UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 2080

September Term, 2015

SHEA DOUGLAS HAYES

v.

STATE OF MARYLAND

Graeff,
Kehoe,
Davis, Arrie W.
(Senior Judge, Specially Assigned),

JJ.

Opinion by Davis, J.

Filed: November 2, 2016

Appellant, Shea Douglas Hayes, *pro se*, was tried and convicted by a jury in the Circuit Court for Wicomico County (Long, J.) of first-degree murder and use of a handgun in the commission of a crime of violence in 1996. Appellant was sentenced to a term of life imprisonment and an additional term of 15 years' imprisonment under the jurisdiction of the Maryland Department of Corrections. Appellant appealed his conviction and sentence to this Court, which affirmed the convictions and sentences in an unreported opinion, *Shea Douglas Hayes v. State of Maryland*, No. 1849, SEPT. TERM (filed September 4, 1996).

Subsequent to filing several petitions for post-conviction relief between 1998 and 2005, all of which were denied, appellant, on August 17, 2011, filed a pleading captioned "Petition for Writ of Actual Innocence and Motion to Reopen a Closed Post-Conviction Proceeding and Request for Hearing and Supporting Memorandum of Law." Subsequent to a hearing, the circuit court denied appellant's Petition and Motion in a memorandum opinion issued on July 11, 2015. Appellant noted an appeal from the circuit court's denial of his Petition, but neglected to file an Application for Leave to Appeal from the court's denial of his request to reopen the post-conviction proceeding.

We determined that, because appellant had failed to file an application for leave to appeal, his Motion to Reopen Post-Conviction Proceedings was not properly before us. We heard the case, however, and determined, in an unreported opinion filed on February 9, 2015, that the circuit court had wrongly applied the "probable" rule in denying appellant's Petition for Writ of Actual Innocence, pursuant to *Stevenson v. State*, 299 Md. 297 (1994), and remanded the case to use the "substantial or significant possibility" standard, pursuant to *Yorke v. State*, 315 Md. 578, 556 (1989).

On September 16, 2015, the Circuit Court for Wicomico County (Long, J.) conducted a hearing on appellant's Petition for Writ of Actual Innocence. On November 2, 2015, the circuit court filed a memorandum opinion, denying appellant's Petition based on the court's determination that there was sufficient evidence of guilt to establish premeditated murder and that appellant's claims did not create a "substantial or significant possibility" that the verdict would be different. Appellant filed the instant appeal from the court's denial of his Petition for a Writ of Actual Innocence, in which he raises the following issues for our review:

1. Does the record reflect a Brady violation in the State's nondisclosure of the familial relationship between the lead investigating detective and a State's witness and that witness' mother?

2. Did the trial court err in denying appellant's Petition for Writ of Actual Innocence without considering relevant evidence and making findings of fact as to that evidence?

FACTS AND LEGAL PROCEEDINGS

Factual Background to 1996 Trial

Melissa DeShields, the mother of a child by appellant and a second child by Raymond James, testified that, on October 10, 1995, appellant arrived at her apartment at approximately 4:00 to 4:30 p.m. She and appellant were going to go grocery shopping and were in their vehicle when James arrived to visit Raven, his biological daughter by DeShields. Appellant exited the vehicle and followed James into Deshields' apartment. James exited the apartment, as did appellant, who joined DeSheilds in the vehicles and both proceeded to the grocery store.

Before appellant and DeShields arrived at the grocery store, however, appellant pursued and ultimately confronted James, who stated that he did not want to fight and walked away. According to DeShields, appellant then produced a gun from under the car seat, ignored her exhortations not to shoot, and fired three shots, the second shot striking James in the head, fatally wounding him. Appellant then wrapped the gun in a blanket and handed it to DeShields; who disposed of the gun by throwing it into a lake, for which she was charged with accessory after-the-fact. The charge was ultimately placed on a Stet Docket as of the time of her testimony. DeShields also testified to longstanding "bad blood" between appellant and James, citing numerous "incidents" between them as well as constant arguing.

