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STATE OF MARYLAND	*	**IN THE**
v.	*	**CIRCUIT COURT**
JAMES LANGHORNE	*	**FOR**
CASE NOS:	*	
197007031		
197007032	*	**BALTIMORE CITY**

* * * * * * * * * * *

STATE'S MOTION TO VACATE JUDGMENT

COMES NOW the State of Maryland, by and through its attorneys, Ivan J. Bates, State's Attorney for Baltimore City, Lauren R. Lipscomb Assistant State's Attorney and Chief, Conviction Integrity Unit, and hereby moves this Honorable Court, pursuant to Maryland Annotated Code, Criminal Procedure Article, § 8-301.1, to vacate the judgment of conviction in case numbers 197007031 and 197007032 and, in support thereon, states as follow

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I. BRIEF FACTUAL SUMMARY

On November 20, 1993, around 2:45 am, Lawrence Jones ("Victim") was walking home to his residence located at 1411 Bank Street[1] which was adjacent to the then-Perkins Homes community[2]. As he walked in front of the 1405 location of Bank Street, he was confronted by an individual who produced a handgun and shot him. The shot entered the Victim's left eye with a downward trajectory indicating that the Victim had likely fallen to his knees before being shot. The shooter fled the location. At 3:17am, police officers from the Baltimore Police Department ("BPD") responded to the scene. Though gravely injured, the Victim was still alive and was transported by medics to Shock Trauma at the University of Maryland Hospital. Later that night, after the arrival of the Victim's family, the Victim succumbed to his injuries and was pronounced dead.

There were no witnesses to the murder itself. There was no physical evidence of value recovered. The caliber of gun used to kill the Victim was determined to be either a .38 or .357. The investigation into the case ultimately went cold until on or around July 6, 1996, when the case was re-assigned to Detective J.T. Brown. Interviews were conducted of Witness B[3][4] and the then-recent ex-girlfriend, Witness W, of James Langhorne ("Defendant"). On November 15, 1996, the Defendant was arrested.

II. SUMMARY OF ARGUMENT

In February 2019, the Defendant submitted a request to the Conviction Integrity Program ("CIP")[5] of the Baltimore City State's Attorney's Office ("BCSAO") for a review of this case based on the Defendant's contentions that he had been wrongfully convicted and was factually innocent of the murder in this case. Deeming there was merit to the concerns raised, the State initiated an

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[1] *See* Exhibit 1 – Map.

[2] Perkins Homes has since been razed. See Melody Simmons, Demolition of Perkins Homes public housing complex to kick off this week, BALTIMORE BUSINESS JOURNAL (June 22, 2001), available at https://www.bizjournals.com/baltimore/news/2021/06/22/perkins-homes-redevelopment-demolition.html.

[3] To protect the identities of and to ensure the safety of the civilians in this case, the State will identify civilians involved in the case generally.

[4] Witness B may be fairly and accurately characterized as a jailhouse witness or snitch. That he was a jailhouse witness was known by the defense at trial and was probed accordingly.

[5] The CIP is a team within the Conviction Integrity Unit which reviews claims of factual innocence.

investigation into the case. The ensuing investigation included the interviews of dozens of witnesses, extensive analyses of the crime scene, gathering and review all available documents, briefing all information to form a comprehensive timeline, and synthesizing all of the information which has resulted in the State's conclusion that the Defendant was convicted of a crime he did not commit.

Md. Crim. Pro. § 8-301.1 provides that the State may seek to vacate a conviction under two circumstances: 1) that there exists newly discovered evidence that could not have been discovered in time to move for a new trial as permitted in Md. Rule 4-331 which creates a significant or substantial probability that the outcome would have been different at trial; or 2) the State has received new information which so erodes the integrity of the conviction so as to warrant a vacatur of the conviction in the interests of fairness and justice. The standard to be applied in such circumstances is clear and convincing.

Here, the State asserts that its investigation has revealed both new evidence and new information which exceed the clear and convincing standard as to each and both statutory pathways provided in Md. Crim. Pro. § 8-301.1 to such an extent that the State concedes the Defendant has been convicted and imprisoned for a crime not committed and for which he has been serving time since November 15, 1996.

In brief, the appellate courts have provided guidance as to the evaluation of such claims involving newly discovered evidence.[6] Such claims should be evaluated through the lens of the before and after test[7] and a cumulative impact analysis[8].

Here, the State's theory at trial was that of a first degree murder predicated upon a felony murder. Identity was the contested issue. In short, the convicting evidence was as follows: 1) the Defendant accosted the Victim, taking a particular family heirloom ring ("Heirloom Ring"), money and wallet[9] before shooting (with a .38 or .357) and killing the Victim; 2) Witness G saw two men walk behind the Victim; 3) Witness R saw two men running and identified the Defendant as one of them; 4) Defendant confessed to Witness B[10]; and 5) Defendant inculpated himself to Witness W.

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[6] Attendant appellate law will be analyzed in later sections.
[7] Considering the evidence known at trial in light of the evidence discovered after trial.
[8] Considering the overall cumulative impact of the new evidence on the case.
[9] Among other possible items, i.e. papers, of less import to the instant analysis because same items were not clearly established as missing.
[10] Deceased.

The State has determined the following: 1) neither the Heirloom Ring nor money was taken during this incident; 2) Witness G could not have seen the corner she claimed to see during her testimony; 3) Witness R has recanted his trial testimony advising that police told him what to say and paid him money for drugs in exchange for his cooperation; and 4) Witness W has recanted her testimony and advised that she was provided a "script" by police of what to say. As to Witness B, as a jailhouse witness, corroboration of his information would be necessary and critical. In light of the results of our investigation, we are left with no credible corroboration and more concerns as to the reliability of Witness B's testimony.

