

Circuit Court for Baltimore City  
Case No. 116127003

UNREPORTED  
IN THE COURT OF SPECIAL APPEALS  
OF MARYLAND

No. 2418

September Term, 2019

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ANTHONY WALKER

v.

STATE OF MARYLAND

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Graeff,  
Nazarian,  
Wright, Alexander  
(Senior Judge, Specially Assigned),

JJ.

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Opinion by Nazarian, J.

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Filed: February 9, 2021

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

In 2016, Anthony Walker was arrested by members of the Baltimore City Police Department and charged with an array of drug distribution crimes and conspiracy. Rather than proceeding to trial, Mr. Walker pleaded guilty to one count of possession with intent to distribute.

Three years later, the State revealed that the detective who submitted and recovered the drugs underlying Mr. Walker's charges had been involved in an incident that called into question the integrity of Mr. Walker's conviction, and in response filed a motion to vacate it. After a hearing, the Circuit Court for Baltimore City found that the actions of the submitting officer didn't affect the integrity of the conviction and denied the State's motion. Mr. Walker argues on appeal that the court abused its discretion in denying the motion, the State agrees, and we vacate the judgment and remand for further proceedings.

## **I. BACKGROUND**

On April 1, 2016, after the Baltimore City Police Department executed a search and seizure warrant, Mr. Walker was arrested and charged by indictment with intent to distribute cocaine (Count 1), possession with intent to distribute heroin (Count 3), possession of cocaine (Count 5), possession of heroin (Count 7), possession of drug paraphernalia (Count 9), second-degree assault (Count 11), and conspiracy to commit the offenses charged in Counts 1, 3, 5, 7, and 9. He opted to plead guilty to one count of possession with intent to distribute heroin, and on September 22, 2016 was sentenced to ten years, all but time served suspended, and three years of supervised probation.

On October 25, 2019, three years after Mr. Walker was sentenced, the State filed a

motion under Maryland Code, § 8-301.1 of the Criminal Procedure Article (“CP”),<sup>1</sup> and asked the court to vacate the conviction. In support of the motion, the State contended that it had acquired new information about Detective Robert Hankard, the submitting officer in Mr. Walker’s case, that called into question the integrity of Mr. Walker’s conviction. According to the State’s motion, Detective Hankard took part in an incident, on March 26, 2014, in which a sergeant had “deliberately [run] over an arrestee” and Detective Hankard had provided a BB gun that they had planted at the scene to make the Sergeant’s conduct seem justified. The State said that it learned of this incident on September 10, 2019.

The circuit court held a hearing on the State’s motion on January 8, 2020. After the Assistant State’s Attorney described the situation, the court denied the State’s motion after

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<sup>1</sup> 8-301.1 defines the circumstances under which the State can ask a court to vacate a conviction:

(a) On a motion of the State, at any time after the entry of a probation before judgment or judgment of conviction in a criminal case, the court with jurisdiction over the case may vacate the probation before judgment or conviction on the ground that:

(1)(i) there is newly discovered evidence that:

1. could not have been discovered by due diligence in time to move for a new trial under Maryland Rule 4-331(c); and

2. creates a substantial or significant probability that the result would have been different; or

(ii) the State’s Attorney received new information after the entry of a probation before judgment or judgment of conviction that calls into question the integrity of the probation before judgment or conviction; and

(2) the interest of justice and fairness justifies vacating the probation before judgment or conviction.

concluding, based on *Wheeler v. State*, 459 Md. 555 (2018), that “Hankard being the submitting officer in no way impacted integrity of the case. Additionally, he was not a necessary witness.” We supply additional facts as necessary below.

## II. DISCUSSION

Mr. Walker raises two issues in his brief,<sup>2</sup> but we need only address the first:<sup>3</sup> did the circuit court err in denying the State’s motion on the ground that Detective Hankard was not a “necessary witness” in Mr. Walker’s case? The State agrees with Mr. Walker that it did, and we agree as well.

Section 8-301.1 of the Criminal Procedure Article took effect on October 1, 2019, as a response to revelations of misconduct by the same unit of the Baltimore Police Department, the “Gun Trace Task Force,” that arrested and searched Mr. Walker. Indeed, misconduct committed by the Gun Trace Task Force has called into question the validity of an estimated 1,300 cases, of which Mr. Walker’s case is one. Fiscal and Policy Note,

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<sup>2</sup> Mr. Walker’s brief identified two Questions Presented:

1. Did the circuit court err in denying the State’s motion to vacate Appellant’s conviction on the ground that the information calling into question the integrity of the conviction only concerned “the submitting officer” and not a “necessary” witness?
2. Did the court err in denying the State’s motion to vacate without permitting Appellant to address the court?

<sup>3</sup> The hearing transcript reveals, as we’ll detail, that the court ruled immediately after the State’s presentation, without turning to Mr. Walker and offering him an opportunity to speak. He did not ask the court for an opportunity to be heard before it ruled but, to be fair, the court moved immediately into its ruling and Mr. Walker, who appeared on his own behalf, didn’t appear to realize what had happened until after the court revised its ruling.

H.B. 874 (2019). The statute was brand new at the time of the State’s motion and there is no appellate case law interpreting and applying it. But as the opening line of the statute itself indicates—“the court with jurisdiction over the case *may* vacate the . . . conviction,” CP § 8-301.1(a)—the decision to grant or deny a motion to vacate lies within the discretion of the circuit court. Our role is to review that decision for abuse of discretion, which occurs “when it is ‘well removed from any center mark imagined by the reviewing court and beyond the fringe of what that court deems minimally acceptable.’” *Wheeler*, 459 Md. at 561 (*quoting Alexis v. State*, 437 Md. 457, 478 (2014)).