Rose Olson, manager at the Pemberton Manor Apartments, testified that James was a frequent visitor. At approximately 4:45 p.m. on October 10, 1995, she observed James in a heated discussion with a man in a burgundy vehicle. As James was walking away from the vehicle, she heard three gun shots. Olson saw James fall to the ground and the vehicle "speed" away from the scene. Olson also observed a man and a woman in the car. She did not observe any weapons in James' possession.

Laron Waters, eleven years old at the time of the trial, testified that he was DeShields' next door neighbor. On October 10, 1995, he was babysitting Raven in DeSheilds' apartment when James arrived. According to Waters, appellant also entered the apartment just as James was leaving. Waters would later recant his testimony that the two encountered each other before appellant retrieved a gun, but at trial, he testified that

appellant and James met in the apartment just before appellant obtained a gun from the closet in DeShields' bedroom.

In testimony that he would later recant, Waters added that the two men left the apartment, whereupon appellant argued with James and confronted him with the gun. He then returned the gun to his waistband. James then walked away and appellant and DeShields drove off in a car. On cross-examination, Waters added that appellant and James met in the hallway of the apartment building before the gun was retrieved. No words were exchanged, but appellant then went to the bedroom and retrieved the weapon from the closet; he "pulled it" on James prior to getting into the car. He also observed the two men argue in front of DeShields' residence.

Former Detective Sheila Griffin, now "Griffin-Johnson,"[1] the investigating police officer at the time of the incident, testified that she interviewed DeShields and that, together, they retrieved the discarded gun. She added that two weeks later, appellant was arrested in New York.

Appellant, testifying in his own defense, did not contest that he shot James; rather, appellant argued that he shot James in self-defense. James had previously assaulted appellant on several occasions. After appellant and DeShields had gotten into the car to drive to the grocery store, he remembered that he had left the gun in DeShields' closet where it was not concealed and could be removed. When he returned to the car, he saw James, whereupon he exited the car and approached James to confront him about an

[1] Griffin identified her last name as "Griffin-Johnson" at the March 6, 2012 hearing.

accusation that James had made to DeShields that appellant had impregnated a minor. After what appellant characterized as a brief conversation, he returned to the vehicle and continued to drive to the grocery store.

Before arriving at the grocery store, however, appellant stopped twice, once to converse with DeShields' brother, Michael, and a second stop to visit a friend, Teresa Stanley, who lived at the Pemberton Manor Apartments. Appellant did not encounter Stanley; rather, appellant again saw James, walking across the parking lot and flagged him down to talk. Appellant was still in his vehicle.

According to appellant, James approached the car in such a manner that appellant thought "that he, you know, might have a gun or something." When appellant saw James "reaching," he made a "spur of the moment" decision to fire on James.

Appellant further testified that he was in fear of James, in part, because James had previously pulled a gun on him. Additionally, there had been prior conflicts between the two men. Specifically, James had threatened to strike appellant with a wooden board and, on another occasion, had accompanied his cousin, Willey McCloud, to DeShields' home and threatened appellant with a gun. James urged McCloud to "bust [appellant's] ass," meaning to shoot him, but McCloud declined.

On cross-examination, appellant reiterated his testimony that James came at him in an "aggressive" manner and gestured in a way that made him think James had a gun. Appellant admitted that, in 1989, he had been convicted of "felonious possession of cocaine," which would explain why he would not have wanted to have a regulated firearm

visible in DeShields' closet. The defense also called Demonde Potter and Sam Jones, who both corroborated appellant's account that James had previously threatened him in a violent manner, either directly or through an armed companion. DeShields also confirmed that appellant's life had been threatened during the altercation with McCloud and James. DeShields testified that, although James did not physically pull a gun on appellant, that he did nothing to stop McCloud from brandishing a gun, placing it against appellant's forehead and threatening to kill him.

In closing argument, the State relied upon Waters' testimony, which was later recanted, that he had observed an encounter between appellant and James before the retrieval of the handgun and that he had seen appellant confront James with the gun after the two men left the apartment but before the shooting.