Relatedly, exculpating material appears to have not been disclosed.[11] There were two alternative suspects identified by police – one known by the Defense, and one that may have not been. There were two individuals who were looked at closely and could arguably be considered alternative suspects but were not clearly identified as suspects in police records – it is not clear whether the Defense had this information. Lastly, a photo array containing the Defendant was shown to Individual JP – who was outside with Witness R – and he failed to identify the Defendant. While other arrays were provided to the Defense, this specific array does not appear to have been. Disclosure of this information would be required pursuant to *Brady v. Maryland*, 373 U.S. 83 (1963).

The State asserts that had the jury had the benefit of the newly discovered evidence alongside that which was presented at trial, the outcome would, with certainty, have been different, and therefore the convictions should be vacated. In addition, the State has uncovered new, exculpating evidence that erodes and negates the inculpating evidence presented at trial to such an extent that fairness and justice require that the convictions be vacated. In consideration of the cumulative impact of the totality of now-known evidence, it is the State's position the Defendant has been convicted of a murder he did not commit. Procedurally, the State is seeking that the convictions in this case be vacated. Following the vacatur, the State will enter a *nolle prosequi*.

III. PROCEDURAL HISTORY

On February 3, 1998, following a trial by jury, the Defendant was convicted of first degree murder, handgun use during the commission of a crime of violence ("HGCOV"), and related charges which merged for purposes of

[11] Pre-trial, the State filed discovery and supplemental disclosures as required. On November 25, 1997, the State filed a Supplemental Disclosure which advised that counsel had been provided access to the BPD Homicide file as well as certain material specifically copied and disclosed. However, the specific materials reviewed were not identified. This will be discussed more later.

sentencing. On March 30, 1998, the Defendant was sentenced to a life sentence plus twenty years consecutive.

On April 9, 1998, the Defendant filed a direct appeal with the then-Court of Special Appeals. On April 20, 1999, the judgment in this case was affirmed by the then-Court of Special Appeals. A modification of sentence was filed at some point thereafter.[12] On March 15, 1999, same modification was denied. On March 23, 1999, the Defendant filed a petition for writ of certiorari with the then-Court of Appeals. On June 30, 1999, the Defendant's petition for writ of certiorari was denied.

On January 31, 2000, the Defendant filed a petition for post-conviction relief. On September 27, 2000, same petition was denied. On November 17, 2016, the Defendant filed a motion to re-open petition for post-conviction relief. On January 23, 2018, same was denied. On February 20, 2018, the Defendant filed an application for leave to appeal the denial of his motion to re-open petition for post-conviction relief. On June 27, 2018, same was denied.

In February 2019, the Defendant contacted the State directly and requested an extrajudicial review by the CIP team into his case.

IV. EXPANDED FACTUAL SUMMARY

The Victim in the instant case, 24 year old Lawrence Jones, moved from Maine to Baltimore, Maryland in August of 1993. A native of Maine, he had recently graduated from the University of Maine in 1992 and relocated to Baltimore in hopes of pursuing graduate studies at Johns Hopkins University. A matter of convenience, a friend of the Victim's, Witness TP had room in the row house she was renting at 1411 Bank Street, so the Victim moved in. There was another room mate living in the house at the time – Individual RQ. In total, the Victim, Witness TP, and Individual RQ resided at the location. The three had numerous friend groups that lived nearby, all went to bars/clubs together, went to each other's homes, and generally interfaced as young adults do.

Leading up to the night of the murder, the Victim was upset about two affronts. Individual RQ was asked to move out, in part, because her boyfriend, Individual MB, would stop by the house at all hours of the night which disturbed the other roommates. As a result, Individual RQ moved out and into her boyfriend's, Individual MB, home located around the corner at 430 S. Eden Street.[13] After she moved out, the Victim was unable to locate a few of his

[12] The filing date of the modification is not apparent in electronic Court records.
[13] *See* Exhibit 1 – map.

compact discs ("CDs") and he became suspicious that Individual RQ had taken them. As well, during the weeks immediately preceding the murder, the Victim had dated Individual CP for about two weeks. The two broke up right before the Victim was murdered. Both of these situations played a part in the events that unfolded on the night of the murder.

On November 19, 1993, the Victim headed out to meet Individual FM and RC at a local neighborhood bar. At the bar, the Victim bought a few rounds of drinks for the group.[14] At approximately 1:00am, November 20, 1993, the Victim left that bar and walked to Bohager's Club.[15] At Bohager's, he ran into Individual CP (with whom he had recently broken up). The Victim left Bohager's at closing time and walked home to 1411 Bank Street.

Witness TP was asleep when the Victim arrived home, though she heard his footsteps and that he was checking the answering machine.[16] Witness TP remained in her room, half asleep, though she heard the Victim on the phone engaged in an argument. Indeed, the Victim had called Individual CP to argue about their recent breakup. Individual CP hung up on the Victim. Witness TP heard the Victim leave the house again.

The Victim walked over to Individual MB and Individual RQ's residence at 430 S. Eden Street. Once there, he demanded that Individual RQ return the CDs she had taken. Individual RQ denied having the Victim's CDs and asked the Victim to leave. At some point during this exchange or right before, Individual MB arrived home and Witness DS arrived at the location. Individual MB reiterated that Individual RQ did not have the CDs and told the Victim he needed to leave. The Victim refused to leave, so Individual MB started physically shoving the Victim toward the door. A fight ensued. Individual MB and the Victim went crashing through the storm door and onto the pavement outside the residence. At some point the Victim had Individual MB pinned under him. Individual DS and an unknown white male who appeared at the location claiming to be a police officer[17] ("Fake PO") pulled the two apart. The Victim and Individual MB continued shouting at each other and attempting to throw punches as they were being pulled apart. Outside, the Fake PO continued talking to the Victim as Individual MB was being pushed back inside 430 S. Eden

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[14] As is common for students, Victim had a part time job but he was usually "broke" according to his friends.

[15] Bohager's Club no longer exists. At the time, it was located at 701 S. Eden Street. *See* Exhibit 1 – map.

[16] At the time such a device was used to collect incoming phone messages when people were not home.

