Circuit Court for Cecil County
Case No. 07-K-06-000806

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 785

September Term, 2013

(ON REMAND FROM THE
COURT OF APPEALS)

WILLIAM LOUIS KRANZ

v.

STATE OF MARYLAND

Meredith,
Kehoe,
Berger,

JJ.

Opinion by Kehoe, J.

Filed: November 25, 2019

In 2009, a jury sitting in the Circuit Court for Cecil County convicted William Louis Kranz of two counts each of assault in the first degree and reckless endangerment. The circuit court sentenced Kranz to a total term of five years' imprisonment, to be followed by three years' supervised probation.

Kranz subsequently filed a petition for postconviction relief seeking to vacate his convictions on two grounds: first, that the State had committed a *Brady v. State*[1] violation when it failed to disclose to the defense that the State's Attorney was aware that the two individuals allegedly shot by Kranz were planning to file a civil action against him for damages; and second, that Kranz's trial counsel had been ineffective. The postconviction court ruled that the State had failed to make a required disclosure to Kranz, but it nonetheless denied his *Brady* claim on the basis that the State's nondisclosure was not "material." The postconviction court reasoned that, even if the jury had completely disregarded the victims' testimonies, it still could have found against Mr. Kranz based on the circumstantial evidence presented by the State. The court further denied Kranz's ineffective assistance claim.

Kranz thereafter filed an application for leave to appeal from that decision, which this Court granted. In his brief, Kranz abandoned the ineffective assistance claim and raised a single issue: whether the postconviction court had erred in denying his *Brady* claim on the basis that the information withheld by the State was not material. In addition to arguing

[1] *Brady v. Maryland*, 373 U.S. 83 (1963).

the merits, the State moved to dismiss the appeal because Kranz had completed serving his sentence while the appeal was pending, thereby divesting us of appellate jurisdiction. We agreed and, in a reported opinion, granted the State's motion to dismiss. *Kranz v. State*, 233 Md. App. 600 (2017).

Kranz filed a petition for writ of certiorari. The Court of Appeals granted the petition and ultimately reversed the judgment of this Court, holding that we had erred in dismissing the appeal and remanding the matter for review on the merits. *Kranz v. State*, 459 Md. 456, 476–77 (2018) ("The more reasonable construction of [Criminal Procedure Article] § 7–101[2] is to require the petitioner to be in custody at the time of filing and not, as the State would have it, to require the petitioner to remain in custody throughout litigation of the petition, including the appeal, if any.") (cleaned up, footnote added).

Pursuant to the Court of Appeals' mandate in *Kranz*, we have considered the merits of this case. We conclude that the suppressed evidence was material and that, therefore, the postconviction court erred in denying Kranz's *Brady* claim. Accordingly, we will reverse the judgment of the postconviction court and remand this case with directions to vacate the judgments of conviction.

[2] Criminal Procedure Article § 7-101 states that Maryland's version of the Uniform Postconviction Procedure Act applies to any person "convicted in any court in the State who is: (1) confined under sentence of imprisonment; or (2) on parole or probation."

Background

Materiality is the only disputed issue in this appeal. As that is a fact-bound question, we set out the underlying facts in detail.

On the evening of Saturday, July 15, 2006, Kenneth Hollenbaugh, Jr., hosted a party at his Elkton home. Among the attendees were his then-girlfriend, Brandi Lee Schaffer, and his best friend, George McSwain, Jr.

A friend of Schaffer's named Casey Pierce was experiencing problems with her boyfriend and repeatedly called Schaffer that evening. Pierce requested that Schaffer come to her apartment, which was in Newark, Delaware, about a fifteen minute drive from Elkton. Hollenbaugh did not want Pierce to come to his home, nor did he want to leave his own party. Ultimately, Hollenbaugh and Schaffer agreed that she would drive to Pierce's apartment and that McSwain would accompany her on the trip. Sometime after 1:00 a.m. on July 16, Schaffer and McSwain drove to Newark in Schaffer's red 1998 Isuzu Amigo.

Upon arriving at Pierce's apartment, McSwain joined Pierce's boyfriend in watching television and drinking beer, while Schaffer and Pierce "talked and had a beer." About an hour later, Hollenbaugh called. He was angry that Schaffer and McSwain were still at Pierce's apartment. So, at approximately 2:15 a.m., Schaffer and McSwain set out to return to Hollenbaugh's home.

Schaffer took a shortcut during the return trip. At this point, things went awry. She made a wrong turn and inadvertently drove onto what the State maintained was Kranz's property on Dixie Line Road in Cecil County.

