Circuit Court for Baltimore City
Case Nos.: 192002009, 11, 13 & 15

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 3017

September Term, 2018

LAMONT McGINNIS

v.

STATE OF MARYLAND

Beachley,
Shaw Geter,
Moylan, Charles E., Jr.,
(Senior Judge, Specially Assigned),

JJ.

PER CURIAM

Filed: May 1, 2020

*This is an unreported opinion, and it may not be cited in any paper, brief, motion, or other document filed in this Court or any other Maryland Court as either precedent within the rule of stare decisis or as persuasive authority. Md. Rule 1-104.

In 1992, a jury in the Circuit Court for Baltimore City found Lamont McGinnis, appellant, guilty of felony murder, armed robbery, conspiracy to commit armed robbery, and use of a handgun in the commission of a crime of violence. Upon appeal, this Court affirmed the convictions but remanded for a new sentencing hearing. McGinnis was then resentenced to a total term of life imprisonment, plus five years. In 2017, he filed a petition for writ of actual innocence. Following a hearing, the circuit court denied relief, a ruling McGinnis timely appealed. For reasons to be discussed, we shall affirm the judgment.

BACKGROUND

On the morning of November 5, 1991, the body of Darrell Thiems was found on the ground behind a retaining wall next to a Rite Aid store located in the 1400 block of East Cold Spring Lane in Baltimore. He had a gunshot wound to the chest and his death was ruled a homicide. The victim's car (a blue Dodge Shadow owned by his fiancé) and a stolen white Mitsubishi were later discovered in a rear yard in the 1200 block of Winston Avenue, near the home of the victim's "next of kin." The ignition of the Mitsubishi had been "popped . . . so it could be started with a screwdriver." The rear-view mirror was missing from the Dodge; its keys were found in the grass nearby.

Carrie Benjamin, who lived across the street from the Rite Aid, testified that, about 10:30PM on November 4, 1991, as she left her house and got into her car to go to work, she noticed "a few guys" standing near the phone booth located near the Rite Aid parking lot. She then observed "two of the boys tussling" with the third – "look like they was trying to take something away from him" and "he was holding on to it, whatever it was, he was holding on to it." As the struggle continued, "one of the boys began to move off after he

couldn't get whatever he was after . . . [b]ut one continued on." And "after awhile" Ms. Benjamin "heard like pop, pop" and observed that the "one that walked away" got into a white-colored car and "speed off" and the other "one ran and got to his [dark-colored] car and speed off" and the third "struggled on over to the fence" and because she did not see anything on the ground she "took for granted he must've gotten away over the fence." Although she could not see their faces or determine their approximate ages, Ms. Benjamin described all three persons involved in the "struggle" as black males.

Detective Walter Akers testified that, nearly two weeks after the incident, he was notified that Thomas Scott, who had been arrested for a CDS offense, informed the police that he had information about the Rite Aid murder. Based on information he received from Scott, Det. Akers obtained an arrest and search and seizure warrants for McGinnis and Gregory Bean. The warrants were executed at their respective residences in the early morning hours of November 19th. The victim's pager was found in a search of Bean's bedroom. Nothing related to the murder was found in the search of McGinnis's residence, who was 18 years old at the time and resided with his mother and grandmother. McGinnis's girlfriend and their baby were also present when the home was searched.

Bean and McGinnis were both arrested and taken to the police station for questioning. Bean refused to speak to the police. McGinnis, however, gave a statement, which was reduced to writing and signed by him. The suppression court subsequently denied the defense's request to suppress the statement. McGinnis told the police that he and Bean saw the victim at the phone booth by the Rite Aid and "went to rob him." When the victim grabbed the gun Bean was holding, a struggle ensued. McGinnis ultimately

backed off and ran to the white Mitsubishi that he and Bean had been driving, admitting that it was stolen but claiming someone else had stolen it earlier. After McGinnis drove off in the Mitsubishi, Bean pulled off behind him in the victim's car. They drove to an alley behind Winston Avenue and threw the keys in the yard. McGinnis took the mirror from the car. He also told the Detective that Bean had taken the pager "out of" the victim's hand.

