

IN THE CIRCUIT COURT FOR PRINCE GEORGE'S COUNTY, MARYLAND

JAMAAL GARVIN ALEXIS  
Petitioner,

Case Nos:

v.

CT080504X  
CT091040B

STATE OF MARYLAND  
Respondent.

STATEMENT OF REASONS AND ORDER OF COURT

This matter came before the Court for an in-person hearing on March 26, 2019, and a virtual further hearing on April 13, 2021, on Petitioner Jamaal Garvin Alexis's July 21, 2017, Petition for Writ of Actual Innocence and his March 17th, 2021, Supplemental Petition.<sup>1</sup> The State filed its opposition on March 22, 2018, and March 22, 2019. Counsel represented the Petitioner, and the State was also represented. After witness testimony and argument by counsel at the April 13, 2021 hearing, the Court took the matter under advisement.

On February 1, 2022, the Court issued a Statement of Reasons and Order of Court denying Petitioner's Petition for Writ of Actual Innocence. On February 9, 2022, Petitioner filed a Motion To Reconsider Order Denying Petition For Writ Of Actual Innocence. The Court held a hearing on Petitioner's reconsideration motion on March 29, 2022. At the hearing, the State orally opposed the motion. The Court allowed the State to file a written response to Petitioner's reconsideration motion. On April 8, 2022, the State filed its reply to Petitioner's motion. This Court granted Petitioner's motion to reconsider.

Upon consideration of the evidence and arguments of counsel, this Court grants Petitioner's Writ Of Actual Innocence for the reasons as more fully set forth below.

<sup>1</sup> Md. Code Crim. Proc. §8-301 and Md. Rule 4-332

## BACKGROUND

In March 2008, the State charged Petitioner with the 2006 murder of Raymond Brown and other related charges. In July 2009, the State charged Petitioner with the October 6, 2008, murder of Bobby Ennels and additional associated charges. The State anticipated that Ennels would testify against Petitioner in the Brown murder trial. Both murders were consolidated for trial.

Neiman Marcus Edmonds, a co-defendant of Petitioner in the Brown murder case, and other key state witnesses testified against Petitioner under cooperation agreements with the State.<sup>2</sup> State witness, Brian Barns was the only key state witness who did not have a written cooperation agreement with the State to testify against Petitioner.

Following a trial of the consolidated cases from October 4, 2010, to October 29, 2010, a jury in the Circuit Court for Prince George's County convicted Petitioner in case number CT08-0504X of second-degree murder and robbery with a dangerous weapon of Raymond Brown, use of a handgun in the commission of a crime of violence, common law conspiracy to commit theft over \$500, and two counts of theft over \$500. In case number CT09-1040B, the jury convicted Petitioner of solicitation to commit the murder of Bobby Ennels to prevent him from testifying in case number CT08-0504X and solicitation to commit the murder of Bobby Ennels in retaliation for testifying before the

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<sup>2</sup> Pursuant to a plea agreement with the State in the Brown murder, Co-defendant Neiman Edmonds pled guilty to two counts of theft over \$500 and one count of conspiracy to commit carjacking. Under that initial plea agreement, Edmonds faced a maximum 15 years incarceration with an agreed upon 5 years of executed time. Edmonds subsequent escape from home detention caused the State to withdraw the initial plea agreement. The State subsequently offered Edmonds a revised cooperation agreement. The revised agreement was the same as the initial agreement with an additional charge of second-degree escape added. Under the revised agreement, Edmonds faced a maximum jailable exposure of 63 years. T5, pp. 96-101. On cross examination, however, Edmonds admitted that his attorney was able to significantly "negotiate" the potential jail time he faced in the Brown murder and other pending cases for his testimony. T5, pp. 122- 129.

grand jury.<sup>3</sup>

Petitioner alleges that he is entitled to a new trial under §8-301 of the Criminal Procedure Article because federal sentencing benefits provided to State witnesses Brian Barnes and Neiman Edmonds were not disclosed to him or his counsel, who, despite due diligence, was unable to discover these benefits in time to request a new trial under Maryland Rule 4-331.<sup>4</sup>

### FACTUAL BACKGROUND<sup>5</sup>

#### 1. The Murder of Raymond Brown

On the morning of October 13th, 2006, the decedent, Raymond Brown,<sup>6</sup> and his wife were awakened by Mr. Brown's car alarm while in their home. Through a window, Mrs. Brown observed a tow truck towing away Mr. Brown's black Chrysler 300. The Browns got into Mrs. Brown's car and drove toward the entrance of their community, where they saw the tow truck with Mr. Brown's car attached. According to testimony, Mr. Brown approached the tow truck, and a man standing next to the tow truck ran away. Gunfire came from the driver's side of the tow truck. Mr. Brown fell to the ground, injured. The tow truck drove away with the Chrysler. Mr. Brown was taken to a local hospital, where he died due to a gunshot wound to his chest.

Later that day, law enforcement recovered the Chrysler and an abandoned, stolen Snatchman tow truck with a broken driver's side door window. The ignition of the tow

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<sup>3</sup> The relevant trial transcripts are cited as follows:

T1: October 4, 2010 (day 1 of trial before The Honorable C. Philip Nichols, Jr.)

T2: October 5, 2010 (day 2 of trial before The Honorable C. Philip Nichols, Jr.)

T3: October 6, 2010 (day 3 of trial before The Honorable C. Philip Nichols, Jr.)

<sup>4</sup> Supplemental Petition for Writ of Actual Innocence, p.5

<sup>5</sup> The Factual Background is taken, in part, from the opinion of the Court of Appeals, *Jamaal Alexis v. State*, 437 Md. 457 (2014) and the Court of Special Appeals Opinion, *Jamaal Alexis v. State*, 209 Md. App. 630 (2013).

<sup>6</sup> Raymond Brown is occasionally referred to as "Scotty Beats" in the trial transcripts.

truck was damaged, and a cartridge casing was found inside the truck's cabin. A fingerprint belonging to co-defendant Neiman Marcus Edmonds was recovered from the hood of the Chrysler. Mrs. Brown ultimately identified Edmonds from a photographic array as the man who had been standing next to the tow truck on the night of her deceased husband's shooting and ran. Mrs. Brown also told detectives that Mr. Brown's car was a black Chrysler 300, and when she retrieved the car from the police impound lot, the wheels were missing. The vehicle also had a broken driver's side window.

According to Edmonds and other State witnesses who testified at Petitioner's trial, Petitioner had a history of stealing cars using a Snatchman tow truck. He would strip the tires off the cars to sell the rims and then abandon the car. Some of the witnesses claimed that Petitioner admitted to shooting and killing Brown. Edmonds testified that Petitioner, Bobby Ennels, and he drove to Largo to steal a car in the late evening of October 12, 2006. Petitioner drove a stolen Snatchman tow truck. Ennels drove his vehicle with Edmonds asleep in the back seat. Petitioner backed the tow truck into the Browns' driveway, put the forks under the Chrysler 300, and picked it up. When Petitioner picked up the Chrysler, the car's alarm sounded. Petitioner drove the truck, with the vehicle attached, to the front of the community, where Ennels broke the Chrysler's door window on the driver's side and popped the hood so Edmonds could disable the alarm. As Edmonds disabled the alarm, another car approached. A man stepped out of the second car. Edmonds ran to Ennels's car. Edmonds testified that, as he ran to Ennels's car, he heard a "slight pow" and glass breaking. Ennels and Edmond drove to a previously agreed upon meet-up location, where they found Petitioner with the tow truck, which had a newly broken window, and the Chrysler attached. Edmonds asked Petitioner if the man in the second car shot at them; Petitioner did not reply.

