Circuit Court for Baltimore City
Case No. 117024024

UNREPORTED*

IN THE APPELLATE COURT

OF MARYLAND

No. 1914

September Term, 2023

ALVIN SPRIGGS

v.

STATE OF MARYLAND

Berger,
Nazarian,
Ripken,

JJ.

Opinion by Berger, J.

Filed: January 13, 2025

* This is an unreported opinion. This opinion may not be cited as precedent within the rule of stare decisis. It may be cited for its persuasive value only if the citation conforms with Rule 1-104(a)(2)(B). Md. Rule 1-104.

Following a jury trial in the Circuit Court for Baltimore City, Alvin Spriggs ("Spriggs"), appellant, was convicted of first-degree murder, use of a firearm in the commission of a crime of violence, and possession of a regulated firearm by a person with a disqualifying conviction. He was sentenced to life imprisonment plus fifteen years.[1] Spriggs filed a notice of appeal, and this Court affirmed his convictions in an unreported opinion. *See Spriggs v. State*, No. 1171, Sept. Term, 2017, 2019 WL 2406973 (Md. App. Jun. 7, 2019).

On October 19, 2020, Spriggs filed a *pro se* petition for post-conviction relief. On November 10, 2022, he filed through counsel an amended petition for post-conviction relief to replace the *pro se* petition. A post-conviction hearing was held on February 10, 2023. On April 14, 2023, the post-conviction court issued a Statement of Reasons and Order of the Court granting Spriggs a new sentencing hearing and denying all other relief. Spriggs now challenges the court's denial of post-conviction relief. On appeal, Spriggs presents three questions for our review, which we rephrase slightly as follows:[2]

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[1] Spriggs was sentenced to life imprisonment for first-degree murder, with ten years to be served consecutively for use of a firearm in the commission of a crime of violence, the first five years without parole, and another five years without parole to be served consecutively for possession of a regulation firearm by a prohibited person.

[2] Spriggs phrased his original questions presented as follows:

I. Whether defense counsel provided ineffective assistance by failing to request a mistrial or curative instruction following testimony and argument from the State indicating that witness Jerrie McKinney did not receive a benefit for changing her account of events or testifying at trial.

II. Whether the State violated *Brady v. Maryland* by failing to disclose the details of its relocation agreement with defense counsel before trial.

III. Whether defense counsel provided ineffective assistance by failing to request the details of McKinney's relocation agreement before trial.

For the reasons explained herein, we shall affirm.

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1. Did the post-conviction court err in holding that relocation expenses paid on behalf of a State's witness were not a "benefit" and that defense counsel therefore did not have viable grounds to request a mistrial (a) when the State elicited that a witness had not received "any sort of benefit" or (b) when the State told the jury in closing argument that the witness "got no benefit from coming to court to testify?"

2. Did the post-conviction court err in finding no *Brady* violation where the State did not disclose details of how much, and when, it compensated a witness for her relocation expenses?

3. Did the post-conviction court err in finding that defense counsel had no[t] rendered ineffective assistance in not seeking detailed information on the State's agreement to compensate its witness for relocation expenses?

FACTS AND PROCEDURAL HISTORY

The Crime

Spriggs was arrested on December 28, 2016, following an incident in Baltimore City. This Court set forth the following facts in an unreported opinion affirming his convictions:

> On the afternoon of July 24, 2016, Todd Dillard, Jr. walked out of Soul Source, a restaurant on Edmondson Avenue in Baltimore City, crossed the intersection, and walked up North Pulaski Street. Jerrie McKinney, an acquaintance of Dillard, was waiting for her take-out order in a white sedan parked on Edmonson Avenue. McKinney heard gunfire, and Kesha Hannah, who was driving the vehicle, pulled onto Edmondson Avenue and turned left on North Pulaski Street. As they turned the corner, McKinney saw that Dillard was being chased by a man holding a gun. When Dillard fell to the ground, the man stood over him and shot him. Hannah, who had been driving slowly up North Pulaski Street, turned left onto Harlem Avenue. The gunman then entered Hannah's vehicle on the rear passenger side. McKinney identified [Spriggs], whom she had seen around the neighborhood, as the man that she saw shoot Dillard and then enter Hannah's car.
>
> Hannah circled the block and proceeded up North Pulaski Street again, and McKinney exited the vehicle to check on Dillard. According to McKinney, Hannah drove away with appellant, but returned to North Pulaski Street approximately ninety seconds later. When McKinney entered the vehicle, she saw that appellant was no longer in the back seat. Hannah and McKinney then left the scene.
>
> McKinney's testimony was corroborated by Shadae Artson, who witnessed the shooting through the basement window of her home on North Pulaski Street. Artson was identified as an eyewitness by Baltimore City police, and in December 2016, she identified [Spriggs] as the gunman in a photographic array. She also provided a videotaped statement to police investigators. Taurean Shannon, who also lived on North