[17] There is no evidence to suggest this was true.

Street by Individual DS. The Victim then left and began walking home to 1411 Bank Street.

At approximately 2:45am, as the Victim was walking in front 1405 Bank Street, someone approached him, produced a .38 or .357 handgun and shot him. The Victim remained on the sidewalk gravely injured, but alive, until police arrived.

Numerous individuals heard the gunshot – approximately ten persons would later report that they heard the gun shot to police.

At approximately 3:17am, police arrived in response to having received a call for an injured person on the sidewalk. PO Childs was one of the first responding officers on scene. He observed the Victim to still be alive and called for a medic.

The Victim was taken to Shock Trauma as a "John Doe" due to a lack of identification. The police began knocking on doors at the scene to gather information. Witness TP – the Victim's roommate – would advise that police knocking on the door awakened her. When the police described the injured person, Witness TP suspected that it was the Victim so she responded to Shock Trauma. At Shock Trauma, Witness TP identified the Victim.

An autopsy was conducted and the cause of death was homicide, manner of death was gunshot wound. Notably, the direction of travel of the bullet was determined to be front to back with a downward trajectory[18]. Stippling was present which suggested a close range shot.

There were no eyewitnesses and no physical evidence of value. In spite of investigative efforts, the case went cold until July 1996 when Detective J.T. Brown was assigned the case. On November 15, 1996, the Defendant was arrested and charged with the murder of the Victim.

V. ARGUMENT

A) The prosecutorial obligation to notify the Court of clear and convincing exculpating evidence learned after the entry of conviction may be found

[18] This is worth a mention because the persons who claimed to have seen two men outside place the men as coming from behind the Victim as he walked whereas the Victim was shot from the front, likely after he dropped to his knees. Certainly, the shooter could have run ahead of the Victim, turned around then run up to him or the Victim could have abruptly turned around then back again. Or, the shooter approached the Victim from the front, not behind.

in Maryland Rule 19-303.8 (g) and the procedural mechanism for the State to bring such evidence before the Court may be found in Maryland Criminal Procedure Article § 8-301.1.

Maryland Rule 19-303.8(g)[19] mandates that, "when a prosecutor knows of clear and convincing evidence establishing that a defendant in the prosecutor's jurisdiction was convicted of an offense that the defendant did not commit, the prosecutor *shall* seek to remedy the conviction." Here, the State respectfully notifies the Court that it has uncovered clear and convincing evidence that the Defendant in this case has been convicted of a crime that he did not commit and for which he has been incarcerated since November 15, 1996. Procedurally, in order for the State to seek to remedy the conviction, the conviction first must be vacated thereby providing the State the ability to enter a *nolle prosequi*.

Md. Crim. Pro. Art. § 8-301.1 provides the avenue for procedural relief that the State respectfully seeks herein. In relevant part, Md. Crim. Pro. Art. § 8-301.1 provides that, on the motion of the State, at any point following a conviction the Court may vacate a conviction if: "there is newly discovered evidence that could not have been discovered by due diligence in time to move for a new trial under Maryland Rule 4-331(c)[20]… [and that] creates a substantial or significant probability that the result would have been different or the State's Attorney received new information after the entry of… a judgment of conviction that calls into question the integrity of the… conviction and the interest of justice and fairness justifies vacating the… conviction."

There are two theoretical scenarios from which relief may be sought in Md. Crim. Pro. Art. § 8-301.1: 1) if the State determines there is clear and convincing evidence to suggest a defendant is factually innocent;[21] or 2) if the State determines that there is new, compelling information that erodes the integrity of a conviction sufficiently and to an extent that necessitates remedial action.

[19] Md. Rule 19-303.8(g) is a codification of the American Bar Association Model Rule 3.8 – Special Duties of a Prosecutor.
[20] Md. Rule 4-331(c) provides the Defense with the ability to move for a new trial, not the State.
[21] This pathway provides a mechanism for the State to bring a motion based on the same statutory construction as provided the Defense in Md. Crim. Pro. Sec. 8-301 – Petition for Writ of Actual Innocence.

A relatively new statute, Md. Crim. Pro. Art. § 8-301.1, went into effect October 1, 2019. Given the relative newness of the statute, the legislative intent provides guidance on which universe of cases the Maryland Legislature was intending to capture. Indeed, the circumstances presented herein are precisely what was contemplated during the legislative hearings as the legislature envisioned a pathway for the State to seek remedial relief.

During the 2019 legislative session, Senate Bill 676 ("SB676") and House Bill 874 ("HB874") were cross filed – both were bills which proposed providing the State with a procedural mechanism to seek relief in limited circumstances. On February 26, 2019, testimony on HB874 was received before the House Judiciary Committee.[22] In introducing the intent of the bill, then-Delegate Erek Barron, sponsor of the bill, testified as follows:

> *"The prosecutor has a duty to seek justice. That includes a responsibility to correct wrongful convictions. Sometimes, long before a defendant, it's the prosecutor who may learn of credible, material information of a wrongful conviction after it has become final. In Maryland, there is no clear tool for the prosecutor when this happens. HB874 provides a mechanism for a prosecutor to do what he or she is bound to do legally, ethically and by well tread standards. As an attorney and officer of the Court, the prosecutor is unique and, by codifying this responsibility, the proposed provisions would not only protect individual rights, but also serve to enhance public confidence in our justice system.*
>
> *In Berger v. United States, the Supreme Court stated that prosecutors have a special obligation as representatives "not of an ordinary party to a controversy but of a sovereignty whose obligation to govern impartially is as compelling as its obligation to govern at all and whose therefore in a criminal prosecution is not that it shall win a case but that justice shall be done."*
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> *Maryland Rules of Professional Conduct – Special Rules for Prosecutors "…prosecutors are ministers of justice and not simply that of an advocate…"*

[22] *See* MARYLAND GENERAL ASSEMBLY, JUDICIARY COMMITTEE HEARING (Feb. 26, 2019), https://mgaleg.maryland.gov/mgawebsite/Committees/Media/false?cmte=jud&ys=2019RS&clip=JUD_2_26_2019_meeting_1&billNumber=hb0874 (full committee testimony regarding HB874).

