UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

Nos. 1066 & 1878

September Term, 2016

DAVID R. FAULKNER

v.

STATE OF MARYLAND

Meredith,
Graeff,
Reed,

JJ.

Opinion by Graeff, J.

Filed: July 26, 2017

* Judge Christopher B. Kehoe did not participate, pursuant to Md. Rule 8-605.1, in the Court's decision to report this opinion.

On January 5, 1987, 64-year-old Adeline Wilford was stabbed to death in the kitchen of her farmhouse. The investigation stalled for years, but on April 5, 2001, David R. Faulkner, appellant, was convicted by a jury in the Circuit Court for Talbot County of first degree murder, felony murder, involuntary manslaughter, theft under $300, and daytime house breaking. The circuit court subsequently sentenced him to life imprisonment.[1]

Approximately 10 years later, after appellant's effort to reverse his convictions by appeal and post-conviction relief were unsuccessful, the Mid-Atlantic Innocence Project in Washington, DC, filed a Maryland Public Information Act ("MPIA") request on behalf of appellant. Based on information that he received from that request, and in light of a 2014 report indicating that latent prints obtained from the crime scene matched another suspect, Tyrone Anthony Brooks ("Ty Brooks"), appellant filed a Petition for Writ of Actual Innocence and a Motion to Reopen Post-Conviction Proceedings. The hearing on these pleadings was consolidated with similar pleadings filed by Jonathon Smith. The circuit court denied both the petitions and the motions.

On appeal, appellant presents nine questions[2] for this Court's review, which we have consolidated and rephrased, as follows:

[1] Two others were implicated in the murder. Jonathan Smith was tried separately, and he was convicted of murder. Ray Andrews was found guilty, pursuant to a plea, of involuntary manslaughter.

[2] Appellant's original questions presented were as follows:

1. Did the circuit court err by requiring Faulkner to prove that he is "innocent" in order to prevail on his innocence petition, rather than applying the statutory standard, i.e., evidence sufficient to "create[] a substantial or significant possibility that the result may have been different?"

2. Did the circuit court err by holding that Faulkner was not diligent because he failed to seek a Rule 4-264 subpoena for the palm prints of [Ty] Brooks, one of 27 suspects in the police files?

3. Did the circuit court err by holding that Faulkner was not diligent because he failed to recognize the significance of an eyewitness mentioned in one paragraph out of more than 700 pages of discovery, where that paragraph omitted critical information contained in a witness statement withheld by police?

4. Did the circuit court err by holding that Faulkner was not diligent because he failed to file a Maryland Public Information Act request immediately following a trial to discovery exculpatory tapes that the prosecution was affirmatively required to disclose under *Brady* and Rule 4-263?

5. Did the circuit court abuse its discretion by denying the motion to reopen post-conviction proceedings without considering the vast majority of the evidence and claims set forth in the motion?

6. Did the circuit court err by placing the burden upon the defense to identify an exculpatory eyewitness mentioned in one paragraph out of more than 700 pages of discovery, where that paragraph omitted critical information contained in a witness statement withheld by police?

7. Did the circuit court err by failing to find that a suppressed non-prosecution agreement with the State's key witness was material under *Brady*?

8. Did the circuit court err by precluding Faulkner from calling [Ty] Brooks as a witness based on [his] out-of-state perjury conviction post-dating Faulkner's trial?

9. Did the circuit court err by excluding the words "Ty Brooks" in a statement by an unavailable witness asserting that he murdered [Ms.] Wilford together with "Ty Brooks"?

1. Did the circuit court abuse its discretion in denying appellant's Petition for Writ of Actual Innocence?

2. Did the circuit court abuse its discretion in denying appellant's Motion to Reopen Post-Conviction Proceedings?

For the reasons set forth below, we shall vacate the judgments of the circuit court and remand for further proceedings.