> Pulaski Street, testified that he saw a "red shirt" run past his front window and jump into a white car. The car drove toward Harlem Avenue.
>
> The State also introduced into evidence surveillance camera footage from the restaurant that showed Hannah parking a white sedan on Edmondson Avenue before she and McKinney entered Soul Source. Exterior camera footage showed Dillard leaving the restaurant, and a white sedan driving through the intersection of Edmondson Avenue and North Pulaski Street several times.

The Relocation Agreement

Jerrie McKinney ("McKinney") was one of the State's two primary identifying witnesses. In the events leading up to Spriggs' arrest, detectives interviewed McKinney in November and December 2016. During her December 21, 2016 interview, she positively identified Spriggs as the shooter in this crime. Spriggs was arrested a few days after this identification. Following his arrest, according to McKinney, Spriggs' co-defendant and her attorney began contacting McKinney to ask her what she had told the police. Fearing for her safety, McKinney contacted the detectives and ultimately entered into a relocation agreement with the State on January 27, 2017.

As part of the relocation agreement, the State agreed to assist McKinney with expenses for a U-Haul flatbed rental truck, gas reimbursement, a one-night hotel stay for not more than $125, and $300 towards rent. The majority of the expenses ($839.77) were paid to McKinney's uncle who had covered the cost of the U-Haul, gas, and hotel stay while transporting McKinney to the home of an out-of-state relative. The remaining $300

was paid to cover a utility bill for the relative with whom McKinney was staying. That amount was paid directly to the power company.

The day before the trial began, the State informed defense counsel of this agreement and requested a postponement to allow sufficient time to bring McKinney back to Baltimore to testify and to ensure that defense counsel was aware of all the State's evidence. Defense counsel opposed the postponement, and the case proceeded to trial. The State, however, did not provide defense counsel with the details of the agreement, including receipts or specific dollar amounts and distributions. Defense counsel did not request additional details surrounding the agreement.

The Trial

During trial, McKinney testified to the facts as laid out above. This account was not, however, the only version of the story she had told. A great deal of McKinney's trial testimony, both on direct and cross examination, concerned her evolving version of events. McKinney testified that when first questioned by police in November 2016, she told them she had seen nothing. When pressed, she admitted she had been present and knew a shooting had occurred, but that she did not see what happened. She testified that she said this because she did not want to "be in a position like this."

McKinney then testified that in December 2016, a detective came to her home and brought her to the station for further questioning. During this interview, the detective informed McKinney that police had a video of the incident. McKinney testified that this information caused her to change her previous account. This time, McKinney told police

that she had seen Spriggs shoot the victim. He then got into the car McKinney was sitting in with Kesha Hannah, and McKinney jumped out. At trial, McKinney testified that, rather than immediately getting out of the car, she waited until the car came back around the block to the crime scene, at which point she got out to check on the victim. She then got back into Hannah's car, which Spriggs had exited, and returned home.

This focus on McKinney's different accounts was threaded throughout the entirety of her trial testimony. Even after the initial narrative was established, both parties repeatedly returned to the issue. During recross-examination, defense counsel focused on the changing details of McKinney's account of when and where she exited the vehicle, concluding, "[s]o that's four different version as to the scenario about the car going down . . . is that right? Four different stories?" On redirect examination, the State addressed McKinney's differing testimony again, in the following exchange:

> [STATE]: Ms. McKinney, you told one version in November, one version in December and - -
>
> [DEFENSE]: Objection.
>
> [STATE]: - - and now today.
>
> [MCKINNEY]: Correct.
>
> [COURT]: This is the question - -
>
> [DEFENSE]: No, I understand, except the way she's phrasing it.
>
> [COURT]: I'll allow the question.
>
> [DEFENSE]: It's inaccurate.

