Circuit Court for Baltimore City
Case No.: 109104026, 109104027

UNREPORTED

IN THE APPELLATE COURT

OF MARYLAND*

No. 2287

September Term, 2024

ROBERT LEE MURPHY

v.

STATE OF MARYLAND

Graeff,
Beachley,
Kenney, James A., III.
(Senior Judge, Specially Assigned),

JJ.

PER CURIAM

Filed: September 11, 2025

*This is a per curiam opinion. Under Rule 1-104, the opinion is not precedent within the rule of stare decisis, nor may it be cited as persuasive authority.

In 2011, a jury sitting in the Circuit Court for Baltimore City found Robert Lee Murphy, appellant, guilty of first-degree murder, robbery with a deadly weapon, and two counts of use of a handgun in the commission of a crime of violence. The court sentenced him to life imprisonment, plus twenty years. This Court affirmed the judgments. *Murphy v. State*, No. 936, September Term 2011 (filed unreported August 14, 2013) ("*Murphy I*").

In 2024, Murphy, representing himself, filed a Petition for Writ of Actual Innocence based on his alleged discovery that the crime scene technician had recovered currency which was not analyzed for fingerprint or DNA evidence and was given to the victim's family to start a fund raiser. The circuit court dismissed the petition after concluding that Murphy's alleged evidence was not "newly discovered" and, thus, he was not eligible for a writ of actual innocence. Murphy appeals that ruling. For the reasons to be discussed, we shall affirm the judgment.

BACKGROUND[1]

Trial

Murphy was charged in this case after a taxicab driver from Frederick, Maryland was found shot to death in his cab in the 200 block of N. Bond Street in Baltimore in the early morning hours of January 26, 2009. The State produced evidence that on January 25, 2009, Murphy was in Frederick and seeking a cab ride to Baltimore. Various cab companies declined to give him a ride upon learning that he had insufficient funds to pay the fare. (Two cab drivers testified that Murphy claimed to have $50, but the fare would be

[1] The trial transcripts are not in the record before us. The facts set forth in this opinion are taken from this Court's opinion in *Murphy I*.

significantly more than that.) Ultimately, however, a person booked a fare with the Yellow Cab company for a ride beginning at 25 S. Pendleton in Frederick and ending at 711 S. Jefferson in Frederick, a distance of about one mile.

Stephen Mauk, a driver for Yellow Cab, advised his dispatcher that he had picked up the passenger at 12:18a.m. The dispatcher never heard from Mr. Mauk after that, despite numerous calls subsequently made to him. Mr. Mauk was found dead, shot in the head with a 9mm bullet, in his cab located in the 200 block of N. Bond Street in Baltimore, about a half-block from Murphy's mother's house. Murphy's DNA was detected on the rear interior door handle on the passenger side of the cab. Cell phone data tracked Murphy's phone traveling from the vicinity of S. Pendleton Street in Frederick beginning about 12:22a.m in an easterly direction. There was no signal picked up after 12:30a.m, until 1:10p.m. on January 26 when it bounced a signal off a cell tower in the vicinity of the 200 block of N. Bond Street.

Mark Smith, who knew Murphy, testified that Murphy was in Frederick at 31 S. Pendleton Street on January 25, 2009 and had called all three Frederick cab companies seeking a ride to Baltimore. Smith knew that Murphy had a 9mm Glock handgun and observed it in Murphy's possession that day. Smith related that Murphy left the S. Pendleton location to catch a cab that was to take him to Jefferson Street and Murphy later called Smith from the cab indicating he was heading to Baltimore. Smith was "surprised" by that news because he knew Murphy did not have the funds to pay for a ride to Baltimore. During their conversation, Murphy used the phrase "Willy Wonka," a term which Smith

understood meant "[t]o do something to somebody" and when asked to clarify what he meant by that, Smith answered, "[s]hoot."

Petition for Writ of Actual Innocence

In his 2024 petition for writ of actual innocence, the self-represented Murphy asserted that the State had "withheld exculpatory evidence" during trial. Specifically, he stated:

> At trial defense learned of missing evidence (money), found by crime scene tech "Amy Scott" that had been destroyed during search and seizure of the victims van. This evidence, although exculpatory in nature, had not been tested for DNA-fingerprint-analysis so as to allow defense to present to jury, thus disproved States theory of robbery, after considering all of the evidence. As the State's theory (robbery), for the case, the test results would've been the most promising evidence to play a part in disproving the State's theory that defendant robbed the victim.