FACTUAL AND PROCEDURAL BACKGROUND

We provided a detailed discussion of the underlying facts of the murder in the separate, but related, appeal brought by Jonathan Smith. *See Smith v. State*, ___ Md. App. ___, Nos. 1069 & 1879, Sept. Term, 2016, slip op. at 2-8 (filed July 26, 2017). We will incorporate large portions of that opinion, as relevant to this appeal.

As discussed in *Smith*, Ms. Wilford was murdered on January 5, 1987. The police believed the murder took place between 2:10 p.m. and 3:00 p.m., when one or more persons entered Ms. Wilford's house through a window located in her utility room, and subsequently stabbed Ms. Wilford when she returned home from running errands. *Id.* at 2-3. In 2000, after a period of inactivity, the police reopened the investigation and focused their attention on appellant, Mr. Smith, and Ray Andrews. *Id.* at 3-8.

I.

Appellant's Trial

Appellant's trial began on April 2, 2001. The State called a number of officers and crime scene technicians who testified, as they did in Mr. Smith's case, about their observations at the crime scene. *See Smith*, slip op. at 9-12. No fingerprints or other physical evidence at the scene tied appellant to the crime.

The State called Alexander Mankevich, the State's fingerprint expert. Mr. Mankevich testified, as he did in Mr. Smith's trial, that he was not able to match any of the latent prints recovered from the crime scene to appellant, Mr. Smith, or Mr. Andrews.

Norman Lee Jacobs, who previously had been housed in the same unit as appellant at the Talbot County Detention Center, testified that appellant stated that he was involved in "a murder case . . . about a woman back in 1987." Appellant told Mr. Jacobs that he, Mr. Smith, and "another guy" went to Ms. Wilford's "big white barn looking house" to rob "the lady." She returned home, and during a struggle bit Mr. Smith on the finger. Appellant stated, however, that the State did not have any evidence on him because appellant "had gloves on." After the stabbing, the three men walked through "what was supposed to be a big cornfield," and then Mr. Smith's aunt picked them up and gave them a ride back to town. Mr. Jacobs also testified that he overheard appellant "[a]rguing and cussing" at Mr. Smith and "talking about who did the most stabbing."

Mr. Jacobs contacted Sergeant Jack McCauley about appellant's statements because appellant "kept bragging about it like he thought it was a joke." On cross-examination, however, Mr. Jacobs explained that he used his cooperation in this case to "get leniency" in his federal drug case. Mr. Jacobs denied making up a story based on what he read in the newspapers, stating that he did not read anything about the murder in the papers until after talking with appellant, and the information he was providing was "from David." He explained that appellant "used to come to [his] room day and night . . . and tell [him] his case, show [him] his paperwork and that's all he talked about was the case."

Susan Fitzhugh testified that, on January 5, 1987, she and Beverly Haddaway, Mr. Smith's aunt, were passing through the area of Kingston Road and Black Dog Alley, when she saw appellant, Mr. Smith, and Mr. Andrews "[c]oming up out of the ditch, out of the hedgerow."[3] She noted that the men "had blood on them." Mr. Andrews had some blood on his pants as if he wiped his hands on them, and Mr. Smith had blood on his shirt, "down on his pants" and "on his feet, boots." Appellant was wearing Mr. Smith's jacket, and "he had more blood on him than either one of the others."

Ms. Fitzhugh and Ms. Haddaway "pulled over and . . . spoke to them." "[T]hey said that they were on their way in town." Ms. Fitzhugh asked Mr. Smith what they had been doing, and Mr. Smith showed her his hunting knife and told her that he had killed a deer. They told Mr. Smith and his companions that they could not give them a ride into town because there was not enough room in the vehicle. Mr. Smith told them that he and his companions "were going to go in town and get [someone] to come back and get the deer."

After speaking with Mr. Smith for approximately three to five minutes, Ms. Haddaway drove away. As they were pulling away, Ms. Fitzhugh observed the three "start[] walking towards town . . . [in] the same direction [Ms. Fitzhugh and Ms. Haddaway] were going."

