Circuit Court for Cecil County
Case No: 07-K-16-000064

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 80

September Term, 2020

IKIEM R. SMITH

v.

STATE OF MARYLAND

Graeff,
Arthur,
Moylan, Charles E., Jr.
(Senior Judge, Specially Assigned),

JJ.

PER CURIAM

Filed: February 11, 2021

*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.

Following a 2017 bench trial in the Circuit Court for Cecil County, Ikeim R. Smith, appellant, was found guilty of possession of cocaine and possession of cocaine with intent to distribute and was sentenced to eight years' imprisonment. On direct appeal, Mr. Smith argued, among other things, that the suppression court had erred in failing to suppress the cocaine that had been found in a pat-down of his person pursuant to a frisk by the police. At the suppression hearing, an officer from the Cecil County Sheriff's Department and two others from the Maryland State Police testified that they were "working a stolen handgun case" and had "located a suspect vehicle parked" at a residence in Cecil County.[1] That then prompted a "history check for calls for service" at that location, which revealed that a woman named Christine Goldinger had been arrested there several months earlier and a "records check" further revealed an open warrant for her arrest. The officers then responded to the location for two purposes: (1) to attempt to locate Ms. Goldinger in order to serve the warrant and (2) to investigate the ownership of the "suspect vehicle" parked in the driveway, which matched the description of a vehicle involved in a stolen gun incident three days earlier.[2] When the officers pulled up to the residence, Mr. Smith and another male jumped from a second-story rear door and fled. Mr. Smith was soon apprehended and in a pat-down of his person the police recovered cocaine from his pants pocket.

[1] The testifying officers were Deputy Jeffrey Plummer, Cecil County Sheriff's Office, assigned to the Maryland State Apprehension Team; Sergeant Steven Juergens, Maryland State Police, Criminal Investigations Unit; and Sergeant Greg Hahn, Maryland State Police, Criminal Enforcement Division.

[2] The "suspect vehicle," which had been caught on surveillance video, was described as a red Monte Carlo with a black fender and a black roof.

This Court affirmed the suppression court's denial of Mr. Smith's motion to suppress the contraband. *Smith v. State*, No. 1579, September Term, 2017 (filed August 15, 2019), *cert. denied*, 466 Md. 324 (November 20, 2019). In upholding the suppression court's decision, we held "that the police had a reasonable articulable suspicion that Smith was armed and dangerous at the time of the frisk[,]" noting that the police had responded to the residence "to investigate the theft of a handgun" and that Mr. Smith had attempted to flee the scene by jumping from a second-story doorway. *Slip op.* at 20-21. We further held that the officer who conducted the frisk of Mr. Smith had probable cause to search his pants pocket where the contraband was discovered. *Id.* at 23-24.

In February 2020, the self-represented Mr. Smith filed a motion for a new trial based on newly discovered evidence pursuant to Md. Rule 4-331(c). He claimed that "evidence" he had uncovered supported his position that the contraband seized from his person should have been suppressed because the police had lied when they testified that one of the reasons they approached the residence was to investigate the parked car in relation to the "stolen gun case." His "newly discovered evidence" was based on Maryland Public Information Act ("MPIA") requests made by Mr. Smith's counsel in June 2018 to the Maryland State Police and to the North East Police Department for documents "relating to the January 3, 2016 handgun theft, in which Mr. Smith was a person of interest."[3]

[3] The request identified the location of the theft, which took place in the Walmart Supercenter parking lot in the Northeast Plaza Shopping Center, and also identified Sergeant Steven Juergens as the investigating officer. The request further mentioned that evidence in the case included surveillance video from Walmart and another business (continued)

The North East Police Department responded that "[o]ur department shows no records on file for the person referenced." The Maryland State Police apparently produced a document (not in the record before us) which prompted Mr. Smith's counsel to clarify the nature of the request:

> The January 3, 2016 stolen handgun case, which is the subject of my PIA request, is referenced in the report you sent me ("Also located parked in front of the residence was a red 2003 Chevrolet Monte Carlo which was a suspect vehicle in a stolen handgun case from January 3rd, 2016."). Please provide all documents related to the January 3, 2016 incident[.]