Murphy also asserted that "[t]he information of the State not conduct[ing] DNA or fingerprints of the money was not disclosed to the defense thus it was not obtained in time to file a motion for a new trial[.]" He further alleged that crime scene tech, Ms. Scott, related that the money "'was given to the victims family to start a fund raiser.'"

Murphy claimed that he learned that money had been recovered from the cab, but not analyzed, in response to a March 30, 2023 "request to court" for "a copy of the DNA and fingerprint (analysis) test results of the money found by crime scene tech 'Amy Scott.'" In response to his request, Murphy asserted that he was informed by the court that "'this is

not in my file.'"[2] Murphy stated that "[t]his evidence" that the State "fail[ed] to conduct DNA and/or fingerprint testing of the money found" by the crime scene technician constituted newly discovered evidence. Murphy maintained that this "evidence" creates a substantial or significant possibility that the result of his trial may have been different because the defense "could've argued that the State had not tested the money because it undermines its theory 'that Mr. Murphy robbed the victim of his services.'" He also claimed that it would have "disprove[ed]" Mr. Smith's testimony that he did not have "any money" to pay for a cab.[3]

The State opposed Murphy's petition. Among other things, the State noted that Murphy had failed to cite where in the trial transcript Ms. Scott had testified about money she recovered from the cab. The State asserted that the "trial transcript actually shows that Ms. Scott did not say anything about finding currency in the cab, let alone providing the same to the Victim's family." [4]

[2] The Clerk of the Circuit Court for Baltimore City responded: "Mr. Murphy: The information you requested is not in your circuit court file. Contact your attorney for copies[.]"

[3] The State elicited at trial that Murphy had insufficient funds to pay the cab fare from Frederick to Baltimore, with at least one witness testifying that he had $50 but not the $90 she would have charged him. In this Court's opinion affirming the judgments on direct appeal, we noted that Mr. Smith had testified that he was "surprised" when Murphy phoned him from the cab saying he was heading to Baltimore because Smith "knew Murphy did not have the money for a cab ride to Baltimore." *Murphy I*, slip op. at 6.

[4] As noted, the trial transcripts are not in the record before us. In its opposition to Murphy's petition, the State included a footnote that it provided the transcript from April 21, 2011 to the court "via hand delivery because it cannot be provided via MDEC due to the size of the electronic file."

The court dismissed Murphy's petition with prejudice. In its memorandum opinion, the court indicated that it had reviewed Ms. Scott's trial testimony and "[t]here is no reference in her testimony to giving any recovered currency" to the victim's family. The court found that "[m]ost of her testimony concerned the exact areas she swabbed to recover possible DNA and the exact areas she dusted to recover fingerprints." The court further noted that "[t]he only reference to currency came during cross-examination" when defense counsel cross-examined Ms. Scott "about the ability to recover fingerprints from various surfaces" and she testified as follows:

> Q. Could you also do it with currency?
>
> A. Yes you can.
>
> Q. Okay. Were you asked to do any fingerprinting of any money recovered in the case?
>
> A. No I was not.
>
> Q. Were you asked to do any fingerprinting of any paper recovered in the case?
>
> A. No, I would not do that. That would go to latents. Because you have to process paper with chemicals.

The court concluded that this trial testimony reflects that the defense was aware at the time of trial that any currency that had been recovered had not been tested for DNA or fingerprints and, consequently, that information is not "newly discovered evidence" for purposes of a writ of actual innocence.

DISCUSSION

Certain convicted persons may file a petition for a writ of actual innocence based on "newly discovered evidence." *See* Md. Code Ann., Crim. Proc. § 8-301; Md. Rule 4-332(d)(6). "Actual innocence" means that "the defendant did not commit the crime or offense for which he or she was convicted." *Smallwood v. State*, 451 Md. 290, 313 (2017).