[3] Susan Fitzhugh is now deceased.

Ms. Fitzhugh saw appellant, Mr. Smith, and Mr. Andrews later that night at Mr. Smith's residence. Ms. Fitzhugh recalled that they were in the living room "fighting and arguing and wrestling."

Ms. Haddaway testified that, on January 5, 1987, at approximately 2:00 or 2:15 p.m., she and Ms. Fitzhugh arrived at Ms. Fitzhugh's trailer near Black Dog Alley. They left shortly thereafter and turned onto Black Dog Alley, where they saw appellant, Mr. Smith, and Mr. Andrews. Mr. Smith was not wearing a coat, and he had blood spatter on his shirt and blood smeared under his chin and on the side of his face. Appellant was wearing black gloves and had "blood from his kneecaps down over his white tennis shoes and all over his tennis shoes."[4] She also noted that appellant was wearing Mr. Smith's coat, which was "too big" for him, and Mr. Andrews was wearing an identical blue coat. Although appellant, Mr. Smith, and Mr. Andrews regularly carried hunting knives on their backs, she did not see the knives that day.

Ms. Haddaway asked Mr. Smith what they were doing there, and Mr. Smith stated that "a dog had tried to bite him, and he killed it." Ms. Haddaway accused him of lying, and Mr. Smith pointed out where he supposedly had been bitten on the hand, but Ms. Haddaway did not see a dog bite.

The three men asked Ms. Haddaway to give them a ride, but she said that she could not. At that point, appellant said "here he comes now, and a blue truck . . . pulled up

[4] On cross-examination, Beverly Haddaway testified that Mr. Smith and one of the other two "both had on men's type . . . leather construction boots" of a "neutral color."

behind" Ms. Haddaway with two men inside. Ms. Haddaway saw the three men go behind the truck, but she did not see them get inside. The truck backed up and went toward Denton road.

Later that evening, Ms. Haddaway's daughter called her, stating that Mr. Smith, appellant, and Mr. Andrews were fighting and "tearing up everything." Ms. Haddaway went over there, and she observed the three men "arguing and fighting." She saw "some money and a piece of jewelry" on the dining room table, and she recalled that appellant said: "Ray wasn't going to get any money because he didn't do anything."

Ms. Haddaway also testified about the reward offered in the case. She testified that she was not aware of the reward until Corporal Roger Layton mentioned it, and she told him she did not care, but she had since claimed the reward. In June 2000, she received $10,000 as a "down payment" of a $25,000 reward "offered by the family and friends through the [S]tate police for information leading to [an] arrest." She noted that the remaining $15,000 was for a conviction.[5]

Mr. Andrews testified that, on January 5, 1987, he, appellant, and Mr. Smith walked from a friend's house near Black Dog Alley to Ms. Wilford's house. Appellant and

[5] Defense counsel also attempted to impeach Ms. Haddaway by exposing an alleged "incentive to make up a story implicating Jonathan Smith." The State objected, and defense counsel proffered that Ms. Haddaway "felt she had been cheated out of her mother's house by her brother." Counsel theorized that Ms. Haddaway was dragging down appellant in an attempt to frame Mr. Smith and secure the property left by Mr. Smith's late father. The State argued that, notwithstanding "any inter-family problems between Mrs. Haddaway and her nephew or her brother, there's no bias here as far as Mr. Faulkner" was concerned. The court agreed with the State, and it sustained the objection.

Mr. Smith left him alone for a "good forty minutes" while they burglarized Ms. Wilford's residence. When they returned, appellant had something red on the side of his face.

When the three men reached Black Dog Alley, they encountered Ms. Haddaway who was in a vehicle. The men then continued walking, up Black Dog Alley, down Route 50, to Mr. Smith's house.[6]

At Mr. Smith's house, Mr. Andrews overhead appellant "say something about I hit her." Appellant and Mr. Smith removed some money from their pockets and divided it up, but appellant said Mr. Andrews "wasn't part of it," so he did not get any of the money. Mr. Andrews denied seeing any other property that Mr. Smith and appellant brought from the house.