Thomas Scott testified for the State, acknowledging that in exchange for his truthful testimony in court, the State had agreed to stet a CDS charge and recommend a suspended sentence for a burglary charge. Scott testified that he had known McGinnis since elementary school and that they were friends, as were McGinnis and Bean. He recalled a telephone conversation with McGinnis in November 1991 during which McGinnis told him that he and Bean had attempted to rob a man at the telephone booth by Rite Aid on Cold Spring Lane and the victim tried to grab the gun "so Bean shot the man." He also testified that he had observed McGinnis driving a white Mitsubishi sometime before this telephone conversation and that he believed "Romey" had stolen it and McGinnis then got it "from Romey and them." He further testified that McGinnis had told him that he and Bean then drove away in the Mitsubishi and the victim's car, respectively, and that they had tossed away the keys. Scott admitted that the week before trial he had appeared in defense counsel's office with McGinnis and signed an affidavit saying that he was lying about the phone call. He claimed he had felt pressured to tell defense counsel he had lied

to the police, but in fact his statement to the police in November 1991, his grand jury testimony, and his trial testimony were the truth.[1]

Det. Akers testified that although fingerprints suitable for comparison were found in the two vehicles, none matched McGinnis's prints. Nor were his fingerprints found on the pager recovered from Bean's residence.

The defense produced evidence supporting its theory that McGinnis was significantly cognitively impaired and could barely read or write. (The State presented evidence somewhat to the contrary, that is, that his intellectual disability was not as severe as the defense maintained.) The defense maintained to the jury that the statement McGinnis gave to the police was given under duress and without an understanding of his Miranda rights. (As noted, the suppression court had denied the motion to suppress the statement, ruling that McGinnis had been "properly Mirandized" and that he gave the statement voluntarily.)

The defense further theorized that someone else had committed the crime and even suggested that the reason Thomas Scott knew so many details about the crime was because he himself was involved. McGinnis maintained throughout the trial and sentencing that he was innocent. He also refused to testify against Bean, maintaining that he had no knowledge that Bean had been involved with the murder. The charges against Bean were ultimately dropped for lack of evidence.

[1] Thomas Scott's testimony before the grand jury in November 1991 was essentially the same as that at trial. He also testified before the grand jury that after Bean shot the victim, McGinnis told him the victim "tried to hobble over the wall, and they shot him in the back, in his back, and he jumped over the wall."

At trial, McGinnis denied telling Thomas Scott that he and Bean committed the crime. He claimed that, on the evening of this incident, he had played basketball at the rec center, as was his custom, and then returned home and stayed at home. His mother and grandmother testified similarly. A program director from the rec center testified that McGinnis played basketball there every Monday and Wednesday evening from 7:00PM to 10:00PM. A friend testified that he and McGinnis had played basketball on November 4th until nearly 10:00PM, after which they walked to 7-11 for a drink and McGinnis then went home.

As noted, the jury convicted McGinnis of felony murder, armed robbery, conspiracy to commit armed robbery, and use of a handgun in the commission of a crime of violence.

Petition for Writ of Actual Innocence

McGinnis's petition for writ of actual innocence relied on certain documents he had obtained from the Baltimore City Police Department in 2009 and 2012 in response to his Maryland Public Information Act ("MPIA") requests. In addition, McGinnis included an affidavit from a purported and previously unknown witness to the crime, Purell Curbeam, who claimed that Jerome Brewer and Kevin Carey were the assailants. A hearing on the petition was held on April 30, 2018.

The "Newly Discovered" Documents.

In ruling on the petition, the circuit court considered the following documents that McGinnis had claimed were newly discovered, the contents of which we have summarized.

(1) A Police Department memorandum dated November 11, 1991 from Det. Akers, Homicide Division, to his commanding officer regarding the murder. The memo related that, two days after the victim's body was found, Det. Akers was notified

by an officer in the Northeast District that a stolen vehicle under police surveillance and thought to have been stolen by the same person(s) that had stolen the white Mitsubishi had been spotted. After two black males entered the vehicle, a police chase ensued and the occupants, including Jerome Brewer, were arrested. Brewer then admitted to 12 armed robberies and admitted stealing the white Mitsubishi. Brewer also admitted that he, Stanley Scott, and Kevin Carey had used the Mitsubishi to commit a robbery at 8:00PM, but he claimed to have then parked the vehicle in the 1300 block of Kitmore Road at 9:00PM. Brewer denied any knowledge that the Mitsubishi was used in a homicide. Brewer claimed that he was picking up his girlfriend from work at 10:30PM (when the murder was believed to have been committed); the girlfriend was interviewed and verified Brewer's alibi. Kevin Carey was arrested and denied any knowledge of any robberies or any homicide.