Both Schaffer and McSwain described that property in similar terms—it had a long, narrow, tree-lined driveway, at the end of which was an open gate. Upon driving through the gate, they saw, to their right, a log cabin. According to McSwain, there were numerous vehicles parked on the property, which he described as "an auto shop."

By this time, Schaffer and McSwain realized that they were on private property and began to look for a place to turn around so that they could leave. Schaffer drove past the cabin to a clearing and turned around. Several guard dogs had approached their vehicle, and Schaffer and McSwain saw a figure on the porch of the cabin, who called out to them. They continued past the house in the opposite direction. At this point, several shotgun blasts rang out, and both Schaffer and McSwain were struck by pellets and injured.

As Schaffer exited the property and turned onto the adjoining highway, a tow truck followed them closely for a brief period but eventually gave up the chase. Several minutes later, they arrived at Hollenbaugh's home. Both Schaffer and McSwain were seriously injured and Hollenbaugh called 911. Emergency responders arrived shortly thereafter and transported Schaffer and McSwain to a hospital for treatment of their injuries.

Police searched Schaffer's vehicle and recovered suspected shotgun pellets as well as paint samples. They further observed blood on both the driver's and passenger's seats as well as on the driver's seat belt.

Police officers questioned Schaffer and McSwain while they were at the hospital. From their description of the events, the police came to the conclusion that the place in question was Kranz's property, and several officers went there to question him. Kranz

denied any knowledge of the shooting, claiming that he had been asleep, and that the gate at the beginning of his land had been locked. A next-door neighbor also told police that he had heard nothing that night, but he acknowledged that his windows and doors had been closed because he was running the air conditioning at the time.

Police obtained a search warrant for Kranz's property and executed it late Sunday afternoon. From a gun rack on the wall of the master bedroom, they recovered a loaded, 12-gauge, pump-action shotgun that matched the description McSwain had given, as well as a box of shells. They recovered an empty shotgun shell of the same type from a trash can in the kitchen. On the driveway in front of Kranz's house, they recovered suspected shotgun pellets as well as a number of red paint chips, which the State subsequently claimed had come from Schaffer's vehicle as it had been struck by shotgun blasts. The police also observed a tow truck parked on the driveway near Kranz's residence, that was consistent in appearance with the vehicle Schaffer and McSwain described as having chased them off the property.

Kranz was charged with two counts each of attempted second-degree murder, first- and second-degree assault, and reckless endangerment. In 2008, a jury acquitted him of both counts of attempted second-degree murder but deadlocked on the other counts. In 2009, he was re-tried on the remaining charges.

At the re-trial, in addition to the evidence summarized above, the State presented a forensic expert who testified that the paint chips recovered from Kranz's driveway and samples taken from Schaffer's Amigo had been tested by spectroscopic analysis. The

expert opined that the two sets of samples had come from very similar production runs, because the colors closely matched and the samples exhibited the same multiple paint and primer layers; moreover, both sets of samples contained vaporized lead, which he opined was consistent with a high-speed impact with lead shot. However, the expert could not state definitively that the paint chips found in Kranz's driveway had come from Schaffer's vehicle.

A former paint sales representative testified for the defense. He told the jury that, when making sales calls at Kranz's property, where Kranz operated an automotive body shop, the salesman "on numerous occasions" observed Kranz sandblasting vehicles outside, thereby creating dust and paint fragments. Kranz also testified in his defense and described the methods he used to strip the paint from vehicles. He further maintained that he had been asleep on the night in question, that he had kept his gate closed, and that he had not discharged a shotgun that night.

After twelve hours of deliberation, the jurors presented the court with a note indicating that they were deadlocked. The court asked the foreperson of the jury whether there would be any benefit in continuing deliberations and the foreperson responded in the affirmative. On the following day the jury found Kranz guilty of two counts each of first-degree assault and reckless endangerment. The court deferred sentencing pending a Pre-Sentence Investigation Report.

Thirteen days after the verdict was entered, Schaffer and McSwain filed a civil action against Kranz, seeking damages for the assault "in excess of one million dollars."

See Kranz v. State, No. 07-K-06-000806, slip op. at 2 (Cecil Cnty. Cir. Ct. May 20, 2013) (hereafter "Postconviction Opinion"). They were represented in that civil action by Assistant State's Attorney Kevin Urick.

Kranz filed two separate motions for new trial. The first motion did not raise a *Brady* claim and, in any event, was denied by the trial court on July 31, 2009, at Kranz's sentencing hearing. On August 17, 2009, Kranz noted a timely appeal. Subsequently, on September 23, 2009, he filed a second motion for new trial which raised a *Brady* claim. The court denied this motion on December 11, 2009.