Sergeant McCauley testified about a recorded conversation between Ms. Haddaway and Mr. Smith. During that conversation, Mr. Smith told Ms. Haddaway that "he had been to the house of Mrs. Adeline Wilford" to "get money, to rob," and "he had stabbed her."

The sole witness called by the defense was Geraldine Francis Huber, the Human Resources Director at Tidewater Publishing Corporation. She testified that Tidewater's personnel records indicated that appellant had been employed by the company from August 26, 1985, through May 1, 1987, that the company's payroll records indicated that appellant was paid for approximately 46 hours of work during the week that included January 5, 1987, and his records did not indicate any absences during that week. Ms. Huber

[6] Mr. Andrews could not remember how long it took them to walk from Black Dog Alley to Mr. Smith's house.

also noted that certain pages from a supervisor's journal indicated whether any employee was absent on January 5, 1987, and appellant's name was not on the list. Appellant's name did appear in a record indicating that he took a vacation day on January 23, 1987.

On cross-examination, Ms. Huber testified that her payroll records indicated only the total number of hours that appellant worked for that week, and the company did not have time cards that would indicate what days and hours he actually worked.[7] She further testified that there had been errors in the payroll in the past, and if such an error occurred, it was possible that unpaid time from a previous week could be included in the payroll for the following week.

On April 5, 2001, a jury found appellant guilty of first degree murder, felony murder, involuntary manslaughter, theft under $300, and daytime house breaking. On May 31, 2001, the circuit court sentenced him to life for the murder conviction and 10 years, consecutive, for the daytime housebreaking conviction. The remaining convictions were merged for sentencing purposes.

II.

Subsequent Procedural History

On April 12, 2001, appellant filed a Motion for New Trial, arguing that: (a) "the State failed to inform" him that "DNA had been recovered from the victim's fingernail scrapings, and that [he] was excluded as a source of that DNA"; and (b) the circuit court

[7] Geraldine Francis Huber testified that the company kept time cards for only five years.

erred in admitting Mr. Smith's inculpatory hearsay statements to Ms. Haddaway regarding his participation in the murder. The circuit court denied the motion.

On direct appeal, appellant argued that the circuit court erred in (a) denying his motions regarding the "allegedly belated disclosure of the DNA test results"; (b) admitting "two instances of allegedly inadmissible hearsay"; and (c) admitting a photograph of Mr. Jacobs and appellant. This Court affirmed appellant's convictions, *Faulkner v. State*, No. 926, Sept. Term, 2001 (filed July 8, 2002), and the Court of Appeals subsequently denied appellant's petition for writ of certiorari, *Faulkner v. State*, 371 Md. 614 (2002).

On December 30, 2003, appellant filed a Petition for Post-Conviction Relief, alleging multiple claims of ineffective assistance of counsel. He subsequently filed supplements to his petition.[8] On March 29, 2005, the circuit court denied appellant's petition, and this Court subsequently denied appellant's Application for Leave to Appeal. *Faulkner v. State*, No. 556, Sept. Term, 2005 (filed May 3, 2006).

[8] In his first supplement, appellant added the claim that trial counsel was "ineffective for failing to properly object to the out-of-court statements of a co-defendant, Jonathan Smith." In his second supplement, appellant argued that the State failed to turn over impeachment evidence consisting of a receipt, dated June 22, 2000, on which Ms. Haddaway wrote that the "total reward was twenty-five thousand dollars ($25,000.00), that the ten thousand dollars ($10,000.00) for which she was signing was a mere deposit on the total amount, and that the remaining amount of fifteen thousand dollars ($15,000.00) would be paid within one hour of conviction on the same day."

III.