> [COURT]: A version in November, a version in December, and now. Now, what's - -
>
> *[STATE]: Are you telling the truth today?*
>
> *[MCKINNEY]: Yes.*
>
> *[STATE]: Did you receive any sort of benefit to change your memory of what happened?*
>
> *[MCKINNEY]: No.*

Despite knowledge of the relocation agreement, defense counsel did not object to this question or address the issue of a benefit during his redirect examination. Instead, counsel used the time to again clarify that McKinney had told not one but two different stories during her November interview with detectives.

In closing argument, the State explained at length that McKinney's changing story was the product of "self-preservation," driven first by a desire to avoid being a witness in a murder case and later -- when it became clear detectives had the incident on videotape -- to clarify her limited role in the event. For clarity of context, the portion of the State's closing argument on this point is reproduced below:

> . . . Jerrie McKinney did not talk to the police that day, she didn't call 9-1-1, she didn't stick around to tell them what she saw. She didn't talk to the police until the police came to her. That doesn't make her a liar, it sort of makes her a typical Baltimore citizen . . . She went into self-preservation mode. The police were looking for her now, the police brought her down in November and she told them yes, she was there but when she got there, Todd was shot, she got out and helped him, she got back into the car with Kesha and she left. She didn't tell them that she wasn't there, she didn't tell them that Kesha Hannah wasn't driving the car, she just left out that she actually

> witnessed the murder because she did not want to be a witness to a murder.
>
> But when confronted with the fact that she was in fact an irrefutable witness to a murder in December when [the detective] brought her back in, he said we know, we know you witnessed this murder. How involved were you in the planning of this murder, because we know that you witnessed it. We have proof that you witnessed it, is what [the detective] told her, we have video evidence that you were there for this murder. Self-preservation changed. It was [not] only I don't want to be a witness to a murder, it was I had nothing to do with this murder so let me tell you what I know. And what she knew, what Jerrie McKinney had always known, was that Kesha Hannah was driving the car as it turned onto Pulaski Street towards Alvin Spriggs as Alvin Spriggs killed Todd Dillard. That's what she's always known.
>
> *Jerrie McKinney got no benefit from changing her story, she got no benefit from coming to court to testify.* She did the right thing on the witness stand and told the truth about what happened, under oath, the same story that she told was the same fact pattern that Shadae Artson told, was the same fact pattern that Taran Shannon told, and Jerrie McKinney identified Alvin Spriggs as the shooter, and she identified [Hannah] as the driver.

Again, defense counsel did not object to the State's assertion in closing that McKinney had received no benefit for changing her story or for coming to court to testify. Neither did he raise the issue in his closing argument. There, defense counsel continued his focus on McKinney's changing story, saying:

> . . . [S]he told the police three version of her story about the car and where it went, its route it took, and what happened . . . McKinney lied so many times to the police and throughout her statements, how do you decipher what's the truth and what's a lie? There is no rational basis, there is no way to tell. How do we know which story fits? Did she see? We don't know.

At the close of trial, defense counsel ensured that the witness credibility jury instruction was given but did not request a mistrial or a curative instruction regarding McKinney's testimony or the State's closing argument that McKinney had received no benefit for changing her story or testifying.

The Post-Conviction Hearing

Following an unsuccessful appeal, Spriggs filed a post-conviction petition alleging, among other claims,[3] that (1) defense counsel rendered ineffective assistance by failing to seek a mistrial or curative instruction following McKinney's testimony and the State's closing argument that McKinney had received no benefit for changing her story or testifying at trial; (2) that the State committed a *Brady* violation by failing to disclose the details of McKinney's relocation agreement with defense counsel before the trial; and (3) that defense counsel provided ineffective assistance of counsel by not requesting additional details of the agreement.

During the post-conviction hearing, defense counsel testified that, although he does "not believe curative instructions do any good," and believed the judge would have denied a request for a mistrial, he probably should have objected and requested a mistrial for the record, "because [McKinney] was given a benefit." He explained, however that raising the issue of McKinney's agreement during trial would likely have hurt more than it helped because it could have "shown that maybe there was some threats to her or fear . . . whether

[3] Spriggs made three additional claims in post-conviction, none of which are at issue in this appeal.

it was legitimate or not." Instead, defense counsel testified that he planned to focus on attacking McKinney's credibility by highlighting her changing story about the day of the crime.