In his direct appeal, Kranz attempted to challenge the denial of his *Brady* claim, but in an unreported opinion, a panel of this Court, held that that claim was not properly before it as no appeal had been taken from the December 11 order. *Kranz v. State*, No. 1548, Sept. Term, 2009, slip op. at 2-3 (filed Nov. 9, 2010). Ultimately Kranz filed the postconviction petition raising the *Brady* claim that is now before us.

The postconviction court denied Kranz's *Brady* claim, reasoning as follows:

> The materiality prong of *Brady* requires a finding that the [S]tate's failure to disclose the impeaching evidence created a reasonable probability of altering the result. While there is a clear violation of the [S]tate's disclosure requirement, Mr. Kranz's *Brady* violation ultimately fails for lack of materiality.
>
> While this Court can reasonably infer that Mr. Kranz's trial counsel would have used information regarding the civil suit to impeach Ms. Schaffer and Mr. McSwain it cannot infer that such information would have changed the jury's findings in the case or given different weight to Ms. Schaffer's and Mr. McSwain's testimonies. This Court finds that the [S]tate's failure to disclose the relevant impeaching evidence did not have a material effect ort the outcome of the case.

> Even if this Court were to assume, *arguendo*, that the jury would have completely disregarded Ms. Schaffer's and Mr. McSwain's testimonies had it been made aware by Mr. Kranz's trial counsel that the two witnesses had a financial interest in the outcome of the case the jury still could have found against Mr. Kranz based on the circumstantial evidence presented by the [S]tate.
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> As the trial judge stated to the jury in his jury instructions, direct evidence and circumstantial evidence are weighted equally in the law. One does not carry more weight than the other and a defendant could be convicted solely on the basis of circumstantial evidence. Therefore, even if Mr. Kranz's trial counsel would have successfully impeached the testimonies of both Ms. Schaffer and Mr. McSwain by pointing out their civil suit against Mr. Kranz it does not necessarily follow that the result of the trial would have been different. The [S]tate's circumstantial evidence still would have supported the jury's verdict.
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> Without the testimonies of Ms. Schaffer or Mr. McSwain the [S]tate was still able to show that Mr. Kranz was located on his property on the night of the shooting. Likewise, the police were able to recover a shotgun from Mr. Kranz's property pursuant to a valid search warrant. *Transcript 05/27/09*: 155-156. Taken together these evidentiary findings could support a verdict against Mr. Kranz. As such, the impeachment evidence against Ms. Schaffer and Mr. McSwain was not material.

Postconviction Opinion, at 8-9.

The Standard of Review

An appellate court accepts the factual findings of a postconviction court "unless they are clearly erroneous." *Wilson v. State*, 363 Md. 333, 348 (2001). We nonetheless "must make an independent analysis to determine the 'ultimate mixed question of law and fact, namely, was there a violation of a constitutional right as claimed.'" *State v. Jones*, 138 Md. App. 178, 209 (2001) (quoting *Harris v. State*, 303 Md. 685, 699 (1985)).

Analysis

A *Brady* claim is based upon an alleged violation of due process arising from the prosecution's failure to disclose favorable evidence in its possession to a criminal defendant. *See generally Brady v. Maryland*, 373 Md. 83 (1963). "To establish a *Brady* violation, the defendant must establish (1) that the prosecutor suppressed or withheld evidence that is (2) favorable to the defense—either because it is exculpatory, provides a basis for mitigation of sentence, or because it provides grounds for impeaching a witness—and (3) that the suppressed evidence is material." *Ware v. State*, 348 Md. 19, 38 (1997) (citations omitted). Suppression of evidence by the prosecution may be either willful or inadvertent, *Strickler v. Greene*, 527 U.S. 263, 282 (1999), and no showing of prosecutorial bad faith is required. *Brady*, 373 U.S. at 87.

In its brief, the State concedes, as it must, that the prosecutor withheld evidence favorable to the accused. *See Martin v. State*, 364 Md. 692, 699 700 (2001) ("Just as the formal commencement of a civil lawsuit may establish witness bias, action taken in contemplation of the commencement of a civil lawsuit against a criminal defendant by a prosecuting witness is relevant to the witness's credibility and may be evidence that a witness has an interest in the outcome of the trial."). The only dispute, and the basis for the postconviction court's ruling denying Kranz's claim, is whether the withheld evidence was material.