Petition for Writ of Actual Innocence and Motion to Reopen

In 2012, the Mid-Atlantic Innocence Project filed a MPIA request on behalf of appellant. The Maryland State Police ("MSP") subsequently produced a copy of several recorded conversations between Sergeant John Bollinger and Ms. Haddaway (the "Bollinger-Haddaway tapes").

On August 1, 2013, appellant filed a Motion to Reopen Postconviction Proceeding, arguing that he was "entitled to a new trial because the State improperly withheld . . . exculpatory material." Specifically, he pointed to his discovery of the Bollinger-Haddaway tapes, which he argued "destroys the already-fragile credibility of the State's star witness, Beverly Haddaway."

As explained in *Smith*, Mr. Mankevich subsequently entered the unidentified palm prints in Ms. Wilford's residence into the new Maryland Automated Fingerprint Identification System and determined that Ty Brooks was the source of the palm prints found on Ms. Wilford's washing machine and on the outside of the utility room window.

On July 2, 2015, appellant filed a Petition for Writ of Actual Innocence. In his petition, and at the hearing, he asserted three claims of newly-discovered evidence: (1) Ty Brooks' palm print match; (2) the recorded conversations between Ms. Haddaway and Sergeant Bollinger; and (3) statements by an eyewitness that he saw a vehicle at Ms. Wilford's house at approximately 2:00 p.m. on the day of the murder.

On April 11, 2016, the court held a seven-day hearing, addressing both appellant's and Mr. Smith's petitions for writ of actual innocence and motions to reopen. The court detailed in an order the way the hearing would proceed, emphasizing that the court would hear evidence and argument on the petitions for writ of actual innocence first, and after the court's ruling on the petitions, the court, if it did not grant or defer ruling on the petitions, would hear evidence and arguments on the motions to reopen. With respect to the substance of the hearing, we refer to our opinion in *Smith*, slip op. at 17-35.

DISCUSSION

I.

Petition for Writ of Actual Innocence

Appellant argues that the circuit court erred in denying his Petition for Writ of Actual Innocence. He contends that the following evidence was "newly discovered" evidence that warrants the granting of his innocence writ: (1) the identification of Ty Brooks as the person who left the palm prints on a window on the exterior of Ms. Wilford's utility room and the washing machine inside the room; (2) Mr. Keene's statement that he saw a vehicle in Ms. Wilford's driveway at approximately 2:00 p.m. on the day of the murder; and (3) the Bollinger-Haddaway tapes discussing, *inter alia*, the nol pros of the charges against Ms. Haddaway's grandson, Landon Janda.

The State contends that the circuit court properly exercised its discretion in denying the petition. It makes two arguments in this regard. First, it argues that appellant did not present evidence of innocence, asserting that the above-referenced evidence was not

"exonerating" evidence. Second, the State asserts that the circuit court did not abuse its discretion in concluding that appellant was not diligent in discovering the evidence that he alleges is "newly discovered."

In 2009, the Maryland General Assembly enacted Maryland Code (2016 Supp.) § 8-301 of the Criminal Procedure Article ("CP"), which allows certain convicted persons to petition for a writ of actual innocence based on newly discovered evidence. *See Smallwood v. State*, 451 Md. 290, 313-20 (2017) (setting forth the legislative history of CP § 8-301). CP § 8-301 states, in pertinent part, as follows:

> (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) 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.
>
> * * *
>
> (g) A petitioner in a proceeding under this section has the burden of proof.

The court has several options if it grants the petition: it "may set aside the verdict, resentence, grant a new trial, or correct the sentence, as the court considers appropriate." CP § 8-301(f)(1).

In *Smith*, slip op. at 38-39, we explained:

> [A] petitioner asserting newly discovered evidence must satisfy three requirements to prevail in a petition for actual innocence. A petitioner must produce newly discovered evidence that: (1) "speaks to" the petitioner's actual innocence; (2) "could not have been discovered in time to move for a

new trial under Md. Rule 4-331"; and (3) creates "a substantial or significant possibility that the result may have been different."

