Circuit Court for Prince George's County
Case No.: CT940478B

UNREPORTED

IN THE APPELLATE COURT

OF MARYLAND*

No. 1976

September Term, 2024

JEAN BERNARD GERMAIN

v.

STATE OF MARYLAND

Wells, C.J.,
Friedman,
Woodward, Patrick L.
(Senior Judge, Specially Assigned),

JJ.

PER CURIAM

Filed: August 15, 2025

*This is a per curiam opinion. Under Rule 1-104, the opinion is not precedent within the rule of stare decisis, nor may it be cited as persuasive authority.

In 1994, a jury sitting in the Circuit Court for Prince George's County found appellant, Jean Bernard Germain, guilty of felony murder, robbery, robbery with a dangerous and deadly weapon, and use of a handgun in the commission of a felony or crime of violence. The court sentenced Mr. Germain to a total term of life imprisonment, plus twenty years. On direct appeal, this Court affirmed the judgments. *Germain v. State*, No. 1711, September Term, 1994 (Md. App. June 13, 1995). In 2024, Mr. Germain, representing himself, filed a petition for writ of actual innocence, which the circuit court denied without a hearing. Mr. Germain appeals that ruling. For the reasons to be discussed, we shall affirm the judgment.

BACKGROUND

Trial

At the 1994 trial in this case, it was undisputed that on the night of January 31, 1994, Mr. Germain engaged Daniel Settles, a maintenance worker at the Oakton Apartments in Hyattsville, to lure Edwin Barclay to the maintenance shop where Mr. Germain and Russell West were waiting, in the dark, to confront Mr. Barclay. It was also undisputed that, when Mr. Barclay arrived, Mr. Germain demanded money and when it was not handed over, he fought with Mr. Barclay. Mr. Barclay was hit in the head with a shovel (by Mr. West, according to Mr. Germain) and shot multiple times; he died at the scene. Although Mr. Germain admitted that he had brought the gun to the scene and admitted that he had fired three shots, he maintained that his shots missed the victim and that Mr. West had fired the fatal shots.

Mr. Germain's defense at trial was that this set-up was not a robbery, but simply his attempt to retrieve items that Mr. Barclay and others had stolen from him. He maintained that several days prior to this incident, Mr. Barclay and several others he knew had come to his room (he lived in a boarding house) looking for someone's cocaine that they believed was there. After Mr. Germain denied having it, he claimed that they took items belonging to him, including a Sega Genesis and CD player, Polo boots, and a shotgun. When he later asked one of the participants to return his boots because he had some money in them, he was told that Mr. Barclay said he would have to pay him to get the boots back. Rather than do that, he admittedly recruited Mr. Settles to lure Mr. Barclay to the maintenance shop and brought along Mr. West and a gun "[f]or protection." Mr. Germain and Mr. West hid in the darkened maintenance room (having adjusted the light bulbs so they would not turn on) and surprised Mr. Barclay when he entered the room. At trial, Mr. Germain said he then confronted Mr. Barclay and "[h]e told me he wasn't going to give me any money. So, I kept asking for the money." A fight then ensued and thereafter he fled the scene, followed shortly thereafter by Mr. West.

Mr. Germain insisted at trial that his purpose in confronting Mr. Barclay was "[t]o try and get my money back that he took from me." He denied that his intent was to rob or kill Mr. Barclay, claiming instead that "all [he] wanted" was get his "stuff back." He admitted that, in an initial statement he gave to the police he denied any involvement in the incident, but he changed his story after he read a police statement Mr. West had given implicating him. In the first statement, Mr. Germain related the story of Mr. Barclay and the others looking to retrieve cocaine from his room several days before the murder, and

then searching for things of his to take when the cocaine was not found. He informed the police that they took a Sega Genesis and Sega game, Polo boots, and a 12-guage shot gun. He described the boots as "black polo boots, size 10 or 10 ½" but in his statement he did not mention any money in the boots nor claim that any money was taken. When specifically asked if Mr. Barclay had taken anything, Mr. Germain's responded, "No, he didn't take anything." He told the police he was home the night Mr. Barclay was killed and denied any involvement in the murder.

