

Circuit Court for Baltimore County  
Case No.: 03-K-16-005628

UNREPORTED  
IN THE COURT OF SPECIAL APPEALS  
OF MARYLAND

No. 1352

September Term, 2021

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MICHAEL EARL AMICK

v.

STATE OF MARYLAND

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Berger,  
Reed,  
Meredith, Timothy,  
(Senior Judge, Specially Assigned),

JJ.

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PER CURIAM

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Filed: June 28, 2022

\*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.

The Circuit Court for Baltimore County denied a motion for a new trial filed by appellant, Michael Earl Amick. For the reasons to be discussed, we shall affirm the judgment.

### **BACKGROUND**

On September 15, 2006, Roxanne Amick, appellant's wife, was found deceased in a wooded area about two and a half miles from the Amick's home. The medical examiner determined that Mrs. Amick had died of "multiple injuries" and the manner of death was homicide. Mr. Amick told the police that he had last seen his wife two days before her body was found when she left their home, in his minivan, to go shopping following an argument between the two of them. The day after Mrs. Amick left the home, the van was found at a shopping center located less than a mile from the Amick's home. The friend who discovered the van while searching for Mrs. Amick noted that it "was incredibly clean" and that a pair of work gloves were sitting on the passenger seat.

Mrs. Amick's body was found in a "highly vegetive" area, about "50%" of which was "covered" with poison ivy. The body was wrapped in blankets belonging to the Amicks. When he had reported his wife missing, Mr. Amick told the police that he kept blankets in the back of the van. The wife of Mrs. Amick's brother, however, had told the police that Mr. Amick and his two young children had visited at her home the night before Mrs. Amick went missing and when she walked them out to the minivan and assisted in putting the children in their car seats, she noticed how clean the van was and observed that only a piece of cardboard was in the vehicle.

When interviewing Mr. Amick after his wife’s body was found, the police noticed a rash on his arms and took him to Greater Baltimore Medical Center where a doctor diagnosed the rash as poison ivy. The rash covered his arms, but not his hands or wrists.

No charges were filed in the case for a number of years. Then, given advances in DNA testing, analysis was repeated on various items that had been recovered at the time of the incident. The new test results determined, among other things, that Mr. Amick’s DNA was on the interior of the right glove that had been recovered from the van and further concluded that Mrs. Amick’s DNA profile was on the left glove. In October 2016, while he was visiting family in Maryland, the police arrested Mr. Amick, who had moved to Hawaii in 2009.

Following a five-day jury trial in 2018, Mr. Amick was found guilty of second-degree murder. The court sentenced him to 30 years’ imprisonment. On direct appeal, Mr. Amick challenged the trial court’s failure to instruct the jury on second-degree depraved heart murder and involuntary manslaughter. This Court found no error and affirmed the judgment. *Amick v. State*, No. 2016, September Term, 2018 (filed June 25, 2019), *cert. denied*, 466 Md. 217 (October 18, 2019). This Court’s mandate was issued on July 29, 2019. The circuit court’s docket entries reflect that the mandate was received in that court on July 2, 2020. The reason for the delay between the issuance of the mandate by this Court and the circuit court’s receipt thereof is not apparent from the record before us.

*Motion for New Trial*

On June 29, 2021, Mr. Amick, representing himself, filed a motion for a new trial. In that motion, Mr. Amick relied upon “new evidence” consisting of a report rendered by

Dr. Jonathan Arden, a forensic consultant, whom he had apparently hired to review the autopsy report in conjunction with a post-conviction claim. In his report dated January 1, 2021, Dr. Arden discussed the autopsy report and Assistant Medical Examiner Dr. Pamela Southall’s trial testimony regarding the autopsy. Dr. Arden perceived some inconsistencies between the autopsy report and Dr. Southall’s testimony, in particular in relation to fractures between vertebrae C3 and C4. Dr. Arden concluded that “Dr. Southall testified affirmatively that there were fractures at C3 and C4, despite the fact that no such fractures or dislocations were documented in the Autopsy Report or autopsy photographs.” In short, in Dr. Arden’s opinion, Dr. Southall’s conclusion that Mrs. Amick’s death was caused by “multiple injuries” was not supported by the autopsy report and the injuries to her body that were documented in the report “did not demonstrate any clearly fatal injury, nor even any injuries that had a significant likelihood of causing death.” Dr. Arden further questioned Dr. Southall’s conclusion that the manner of death in this case was homicide. Dr. Arden stated that “the determination of the manner of death for Ms. Amick as homicide is not unreasonable, given that her body was found ‘dumped’ in the woods, partially wrapped in blankets, after she disappeared[,]” but “certification of the manner of death of Ms. Amick as undetermined is also reasonable.” Dr. Arden concluded that, “[i]n the absence of definitive evidence of a specific cause of death, the cause of death of Ms. Amick should have been certified as undetermined.”