> *National District Attorney's Association - Standards for Prosecutors "…when a prosecutor is satisfied that a convicted person is wrongfully convicted, the prosecutor should notify the appropriate court and seek the release of the defendant if incarcerated. If the prosecutor becomes aware of material and credible which leads him or her to reasonably believe the defendant may be innocent of a crime for which the defendant has been convicted the prosecutor should disclose within a reasonable period of time as circumstances dictate such evidence to the appropriate court…These standards that the primary responsibility of a prosecutor is to seek justice can only be achieved by the representation and presentation of the truth and that this responsibility includes that the innocent are protected from unwarranted harm…"*

Following cross over, and in acceptance of amendments requested by the Senate Judicial Proceedings Committee ("JPR"), HB874 was placed on the April 8, 2019[23] House of Delegates floor docket, Concurrence Calendar 28. When HB874 was called, a question was posed by "the gentleman from the Eastern Shore" whose name was not mentioned and, in response to the question posed about the bill's purpose, Chairman Clippinger advised that the purpose of HB874 was as follows.

> *"To give the State's Attorney the ability to vacate a conviction if: 1) there was further evidence that could not have been discovered by due diligence in time for a new trial and creates a substantial or significant probability that the result would have been different; and 2) that they received the information at such a time that questions the integrity of the conviction… [in response to a follow up question whether this would address the GTTF instances involving officers planting evidence, Chairman Clippinger responded] yes, would help create that record."*

HB874 was the bill ultimately passed. Following crossover day, on April 8, 2019, on the floor, from Concurrence Calendar 28 (amended bills from the Senate), the House voted to accept the Senate amendments and pass HB874. HB874 was enacted on May 25, 2019, and signed into law by former-Governor Larry Hogan.

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[23] *See* MARYLAND GENERAL ASSEMBLY, HOUSE FLOOR ACTIONS (Apr. 8, 2019), https://mgaleg.maryland.gov/mgawebsite/FloorActions/Media/house-68-?year=2019rs.

Here, the State asserts that its investigation in this case reveals exculpating evidence which creates a circumstance such as what was contemplated by the legislature in enacting the vacatur statute. Further guidance on how to evaluate the instant case may be found in other post-trial statutes.

B) The impact of the new evidence and/or new information in any case should be first assessed using the before and after test; then the cumulative impact of the evidence as a whole should be analyzed.

Appellate courts have guided that analyses in writ of actual innocence cases should look no different than analyses conducted in other post-trial cases.

Ward v. State, 221 Md. App. 146, 108 A.3d 507 (2015) provides that, "…the test in every newly discovered evidence case for measuring the persuasive weight of newly discovered evidence, the "before and after" test, is: We first look at the evidence of guilt before the jury at the trial that led to the conviction. We then look at the newly discovered evidence. The acid test is to ask whether, if that jury had had the benefit of the newly discovered evidence as well as the evidence that was before them, would there be 'a substantial or significant possibility that the result would have been different there exists new evidence that could not have been discovered in time to move for a new trial which creates a substantial probability that the result would have been different.'"

In *Faulkner v. State*, 468 Md. 418, 227 A.3d 584 (2020), the Court held that with respect to the "materiality of multiple items of newly discovered evidence for purposes of an actual innocence petition, a circuit court must conduct a cumulative [impact] analysis. [T]here is no reason to treat actual innocence petitions differently than cases involving claims of Brady violations or claims of ineffective assistance of counsel."

Finally, pursuant to *Brady v. Maryland*, 373 U.S. 83 (1963), the State is obligated to turn over that material in its possession that tends to exculpate a Defendant. A violation of *Brady* occurs when the material, which has not been turned over, is found to be: 1) favorable to the accused (either because it is exculpatory or impeaching); 2) suppressed by the State – either willfully or inadvertently; and 3) prejudice to the Defendant ensued." *Yearby v. State*, 414 Md. 708 (2010).

Here, the State has considered and applied the above scrutiny to reach the conclusion that the Defendant was convicted of a crime which he did not commit. First, the State evaluated the existing evidence which was presented at trial (before test). Next, the State considered the evidence and information it obtained from its investigation (after test). The State determined that if the jury had been presented with the evidence as it was, plus the new evidence and information the State now has, the result would undoubtedly have been different.

Next, the State considered the cumulative impact of the new evidence and information. Here, the State considered of all the known evidence (whether presented at trial or not) and all of the new evidence and information to determine whether we would charge and whether we would take the matter to trial. Thereby, the State was assessing what is the total effect of its present day investigation on the case as a whole. The evidence in this case was thin and circumstantial. Essentially, the case was solved on the statements of a jailhouse witness, Witness B, and Witness W – both of whose statements were thinly corroborated to start. The cumulative impact of the new evidence and information negates that convicting evidence which was presented at trial to such an extent that the convictions cannot justly stand.

C) The Defendant maintained that he did not commit this murder since his initial arrest and, having exhausted post-trial motions in Court, the Defendant contacted the CIP team within the BCSAO.

In February of 2019, through counsel, the Defendant wrote to the State and asserted that he had been convicted of a murder that he had not committed. Among the contentions of the Defendant was that Witness W had recanted her trial testimony and that critical evidence had been suppressed or not disclosed. The State conducted an initial review of the information presented and determined there was enough merit to warrant a closer investigation. As such, the case was escalated into a full investigation[24] which has concluded.

D) Evidentiary and factual investigative developments and conclusions are key factors which form the basis for whether to seek remedial relief from the Court in cases such as this.

[24] Given the age of the case, the thin and circumstantial nature of the evidence, an intervening global pandemic, and difficulties in locating witnesses, the investigation proved difficult.