Section 8-301.1(a) identifies two bases on which a circuit court can vacate a conviction. The one at issue here appears in subsection (a)(1)(ii), which provides that the court may vacate the conviction on the ground that there is newly discovered evidence that “the State’s Attorney received new information after the . . . judgment of conviction that calls into question the integrity of the . . . conviction.” From there, the court then must find that “the interest of justice and fairness justify vacating the . . . conviction.” CP § 8-301.1(a)(2). The statute authorizes the State, not the defendant, to bring this motion, and the State did so in this case within a month of the statute’s effective date.

At the motions hearing, the State presented newly discovered, and undisputed, information about Detective Hankard’s involvement in an incident that took place on March 26, 2014, two years before Mr. Walker’s arrest. According to the State’s motion, Detective Hankard provided Detective Keith Gladstone with a BB gun to plant at the scene of a crime. Detective Hankard’s actions led to federal charges against him and others of

conspiracy to deprive an individual of their civil rights by intentionally presenting false evidence, a violation of 18 U.S.C. § 241. The State asserted that it learned of Detective Hankard’s misconduct on September 10, 2019, when Detective Gladstone and another officer involved in the cover-up entered guilty pleas in federal court.<sup>4</sup>

After hearing the State’s presentation, the circuit court stated that “Suiter being the submitting officer in no way impacted the integrity of the case. Additionally, he was not a necessary witness. See *Wheeler v. State*, 459 Md. 555, 2019. The motion is denied with prejudice. Thank you.” The prosecutor advised the court that Officer Suiter had not been involved in the case, but Officer Hankard was. The court then looked again, and after a short colloquy restated its ruling, *verbatim* except for the name of the officer: “Yes. All right. Hankard being the submitting officer in no way impacted [the] integrity of the case. Additionally, he was not a necessary witness. See *Wheeler v. State*, 459 Md. 555, 2019. The motion is denied with prejudice. Thank you.” At that point, Mr. Walker spoke up and asked the court if the conviction had been vacated. The prosecutor advised him that it hadn’t, and after Mr. Walker responded that he thought he had been summoned for it to be vacated, the court advised him that relief wasn’t guaranteed:

No. I review the cases. The State has filed a motion for vacation. It’s not guaranteed. I review the cases based on the evidence they present, and then I make a decision whether they’re granted or denied. They’re not automatically granted.

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<sup>4</sup> The federal charges against Officer Hankard encompassed one other incident in which he, Sergeant Gladstone, and a third officer planted drugs on a suspect and lied about it in court papers. See Justin Fenton, “Baltimore Police officer charged in BB gun planting incident as Gun Trace Task Force fallout continues,” *Baltimore Sun* (Jan. 15, 2020).

The court was right that the mere filing of a § 8-301.1 motion is not a guarantee that the conviction will be vacated. The language of the statute is permissive—the court *may* vacate the conviction—even if it makes the necessary findings. In this case, though, the court based its ruling solely on its conception of Detective Hankard’s role as the submitting officer. Because the police report didn’t say anything about Detective Hankard recovering the drugs underlying Mr. Walker’s case, the court assumed that he would not have been a necessary witness, and from there that his misconduct in “no way impacted [the] integrity of the case.”

In a case like this, where an officer involved in handling evidence has been charged with and pleaded guilty to criminal misconduct in his handling of evidence in other cases, we cannot see how the new evidence wouldn’t affect the integrity of this conviction. It may be that in a normal case, where the State otherwise would be able to demonstrate “that the evidence was substantially in the same condition as when recovered and presented sufficient evidence to demonstrate the absence of tampering,” *Wheeler*, 459 Md. at 561, Detective Hankard wouldn’t have been a necessary witness. But here, where Mr. Walker was searched and arrested by the Gun Trace Task Force, and where Detective Hankard, among others, has pled guilty to planting evidence on defendants, it is difficult to imagine how Mr. Walker would *not* have sought to call the Detective had he known, and equally difficult to imagine how the absence of that testimony and cross-examination would *not* have affected the integrity of this conviction. Put another way, it’s not purely a question of whether the State could have proven the elements of its case without this witness (although

the State, to its credit, acknowledges that “it is unclear whether the state could have proven the chain of custody without Detective Hankard’s testimony,” and that the record before the circuit court at the time wouldn’t establish the chain definitively).

We agree with the State that the court should have considered not only whether Detective Hankard, on this record, was an essential witness, but also (whether or not he was essential) the totality of the circumstances bearing on the integrity of the conviction and the interests of justice and fairness. In cases like this, the State—the prosecuting authority that pursued and obtained the conviction in the first place—is asserting that the conviction has been tainted to the extent that it is inconsistent with the interests of justice and fairness to leave it intact. The State isn’t saying that Mr. Walker is innocent of the crimes, but instead that it no longer can defend the integrity of the body of evidence underlying that conviction. To be sure, the court is not obliged to agree with the State’s assessment. But where the State’s motion is grounded in adjudicated police misconduct on the part of officers involved in securing the conviction at issue, the court abuses its discretion when it reduces the § 8-301.1 analysis to a determination of whether the officer was a necessary witness. We vacate the decision to deny the State’s motion to vacate Mr. Walker’s conviction and remand for further proceedings consistent with this opinion.

**JUDGMENT OF THE CIRCUIT COURT  
FOR BALTIMORE CITY VACATED AND  
CASE REMANDED FOR FURTHER  
PROCEEDINGS CONSISTENT WITH  
THIS OPINION. COSTS TO BE PAID BY  
THE MAYOR AND CITY COUNCIL OF  
BALTIMORE.**