of the Baltimore County State's Attorney's Office, was tasked with calling Appellant to inform him that the criminal case against Mr. Reynolds had been postponed. She made the phone call "probably somewhere between 9:30 and 10" on the morning of December 1. A woman answered the phone and advised that Appellant was not there. Ms. Harrell left a message and sometime before lunch a man, identifying himself as Appellant, returned the call. After informing him that the case against Mr. Reynolds had been postponed, he asked about the attempted murder

case against him. Ms. Harrell informed Appellant that that case against him would be going forward the next day (December 2), as scheduled. She described Appellant's tone during the phone conversation as "very abrupt and agitated."

On December 1, Ms. McKinney went to the Owings Manor apartment complex to meet a child in her daycare who would be getting off the bus. She saw Mr. Reynolds at approximately 12:20 p.m. He was working outside an apartment building on Brookebury Drive. She spent about thirty minutes with him, leaving after she retrieved the child from the bus.

Aaron Grimes, a maintenance technician at the Owings Manor apartments, worked with Mr. Reynolds and had known him for about twenty years. He did not know Appellant, nor had he seen him before December 1. On December 1, Mr. Grimes discovered a leak in the storage room of the apartment building bearing the address 108 Brookebury Drive. He contacted Mr. Reynolds, who drove over in his work van, which he backed up towards 108 Brookebury Drive. Mr. Grimes saw Ms. McKinney parked in front of 112 Brookebury.

Mr. Reynolds agreed to fix the leak, while Mr. Grimes tended to a task inside an apartment located at 110 Brookebury Drive. After Mr. Grimes completed his task, he stopped back to see how Mr. Reynolds was coming along with the leak. Around 1:00 p.m. the men "were talking about the time," as they were anxious to get done in order to take their lunch break. When Mr. Reynolds related that he needed another part, Mr. Grimes agreed to retrieve it from the maintenance shop, leaving around 1:00 p.m. to get it.

Mr. Grimes drove to the maintenance shop, located at 17 Brookebury Drive, obtained the part and headed back to where he had left Mr. Reynolds. Mr. Grimes estimated that he had been gone "something like" five to seven minutes. Mr. Grimes recounted what happened on his way back:

> Well, I left 17 Brookebury, I came down to across Taragon and then I went across Taragon and then to proceed around the right corner to turn into it starts 100 Brookebury, 104 – 102, 104 Brookebury, and as I turned the corner at 100 Brookebury I saw this bike coming around the corner from 106 and 104 at a high rate of speed and he almost lost it off the bike. By that time it is only like a split second, I'm up to 104 already and I'm close to the car because there is a vehicle parked to the right of me and he is speeding by between my truck and the vehicles and he almost took off my mirror on my truck. He looked at me like this (indicating), real big surprise and I looked at him, never gave a second thought, proceeded on, come around the corner at 106 and the second I seen 106, I turned the corner, I seen Kevin [Reynolds] on the ground[.]

Mr. Grimes parked his vehicle, jumped out, and observed Mr. Reynolds lying on the ground with "blood coming from his head[.]" Mr. Grimes radioed for help, utilizing a radio with "a direct link to" the rental office and "every other maintenance personnel on the property." In addition to requesting help for Mr. Reynolds, Mr. Grimes advised that a person on a bicycle had just left the area "at a high rate of speed" and suggested someone "track him down."

Police Officer Scott Nelson responded to the "call for a gunshot wound to the head"—a call that came in about 1:08 p.m. He arrived at the scene about three minutes later and observed the victim, with two gunshot wounds to the head, laying on the grass about ten yards from the entrance of 108 Brookebury Drive. Officer Steven Duvall also responded to the call, and he arrived at the area within "[a]pproximately five to seven

minutes." As he turned onto Taragon Road, he observed a bicycle in the street. He stopped as he knew that "dispatch said that the suspect fleed [sic] the scene on a bike." Officer Duvall stayed there with the bike for two and half to three hours, until a crime lab technician retrieved it. The crime lab later processed the bike for fingerprints, but no fingerprints were recovered.

About 1:30 p.m. Mr. Grimes gave a written statement to the police. In that statement, he described the person on the bicycle as a black male, approximately 200 or 220 pounds, in his early twenties, and wearing a dark blue bright "puff jacket" with a hood and blue pants. The day after the murder, Mr. Grimes (along with two others) was watching television during his lunch break at his father-in-law's apartment and switching channels looking for any news about the murder. One station covered the incident and showed a suspect (Appellant) in police custody. Mr. Grimes immediately recognized the suspect as the man he had seen on the bike. At trial, Mr. Grimes identified that person as Appellant. He also testified at trial that, at the time of the incident, the man on the bike had a "bandana" or something like it "wrapped over his head." He testified that his in-court identification of Appellant as the man on the bike was not based on the television news clip, but "[b]ecause that is the man [he] saw that day on the bicycle."

Baltimore County Police Detective Gerald D'Angelo arrived at the crime scene around 1:30 p.m. He interviewed Ms. McKinney, who had returned to the apartment complex after receiving a page from a friend of Mr. Reynolds. After participating in an

interview with Mr. Grimes, Det. D'Angelo met with Ms. McKinney again, this time at the Garrison police precinct.

On December 1, 1997, around 5:00 p.m., Appellant was arrested and taken to police headquarters. When Det. D'Angelo encountered Appellant at police headquarters, he was wearing a black jacket, black pants, and a hooded sweatshirt underneath the jacket. The crime lab tested the sleeves of the jacket and the pants, and they were negative for gunshot residue. Appellant's hands were not swabbed, as Det. D'Angelo explained that you "have the most likely chance" of getting results (negative or positive) within the first two hours of a shooting and they were "well beyond" that time frame. A photograph of Appellant taken at the time of processing reflected a "[l]arge face" with a goatee and mustache. At the time of the arrest, Appellant gave his height and weight as six feet, two hundred pounds.

When arrested, Appellant was wearing boots and the police noticed, on the bottom of one of the boots, "a small dried brown matter which was later determined by the lab to be dog feces." Because there were several piles of dog feces in the grassy area near the crime scene, the police had the matter on the boot compared to samples taken from the scene—testing specifically for "any parasites in the feces itself." The results were "negative for parasites." The police also "collected swabs from two dogs that lived in the apartment complex[,]" but the swabs did not match the matter found on the boot. In sum, Det. D'Angelo testified that "six piles of feces" were sent to the lab for testing. According to the detective "[t]hree of the piles did not match the sample from the boot and the other three, the samples were too degraded to do a comparison with what was on the boot."

When meeting with the detectives upon his arrest, Appellant provided them with a receipt from the BGE store. The receipt indicated payment of a bill on December 1, 1997, for an account associated with Appellant's address. The receipt bore a transaction number—236—but not a time stamp or any indication as to what time the bill was paid. As part of his investigation, Det. D'Angelo responded to the BGE office at Mondawmin Mall and spoke with both the "teller supervisor" and the "teller specifically that handled that particular transaction." Neither could provide an "exact time[]" the transaction took place and no one could identify who paid this particular bill. Although BGE would normally have a videotape recording the area, the recording device was not turned on until about 3:00 p.m. on December 1. Det. D'Angelo reviewed the videotape that was available, recording from approximately 3:00 p.m. until 5:00 p.m., and did not see Appellant on the tape.