In response, counsel received a message from the Maryland State Police that "no other files exist."

The "newly discovered evidence" also included what Mr. Smith described as a "police computer aided dispatch (CAD) detail report" that reflected that officers responded to the address in regard to a warrant for Christine Goldinger.[4]

Mr. Smith alleged that the responses to the MPIA requests and the CAD report demonstrate that the State introduced "false evidence and perjured testimony" at the suppression hearing and trial because, in essence, it contradicted the testimony given at those proceedings that the officers had responded to the location, in part, to investigate a suspect vehicle in the stolen gun case – testimony which he asserted was material to the decision to deny the suppression motion. He requested that the court subpoena his former counsel to testify about her MPIA requests; order an "independent examination of false

"allegedly showing Mr. Smith and his vehicle." These were details that were testified to at Mr. Smith's suppression hearing and trial.

[4] The CAD report does not appear to be in the record before us.

evidence/newly discovered evidence"; vacate his conviction and sentence; or order a new trial.

The circuit court summarily denied the motion,[5] which Mr. Smith appealed. For the reasons to be discussed, we shall affirm the judgment.

DISCUSSION

Mr. Smith asserts that the circuit court abused its discretion by failing to hold a hearing on his motion; his conviction was obtained by "use of false evidence"; the denial of his motion to suppress was "based on false evidence"; and the State's Attorney "knowingly introduced false evidence/testimony" at both his suppression hearing and trial.

Initially, the State responds that the only issue properly before this Court is whether the court erred in denying the Rule 4-331(c) motion without holding a hearing. The State maintains that the remaining claims should have been raised on direct appeal. We agree with the State that the only issue properly before us is the circuit court's decision to deny Mr. Smith's motion for a new trial without a hearing.

Motions for a new trial are governed by Md. Rule 4-331 which, in pertinent part, provides:

> (a) *Within Ten Days of Verdict*. On motion of the defendant filed within ten days after a verdict, the court, in the interest of justice, may order a new trial.
>
> ***
>
> (c) *Newly Discovered Evidence*. The court may grant a new trial or other appropriate relief on the ground of newly discovered evidence which could

[5] The same judge who presided over the bench trial ruled on the motion.

> not have been discovered by due diligence in time to move for a new trial pursuant to subsection (a) of this Rule:
>
> (1) on motion filed within one year after the later of (A) the date the court imposed sentence or (B) the date the court received a mandate issued by the final appellate court to consider a direct appeal from the judgment or a belated appeal permitted as post conviction relief [.]
>
> ***
>
> (e) *Form of Motion*. A motion filed under this Rule shall (1) be in writing, (2) state in detail the grounds upon which it is based, (3) if filed under section (c) of this Rule, describe the newly discovered evidence, and (4) contain or be accompanied by a request for hearing if a hearing is sought.
>
> (f) *Disposition*. The court may hold a hearing on any motion filed under this Rule. Subject to section (d) of this Rule, the court shall hold a hearing on a motion filed under section (c) if a hearing was requested and the court finds that: (1) if the motion was filed pursuant to subsection (c)(1) of this Rule, it was timely filed, (2) the motion satisfies the requirements of section (e) of this Rule, and (3) the movant has established a prima facie basis for granting a new trial.

The Court of Appeals discussed this Rule in *Cornish v. State*, 461 Md. 518 (2018) where the defendant, like Mr. Smith, had moved for a new trial more than 10 days after the verdict based on newly discovered evidence and was denied relief without a hearing. The Court of Appeals noted that the Rule provides that "the trial court *shall* grant the movant a hearing when a hearing is requested, the motion is timely filed, the motion satisfies the requirements of subsection (e) of the Rule, and the movant has established a *prima facie* basis for granting a new trial." *Id.* at 529. "[W]ith respect to this last requirement, Rule 4-331(f)(3) provides that the movant must establish a *prima facie* basis that there is newly discovered evidence which could not have been discovered by due diligence in time to move for a new trial pursuant to sections (a) and (c) of Rule 4-331." *Id.* at 529.