Waters Recantation of His 1996 Testimony

At the trial in 1996, eleven-year-old Waters had testified that appellant and James had encountered each other at Deshields' residence. Before appellant retrieved a handgun at that residence, he followed James from the house and confronted him, displaying the gun *prior* to getting into the car with DeShields. On September 10, 2009, Waters recanted his 1996 testimony, citing coercion by the State's Attorney's Office as a reason for providing the false testimony. In a letter to appellant, Waters also revealed a familial relationship between himself, his mother and DeShields: "I also felt pressure from my moms [sic]; she was so mad at you saying that you got Melissa caught up in the situation.

I don't know if you know, but Melissa like my second or third cousin. Maybe my mom felt like you got her family involved."

Based on Waters' recantation, on August 17, 2011, appellant submitted the aforementioned hybrid filing entitled "Petition for Writ of Actual Innocence & Motion to Reopen a Closed Post Conviction Proceeding & Request for Hearing & Supporting Memorandum of Law." In the two pleadings, appellant raised two separate claims: (1) a petition for writ of actual innocence alleging newly discovered evidence; and (2) a motion to reopen his post-conviction proceeding.

Fifteen years after Waters initially testified in 1996, he testified at the December 21, 2011 and March 6, 2012 post-conviction hearings that he had lied during his 1996 trial testimony. He stated that the investigating detective, Griffin-Johnson, had suggested that he saw James in the house with appellant prior to retrieving the gun and that he saw them arguing on the day of the shooting. Waters alleged that this version of events was "repeatedly" presented to him and that he was influenced by Griffin-Johnson to testify to this false narrative. According to Waters, he "just went with it" at trial.

On cross-examination, Waters further admitted that, despite feeling guilty for years about lying at appellant's trial, he did not come forward until a chance encounter with appellant's children, resulting in him sending a letter to appellant in September 2009. He also acknowledged that his 2009 affidavit alleges that the State's Attorney's Office, rather than the police, had coerced him. Waters added, however, that he was under the impression

that they were all "working together." Waters testified that he had not spoken with Abigail Marsh, the Assistant State's Attorney during the 1996 trial.[2]

State's witness Marsh testified that both she and Griffin-Johnson had interviewed Waters. Marsh testified that Waters said nothing about having been told what to say and denied having herself coached or coerced him. Waters told her that appellant had retrieved a gun from a bedroom, but never mentioned having pointed it at James.

Investigator Wayne Lowe testified that he accompanied Marsh on the interview of Waters. According to his testimony, neither he nor Marsh coerced Waters or told him what to say. Lowe stated that Waters told them that he saw appellant retrieve a gun from the apartment, point it at James, but then reinserted it in his waistband.

At the March 6, 2012 hearing, Griffin-Johnson testified that she interviewed Waters on October 13, 1995. According to Griffin-Johnson, Waters' mother, whom she referred to as "Tammy," is her distant cousin, as is her son Laron, by extension. Griffin-Johnson further testified that it was Tammy who provided the information for her investigation and that she did not speak to Waters alone. While she met with his mother several times, she met with Waters only once. Although having been a former police officer, Griffin-Johnson has been charged with both theft and assault. In her reports in this case, she did not mention that Tammy and Laron are both her cousins, deeming the fact "irrelevant." The familial

[2] Marsh had been promoted to Deputy State's Attorney by the time of the 2011 hearing.

relationship between Griffin-Johnson and two of the State's witnesses was also not disclosed by the State.

The circuit court issued an opinion on July 11, 2012, denying appellant's Petition for Writ of Actual Innocence and Motion to Reopen his post-conviction proceeding. Appellant noted an appeal of the court's denial and we held that appellant's appeal was not properly before us because appellant had never filed an application for leave to appeal. Nevertheless, we heard the case and concluded, in an unreported opinion, on February 9, 2015, that the circuit court had wrongly applied the "probable" rule of *Stevenson, supra*, in denying appellant's Petition for Writ of Actual Innocence and Motion to Reopen his post-conviction proceeding. This Court remanded the case, directing the circuit court to apply the "substantial or significant possibility" standard of *Yorke, supra*.

Appellant filed various motions between 2012 and the current appeal. Specifically, on March 13 and March 26, 2015, appellant filed two *pro se* motions in the circuit court. He requested an evidentiary hearing on the merits of his Petition that the State violated *Brady, supra*. The hearing was held on September 16, 2015 and a written memorandum opinion was filed on November 2, 2015 denying his Petition.

