

Circuit Court for Baltimore City  
Case No. 191136027

UNREPORTED  
IN THE COURT OF SPECIAL APPEALS  
OF MARYLAND

No. 2429

September Term, 2017

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RONNIE HUNT

v.

STATE OF MARYLAND

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Wright\*,  
Graeff,  
Reed,

JJ.

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Opinion by Reed, J.

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Filed: November 26, 2019

\*Wright, Alexander, J., now retired, participated in the hearing of this case while an active member of this Court; after being recalled pursuant to the Constitution, Article IV, Section 3A, he also participated in the decision and the preparation of this opinion.

\*This is an unreported opinion, and it may not be cited in any paper, brief, motion, or other document filed in this Court or any other Maryland Court as either precedent within the rule of stare decisis or as persuasive authority. Md. Rule 1-104.

On September 25, 1991, a jury in the Circuit Court for Baltimore City convicted Ronnie Hunt (“Appellant”) of first-degree murder and use of a handgun in the commission of a felony or crime of violence. Appellant was sentenced to life in prison for the murder conviction plus a consecutive twenty (20) years for the handgun offense. Appellant filed a timely appeal, and this Court affirmed the trial court’s judgment. Appellant then filed a petition for post-conviction relief, which was denied.

Appellant has since filed a petition for a writ of actual innocence in the Circuit Court for Baltimore City, citing the fact that the State’s ballistics expert lied about his credentials prior to testifying. The petition was initially denied with a hearing. After this Court reversed, a hearing was held in front of the Honorable Charles Peters. The petition was denied in a written opinion dated January 12, 2018. This appeal followed.

In bringing his appeal, Appellant presents two questions for our review, which we have rephrased for clarity<sup>1</sup>:

- I. Did the trial court err in ruling that trial defense counsel failed to act with due diligence?
- II. If the trial court did err in ruling that trial defense counsel failed to act with due diligence, did Appellant satisfy the second prong of § 8-301(a)?

For the foregoing reasons, we affirm.

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<sup>1</sup> Appellant presents the following questions:

1. Did the trial court err in ruling that trial defense counsel failed to act with due diligence?
2. Did Appellant satisfy the second prong of § 8-301(a)?

### **FACTUAL AND PROCEDURAL BACKGROUND**

On September 25, 1991, following a jury trial spanning several days, Ronnie A. Hunt, Jr. (“Appellant”) was convicted in the Circuit Court for Baltimore City of first-degree murder and use of a handgun in the commission of a crime of violence. The jury found that Appellant, along with his co-defendant, Harry Johnson, III, shot and killed Sheldene Simon on the front lawn of the victim's Baltimore home during a gunfight on April 10, 1991. Appellant was sentenced to life imprisonment for murder, plus a consecutive twenty years for the handgun offense. Appellant’s convictions were affirmed in 1993 by the Court of Special Appeals on direct appeal in an unreported opinion.

On April 8, 1997, Appellant filed a Petition for Post–Conviction Relief, which was denied by the Circuit Court on August 19, 1997. On September 22, 1997, Appellant filed an Application for Leave to Appeal, which was denied by the Court of Special Appeals on January 23, 1998. Appellant then filed a *pro se* Amended Petition for Writ of Actual Innocence in the Circuit Court for Baltimore City on January 31, 2011. In the Amended Petition, Appellant claimed that his federal constitutional rights to due process and equal protection of the law afforded under the Fifth and Fourteenth Amendments were denied to him “based on false evidence.” Appellant alleged the following:

In 2007 it was unveiled by the Office of the Public Defender Innocence Project and the Maryland State Police that Joseph Kopera, reportedly an expert in ballistics, had in fact testified and lied under oath about his academic credentials for years, and probably falsified evidence as well. At the time of Kopera’s reported death as a result of a self-inflicted gunshot wound, he was employed with the Maryland State Police, after being employed with the Baltimore City Police Department for approximately 21 years. Kopera was the lynchpin in the State’s case, in which [Hunt] was

convicted based solely on the testimony of Kopera, who has since become known as a liar and fraud.

(minor alterations added). Later, Appellant alleged the following:

A number of inconsistencies in Kopera’s trial testimony in several or more cases regarding his academic credentials prompted an investigation or background check on Kopera by Ms. Michele Nethercott, chief attorney, out of the Office of the Public Defender Innocence Project. That also led to a subsequent investigation by the Maryland State Police, which unveiled some very troubling facts, that Kopera had been “lying” about his academic credentials for years, all while testifying under oath in countless court rooms in Baltimore City, the State of Maryland, and perhaps, state and federal courts in Virginia, Delaware, and Pennsylvania. It has been proven that Kopera wasn’t only a liar, but a fraud as well....

(minor alterations added).