The trio stripped the Chrysler of its tires, "wiped down" the car and the tow truck, and abandoned both vehicles. The next day, according to Edmond's testimony, Petitioner, Edmonds, and Ennels were at the house of State witness Brian Barnes when Petitioner told Edmonds that he shot Brown because he saw Brown get out of the car with something in his hand.

## 2. The Murder of Bobby Ennels

Two years after Raymond Brown's murder, Bobby Ennels and Anthony Cash were shot and killed on October 6, 2008. Ms. Frances Lammons was injured in the shooting. At trial, Edmonds testified that Ennels was present at Barnes's house on October 14, 2006, during the conversation in which Petitioner admitted to shooting Brown. According to Edmonds, this conversation led Ennels to "freak out," which, in turn, caused Petitioner to worry that Ennels might "snitch." Edmonds told the Petitioner that Ennels would not do that. Approximately one month later, Petitioner asked Edmonds if he thought he should kill Ennels if Ennels tried to snitch. Edmonds re-affirmed his confidence that Ennels would keep quiet. Nevertheless, Petitioner suggested that Edmonds get Ennels drunk one night and in a car, pull up to a stoplight, and let Petitioner "do the rest." Edmonds refused.

On October 3, 2008, while detained at the Prince George's County Detention Center, Petitioner called Deaundrey Shropshire, who was raised with the Petitioner's family and was the current roommate of Petitioner's brother, Rashadd. Petitioner asked him, "What's going on with my M?" Shropshire responded, "You still haven't told me what you want me to do with that [guy]?"<sup>7</sup>

According to State witness, Ms. Frances, Lammons, on October 6, 2008, Ennels,

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<sup>7</sup> At trial, the State introduced an audiotape of this call.

Anthony Cash, and Lammons drove to a location on Nalley Road in the County. Upon arrival, Ennels called someone and stated, "You all can come on down...." Approximately two minutes later, two men approached the car. Lammons testified that one man was "brown skin[ned with a] short haircut," and the second man was "brown skin[ned] with dreads." According to Lammons, Ennels told the men, "You all don't have to worry about nothing[;] It's okay. It's cool." At which point, the man with the short haircut shot Ennels. Ennels put the car into reverse and crashed into a tree upon being shot. Lammons and Cash got out of the vehicle and ran, and Lammons was shot in the elbow while fleeing.

Ennels was found dead in the driver's seat of the car, and Cash was found dead in the driveway of a nearby home at 406 Nalley Road. The day after the murder, law enforcement officers found a black skull cap at a neighboring house that contained a mixed DNA profile. Analysts determined that Petitioner's brother, Rashadd Alexis, was the major contributor to the DNA on the skullcap.

Officer Juan Nolasco testified that, on the morning of the Ennels-Cash murders, around 1:00 a.m., he observed two vehicles speeding from the area near Nalley Road where the bodies of Ennels and Cash were found. The Officer stopped one of the vehicles, a Buick Regal, registered to Shropshire. The driver of the stopped vehicle was Rashadd Alexis, who, according to Officer Nolasco, was very nervous and appeared to have blood on his shirt. Rashadd Alexis was released under an order from a detective at the shooting scene.

While Lammons was in the hospital, the Prince George's County Police Department showed her a photographic array. She selected a picture of state witness Brian Barnes as someone who looked familiar to her and as a person that "resembled" a man present at the Nalley Road shootings. Lammons was also shown a picture of Rashadd

Alexis but could not identify or recognize him.

As part of the double homicide investigation of Cash and Ennels, law enforcement officers discovered that the last call to Ennel's cellular phone before his murder was from a telephone number associated with a prepaid telephone purchased in Landover, approximately a mile from Rashadd Alexis's house. Phone records disclosed that only thirteen calls were made from this particular number. All thirteen calls were made to Ennels's cellular telephone between September 23, 2008, and October 7, 2008, the day of Ennels's murder. Additionally, law enforcement officers discovered that the calls utilized cellular telephone towers near Swan Terrace, where Rashadd Alexis's and Petitioner's aunt lived and a half a mile from where Rashadd's girlfriend lived.

At trial, the State requested and was granted permission to read Ennels's March 6, 2008, grand jury testimony over the defense's objection. Ennels told the grand jury that he and Edmonds saw Petitioner driving a "black tow truck" with a "black Chrysler" on the back of the tow truck in "Lake Arbor." Ennels stated that when he saw the Petitioner with the vehicle, the Petitioner "pulled up to the front of the neighborhood, and Edmonds got out of the vehicle. He "lifted the hood" and "disconnected the alarm." Ennels further testified that a car pulled up and a person gets out of the passenger side and "tries to run to the driver's side of the tow truck." Edmonds runs to Ennels car, gets into the car and Ennels and Edmonds "pull off." The three later met at Walker Mill Road, where the Chrysler's wheels were taken off. Ennels further testifies that Edmonds asks Petitioner about the broken tow truck window. Petitioner tells Edmonds that he shot through the window, but Petitioner did not know if he "hit the guy."<sup>8</sup>

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<sup>8</sup> T2: pp. 103-105.

Further, in his grand jury testimony, Ennels states that he saw Petitioner on October 14. He testified as follows:

THE STATE: So did here come a time the next day, on October 14<sup>th</sup>, that you saw Jamaal?

ENNELS: Yeah. I seen Jamaal and Nieman, 2—2 p.m., later on the afternoon.

THE STATE: That same day?

ENNELS: No, on the 14<sup>th</sup>. Yes.

THE STATE: Okay. And so what, if anything, did Jamaal tell you in reference to what happened the night before?

ENNELS: A guy named Brian pulled up the side and told him that he shot and killed somebody the night before, and when that conversation was over, Jamaal come to me one-on-one and told me that he shot the guy, but he didn't, he know he killed him. That he was going to get rid of the rim and the weapon.

THE STATE: Let me clarify this. You said that Jamaal and Brian were talking?

ENNELS: Yeah.

THE STATE: Okay. And Brian knew that Jamaal shot the guy from the night before?

ENNELS: Yes.

THE STATE: Okay. Then after that, Jamaal came and told you that he shot him?

ENNELS: Yeah. Yeah.

THE STATE: And he said he shot him through the window?

ENNELS: Yes, through the driver's window.

THE STATE: Of the tow truck?

ENNELS: Yeah.

T2, pp. 107-108.

As a witness for the State, Matthew Coppedge<sup>9</sup> testified that he had known Petitioner since 2002 and that, a few times, he and Petitioner stole "[r]ims" together using a Snatchman tow truck. According to Coppedge, with a Snatchman tow truck, a car can be towed without the driver getting out to chain the car to the truck. Coppedge testified that he heard of the death of "Scotty Beats" and telephoned Petitioner to ask "what he did." Later the same day, Coppedge met Petitioner in their neighborhood. Coppedge testified that Petitioner told him that he and Edmonds had been stealing a car in Largo, and Ennels acted as the lookout. While they were stealing the car, "somebody came out and was about to do something to [Edmonds]" so he (Petitioner) reacted. Coppedge testified that Petitioner said that he shot a man through the glass of the driver's side window of the tow truck and that he and Edmonds took the wheels off the vehicle and sold them for a thousand dollars.