In his second statement to the police, several hours after the first one and after learning that Mr. West had implicated him in the crime, Mr. Germain admitted his involvement. He related that, earlier on the day of the murder, he had "met with Russell [West] and told him that I was about to rob somebody" and asked if he wanted to join him. About 10:45PM that night, Mr. West came to Mr. Germain's house "and [West] didn't have a mask or a cap to wear" and he went home and got something to wear and came back. They then met up with Mr. Settles, to whom Mr. Germain gave a "20 piece of coke" for his role in luring Mr. Barclay to the maintenance shop. Mr. Germain further related in this statement to the police that, when Mr. Settles brought Mr. Barclay to the maintenance rooms, "me and Russell [West] jumped out. I pointed the gun at him and told him to get on the ground and give me his money." When Mr. Barclay refused, Mr. Germain stated that he "hit [Barclay] a couple of time[s] with the gun in his face." Mr. Germain dropped the gun, but he picked it up and when Mr. Barclay moved towards him, Mr. Germain claimed he fired three shots but did not believe any hit Mr. Barclay. Mr. Germain then related that Mr. West hit Mr. Barclay with a shovel, causing him to fall to the ground. Mr.

Germain stated that he did not know whether Mr. Barclay was dead or alive at that point and he wanted to leave, but Mr. West wanted to ensure that he was dead and when Mr. Germain would not shoot him, he, at Mr. West's request, gave the gun and some extra bullets to Mr. West who then shot him. He fled the scene, as did Mr. West, and when they later saw Mr. Settles, Mr. Germain related that he "told Danny we killed him." He also related that, after leaving the scene, Mr. West "showed the money he took from [Barclay] and some coke and some weed he took from him." When he then asked Mr. West to hail a cab for him, Mr. Germain related that Mr. West gave him "10 dollars from the money to pay the cab driver."

In this second statement, when asked if he had told Mr. Settles "that you were going to rob" Mr. Barclay, Mr. Germain replied: "Yes, I told him." When asked when he told him, he answered: "When I got in the [maintenance] shop." When asked if Mr. Settles knew that he and Mr. Barclay "had an argument over the shotgun that [Barclay] stole from you," Mr. Germain replied: "I told him when we ran outside and met him."

Both statements Mr. Germain had given to the police were admitted at trial. As noted, in his trial testimony, Mr. Germain denied that he had ever intended to "rob" Mr. Barclay and claimed that he had used that word in his written police statement (the answers to which he himself had handwritten) because the police detective interviewing him had said his claim that he was just trying to get his own "stuff back" is "a robbery, whether it was your stuff or his stuff" and "[s]o, I just put 'rob' down" when writing the statement. At trial, he denied that he had ever told Mr. West that he was going to "rob somebody" as he had related in his police statement. Rather, he claimed he "told him that I was going to

get some money from somebody, to come with me. And he said all right." He related that Mr. West went home to "get a cap to wear, because it was cold out."

Mr. Germain admitted that he had never asked Mr. Barclay to meet him at the maintenance shop, but rather had Mr. Settles bring him there under false pretenses because he claimed "if I asked him, he would never come. So I didn't ask him." He testified that he only brought a gun "for protection" and "in case he brought a gun, and to get my money back at any means." He admitted his gun was loaded and he had an additional four bullets with him. At trial he also testified that he had previously asked Mr. Barclay for the boots, the Sega game, and his money, and had told him that he could keep the shotgun and the coke, but Mr. Barclay had "asked [him] to pay for [the] boots." Although he had told a third party to pay Mr. Barclay, with the understanding he would reimburse that third party, he did not get the boots back.

When he confronted Mr. Barclay in the maintenance shop, Mr. Germain testified that he told Mr. Barclay that he had had money in his boots and he wanted his money back, and Mr. Barclay responded that he did not take any money. Mr. Germain admitted that, in his second statement to the police, he had related that when confronting Mr. Barclay he had written, "I pointed the gun at him and told [him] to get on the ground and give me his money." He insisted at trial, however, that he was only seeking the return of his own money and that the physical brawl and subsequent shooting occurred only after Mr. Barclay said he did not take any money and "was coming at" him.