The Court in *Cornish* recognized "the subtle yet important distinction that is crucial in our [appellate] review" where, again like here, the circuit court denied relief without explanation and, thus it was not clear whether the court denied relief because the motion failed "to satisfy the *prima facie* pleading requirement, or for some other reason." *Id.* at 528. The Court concluded that in such instances appellate review is "limited to the judge's decision to deny [the movant] a hearing" and would not include a review of the merits of the defendant's request for a new trial. *Id.* at 528-29. Accordingly, the Court in *Cornish* focused on whether "the pleading sufficiently established a *prima facie* case, thus warranting a hearing[.]" *Id.* at 527. A *prima facie* case requires a movant to "provide evidence 'sufficient to establish a fact or raise a presumption . . . even though it may later be proved to be untrue.'" *Id.* at 527 (quoting *Black's Law Dictionary*, at 1382 (10th Ed. 2014). Whether a *prima facie* case was established, is a legal determination which the appellate court reviews *de novo. Id.*

As noted above, the Court in *Cornish* stated that, in determining whether a movant was entitled to a hearing on a Rule 4-331(c) motion, the *prima facie* case requirement includes whether the movant acted with due diligence. 461 Md. at 529 ("Rule 4-331(f)(3) provides that the movant must establish a *prima facie* basis that there is newly discovered evidence which could not have been discovered by due diligence in time to move for a new trial[.]") "'Due diligence' requires that the 'defendant act reasonably and in good faith to obtain the evidence, in light of the totality of the circumstances and the facts known to him or her.'" *Id.* at 532-33 (quoting *Argyrou v. State*, 349 Md. 587, 605 (1998)).

Here, Mr. Smith filed his motion within one year after the Court of Appeals denied certiorari of this Court's decision affirming the judgment on direct appeal. Accordingly, he met the timeliness requirement. His pleading also met the "form of motion" requirement of Rule 4-331(e). The next question is whether his pleading established a *prima facie* basis for granting a new trial, Rule 4-331(f)(3), which is a two-pronged determination: (1) whether Mr. Smith provided sufficient evidence to establish a fact or raise a presumption that is material to the result of his trial, 461 Md. at 534, and (2) whether the newly discovered evidence could not have been discovered by due diligence in time to move for a new trial within 10 days after the verdict, which was rendered on July 26, 2017. To be sure, the second determination "is limited to whether" Mr. Smith's newly discovered evidence, "on a *prima facie* basis, could not have been discovered with due diligence." *Id.* at 536 (even where a movant has satisfied the pleading requirement to assert grounds for relief, if a hearing is granted the movant will then need to prove that the newly discovered evidence could not have been discovered with due diligence in time to move for a new trial).

The State maintains that Mr. Smith's newly discovered evidence was discoverable prior to his trial and certainly within 10 days of the guilty verdict. The State points out that the officers testified at the July 1, 2016 suppression hearing – a full year before his July 26, 2017 trial – that one reason they approached the residence was to investigate ownership of the "suspect vehicle" in the stolen gun case which was parked in the driveway. Thus, the State maintains that, with an exercise of due diligence, Mr. Smith could have readily discovered the lack of police records related to the stolen gun case, as well as the CAD

report, well before trial and certainly within 10 days after the verdict. The State, therefore, asserts that the court did not err in denying relief without holding a hearing because Mr. Smith failed to establish a *prima facie* basis for granting a new trial.

We agree with the State. Based on the totality of the circumstances and the facts known to him following the suppression hearing (facts which were reiterated at his trial), Mr. Smith's pleading failed to establish a *prima facie* showing that the lack of police reports related to the stolen gun case and the CAD report could not have been discovered, in an exercise of due diligence, in time to move for a new trial – a threshold requirement for relief. Accordingly, we hold that the circuit court did not err in denying the motion without a hearing.

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