During its investigation into this case, the State interviewed approximately 25 people (some more than once), conducted several crime scene analyses, gathered, reviewed and analyzed all available documents,[25] and synthesized all of the information repeatedly, which forms the basis for its investigative conclusion and relief sought herein. The State will provide the highlights, though not the totality, of its investigation as follows: 1) summation of that evidence which was presented at trial; 2) summation of how the newly discovered evidence and new information impacts the trial evidence; and 3) summation of exculpating newly discovered evidence and new information not probed at trial.

1. Summation of Evidence Presented at Trial

(a) The State's theory of the case was predicated upon the Defendant having been guilty of a felony murder during which the Victim was robbed of items before ultimately being shot and killed.

(b) The main contested issue at trial was the identity of the Victim's killer. The State's convicting evidence presented at trial was as follows.

- The Victim always wore the Heirloom Ring.
- There was no Heirloom Ring, money or wallet recovered from the Victim at Shock Trauma nor was there an Heirloom Ring, money or wallet found when collecting the Victim's personal effects from his home following his murder.
- Witness G lived in Perkins Homes[26] and was looking out of her 2nd or 3rd [27] floor window at the time of the murder. She saw two men at the phone booth on the corner. She stepped away from the window and heard a gunshot. She returned to the window and the two men were no longer at the phone booth.
- Witness R was outside in the Perkins Homes parking lot area working on his car at the time of the murder with a

[25] The existence and contents of state, police and court files are subject to myriad intervening circumstances which may render any part or whole file missing.
[26] She lived at 347 Spring Court.
[27] Witness G's story of whether she was on the 2nd or 3rd floor varies from statement to statement. It is of no consequence as the view of the area in question is the same.

friend, Individual JP. Witness R heard a gunshot and saw two men run through the court – one with a handgun. Witness R identified the Defendant as one of the two men he saw running – the one without the handgun.

- Witness B testified that he was in the Division of Corrections ("DOC") serving a sentence in 1995 when he ran into the Defendant who admitted to robbing, killing and taking the "rings," money and wallet of a "white guy." Witness B identified the Defendant as being the person who made same admission while in DOC.
- Witness W was the on-again, off-again girlfriend of the Defendant who testified that she recalled one night when the Defendant came home frantic that he was with a friend named "Wink" who shot and killed a man after they robbed him. Defendant further showed Witness W a ring taken from the robbery which was gold with black and a line of diamonds.

c) The Defense's theory of the case was that, while the Defendant was in the area at the time, he did not commit the murder. The Defense presented the following evidence.
    - The Defendant testified on his own behalf:
        (i) He owned a .22 caliber handgun at the time.
        (ii) He was at the corner of Eden and Bank using a pay phone that night but was not involved in the murder.
        (iii) He heard a gunshot and saw someone known to him as "Skip" running toward him, so he took off running, cutting through Perkins Homes.
    - BPD Homicide Detective J.T. Brown was called back to the stand by the Defense apparently to flesh out whether "Skip" was considered a suspect. Detective Brown testified, "Skip was not a suspect in the case"[28].

[28] 2/2/98 Trial Transcript ("T") (p. 251).

d) In closing, the State impressed that: 1) the Victim had been robbed of a large amount of money, the Heirloom Ring, and jewelry; 2) the Defendant confessed to Witness B; and 3) Witness W ties it all together - the Defendant admitted to the robbery. Conversely, the Defendant impressed that the State's witnesses were lying and the Defendant had not committed the murder.

2. Summation of how the newly discovered evidence and new information impacts the trial evidence.

Throughout its investigation, *as related to the evidence presented at trial*, the State has uncovered clear and convincing new evidence and information. The State asserts that the following conclusions are supporting by now-known evidence in this case:

1) The victim was not wearing the Heirloom Ring the night of the murder.
2) Witness G could not have physically seen what she testified to seeing.
3) Witness R was not able to identify either of the two men he saw running.
4) Witness W advises the Defendant never told her he robbed, shot or killed anyone.
5) There was no watch or money taken from the Victim as Witnesses B and W stated to police and testified.

a) The Victim did not have his Heirloom Ring on nor did he have any money on him to be taken by the time he was robbed.

On June 15, 2022, the CIP team interviewed Individual CP[29] who was a friend of Victim. She advised that the Victim had lost his Heirloom Ring prior to

[29] On November 22, 1993, Individual CP spoke with police over the phone according to police reports. The detective noted that Individual CP mentioned that the Victim had lost the Heirloom Ring and that she was not sure whether the Victim had it on or not the last time she saw him. As well, Witness TP stated to police that the Victim had lost the Heirloom ring and found it again. *As to Witness TP, she did not see the Victim the night of the murder.*

As to Individual CP, she credibly described not being contacted again by police. She was disturbed when reading in the paper that the case seemingly relied heavily on the Heirloom Ring – so much so that she sounded the alarm by contacting the Victim's mother (years after the trial) to advise there had been an error given the Victim was not wearing the Heirloom Ring that night.

Individual CP indicated to the State that she is "100% sure" that the Victim did not have that Heirloom Ring on the night he was killed and it has bothered her ever since learning the case turned on the Heirloom Ring.

the day of the murder. The night of the murder, Individual CP saw the Victim at Bohager's club shortly before he was murdered. When she saw the Victim, he did not have the Heirloom Ring on. Individual CP asked the Victim about the whereabouts of his Heirloom Ring and the Victim advised it was still lost.

Further, Individual CP said the Victim had no money when he arrived at Bohager's and she and her friend had to "spot" the Victim money at the club as a result. Individual CP advised that this was not unusual as the Victim, given he was a student, was often without money.

Present day interviews of Individuals RC and FM[30] reveal that the Victim had met them at a local neighborhood bar earlier in the night – prior to the Victim going to Bohager's. While at that neighborhood bar, the Victim bought multiple rounds of drinks prior to leaving around 1am. This corroborates Individual CP's observation that the Victim had no money by the time he arrived at Bohager's following his departure from the bar outing with Individuals RC and FM.