The autopsy report concluded that Mr. Reynolds died of three gunshot wounds to the head. The wounds indicated that it was a "[n]ear contact[,]" meaning "[t]he barrel of the gun . . . would have been in close proximity to the [victim]." "A deformed bullet projectile" and bullet fragments were recovered from the victim's skull.

Detective Mark Ensor testified based on his expertise in firearms and tool mark identification. He examined the bullets or bullet fragments in this case and determined that they were ".22 caliber long rifle" bullets. Among other weapons, this type of bullet could be fired from a Beretta model 21A semi-automatic pistol. Although such a weapon would dispense a cartridge case, along with the bullet, upon firing he explained that "a bag or

similar device" could be "attached to the gun or the hand next to the firearm" to capture the cartridge case when ejected from the weapon.

No shell casings were recovered at the crime scene. The gun used in the murder was not recovered. In a search of Appellant's home, a shotgun was recovered from the attic, but "a .22" was not located.

Robin Lawson, Appellant's sister, was called as a witness by the State. She testified that she purchased a Beretta .22 caliber, model 21A pistol in May 1996. When at home, she kept the firearm under the mattress in her bedroom. On February 17, 1997, she filed a report with the Baltimore Police Department that the firearm was lost or stolen. No other items were missing from her home and there was no indication of a break-in. Her firearm was never recovered. During the defense's case, Ms. Lawson testified that she works for the Division of Corrections and had a handgun permit for the .22 caliber semi-automatic firearm. On the weekend the firearm went missing, Ms. Lawson claimed that her four nephews (ranging in age from twelve to eighteen), sister-in-law, and the sister-in-law's boyfriend had been at her home. She asserted that Appellant was not at her home that weekend.

Ricky Kemper, an inmate at the Baltimore County Detention Center, testified for the State. He acknowledged a significant criminal history, beginning in 1976 and continuing to the time of trial, including convictions for robbery, unauthorized use of a motor vehicle, malicious destruction of property, conspiracy to distribute cocaine, theft, and possession of CDS.

Mr. Kemper met Appellant at the Baltimore County Detention Center, where Appellant was detained after his arrest. Both were housed in the same area of the facility. Over a period of about four months—from January through April 1998—Mr. Kemper engaged in numerous conversations with Appellant about this case. In late April 1998, Mr. Kemper made contact with Det. D'Angelo and offered to provide him with information he learned from Appellant in exchange for "maybe speed[ing]" up his own case pending in Baltimore County. Mr. Kemper's attorney engaged in plea negotiations with the State and, in exchange for his truthful testimony at Appellant's trial, the agreement provided that Mr. Kemper would plead guilty to petty theft and second-degree assault.

Ann Brobst, an Assistant State's Attorney for Baltimore County, testified that she had been assigned to prosecute the criminal case against Mr. Kemper. The file was brought to her attention after Mr. Kemper had made contact with Det. D'Angelo. The charges pending at that time were first-degree assault, two counts of theft, unlawful taking of a motor vehicle, unauthorized use, possession of drug paraphernalia, malicious destruction of property, and fleeing and eluding police.

As a result of the plea negotiations, Mr. Kemper pled guilty on July 18, 1998 to theft under $300 (the theft of a license plate) and second-degree assault. The court sentenced Mr. Kemper to 18 months' incarceration for theft. Sentencing on the assault conviction was delayed, pending the "nature and extent of his cooperation" in Appellant's case. The

expectation was that, if he testified truthfully in Appellant's case, Mr. Kemper would not be sentenced to any "additional time" on the pending assault conviction.[2]

Mr. Kemper testified that, over the course of "a lot" of conversations, Appellant told him about the May 13th stabbing incident, the charges against him, the charges Appellant later sought against Mr. Reynolds, and the murder in this case. Mr. Kemper offered several reasons why Appellant confided in him: (1) because he was older than most of the other inmates and relatively close in age to Appellant; (2) he had a record and familiarity with the criminal justice system; and (3) Appellant thought they had "something in common[]" because Appellant's "girlfriend now was married to a guy that [Kemper] was in the federal system with."

Appellant told him that, when he learned about the postponement of his case against Mr. Reynolds, he "realized he had to kill this dude to keep from going to jail for fifty years." Mr. Kemper related that Appellant was worried about the murder charge pending against him because the victim's co-worker had seen him. According to Mr. Kemper, Appellant told him that, "after he did the guy Kevin in the parking lot, that he was coming out on a bicycle" and a co-worker of the victim "was coming out of the apartment complex across the street" and "the guy seen him for about four seconds" and Appellant "wanted to know would that hold-up in court, that he only seen him for about four seconds."

[2] After completing his Baltimore County sentence, Mr. Kemper was required to serve "the remainder" of a four-year federal sentence.

Among other details about the crime, Mr. Kemper testified that Appellant also told him that "he had planned to do it another way first and that way failed." Mr. Kemper testified that Appellant told him that, the day before the murder (November 30), Appellant

> took his buddy over there, John Johnson, sent him up to the door and he was waiting out in the parking lot. The guy John Johnson was supposed to tell him that something was wrong with his van, that he bumped into his van in the parking lot and when he came out, he was going to shoot him like that. But the guy was evidently like skeptical and he wouldn't come out.

As for the murder that occurred the next day, Mr. Kemper related the following:

> He said when he actually did it, he had a Rent-a-car. He didn't say where the bike came from. So I don't know if it was there or he brought it with him or not. But he said he left the car a couple blocks away and he rode the bike down. He said he had all black on with the thing pulled up like this, the kind that zippers over your face some, and a black like ski cap that come down over his eyes even some.
>
> He rode up and the guy was working outside besides his truck. He was putting some tools or taking some tools out and he just rode up to him on the bicycle, shot him three times[.]
>
> ***
>
> He said he hit him first like that and then when the guy fell he hit him and then to make sure I put the gun to his head and hit him a third time. Then he said the dude was out and he never got off the bike, he stayed with his legs on the side of the bike and just took off on the bike. He said – he is telling me, he said, I'm balling out of the parking lot and here this dude is coming this way across the street coming out of the other apartment complex and now I don't know what he did after that. He got rid of the bike and said he took the rental car back.

Mr. Kemper further testified that Appellant had discussed with him that returning the rental car and securing the BGE receipt were both part of his alibi. According to Mr. Kemper, Appellant said he knew that he would immediately be a suspect upon the death of Mr. Reynolds.

> So what he did was he said he put all black on, like black pants, black coat, big puffy coat, and black ski cap, like toboggan type hat. Then after he did it, he changed clothes; he left all black on but he changed the type of jacket, a jacket that wouldn't come up real high; and he put a different kind of black hat on, a black hat that was more like a skull cap that had a thick white band around it. He said because he knew if anybody did see the guy, like the guy in the van, that they were going to say yeah, he had an all black hat on, a big puffy coat that come up like that and he said this way he would have black on but it wouldn't – it would be a white stripe. What witness would miss that? So he wanted to change it around to where if it did go to court, he would have some good grounds to beat it with.