Appellant argued that Kopera’s testimony in his capacity as the State’s ballistics expert was the State’s “only evidence” against him and “the lynch [sic] pin in the State’s case.” Hunt reproduced a portion of the trial transcript in his case where Kopera discussed his (fraudulent) qualifications. He then reproduced portions of the trial transcript where Kopera discussed a bullet specimen recovered from Simon’s body, a semiautomatic pistol, and Kopera’s process of “match[ing]” the two. Appellant noted that the State had not produced any DNA, fingerprints, or eye witnesses who placed him at the scene of the murder, and so, “without the false testimony of [Kopera], regarding both credentials and the murder weapon, it is highly unlikely that the State would have proven their case against [Appellant] beyond a reasonable doubt.” Appellant surmised penultimately:

Every factual finding made by the jury hinged upon a determination that Kopera testified credibly. If Kopera’s fake credentials and/or false testimony had been known, however, it is reasonably probable that the outcome of the trial would have been different[,] because his testimony probably would not have been as credible.

Appellant concluded by requesting, among other things, “a reversal of his conviction and unconditional release, otherwise, a new trial” and that “a prompt hearing be set in this matter.”

The circuit court initially denied Appellant’s Amended Petition without a hearing on February 15, 2011 because the petition “fail[ed] to state a claim or assert grounds for which relief may be granted pursuant to [§ 8–301(a)].” After Appellant filed a motion for reconsideration on March 3, 2011, which was denied by the circuit court on March 7, 2011, this Court reversed the decision and ordered that the circuit court hold a hearing.

Upon reversal and remand, the circuit court held a hearing regarding Appellant’s Amended Petition for Writ of Actual Innocence on February 28, 2017. In a written opinion dated January 12, 2018, the circuit court denied Appellant’s petition. In denying Appellant’s Amended Petition, the circuit court stated in part:

[Appellant] argues that “knowledge of Kopera’s lies would provide [Appellant’s trial counsel] with a potent defensive advantage,” as well as ammunition for a “blistering cross examination.” According to [Appellant], such evidence would have eviscerated Kopera’s testimony. Therefore, it seems indisputable that the discovery of such evidence would have been critical to [Appellant’s] defense. Nonetheless, [Appellant] claims that it would have been too much for trial counsel to have made a simple request to uncover these “lies.” The Court disagrees.

[Appellant] further contends that his trial counsel had a right to rely on the fact that Kopera had testified for many years as an expert and, therefore, someone in the past must have checked on the validity of his credentials. [Appellant] offered no evidence of such reliance. Regardless, such a contention is unpersuasive because [Appellant] then must show that it would have been too onerous for trial counsel to have contacted numerous local counsel to confirm whether anyone had ever verified Kopera’s credentials. If [Appellant’s] counsel had undertaken this simple task, he would have quickly learned that no one had done so.

It is from the circuit court’s denial of Appellant’s Amended Petition that Appellant now appeals.

### STANDARD OF REVIEW

When an appellate court reviews a circuit court’s decision to deny a petition for writ of actual innocence, we limit our review “to whether the trial court abused its discretion.” *Smallwood*, 451 Md. at 308–09. *Accord Patterson v. State*, 229 Md. App. 630, 639 (2016), *cert. denied*, 451 Md. 596 (2017). “Under that standard, this Court will not disturb the circuit court’s ruling, unless it is well removed from any center mark imagined by the reviewing court and beyond the fringe of what the court deems minimally acceptable.” *Patterson*, 229 Md. App. at 639 (citations and quotation marks omitted). A trial court must, however, “exercise its discretion in accordance with correct legal standards.” *Jackson v. Sollie*, 449 Md. 165, 196 (2016) (quoting *Alston v. Alston*, 331 Md. 496, 504 (1993)). With respect to the circuit court’s factual findings, we accept these findings unless clearly erroneous. *Yonga*, 221 Md. App. at 95.

### DISCUSSION

#### *i. Failure to Act with Due Diligence*

##### **A. Parties’ Contentions**

Appellant contends that the trial court erred in ruling that trial defense counsel failed to act with due diligence when failing to investigate Kopera’s credentials. Appellant asserts that the case relied upon by the trial court, *Jackson v. State*, 216 Md. App. 347 (2014), has been called into question by more recent cases. Appellant argues in the alternative that even if *Jackson* is good law, because the trial court made its ruling as a “broad” matter of law,

i.e. without hearing testimony, the trial court is not entitled to deference and their decision should be reviewed *de novo*.