Mr. Amick also based his motion for a new trial on trial counsel’s alleged ineffective assistance for failing to file a motion to suppress a portion of his videotaped statement to the police. Mr. Amick claimed that trial counsel had told him the motion would be filed,

but he learned later that the motion in fact was not filed. On July 6, 2021, Mr. Amick filed an “Amendment” to the motion for new trial, which added an allegation that “trial counsel never offered a single alternative explanation for the Defendant’s poison ivy lesions[.]” On July 19, 2021, the circuit court summarily denied the motion for new trial.

On October 7, 2021, Mr. Amick filed a pleading he captioned “Second Amendment of and Corrections to the Motion for a New Trial Pursuant to Maryland Rule 4-331(b) and (c) Original Filing Date of June 25, 2021.” In this amendment, the only additional claim appears to be that trial counsel allegedly failed to share with Mr. Amick notes the prosecutors had taken in a pretrial meeting with Dr. Southall. The court summarily denied this motion on October 20, 2021. Mr. Amick did not appeal the ruling and, consequently, any issues related to the October 20th denial of the “Second Amendment” to the motion for a new trial is not before us.

### **DISCUSSION**

Motions for a new trial are governed by Md. Rule 4-331 which, in pertinent part, provides:

- (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.

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- (c) *Newly Discovered Evidence.* The court may grant a new trial or 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 subsection (a) of this Rule:

- (1) on motion 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[.]

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(e) *Form of Motion.* A motion filed under this Rule shall (1) be in writing, (2) state in detail the grounds upon which it is based, (3) if filed under section (c) of this Rule, describe the newly discovered evidence, and (4) contain or be accompanied by a request for hearing if a hearing is sought.

(f) *Disposition.* The court may hold a hearing on any motion filed under this Rule. Subject to section (d) of this Rule, the court shall hold a hearing on a motion filed under section (c) if a hearing was requested and the court finds that: (1) if the motion was filed pursuant to subsection (c)(1) of this Rule, it was timely filed, (2) the motion satisfies the requirements of section (e) of this Rule, and (3) the movant has established a *prima facie* basis for granting a new trial.

The Court of Appeals discussed this Rule in *Cornish v. State*, 461 Md. 518 (2018) where the defendant, like Mr. Amick, had moved for a new trial more than 10 days after the verdict based on allegedly newly discovered evidence and was denied relief without a hearing. The Court of Appeals noted that the Rule provides that “the trial court *shall* grant the movant a hearing when a hearing is requested, the motion is timely filed, the motion satisfies the requirements of subsection (e) of the Rule, and the movant has established a *prima facie* basis for granting a new trial.” *Id.* at 529. “[W]ith respect to this last requirement, Rule 4-331(f)(3) provides that the movant must establish a *prima facie* basis that there is newly discovered evidence which could not have been discovered by due diligence in time to move for a new trial pursuant to sections (a) and (c) of Rule 4-331.” *Id.*

The Court in *Cornish* recognized “the subtle yet important distinction that is crucial in our [appellate] review” where, again like here, the circuit court denied relief without

explanation and, thus, it was not clear whether the court denied relief because the motion failed “to satisfy the *prima facie* pleading requirement, or for some other reason.” *Id.* at 528. The Court concluded that in such instances appellate review is “limited to the judge’s decision to deny [the movant] a hearing” and would not include a review of the merits of the defendant’s request for a new trial. *Id.* at 528-29. Accordingly, the Court in *Cornish* focused on whether “the pleading sufficiently established a *prima facie* case, thus warranting a hearing[.]” *Id.* at 527. A *prima facie* case requires a movant to “provide evidence ‘[s]ufficient to establish a fact or raise a presumption . . . even though it may later be proved to be untrue.’” *Id.* (quoting *Black’s Law Dictionary*, at 1382 (10th ed. 2014)). Whether a *prima facie* case was established, is a legal determination which the appellate court reviews *de novo*. *Id.*