Mr. Kemper also recounted that Appellant told him that the police were examining dog feces and "that had him worried a little bit." Appellant "was afraid he had stepped in some and didn't realize it." According to Mr. Kemper, Appellant said "he had changed shoes, but he was afraid there could have been some dog crap on his shoes that could match that dog crap because he don't know how dog systems works, whether all of it could be the same or certain kind of dogs could be the same and he said that had him worried."

After Mr. Kemper's testimony, the State rested. The court denied a defense motion for judgment of acquittal.

The defense's first witness was Mario Williams. On the day of the murder, Mr. Williams was watching television at his girlfriend's apartment located on the top floor of 106 Brookebury Drive. At approximately 1:00 p.m. he heard two gunshots and got up and looked out the window and saw "a guy riding away on a bike." At 1:25 p.m. he gave a description to the police. At trial, he testified that he told the officer

> that I couldn't really see his face but I gave him that he was a male, he was black, and he was about six feet and one thirty pounds and one hundred and sixty pounds. I told him, by the way, whoever was riding the bike, he had

> the coat over his face, skull cap over his head, I couldn't really tell how old he was.

Mr. Williams told the police he believed the bike rider was in his late teens, early twenties—believing he was "a younger guy because of the way his body was fitting on the bike. It is a small bike and he was riding it like a younger guy." Although much of the bike rider's face was covered, he did observe his hands and a portion of his face around the eyes. Mr. Williams did not believe it was Appellant because the bike rider was "[d]arker in complexion." In fact, upon later seeing Appellant on the news, Mr. Williams' "first reaction[]" was "that wasn't the guy that was on the bike."

On cross-examination, Mr. Williams stated that, after hearing the gun shots, he got up from the bed he was lying on and moved towards the window. He had to move the sheet hanging over the window (like a curtain) and also make an opening in the mini-blinds, which were closed at the time. He confirmed that he had not gotten a good look at the bike rider's face. In fact, Mr. Williams observed him as he was pedaling away from where Mr. Williams stood at the window and the rider was kind of looking back over his shoulder. He also confirmed that he had told the police that the bike rider had a "big collar around his face," "a hat pulled down[,]" and was wearing "a big black coat."

Jose Pineda, a twenty-three-year employee with BGE, was called by the defense. At the time of trial, he was the supervisor of the bankruptcy department and the custodian of BGE records. He had also once worked as a customer relations person at the BGE office located at Mondawmin Mall.

Mr. Pineda explained that BGE maintains records of how many transactions each teller processed during a day. Mondays and the beginning of the month are the busiest days. The first day of the month, "when the checks come out," is "very hectic," noting that "[p]eople are waiting in line before the door is even open." But he also testified that there are "[d]efinitely more in the afternoon."

The BGE receipt Appellant turned over to the police upon his arrest was handled by teller "number 64." On Monday, December 1, 1997 (the date of the receipt), that particular teller processed a total of 351 transactions during an eight-hour shift, which "started at 8:30 and ended at 4:30." Appellant's receipt reflected a transaction number of 236. Mr. Pineda could only estimate the time of that transaction, which he did by employing a simple mathematical formula: he divided the total number of transactions (351) by the number of hours the teller worked (eight) and assumed that the teller processed about 44 transactions per hour. Based on this formula, he opined that transaction number 236 (Appellant's receipt) took place "between 12:30 and 2:30, probably closer to 1:30 or so."[3]

On cross-examination, Mr. Pineda admitted that he could "only surmise" the timeframe he gave, which he based on having worked at this location and having knowledge of the volume of customers. He agreed that his time estimate "is not a definitive, no." When asked whether customer service would accept payment from

[3] This formula did not appear to take into account any employee lunch break or Mr. Pineda's testimony that there is a higher volume of transactions early in the morning on the first day of each month.

someone for a BGE bill that was not their account, Mr. Pineda replied: "Oh, we will take money from anybody."

The State and the defense had stipulated that, on or about March 30, 1998, the State provided defense counsel with discovery in this case, comprising a total of 465 pages which included "[c]rime scene reports, crime scene investigations, confidential reports of investigation, search warrant reports, crime scene interviews, crime scene canvas[s] reports, ballistic reports, grand [j]ury subpoenas, forensic investigation reports, [and] autopsy reports."

The defense called individuals who had been inmates with Appellant and Mr. Kemper at the Baltimore County Detention Center. Derrick Thompson was Appellant's cell mate. Although he knew that Appellant was facing homicide charges, they never spoke about his case.

Mr. Kemper was housed four or five cells down from them. Mr. Thompson regularly gave his newspaper to Mr. Kemper. If Mr. Thompson was in his cell, he would hand him the paper. If Mr. Thompson was in the recreation room, and Kemper asked for the paper, he would "okay him to go to the cell and get the newspaper."

Mr. Thompson testified that at some point Appellant was visited by his attorney and brought back a stack of papers. He observed Appellant reviewing the papers and taking notes on a legal pad. Sometime later Appellant's legal pad "wound up missing." When Appellant asked him about it, Mr. Thompson suggested Mr. Kemper could have taken it as he was the only person he allowed to come in and out of their cell. According to Mr.

Thompson, even before the legal pad went missing, Mr. Kemper had been "labeled as a snitch."

David Hernandez, another inmate, testified that "[o]nce sometime between March and April" he was in the recreational area on the first floor and observed Mr. Kemper leave Appellant's cell, located on the second floor, "with what appeared to be a writing pad and some other paperwork." According to Mr. Hernandez, Mr. Kemper was trying to conceal what he had taken.

On cross-examination, Mr. Hernandez admitted that the day before, after he arrived from a prison in Hagerstown, he had an opportunity to speak with defense counsel and then with the prosecutors in this case. When asked whether, during the prosecutors' attempts to speak with him, he had heard Appellant calling his name and yelling he did not have to speak to the prosecutors, Mr. Hernandez admitted hearing a "voice[]" but claimed he chose not to speak with them because he thought the prosecutors "were getting too deep into the conversation" and he did not feel comfortable speaking outside Appellant's counsel's presence.

Cornetta James testified that she had been Appellant's girlfriend for thirteen years, and she had three children fathered by him. Ms. James admitted that she had previously been convicted of theft, "several convictions" for shoplifting, but she had not incurred any convictions in the past four years.

In 1997, Ms. James, Appellant, and their two young sons (then seventeen months and six years old) lived together.[4] On December 1, 1997, Ms. James related that she woke up early and took her oldest son to school and then went to the market. When she arrived home about 9:30 a.m. Appellant and their youngest child were asleep. Around 10:00 a.m. Appellant's mother called the house, prompting Ms. James to wake up Appellant. Appellant then left the house sometime between 10:30 and 11:00 a.m. for his mother's residence. According to Ms. James, Appellant returned to their home shortly before noon. (On cross-examination, the State elicited that in her testimony to the Grand Jury two weeks after the murder, Ms. James stated that Appellant had returned home from his mother's about 11:00 or 11:30 a.m.).

The three of them—Appellant, Ms. James, and their youngest child—then fell asleep on the bed, taking "a very light nap." She testified that, "[a]round 1:30, something of two," they got up and Appellant said "he had to go pay the Gas and Electric bill."