(2) A Police Department memorandum dated November 14, 1991 from Det. Akers, Homicide Division, to his commanding officer regarding the murder. This memo related that Det. Akers had interviewed a woman who had refused to give her name [but is known now to have been Carrie Benjamin] who witnessed the crime. The memo related that the woman had seen three males at the telephone booth near the Rite Aid and two appeared to be robbing the third. She observed one male fire two shots at another and the one that was shot at jumped over the wall. She further related that one of the males entered a small white car and drove away; the other entered a blue/green car she thought belonged to the victim and followed the white car. In addition, she related that there was a third car (navy blue) parked on Cold Spring Lane along the side of the Rite Aid and the person driving that car had walked back from the newsstands and when the shots rang out this car sped off.

(3) A November 5, 1991 "Follow-Up Report" from Police Officer Georgiann Gurth in reference to the Rite Aid murder. The officer related that she had responded to the rear of 1200 Winston for a possible stolen vehicle and was approached by a man named Falcon who stated that, around 10:00PM on November 4th he was home and he heard three cars racing down the alley by 1200 Winston. He looked out the window and saw a group of men near the cars. Because he didn't think anything was wrong, he stopped looking out the window. The next morning, around 9:30AM, he saw a black male wearing a brown jacket walk up the alley, stop, look around, and then walk to where the white vehicle was parked, got into the vehicle and sat in it for about 10 minutes, and then exited the vehicle and removed some papers and walked back down the alley.

(4) A Police Department memorandum dated November 26, 1991 from Det. Akers, Homicide Division, to his commanding officer regarding the murder. The memo gave a summary of the investigation to date, noting among other things, that the

victim's body was found at 9:00AM on November 5th and that he and two other investigators arrived at the scene at 9:30AM. The victim had $279 in cash in his left pants pocket; his driver's license, bank card, and other "personal papers" were found in his "left inside, jacket pocket." Officer Gurth was the first police person to arrive and was met by a medic who pronounced the victim dead at 9:10AM. While at the crime scene, a call came out for a stolen vehicle in the rear of the 1200 Block of Winston Avenue. Sergeant Lehmann was already in route to 1203 Winston Avenue to notify the victim's father, Isaiah McPhearson, of the victim's death. Mr. McPhearson informed Sgt. Lehmann that he had observed his son's vehicle (1989 blue/green Dodge Shadow) outside in the alley about 7:30AM. While investigating the area, the stolen white Mitsubishi was found parked directly next to the victim's car.

Sergeant Richard Barger advised that the white Mitsubishi was used to commit two "armed street robberies" on November 4, 1991 at about 7:30PM.

The victim's girlfriend was interviewed and advised the police that the victim had left their apartment at about 10:20PM to visit his brother, but never arrived and did not return home. She also informed the police that the victim had a beeper on him when he left home. She identified the Dodge Shadow as her vehicle and said the only thing missing from it was the rear-view mirror.

Shirley McGriff told the police that on November 4th at about 10:30PM she pulled into the Rite Aid parking lot, at which time she heard two gunshots. She then saw a black male jump over the wall, a black male get into a small white car, and a black male get into a blue/green car. The vehicles followed each other. When shown the victim's car and the white Mitsubishi, Ms. McGriff said that they looked like the vehicles she had seen.

The autopsy determined that the victim was shot once in the left side of the chest. A silver tip .38/357 caliber projector was removed from the body. Cause of death was ruled homicide by shooting.

Two days after the victim's body was found, Det. Akers contacted Sgt. Barger in the Northeast District regarding robberies in the area where the victim was killed. Sgt. Barger reported that he presently had a car under surveillance that had been used in a street robbery earlier that day and was parked about a block from where the victim's car was found. Sgt. Akers responded to the scene. Jerome Brewer and Kevin Carey were seen entering the vehicle and ultimately apprehended. Brewer admitted to 11 "armed assault and robberies" and "admitted to using the white Mitsubishi" to commit a robbery two hours prior to the homicide. Brewer denied any involvement in the murder and claimed to have parked the car at 9:00PM. in the 1300 block of Kitmore Road on November

4, 1991. Brewer's alibi [for the time of the murder] was corroborated by his girlfriend. "It was also learned through these robbery investigations that another group was also using the same M.O. to commit other robberies. These individuals were identified as Gregory Bean and Lamont McGinnis. Both subjects lived within two blocks of where the car was dumped."