The terms of the relocation agreement were also addressed. The prosecutor explained that although the relocation agreement included in its terms that "[t]he witness shall testify truthfully before a state or federal grand jury and at all trials or other proceedings in which the witness' testimony may be relevant," any witness testimony is separate and apart from a relocation agreement of this kind. The agreement "wasn't a cooperation agreement in which her . . . compensation or benefit was going to be based on the value of her testimony." Rather, it "was a relocation agreement for her safety." The prosecutor further explained that the State does not relocate an individual who is not going to be a witness in a case. Any relocation agreement will necessarily be made with a person "because they're a witness and," the State explained, "we expect all of our witnesses to testify truthfully."

Finally, the prosecutor explained that the agreement had been provided to defense counsel the day before trial, but that "the actual funds that were paid to the power company and to [McKinney's uncle] were not disclosed" because of time constraints. It was also established that defense counsel did not ask for any specifics regarding the agreement, including receipts detailing the timing, recipients, or amounts of each payment or reimbursement included in the agreement.

At the conclusion of the post-conviction hearing, the court articulated numerous reasons for denying Spriggs post-conviction relief. Chief among them was that McKinney's relocation agreement was not a benefit, and therefore, no basis for a mistrial or curative instruction existed. The court's reasoning stemmed from *Preston v. State*, 444 Md. 67 (2015), in which the Supreme Court of Maryland differentiated between benefits such as plea agreements or other *quid pro quo* inducements offered to witnesses in exchange for testimony and "reasonable protective housing," given to witnesses who fear for their lives. 444. Md. at 85. Because McKinney's relocation agreement fell within the latter category, her agreement was not a benefit and no false or misleading statements were made to warrant a legal remedy.

The post-conviction court also articulated a number of supporting facts for its decision including that (1) the agreement was signed after McKinney identified Spriggs; (2) the prosecutor testified that relocation agreements are not conditioned on if or how the witness testifies; (3) there was no indication McKinney changed her testimony because she received the benefit; (4) McKinney was not awaiting payment at the time of trial; (5) defense counsel had strategic reasons for not objecting to McKinney's testimony or requesting a curative instruction or mistrial; (6) there was no evidence the court would have granted the request for a mistrial had defense counsel moved for one; and (7) no prejudice existed because another witness identified Spriggs as the shooter. The post-conviction court further found that "the witness' credibility was not bolstered as a result of the State's closing argument," because based on testimony regarding her changing stories "the jury

had an opportunity to assess the witness' credibility." For these same reasons, the post-conviction court found that defense counsel did not render ineffective assistance by failing to request additional details of the relocation agreement.

The post-conviction court also found that no *Brady* violation occurred because "the State made available evidence that it was going to use in trial and sought a postponement to ensure that defense counsel had access to everything he needed." The post-conviction court further found that defense counsel chose not to pursue the issue of the relocation agreement for tactical reasons.

STANDARD OF REVIEW

We have explained that the following standard of review applies when considering an appeal of a circuit court's denial of post-conviction relief:

> The standard of review of the lower court's determinations regarding issues of effective assistance of counsel is a mixed question of law and fact. We will not disturb the factual findings of the post-conviction court unless they are clearly erroneous. But, a reviewing court must make an independent analysis to determine the ultimate mixed question of law and fact, namely, was there a violation of a constitutional right as claimed. In other words, the appellate court must exercise its own independent judgment as to the reasonableness of counsel's conduct and the prejudice, if any. Within the *Strickland* framework, we will evaluate anew the findings of the lower court as to the reasonableness of counsel's conduct and the prejudice suffered. As a question of whether a constitutional right has been violated, we make our own independent analysis by reviewing the law and applying it to the facts of the case. We will defer to the post-conviction court's findings of historical fact, absent clear error, but we will make our own, independent analysis of the appellant's claim.

State v. Jones, 138 Md. App. 178, 209 (2001) aff'd, 379 Md. 704 (2004) (internal citations and quotations omitted, alterations from original).

Suppression of exculpatory evidence by the prosecution is a constitutional claim, and, therefore, this Court reviews claims of *Brady* violations de novo. *Canales-Yanez v. State*, 472 Md. 132, 156–57, 244 A.3d 1096 (2021) (citing *Ware v. State*, 348 Md. 19, 48, 702 A.2d 699 (1997)).

DISCUSSION

I. The post-conviction court correctly concluded that defense counsel did not provide ineffective assistance by failing to request a mistrial or curative instruction.

