Circuit Court for Baltimore City
Case No.: 104281054

UNREPORTED

IN THE APPELLATE COURT

OF MARYLAND*

No. 444

September Term, 2022

CARL EMERSON-BEY

v.

STATE OF MARYLAND

Friedman,
Albright,
Harrell, Glenn T., Jr.
(Senior Judge, Specially Assigned),

JJ.

PER CURIAM

Filed: February 6, 2023

*At the November 8, 2022 general election, the voters of Maryland ratified a constitutional amendment changing the name of the Court of Special Appeals of Maryland to the Appellate Court of Maryland. The name change took effect on December 14, 2022.

Jennie Emerson-Bey was shot multiple times by someone in her house when she returned home after work about midnight on August 30, 2004. She died from her wounds. Although the home security alarm was activated when Ms. Emerson-Bey left for work, the alarm did not sound when Ms. Emerson-Bey entered the house after work. There was no indication that Ms. Emerson-Bey had deactivated the alarm when she entered the premises and there was no evidence of a break-in. Her estranged husband, Carl Emerson-Bey, appellant, had lived at the home until their separation and he was charged with the murder. In 2005, a jury in the Circuit Court for Baltimore City convicted Mr. Emerson-Bey of first-degree murder and related weapon offenses.

In 2018, the United States District Court for the District of Maryland granted Mr. Emerson-Bey's petition for a writ of habeas corpus and remanded the case for a new trial. After discharging his counsel, Mr. Emerson-Bey represented himself in a bench trial held in October 2018. The court found him guilty of first-degree murder and use of a firearm in the commission of a felony or crime of violence and sentenced him to life imprisonment, plus a consecutive 20 years. On direct appeal, Mr. Emerson-Bey argued, among other things, that the evidence was insufficient to support the convictions. This Court disagreed and affirmed the judgments. *Emerson-Bey v. State*, No. 130, September Term, 2019 (filed November 16, 2020), *cert. denied*, 474 Md. 183 (2021). In holding that the evidence was sufficient to support the convictions, we determined that the "trial court reviewed and cited competent and material evidence to support the conclusion that Emerson-Bey was uniquely situated to enter the home through the back door with a key, and that he was the only other person to have the alarm code, which is significant because the alarm did not go off when

Ms. Emerson-Bey entered her home after work." *Id.* slip op. at 14. We further noted that the trial court "also considered the fact that Emerson-Bey likely knew her work schedule, as well as the fact that no witness could provide an alibi for Emerson-Bey, including his own testimony that acknowledged he was not at his father's house at the time of the murder." *Id*.

In June 2020, while his direct appeal was pending in this Court, Mr. Emerson-Bey filed a pleading in the circuit court captioned "Writ of Actual Innocence/Discovery Violation" based on the transcript of a pre-trial hearing held on June 20, 2018. The transcript of that proceeding reflects that, at the outset of the hearing, Mr. Emerson-Bey was still in lock-up. Before he entered the courtroom, the State informed the court that it had "just found out a disclosure about one of our officers and we've advised [defense] counsel about it verbally, we've tried to have the materials forwarded to her," but counsel had not yet received it. Defense counsel stated that "[i]t's actually fact-sustained for either false statement or lying" related to a police officer, Michael Valair, who had been detailed to the Crime Lab and had been "involved with some of the processing" of the crime scene in 2004, including the lifting of Mr. Emerson-Bey's "handprint in the house[.]" The State also related that when searching for the "print card" it was discovered that there was a "second file that had to be located and that second file has several pieces of discovery that we were not able to recreate." The State, therefore, informed the court that it needed a court order to retrieve or photocopy those items that were in the possession of the clerk of the circuit court. Shortly after this discussion, the proceeding recessed while they waited for Mr. Emerson-Bey to be brought to the courtroom. When the proceeding resumed, Mr.

Emerson-Bey requested permission to discharge his counsel. After a discussion about that request, the court allowed the discharge and Mr. Emerson-Bey made known his intent to represent himself. The court then directed that all documents provided or to be provided in discovery be turned over to Mr. Emerson-Bey.

In his post-trial petition for actual innocence relief, Mr. Emerson-Bey—representing himself—asserted that he had received the June 20, 2018 transcript in August 2019 (about 10 months after his re-trial) and learned for the first time about the "Lift Print Card and other evidence missing" from the original trial. He alleged a *Brady* violation based on "suppression of material evidence and favorable pertinent information withheld from defense"; a discovery violation based on "failure to disclose favorable information to the defense" as instructed by the court at the June 20, 2018 hearing; and a "Confrontation Clause and Due Process Violation" based on his allegation that he was "denied right to effective cross-examination and denied right to a fair trial."