Appellant also contends that the trial court erred in ruling that trial defense counsel should have discovered Kopera's misrepresentations about his credentials. Appellant argues that the trial court relied on no testimony or evidence in reaching such a conclusion, which violates the correct legal standard discussed in *Kulbicki v. Maryland*, 136 S. Ct. 2 (2015). Appellant emphasizes the United States Supreme Court's *per curiam* order reversing *Kulbicki*, arguing that the order is "highly persuasive." Finally, Appellant argues that it was error for the trial court to find that trial defense counsel was not diligent when numerous prosecutors and defense attorneys had also failed to recognize Kopera's false credentials for years. Appellant asserts that to require counsel to investigate every expert's credentials would constitute an unworkable standard, comparable to "looking for a needle in a haystack." As such, Appellant argues this Court should reverse the trial court's denial of Appellant's Amended Petition. Furthermore, Appellant contends that the evidence of Kopera lying about his credentials created "a substantial or significant possibility" that the results from his trial would have been different, had Kopera been exposed.

The State argues that the trial court properly exercised its discretion in denying Appellant's Amended Petition. The State emphasizes the trial court's reliance on *Jackson*, and disputes Appellant's claim that *Jackson* no longer functions as good law. The State further contends that the trial court should be granted deference because the trial court properly reviewed the evidence from previous proceedings involving Appellant. The State asserts that even if this Court were only to consider the evidence presented by Appellant at

his actual innocence hearing, this Court should still find that Appellant failed to carry his burden in showing that Kopera's false credentials qualifies as new evidence. The State relies on the failure by Appellant's counsel to file pretrial discovery motions and their failure to properly investigate Kopera.

### **B. Analysis**

A defendant filing a petition for writ of actual innocence must first show newly discovered evidence that “could not have been discovered in time to move for a new trial under Maryland Rule 4–331.” C.P. § 8–301(a)(2). This is “a threshold question,” and until there is a finding of newly discovered evidence that could not have been discovered by due diligence, no relief is available, “no matter how compelling the cry of outraged justice may be.” *Argyrou v. State*, 349 Md. 587, 604 (1998) (quoting *Love v. State*, 95 Md. App. 420, 432 (1993)). Due diligence has been defined as acting “reasonably and in good faith.” *Id.* at 605.

In this case, the circuit court ruled that trial defense counsel failed to act with due diligence because it did not investigate Kopera's credentials and discover his misrepresentations regarding his educational background. Appellant contends that *Jackson v. State*, 216 Md. App. 347 (2014), a decision handed down by this Court, was improperly relied on by the circuit court in reaching its decision.

In *Jackson*, this Court relied on *Douglas v. State*, 423 Md. 156 (2011), in finding that while evidence of Kopera's false credentials *may not* have been discovered in time to move for a new trial under Rule 4-331, the ultimate decision of a request for a new trial based on newly discovered evidence was a matter “committed to the hearing court's sound



discretion.” *Douglas*, 423 Md. at 188. The *Jackson* Court then noted that a hearing court’s ruling “will not be deemed to be an abuse of discretion 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.’” *Jackson*, 216 Md. App. at 363-64 (quoting *Moreland v. State*, 207 Md. App. 563, 569 (2012)).

This Court addressed a similar issue in *Kulbicki v. State*, 207 Md. App. 412 (2012), *rev’d*, 440 Md. 33 (2014), *rev’d*, 136 S. Ct. 2 (2015).<sup>2</sup> In *Kulbicki*, this Court ultimately ruled that Kopera’s false credentials could have been discovered prior to trial, and therefore, could have been raised on appeal (instead of in a petition for post-conviction relief). 207 Md. App. at 437. Our Court ruled that Kulbicki was “not entitled to a new trial on due process grounds even if state’s ballistics expert lied about his credentials”, as “credibility is not based on credentials alone . . . and jurors can utilize ‘experience, training and skills . . . and give expert testimony the weight and value [they] believe it should have.’” 207 Md. App. at 415, 447. Further, *Jackson*, in relying on our analysis in *Kulbicki*, found that “there simply is no likelihood that the jury’s determination would have been influenced by the fact that Mr. Kopera did not have the academic credentials he claimed.” *Jackson*, 216 Md. App. at 369 (citing *Kulbicki*, 207 Md. App. at 447).

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<sup>2</sup> The question presented to the Supreme Court in *Maryland v. Kulbicki* concerned an ineffective assistance of counsel claim, and whether an attorney’s conduct was deficient in failing to anticipate the demise of the CBLA. *id.* Appellant in this case presents no such question, and therefore, we need not address the Supreme Court’s decision in this case.

As such, Appellant’s attempt to discredit *Jackson* is flawed. In his brief, Appellant relies on a footnote from the Court of Appeals’ decision in *State v. Hunt*, 443 Md. 238 (2015). In that footnote, the *Hunt* court states:

Kopera testified for over twenty years at trials as a State’s witness in his capacity as a municipal or State employee. As an objective fact, attorneys with unlimited time and resources could have discovered Kopera’s fraud at any point during that time. We would avoid, however, the negative inference from the opinions of the Court of Special Appeals that no defense attorney representing a defendant at a trial in which Kopera testified exercised due diligence (prior to the discoveries made by the attorneys of the Innocence Project) in failing to discover his charade.