November 2, 2015 Order

The circuit court found that appellant had persuaded the court that the newly discovered evidence, *i.e.*, Waters' 2009 affidavit, could not have been discovered in time to move for a new trial under Md. Rule 4–331. Regarding the *Yorke* standard, the court first noted that appellant argued that Waters' perjury impacted the 1996 trial in two ways:

"(1) it helped make the case for the State's case for premeditation and (2) it impacted [appellant's] credibility at the 1996 trial." The court also noted, in citing the case law subsequent to *Yorke*, that the court should only grant appellant's petition if it found "that Waters 2009 affidavit is 'directly exculpatory' or has a 'direct bearing on the merits of the trial,' rather than being 'merely impeaching' or 'collateral impeachment.'"

As to premeditation, the circuit court ultimately found that circumstantial evidence, in the case, suggested that the "killing was deliberate, premeditated and willful." The court specifically relied upon DeShield's testimony that appellant "checked the gun to be sure a live round was in the chamber" and that she tried to stop appellant from shooting James in the back as he walked away. The court noted that Olson also testified that appellant shot James from behind as he walked away from the car. The police report confirmed that James sustained a wound to the back of his head and an unspent cartridge was recovered from the floor board of the driver's seat of the vehicle. The court also noted that appellant fled the scene after the shooting.

As to appellant's credibility at the 1996 trial, the court found that

> Waters' affidavit does not create a 'substantial or significant possibility' that the result at his trial 'may have been different' because although the affidavit supports [appellant's] testimony regarding one event, it also conflicts with [appellant's] testimony regarding another event.

Specifically, the court notes that, according to the affidavit, Waters saw appellant leave with DeShields in the car *before* he saw James later that day. Furthermore, Waters' affidavit alleges that he did not see appellant with James at all, much less arguing, on that day. Appellant and DeShields, however, testified that James spoke with them before they

drove away. The court also noted that appellant's testimony conflicted with testimony from DeSheilds and Olson during the 1996 trial. The circuit court's ultimate determination was:

> In particular, the court finds that, although Waters claims to have committed perjury at the 1995 trial, petitioner has not sufficiently demonstrated that this newly discovered evidence creates a substantial or significant possibility that the result that his trial may have been different.

Citing this Court's decision in *Keyes v. State*, 215 Md. App. 660, 673 (2014), *cert denied*, 438 Md. 144 (2014), the circuit court noted that "[e]ven if the additional evidence 'may' produce a different result at a new trial, there is not a 'substantial or significant possibility' that it would do so."

The instant appeal followed.

DISCUSSION

I.

Appellant contends that the State's failure to disclose the familial relationship between Griffin-Johnson, Tammy, Laron and DeShields, constituted a *Brady* violation. The State's response is that the issue concerning the disclosure, *vel non*, of the familial relationship is not properly before this Court. Furthermore, the State asserts that the claim actually litigated in the lower court concerned appellant's Petition for Writ of Actual Innocence, supported by the premise of newly discovered evidence. Although not raised, the State argues that, if the lower court's denial of appellant's petition is reviewed by this Court, we should hold that it was properly denied.

Preservation

Appellant argues that a *Brady* analysis is appropriate for two reasons. First, he argues that "evidence, which would serve to impeach the credibility of a State's witness," is mandatory to disclose under *Brady* as exculpatory evidence. Second, appellant argues that "there can be no dispute that exculpatory or impeachment evidence in relation to or known by a police detective working with the prosecution team implicates the *Brady* disclosure regardless of whether it is known personally by the prosecutor."

This claim, according to the State, is not properly before this Court "because the claim, in addition to being beyond the scope of this Court's remand order, was not litigated or considered" by the trial court. The State further asserts that the claim appellant "actually litigated" in the trial court, *i.e.*, newly discovered evidence, is not challenged by appellant in the instant appeal. Therefore, maintains the State, the only issue on appeal is not properly before this Court.