By order dated August 4, 2020, the court dismissed the petition for failure to assert grounds on which relief may be granted.[1] Mr. Emerson-Bey appealed and maintained before this Court that the circuit court erred in dismissing his petition and in doing so without a hearing. We affirmed the judgment, concluding that:

> Mr. Emerson-Bey's petition was not based on any "evidence" that speaks to his actual innocence. He focuses on the transcript from the June 20, 2018 hearing before he entered the courtroom wherein the State and defense counsel informed the court that a police officer who had assisted with the

[1] On August 20, 2020, Mr. Emerson-Bey filed a pleading captioned "Motion for New Trial/Discovery Violation" in which he raised substantially the same claims as in his "Writ of Actual Innocence/Discovery Violation." The court denied the request by order dated August 26, 2020.

> processing of the crime scene—and specifically the person who "found [Mr. Emerson-Bey's] handprint in the house"—had been "fact-sustained for either false statement or lying." That disclosure, however, did not indicate that the officer's misconduct was related to this case. Moreover, the officer did not testify at Mr. Emerson-Bey's retrial and the court, in reviewing the evidence in support of its finding of guilt, never mentioned that Mr. Emerson-Bey's handprint had been recovered from the house—a dwelling where Mr. Emerson-Bey had resided with his wife until shortly before her murder.
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> In his petition, Mr. Emerson-Bey also focused on the prosecutor's statement to the court that, when searching for the handprint "lift card," the State discovered that the "original court file" did not "contain the evidence that was admitted at [the first] trial" and thereafter learned that a "second file ha[d] several pieces of discovery that [the State was] not able to recreate." The prosecutor further related that it wished to get "that stuff . . . back" or be permitted "to photocopy it" but was told by the clerk's office that to do so required a court order. Later in the proceeding, after Mr. Emerson-Bey had discharged his counsel, the court directed the State to ensure that Mr. Emerson-Bey was given "every document that he is entitled to[.]" From this, Mr. Emerson-Bey seems to assert that evidence favorable to him had been withheld by the State. He does not, however, point to anything whatsoever that speaks to his actual innocence. Moreover, any discovery or evidence presented in relation to the first trial would not meet the definition of "newly discovered" as it would have already been known to Mr. Emerson-Bey.
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> The requirement that newly discovered evidence "speaks to" the petitioner's actual innocence "ensures that relief under [the statute] is limited to a petitioner who makes a threshold showing that he or she may be actually innocent, 'meaning he or she did not commit the crime.'" *Faulkner v. State*, 468 Md. 418, 460 (2020) (quoting *Smallwood* [*v. State*] 451 Md. [290] at 323 [2017]). In short, because nothing in his petition identified any "newly discovered evidence" that even suggests the possibility that Mr. Emerson-Bey did not commit the crime, the circuit court did not err in dismissing the petition without a hearing.

Emerson-Bey v. State, No. 605, September Term, 2020 (filed July 30, 2021), slip op. 5-7.

In September 2021, shortly after our opinion in No. 605, September Term 2020 was filed, Mr. Emerson-Bey, who continues to represent himself, filed in the circuit court a "Motion for New Trial/Discovery Violation," which presented essentially the same claims

he raised previously in his petition for Writ of Actual Innocence/Discovery Violation. In fact, the 2021 motion was practically a carbon copy of the 2020 petition, with the exception that he added two additional allegations: "Prosecutorial Misconduct – C. Banks & G. Collins" and "P.D./M. O'leary – Misconduct, I.A. of C., and a Misfeasance Performance." The "new" allegations were intertwined with the original allegations. In a Supplemental Motion, Mr. Emerson-Bey complained that the trial court had failed to follow the "strict requirements" when it allowed him to discharge his counsel. That issue, however, was addressed and rejected by this Court in Mr. Emerson-Bey's direct appeal. *Emerson-Bey v. State*, No. 130, Sept. Term, 2019, slip op. at 3-7.

Following a hearing held on April 14, 2022, the circuit court issued a Memorandum Order (filed on May 2, 2022) denying relief because "the matters raised in the motion have already been litigated by the appellate court and, in the alternative, on the basis that [Mr. Emerson-Bey] has failed to meet his burden of proof to warrant a new trial."

After reviewing the history of this case and our decision in No. 605, September Term, 2020, the circuit court noted that, "[n]othing in the arguments made by Mr. Emerson-Bey, in his written pleadings or in his oral argument, demonstrate how this court can do anything but recognize the law of the case in this matter with respect to all issues already ruled on by the appellate court." Moreover, the circuit court determined that, even if the law of the case was not a bar to relitigating the issues raised, "Mr. Emerson-Bey has failed to meet his burden under Maryland Rule 4-331(c)(1)" because he "has not explained why

he could not have discovered the information he relies on" in a timely manner and "has failed to produce any **evidence** which would qualify as newly discovered."[2]

Mr. Emerson-Bey appeals that ruling and raises seven issues on appeal, which we combine and recast as whether the circuit court erred in denying relief.[3] In his brief, he

[2] Md. Rule 4-331(c) provides that "[t]he court may grant a new trial or other appropriate relief on the ground of newly discovered evidence which could not have been discovered by due diligence in time to move for a new trial[.]"

