Circuit Court for Prince George's County
Case No.: CT940199X

UNREPORTED

IN THE APPELLATE COURT

OF MARYLAND*

No. 1616

September Term, 2023

GEORGE DUNDAS

v.

STATE OF MARYLAND

Graeff,
Arthur,
Eyler, James R.
(Senior Judge, Specially Assigned),

JJ.

PER CURIAM

Filed: May 10, 2024

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

Following the denial of his petition for writ of actual innocence by the Circuit Court for Prince George's County, George Dundas noted this appeal. He asserts that the circuit court erred in denying his petition without a hearing. For the reasons to be discussed, we shall affirm the judgment.

BACKGROUND

Trial[1]

Following a bench trial, Mr. Dundas was convicted of the first-degree murder of Denise Shea, a bedridden young woman with spina bifida.[2] Denise resided with her mother, Carol Roberts, and stepfather, Junior "Harry" Roberts in Hyattsville. Mr. Roberts knew Mr. Dundas from "back home" in Jamaica. Mrs. Roberts also knew Mr. Dundas, whom she testified was known by the name "Raga." She first met him when he was a child when she was residing with her husband in Jamaica in 1982-1983. After the Robertses moved to the United States, Mr. Dundas visited them in their home in August of 1990 and on three or four other occasions.[3]

[1] The facts related to the crime are taken from this Court's opinion in *Dundas v. State*, No. 1614, September Term, 1994 (filed June 13, 1995) (*Dundas I*) affirming his conviction on direct appeal. The transcript from Mr. Dundas's bench trial is not in the record before us.

[2] The record indicates that Denise was 27 years old at the time. We shall refer to her and her sister, Dannette Shea, by their first names to distinguish one from the other.

[3] Mr. Roberts testified that Mr. Dundas had stayed with him and his family for a time in 1990. It appears that Mr. Dundas had also moved from Jamaica to the United States.

On the morning of December 16, 1993, Mrs. Roberts left home for work. She left the front door unlocked because her daughter, Dannette Shea, was coming to the home later that morning to take Denise to get a flu shot. Sometime that morning, before Dannette arrived, Denise telephoned her mother. At trial, Mrs. Roberts summarized their conversation:

> She said, Mom, Raga was here. And I said, what do you mean he was there. He came in the house? And she said, yes, ma'am. And I said, he just came into the house? And she said, yes. And I said, well, what did he want, or I don't know if I said what did he want. She said he was looking for Harry, and he needed to use the bathroom. And I said, which bathroom did he use, because we have two bathrooms. And she said, he used mine. And I said, well, has he gone and she said yes.

Dannette arrived at the Roberts' home at approximately 12:40PM, having driven there with Edward Petit. To her surprise, Dannette found that the front door was locked. She then walked around to the side of the house to try another door and was startled by a man who was "scrunched down" and then "jumped up." Dannette later (and also in court) identified that man as Mr. Dundas. When she asked him what he was doing there, the man explained that he was "Mike," a friend of Harry's.[4] He then walked away from the house. Mr. Petit also saw the man, whom he later identified as Mr. Dundas, walk away from the house and get into a car and as soon as the car "hit the corner," it immediately sped up.

[4] The record indicates that Mr. Dundas had previously used the alias Michael George Miller, Jr., as reflected in two previous convictions for possession of cocaine in 1991 and 1992 in Washington, D.C.

Dannette entered the house and found Denise dead. Denise had been stabbed twice in the chest. Immediately after observing Mr. Dundas leave the premises "really quick," Mr. Petit related that Dannette ran out the front door of the house screaming.

Mr. Roberts testified that Mr. Dundas knew that he kept valuables in a filing cabinet in his home. Mr. Roberts was not expecting a visit from him that day. A trash bag containing a VCR and a telephone were recovered from the top of the filing cabinet in the closet of the master bedroom.

Leighton Brown and his wife, Tanya Sutton, testified that, after his arrest, Mr. Dundas called them from the county detention center and asked them to tell the police that he had been at their home in Washington, D.C. between 10:00AM and 1:00PM on the day of the murder. Mr. Dundas, however, had not been at their home that day.

On direct appeal, among other things, Mr. Dundas argued that the evidence was insufficient to support the conviction for first-degree murder. This Court disagreed, holding that "the overwhelming evidence establish[ed] the appellant's guilt[.]" *Dundas I*, slip op. at 4.

Petition for Writ of Actual Innocence

In 2023, Mr. Dundas, representing himself, filed a petition for writ of actual innocence. In support of his claim of newly discovered evidence of an exculpatory nature, he relied on letters he had received from an attorney with the Innocence Project within the Office of the Public Defender. In the first letter, dated December 5, 2007, the attorney wrote to Mr. Dundas stating, in relevant part:

> I am trying to find out if the police department still has the records of the fingerprints that were found at the murder scene. The fingerprints were compared to yours and did not match, but the reports that I have do not indicate the number and location of the fingerprints.
>
> Once I receive this information, our staff will decide whether there is enough useful information to file a motion to reopen your postconviction.

In a second letter, dated April 4, 2008, the attorney informed Mr. Dundas:

> I have now reviewed the fingerprint evidence in your case. Interestingly, several unidentified fingerprints were found in places where the murderer would have been: on the metal sidebar to the bed where the murder took place; on a telephone and a VCR that were found in the trash bag in the master bedroom; on the main bathroom sink; on the door to the victim's bedroom; and on the interior side of the front door. As you are aware, none of these facts were brought to judge's attention during your trial.