On appeal, Spriggs argues that his defense counsel provided ineffective assistance when he failed to request a mistrial or, in the alternative, request a curative instruction following testimony and closing argument that indicated McKinney received no benefit from the state to "change [her] memory of what happened" during the incident at issue. The Sixth Amendment to the United States Constitution and Article 21 of the Maryland Declaration of Rights guarantee a criminal defendant's right to counsel, which includes effective assistance of counsel in criminal proceedings. *See Strickland v. Washington*, 466 U.S. 668 (1984). In general, in order to prevail on a claim of ineffective assistance of counsel, the convicted defendant must satisfy the two-prong test set forth in *Strickland*:

> First, the defendant must show that counsel's performance was deficient. This requires showing that counsel made errors so serious that counsel was not functioning as the "counsel" guaranteed the defendant by the Sixth Amendment. Second, the defendant must show that the deficient performance prejudiced the defense. This requires showing that counsel's

> errors were so serious as to deprive the defendant of a fair trial, a trial whose result is reliable.

Strickland, *supra*, 466 U.S. at 687; *see also State v. Borchardt*, 396 Md. 586, 602 (2007) (reiterating the *Strickland* standard for ineffective assistance of counsel). There is a strong presumption that counsel rendered effective assistance. *State v. Thomas*, 325 Md. 160, 171 (1992).

The deficiency prong of the *Strickland* test is defined by an objective standard and the defendant has the burden of demonstrating "that counsel's representation fell below an objective standard of reasonableness." *Evans v. State*, 396 Md. 256, 274 (2006) (citing *Strickland*, *supra*, 466 U.S. at 688). The deficiency prong "is satisfied only where, given the facts known at the time, counsel's choice was so patently unreasonable that no competent attorney would have made it." *Borchardt*, *supra*, 396 Md. at 623. To establish the deficiency prong of the *Strickland* test, Petitioner bears the burden of: (1) identifying the acts or omissions of counsel that are alleged not to have been the result of reasonable professional judgment; (2) showing that counsel's performance fell below an objective standard of reasonableness; and (3) overcoming the presumption that, under the circumstances, the challenged action might be considered sound trial strategy. *Strickland*, *supra*, 466 U.S. at 690.

Satisfying the prejudice prong under Strickland requires more than simply demonstrating that counsel's errors "had some conceivable effect on the outcome of the proceeding . . ." *Evans*, *supra*, 396 Md. at 275. Rather, Petitioner must establish "that there is a reasonable probability that, but for counsel's professional errors, the result of the

proceeding would have been different." *Strickland*, *supra*, 466 U.S. at 694. The Supreme Court defined "a reasonable probability" as "a probability sufficient to undermine confidence in the outcome." *Id*.

A. The relocation agreement was not a "benefit" under *Preston v. State*, and therefore, neither a mistrial nor a curative instruction was warranted.

As an initial matter, Spriggs and the State disagree over the meaning of the term "benefit" as it relates to the relocation agreement provided to McKinney before her trial testimony. Spriggs' argument in post-conviction hinged in large part on the notion that McKinney's testimony and the State's assertions in closing argument were false and misleading to the jury because McKinney had, in fact, received a benefit from the State in exchange for her testimony. Spriggs argues that by not requesting a mistrial or curative instruction in response to these assertions, defense counsel provided ineffective assistance. In response, the State contends that the relocation agreement McKinney received was not a benefit and, as a result, no remedies were warranted, and counsel's performance was necessarily not deficient.

The relevant definition of the term "benefit" in this context was established in *Preston*, *supra*, 444 Md. 67, a case in which the Supreme Court of Maryland explored the meaning of the word as used in Maryland Criminal Pattern Jury Instruction 3:13, the "witness promised benefit" instruction. The facts of this case differ from *Preston* in some ways, but the analysis is nonetheless instructive here. In *Preston*, the Court addressed whether the trial court erred in declining to give this instruction with respect to a witness who had received protective housing. *Id*. at 70. Unlike the present case, the full details of

the witness's relocation agreement were elicited during trial, including the timeline of the witness telling and changing her story and the cost and duration of the witness' protective housing. *Id.* 73-75. In light of these facts, defense counsel in *Preston* requested the "witness promised benefit" instruction, which reads:

> You may consider the testimony of a witness who [testifies] [has provided evidence] for the State as a result of [a plea agreement] [promise that he will not be prosecuted] [a financial benefit] [a benefit] [an expectation of a benefit]. However, you should consider such testimony with caution, because the testimony may have been influenced by a desire to gain [leniency] [freedom] [a financial benefit] [a benefit] by testifying against the defendant.