On November 18, 1991, Thomas Scott was arrested for possession of heroin and informed the police he had information about the Rite Aid murder. Scott claimed that Lamont McGinnis (a friend he's known all his life) resided at 1408 Winston Avenue and he and Gregory Bean "have been doing street hold-ups in the area of Coldspring Lane and The Alameda." McGinnis told Scott that he and Bean "were trying to rob this guy by the Rite Aid . . . and everything went wrong." Bean "had a gun on the guy" and the victim grabbed the gun. McGinnis said he pushed the guy off of Bean and Bean then fired two shots at the victim. McGinnis told Scott that he and Bean drove off in the white Mitsubishi and the victim's car.

McGinnis's house was searched pursuant to a warrant, and the "only thing recovered were two telephone calling cards in the name of Linda Gillespie." McGinnis was arrested and transported to the Homicide Unit where he waived his right to remain silent and right to an attorney and "gave a statement admitting to his participation in the murder, implicating Bean as the shooter." "McGinnis told us the same thing Scott told us." McGinnis also stated that Bean drove the victim's car and that he drove the Mitsubishi and wore gloves. McGinnis also stated that Bean stole the victim's pager.

(5) A November 14, 1991, Laboratory Division Request for Examination requesting "comparison with prints taken from 1991 Mitsubishi and 1990 Dodge Shadow. Listed as "suspects" were: Stanley Scott, Avon Scott, Kevin Carey, Jerome Brewer, Fernandez Halliburton. The second page listed results: "The prints from the right index finger of Jerome Brewer and the left ring finger of Stanley Scott were found on the interior and exterior of the Mitsubishi."

In his petition for writ of actual innocence, Mr. McGinnis maintained that, despite his trial counsel's demand for discovery, the State had failed to disclose the above-referenced documents. He asserted that he obtained them pursuant to MPIA requests in 2009 and 2012, and noted that none of the items were produced in response to his 1998 MPIA request. He also claimed that, in 1996 (four years after his trial), he had requested

that his defense counsel forward him the discovery in his case and the attorney had sent him a letter listing items sent in response, which did not mention the documents listed above. He also pointed out that, during defense counsel's cross-examination of Det. Akers, counsel elicited that McGinnis's fingerprints were not found on either vehicle. He then asserted that, if trial counsel had known that fingerprints matching Jerome Brewer and Stanley Scott had been found on the Mitsubishi, he would have elicited that information at trial. In short, McGinnis maintained that trial counsel did not know of the documents at issue here, otherwise he "would have presented the jury with compelling evidence that Jerome Brewer, Kevin Carey, and Stanley Scott committed this offense, and completely debunked Thomas Scott's testimony and Petitioner's alleged confession."

In support of his claim that the documents were "newly discovered," McGinnis testified before the actual innocence court that he did not believe that his trial attorney, now deceased, was aware of any of the above-referenced documents because, in his opinion, if trial counsel had known of them, he would have used them at trial.[2] He also had no recollection of defense counsel discussing the information in the documents with him prior to trial, including any "fingerprint reports." McGinnis did admit that he personally knew Jerome Brewer, Gregory Bean, Thomas Scott, Stanley Scott, and Kevin Carey, but denied ever speaking to them about the murder. He denied knowing, before receiving these documents through his MPIA requests, that Brewer had confessed to his involvement in street robberies at the time and that he had admitted to stealing the Mitsubishi. He did

[2] In its brief, the State asserts that McGinnis's trial counsel, Roland Walker, died in March 2013.

know, however, that Brewer was listed as a witness for the State, and he acknowledged that his defense counsel had interviewed Brewer and obtained an affidavit from him, which was not used because Brewer was not called to testify at trial.