When Appellant left the house, he was unsure whether he would make it to their older child's school in time to pick him up, so Ms. James left the house close to 2:00 p.m. and headed to the school. The children were released from school at 2:45 p.m. When Ms. James arrived, the children were starting to come out and Appellant pulled up. Because she had the baby, Appellant told her he would go in to get their older son. Appellant then went inside and when he came out five or ten minutes later with their son, they (Ms. James and Appellant) followed each other to Appellant's grandmother's house.

[4] A third child, a four-year-old daughter, resided with Appellant's grandmother.

Gloria McCorkle, Appellant's mother, testified that, at the time of trial, she was a sergeant in the United States Army and had been in the military for eighteen years. In December 1997, she was stationed in Illinois but was in Baltimore staying at a residence on Granada Avenue in Baltimore. She was in town to be present for Appellant's trial set for December 2. On the morning of December 1, she took a phone call from the State's Attorney's Office advising of a trial postponement. She then called Appellant's house to relay the message and spoke to Ms. James. Then, "close to 11 o'clock[,]" Appellant came over to the house to speak to her and used the telephone to call the State's Attorney's Office. After about an hour, Appellant left.

Robin Lawson, Appellant's sister, acknowledged that in November 1997 she had rented a car from BWI airport and allowed Appellant to drive it. The vehicle was returned on December 1, 1997, the day of the murder.

Wilford Lawson, called by the defense, testified that he is married to Robin Lawson and hence is Appellant's brother-in-law. He related that, on December 1, he was at Appellant's grandmother's house and Appellant arrived "somewhere" in the area of "2:30 to 3 o'clock" and Appellant asked him to go with him to return a rental car. Mr. Lawson then followed Appellant to BWI airport, an approximate 25-minute drive. After returning the car, they drove to his mother-in-law's house, stopping once at Appellant's home so that Mr. Lawson could use the bathroom.

Andre Dry, Appellant's uncle, testified that he saw Appellant at his mother's (Appellant's grandmother's) house on December 1. He did not recall the time, but

remembered that they were eating. Appellant asked him to go with him to the airport to return a car, which he did. He rode with Appellant while Wilford Lawson followed behind in another vehicle. The three men returned from the airport in Mr. Lawson's car, stopping at Appellant's house "[l]ong enough to use the restroom." They then drove to Mr. Dry's sister's house where they encountered "a whole lot of police officers," who took Appellant into custody. Appellant was arrested shortly before 5:00 p.m.

Appellant testified in his own defense. Appellant established that he had maintained a mustache and goatee for years, including the date of the murder. In addressing the phone call the night of November 30 from the Burger King, Appellant testified that, about 9:00 p.m., he had dropped his ten-year-old son at Ms. McKinney's apartment and en route to his home his son paged him. He stated that he stopped at a Burger King located at Reisterstown Road and Painter's Mill and called his son from a phone booth. After speaking with his son, he stopped at a fish market, purchased some fish, and went home.

Appellant testified that, after he received the discovery packet from defense counsel, he reviewed it and "took notes[,] and "wrote down everything[]" on a yellow note pad. He claimed that in April 1998, the note pad and "a bunch of [his] charge papers, court documents[,]" which he had "wrapped up in a . . . plastic, clear commissary bag[]" were missing. In June, he "found out" that Mr. Kemper had taken it. He denied that he had any "contact" with Mr. Kemper while they were incarcerated together, claiming that he "didn't bother with people in that joint[]" and preferred to keep to himself. On cross-examination,

he testified that initially he did not believe that Mr. Kemper had taken his legal pads, suspecting instead it was his cell mate, Mr. Thompson.

In December 1997, Appellant lived at 5503 Gwyndale Avenue (Baltimore), with Cornetta James and their two sons. On December 1, 1997 (the day of the murder), he indicated that he woke up about 8:30 a.m. and stayed in bed until Ms. James told him his mother had called about a postponement in one of his cases. He then got dressed—wearing the clothes he was later wearing when arrested—and went to his mother's house. After his mother relayed the phone message she had been given from the State's Attorney's Office, Appellant returned the call and learned that the case he had brought against Mr. Reynolds and set for trial the next day was postponed until February, but the attempted murder charge against him stemming from the May 13, 1997, stabbing of Mr. Reynolds would be proceeding, as scheduled, the next day. He claimed that, after speaking with his mother "for a little while[,]" he went home, took a shower, and got in bed with his youngest son. He could not recall the time.

Appellant testified that he left home "close to 1:30" headed to "the Gas and Electric Company." "Time was a factor" because he "had to get down to the Gas and Electric Company and try to get up to the school" to pick up his son. He obtained a receipt from BGE and put it in his pocket. After paying the bill, he went to Callaway Elementary to retrieve his son. Ms. James was there when he arrived. Upon leaving the school, he and Ms. James went to his grandmother's house, and he then left for BWI airport to return a rental car. His uncle drove with him, and his brother-in-law followed behind. On the return

trip, they stopped at his house so his brother-in-law could use the bathroom. When they arrived at Appellant's mother's house, the police "swarmed" them and placed him under arrest. He denied killing Mr. Reynolds.

On cross-examination, the State elicited that, upon his arrest, Appellant's wallet contained an employee identification card in the name of Timothy Scott, Appellant's cousin. The ID card bore Mr. Scott's name, but Appellant's photo. In 1996, a nine millimeter Ruger handgun was purchased in Mr. Scott's name at the White Marsh Arms gun shop in Reisterstown.

The State cross-examined Appellant about his payment of the BGE bill:

> [THE STATE]: Mr. McCorkle, after you paid your Gas and Electric bill how long did you stay at the Mondawmin Mall?
>
> APPELLANT: I'm not sure.
>
> [THE STATE]: Did you go someplace between paying the bill and to the school?
>
> APPELLANT: No. When I left out of the mall, I went straight up to Callaway [Elementary School].
>
> [THE STATE]: Okay. But after you paid the bill you went someplace in the mall?
>
> APPELLANT: I'm not sure. It is a big mall. The Gas and Electric Company is in the basement of the mall. It depends. I give myself time to -- I move around in the mall, give myself time for the school to let out and get up to the school.
>
> [THE STATE]: So there was a significant period of time where you were at the mall and --
>
> APPELLANT: Not significant period of time, no.

***

[THE STATE]: How far is the Mondawmin Mall from your son's school?

APPELLANT: I couldn't tell you exactly how far.

[THE STATE]: Give me an estimate? How long does it take to drive?

APPELLANT: Maybe about -- I might get up to the school in fifteen, twenty minutes.

***

[THE STATE]: And it is how far from your house with Miss James to the BGE store?

APPELLANT: I guess the same, almost the same. A little more.

On further cross-examination, he claimed that Ms. Martin's testimony that she had seen him in a red Trans Am in the summer of 1997 cruising by the Owings Manor parking lot staring at Mr. Reynolds vehicle "never happened." He also disputed Mr. Beck's testimony that he appeared at the maintenance office in April 1997 looking for Mr. Reynolds, again claiming that "did not happen."

In its rebuttal case, the State called Evelyn McKinney, Cynthia's mother. She testified that she had spoken to Appellant several times by telephone and Appellant told her to tell Cynthia to move out of town. She related that Appellant said "that she couldn't stay in that town and have another man." In speaking about Mr. Reynolds, Mrs. McKinney testified that Appellant had said "what he didn't know will get him killed."