Defense counsel moved for judgment of acquittal. With regard to the robbery and the robbery with a deadly weapon charge, counsel noted that "[r]obbery is defined as a

felonious taking and carrying away the personal property of another from his person or in his presence by putting him in fear." Counsel asserted that "[t]here can be no robbery without larcenous intent" and that "[o]ne cannot be guilty of robbery and forcibly taking his own property." The State countered that, although "the Defendant provides some evidence to suggest that he may have been robbed" prior to the murder, "[t]he law does not sanction retaliatory robbery[.]" The court denied the motion.

The court's jury instructions included the following instruction on felony murder:

> In order to convict the Defendant of first degree felony murder, the State must prove one, that the Defendant, or another participating in the crime with the Defendant, committed either the crime of robbery with a deadly weapon, robbery, or both. Two, that the Defendant, or another participating in the crime, killed Edwin Lorenzo Barclay. Three, that the act resulting in the death of Edwin Lorenzo Barclay occurred with the crime of [robbery with] a deadly weapon, the crime of robbery, or both.

As for robbery, the court instructed the jury as follows:

> Robbery is the taking and carrying away of property from someone else or from their presence and control by force or threat of force, with the intent to steal the property.
>
> In order to convict the Defendant of robbery in this case, the State must prove one, that the Defendant took the property from Edwin Lorenzo Barclay, or from his presence and control. Two, that the Defendant took the property by force or threat of force. Three, that the Defendant intended to steal the property, that is to deprive Edwin Lorenzo Barclay of the property belonging to him, permanently.

Defense counsel objected to the court's decision not to supplement the robbery instruction with an instruction that the State had to prove that the defendant had an intent to steal. In advocating for the supplemental instruction, counsel maintained that "[y]ou

can't steal your own stuff." The court declined to so instruct, finding that "an intent to steal" was covered by the instruction given.

In closing statements, the State addressed "[w]hat happened in this case" and "why it happened" and reminded the jury that

> the Defendant has told us that the Thursday before this happened, that some friends of his, or some individuals that he knew came by his house, and they accused him of taking some cocaine.
>
> So, they come by one day, he points a shotgun at them. They take the shotgun away, and they take some items of property of his. And in the statement [to the police], he lists that as a Sega game, some Polo boots, and he also mentioned the 12 gauge shotgun. So, what does he do as a result of these actions having taken place? That Monday after the Thursday, he decides he's going to set up one of the persons that was involved in taking these things from him, and he's going to get back at that person by robbing him. It's very clear.

The prosecutor then reviewed the police statements Mr. Germain had given, including the statement, in Mr. Germain's handwriting, that "I met with Russell and told him that I was about to rob somebody if he wanted to come he said o.k." And the statement that, after Mr. Settles brought Mr. Barclay to the maintenance shop, "me and Russell jumped out. I pointed the gun at him and told to get on the ground and give me his money." The prosecutor argued to the jury that "he makes it very clear at this point, in his own handwriting, that he's going there to rob, and he has gotten this other person Russell to come with him to do the robbery." The prosecutor also reviewed the portion of the police statement where Mr. German had written about what happened after he and Mr. West fled the scene, which was: "[West] showed the money he took from him and some coke and some weed he took from him. I asked to hail me a cab, he called me the cab. He gave me

10 dollars from the money to pay the cab driver." The prosecutor argued that Mr. Germain "told us there that indeed he got part of the proceeds of this robbery that he, by his own admission, initiated in this case." Although acknowledging that Mr. Germain himself "did not actually take the money" from the victim (rather Mr. West did), the prosecutor argued that Mr. Germain was an active and willing participant and, therefore, guilty of robbery and hence felony murder.

In his closing, defense counsel told the jury that there are "a few things" that are "not in dispute[,]" including that "Jean Germain was robbed prior to this incident. The evidence is uncontroverted on that point." Counsel then argued that "[t]he crucial issue is one of intent" and maintained that "[a] person may not steal what belongs to them." He told the jury that "the reason that Jean Germain confronted [the victim] was because he wanted his money back. He didn't want the coke. He didn't want the weed. He didn't want anything that he wasn't entitled to." He emphasized that Mr. Germain "wasn't going to take anything that didn't belong to him. He wasn't going to rob him." Counsel reiterated that, "You can't steal your own stuff. You have to have the larcenous intent." Counsel maintained that "it's not a felony murder if it's not a robbery, because the only way it's a felony murder is if you participate in the robbery." He argued that the evidence showed that Mr. West, not Mr. Germain, took money, coke, and weed from the victim.