State witness Brian Barnes testified that he had known Petitioner since high school and lived several houses away from Petitioner. According to Barnes, he and Petitioner had a history of stealing cars together.

Barnes testified that, in October 2006, he showed Petitioner the location of a Ford Snatchman tow truck. At approximately midnight on October 12, 2006, Barnes spoke to

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<sup>9</sup> Coppedge contacted the Prince George's Police Department to provide information for the Raymond Brown murder case in exchange for a reduction on a sentence he was serving in Virginia. At the time of his testimony, Coppedge had pending armed carjacking and related gun charges pending in Prince George's County. On cross-examination, Coppedge admitted that he would let the Court, presiding over the armed carjacking charges, know that he testified for the State in the murder of Raymond Brown. See, T2, pp.130--131.

Petitioner to "get" a car for him. Petitioner responded that he was busy and would call Barnes back later, but Petitioner failed to return Barnes's call. On October 13, 2006, Barnes heard that Raymond Brown had been killed and that the killing involved a tow truck.

At approximately 3:00 p.m., Barnes spoke with Petitioner and asked whether he killed Brown. Barnes testified that Petitioner told him that he had to kill Brown because "[the dude was going to kill [Edmonds]." Barnes testified that he had known Petitioner to carry various types of guns and that Petitioner's .40 caliber handgun was missing after Brown's murder.

### **3. Jalloh, the jailhouse informant.**

Amadu Sulamon Jalloh, an inmate with pending criminal charges, was incarcerated with Petitioner and Donnell Hunter (a/k/a "Fat Rat") at the Prince George's County Detention Center. Jalloh informed his attorney that he overheard conversations between Petitioner and Fat Rat regarding the murder of Brown and the potential killing of a witness. Jalloh's attorney arranged a meeting between Jalloh and an Assistant State's Attorney. According to Jalloh's grand jury testimony,<sup>10</sup> Petitioner confessed to him in jail that he murdered Brown. Moreover, Jalloh stated that, on one occasion, he heard Fat Rat tell Alexis that "the only way you can go home is to kill the witness." Jalloh also testified that after meeting with the Assistant State's Attorney, Petitioner told Jalloh that he was going home because "[his] brother got rid of the witness." According to Jalloh, Petitioner told him three people had been shot: two men were killed, and a girl was injured.

### **4. Petitioner's case**

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<sup>10</sup> Jalloh refused to testify at trial. The trial judge permitted the State to read his grand jury testimony aloud to the jury.

In his case, Petitioner called a Prince George's County police detective. The officer testified that Lammons picked a photo of Brian Barnes out of a photo book as the person that "resembled" a man present at the October 2008 murder of Ennels and Cash. The officer further testified that Lammons was shown a photograph of Rashadd Alexis, but she did not identify or recognize him.

An additional defense witness, Shropshire, testified that he was best friends with Rashadd and that they shared an apartment in 2008. Shropshire testified that he allowed Rashaad to use his 1999 Buick Regal for work on numerous occasions. He also testified that he saw Rashadd the day after Ennels was murdered, that Rashadd did not appear nervous or upset, and that he did not see bloody clothing or a gun in their apartment.

Finally, Petitioner testified. In essence, Petitioner stated that Barnes had framed him, that he was not present at the theft of Brown's vehicle, and that the other witnesses were lying. According to Petitioner, he and Barnes had a significant dispute in which Barnes believed that Petitioner had "shot up" his house, and after that, Barnes broke Petitioner's jaw. Petitioner testified that his truck had been stolen and believed Barnes was responsible for the theft. According to Petitioner, Barnes threatened that Petitioner would "catch a serious charge" if he reported the truck stolen.

To discredit Jalloh's testimony, Petitioner's counsel played taped conversations between Jalloh and his wife to challenge Jalloh's testimony at a pretrial motion hearing that he (Jalloh) had conversations with his wife concerning whether to come forward and testify against Petitioner.

## PERTINENT PROCEDURAL HISTORY<sup>11</sup>

On December 14, 2010, The Circuit Court sentenced Petitioner to a total of 140 years of incarceration as follows:

In CT080504X, second-degree murder of Raymond Brown – 30 years; use of a handgun in the commission of a crime of violence – 20 years, first five without parole; robbery with a dangerous weapon of Raymond Brown – 20 years; conspiracy to commit theft over \$500 – 15 years, theft over \$500 of Raymond Brown – merged; and theft over \$500 of Jevon Adams – 15 years.

In CT091040B, solicitation to induce false testimony – 20 years; solicitation to retaliate for testimony – 20 years. All sentences being consecutive.

On January 6, 2011, Petitioner filed a notice of appeal. On February 27, 2013, the Court of Special Appeals affirmed the judgment of the Circuit Court for Prince George's County. *Alexis v. State*, 209 Md. App. 630 (2013). The Court of Appeals granted certiorari and, on March 24th, 2014, affirmed the judgment of the Court of Special Appeals. *Alexis v. State*, 437 Md. 457 (2014). The Circuit Court received the mandate from the Court of Appeals affirming the decision of the Court to Special Appeals on June 7, 2014.

## DISCUSSION

A petitioner seeking to prevail on a Petition for Writ of Actual innocence has the burden of proving that newly discovered evidence: (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." *Smith v. State of Maryland*, 233 Md. App. 372 (2017).

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<sup>11</sup> The Procedural History is taken, in part, from Petitioner's brief from his appeal from the Circuit Court for Prince George's County and the Petitioner's Supplemental Petition for Writ of Actual Innocence.

Under Maryland law, newly discovered evidence is evidence that was not known to the petitioner at trial. *Hawes v. State*, 216 Md. App. 105, 132-133 (2014). Therefore, to prevail on a petition for writ of actual innocence, the petitioner must produce evidence that could not, with due diligence, have been discovered in time to move for a new trial under Maryland Rule 4-331. *Hunt v. State of Maryland*, 474 Md. 89 (2021). This requirement is "a threshold question." As such, "until 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.'" *Smith v. State*, 233 Md. App. 372, 416 (2017) (citing, *Argyrou v. State*, 349 Md. 587, 602 (1998)).

In his initial and supplemental petition for writ of actual innocence, Petitioner argues that State witnesses Brian Barnes and Neiman Edmonds<sup>12</sup> received federal sentencing benefits because of their testimony in Petitioner's murder trial. Petitioner alleges that the State did not disclose and/or misrepresented the sentencing benefits to Petitioner and his trial attorneys, in violation of *Brady v. Maryland*, 373 US. 83 (1963).<sup>13</sup>

The State, in its response opposition, denies that there was a *Brady* violation and further argues that even if there were a *Brady* violation, Petitioner could have, with due diligence, timely learned about Barnes's federal sentencing hearing pending in the United State District Court for the District of Maryland. The State argues that trial counsel's cross-examination of Barnes put Petitioner on notice of a future sentencing event in time

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<sup>12</sup> There was no evidence introduced at Petitioner's actual innocence hearing that Neiman Edmonds received any unknown "benefits" for his testimony in Petitioner's murder trial. Petitioner's Supplemental Petition for Writ of Actual Innocence indicates that part of Edmond's District of Columbia sentencing proceedings were sealed by the District of Columbia Superior Court. Petitioner filed a Motion to Unseal Transcript which, at the time of Petitioner's actual innocence hearing, had not been ruled upon. This Court will address Petitioner's Writ of Actual Innocence as it relates to Neiman Edmonds later in its discussion.