In closing statements, the prosecutor focused on the evidence pointing to Appellant's obsessive jealousy, his confrontations with Mr. Reynolds, Mr. Grimes'

identification of Appellant as the man on the bike fleeing the area, and Mr. Kemper's testimony. The State pointed out that Appellant's alibi was based on the BGE receipt and the testimony given by himself and Ms. James. As for the BGE receipt, the State noted that the BGE employee called by the defense offered a "best guess" that the transaction took place at 1:30 p.m., but Appellant and Ms. James both testified that Appellant had left home to pay the bill about around 1:30 or "something of two." Therefore, the State argued that payment of the BGE bill at 1:30 p.m. "can't be right, even according to the Defendant's own testimony."[5] The State reminded the jury that Appellant had testified that he left Mondawmin Mall and went to his son's elementary school, arriving there at about 2:45 p.m. In short, the State argued that the only witnesses that could "account for the Defendant's whereabouts" during the "critical hour of 1" were him and Ms. James. The State urged the jury to "evaluate" their credibility.

The jury convicted Appellant of first-degree murder and use of a handgun in the commission of a crime of violence. The court sentenced Appellant to life without parole. On direct appeal, Appellant challenged the trial court's response to a jury note. This Court affirmed the judgment. *McCorkle v. State*, No. 646, Sept. Term, 1999 (filed July 17, 2000).

Petition for Writ of Actual Innocence

In his petition for writ of actual innocence, filed in 2016, Appellant alleged that, in a 2009 conversation with a friend, he learned that two of the friend's older sisters had seen

[5] In closing, the State also pointed out that Mr. Pineda's estimate as to when the transaction took place was based on the teller working an eight-hour shift, without mention of a lunch break.

Appellant at the BGE store on the day he was arrested. When his attorney met with one of the sisters, she "confirmed that she had seen [Appellant] in the BG&E payment center on December 1, 1997, about 1:30 p.m." Appellant claimed that this "newly discovered evidence" would have confirmed his alibi. As noted, the circuit court denied the petition, a decision this Court vacated after holding that Appellant was entitled to a hearing on his petition.

On December 12, 2023, the circuit court convened a hearing on Appellant's petition.[6] Cassandra Gail Dismal testified that, at time of the murder, she knew Appellant because they lived in the same neighborhood, and he was a friend of her brother.[7] When asked if she remembered December 1, 1997, she replied: "Partially." She then related that she remembered that she and her sister were waiting for the mail to come because it was the first of the month and she expected to receive a check. The mail carrier typically delivered her mail sometime between ten and eleven in the morning. After the mail came on December 1, she and her sister "went to the top" of the street and caught a "hack" to the "check cashing place" located at Liberty Heights and Garrison. From there, they went to

[6] Several witnesses testified at this hearing. Because the only issue on appeal relates to the testimony of Cassandra Gail Dismal and the payment of Appellant's BGE bill, we shall not recount the testimony of the other witnesses unless needed for context.

[7] James Dismal, Cassandra's brother, testified that he and Appellant had been "close friends[,]" and "[w]ithout a doubt" Appellant was one of his closest childhood friends. At the time of the actual innocence hearing, Mr. Dismal was suffering from a "brain disease called hydrocephalus" and as a result claimed that he had difficulty with "memory recall[.]" He did remember, however, that shortly after he had heard that Appellant was arrested ("[p]robably" the day of the arrest "or the next day[,]") he told his sisters about Appellant's arrest. He recalled that his sister Gail said "she had just saw him down Mondawmin."

Mondawmin Mall. She estimated that they would likely have arrived at the mall sometime "before twelve" based on when the mail usually came and the stop they made to cash their checks. When asked how long they spent at the mall, Ms. Dismal replied, "two or three hours."

Although she did not have a BGE bill to pay that day, she recalled that her sister did.[8] She accompanied her sister to the BGE office, and at that time did not see anyone she knew. In particular, she did not see Appellant at the BGE office. She then did some shopping.

Ms. Dismal stated that she saw Appellant near the bathrooms in the basement of the mall. The bathroom was not in the same location as the BGE office, and she did not see him in line to pay his BGE bill. Rather, he was "just passing through the hallway basically." She could not recall what Appellant was wearing, and she did not speak to him.

When asked about what time it was when she saw Appellant, Ms. Dismal testified:

> It would have to be after twelve because, like I say, the mailman come between ten and eleven. By the time that we go cash it and then get down to Mondawmin, it was between one and two. So, I guess about that time, in between that time period. You know, you have to stand in line and all of that.

On cross-examination, Ms. Dismal agreed that she was "kind of estimating[]" the timeline and that her mail did not always arrive at the usual time between ten and eleven. She confirmed that, after receiving the mail, she would go to the cash checking place and agreed that, on December 1, 1997, she may have had some other things to do as well,

[8] Ms. Dismal's sister died at some point before the December 2023 hearing.

testifying, "Yes. It was December. It was Christmastime. So, who knows." Ms. Dismal also confirmed that she could have been shopping for two or three hours.

In closing statements, Appellant's counsel emphasized that the "standard" when considering a petition for writ of actual innocence is whether Ms. Dismal's testimony "would [ ] significantly or substantially have impacted the result of the trial." In addressing that standard, counsel asserted that "[t]hat's less than probable" and "just above might, might have impacted one of the twelve jurors, would have changed how they voted in deliberations."

Counsel argued that Ms. Dismal's testimony "is evidence of corroboration of an alibi which completely contradicts" the State's timeline. He explained his reasoning:

> Ms. Dismal at a new trial would say I did see Mr. McCorkle at Mondawmin Mall. This wasn't someone else paying for it. This was early afternoon after the mailman came, after we were able to cash our checks, around noon we got down to the mall, paid ours, went down to the mall, went to the bathroom and went down there makes it about 1:30 that he would have paid his check.
>
> As Mr. McCorkle was at the mall, this contradicts the timeline that the State had put forward. He couldn't have or he would have had a very, very difficult time running at full speed to get all of these things done to commit the crime and it substantiates the alibi. This would have a significant or substantial impact on the jury as at least one member of the jury would now be questioning whether just the evidence against him beyond a reasonable doubt is enough to convict and find him guilty of murder when no one saw him or saw anybody commit this crime, they just saw someone that we're not sure if it was him commit this crime and he was actually somewhere else right after.

The State countered that Ms. Dismal "had no independent recollection" of when she went to Mondawmin Mall on December 1, 1997, and instead based her testimony on what time the mail usually arrived. The State also pointed out that Ms. Dismal "said she was

shopping for two to three hours and that she then sees him, not at the beginning, but towards the end of her shopping experience." But even accepting "her initial testimony on direct where she said somewhere between one and two," the State pointed out that 2:00 p.m. would not have supported a claim of actual innocence as this was "clearly a planned murder[]" and the trial evidence "was that it takes maybe half an hour, 25 minutes, 20 minutes to get from the murder scene to Mondawmin to pay his BGE bill."[9] Moreover, the State pointed out that the jury heard Appellant's testimony at trial that he went to Mondawmin Mall to pay his BGE bill and that he had a BGE receipt in his pocket upon his arrest. In addition, Mr. Kemper had testified at trial that the BGE payment was part of Appellant's planned alibi.