In rebuttal closing, the State reiterated its point that "the law does not sanction retaliatory robberies. It's not a defense to robbing someone, that that person has stolen some property from you the week before." The prosecutor again referred the jury to Mr. Germain's police statement where he himself penned that "I pointed the gun at him and

told him to get on the ground and give me his money." Accordingly, the prosecutor argued that Mr. Germain "clearly . . . had the intent to steal, to permanently deprive the victim of the property."

As noted, the jury found Mr. Germain guilty of robbery, robbery with a dangerous and deadly weapon, felony murder, and use of a handgun in the commission of a felony or crime of violence.

Direct Appeal

On direct appeal, Mr. Germain argued that the evidence was insufficient to support his conviction for robbery because, as this Court paraphrased his contention, "it merely established his intent to take back property that actually belonged to him." *Germain v. State*, No. 1711, September Term, 1994 (*Germain I*) slip op. at 2. We concluded that, although "[i]t is true that the jurors could have reached such a conclusion[,]" there was "ample evidence of [Germain's] felonious intent." We thus held that "[t]he evidence was sufficient to support each guilty verdict." *Id.*

Mr. Germain also contended that the trial court erred in refusing to give a jury instruction on robbery that included that following language: "One cannot be guilty of robbery in forcibly taking his own property. Therefore, one who honestly believes himself to be entitled to the property has a claim of right and cannot have a larcenous intent." *Id.* In rejecting this contention, we stated that "[t]he instruction actually given made it clear to the jury that in order to find [Mr. Germain] guilty of robbery, they would have to find that the property taken belonged to the victim." *Id.* at 3. We noted that Mr. Germain "obtained the benefit of a more generous instruction than was required by the evidence." *Id.*

Petition for Writ of Actual Innocence

In 2024, Mr. Germain, representing himself, filed a petition for writ of actual innocence in which he claimed that he had "newly discovered evidence" that Mr. Barclay had stolen his Polo boots. He attached a copy of a statement Augustine Koroma gave to the police on February 3, 1994, several days after Mr. Barclay's murder. That statement included the following questions asked by Detective Salen and Mr. Koroma's answers:[1]

> Q. Tell me about the argument that Bernard had with Edwin?
>
> A. Saturday at the house on 23rd [A]ve[.], it was in the evening Edwin got into an argument with Bernard about the $200 that Bernard had tried to steal from me. Edwin ruffed him up and took his Polo black boots. They're in Edwin's room now. Edwin pulled him up and asked Bernard why did you take his money. He didn't hit him but he said he should've.
>
> Q. Who was there when this argument occurred?
>
> A. Mac, Anthony, Emerick, Quan, and me and Bernard.
>
> Q. Why did Edwin take the Polo Boots?
>
> A. I really dont [sic] know.
>
> Q. What did Bernard say when Edwin took the boots?
>
> A. He just said he was going to hurt him.

Mr. Germain also attached Detective Salen's "Summary of Investigative Activity" that included the following notes dated February 4, 1994:

> Recovered Polo Boots & additional phone number from residence – Sonya Howard present. Ernest ran up and got boots from bedroom.

[1] Although not reflected in the statement, we believe it is fair to assume that "Bernard" refers to Mr. Germain and "Edwin" to Mr. Barclay.

> Sister stated Herbie told her Bernie pulled shot gun on Block, Block took the shotgun & Bernie threatened him (Block), said he was going to kill him. Herbie told her last night.[2]

Mr. Germain also attached a "Prince George's County Police Property Record" dated February 4, 1994 indicating that "one pair of Polo Sportsman Boots, size 10D, made in [C]hina, black" were recovered from Mr. Barclay's residence. The form states the "owner" of the property as "Germain, Bernard." A photograph of boots was also included. Another exhibit Mr. Germain relied upon is a "Crime Scene Processing Report" indicating that on February 2, 1994, Det. Salen submitted to the "CID Evidence Unit" certain items recovered from Mr. Barclay's residence and "requested that these Items of Evidence be processed." The items listed on the form included a 12-gauge shotgun; shotgun shells; a bank bag; and two baggies containing suspected crack cocaine. Boots were not included on the list, but as reflected in the attachment discussed above, it appears that Det. Salen recovered the Polo boots two days later.