443 Md. at 264, n.25.

However, Appellant stretches the words of *Hunt* in an attempt to fit his narrative. Here, Appellant is arguing that it would be incorrect for a trial court to determine that a defense attorney – representing a defendant at a trial in which Kopera testified – failed to exercise due diligence if they failed to discover his false credentials (emphasis added). For example, if a defense attorney had reached out to the University of Maryland and/or RIT<sup>3</sup> to inquire into Kopera’s educational background, and either school had misinformed counsel that Kopera was a graduate of either school, it would be an abuse of discretion for a trial court to then rule that defense counsel had failed to act with due diligence in discovering Kopera’s false credentials. However, there is no dispute that Appellant’s counsel did not look into Kopera’s credentials. In fact, throughout the trial, defense counsel indicated that Kopera was highly qualified and did not question his background.

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<sup>3</sup> Rochester Institute of Technology, one of the institutions where Kopera claimed to have received training and education.

Ultimately, the question is whether Kopera's false credentials could have been discovered prior to Appellant's trial. As the circuit court noted in its opinion, Kopera's credential issues could have been discovered because it was discovered by another attorney in a different trial in which Kopera testified. Furthermore, the circuit court ruled that checking an expert's credentials is reasonable trial preparation. *See Hilary Sheard, Capital Cases, CHAMPION*, January/February 2000, at 52, 56 ("Taking any expert's *curriculum vitae* at face value is ill advised—allow time to call each institution where the expert has studied ... and every professional organization of which he is a member.... Use data bases such as *Westlaw* and *Lexis-Nexis*, use the Internet, conduct courthouse searches."). In this case Appellant's counsel was actually ready to stipulate to Kopera's credentials during the jury trial, not even allowing the jury to hear Kopera's alleged academic background.

Although there may have been reasons that counsel did not pursue an investigation into Mr. Kopera's credentials, the circuit court did not abuse its discretion in finding that appellant failed to show that the evidence could not have been discovered in the exercise of due diligence. *See Jackson v. State*, 164 Md. App. 679, 690 (2005) (In analyzing whether newly discovered evidence could have been found using due diligence, "[t]he test, of course, is whether the evidence was, in fact, discoverable and not whether the appellant or appellant's counsel was at fault in not discovering it."), *cert. denied*, 390 Md. 501 (2006). The fact that the trial court did not allow testimony to be presented at the actual innocence hearing does not change the fact that Appellant presented no evidence in its Amended Petition justifying his counsel's failure to look into Kopera's credentials. Based on the mere fact that Kopera's credentials were not found by Appellant's trial counsel, but

were found by another attorney in 2007, is enough for the trial court to find that Appellant’s trial counsel failed to act with due diligence. Appellant’s Petition for Writ of Actual Innocence was properly denied.

*ii. § 8-301*

**A. Parties’ Contentions**

Appellant contends that if Kopera’s false credentials are considered new evidence, he is entitled to relief because such evidence “creates a substantial or significant possibility” that the result of his trial would have been different. Appellant argues that had Kopera’s misrepresentations been known, Appellant would have mounted a vigorous defense and been able to impeach Kopera’s testimony. Appellant believes that without Kopera’s testimony, the State’s case would have been considerably weaker and the jury may have reached a different verdict. However, Appellant concedes that the State still possessed some circumstantial evidence aside from Kopera’s testimony and ballistics report.

The state argues that if Kopera’s credentials are deemed newly discovered evidence by this Court, the State requests that this case be remanded to the trial court for further consideration of Appellant’s Amended Petition. The State contends that because the trial court did not engage in second-step analysis – whether the new evidence would create a substantially possibility that the jury verdict would have been different – the case should be remanded for such analysis.

**B. Analysis**

As the Court of Appeals stated in *State v. Hunt*, 443 Md. at 264 (2015), the burden

is placed on Appellant to “prove their newly discovered evidence and also persuade the trial judge that they could not have discovered in time to move for a new trial pursuant to Rule 4-331.” Only then must the trial court “determine whether the new evidence regarding Kopera creates a substantial or significant possibility that the result of their trial[] must have been different.” *Id.* As we discussed *infra*, however, the trial court did not abuse its discretion in concluding that the defense counsel failed to act with due diligence. The falsity of Kopera’s educational credentials were discoverable not only in time for Appellant to cross examine Kopera regarding the lack of his academic history in ballistics, but also to move for a new trial. Therefore, because the newly discovered evidence could have been uncovered through due diligence, it was not necessary for the trial court, and is not required of this Court, to reach the second step in determining whether such evidence would have materially altered the outcome of Appellant’s trial, pursuant to § 8-301(a).

Accordingly, the judgment of the Circuit Court for Baltimore City is affirmed.

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