The State further noted that if Ms. Dismal's testimony was that she saw Appellant at the mall about 1:30 p.m., that timeline would conflict with the trial testimony of Ms. James and Appellant himself who both testified he left home that day to go to the BGE office around 1:30 p.m. Accordingly, given the lack of "concrete information" from Ms. Dismal as to what time she saw Appellant at the mall and the "timeline established" by the defense at trial, the State argued that Ms. Dismal's testimony would not have affected the outcome of the trial.

[9] A copy of Google Maps directions from the scene of the crime to Mondawmin Mall was attached as an exhibit to Appellant's petition for writ of actual innocence. According to that document, the trip would take 25 minutes.

At the conclusion of the hearing, the court advised the parties that it intended to review the trial transcripts in light of Ms. Dismal's testimony, and consider counsel's arguments and the applicable law vis à vis that testimony.

Circuit Court Ruling

On December 20, 2023, the court denied relief pursuant to a memorandum opinion. After providing a summary of the salient trial evidence, the court provided the following discussion and reached the following conclusion:

> Pursuant to Crim. Proc. §8-301, a person may file a Petition for Writ of Actual Innocence if there is newly-discovered evidence, which could not have been discovered in time to move for a new trial, creating a substantial or significant possibility of a different result at trial. Petitioner's contention as to that newly-discovered evidence is two-fold. First is a witness who observed Petitioner at the BGE store on the day of the murder. At the hearing, the witness testified that she usually received the mail between 10 and 11am and then went to the mall and spent 2-3 hours shopping. She testified that she saw Defendant in the area of the bathroom and it "had to be after noon." She was unsure whether Petitioner saw her and did not realize the information had any significance until much later.
>
> The Petitioner did not testify so it is unclear whether Petitioner saw this witness or whether she could have been discovered earlier and subpoenaed for trial. Assuming arguendo, however, that the witness was unknown to Petitioner, she would constitute "newly-discovered evidence." However, that does not end this [c]ourt's inquiry.
>
> The State's theory of the case was, in part, that Petitioner went to the BGE store at the mall to create an alibi. The informant testified as such. Petitioner had the BGE receipt on his person and that receipt was produced and admitted at trial. It was date-stamped but not time-stamped. Petitioner's girlfriend testified that he received the call about the attempted murder case, left for a few hours, came home and showered, and left again to pay the BGE bill. This was consistent with the State's timeline. A witness who saw Petitioner at the store, if produced, would not have affected the outcome of the case. The jurors heard testimony as to the Defendant's presence at the BGE store and did not find that evidence exculpatory.

Appellant noted a timely appeal.

STANDARD OF REVIEW

On appeal, we review a circuit court's denial of a petition for writ of actual innocence for an abuse of discretion. *Carver v. State*, 482 Md. 469, 485 (2022). "We accept the factual findings of the circuit court unless clearly erroneous and will not reverse a circuit court's discretionary determination unless it is well removed from any center mark imagined by the reviewing court and beyond the fringe of what that court deems minimally acceptable." *Id*. (cleaned up). A circuit court also abuses its discretion if it applies an incorrect legal standard in rendering its decision. *Id*.

THE WRIT OF ACTUAL INNOCENCE

Certain convicted persons may file a petition for a writ of actual innocence based on "newly discovered evidence." *See* Md. Code Ann., Crim. Proc. § 8-301; Md. Rule 4-332(d)(6). "Actual innocence" means that "the defendant did not commit the crime or offense for which he or she was convicted." *Smallwood v. State*, 451 Md. 290, 313 (2017).

In pertinent part, the statute provides:

> (a) A person charged by indictment or criminal information with a crime triable in circuit court and convicted of that crime may, at any time, file a petition for writ of actual innocence in the circuit court for the county in which the conviction was imposed if the person claims that there is newly discovered evidence that:
>
> (1) (i) if the conviction resulted from a trial, creates a substantial or significant possibility that the result may have been different, as that standard has been judicially determined; [and]
>
> ***

> (2) could not have been discovered in time to move for a new trial under Maryland Rule 4-331.
>
> ***
>
> (g) A petitioner in a proceeding under this section has the burden of proof.

Crim. Proc. § 8-301.

"Thus, to prevail on a petition for writ of innocence, the petitioner must produce evidence that is newly discovered, i.e., evidence that was not known to petitioner at trial." *Smith v. State*, 233 Md. App. 372, 410 (2017). Moreover, "[t]o qualify as 'newly discovered,' evidence must not have been discovered, or been discoverable by the exercise of due diligence," in time to move for a new trial. *Argyrou v. State*, 349 Md. 587, 600-01 (1998) (footnote omitted); *see also* Rule 4-332(d)(6).

"Evidence" in the context of an actual innocence petition means "testimony or an item or thing that is capable of being elicited or introduced and moved into the court record, so as to be put before the trier of fact at trial." *Hawes v. State*, 216 Md. App. 105, 134 (2014). The requirement that newly discovered evidence "speaks to" the petitioner's actual innocence "ensures that relief under [the statute] is limited to a petitioner who makes a threshold showing that he or she may be actually innocent, 'meaning he or she did not commit the crime.'" *Faulkner v. State*, 468 Md. 418, 460 (2020) (quoting *Smallwood*, 451 Md. at 323).

Whether the newly discovered evidence creates a substantial or significant possibility that the outcome of the trial may have been different involves a "materiality

analysis under a standard that falls between 'probable,' . . . and 'might,' which is less stringent than 'probable.'" *Carver*, 482 Md. at 490 (cleaned up). "To meet this standard, the cumulative effect of newly discovered evidence, viewed in the context of the entire record, must undermine confidence in the verdict." *Id*. (cleaned up).

Thus, when considering a petition for writ of actual innocence, the court employs "'a retrospective approach that considers the impact of the newly discovered evidence at the trial that occurred.'" *Id.* at 490-91 (quoting *McGhie v. State*, 449 Md. 494, 511 (2016). The analysis is "identical to other materiality analyses required for violations under *Brady*" *v. Maryland*, 373 U.S. 83, 87-91 (1963), or "claims of ineffective assistance of counsel under *Strickland v. Washington*," 466 U.S. 668, 694-96 (1984). *Id.* at 491.

A court must evaluate how the newly discovered evidence "would impact: (1) any evidence admitted at trial; (2) any evidence available at the time of trial, including evidence both (a) offered but excluded and (b) not offered but available; and (3) the defendant's or defense counsel's trial strategy." *Id*. at 492 (citation omitted). "This hindsight assessment requires courts to ascertain whether such evidence, combined with the evidence the jurors did hear, created a substantial or significant possibility that a reasonable jury would have acquitted the defendant, that is, *whether the cumulative effect of the new evidence and the available evidence at trial undermined the verdict*." *Id*. at 492 (cleaned up) (emphasis added).

DISCUSSION

I.