Maryland Rule 8–131(a) governs the scope of appellate review and provides, in part, that "[o]rdinarily, the appellate court will not decide any other issue unless it plainly appears by the record to have been raised in or decided by the trial court." Similarly in post-conviction proceedings, preservation of an issue requires that it be raised at the earliest opportunity. *Conyers v. State*, 367 Md. 571, 596 (2002) (holding that Petitioner had preserved his *Brady* claims because they "did not arise until the post-conviction evidentiary hearing, at which point Petitioner properly raised these issues").

As the circuit court noted, in his 2011 Petition for Writ of Actual Innocence, appellant's only claim is that Waters committed perjury at the 1996 trial and the State coerced Waters' false testimony and withheld evidence of it. At that time, appellant did not raise the familial issue as a claim, despite possession of Waters' 2009 letter describing the familial relationship between DeSheilds, Tammy and Laron. Furthermore, appellant alleges that he first became aware of Griffin-Johnson's familial relation to DeSheilds, Tammy and Laron at the March 6, 2012 hearing, but filed approximately nine[3] motions with the Circuit Court for Wicomico County and proceeded with the appeal, before this Court, of the July 11, 2012 Order, without asserting the issue of Griffin-Johnson's familial relationship. The first time appellant raised the familial issue in a filing with the circuit court was on March 13, 2015, in a "Motion for Request for Hearing." In order to preserve the issue of the State's failure to disclose this familial relationship as a *Brady* violation, appellant was required to raise this claim upon the *earliest opportunity* after learning of the familial relationship. The record illustrates that three years and approximately nine motions occurred between appellant first learning about Griffin-Johnson's relation to the State's witnesses and his first assertion of the issue. Accordingly, we hold that appellant's claim of a *Brady* violation, concerning the issue of a familial relationship, has not been preserved

[3] October 11, 2013 "Motion to Correct Illegal Sentence"; October 23, 2013 "Amendment to Motion to Correct Illegal Sentence"; October 31, 2013 "Motion to Correct an Illegal Sentence" and "Amendment to Motion to Correct an Illegal Sentence"; December 23, 2013 "Amendment to Correct an Illegal Sentence"; March 20, 2014 "Response to State's Motion to Dismiss Sentence Modification"; April 4, 2014 "Motion for Modification and/or Reduction of Sentence"; May 6, 2014 "Application for Review of Sentence"; and November 24, 2014 "Motion to Correct Illegal Sentence."

for our review. However, even if appellant's claim had been preserved, his argument is without merit. We explain.

Analysis

"An alleged *Brady* violation is a constitutional claim, based on the Due Process Clauses of the Fifth and Fourteenth Amendments." *Yearby v. State*, 414 Md. 708, 719–20 (2010) (citations omitted) (alterations in original). The burden is upon the accused to provide proof of "production and persuasion." *Id*. at 720. "Facts known to the police will be imputed to the State for *Brady* purposes." *Conyers*, 367 Md. at 602.

> The Supreme Court held, in *Brady* [], that 'the suppression by the prosecution of evidence favorable to an accused upon request violates due process where the evidence is material either to guilt or to punishment, irrespective of the good faith or bad faith of the prosecution.'

Yearby, 414 Md. at 716 (citations omitted).

> There are three components of a true *Brady* violation: The evidence at issue must be favorable to the accused, either because it is exculpatory, or because it is impeaching; that evidence must have been suppressed by the State, either willfully or inadvertently; and prejudice must have ensued.

*Id. a*t 717 (quoting *Strickler v. Greene*, 527 U.S. 263, 281–82 (1999)).

Post-*Brady*, the Supreme Court expanded the categories of evidence requiring disclosure, including "[w]hen the reliability of a given witness may well be determinative of guilt or innocence," *i.e.*, impeachment evidence. *Giglio v. United States*, 405 U.S. 150, 154 (1972). *See State v. Williams*, 392 Md. 194, 201 (2006) ("[W]hen the reliability of a witness is determinative of guilt or innocence, nondisclosure of such evidence falls within

Brady.”); *Conyers*, 367 Md. at 597 (“Impeachment evidence, as well as exculpatory evidence, is evidence favorable to an accused.”).