In the affidavit attached to his petition, Mr. Germain claimed that the documents he attached were not made known to him at the time of trial and that he "always believed that the police department was suppressing exculpatory evidence in this case[.]" He asserted that, "I am absolutely innocent . . . because I never had the intent to steal Edwin Barclay's personal property but only wished to get my boots back which contained a lot of my savings." In his memorandum in support of his petition, Mr. Germain insisted that these documents would have supported his "bona fide claim of right" that he was seeking the

[2] There is no dispute that "Block" was Edwin Barclay's nickname.

return of his money and, therefore, did not have an intent to steal Mr. Barclay's property. He maintained that, if he had had these documents at trial, he could have "successfully advanced the 'claim of right' to even forcibly retrieve his property back from the victim."

The circuit court denied relief, without a hearing. In its order, the circuit court noted that the State maintained that the documents Mr. Germain relied upon were provided in discovery prior to trial. But even if the documents could be deemed "newly discovered," the court concluded that they did not support his contention that this evidence would have created a substantial or significant possibility that the result of Mr. Germain's trial may have been different. The court noted that Mr. Germain's position at trial was that he was seeking the return of his money and, since then, in post-conviction proceedings he has "repeatedly admitted [that Mr. Barclay] was killed in the course of a robbery he and [Mr. West] committed, which satisfies the elements of felony murder." The court stated that "[r]etalation for a robbery [Mr. Germain] suffered is not a defense for the robbery [he] committed, resulting in [Mr. Barclay's] death." The court concluded that Mr. Germain "has not asserted grounds on which relief can be granted" under the actual innocence statute.

THE WRIT OF ACTUAL INNOCENCE

Certain convicted persons may file a petition for a writ of actual innocence based on "newly discovered evidence." *See* Md. Code Ann., Crim. Proc. § 8-301; Md. Rule 4-332(d)(6). "Actual innocence" means that "the defendant did not commit the crime or offense for which he or she was convicted." *Smallwood v. State*, 451 Md. 290, 313 (2017).

In pertinent part, the statute provides:

> (a) A person charged by indictment or criminal information with a crime triable in circuit court and convicted of that crime may, at any time, file a petition for writ of actual innocence in the circuit court for the county in which the conviction was imposed if the person claims that there is newly discovered evidence that:
>
> (1) (i) if the conviction resulted from a trial, creates a substantial or significant possibility that the result may have been different, as that standard has been judicially determined; [and]
>
> ***
>
> (2) could not have been discovered in time to move for a new trial under Maryland Rule 4-331.
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> ***
>
> (g) A petitioner in a proceeding under this section has the burden of proof.

Crim. Proc. § 8-301.

"Thus, to prevail on a petition for writ of innocence, the petitioner must produce evidence that is newly discovered, i.e., evidence that was not known to petitioner at trial." *Smith v. State*, 233 Md. App. 372, 410 (2017). Moreover, "[t]o qualify as 'newly discovered,' evidence must not have been discovered, or been discoverable by the exercise of due diligence," in time to move for a new trial. *Argyrou v. State*, 349 Md. 587, 600-01 (1998) (footnote omitted); *see also* Rule 4-332(d)(6).

"Evidence" in the context of an actual innocence petition means "testimony or an item or thing that is capable of being elicited or introduced and moved into the court record, so as to be put before the trier of fact at trial." *Hawes v. State*, 216 Md. App. 105, 134 (2014). 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*, 451 Md. at 323).

Whether the newly discovered evidence creates a substantial or significant possibility that the outcome of the trial may have been different involves a "materiality analysis under a standard that falls between 'probable,' which is less demanding than 'beyond a reasonable doubt' and 'might,' which is less stringent than 'probable.'" *Carver v. State*, 482 Md. 469, 490 (2022) (quoting *Faulkner*, 468 Md. at 460). In making its determination, the court employs a "'retrospective approach that considers the impact of the newly discovered evidence at the trial that occurred.'" *Id.* at 490-91 (quoting *McGhie v. State*, 449 Md. 494, 511 (2016)). A court must evaluate how the newly discovered evidence "would impact: (1) any evidence admitted at trial; (2) any evidence available at the time of trial, including evidence both (a) offered but excluded and (b) not offered but available; and (3) the defendant's or defense counsel's trial strategy." *Id*. at 492 (citation omitted). "This hindsight assessment requires courts to ascertain whether such evidence, combined with the evidence the jurors did hear, created a substantial or significant possibility that a reasonable jury would have acquitted the defendant, that is, whether the cumulative effect of the new evidence and the available evidence at trial undermined the verdict." *Id*. at 492 (cleaned up).