Individual CP was the last person with knowledge of the Heirloom Ring[31] to see the Victim alive the night of his murder. Neither of the witnesses *who provided trial testimony about the Heirloom Ring being worn by the Victim* saw the Victim *after* Individual CP the night of the murder.

Both Witness B and W testified that the Defendant was in possession of a ring taken during the robbery. The State's theory of the case rested heavily on this ring having been stolen.

b) BPD Mobile Unit and ECU reports contained information that directly contradicts the testimony and statements of Witnesses W and B.

BPD Mobile Unit recovered the following items which were still on the Victim's person and submitted same to ECU: keys, necklace, black Casio watch, a nickel and gold earring.[32] None of these items had been stolen.

Notwithstanding this, Witnesses W and B both provided statements to the police that were presented at trial to circumstantially suggest that the Victim's watch was taken during the robbery. This did not occur. Witness W's description of the watch to police was that it was gold and white. As well,

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[30] Individuals RC and FM live in New Zealand. With the assistance of New Zealand police, the State was able to locate and interview each via ZOOM.

[31] There were other persons who saw the Victim after Individual CP that night – but none of those persons had information/knowledge related to the Heirloom Ring.

[32] *See* Exhibit 2 – Property Recovered.

Witness B stated to police that the Defendant confessed to having stolen the Victim's watch.

c) Witness G could not have seen the corner of Eden and Bank Streets nor the pay phones as she had claimed at trial rendering her testimony non-credible. That the State has discovered the testimony provided by Witness G to be non-credible is newly discovered and new information.

The State conducted an extensive crime scene analysis which spanned multiple trips to: 430 S. Eden Street, 1405 Bank Street, Perkins Homes[33] parking lot, the former residence of Witness G,[34] former location of pay phones (Bank/Eden) and carryout located at the corner of Eden and Bank Streets.

Same revealed that, short of superhuman ability, it would have been physically impossible for Witness G to have seen the carryout and pay phone location[35] that she testified to having viewed because there was a brick building of apartments blocking and a large tree obstructing the view from her residence[36].

On or about November 20, 1993,[37] Witness G provided a statement to police that she saw one man walking behind the Victim.[38] After that initial interview, Witness G's subsequent interviews included observations which grew to: 1) seeing two men at the pay phone at Eden and Bank Streets; and 2) seeing two men running up behind the Victim right before hearing the gunshot. Then, at trial, Witness G began backpedaling and recanted parts of her story.

Our conclusion is that Witness G's testimony was not credible or reliable as her observations are limited to those provided to police on November 20, 1993: she saw a man walking behind the Victim with no further description or

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[33] While the building had already been condemned and the public was forbidden from entering the premises, the State gained permission from construction site workers to enter the premises for investigative purposes. It took multiple years, in phases, for the buildings to be razed.
[34] Witness G was fully uncooperative with this investigation. The State made over a dozen separate attempts to speak with Witness G. Witness G's responses ranged from apt refusal to statements that she didn't care if the Defendant was convicted of a crime that he did not commit.
[35] *See* Exhibit 3 – Crime Scene Picture with View of Bank/Eden Corner.
[36] *See* Exhibit 4 – View from Witness G's window. The CIP team was permitted access to the Perkins Homes just before they were razed.
[37] There is an undated, handwritten note in the police file that appears to have been taken later in the evening of November 20, 1993.
[38] It would have been possible to see shadows or silhouettes of people depending on where they were in the 1400 block of Bank. It is not possible, however, to see the corner of Eden and Bank from Witness G's then-home – regardless of what floor you are on.

information provided. This lack of credibility and reliability is new information discovered by the State.

d) Witness R has recanted his trial testimony and advised that the police paid him money for drugs in exchange for his cooperation. Both the recantation and receipt of money to buy drugs are newly discovered evidence and new information.

During the investigation, Witness R provided statements to the police on multiple occasions. He also testified during the pretrial suppression motion and the State's case in chief. Witness R's testimony was that he was working on his car with a friend in the Perkins Homes parking lot. At some point, he heard a gunshot. He then saw two men run by him – one with a gun. He testified that one of the men running was the Defendant – the one without a gun - and that the Defendant returned to the scene after having changed clothes.

The CIP team interviewed Witness R on March 29, 2023. Witness R is adamant that he was too far away to see the incident, he does not know whether the running men had anything to do with the incident and he could not then, nor now, identify either of them.

Witness R's current statements are consistent with his initial statements made to police. As well, they are consistent with available records. BPD records reveal that there were no fewer than ten people who reported being awake, outside in the vicinity or otherwise able to hear the gunshot and reported hearing same. Therefore, that there were people outside running when a gun shot was heard was not remarkable. Police arrived at least 20 minutes after the gunshot and were responding to a report for an injured person – not shots fired.

Further, during his 2023 interview, Witness R advised that, *in 1993*, he told police he was in the parking lot area of Perkins Homes working on his car when he heard a gunshot – that it was too dark and from a "significant" distance away that he saw two people running. He stated he told police that he had no idea whether either of those people had anything to do with the gunshots or not.

In 2023, Witness R described his interactions with police as follows, "I told [the police] I didn't see anything but they gonna believe what they believe…[the police] worked on me because of my drug issue…[the police] gave me money to get high."

On March 20, 2023, the CIP team evaluated the location of the parking lot as described by Witness R in relation to the scene of the shooting and the location

of the pay phones. Neither would have been visible from where Witness R was located[39].

It is the State's position that this recantation and inducement for cooperation is properly characterized as newly discovered evidence and new information. That Witness R recanted in 2023 could not have been discovered within the one year time frame as mandated by Md. Rule 4-331(c).

e) Witness W has recanted her trial testimony and advises that she was coached and threatened with the removal of her children if she did not cooperate. This is newly discovered evidence and new information.