The Circuit Court's Factual Findings

Appellant first contends that the circuit court based its decision "on a clearly erroneous factual finding that the timeline asserted by defense witnesses matched the [S]tate's proposed timeline." He relies on the court's statement in its memorandum opinion that, "Petitioner's girlfriend testified that he received the call about the attempted murder case, left for a few hours, came home and showered, and left again to pay the BGE bill. This was consistent with the State's timeline." Appellant maintains that this finding—that the defense's timeline was consistent with the State's timeline—was clearly erroneous because the State's evidence at trial was that Mr. Reynolds was murdered about 1:00 p.m. and, in contrast, "Ms. James testified that she was with Mr. McCorkle at their home from approximately 11:45 a.m. until about 1:30 p.m., during the window when the victim was killed[.]" In short, Appellant asserts that Ms. James' testimony "contradicted the [S]tate's timeline" and "directly opposes the [S]tate's theory that it was Mr. McCorkle who killed the victim at one pm."[10]

The State counters that the circuit court's characterization of the evidence was not clearly erroneous. Even if the court's statement that the defense's timeline was "consistent

[10] Appellant further maintains that the court abused its discretion when it relied on this "clearly erroneous" factual finding to conclude that Ms. Dismal's testimony would not have affected the outcome of the case. Because we conclude that the court did not err in its fact finding, the court did not abuse its discretion by relying on these facts.

with the State's timeline" was "phrased too broadly" (or "poorly phrased"), the State asserts that the court's statement "merely iterated its conclusion that it was not persuaded that McCorkle had proved his case." The State points out that the court had accurately summarized the salient evidence in the case and recognized that Ms. Dismal's evidence "did nothing more than elaborate on the defense that he presented at trial." In other words, according to the State, "the court denied relief not *because* James' trial testimony was consistent with the State's timeline, but because Ms. Dismal's 'new' testimony was consistent with the timeline McCorkle already presented, unsuccessfully, at trial." Accordingly, the State maintains that the "factual predicate of the court's conclusion—that the jurors who heard about McCorkle's alibi did not find it exculpatory—was not clearly erroneous."

We are not persuaded that the court's decision was based on a clearly erroneous finding of fact. In essence, the court found that Ms. Dismal's testimony that she saw Appellant at Mondawmin Mall on the day of the murder would not have affected the outcome of the case because the jury "heard testimony as to the Defendant's presence at the BGE store and did not find that evidence exculpatory." In other words, Ms. Dismal's testimony may have corroborated a portion of Appellant's testimony that he went to Mondawmin Mall to pay his BGE bill on the afternoon of the murder, but testimony that merely corroborates a defense theory that was previously placed before the jury does not speak to Appellant's actual innocence. *See Carver, supra,* 482 Md. at 493 (upholding the denial of a petition for writ of actual innocence where the newly discovered evidence did

"not erode the factual premise of Petitioner's conviction[]" and noting that, in enacting the actual innocence statute, "the General Assembly focused the statute on newly discovered evidence that 'would *potentially exonerate* the convicted defendant.'" (quoting *Smallwood*, 451 Md. at 319)). Nor did Ms. Dismal's testimony cast doubt on the only timeline offered by the State: Mr. Reynolds was murdered at approximately 1:00 p.m. (a fact undisputed at trial) and a few minutes later Mr. Grimes observed a suspect that he later identified as Appellant fleeing the scene on a bicycle.

Although the circuit court did not elaborate, its conclusion is supported by the testimony Ms. James and Appellant gave at trial. Ms. James testified that "[a]round 1:30, something of two" she, Appellant, and their child got up from a nap and Appellant stated that "he had to go pay the Gas and Electric bill[.]" Appellant himself testified that he left home "close to 1:30" and headed to "the Gas and Electric Company." On cross-examination, Appellant conceded that it took him about fifteen or twenty minutes or a "little more[]" to drive from his home to Mondawmin Mall. Thus, in accordance with the alibi timeline offered by the defense, Appellant would have arrived at the mall no earlier than 1:45 p.m.—approximately 40 to 45 minutes after the murder. Although Ms. James and Appellant indicated that they were napping at 1:00 p.m., that testimony does not undermine the State's "timeline" that Mr. Reynolds was murdered around 1:00 p.m. and that Appellant subsequently went to the mall to pay the BGE bill.[11] In short, Ms. James'

[11] In closing argument made at the actual innocence hearing, Appellant's counsel maintained that Ms. Dismal's testimony that she observed Appellant at Mondawmin Mall (continued)

and Appellant's testimony that Appellant left the home around 1:30 p.m. (and therefore arrived at the mall around 1:45 p.m.) is not inconsistent with the State's *timeline* of events. Instead, any inconsistency pertains to the core issue to be decided by the jury—whether Appellant was home at 1:00 p.m. with Ms. James or whether he was at the Owings Manor complex committing the murder. The jury obviously rejected Appellant's alibi evidence.

II.

The Legal Standard Used By The Circuit Court

Appellant maintains that the court in this case erred by denying relief based on an incorrect legal standard, that is, "whether the presentation of the newly discovered evidence would have *actually* changed the result of the trial." This was error, according to Appellant, because the "proper analysis" is "whether the introduction of the [newly discovered]

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paying his BGE bill "about 1:30" placed Appellant at the mall and "*contradicts the timeline that the State had put forward*[]" at trial. (Emphasis added.) In its memorandum opinion denying relief, the circuit court stated:

> The State's theory of the case was, in part, that Petitioner went to the BGE store at the mall to create an alibi. The informant testified as such. Petitioner had the BGE receipt on his person and that receipt was produced and admitted at trial. It was date-stamped but not time-stamped. Petitioner's girlfriend testified that he received the call about the attempted murder case, left for a few hours, came home and showered, and left again to pay the BGE bill. *This was consistent with the State's timeline*. [Emphasis added.]

It appears that the emphasized language in the circuit court's opinion that Appellant focuses on in this appeal is essentially a response to his counsel's argument at the close of the actual innocence hearing. In other words, the circuit court was essentially expressing its disagreement with Appellant's argument that Ms. Dismal's testimony contradicts the timeline the State presented at trial.

evidence raises a substantial or significant possibility that there may have been a different result."

The State counters that, at the hearing, the court clearly recognized the correct legal standard and noted on the record that, whether the newly discovered evidence creates a "substantial or significant" possibility that the result of the trial could have been different falls somewhere between "might" and "probable." In other words, according to the State, the court understood and correctly applied the requisite legal standard as illustrated by its conclusion that the jury had heard and rejected Appellant's alibi and, therefore, Ms. Dismal's testimony did not create a substantial or significant possibility of a different trial result.

The court stated in its memorandum opinion that "[a] witness who saw Petitioner at the store, if produced, would not have affected the outcome of the case." That conclusion, along with its finding that the jury "heard testimony as to the Defendant's presence at the BGE store and did not find that evidence exculpatory[,]" does not, in our view, equate to the court employing a more stringent legal standard.

In its memorandum opinion, the court cited the requirement that the newly discovered evidence must "creat[e] a substantial or significant possibility of a different result at trial." As the State points out, at the hearing, the court agreed with defense counsel that this statutory standard falls somewhere between "might" and "probable." Consequently, we are not convinced that Appellant has rebutted the presumption that the judge in this case knew the law—that is, the correct legal standard—and applied it

correctly. *See State v. Chaney*, 375 Md. 168, 183-84 (2003).

III.