A.

Actual Innocence

As indicated, a petition for writ of actual innocence was intended to be limited to cases involving newly discovered evidence that "speaks to" the petitioner's actual innocence. In *Smith*, slip op. at 40-43, we concluded that the newly discovered evidence here, the Keene evidence, the match of Ty Brooks' palm prints, and the Haddaway-Bollinger tapes, satisfies the first prong of the analysis, i.e., that the evidence speaks to actual innocence.

B.

Could Not Have Been Discovered

The second prong of the analysis is that the newly discovered evidence "could not have been discovered in time to move for a new trial under Maryland Rule 4-331." CP § 8-301(a)(2). A Rule 4-331 motion based on newly discovered evidence must be filed "within one year after the later of (A) the date the court imposed sentence or (B) the date the court received a mandate issued by the final appellate court to consider a direct appeal from the judgment or a belated appeal permitted as post conviction relief." Rule 4-331(c)(1). Here, the docket entries indicate that the circuit court received the mandate from this Court affirming his convictions on direct appeal on October 4, 2002.[9] Accordingly,

[9] The Court of Appeals denied certiorari, and therefore, pursuant to the rule, this Court was the final appellate court to consider a direct appeal.

the appellant must show that the newly discovered evidence could not have been discovered before the one-year deadline on October 4, 2003.

As we explained in *Smith*, slip op. at 44-45:

> It is important to note that the requirement that the petitioner show that evidence could not have been discovered at an earlier time does not require that defense counsel exhaust every lead or seek to discover a needle in a haystack. *Cf. Maryland v. Kulbicki*, 136 S. Ct. 2, 4-5 (2015) (standard of "reasonable competence" does not required defense counsel to "go 'looking for a needle in a haystack,' even when they have 'reason to doubt there is any needle there'") (quoting *Rompilla v. Beard*, 545 U.S. 374, 389 (2005)). Rather, CP § 8-301(a)(2) requires only that defense counsel exercise due diligence to discover evidence. *See Hawes*, 216 Md. App. at 136 (CP § 8-301(a)(2) requires a showing that newly discovered evidence "could not, with due diligence, have been discovered in time to move for a new trial under Maryland Rule 4-331."). *See also Argyrou v. State*, 349 Md. 587, 600-01 (1998) ("To qualify as 'newly discovered,' evidence must not have been discovered, or been discoverable[,] by the exercise of due diligence."); Md. Rule 4-332(d)(6) (A petition for a writ of actual innocence must allege that it is based on "newly discovered evidence" "which, with due diligence, could not have been discovered in time to move for a new trial pursuant to Rule 4-331.").
>
> This second requirement, that the evidence could not, with due diligence, have been discovered in time to move for a new trial, is "a threshold question." *Argyrou*, 349 Md. at 604. *Accord Jackson v. State*, 216 Md. App. 347, 364, *cert. denied*, 438 Md. 740 (2014). "[U]ntil there is a finding of newly discovered evidence that could not have been discovered by due diligence, no relief is available, 'no matter how compelling the cry of outraged justice may be.'" *Argyrou*, 349 Md. at 602 (quoting *Love v. State*, 95 Md. App. 420, 432 (1993)).

Here, appellant claims that the newly discovered evidence, including Mr. Keene's observations, the identification of Ty Brooks' palm prints, and the Bollinger-Haddaway tapes, satisfied this requirement, and the circuit court erred in finding to the contrary. As discussed in *Smith*, slip op. at 45-61, we conclude that the circuit court did not abuse its

discretion in its ruling regarding Mr. Keene's observation, but we agree with appellant that the Bollinger-Haddaway tapes and the palm print evidence constitute newly discovered evidence that could not have been discovered in the exercise of due diligence in time to move for a new trial pursuant to Rule 4-331.

C.