In 2019, the Defendant, through counsel, provided the State with an affidavit[40] prepared by Witness W in which she recanted her trial testimony. The CIP team interviewed Witness W[41] on April 22, 2021, and April 19, 2022.

When probed as to her present day recantation, Witness W is adamant that the police threatened her with the removal of her children, coached her on what to say, and provided a "script"[42] of what to ultimately put on tape and testify to.

An investigation into Witness W's initial contact with police reveals a concerning set of circumstances.

- In November 1998, Witness W was first interviewed by police. Notably, she was interviewed for approximately 5 hours prior to going on tape. In reviewing the tape, Detective J.T. Brown interjects numerous times to "remind" Witness W of what she had said during her 5 hour pre-interview.
- On the tape, Witness W claimed she saw Defendant with a ring. The State has determined that, if the Defendant was seen with a ring – it was not the Victim's Heirloom Ring. Moreover, Witness W described a ring inconsistent with the actual Heirloom Ring at all points when asked about the ring – the ring was a small, fire opal pinky ring and not gold with black and a line of diamonds.[43]

[39] *See* Exhibit 6 – Parking Lot in Courtyard of Perkins Homes.
[40] *See* Exhibit 7 – Affidavit of Witness W.
[41] Witness W was very difficult to locate. On April 13, 2021, the CIP team interviewed both of Witness W's daughters who were able to assist with locating Witness W.
[42] According to Witness W, she was told by Detective J.T. Brown to "stick to the story."
[43] *See* Exhibit 8 – Sketch of Heirloom Ring.

- Discovery violation: the complete 1998 tape recording of Witness W's initial police interview was demanded by defense attorneys over the pendency of this case – and never produced; however, in 2024, the State secured a copy of same,[44] which tends to corroborate that a complete copy of same was not disclosed to the Defendant despite ongoing demands dating back to 1998. Notably, the area in which the instant murder occurred was plagued with numerous crimes of violence and murders[45] throughout the early 1990s.[46] Witness W was interviewed by police *2 years* after the murder. On tape, she described a night in which the Defendant arrived home frantic because he and his friend robbed and killed someone. Present day, Witness W says the Defendant never said he and his friend robbed and killed someone. She advised that she told police the Defendant came home frantic having seen someone get shot at some point. She is adamant that the police told her what details to fill in to create a connection.[47]
- When asked by the CIP team if she can specifically tell us the day, month and/or year the Defendant may have seen someone get shot – Witness W said no. When asked if the police or State ever asked her any corroborating questions that would *nail down a day, month, and/or year* of when the Defendant made these statements, Witness W said no one ever asked her.[48]

f) Witness B's[49] statements to police were self-serving and – without corroborating evidence - are rendered unreliable. Here, any indicia of corroborating evidence has evaporated.

As indicated previously, Witness B stated that the Defendant boasted of having taken the ring, watch, and wallet/money. As described earlier, there was no ring, watch or money taken.

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[44] In August 2024, the State received a copy of the 1998 cassette recording of Witness W.
[45] Indeed, evidence of another, unrelated murder at Perkins Homes was interspersed in the police records for the instant case which required investigation to ensure the instant murder was not confused with the unrelated reports from an unrelated Perkins Homes murder which inexplicably were mixed together.
[46] Baltimore City recorded 353 homicides in 1993.
[47] Witness W goes back and forth on whether the Defendant was frantic for an unknown reason or frantic over having seen someone get shot. She is consistent that the Defendant did *not* claim to have robbed or killed anyone or to have participated in same. Witness W advises that the police provided her with a "script" of what story to give.
[48] Indeed, no such questions were posed during Witness W's trial testimony.
[49] On December 2, 2023, the Office of the Chief Medical Examiner confirmed that Witness B died on February 24, 2019, of a drug overdose.

There exist notes in the BCSAO file from the trial ASA to the grand jury unit suggesting that Witness B came forward, presumably to do a good deed, *before* his escape charge. This is inconsistent with the records. The police records clearly reflect that Witness B was arrested and charged with escape. During said arrest episode, Witness B informed police that he had information about the instant murder.

During the January 16, 2025, meeting with the Victim's Representative, the Victim's Representative described a conversation that the family had with Detective J.T. Brown during the pendency of the trial in 1998 regarding Witness B. Evidently Detective Brown advised the family that they (police) had essentially planted someone "undercover" specifically to elicit a confession or statement from Defendant.[50]

The State's position is that the testimony provided by Witness B has been rendered unreliable as any corroboration which may have existed previously does not now.

3. Summation of Newly Discovered Evidence and New Information Not Probed at Trial

a) Alternative Suspect[51] – Individual MB was investigated, detained and photographed as a suspect in this case.

Individual MB was in a physical altercation with the Victim immediately prior to the shooting of the Victim. Witness DS testified as to this prior altercation. However, the fact that Individual MB was investigated as a suspect conspicuously did not come up[52] at trial though police conducted several interviews of persons with knowledge of Individual MB as being a "violent drunk" with access to guns.[53]

[50] The State provides this information to the Court as it has no reason to doubt the veracity of this information. However, the State is unable to proverbially drill down more on looking for corroboration as for those present - Detective Brown has passed away and the Victim's mother suffers from cognitive challenges.
[51] The outcome sought in this case will render the investigation open. As a result, the State is limiting the information included as to alternative suspects.
[52] Again, it is not clear which specific BPD records were shown to the Defense and whether or not they included the photographs or other reports of Individual MB being a suspect.
[53] As described and provided by individuals who knew Individual MB.

The police investigation moved away from Individual MB[54] and was not revisited as part of the re-opened investigation in 1996. Individual MB is a white male. Defendant is a black male.

Same alternative suspect investigation information would be exculpatory and subject to disclosure pursuant to *Brady*. It is not clear whether the Defense reviewed police reports related to Individual MB being an investigated suspect; the trial transcript is silent.

b) Detective J.T. Brown testified that "Skip" was not a suspect; however, extensive police records identify "Skip" as a suspect in the case.