<sup>13</sup> Petitioner's Supplemental Petition for Writ of Actual Innocence at 9.

to file a motion for a new trial under Md. Rule 4-331(c).<sup>14</sup>

This Court finds, under the particular facts of this case, that the State violated *Brady*. The significant reduction in Barnes's federal sentence constitutes newly discovered impeachment evidence under *Brady*. The evidence was material to the impeachment of Brian Barnes, and its non-disclosure by the State prejudicially impacted the Petitioner. Accordingly, this Court grants Petitioner's Petition For Writ Of Actual Innocence for the reasons as more fully set forth below.

#### Newly Discovered Evidence

The due diligence requirement embodied in a writ of actual innocence petition filed under section 8-301 incorporates by reference the due diligence requirement of Rule 4-331(c). *Hunt v. State*, 474 Md. 89, 103 (2021). Our Maryland appellate courts look to decisions that interpret Rule 4-331 when deciding whether a trial court has abused its discretion when determining whether evidence is or is not newly discovered. *Id.*

Under Rule 4-331, a motion based upon 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).<sup>15</sup>

<sup>14</sup> State's Opposition to Petition for Writ of Actual Innocence at 2.

<sup>15</sup> In 2010, when Petitioner was tried, Maryland Rule 4-331 provided in relevant part:

- (a) **Within ten days of verdict.** –On motion of the defendant filed within ten days after a verdict, the court, in the interest of justice, may order a new trial.
- (b) **Revisory power.** The court has the revisory power and control over the judgment to set aside an unjust or improper verdict and grant a new trial:
  - (1) in the District Court, on motion filed within 90 days after its imposition of sentence if an appeal has not been perfected;
  - (2) in the circuit courts, on motion filed within 90 days after its imposition of sentence.

A review of the docket entries, in this case, shows that the Circuit Court received the mandate from the Court of Appeals affirming the Court of Special Appeals decision on June 7, 2014. Therefore, Petitioner must show that the newly discovered evidence (i.e., the federal sentencing benefits Barnes received) could not have been found before June 7, 2015.

The trial transcripts show that Petitioner's counsel extensively cross-examined Barnes on October 6, 2010. During Barnes's cross-examination, which comprises approximately one hundred one pages of transcribed testimony, trial counsel asked Barnes numerous times whether he was "cooperating with the State, cooperating with anybody, working out a preindictment plea with the U.S. Attorney's Office," and "working out a deal at the federal level." Tr. 3 at 26. The State, in response to this questioning, objected. The following discussion at the bench ensued:

THE COURT: What is going on?

THE STATE: There is no cooperation agreement. There has not been a cooperation agreement. Mr. Wood indicated that they are hoping to receive a benefit from his testimony; however, there is not [sic] cooperation agreement.

THE COURT: So you would agree there is a possible benefit?

THE STATE: Of course there is.

THE COURT: He can't ask the question to him?

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Thereafter, the court has revisory power and control over the judgment in case of fraud, mistake or irregularity.

(c) **Newly Discovered Evidence.** --- The court may grant a new trial of other appropriate relief on the ground of newly discovered evidence which could not have been discovered by due diligence in time to move for a new trial pursuant to section (a) of this Rule:

(1) on motion filed within one year after the date of the court imposed sentence or the date it received a mandate issued by the Court of Appeals or the Court of Special Appeals, whichever is later.

THE STATE: He can't ask the question to him. But getting into what his attorney is doing, I don't think—I mean, if he's looking for a benefit, he can ask the question are you looking to get a benefit from that cooperation.

DEFENSE COUNSEL: And, Your Honor, the way the feds work is they make you—because I do federal practice—you sit down for what are called debriefings, and then you try to work out a preindictment plea. He's facing three strikes, life without possibility of parole, and that is why he is dealing. Your Honor. He has a tremendous incentive to provide information because he's looking at life without. So I should be allowed to explore that.

THE STATE: He can ask the question was he hoping to get some benefit with his charges, but we didn't go into the nature of his charges.

THE COURT: I understand. There are charges pending and the door was opened. I think the door was opened when he walked into this courtroom in an orange jumpsuit with three deputy sheriffs in handcuffs. The jury knows there's an issue.

THE STATE: They know he's in jail.

THE COURT: Objection overruled.

DEFENSE COUNSEL: Thank you, Your Honor.

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Before the jury, the defense counsel continued with his cross-examination of Barnes as follows:

BY DEFENSE COUNSEL:

Q. Now, Mr. Barnes, you are hoping to get a benefit for yourself on your pending federal charges; isn't that true?

A. What do you mean "benefit"?

Q. Is it not true that you're facing life in jail without the possibility of parole for your pending charges?

A. That's what the State's Attorney told me in the federal system.

Q. And you had a detention hearing there; did you not?

A. Yes.

Q. And the U.S. Government established you had two prior felony convictions, didn't they?

A. Yes

Q. What are those two convictions?

A. Reckless endangerment and possession, simple possession of powder cocaine.

Q. Oh, that's not true, is it?

A. Oh, that is true.

Q. You don't have a conviction for possession with intent to distribute cocaine?

A. Yeah, but that wasn't the one they were trying to career criminal me on.

Q. Do you have –

A. I do have a possession with intent to distribute marijuana out of Anne Arundel County. It happened July 6<sup>th</sup>, 2006, sir.

Q. For which you pled guilty, didn't you?

A. Yes, sir.

Q. So in addition to the charges that they're trying to find you career criminal on, you got extra, including a possession with intent to distribute marijuana like you just told us about?

A. Yes

Q. So you would agree that if the feds push you all the way and you lose, you're

going down and you're going to spend the rest of your life in jail?

A. It's possible.

T3, pp. 25-30.

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It is clear from the defense counsel's cross-examination of Barnes that he knew of Barnes's pending federal charges. Given the defense counsel's knowledge, counsel could have requested the transcript of Barnes's federal sentencing any time after July 15, 2011.<sup>16</sup> In the actual innocence hearing, Petitioner put forth no evidence that Barnes sentencing proceedings, unlike a portion of Nieman Edmond's proceedings, were sealed or otherwise unavailable to trial counsel.<sup>17</sup> Petitioner introduced no evidence that his trial counsel sought to obtain Barnes's federal sentencing transcript after Barnes was sentenced but before June 7, 2015, the last day to file a motion for a new trial under Rule 4-331(c).

Under the totality of the circumstances, given the evidence mentioned above, this Court would ordinarily find that trial counsel could have discovered Barnes's significant sentence reduction in time to move for a new trial. See *Argyrou v. State*, 349 Md. 587, 605 (“[D]ue diligence’ contemplates that the defendant as reasonably and in good faith to obtain the evidence, in light of the totality of the circumstances and the facts known to him or her.”) But because the State, under the particular facts of this case, knew or should have known Barnes may receive a sentencing benefit, the State violated *Brady*. The fact that defense counsel could have, with due diligence, discovered

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<sup>16</sup> Barnes was sentenced in federal court on July 15, 2011.