Significantly, the evidence suppressed by the State must have been material to the outcome. In *Yearby*, the Court of Appeals observed “our own cases have said that evidence is material if there is a ‘substantial possibility that, had the [evidence] been revealed to [defense] counsel, the result of his trial would have been any different.’” 414 Md. at 719 (alterations in original) (quoting *State v. Thomas*, 325 Md. 160, 190 (1992)). *See also Adams v. State*, 165 Md. App. 352, 434–35 (2005) (noting that the measure of the materiality of a *Brady* violation is the same “substantial possibility” standard found in the newly discovered evidence contexts).

In *Giglio*, the Supreme Court, observing that the Government’s case almost depended entirely on the testimony of one witness, noted that “without it there could have been no indictment and no evidence to carry the case to the jury[.]” The Court held that the witness's credibility was an “important issue” and the jury was entitled to any evidence relevant to his credibility. 405 U.S. at 154–55.

In the instant case, appellant does not address the three required elements of a *Brady* violation; rather, appellant makes two arguments:

> First, evidence, which would serve to impeach the credibility of a State’s witness, qualifies as mandatorily-[disclosable] exculpatory evidence under *Brady*.
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> * * *
>
> Second, there can be no dispute that exculpatory or impeachment evidence relating to or known by a police detective working with [the] prosecution team implicates the *Brady* disclosure regardless of whether it is known personally by the prosecutor.

We agree with appellant's second argument. Even if the State's Attorney's Office was unaware of the familial relationship, the investigating detective, Griffin-Johnson, was aware and, accordingly, that fact becomes imputed to the State for *Brady* purposes. *Conyers, supra.*

Appellant's first argument, concerning the required disclosure of impeachment evidence, is addressed by the first prong of a *Brady* analysis, which is met in the case *sub judice.* Evidence of a familial relationship, albeit as distant cousins, between the former investigating detective and two key witnesses for the State is decidedly favorable to the accused. The fact that the investigating detective, DeShields and State's witnesses, Laron and Deshields, were relatives potentially implicates the credibility and reliability of the witness and, therefore, requires disclosure under *Brady.*

The second prong, governing the suppressed evidence, *i.e.,* materiality of evidence alleged to have been suppressed, is less straight forward.

> In cases where there is no false testimony but the prosecution nonetheless fails to disclose favorable evidence, the standard for materiality, in the language of the Supreme Court, is whether there is a reasonable probability that, had the evidence been disclosed to the defense, the result of the proceeding would have been different. A 'reasonable probability' is a probability sufficient to undermine confidence in the outcome.

Conyers, 367 Md. at 598 (internal quotation marks omitted). "This Court has interpreted the reasonable probability standard from *Strickland v. Washington*, 466 U.S. 668 (1984), to mean a 'substantial possibility that . . . the result of [the] trial would have been any different.'" *Conyers*, 367 Md. at 598 (quoting *Thomas*, 325 Md. at 190).

In the case *sub judice*, it is possible that the outcome of the 1996 trial may have been different had the evidence of the familial relationship been disclosed; however, we are not prepared to say that it is "significantly or substantially possible." There was still physical evidence, *i.e.*, unspent shell casing found on the driver's side of the car appellant was driving, and Olsen's eye-witness testimony supporting the premise that appellant did not shoot James in self-defense.

Furthermore, appellant fails to articulate how the outcome of the 1996 trial would be different, notwithstanding the assertion in his brief that, "in the eyes of the jury, this blood relationship may well have created such an alignment between the detective and the prosecution as to make very plausible the possibility that the witness would be willing to shade her testimony in the State's favor." Appellant does not offer evidence that either DeShields' or Griffin-Johnson's testimony was perjured. In fact, appellant offers nothing beyond bald speculation that a familial relationship, as distant cousins, would create the "possibility" of collusion between witnesses in the State's favor.

Disclosure of the familial relationship would have provided appellant the opportunity to cross-examine the witnesses concerning "potential bias, prejudices, and self-interest," at the 1996 trial. Appellant, however, did not raise this issue in his Petition for Writ of Actual Innocence in 2011 or in the other nine motions he filed before 2015. Although "[a] criminal defendant's right to cross-examine the prosecution's witnesses is protected by the Confrontation Clause that appears in both the federal and State constitutions[,]" *Peterson v. State,* 444 Md. 105, 122 (2015), "the right to confrontation,

fundamental as it is, is not absolute. It 'must occasionally give way to considerations of public policy and the necessities of the case.'" *Wildermuth v. State*, 310 Md. 496, 514 (1987). Certainly, when appellant himself fails to preserve an issue, he waives his right to cross-examine witnesses about it.