Id. at 75.

The State objected, arguing that "free housing was not the sort of situation contemplated by Jury Instruction 3:13," but instead was provided to the witness after she told detectives she was in fear for her safety. *Id.* at 76. The trial court agreed with the State, finding:

> the word "benefit," in the context of Jury Instruction 3:13, to mean something akin to a plea agreement, a promise that a witness will not be prosecuted, or a monetary reward or other form of direct, *quid pro quo* compensation or inducement. Reasonable protective services, such as those received by [the witness], do not constitute a "benefit" within the meaning of Jury Instruction 3:13.

Id. at 85. For this reason, the Court in *Preston* did not believe the "witness promised benefit" instruction was appropriate in the context of reasonable protective housing. *Id*. at 104.

Here, the post-conviction court agreed with the State that the relocation agreement provided to McKinney was analogous to the protective housing in *Preston* and was therefore not a "benefit" as conceived by Maryland Criminal Pattern Jury Instruction 3:13. We agree as well. Certainly, as Spriggs argues on appeal, McKinney's relocation agreement was *beneficial* to her in the colloquial sense of the word. She feared for her life and, because she was a State's witness, the State assisted her in moving to a safe location for the duration of the trial. The question here, however, is not whether McKinney received just any benefit, but rather whether she received a benefit akin to that described by Jury Instruction 3:13 -- one that could have tainted the credibility of her trial testimony. We agree with the post-conviction court that she did not receive such a benefit.

As the State explained during the post-conviction hearing, the terms of McKinney's agreement were not made in exchange for or based upon the value of her testimony. Rather, the relocation agreement was designed to ensure her safety, in the same vein as the protective housing provided to the witness in *Preston*. McKinney may have had initial reservations about sharing her story with police, but at no time did she enter into any type of *quid pro quo* arrangement with the State to elicit her story or her testimony at trial. She was not the subject of a plea agreement, nor was she promised leniency or immunity from prosecution in exchange for her testimony.

Furthermore, the timeline of events and McKinney's testimony reveal that she positively identified Spriggs as the shooter several weeks before she entered into the agreement with the State. Her testimony indicated that her chief motivation for changing

her story was not an agreement with the State, but rather new knowledge that detectives had the incident on tape and knew she had witnessed it. Even if some details of McKinney's story concerning her own actions continued to evolve after the agreement was signed, the most critical portions of that story -- that she was present and saw Spriggs shoot the victim -- remained the same. There is no indication that McKinney in any way altered her account of events in ways beneficial to the State because of her relocation agreement. The agreement, therefore, cannot be considered a benefit under *Preston*, nor can it be interpreted generally as a benefit given in exchange for cooperative testimony.

For these reasons, we conclude that defense counsel did not have viable grounds on which to request a mistrial or a curative instruction, and the failure to do so was not deficient performance under a *Strickland* analysis.

B. Even if McKinney's relocation agreement somehow constitutes a "benefit," Spriggs has not met the burden of proving counsel's performance was ineffective under *Strickland*.

Spriggs argues that by not requesting a mistrial or curative instruction, defense counsel failed to react competently when the State made what he describes as false and misleading claims about McKinney's lack of incentive to testify. This deficient performance, Spriggs argues, was prejudicial because it enhanced McKinney's credibility as a witness. We reject Spriggs argument surrounding a curative instruction, because there is no doubt that defense counsel's failure to seek such an instruction was a reasonable strategic decision. As Spriggs himself argues on appeal, introducing that McKinney was in such fear for her life that she had to relocate out-of-state could have been prejudicial to

his case. Defense counsel explained the same theory during the post-conviction hearing, stating that he felt raising the issue of the relocation agreement could have done more harm than good by suggesting McKinney had reason to fear Spriggs. Additionally, defense counsel explained that at a personal strategic level, he does not believe "curative instructions do any good," and would not have been inclined to ask for one regardless of the circumstances. Such reasoning is well within professional norms and defense counsel's decision on this matter did not prejudice Spriggs.