There are "two different materiality standards that may be applied to the analysis of suppressed exculpatory evidence." *Conyers v. State*, 367 Md. 571, 609-10 (2002) (footnote

omitted). The stricter of the two applies when the defendant shows that the prosecution's case included what the prosecutor knew or should have known was perjured testimony. In such cases, the conviction must be vacated "if the false testimony could in any reasonable likelihood have affected the judgment of the jury." *Yearby v. State*, 414 Md. 708, 717 n.5 (2010) (cleaned up). In other cases, the conviction will be set aside if the defendant demonstrates that "there is a reasonable probability that, had the evidence been disclosed to the defense, the result of the proceeding would have been different." *Kyles v. Whitley*, 514 U.S. 419, 433-34 (1995) (cleaned up). In this context, a "reasonable probability" is "a probability sufficient to undermine the confidence in the outcome." *Harris v. State*, 407 Md. 503, 522 (2009) (cleaned up). This is generally referred to as the "*Bagley* standard," a reference to *United States v. Bagley*, 473 U.S. 667, 682 (1985), in which the Supreme Court first articulated the standard.

In the present case, there is no suggestion that the State, knowingly or otherwise, presented perjured testimony. Accordingly, we will consider whether there is a reasonable probability that, had the State made the required disclosure, the outcome of the trial would have been different.

It is clear to us that, had the State timely disclosed that Schaffer and McSwain had made preparations to file a civil lawsuit against Kranz, the outcome of the trial might well have been different. We reach that conclusion because two different juries apparently struggled with the case—the first jury acquitted Kranz of the most serious charges and was unable to reach a verdict on the remaining charges, while the second jury, following twelve

hours of deliberation, sent a note to the trial judge stating that it was deadlocked. Moreover, Schaffer and McSwain were, without a doubt, the critical witnesses in the State's case, and furthermore, trial counsel impeached both of them by eliciting their acknowledgment that they had been drinking on the night in question. Although the testimony of the forensic expert regarding the spectroscopic analysis of the paint chips certainly supported the State's theory of the case, ultimately, the State's case against Kranz depended upon the credibility of the two victims. We are not persuaded that the jury would have given the same weight to Schaffer's and McSwain's testimony if the jury was aware that the two were planning to sue Kranz for damages.[3] We conclude that the undisclosed impeachment evidence, combined with trial counsel's impeachment of the witnesses, when considered in the context of the closeness of the case, was sufficient "put the whole case in such a different light as to undermine confidence in the verdict." *Kyles*, 514 U.S. a7 435.

[3] The postconviction court appeared to apply a sufficiency of the evidence test, opining that "even if Mr. Kranz's trial counsel would have successfully impeached the testimonies of both Ms. Schaffer and Mr. McSwain by pointing out their civil suit against Mr. Kranz[,]" the State's "circumstantial evidence still would have supported the jury's verdict." Postconviction Opinion, at 9. But this is not the correct approach. The Supreme Court made this point clear in *Kyles:*

> The second aspect of *Bagley* materiality . . . is that *it is not a sufficiency of evidence test.* A defendant need not demonstrate that after discounting the inculpatory evidence in light of the undisclosed evidence, there would not have been enough left to convict. . . . One does not show a *Brady* violation by demonstrating that some of the inculpatory evidence should have been excluded, but *by showing that the favorable evidence could reasonably be taken to put the whole case in such a different light as to undermine confidence in the verdict.*

514 U.S. at 434–35 (footnote omitted) (emphasis added).

Conclusion

For the reasons stated, the postconviction court erred when it denied Kranz's petition for postconviction relief. When a reviewing court determines on direct appeal that a *Brady* violation by the prosecution was "sufficient to undermine confidence in the outcome of the proceeding," the appropriate remedy is to reverse the convictions and remand the case for a new trial. *Ware v. State*, 348 Md. 19, 54–55 (1997). In this postconviction proceeding, we have concluded that the *Brady* violation was of sufficient materiality to undermine our confidence in the outcome of Kranz's trial. Accordingly, we will reverse the judgment of the postconviction court and remand this case to it with instructions to reverse the convictions and to conduct a new trial or for the parties to otherwise resolve the charges against Kranz pursuant to one of the procedures set out in Title 4 Subtitle 2 of the Maryland Rules.

THE JUDGMENT OF THE CIRCUIT COURT FOR CECIL COUNTY IS REVERSED. THIS CASE IS REMANDED TO THAT COURT FOR FURTHER PROCEEDINGS CONSISTENT WITH THIS OPINION. COSTS TO BE PAID BY CECIL COUNTY.