Accordingly, we hold that, if appellant had preserved the issue for our review, the evidence of a distant-cousin familial relationship between DeShields, Waters, Tammy and Griffin-Johnson is not material, in and of itself, and appellant has failed to provide support, other than bald assertions, that the familial relationship between the aforementioned encouraged collusion between the State and its witnesses. Appellant has also failed to provide evidence to support his premise that disclosure of the familial relationship, in light of the evidence presented, would create a "significant or substantial possibility" of a different outcome at the 1996 trial. Therefore, any failure to disclose the familial relationship, by Griffin-Johnson or the State, does not constitute a violation under *Brady*.

II.

Appellant also contends that the trial court erred in denying his Petition for Writ of Actual Innocence, specifically, because it failed to consider the familial relationship between Griffin-Johnson, DeShields, Tammy and Laron in rendering its decision.

The State posits that this issue is not properly before this Court, but assuming *arguendo*, that the trial court's denial of appellant's petition was properly before us, we should hold that it was properly denied. Specifically, the State asserts that the circuit court systematically analyzed the multiple factors required in the review of newly discovered

evidence in a post-conviction proceeding. According to the State, the trial court's finding that "there was overwhelming evidence" that appellant committed the premeditated murder of James satisfied the "substantial or similar probability" standard articulated in *Yorke, supra*, particularly so because, as the court noted, the only evidence of self-defense was appellant's testimony in his own defense.

In reviewing a petition for writ of actual innocence, we review the legal sufficiency of the pleadings *de novo*. *State v. Hunt*, 443 Md. 238, 247 (2015). We review a trial court's actions regarding a petition for writ of actual innocence, after a hearing on the merits, under an abuse of discretion standard. *Id.* at 248. This means that "we will not disturb the circuit court's ruling, unless it is 'well removed from any center mark imagined by the reviewing court and beyond the fringe of what the court deems minimally acceptable.'" *McGhie v. State*, 224 Md. App. 286, 298, (citation omitted) *cert. granted*, 445 Md. 487 (2015), *aff'd.,* No. 78 SEPT. TERM, 2015 2016 WL 4470907 (Md. Aug. 24, 2016).

As noted, *supra*, the claim raised by appellant, on the instant appeal, concerning the aforementioned familial relationship, was not raised in the 2011 Petition for Writ of Actual Innocence or his Motion to Reopen the Closed Post-Conviction Proceedings. Appellant now argues that the trial court abused its discretion by failing to consider, for the first time, this familial relationship claim in denying his Petition for Writ of Actual Innocence, despite the fact that the case is on remand from this Court specifically to determine the grant or denial of the Petition under the appropriate *Yorke* standard, as codified in by Md. Code Ann., Crim. Proc. (C.P.) § 8–301. We disagree.

Md. Code Ann., C.P. § 8–301(b)(2) requires that, in order for a petition to meet the pleading requirements, it must "state in detail the grounds on which the petition is based." Although a petitioner need not prove the grounds in his petition, *Hunt, supra,* it is logical that the grounds to be considered must be alleged in the petition.

> The pleading requirement mandates that the trial court determine whether the allegations could afford a petitioner relief, if those allegations would be proven at a hearing, assuming the facts in the light most favorable to the petitioner and accepting all reasonable inferences that can be drawn from the petition.

Hunt, 443 Md. at 251. The circuit court will review the allegations in the petition, *but only those allegations.* It will not seek out ones to review that the petitioner has not alleged.

Finally, appellant does not ask that we review the trial court's denial of his Petition under the *Yorke* standard, despite the fact that appellant's instant appeal is *from that decision*.

JUDGMENT OF THE CIRCUIT COURT FOR WICOMICO COUNTY AFFIRMED;
COSTS TO BE PAID BY APPELLANT.