For these reasons, Spriggs argues that the only true remedy was a mistrial. When asked during the post-conviction hearing about his failure to move for a mistrial, defense counsel responded that he assumed that the judge would not have granted that request. Granting a mistrial is an extreme sanction only "resorted to when such overwhelming prejudice has occurred that no other remedy will suffice to cure the prejudice." *Jordan v. State*, 246 Md. App. 561, 598 (2020) (internal quotation and citation omitted). Spriggs contends that McKinney's testimony and the State's closing argument created this level of prejudice and, as a result, the trial court would have had no choice but to grant the motion if requested. Therefore, Spriggs argues, failure to move for a mistrial constituted ineffective assistance of counsel.

In arguing that McKinney's testimony and the State's closing argument misled the jury and created a false and prejudicial impression warranting a mistrial, Spriggs relies on two cases, both of which are distinguishable from the present case. In the first, *Napue v. Illinois*, 360 U.S. 264 (1959), a State's witness facing 199 years in prison was promised "a

recommendation for reduction of his sentence," in exchange for testifying against the defendant. 360 U.S. at 266. Despite this promise, when the prosecutor asked the witness at trial whether "I promised you that I would recommend any reduction of sentence to anybody," he replied, "[n]o you have not." *Id.* at 271. On appeal, the Supreme Court of the United States reversed the defendant's conviction, holding that the elicited testimony was false and that "the false testimony used by the State in securing the conviction . . . may have had an effect on the outcome of the trial." *Id.* at 272.

The present case is distinguishable from *Napue* because statements regarding McKinney's relocation agreement were not false. Notwithstanding the definition of the term benefit, the State made clear during the post-conviction hearing that McKinney's relocation agreement was not offered as encouragement to testify, but rather granted to her based on her status as a witness in fear for her life. This critical distinction supports the conclusion that, unlike the prosecutor in *Napue*, the State did not elicit false testimony from McKinney nor make false statements in closing argument by saying McKinney had received no benefit *for changing her story or testifying at trial*.

There is, likewise no indication that these statements misled the jury or created a false impression regarding McKinney's motive for testifying as she did. In arguing to the contrary, Spriggs relies on *Alcorta v. Texas*, 355 U.S. 28 (1957). In *Alcorta*, the defendant was on trial for the murder of his wife, who he claimed to have killed in a "fit of passion" when he discovered her kissing another man, Castilleja. 355 U.S. at 28. The prosecutor was aware that Castilleja had been engaged in a sexual relationship with Alcorta's wife

prior to the murder but told Castilleja not to volunteer this information at trial unless specifically asked about it. *Id.* at 31. At trial, Castilleja testified that he had nothing more than a "casual friendship" with Alcorta's wife. *Id.* On direct examination, the prosecutor elicited from Castilleja that he and Alcorta's wife were not in love and had not been on any dates. *Id.* at 30. The sexual relationship between the two never came to light. *Id.* At the conclusion of trial, Alcorta was found guilty of murder with malice and sentenced to death. *Id.* at 29. On appeal, the Supreme Court held that Alcorta was not afforded due process because Castilleja's testimony, elicited by the prosecutor, "gave the jury the false impression that his friendship with [Alcorta's] wife was nothing more than that of casual friendship." *Id.* at 31. This deprived him of a defense that may have reduced his offense and precluded the death penalty. *Id.* at 32.

The circumstances of the present case are strikingly different from those of *Alcorta* not only because the State did not coach McKinney in any way regarding the content of her testimony, but because McKinney's testimony and the State's closing argument were grounded in context that clarified their meaning to the jury. The focus on McKinney's changing story, the descriptions of her interactions with police, and the narrative crafted by the State in closing argument all established that McKinney was not offered anything in exchange for changing her story or testifying in the way that she did. Moreover, McKinney provided an understandable explanation at trial for why she changed her story. Within this context, informing the jury that McKinney did not receive a benefit for changing her story or testifying did not create a false impression surrounding her

relationship with the State nor improperly bolster the credibility of her testimony. Following defense counsel's focus on her inconsistencies, this information was a logical response to underscore that the State played no part in the evolution of McKinney's account of the events.

Given this context, defense counsel's assessment that the court would not have granted a mistrial was not "so patently unreasonable that no competent attorney would have made it." *Borchardt*, *supra*, 396 Md. at 623. Whether or not the trial court would have actually granted a motion for a mistrial is unknown, but Spriggs has not proven that defense counsel's choice not to request one was outside the scope of reasonable professional judgments or below the objective standard of reasonableness. Neither has he overcome the presumption that under the circumstances, the decision not to request a mistrial on these grounds was sound trial strategy. *Strickland*, *supra*, 466 U.S. at 690.