In pertinent part, the statute provides:

> (a) A person charged by indictment or criminal information with a crime triable in circuit court and convicted of that crime may, at any time, file a petition for writ of actual innocence in the circuit court for the county in which the conviction was imposed if the person claims that there is newly discovered evidence that:
>
> (1) (i) if the conviction resulted from a trial, creates a substantial or significant possibility that the result may have been different, as that standard has been judicially determined; [and]
>
> ***
>
> (2) could not have been discovered in time to move for a new trial under Maryland Rule 4-331.
>
> ***
>
> (g) A petitioner in a proceeding under this section has the burden of proof.

Crim. Proc. § 8-301.

"Thus, to prevail on a petition for writ of innocence, the petitioner must produce evidence that is newly discovered, i.e., evidence that was not known to petitioner at trial." *Smith v. State*, 233 Md. App. 372, 410 (2017). Moreover, "[t]o qualify as 'newly discovered,' evidence must not have been discovered, or been discoverable by the exercise of due diligence," in time to move for a new trial. *Argyrou v. State*, 349 Md. 587, 600-01 (1998) (footnote omitted); *see also* Rule 4-332(d)(6).

"Evidence" in the context of an actual innocence petition means "testimony or an item or thing that is capable of being elicited or introduced and moved into the court record, so as to be put before the trier of fact at trial." *Hawes v. State*, 216 Md. App. 105, 134 (2014). The requirement that newly discovered evidence "speaks to" the petitioner's actual innocence "ensures that relief under [the statute] is limited to a petitioner who makes a threshold showing that he or she may be actually innocent, 'meaning he or she did not commit the crime.'" *Faulkner v. State*, 468 Md. 418, 459-60 (2020) (quoting *Smallwood*, 451 Md. at 323).

Whether the newly discovered evidence creates a substantial or significantly possibility that the outcome of the trial may have been different involves a "materiality analysis under a standard that falls between 'probable,' which is less demanding than 'beyond a reasonable doubt' and 'might,' which is less stringent than 'probable.'" *Carver v. State*, 482 Md. 469, 490 (2022) (cleaned up). "To meet this standard, the cumulative effect of newly discovered evidence, viewed in the context of the entire record, must undermine confidence in the verdict." *Id*. (quotation marks and citations omitted).

A court may dismiss a petition for actual innocence without a hearing "if the court concludes that the allegations, if proven, could not entitle a petitioner to relief." *State v. Hunt*, 443 Md. 238, 252 (2015) (quotation marks and citation omitted). *See also* Crim. Proc. § 8-301(e)(2). "[T]he standard of review when appellate courts consider the legal sufficiency of a petition for writ of actual innocence is *de novo.*" *Smallwood*, 451 Md. at 308.

We hold that the circuit court did not err in dismissing Murphy's petition because, as the court pointed out, the defense was aware at trial that the crime scene technician had not conducted fingerprint testing on any currency that may have been recovered from the cab and thus, any information Murphy later learned about the lack of testing on any currency could not be deemed "newly discovered." *See Douglas v. State*, 423 Md. 156, 180 (2011) (noting that "evidence that was clearly known during trial" does not constitute newly discovered evidence).

Moreover, whether Murphy's fingerprints or DNA were or were not on any currency that may have been recovered does not speak to his actual innocence. Nor would it undermine confidence in the jury's verdict. The State elicited evidence at trial that Murphy had some money when seeking a cab ride to Baltimore, but not enough to pay the entire fare. Finally, as we noted in our opinion affirming the judgments on direct appeal, this was "not a case in which the evidence against the defendant was thin." *Murphy I*, slip op. at 18.[5]

[5] We decline to address Murphy's contention that the circuit court "erred in failing to address [his] ineffective assistance of counsel" claim when dismissing his petition. In his petition for writ of actual innocence, Murphy argued that his trial counsel:

> rendered ineffective assistance for failing to object to crime scene tech's 'Amy Scott' testimony, wherein, she disclosed 'she found money in the victims (passenger side) sun visor during search and seizure of vehicle for latent prints, etc.,' and demand an evidentiary hearing so as to request that State produce DNA and/or fingerprint analysis of the money found and preserve argument for MJOA.

Trial counsel's alleged deficient performance would not substantiate Murphy's claim that he is actually innocent of the crimes for which he was convicted.

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