A court may dismiss a petition for actual innocence without a hearing "if the court concludes that the allegations, if proven, could not entitle a petitioner to relief." *State v. Hunt*, 443 Md. 238, 252 (2015) (quotation marks and citation omitted). *See also* Crim.

Proc. § 8-301(e)(2). "[T]he standard of review when appellate courts consider the legal sufficiency of a petition for writ of actual innocence is *de novo*." *Smallwood*, 451 Md. at 308. As noted, the court in this case concluded that Mr. Germain failed to assert grounds upon which relief could be granted.

DISCUSSION

On appeal, Mr. Germain maintains that the circuit court (1) erred in denying his petition without a hearing; (2) applied an incorrect legal standard; (3) improperly relied on evidence "beyond the 'face'" of the petition; and (4) the "claim of right defense" is a "legitimate defense under Maryland law." In essence, Mr. Germain's position is that the "newly discovered evidence" he attached to his petition indicating that Mr. Barclay was in possession of the Polo boots at the time of the murder speaks to his "honest belief that the victim was still in possession of the property" that had been stolen from him. He asserts, therefore, that "in trying to forcibly retrieve his own property, [he] lacked the specific 'intent to steal'" and consequently, cannot be guilty of any of the crimes he was convicted of.

The State maintains that the circuit court correctly dismissed Mr. Germain's petition without a hearing because, even if the evidence that Mr. Barclay had been in possession of the boots was "newly discovered," it was essentially undisputed at trial that Mr. Barclay had been involved in a robbery against Mr. Germain prior to the murder and his boots, among other things, were taken. Quoting *Yonga v. State*, 221 Md. App. 45, 57-58 (2015), *aff'd*, 446 Md. 183 (2016), the State asserts "that 'actual innocence means factual innocence, not mere legal sufficiency' and the Writ of Actual Innocence 'require[s] that

the newly discovered evidence point toward actual innocence.'" The State points out that at trial it "did not challenge the facticity of Germain's account [as to the prior robbery of himself], only its legal consequence."

Given the standard of review is *de novo*, we focus on the petition Mr. Germain filed and readily conclude that the court did not err in determining that Mr. Germain was not entitled to a writ of actual innocence nor a hearing on the same. Assuming—without deciding—that the documents Mr. Germain attached to his petition could be deemed "newly discovered" evidence, nothing in them speaks to his actual innocence or would have affected his defense strategy. It is crystal clear from our review of the record that Mr. Germain's defense was that he was merely attempting to retrieve the items Mr. Barclay and others had stolen from him, items which included the Polo boots. The fact that the police recovered the Polo boots from Mr. Barclay's residence would not have changed that strategy. Nor are we persuaded that the documents Mr. Germain's attached to his petition creates a substantial or significant possibility that a reasonable jury would have acquitted him of robbery. In short, we are not persuaded that this "evidence" undermines the jury's verdicts.

As the State points out, at trial the State did not dispute that Mr. Germain had been robbed on a date prior to the murder. Rather, the State's theory was that Mr. Germain robbed Mr. Barclay in retaliation for the robbery he endured. The State made that clear in its closing statement. In his closing statement, defense counsel told the jury that "a few things" are "not in dispute[,]" including that "Jean Germain was robbed prior to this incident." Counsel, in fact, stated that "[t]he evidence is uncontroverted on that point."

Instead, defense counsel suggested that "[t]he crucial issue is one of intent" and argued that "You can't steal you own stuff. You have to have the larcenous intent." In rebuttal, the prosecutor reviewed, again, the police statement in which Mr. Germain himself had written: "I pointed the gun at him and told [him] to get on the ground and give me his money." Thus, the prosecutor suggested to the jury that Mr. Germain "clearly had the intent to steal" property from the victim. In short, the State did not attempt to refute Mr. Germain's claim that Mr. Barclay (and others) had robbed him of his property, including the Polo boots. Thus, the "evidence" Mr. Germain relies on in support of his petition for writ of actual innocence does not undermine the jury's verdict or create a significant or substantial possibility that the result of the trial may have been different.