During his testimony, Detective J.T. Brown insisted that "Skip" was not a suspect and was never a suspect in the case, which directly conflicts with the plain language used in police reports identifying "Skip" as a suspect repeatedly. Indeed, Detective Brown testified outright that "Skip was not a suspect in this case."[55] Police spent many months looking to identify/find "Skip" who was suspected of being involved in the shooting.[56] Again, it is unclear what records the Defense had related to this.

c) Alternative Suspect – an unknown white male claiming to be a police officer ("Fake PO") appeared in front of 430 Eden Street and helped to break up the fight between Individual MB and the Victim.

Witness DS testified that an unknown white male appeared outside of 430 S. Eden as Individual MB and the Victim tumbled out onto the sidewalk fighting. This unknown white male identified himself as a police officer (not determined to be true). After breaking up the fight, Witness DS ushered Individual MB back inside the house leaving the Victim outside with the unknown white male.

Police records reflect that the unknown white male who appeared and broke up the fight between Individual MB and the Victim was a focus of investigation as well. A composite sketch was created and attempts were made to locate the person without success.

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[54] There is an apparent drop off point when Individual MB refused to take a lie detector test. It is unclear whether Individual MB stayed inside the house for the rest of the night, whether anyone could affirmatively place him inside the house for the remainder of the night, whether anyone was deflecting suspicion away from Individual MB as there was no further investigation and the initial investigative results were apparently not explored further in 1996.

[55] *See* Exhibit 9 – Excerpt from Transcript.

[56] *See* Exhibit 10 – "Skip" identified as a suspect.

d) Possible Alternative Suspect – Individual JB

On November 26, 1993, police interviewed Individual JB in reference to this case. Individual JB confirmed that he was in the area driving his Ford Pinto at the time of the murder. Police noted that Individual JB advised that he frequently drives around with no particular destination and could not explain why he was in the area at that time on that night. When Individual JB tried to obtain information about the murder and police refused to provide same, Individual JB became "very hostile and belligerent". Further investigation by police revealed that Individual JB lived with his father and his father was the registered owner of a Colt .357.

On December 2, 1993, the Bullet Report was signed off on by the BPD Firearms Unit which identified the bullet coming from the Victim as being either a .38 or .357[57] - Colt was identified as one of the possible brands.

e) Negative Photo Array of the Defendant

Individual JP was with Witness R working on the car outside of Perkins Homes at the time of the shooting. Individual JP was interviewed extensively and submitted to a polygraph test. He, like Witness R, had seen two black males running in the area. On October 8, 1996, a photo array containing the Defendant was shown to Individual JP – negative.

While there were several other negative photo arrays disclosed to the defense,[58] the one that contains the Defendant appears to have not been among them and was absent from mention at trial. This is *Brady* material requiring disclosure.

VI. VICTIM FAMILY NOTIFICATION

As guided by the Md. Const. Decl. Rights Art. 47 that "victims of crimes are to be treated with dignity, respect, and sensitivity by agents of the State," the State endeavored to alert the Victim's family as early as possible that it was undertaking and nearing the end of an extrajudicial investigation into the factual innocence claim raised in the instant case.

On September 28, 2023, the State made contact with the Victim's mother. During the meeting, the State advised that it was conducting an investigation

[57] *See* Exhibit 11 – Bullet Report.
[58] *See* Exhibit 12 – Negative Array.

into the Defendant's claim of factual innocence. The State advised that the investigation was still ongoing; however, at the conclusion of the investigation, the State may or may not conclude that it must seek a release of the Defendant. Given that the Victim's mother is elderly and appeared to have difficulties in communication, the State made contact with another family member of the Victim, the Victim's cousin, who also provided an impact statement at sentencing on March 30, 1998.

On October 6, 2023, the State convened a meeting over ZOOM with the Victim's cousin, who confirmed that he is the representative for the family ("Victim's Representative"). The State advised the Victim's Representative of our investigation into the possible factual innocence of the Defendant and that we would have an obligation to notify the Court and seek relief if evidence supported that the Defendant was convicted of a crime that he did not commit. He was further advised that he was being contacted with extensive lead time given there was additional investigation needed and no conclusion had been reached.

The State provided the Victim's Representative with a follow up letter, contact information of our Victim Witness Advocate, and a VINE form.

On January 16, 2025, the State[59] met with the Victim's Representative. During the meeting, Chief Lipscomb reviewed the contents of the instant motion in its entirety. Chief Lipscomb also advised that the investigation was over and we have concluded the Defendant was convicted of a crime that he did not commit. Further, we advised of the State's intention to file the instant motion to vacate and, should same be granted, to enter a *nolle prosequi* which will result in the Defendant being released from prison. The Victim's Representative[60] was appreciative and understood the posture of the case.

The State will comply with its obligations as set forth in Md. Crim. Pro. Art. Sec. 8-301.1(d)(1)(2) and will notify the Victim's Representative of any hearing date and advise of their right to be present.

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[59] Chief Lipscomb and Investigator Ellis met with the Victim's Representative via ZOOM.
[60] The Victim's mother was discussed during the meeting and it was agreed that the Victim's Representative would handle discussion as she is elderly and has cognitive challenges.

VII. CONCLUSION

In light of the foregoing, the State respectfully asserts that it has satisfied the requirements as set forth in Md. Crim. Pro. Art. Sec. 8-301.1, as it has established that there exists newly discovered evidence that could not have been discovered in time to move for a new trial which creates a substantial likelihood that the result at trial would have been different. As well, there exists new information which tends to erode the integrity of the convictions in this case to such an extent that the interests of fairness and justice demand a vacatur.

Respectfully Submitted,
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State's Attorney for Baltimore City

By: _____

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CERTIFICATE OF SERVICE

I hereby certify that on the 24th of January 2025 a copy of the forgoing was emailed to Maggie Abernathy and Shawn Armbrust, Mid-Atlantic Innocence Project, counsel for the Defendant.

_____
Lauren R. Lipscomb