<sup>17</sup> The transcript of Neiman Edmonds August 3, 2011 sentencing hearing, in the Superior Court for the District of Columbia, shows that a bench conference between the AUSA, the Edmond’s attorney and the sentencing judge was sealed.

the sentencing benefits in time to file a motion for a new trial does not absolve the State of its primary duty to disclose under Brady. *Smith v. State*, 233 Md.App. 372 (2017); *State v. Williams*, 392 Md. 194 (2006).

### *The State's Brady Violation*

A *Brady* violation is a constitutional claim based on the Due Process Clauses of the Fifth and Fourteenth Amendments. *United States v. Agurs*, 427 U.S. 97, 107 (1976). In *Brady*, the U.S. Supreme Court held that "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." *Brady*, 373 U.S. 83 at 87. The duty to disclose such evidence also applies whether or not there has been a request for such evidence by the accused. *United States v. Augurs*, 427 U.S. 97, 107 (1976). The duty and obligation of the State to disclose under *Brady* are continuous.<sup>18</sup>

There are three components of a *Brady* violation. First, the evidence at issue must be favorable to the accused because it is exculpatory or impeaching. Second, the State must have suppressed the evidence, either willfully or inadvertently; finally, the defendant must suffer prejudice. *Yearby v. State*, 414 Md. 708, 717 (2010) (citing *Strickler v. Greene*, 527 U.S. 263, 281-82 (1999)). The burden of production and persuasion regarding a *Brady* violation falls on the defendant. *Diallo v. State*, 413 Md. 678, 704 (2010).

In this case, Petitioner alleges that the State failed to disclose and/or misrepresented to Petitioner and his trial counsel the federal sentencing benefits State's

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<sup>18</sup> The principles established in *Brady* are incorporated into Md. Rule 4-263. Under this rule, the State also has a continuous duty to disclose exculpatory or impeachment evidence to the defense. Md. Rule 4-263(j)

witnesses Brian Barnes and Nieman Marcus subsequently received because of their testimony in Petitioner's murder trials. The benefits Barnes received, Petitioner argues, constitute impeachment evidence of Barnes's trial testimony that he did not have any cooperation agreements, nor was he seeking a benefit in the form of a reduced federal sentence with the State or anyone else for testifying.

It is undisputed that Barnes had no written cooperation agreement with the State to testify in the Petitioner's murder trials. The State told the trial court that Barnes's federal defense attorney "indicated that they are hoping to receive a benefit from his testimony; however, there is no cooperation agreement."<sup>19</sup>

During Petitioner's actual innocence hearing before this Court, the State, as they did at trial, acknowledged that there was a "possible benefit" for Barnes concerning his federal cases for testifying. Still, the State again maintained that it "never made a deal" with Barnes to testify, and the State "made no promises of what the State's actions would be if he testified,"<sup>20</sup> therefore, *Brady* was not violated.

Considering the totality of the evidence, this Court finds the State's position untenable. The trial transcripts show that nearly four years after Brown's murder, and after initially refusing to testify before the Prince George's County grand jury, Barnes testified. At that time, Barnes was incarcerated federally, pending indictment on

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<sup>19</sup> Tr. 3 at 27-28

<sup>20</sup> Wesley Adams, former Chief of the Homicide Division of the Prince George's County State's Attorney Office was the lead prosecutor in Petitioner's murder trials and testified during Petitioner's Actual Innocence hearing as a witness on behalf of the State. The recollection of Mr. Adams testimony at the actual innocence hearing is from the Court's notes. A transcript of the proceeding may yield words that are slightly different.

federal drug charges<sup>21</sup> and facing other state criminal charges.<sup>22</sup>

Barnes testified on the State's direct examination that he had no "agreements or cooperation" to testify for the "State or anyone."<sup>23</sup> But further into his direct testimony, Barnes admitted to contacting the Prince George's County Police regarding the murders. The following exchange is instructive:

STATE: Do you know somebody by the name of Bobby Ennels?

BARNES: Yes.

STATE: How do you know Mr. Ennels?

BARNES: He lived on the other side of the neighborhood.

THE STATE: And what, if any, relationship did you have with him?

BARNES: We were okay. We was good friends. Everybody was at one point.

THE STATE: And did there come a time when you didn't have such a good relationship with Bobby?

BARNES: Yes.

THE STATE: When was that?

BARNES: Around the time when he was telling everybody that I was agreeing to cooperate with the police or something.

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<sup>21</sup> Barnes testified that he went to his federal detention hearing on June 17, 2010. The detention hearing was for the drug charges that arose out of the incident where Prince George's County Police attempted to arrest Barnes on attempted murder charges. Barnes testified that when he went to the detention hearing the Judge asked "Are we still going through with the indictment on June 23? And Mr. Wood and Mr. Jim Crowell said, "No, Your Honor. We've both agreed to postpone the indictment 30 days." And that's all the knowledge I have about that." Tr. 3 at 30

<sup>22</sup> Barnes federal charges resulted from the Prince George's County Police Department's attempt to serve Barnes with an arrest warrant for attempted murder. Barnes fled and a police chase ensued where police officers fired at the fleeing vehicle. Barnes then broke to the home of a citizen in Prince George's County and barricaded himself inside the home. There was significant damage to the home during the incident. After a long standoff Barnes was arrested. In his vehicle, police found 171 grams of crack, 308 grams of hydrochloride, marijuana, \$12,000 in cash and a loaded .40 caliber semiautomatic handgun.

<sup>23</sup> Tr. 3 at 11-12

THE STATE: When did you start talking to the State?

BARNES: The first time, I believe, I was—I got locked up for fleeing and eluding. I think it was the last day in May.

THE STATE: What year?

BARNES: 2007, I believe.

THE STATE: And did there come a time when you came in—when you spoke to the State again?

BARNES: One time before that, I actually called up there on my own because me and the [Petitioner] had a falling out about something, and they transferred me and I talked to Detective Michael Olds. But at that time, I told him, you know, I know you all are investigating the murder that took place that day and that they was looking in the wrong place. I knew they was after the twins, Darnel and Ronnel. I told him you're looking in the wrong place. But at that particular time, I didn't give up any names of the alleged defendant.

THE STATE: Was that an anonymous [sic] where you did not provide any of your information?

BARNES: Yeah, I didn't provide nothing.

THE STATE: And that's when you called up on your own?

BARNES: Yeah.

THE STATE: And did there come a time when you came to the courthouse?

BARNES: To the courthouse? Up here?

THE STATE: Yes.

BARNES: To testify?

THE STATE: Yes. You were provided with a subpoena?

BARNES: That wasn't at the courthouse. That was in the Grand Jury place by the Wendy's on 301.

THE STATE: And did you actually testify there?

BARNES: No. I went off in there.

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On cross-examination, Barnes denied seeking any consideration for his testimony. Still, he indicated that he did mention to federal prosecutors that he had information about the murder, as illustrated by the following exchange:

DEFENSE COUNSEL: Now, as part of your cooperation with the feds, you mentioned your testimony in this case, didn't you?

BARNES: As part of my cooperation with the feds, I mentioned my testimony, no.

DEFENSE COUNSEL: No?