The actual innocence court concluded that none of the above-referenced documents were "newly discovered." The court found that McGinnis's failure to recall having any conversations with his trial counsel about the documents and their content was "completely unreliable." As an example, the court noted that, although McGinnis alleged that he only learned about the fingerprint evidence years after his trial, the trial transcripts reflect that during defense counsel's cross-examination of Det. Akers on fingerprint evidence it was elicited that McGinnis's prints were not found on the victim's pager and neither his nor Bean's prints were found on the vehicles, even though prints suitable for comparison were found. Thus, it was "clear" to the actual innocence court that McGinnis's trial "counsel was well aware at the time of trial that the State had fingerprint evidence related to the case." Accordingly, the court found it is "certainly reasonable to infer that counsel was well aware of fingerprint *reports* summarizing the evidence."

The court was also not persuaded by McGinnis's claim that the police reports were "newly discovered" because, in the years following his trial, McGinnis had allegedly asked trial counsel to send him copies of his file and those police reports were not sent to him. The court noted that McGinnis had "failed to produce copies of his correspondence to trial counsel, and more importantly, he failed to produce copies of the documents forwarded to [him] from his counsel." Instead, he "only produced two letters from his trial counsel

listing mere descriptions of documents allegedly sent by counsel" and the "generic documents" listed by counsel "could have included the reports in dispute." [3]

Finally, the court rejected McGinnis's assertion that the police reports were "newly discovered" because trial counsel had not referred at trial to the reports or to information contained in the reports. The court found "that such a contention, made over 20 years after trial, is simply far too speculative." The court noted that "most of the information" in the documents "relates to statements and activity by an individual identified as Jerome Brewer," a person disclosed by the State in pretrial discovery as a potential State witness and someone McGinnis acknowledged that trial counsel had interviewed before trial. In short, the actual innocence court found that McGinnis "is simply asking the Court to guess as to what information trial counsel had before trial, and why trial counsel mentioned some facts, and not others, at trial."

In sum, as to the police reports, the court found that McGinnis failed to meet his burden that the documents were, in fact, "newly discovered" evidence.

The Testimony of Purell Curbeam

Purell Curbeam testified at the 2018 actual innocence hearing that at the time of the murder he was "around" 20 years old and lived at 1400 East Cold Spring Lane. When coming out of his house one night, he heard "some commotion" and "looked towards Rite Aid." There "was lots of arguing so" he "kept on walking" and then he "heard some shots"

[3] Counsel's letters describe some of the documents he was sending McGinnis as "Defendant's demand for discovery," "State's supplemental discovery" and "Supplemental Report."

and turned around. He testified that he saw "Kevin Carey and Jerome Brewer over at the Rite Aid" and when he heard the shots "Kevin Carey like ran towards the white car and Jerome was right like still there" so he (Curbeam) kept on walking. Curbeam testified that he knew Carey and Brewer from the neighborhood and they "was like the bad guys." Carey "was known for like knocking people out. You know, you mess with him you know he will knock you out."

Curbeam learned the next morning that somebody had been shot and later that the victim had died. He related that his "main thing," however, was to "stay unnoticed" and "stay out of it." The police did not interview him and he did not volunteer any information about what he had witnessed. He realized that he had information that could help solve the murder, but he "wasn't going to say anything and put [his] life in danger."

Curbeam later moved to Philadelphia, but the murder weighed on his "conscience for like a long time because" he "always knew what happened" but had "never said anything[.]" Then in 2015 or 2016, he saw a Facebook post about a "fundraiser" for McGinnis "trying to get him back in court." About this same time, he "so happened to run into" a relative of McGinnis's in Philadelphia. Curbeam told the relative that he "knew something" about the murder and he would "do whatever" he could "to help out." By then he had heard that both Kevin Carey and Jerome Brewer were deceased and, therefore, he knew he "was safe" and no one would "hurt" him for telling the truth about what he had witnessed.