[3] Mr. Emerson-Bey phrased his questions on appeal as follows:

Issue 1: "Do [sic] the C.O.S.A. have discretionary Authority to review a favorable (Circuit Court) Judicial decision to grant a Prose [sic] Defendants [sic] (4-331) 'Motion for a New Trial/Discovery Violation' Hearing, that is not challenge [sic] by Defendant."

Issue 2: "Did the Court (Judge Y. Tanner) abuse her discretion, while Violating Appellate' s [sic] Right to Due Process (5th & 14th Amend.) when in her Opinion she Contradicts Granting a Hearing, while Indiscreetly Seek [sic] a discretionary review from C.O.S.A. on Md. Rule 4-331 guidelines use [sic] to request a 'Motion for a New Trial/Discovery Violation' In Accordance."

Issue 3: "Did the Court (Judge Y. Tanner) a) Abuse her discretion (prejudicially) and b) Violate Appellant's Right to Due Process/A fair hearing (5th & 14th Amend.), by neglecting to act and rule on my written 'Motion for Evidence to be made Available' (Ex. #96/2005-Nov.-Tria [sic] and Ex. 79/2018-Oct.-retrial) (both are missing Lift Print Cards)"

Issue 4: "Are the Court findings and Denial Erroneous when the Record reflects various Misconceptions and the Court clearly Misconstruing [sic] my 'motion For A New Trial/Discovery Violations' and the 'Supplement Motion for a new Trial'…"

Issue 5: "Was the Judicial Decision to Dismiss and/or Deny Defendant's (Jan. 18, 2022) 'Supplement Motion for New Trial/Discovery Violations' (4-215 Non-Compliance to Triggered Mandatory Inquiry)… A.) Prejudicial and Contrary to Md. Rules and Procedures, and Federal Establish [sic]. B.) Constitutional (14th & 5th Amend.) Violation. C.) Constitutional (6th Amend.) Violation/Right to Self-Representation. D.) Due to Erroneous Findings. E.) Abuse of Discretion."

(continued)

states that the "print cards" are his "focus," and he seems to assert that the lift card was critical "because there is no Evidence or testimony that placed [him] on the Crime Scene" and "establishing presences on crime scene is a required/pertinent element for a conviction." [4]

We shall affirm the judgment of the circuit court denying relief. We agree with the circuit court that Mr. Emerson-Bey is not entitled to a new trial based on the allegations raised in his latest request. First, the circuit court is correct that Mr. Emerson-Bey did not present any cognizable issues that were not raised (or could have been raised) in his last appeal and, therefore, the issues raised in his latest motion are barred by the law of the case. "Under the doctrine, once an appellate court rules upon a question presented on appeal, litigants and lower courts become bound by the ruling, which is considered to be the law of the case." *Scott v. State*, 379 Md. 170, 183 (2004). Moreover, the law of the case

Issue 6: "Is the Circuit Court Judge Y. Tanner in violation of 'Abuse of Discretion,' Defendant State and Constitutional Right to Due Process, by neglecting and Failing to Opinionate on all issues, allegations and violations raised, argued and substantiated (Prima Facie) by the record?"

Issue 7: "1. Did the Circuit Court err or abuse her discretion while violating the Appellant's Fifth and Fourteenth Amendments / Due Process in failing (Neglecting) to review/consider the transcript proceedings from June 20, 2018?

2. Did to [sic] Office of the State's Attorney commit prosecutiorial [sic] misconduct in failing to provide the Court with a copy of Transcripts June 20, 2018 prior to Appellant's ('Motion for a New Trial/Discovery Violation') April 14, 2022 hearing?"

[4] As noted, on direct appeal following his retrial, this Court concluded that the evidence was sufficient to sustain the convictions. In reaching that conclusion, we reviewed the explicit findings the trial court made in support of its conclusion that Mr. Emerson-Bey was guilty – findings that did not refer to any finger or handprints recovered from the scene. *Emerson-Bey v. State*, No. 130, Sept. Term 2019, slip op. at 13-14.

doctrine "applies to both questions that were decided and questions that could have been raised and decided." *Holloway v. State*, 232 Md. App. 272, 282 (2017).

Finally, we agree with the circuit court that Mr. Emerson-Bey was not entitled to a new trial based on newly discovered evidence because he failed to produce any evidence that would be deemed "newly discovered." Moreover, Mr. Emerson-Bey points to nothing whatsoever that speaks to his innocence or any irregularities in his trial entitling him to relief under Md. Rule 4-331. In sum, we are not persuaded that the circuit court erred in once again denying Mr. Emerson-Bey's motion for a new trial.

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