BARNES: I don't believe so. I may have told him like—I did tell him, when I spoke to him in that debriefing, that I had information on this case.

DEFENSE COUNSEL: So you are trying to use the information you have in this case to help you on your federal charges?

BARNES: No. They wanted drug information, but I told them that I had information. I knew about this.

DEFENSE COUNSEL: And would you agree that murder is a pretty important crime in our system of justice?

BARNES: Yeah, but the feds, its totally different.

DEFENSE COUNSEL: Oh the feds weren't interested in the murder information; they just wanted your drug sources?

BARNES: From what I perceived on their faces, yes.

DEFENSE COUNSEL: And they're only going to ask you a limited set of information about your drug sources, and you're not going to offer up this information here today and say, "I'm giving you guys a benefit. I want a benefit back?"

BARNES: No one has agreed to do anything for me.

DEFENSE COUNSEL: Because the game is not over yet. You still haven't even been indicted. You still have to go through the process, don't you?

BARNES: Yeah, you could say that.

DEFENSE COUNSEL: And did you agree to debrief or sit down with the government again?

BARNES: Again?

DEFENSE COUNSEL: Yes.

BARNES: No.

DEFENSE COUNSEL: Did you say you wouldn't?

BARNES: No one asked me if I would.

DEFENSE COUNSEL: But if another one was set up, you would do it because it's for your best interest?

BARNES: More than likely, yeah.<sup>24</sup>

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DEFENSE COUNSEL: Do you agree, as we sit here today, you are facing a very serious and possible life jail sentence in federal court?

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<sup>24</sup> T3 at 50-51

BARNES: Like I told you, I don't think I'm facing no life sentence. I'm not facing a life sentence.

DEFENSE COUNSEL: Then why are you cooperating today?

BARNES: Because I had a change of heart. When I got married, I looked at it like if somebody killed me, my wife would want somebody to step up to the plate.

DEFENSE COUNSEL: Now, this murder occurred in 2006. When did you marry your wife?

BARNES: 2008.

DEFENSE COUNSEL: And in 2008, did you reach out to Detective Olds or the head of homicide, Mr. Adams, and say I've had a change of heart, I want to give up a bad guy?

BARNES: Uh-uh.

DEFENSE COUNSEL: No. You waited until your butt was really in the grinder, and now you can sell your testimony to try to save your skin because you've got a wife?

BARNES: I didn't agree to nothing with nobody.<sup>25</sup>

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Throughout his testimony, Barnes denied cooperating with the state or that he had any desire to get a benefit for his testimony. He testified that he promised to tell the truth because he was a "God-fearing man." He further stated that he was not "looking at that much time" in the federal system.

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<sup>25</sup> Tr. 3 at 96-97

The facts, in this case, are analogous to *State v. Williams*, 392 Md. 194 (2006). *Williams* involved the State's appeal of the decision of the Court of Special Appeals reversing and remanding the Circuit Court of Baltimore City's denial of Williams' petition for post-conviction relief.

In *Williams*, the Court of Appeals was asked to determine whether the State's disclosure obligations under *Brady* and its application under Maryland Rule 4-263(g)<sup>26</sup> extend to other Assistant State's Attorneys within the same office. Chief Judge Robert M. Bell, writing for a unanimous court, held that, under the circumstances of the case, *Brady* did indeed "extend beyond the individual prosecutor, encompassing exculpatory or mitigating information known to any prosecutor in the office." *Id.* at 197.

Like this case, *Williams* involved a murder. The defendant, Tony Williams, was charged with and convicted of the murder of a woman. Critical testimony was given by State's witness, Sean Williams (S. Williams), who occupied a cell adjacent to the one the defendant occupied.

S. Williams testified that the defendant admitted to committing the murder and purchasing the murder weapon. The motive for the murder, according to S. Williams, was the defendant's desire to collect the proceeds of the life insurance policy that the defendant had taken out on the victim. S. Williams testified that he told homicide detectives this information, and he said he was promised nothing in exchange for the information and had not asked for anything. "In short, his testimony was being given "out of the goodness of his heart" and because he did not like guns and violence."

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<sup>26</sup> At the time *Williams* was decided, Maryland Rule 4-263(g) provided: "Obligations of the State's Attorney. The obligations of the State's Attorney under this Rule extend to material and information in the possession of control of the State's Attorney and staff members and any others who have participated in the investigation or evaluation of the action and who either regularly report, or with reference to the particular action have reported, to the office of the State's Attorney."

*Williams*, 392 Md. at 199-200.

The Assistant State's Attorney who prosecuted the case was unaware that S. Williams was a paid and registered police informant for the Baltimore City Police Department for at least ten years. He had cooperated with the State's Attorney's Office in several cases, which led to several arrests. S. Williams's informant status was known to at least one member of the Baltimore City State's Attorney's Office and, more extensively, to the Baltimore City Police Department members. *Id.* at 200.

Contrary to S. Williams's trial testimony, evidence was discovered after the defendant was convicted that S. Williams, the State's key witness, actively sought consideration for his cooperation as an informant in the past and present. He touted his cooperation with homicide detectives and specifically mentioned that he told homicide detectives "very important things in cases that are to be tried [sic] soon." He sent two letters, after defendant's trial, to his sentencing judge. He mentioned that he was a "key witness" in the defendant's trial and that he had just testified and mentioned the name of a Baltimore City Police Officer to whom he gave his information. *Id.* at 201-202.

The sentencing judge sent copies of the letters to "the State's Attorney's Office" and told S. Williams "[to] have [his] attorney or the Detective contact this office to inform the Judge of any help you are giving him." *Id.* at 202.

Upon learning this information, the defendant filed a post-conviction petition in Baltimore City Circuit Court based upon newly discovered evidence. In his post-conviction, the defendant alleged that the State failed to disclose impeachment information regarding S. Williams, "its primary and star witness." He argued that his cross-examination of S. Williams at trial was severely and prejudicially weakened

without this information. The Baltimore City Circuit Court denied his post-conviction petition, and the defendant appealed.

At the Court of Special Appeals, the defendant conceded that the Assistant State's Attorney who prosecuted the case was unaware of the impeachment evidence. Still, he argued that under *Brady*, the obligation to disclose information relating to the credibility of a witness extended beyond the knowledge of a particular prosecutor to all of that prosecutor's colleagues within the same office. Thus, the defendant argued that because S. Williams was the State's critical witness, [the State] should at the very least be required to perform due diligence within the same prosecutor's office to verify such claims. *Id.* at 203. He further argued that S. Williams's testimony was material because there was a lack of forensic evidence linking the defendant to the crime, and the rest of the State's case was circumstantial. Finally, he stated there was a "reasonable probability that the verdict would have been different if S. William's status as an informant had been disclosed." *Id.* at 203.

The State agreed with the limited reading of *Brady* articulated by the post-conviction court. The State further argued that "S. Williams's information was not material since his credibility was sufficiently attacked on cross-examination." *Id.* at 204.