The Circuit Court's Evaluation of Ms. Dismal's Testimony

Appellant maintains that, even if the court applied the correct legal standard and did not base its decision on an erroneous factual finding, it "would have been an abuse of discretion to hold that the newly discovered alibi evidence in Mr. McCorkle's case did not create a significant or substantial possibility of changing the outcome of the trial." Appellant explains:

> The circuit court concluded that the newly discovered alibi evidence from Ms. Dismal would not have affected the outcome of trial because the jurors had already "heard testimony as to the Defendant's presence at the BGE store and did not find that evidence exculpatory." Memorandum Opinion at 5. This conclusion does not consider the substance of the newly discovered evidence or the impact it may have had on a jury. The [S]tate's implication at trial regarding the BG&E receipt was that either the transaction did not occur at the time of the killing, or another person other than Mr. McCorkle paid the bill. [ ] The newly discovered evidence would have directly contradicted both of these theories by placing Mr. McCorkle at BG&E just after the time of the killing. In the half hour between the killing and when Mr. McCorkle was seen paying a bill at BG&E, Mr. McCorkle logically would not have had enough time to bike home from the crime scene, change clothes, dispose of the murder weapon, travel to BG&E, and stand in line to pay the bill. Therefore, the newly discovered evidence would have demonstrated to the jury that Mr. McCorkle was not at the scene of the crime when the killing occurred and was not be [sic] the culprit beyond a reasonable doubt.
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>
> The newly discovered alibi testimony would have strengthened Ms. James' credibility because it meant that a disinterested third party corroborated her timeline. The new evidence also would have made the BG&E employee's testimony more persuasive because it confirms that it was Mr. McCorkle, himself, who paid the BG&E bill. Considered cumulatively, evidence from

> Ms. James, the BG&E employee, and Ms. Dismal thus creates a strong alibi for Mr. McCorkle and creates a significant or substantial probability that at least one juror would have acquitted Mr. McCorkle.

First, we note that Appellant appears to be taking liberty with some of the facts before us, and he also overstates the value of Ms. Dismal's testimony. Ms. James testified that "[a]round 1:30, something of two" she, Appellant, and their child got up from a nap and Appellant "says he had to go pay the Gas and Electric bill." Appellant testified that he left "around 1:30" to go pay the BGE bill and Mondawmin Mall was a 15-to-20-minute (or longer) drive from his house. Ms. Dismal could not recall with any precision whatsoever what time she saw Appellant at the mall, and she conceded that the times she recounted ("between one and two") were estimates. Indeed, Ms. Dismal acknowledged that her recollection of when she saw Appellant at the mall was based on the premise that her mail usually arrived between 10:00 and 11:00 a.m. Thus, Ms. Dismal's testimony would only have corroborated the testimony that Appellant was at Mondawmin Mall sometime after the murder. Based on Ms. James' and Appellant's own testimony, the very earliest he could have arrived there was 1:45 p.m. Testimony that Ms. Dismal saw Appellant at any point prior to 1:45 p.m. would have therefore contradicted Appellant's alibi. Testimony that she saw him after 1:45 p.m. does not undermine the State's theory that he murdered Mr. Reynolds at 1:00 p.m. Contrary to Appellant's assertion, Ms. Dismal did not testify that she saw Appellant "paying a bill at BG&E" within a half-hour of the murder.

Moreover, as the following testimony reveals, Ms. Dismal did not even testify that she observed Appellant at the BG&E office or in line to pay his bill there. Rather, she

testified they passed by each other in a hallway near bathrooms which were not located next to the BGE office. Ms. Dismal related that she accompanied her sister to the BGE store because her sister had a bill to pay and she "was just shopping." She further testified:

> [DEFENSE COUNSEL]: When you went down to BG&E – when you went to the mall, you did go down to the BG&E office?
>
> DISMAL: (Indicating in the affirmative.)
>
> [DEFENSE COUNSEL]: Did you see anybody that you knew?
>
> DISMAL: Not at first. When we was going to the bathroom, that's when we saw [Appellant].
>
> [DEFENSE COUNSEL]: You went to pay your bill. You didn't see anyone then, but when you went back later by the BG&E office to go to the bathroom you saw Mr. McCorkle?
>
> DISMAL: Yes.
>
> ***
>
> [THE STATE]: [A]t some point then you're at Mondawmin Mall. Correct?
>
> DISMAL: Yes.
>
> [THE STATE]: And then you're shopping. Correct?
>
> DISMAL: (Indicating in the affirmative.)
>
> [THE STATE]: At some point your sister goes to pay her bill at BG&E. Correct?
>
> DISMAL: Yes.
>
> [THE STATE]: You didn't see Mr. McCorkle at that point. Correct?
>
> DISMAL: No.
>
> [THE STATE]: So, then you continued to shop. Correct?

DISMAL: Yes.

[THE STATE]: And as you acknowledged don't ask a woman how long she is shopping, it could be two to three hours?

DISMAL: Right.

[THE STATE]: And then you see Mr. McCorkle kind of by the bathroom. Correct?

DISMAL: (Indicating in the affirmative.)

[THE STATE]: Where was this bathroom in Mondawmin?

DISMAL: In the basement.

[THE STATE]: So, was the bathroom in the BG&E location? Where you pay your BG&E bill, was the bathroom at that same location or somewhere was it someplace else?

DISMAL: No, it was someplace else. It wasn't right beside BG&E.

[THE STATE]: So, at some point you're going to the bathroom and that's when you see Mr. McCorkle?

DISMAL: Yes.

***

[DEFENSE COUNSEL]: Ms. Dismal, when you saw Mr. McCorkle, was he in line to pay his bill or was he - -

DISMAL: He was just passing. It was just in passing basically when I saw [Appellant]. We was passing. He wasn't exactly standing by me when we passed. You know, people just passing through the hallway basically. That's it.

Accordingly, we disagree with Appellant's assertion that Ms. Dismal's testimony would have made the BGE employee's "testimony more persuasive because it confirms that it was Mr. McCorkle, himself, who paid the BG&E bill." In short, Ms. Dismal's

testimony, when considered with the testimony of the other defense witnesses, does not "create[] a strong alibi for Mr. McCorkle" nor does it "create[] a significant or substantial probability that at least one juror would have acquitted" him as Appellant maintains.

The circuit court noted that the jury had heard the testimony that Appellant paid a BGE bill about or near the time of the murder and presumably did not find that evidence to be exculpatory. Ms. Dismal's testimony places Appellant at Mondawmin Mall (not at the BGE office) after the murder, but it does not speak to Appellant's actual innocence or put the case in such a different light as to undermine confidence in the jury's verdict. We agree with the State's observation that "[a] reasonable jury could believe that Ms. Dismal saw McCorkle at Mondawmin Mall sometime in the afternoon of December 1, 1997, and still convict him." *Carver, supra*, 482 Md. at 502 ("A reasonable jury can accept" the new evidence, while still convicting the defendant "based on the . . . testimony presented at trial."). Specifically, testimony that Ms. Dismal (or any witness) saw Appellant at the mall at 1:45 p.m. or thereafter does not undermine the State's theory of the case or the jury's verdict.

We therefore hold that the circuit court did not abuse its discretion in denying Appellant's petition for writ of actual innocence.

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