In his petition for writ of actual innocence and in this appeal of the denial of same, Mr. Germain continues to insist that he should have been acquitted of all the crimes because he did not intend to rob Mr. Barclay, but merely wanted to get back his own property. He asserts that a "claim of right" is a valid defense in Maryland. We need not address this issue. Whether a "claim of right" is or is not a legitimate defense is not properly before us in this appeal.[3]

[3] In *Upshur v. State*, No. 1838 2025 WL 892550, Md. App. Ct., March 24, 2025, this Court held that there was sufficient evidence of the appellant's larcenous intent to sustain her convictions for robbery, armed robbery, and felony murder. Like Mr. Germain, Ms. Upshur claimed that she lacked the requisite larcenous intent to rob the victim because her intent was to take from the victim her own money. We rejected her claim in light of the evidence that the victim's wallet, driver's license, and credit cards—which Ms. Upshur did not assert ownership over—were recovered from Ms. Upshur's vehicle. Accordingly, we did not address her argument that taking back one's own possessions negates a (continued)

Moreover, on direct appeal, this Court rejected Mr. Germain's contention that the evidence was insufficient to support the robbery convictions. Although we acknowledged that the jury could have concluded, as the defense advocated, that Mr. Germain merely intended to retrieve his own property from Mr. Barclay, we nonetheless held that there was

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larcenous intent. In our discussion, however, we noted the following, which is equally applicable here:

> It is not clear to this panel whether a defendant can have the requisite larcenous intent to support a robbery conviction if that defendant verifiably engages in self-help to recover only goods stolen from that defendant. Put more simply, can you rob a thief? In 1991, this Court said quite plainly that "a defendant cannot rob a person who the defendant knows in fact has no ... interest in the property." *Miles v. State*, 88 Md. App. 248, 259 (1991). This seems to preclude the possibility that a thief can be the victim of a robbery. Further, the comments to the Maryland Pattern Jury Instructions on Robbery cite to *Miles* as establishing that a "robbery victim must have some lawful interest in the goods taken." Maryland Pattern Jury Instructions—Criminal 4:28. Before and after that statement in *Miles* was made, however, this Court has also held that mere possession of the property by the victim is sufficient to demonstrate larcenous intent. *Martin v. State*, 174 Md. App. 510, 525 (2007) (quoting *Cates v. State*, 21 Md. App. 363, 369 (1974)) ("[O]nly the prior possession of the victim is required, [and] the defendant may be guilty of robbery even though the victim had himself stolen the property from another person."); *Jupiter v. State*, 328 Md. 635, 641 (1992) (citing *Burgess v. State*, 161 Md. 162, 167-68 (1931)) ("[O]ne can be guilty of larceny of property [that] is not legally subject to ownership by the possessor."); *Cates*, 21 Md. App. at 372 (1974) ("[The Supreme Court of Maryland] has never held that ... a party to an illegal transaction may take property from the possession of another merely because he believes or claims that he has a right to do so."); *see also Wieland v. State*, 101 Md. App. 1, 44-45 (1994) (narrowing *Miles*); *Hartley v. State*, 4 Md. App. 450, 465 (1968) (holding that actual possession or custody of the property taken by the victim is sufficient against the defendant). Thus, both before and after *Miles*, we held that even a thief can be the victim of a robbery. Because additional items were stolen from [the victim], however, we need not reach this interesting question.

Upshur, n. 1.

"ample evidence of [Germain's] felonious intent" and "[t]he evidence was sufficient to support each guilty verdict." *Germain I*, slip op. at 2. That holding is law of the case. *Holloway v. State*, 232 Md. App. 272, 284 (2017) ("Under the law of the case doctrine, '[n]either questions that were decided nor questions that could have been raised and decided on appeal can be relitigated.'" (emphasis omitted) (quoting *Kline v. Kline*, 93 Md. App. 696, 700 (1992)).

JUDGMENT OF THE CIRCUIT COURT FOR PRINCE GEORGE'S COUNTY AFFIRMED. COSTS TO BE PAID BY APPELLANT.