In ruling for the defendant, the Court of Special Appeals first established that under *Giglio v. United States*, 405 U.S. 150 (1972), "when the reliability of a State's witness is determinative of the defendant's guilt or innocence, the State's failure to disclose impeachment evidence falls within *Brady*." The Court of Special Appeals reasoned that "*Giglio* required that the prosecutor's office [be treated as] an entity and as such it is the spokesman for the Government. A promise made by one attorney must be attributed, for these purposes, to the Government." *State v. Williams*, 392 Md. 194,

204 (2006), *citing Williams v. State*, 152 Md. App. 200, 224 (2003), *quoting Giglio v. United States*, 405 U.S. 150, 154 (1972). Therefore, the Court of Special Appeals found, from the evidence, that the State's Attorney's Office "had been put on notice" that S. Williams was seeking a reward in exchange for his testimony. The Court of Special Appeals reasoned that "although the prosecutor did not know that S. Williams was a paid informant, it was significant that she did know that he was an incarcerated man coming forward 'out of the goodness of his heart.' That knowledge should [have] give[n] even the most unseasoned prosecutor pause as to the informant's true motives." *Williams*, 392 Md. at 205, *quoting Williams*, 152 Md. App. at 224.

The State petitioned for a writ of certiorari. The Court of Appeals affirmed the decision of the Court of Special Appeals, holding that "the State's duty and obligation to disclose exculpatory and mitigating material and information to the defense extended beyond the individual prosecutor assigned to the case and encompassed information known to any prosecutor working in the office." *Williams*, 392 Md. at 201. The Court additionally held that "defendant's duty to investigate the criminal background of a State witness to discover impeachment information did not relieve the State of its duty to disclose exculpatory evidence under *Brady* and the rules of procedure; and information that a State's witness was a paid informant for the police was material to the impeachment of the witness...and therefore the State's failure to disclose the exculpatory information violated *Brady* and mandated reversal." *Id.* at 226-227; *See also, Smith v. State*, 233 Md. App. 372 (2017) (holding that the due diligence requirement in CP § 8-301 does not encompass a requirement that a defendant file a MPIA request with the police or other agency that reports to the prosecutor, seeking information that the State is required to disclose pursuant to *Brady* and Rule 4-263).

To be sure, the facts in *Williams* are analogous to the instant case with one significant difference; the sentencing benefit Barnes received for testifying against Petitioner was known to a federal prosecutor who is outside the Prince George's County States Attorney's Office. However, this Court finds that fact should not change the analysis because the Court of Appeals and Court of Special Appeals decision in *Williams* turned on the issue of knowledge. In other words, what the State knew or should have known under the circumstances. The Court of Appeals in *Williams*, citing *People v. Robinson*, 157 Ill.2d 68, 191 Ill. Dec. 107, 623 N.E. 2d 352, 358 (1993) stated:

“[We] believe that the imputation of such knowledge to the prosecution requires an individualized focus on the factual circumstances. Among the factors to be considered would be the reasonableness of such imputation, whether the failure to transmit such knowledge up the informational chain was inadvertent or intentional and whether any real prejudice occurred.”

*Williams*, 392 Md. at 219.

The circumstances, in this case, are that the State knew, when it contacted the federal prosecutor seeking Barnes's cooperation, that he had been arrested on federal charges.<sup>27</sup> After that, Barnes's federal indictment was “put off” for 30 days, allowing Barnes to testify for the State before being federally indicted.<sup>28</sup> Most notably was the federal prosecutor's call to the State after Barnes testified, but before his federal sentencing, to see how Barnes performed at trial. This fact alone should have put the State on, at the very least, inquiry notice that Barnes may receive a federal sentencing benefit for his cooperation and testimony in Petitioner's trials. Finally, Barnes received a significant benefit for his testimony. As the federal judge noted during the sentencing

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<sup>27</sup> Barnes was arrested on federal charges on June 9, 2010. United States of America v. Brian Donnell Barnes RWT-10-727, Sentencing Proceedings Friday July 15, 2011 at 51

<sup>28</sup> Tr. 3 at 51

hearing, absent a motion by the government for a reduction in sentence, Barnes was facing a significant federal sentence. Barnes faced two different mandatory minimum sentences, according to the federal sentencing transcript. One hundred twenty (120) months on Count One of the federal indictments and sixty (60) months consecutive on Count Two of the indictment.<sup>29</sup> However, the AUSA, in support of his motion under section 5K1.1 to reduce Barnes's sentence, stated:

[The] Prince George's County State's Attorney's office contacted my office and let the government know that they had a high-profile murder case going to trial; it was an important case to the State's Attorney's office in Upper Marlboro and they needed this defendant to testify. He had previously testified in earlier proceedings, and they needed him for this trial. They asked. I agreed and allowed this defendant to be taken down to Upper Marlboro to so testify. He did. He testified. As I understand from the State's Attorney's office, [Barnes] did very well. In fact, they described him as a critical—a 'but for' witness in the conviction of this other violent individual in Upper Marlboro.

It's not usual that we credit cooperation that happens not here in this courthouse, but in this case it's important what he did, what he was willing to do. It was important cooperation, and it very much assisted the State's Attorney's office. And because of that, the government agrees to make its 5K.

The number of the 5K, even if that had occurred here in this courthouse, would typically be two. *However, I've spoken with the State's Attorney's office. And because of how strongly they describe this defendant's testimony, the critical "but for" nature of how they described it, the government here asks for four levels. And I make that four level 5K recognizing it is aberrant. We don't usually ask for the four level 5K for outside the case cooperation. So I'm asking for that four level 5K.*<sup>30</sup>

(Emphasis added)

As a result, Barnes, who was 27 years old, was sentenced to nine years<sup>31</sup> on his federal

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<sup>29</sup> United States of America v. Brian Donnell Barnes RWT-10-727, Sentencing Proceedings Friday July 15, 2011 at 4.

<sup>30</sup> Sentencing proceedings in United State of America v. Brian Donnell Barnes, RWT-10-727, July 2011 at 7-8.

<sup>31</sup> The federal court, in rendering its sentence stated: "In determining whether to grant a motion for downward departure under 5K1.1, the guidelines give me some instructions on how to apply that. I'm

charges six months after Petitioner's sentencing in state court.<sup>32</sup>

Because the State knew or reasonably should have known that Barnes may receive a reduction in his federal sentence, based upon the inquiry from the federal prosecutor, the State had a duty under *Brady* to determine those benefits and disclose them to Petitioner and his counsel. Because the State failed to do so, it violated *Brady* undermining Petitioner's right to a fair trial. The fact that Petitioner's trial counsel could have, with due diligence, discovered the evidence in time to file a motion for a new trial under Md. Rule 4-331(c) does not absolve the State of its primary duty to disclose under *Brady*. *Smith*, 223 Md.App. 233 at 419-424. *See also State v. Williams*, 392 Md. 194 (2006) (holding that a defendant's duty to investigate the criminal background of a State witness to discover impeachment information does not relieve the State of its duty to disclose exculpatory evidence under *Brady* and the rules of procedure).

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required to evaluate the significance and usefulness of his assistance, taking into account the government's evaluation of the assistance rendered. In this case, I am not in a position to assess the value of the assistance to the same degree that I would had he been a witness testifying in a case in front of me. Nevertheless, it is obvious that his assistance was of great assistance to the authorities in Prince George's County. The government has credited that as being highly useful and has recommended a downward departure of four levels, which is twice the amount the government at least this office's policy of giving two levels for cooperation in the case and two levels outside the case. This was a purely outside the case cooperation, and the government has recommended twice the level it ordinarily recommends in such cases." United States of America v. Brian Donnell Barnes RWT-10-727, Sentencing Proceedings Friday July 15, 2011 at 43-44.