Substantial Possibility of a Different Result

If a petitioner meets his or her burden of showing newly discovered evidence that could not have been discovered in the exercise of due diligence in time to move for a new trial pursuant to Rule 4-331, the next step in the analysis is to determine whether the evidence created "a substantial or significant possibility that the result may have been different, as that standard has been judicially determined." CP § 8-301(a)(1). "This prong of the analysis involves a determination regarding the impact of the evidence." *Jackson*, 216 Md. App. at 366. The test is "whether, if [the convicting] jury had had the benefit of the newly discovered evidence as well as the evidence that was before them, would there be 'a substantial or significant possibility that the result would have been different?'" *Yonga v.* State, 446 Md. 183, 211 (2016) (quoting *Yonga*, 221 Md. App. at 69) (internal quotation marks omitted). "'[T]he substantial or significant possibility standard falls between "probable," which is less demanding than "beyond a reasonable doubt," and "might" which is less stringent than probable.'" *McGhie v. State*, 449 Md. 494, 510 (2016) (quoting *Yorke v. State*, 315 Md. 578, 588 (1989)).

As we discussed in *Smith*, slip op. at 63-64, it is not clear that the circuit court considered this prong of the analysis, and even if it did, it failed to give any reasons for a finding that the newly discovered evidence did not create a substantial or significant possibility that the result in appellant's trial would have been different. We explained that, due to our conclusion regarding the first and second prongs of the analysis, Mr. Smith's innocence petition hinges on the third and final prong of the test. Accordingly, as explained in *Smith*, slip op. at 64-65, we remand the case to the circuit court to consider whether, if the jury that convicted appellant had the benefit of the Bollinger-Haddaway tapes and the palm print evidence, there is a substantial or significant possibility that the result of the trial would have been different. The circuit court will determine whether presentation of new evidence will be permitted on remand.

D.

Evidentiary Issues

Appellant contends that "the circuit court erred in severely curtailing [his] ability to present evidence at the innocence hearing." Specifically, appellant asserts that "the court wrongfully: (1) precluded [appellant] from calling [Ty] Brooks as a witness; and (2) redacted [Ty] Brooks's name from Thomas's statement implicating the two of them in the murder." As indicated in *Smith*, slip op. at 64-65, because we are remanding for the purpose of further proceedings, we need not address these contentions. We incorporate, however, our comments for guidance to the circuit court on remand. *Id.* slip op. at 65-68.

II.

Motion to Reopen Post-Conviction Proceedings

After the circuit court concluded that it would not grant appellant's petition for writ of actual innocence, the court turned to appellant's motion to reopen his post-conviction proceedings. In that context, it addressed only the Bollinger-Haddaway tapes, and it found that the discovery of these tapes did not warrant reopening post-conviction proceedings because "[a]dditional impeaching evidence against Ms. Haddaway does not necessarily mean that the testimony of the other witnesses becomes less credible."[10] The court noted that the "arrangement regarding Landon Janda," Ms. Haddaway's grandson, "does not contradict any other evidence presented," and it was not a precondition to Ms. Haddaway providing information that led to the arrest of appellant. Accordingly, the court stated that it did "not believe that it would advance the interests of justice to reopen the post-conviction proceedings."

Appellant argues that the circuit court "erred in denying [his] motion to reopen post-conviction proceedings." He asserts, *inter alia*, that the "circuit court abused its discretion

[10] In that regard, the court noted that Ms. Haddaway's testimony was corroborated by the testimony of Mr. Andrews and Ms. Fitzhugh. The court also noted that the jury considered Mr. Smith's recorded admission to Ms. Haddaway, as well as admissions to Mr. Jacobs.

by failing to consider the vast majority of [his] constitutional claims." As discussed in *Smith*, slip op. at 69-71, the State agrees, and so do we.

JUDGMENTS OF THE CIRCUIT COURT FOR TALBOT COUNTY VACATED. CASE REMANDED FOR FURTHER PROCEEDINGS. COSTS TO BE PAID BY TALBOT COUNTY.