The actual innocence court found that Curbeam's testimony was newly discovered because it did not appear that McGinnis knew or could have known about Curbeam in time

to move for a new trial. The court then turned to whether his testimony would have created a substantial or significant possibility that the result of McGinnis's trial may have been different. Noting that it had "the opportunity to observe Mr. Curbeam's demeanor and manner of testifying," the court found that "he was incredible" and, therefore, his testimony, if known at the time of trial, "would have had no probative value." The court further explained:

> The facts surrounding Curbeam's disclosure further bolster the Court's credibility findings. According to Curbeam's hearing testimony, at the time of Petitioner's trial, Curbeam allegedly had significant information which might have shown that the Petitioner had not participated in the murder. Curbeam was further aware that after trial, the Petitioner had been convicted of murder and sentenced to life. Curbeam allegedly did not come forward at the time of trial for fear of retribution by the individuals who supposedly committed the murder. Despite the fact that Curbeam testified that his knowledge about the murder weighed "on his conscience," that he had relocated to Philadelphia for many years, and that the perpetrators had been dead for years, Curbeam waited until 2015 or 2016, over *twenty-three years* later, to finally come forward. Further, the disclosure only came about after Curbeam just happened to run into Petitioner's relatives in Philadelphia. He allegedly told the family member at that time that he would finally "help out" the Petitioner. The Court finds that this sequence strains all credibility.

Concluding that Curbeam's "testimony has no probative value," the court found that McGinnis had failed to meet his burden of proof and, therefore, also denied "this claim" in support of his petition for actual innocence.

DISCUSSION

A 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. "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) 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.

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, 600-601 (1998); *see also* Rule 4-332(d)(6). As this Court explained in *Smith,* the

> 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)).

233 Md. App. at 416.

Standard of Review

"Generally, the standard of review when appellate courts consider the legal sufficiency of a petition for writ of actual innocence is *de novo.*" *Smallwood*, 451 Md. 308. "Courts reviewing actions taken by a circuit court after a hearing on a petition for writ of actual innocence limit their review, however, to whether the trial court abused its discretion." *Id.* at 308-09. *See also Jackson v. State*, 164 Md. App. 679, 712-13 (2005) ("Both evaluating the credibility of the [newly discovered] evidence, in the first place, and then weighing the significance of the evidence, in the second place, remain within the broad discretion of the trial judge[,]" thus the "ultimate review" by the appellate court of whether newly discovered evidence merits a new trial is "clearly under the abuse of discretion standard."), *cert. denied*, 390 Md. 501 (2006)). Under this standard, the appellate court "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." *Smith*, 233 Md. App. at 411-12 (quotation omitted). Factual findings made by the circuit court are given deference by the appellate court, unless they are clearly erroneous. *Yonga v. State*, 221 Md. App. 45, 95 (2015).

Analysis

McGinnis, representing himself in this appeal, asserts that the court erred in finding that the police reports were not newly discovered. The State disagrees, as do we. Simply put, based on the record before us, we cannot conclude that the factual findings made by the actual innocence court related to the documents were clearly erroneous. We agree that

the actual innocence court could only speculate as to whether defense counsel possessed the police reports at the time of trial – *or with an exercise of reasonable diligence could have obtained them in time to move for a new trial*. The court found McGinnis's testimony as to his recollection of what the defense had received in discovery was "completely unreliable" given his "alleged limited intellectual abilities" and that "he was only able to read at a very rudimentary level at that time" and, therefore, relied on his recollection of what he discussed with his now deceased attorney over twenty years ago. We also perceive no clear error in the court's finding that the post-trial letters from defense counsel to McGinnis generically describing documents he was sending from the attorney's file adequately demonstrate that the police reports at issue here were never known to the defense. And, as the court noted, prior to trial defense counsel was certainly aware that Jerome Brewer had some connection to the case, as McGinnis admitted that, after Brewer's name appeared on a list of State witnesses, defense counsel had interviewed Brewer and obtained his affidavit (the contents of which were not made known to the actual innocence court). Accordingly, we hold that the actual innocence court did not abuse its exercise of broad discretion in denying relief based on the police reports.

McGinnis also maintains that the court erred in concluding that Curbeam's testimony had no probative value. In short, the court emphatically found that Curbeam was not credible. As this Court stated in *Jackson*, *supra*, 164 Md. App. at 712-13, "[b]oth evaluating the credibility of the [newly discovered] evidence, in the first place, and then weighing the significance of the evidence, in the second place, remain within the broad discretion of the trial judge." We will not disturb the actual innocence court's credibility

determination in this case. Accordingly, we hold that the actual innocence court did not abuse its discretion in denying McGinnis's actual innocence claim based on Curbeam's testimony.

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