As noted, the Court in *Cornish* stated that, in determining whether a movant was entitled to a hearing on a Rule 4-331(c) motion, the *prima facie* case requirement includes whether the movant acted with due diligence. 461 Md. at 529 (“Rule 4-331(f)(3) provides that the movant must establish a *prima facie* basis that there is newly discovered evidence which could not have been discovered by due diligence in time to move for a new trial[.]”). “‘Due diligence’ requires that the ‘defendant act 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.’” *Id.* at 532-33 (quoting *Argyrou v. State*, 349 Md. 587, 605 (1998)).

Here, Mr. Amick filed his motion within one year after the circuit court docketed this Court’s mandate affirming the judgment following direct appeal. Accordingly, the motion filed on June 29, 2021 was timely because it was filed with the circuit court within

one year of July 2, 2020—the date the circuit court docketed this Court’s mandate affirming the judgment on direct appeal. *See* Rule 4-331(c)(1)(B). His pleading also met the “form of motion” requirement of Rule 4-331(e).

The next question is whether his pleading established a *prima facie* basis for granting a new trial, Rule 4-331(f)(3), which is a two-pronged determination: (1) whether Mr. Amick provided sufficient evidence to establish a fact or raise a presumption that is material to the result of his trial, *Cornish*, 461 Md. at 534, and (2) whether the newly discovered evidence could not have been discovered by due diligence in time to move for a new trial within 10 days after the verdict. To be sure, the second determination “is limited to whether” Mr. Amick’s newly discovered evidence, “on a *prima facie* basis, could not have been discovered with due diligence.” *Id.* at 536 (even where a movant has satisfied the pleading requirement to assert grounds for relief, if a hearing is granted the movant will then need to prove that the newly discovered evidence could not have been discovered with due diligence in time to move for a new trial).

Applying these principles to the case before us, it is clear that the circuit court did not err in denying Mr. Amick’s motion without a hearing because he failed to allege any “newly discovered evidence” that could not have been discovered with due diligence. The autopsy of Mrs. Amick took place on September 16, 2006, the day after the body was discovered. The autopsy report summarizing the opinion of the medical examiners that she died of “multiple injuries” and the manner of death was homicide was signed on May 3, 2007. Mr. Amick was arrested and charged with murder in October 2016 and tried in April 2018. In short, there was ample time for the defense to review the autopsy report prior to

trial and obtain its own qualified expert to review it and the opinions set forth therein. Thus, even if we assume that Dr. Arden’s report, upon which Mr. Amick now relies, somehow casts doubt on the medical examiner’s opinions set forth in the 2007 autopsy report, that information is certainly something that could have been discovered in an exercise of due diligence prior to trial and certainly in time to move for a new trial. Moreover, the defense heard Dr. Southall’s trial testimony and cross-examined the doctor and, thus, the defense clearly had the opportunity to timely address any alleged inconsistencies between the autopsy report and Dr. Southall’s trial testimony. In short, Mr. Amick’s pleadings failed to establish a threshold requirement for relief and, consequently, the court was not required to hold a hearing on his motion.

With regard to Mr. Amick’s ineffective assistance of trial counsel allegations, both those raised in his motion for a new trial and those raised for the first time on appeal, those are claims that should be raised in a petition for post-conviction relief pursuant to § 7-101 et seq. of the Criminal Procedure Article of the Maryland Code.<sup>1</sup>

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

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<sup>1</sup> On June 24, 2022, Mr. Amick filed a motion to correct the record to add certain documents, including the exhibit lists from trial and a xerox copy of slides that apparently comprised a Power Point presented by the State during closing arguments. The exhibit lists are already in the record. The copies of the Power Point slides are unnecessary to decide the only issues properly before us in this appeal, and, moreover, they are indiscernible. Consequently, we deny the motion to correct the record.