In a third letter, dated September 18, 2009, the attorney informed Mr. Dundas that the Innocence Project "has been scaled back" and he would no longer be working on the case. And given "the lack of progress on your case," the attorney further advised him that the case file would be closed, and the Innocence Project would not represent him.

In his *pro se* petition for writ of actual innocence filed in 2023, Mr. Dundas claimed that the fingerprint evidence of "other unidentified persons" is "exculpatory in nature . . . and tends to support his claim of innocence." And he asserted, without any corroboration, that the State's Attorney's Office "intentionally withheld and suppressed" the "unidentified fingerprints" prior to and during trial.

The State opposed the petition. Among other things, the State pointed out that the attorney's letters did not characterize "the fingerprint report as newly discovered evidence

nor [do they] state that the report was not provided in discovery."[5] The State also noted that the letters did not say that Mr. Dundas "is in fact innocent, that there was a *Brady* violation, that the fingerprint report exonerates the Petitioner, or that at a minimum the report 'creates a substantial or significant possibility that the result at [trial] might have been different' as mandated by Maryland law."

The circuit court denied the petition without a hearing. In its Opinion and Order, the court concluded that the fingerprint evidence was not newly discovered evidence as the fingerprints were recovered at the time of the murder. The court pointed out that the Innocence Project attorney noted that he became aware of the fingerprints after reviewing Mr. Dundas's case and "[t]he mere fact that the evidence was not used at trial does not mean that it is newly discovered." The court also found that, "[i]n light of all the other evidence presented at the Petitioner's trial," the fingerprint information "does not provide a reasonable probability that the result of the trial may have been different, making it immaterial evidence."

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-

[5] There are no reports or documents in the record before us related to the fingerprints at issue here. The only document is the letters from the Innocence Project attorney referring to the fingerprints. As noted, the trial transcripts are also absent from the record before us. And there is no indication as to what was or was not provided to the defense in discovery or what exhibits were entered into evidence at trial.

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.
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> ***
>
> (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).

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 find no error in the circuit court's denial of Mr. Dundas's petition without a hearing. Although Mr. Dundas asserts that the State's Attorney's Office "suppressed evidence that fingerprints of other unidentified suspects were found at the scene of the crime[,]" he provides no support for that bald assertion and appears to mischaracterize the fingerprints as belonging to "unidentified suspects" rather than "unidentified persons." He points to nothing that suggests that police considered anyone other than himself as a suspect in this murder.

Moreover, the first letter from the Innocence Project attorney which Mr. Dundas relies upon relates that the attorney was "trying to find out if the police department still has the records of the fingerprints that were found at the murder scene" because "the

fingerprints were compared to yours and did not match, but the reports that I have do not indicate the number and location of the fingerprints." In other words, as the circuit court pointed out, the Innocence Project attorney had in his possession "reports" related to fingerprints that did not match those of Mr. Dundas but wanted more detailed information as to the number and location of those prints. Consequently, we are not persuaded that unidentified fingerprints were newly discovered information.[6]

But even if we assume that the recovery of unidentified fingerprints was newly discovered evidence, the fact that fingerprints of unidentified persons were recovered from the crime scene does not speak to Mr. Dundas's innocence. Nor does it create a substantial or significant possibility that the result of his bench trial may have been different. Mrs. Roberts testified at trial that Denise called her the morning of the crime to say that Mr. Dundas had appeared in their home; Mr. Roberts testified that he was not expecting a visit from Mr. Dundas that day; Dannette testified that, just prior to discovering Denise's dead body, she encountered Mr. Dundas outside the home "scrunched down" by the side of the house; Mr. Petit identified Mr. Dundas as the person he observed walk away from the house and drive away in a vehicle that "started spinning wheels" as soon as it "hit the corner[.]"; and Leighton Brown and Tanya Sutton testified that they declined—because it was not

[6] In his petition for writ of actual innocence, Mr. Dundas included purported excerpts of the trial testimony of a crime scene technician. The excerpt indicates that the crime scene was processed, and various items photographed and removed from the home, some of which were submitted to "the FBI lab services." Thus, even if we assume that fingerprint evidence was not turned over in discovery, at the time of trial Mr. Dundas would have been on inquiry notice that fingerprints may have been recovered when the crime scene was processed. Thus, if not disclosed, the fingerprint evidence could have been discovered by the exercise of due diligence in time to move for a new trial.

true—Mr. Dundas's jailhouse request that they give him an alibi for the day of the crime. The fact that fingerprints of unidentified persons were recovered from the crime scene does not in any way negate the State's evidence placing Mr. Dundas at the scene of the crime on the day Denise was murdered. In other words, we are unpersuaded that fingerprints of unidentified persons recovered from the Roberts's home would have created a substantial or significant possibility that the result of Mr. Dundas's bench trial may have been different. Accordingly, the circuit court did not err in denying Mr. Dundas's petition for writ of actual innocence and doing so without holding a hearing.

JUDGMENT OF THE CIRCUIT COURT FOR PRINCE GEORGE'S COUNTY AFFIRMED. COSTS TO BE PAID BY APPELLANT.