<sup>32</sup> After allocution by Mr. Wood to further reduce Barnes federal sentence, but prior to the federal court sentencing Barnes, the AUSA stated the following: "Judge one of the issues that Mr. Wood and Mr. Barnes have raised is his future are his personal characteristics. That's one of the six or seven factors under 3553(a). The other factors must be considered. And frankly, all of them weigh in favor of a very significant sentence in this case. We look at the nature and circumstances of the offense. You have a drug dealer with a .40 Caliber loaded handgun running from the police because they're trying to arrest him for attempted murder. He get in the car and takes off in such a way that the police officers are forced to fire at the fleeing vehicle. He then barricades himself into a civilian's home. He breaks into that home. And I'll articulate to the Court that he caused thousands of dollars worth of damage to that house. He gets in. And then only after they finally get him out and place him under arrest, that's extremely serious in and of itself. Then we look at the nature of the defendant's prior criminal conduct. Mr. Wood is correct: He is young. He's 27 years old. If we look at what he has done from age 18 to 27, he has 11 separate convictions for serious crimes. Eleven convictions. He also has 18 separate charges that have either been nollied or steted. Judge, that's 29 different charges in the span of ages 18 to 27, plus whatever led to the attempted murder charge, plus the events that bring us here today." United States of America v. Brian Donnell Barnes RWT-10-727, Sentencing Proceedings Friday July 15, 2011 at 32-33.

The sentencing benefits Barnes received as a direct result of his cooperation and testimony in Petitioner's murder trials was favorable impeachment evidence for Petitioner to use. The State did not disclose the evidence when they knew or reasonably should have known under the circumstances that it existed. Barnes's testimony was the critical "but for" testimony that state prosecutors felt secured Petitioner's conviction. Other witnesses testified that Petitioner admitted to or committed the Brown murder and, in the case of the Ennels murder, directed that Ennels be killed. However, all critical state witness testimony, except Barnes, was secured under cooperation agreements, or the witness was linked to the crime by physical or forensic evidence. Barnes's testimony was portrayed to the jury as being given because he had "a change of heart." This Court notes that there was no physical evidence linking Petitioner to the murder of Raymond Brown or Bobby Ennels. A jury, aware of the significant sentencing benefits given to Barnes, could reasonably give less or no weight to his testimony. For these reasons, Petitioner suffered prejudice because its non-disclosure undermined Petitioner's right to a fair trial.

This Court finds that Barnes's significant reduction in his federal sentence is newly discovered evidence under §8-301 of the Criminal Procedure Article. However, to prevail on his writ of actual innocence, Petitioner still has the burden of proving that the newly discovered evidence "speaks to" his actual innocence and that there is a substantial possibility of a different result.

### Actual Innocence

To prevail on a petition for writ of actual innocence, a petitioner must prove that the newly discovered evidence “speaks to” the petitioner’s actual innocence. *Smith v. State*, 233 Md.App. 372 (2017). There is no requirement that the newly discovered evidence definitively exonerate the petitioner. It is sufficient that the evidence could support a claim that the petitioner did not commit the crime for which he or she is charged. *Id.* at 412-413.

Petitioner’s case theory was that he was “framed” by Barnes and the other witnesses were “lying.” Raymond Brown’s murder was a difficult case to prosecute. At Barnes’s sentencing, Barnes’s federal defense attorney stated that “the State struggled to solve and struggled to prosecute” the case.<sup>33</sup> Further, Petitioner testified that although Petitioner and Barnes were once friends, he and Barnes were “not on good terms.” Barnes’s home was “shot up,” and there was testimony that Barnes suspected that Petitioner was involved.<sup>34</sup> Additionally, Petitioner’s vehicle was stolen, and the Petitioner suspected Barnes. According to the Petitioner, Barnes threatened the Petitioner, saying he “would catch a serious charge” if he reported the truck stolen.<sup>35</sup>

Barnes repeatedly testified that he was not seeking or receiving a benefit for his testimony. As mentioned *supra*, witnesses other than Barnes and Edmonds testified that Petitioner admitted to the killing of Raymond Brown. Still, those witnesses admittedly were testifying under patent cooperation agreements negotiated by the State. Barnes had

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<sup>33</sup> Wood further told the federal court that “[w]hat happened for the longest time was the State could not get any cooperation from anyone. They had suspects. They talked to people. Mr. Barnes had never testified in any other prior proceedings. I think he talked to the police early on, but the State could not get any—make any progress in the case.” Sentencing proceedings in *United State of America v. Brian Donnell Barnes*, RWT-10-727, July 2011 at 16.

<sup>34</sup> Tr.13, pp. 99-101

<sup>35</sup> Tr. 14, pp. 13-14

no written agreement with the State. According to the State, Barnes's testimony was crucial in securing Petitioner's conviction. The Petitioner testified and put forth his defense that Barnes was framing him for alleged past wrongs. There was no physical or forensic evidence linking Petitioner to the two murders. Accordingly, this Court finds that these particular circumstances could support a claim that Petitioner did not commit the crimes for which he was charged.

#### Substantial Possibility Of A Different Result

In *Hunt v. State*, 474 Md. 89 (2021), the Court found that “weighing the effect of newly discovered evidence in an actual innocence proceeding involves substantially the same inquiry as determining prejudice in the context of an ineffective assistance claim or assessing whether *Brady* evidence is material.” With that in mind, the significance of Barnes's testimony in securing the Petitioner's conviction was extensively discussed before the federal court reduced Barnes's sentence. The State felt that, “but for” Barnes's testimony, the Petitioner may not have been convicted. All other critical witnesses, except Barnes, testified under cooperation agreements. Physical evidence, in the form of a fingerprint and identification by Raymond Brown's wife, bound Neiman Edmonds to the murder of Raymond Brown. There was no physical or forensic evidence linking Petitioner to the murder of Raymond Brown or Bobby Ennels. Barnes's testimony was the only testimony presented that did not carry the barnacle of the State's grant of leniency for its witness testimony. Accordingly, this Court finds that Petitioner has met his burden establishing that there is a substantial or significant possibility that the result may have been different had the State upheld its duty under *Brady* to disclose the impeachment evidence.

Petitioner's Allegations regarding Neiman Edmonds

Petitioner fails to meet his burden regarding the alleged sentencing benefits for witness Neiman Edmonds. Petitioner presented little to no evidence of Edmond's "potential" federal sentencing benefits at the actual innocence hearing.

Conclusion

Accordingly, this Court grants Petitioner's Petition for Writ of Actual Innocence for the reasons mentioned.

IN THE CIRCUIT COURT FOR PRINCE GEORGE'S COUNTY, MARYLAND

JAMAAL GARVIN ALEXIS  
Petitioner,

v.


STATE OF MARYLAND  
Respondent.

CASE NO:  
CT080504X  
CT091040B

ORDER OF COURT

For the reasons as stated in the Court's Statement of Reasons, it is hereby on this 21 day of June, 2022, by the Circuit Court for Prince George's County, Maryland,

**ORDERED**, that the Writ of Actual Innocence filed by Petitioner, Jamaal Alexis, be and hereby is **GRANTED**.

  
Judge Krystal Q. Alves  
7th Judicial Circuit

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