Spriggs has also failed to show that defense counsel's decision not to request a mistrial prejudiced his defense. We agree with the post-conviction court's finding that Spriggs was not prejudiced because another witness, Shadae Artson, identified Spriggs as the shooter and testified to this at trial. We further agree that McKinney's testimony and the State's closing argument did not bolster McKinney's credibility. Defense counsel spent a significant portion of his time with McKinney underscoring the inconsistencies in her account of events and emphasizing the number of times she changed her story before and during trial. He then reminded the jury of these facts during his closing argument. The jury, therefore, had ample opportunity to assess McKinney's credibility as a witness. For

these reasons and because the information was not in any way false or misleading to the jury, Spriggs has not demonstrated a reasonable probability that, but for defense counsel's errors, the result of the proceeding would have been different had be moved for a mistrial.

II. The post-conviction court correctly determined that no *Brady* violation occurred.

Spriggs argues that the State violated *Brady v. Maryland*, 373 U.S. 83 (1963) by failing to disclose to defense counsel the details of McKinney's relocation agreement, including the specific cost and the timing and recipients of the payments. A *Brady* violation exists where the prosecutor suppresses or withholds evidence that is favorable to the defense and "material either to guilt or to punishment." 373 U.S. at 87. Evidence may be favorable to the defense because it is exculpatory in nature or can be used for impeachment purposes. *Yearby v. State*, 414 Md. 708, 717 (2010) (citing *Strickler v. Greene*, 527 U.S. 263, 281–82 (1999)). Furthermore, evidence is material to guilt or punishment where there is a "reasonable probability" that "disclosure of the suppressed evidence would have led to a different result." *Id.* at 718 (citing *Kyles v. Whitley*, 514 U.S. 419, 434 (1995)).

Relying on *Ware v. State*, Spriggs argues that "[e]vidence that the State has entered into an agreement with a witness, whether formally or informally, is often powerful impeachment evidence and the existence of such a 'deal' must be disclosed to the accused." *Ware*, *supra*, 348 Md. at 41. Spriggs cites examples in which the Supreme Court of Maryland granted new trials when the State failed to disclose to defense counsel the specific details of plea agreements made with State's witnesses. *See Wilson v. State*, 363 Md. 333 (2001) (holding that the specific details of the written plea agreements were

material when the jury was led to believe, in direct contradiction to the agreements, that the witnesses would be incarcerated for their roles in the crime); *Conyers v. State*, 367 Md. 571, 607 (2002) (holding that the specifics of a written plea agreement with a witness were favorable to the defendant's impeachment strategy and should have been disclosed when the witness "had requested a favor, and . . . refused to sign his written statement absent such a commitment."). Spriggs contends, therefore, that the specific details of the agreement, such as how much McKinney had been paid, whether she was still waiting for payments at the time she testified, and whether the State had disputed any of her expenses could have been impeaching evidence and, therefore, should have been disclosed to the defense.

Certainly, defense counsel could have chosen to use the details of McKinney's relocation agreement to try to impeach her credibility had he chosen to raise the issue at trial. This, however, is not sufficient to establish that a *Brady* violation has occurred. To show the undisclosed details were material, Spriggs must prove that had the State disclosed these details to defense counsel, there is a reasonable probability that the result of the trial would have been different. Spriggs fails on this account because defense counsel clearly articulated that he was not inclined to reveal the existence of the relocation agreement at trial because of its potentially prejudicial effect. There is nothing in the record to indicate that defense counsel had any interest in using the relocation agreement generally, or any specifics about it, to impeach McKinney. Unlike *Wilson* and *Conyers*, in which the existence of plea agreements was revealed to the jury while essential details of those

agreements were withheld, defense counsel's decision here not to reveal the existence of the agreement at all makes any additional details about it immaterial. For this reason, the State's failure to disclose to defense counsel the details of McKinney's relocation agreement do not constitute a *Brady* violation.

III. The post-conviction court correctly determined that defense counsel did not render ineffective assistance by not seeking detailed information about the state's relocation agreement.

For the same reasons articulated above, defense counsel did not render ineffective assistance of counsel by not requesting the details of the relocation agreement before trial. Despite knowledge of the agreement's existence, defense counsel had no intention of using this information at trial and his decision not to obtain additional details about it was a reasonable strategic decision under the circumstances. For these reasons, we affirm the judgment of the circuit court.

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