

Circuit Court for Baltimore City  
Case No.: 108295013

UNREPORTED  
IN THE APPELLATE COURT  
OF MARYLAND\*

No. 19

September Term, 2023

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GREGORY BARBER

v.

STATE OF MARYLAND

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

JJ.

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PER CURIAM

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Filed: January 19, 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 a 2010 jury trial in the Circuit Court for Baltimore City, appellant Gregory Barber was convicted of the 2008 murder of Kermia Hair. The court sentenced him to life imprisonment. This Court affirmed the judgments. *Barber v. State*, No. 2694, September Term, 2010 (filed January 13, 2012) (*Barber I*).

In December 2022, Mr. Barber, representing himself, filed a petition for writ of actual innocence which the circuit court dismissed, without a hearing, after concluding that the petition failed to assert grounds on which relief may be granted. Mr. Barber appeals that ruling. We shall affirm the judgment.

## **BACKGROUND**

### Trial

A summary of Mr. Barber’s trial for the murder of Ms. Hair is set forth in *Barber I* and we shall not recount it here. For context in this appeal, we note that on February 7, 2008, Ms. Hair’s lifeless body was found lying in a pool of blood in her apartment, where she resided with her young son and Mr. Barber, her boyfriend. The autopsy report indicated that Ms. Hair had been stabbed nine times and had injuries to her head caused by blunt force trauma. There were no signs of a break-in, and the apartment was locked when her body was discovered. Ultimately, Michael Thompson, who at the time was engaged to and living with Mr. Barber’s mother, informed the police that on the day of Ms. Hair’s murder he observed Mr. Barber with blood on his shirt and a hammer in his hand in the home Mr. Thompson shared with his fiancée. Mr. Barber had been staying with his mother and Mr. Thompson at their home because he and Ms. Hair had been arguing about a child Mr. Barber had fathered with another woman. *Barber I*, slip op. at 1-6.

Petition for Writ of Actual Innocence

Twelve years after his conviction, Mr. Barber filed a petition for writ of actual innocence centered around two documents he had received in response to a Maryland Public Information Act (“MPIA”) request to the Baltimore Police Department seeking a copy of his file in this case. Document “A” is a September 8, 2008 report prepared by the Maryland State Police, Forensic Sciences Division, regarding DNA analysis in relation to an unsolved 2007 Baltimore City homicide. The report provided an “Agency Case” no. of 07-6K-4064, the victims as Leonard Hunt and Thomas Jones (non-fatal), the “Date of Offense” as November 8, 2007, and the “Agency Contact” as Detective Daniel Nicholson, IV. Document “A” reported that DNA analysis of a “condom outside” was a match to Ellamont Garland. Document “B” was similar to Document “A”—in that it included the same offense date, agency case number, and victims—but with the following differences: the report was dated September 3, 2008 and concluded that DNA analysis of a “cig butt” was a match to Kevin McNeil.

Mr. Barber asserted that Documents “A” and “B” were evidence of his actual innocence because they established that a condom and cigarette butt were found at the crime scene in this case and the DNA hits on those items implicated Mr. Garland and Mr. McNeil as the perpetrators of Ms. Hair’s murder. He pointed out that the recovery of a condom and cigarette butt were not mentioned in any “other” documents in his police file or listed among the evidence collected at the crime scene, and yet he insisted that Documents “A” & “B” indicate that the condom and cigarette butt were “collected at the crime scene” of Ms. Hair and submitted for analysis. He noted that “[t]wo different

attorneys from the Office of the Public Defender tried to talk [him] down off this Writ of Actual Innocence, claiming that they believed [Documents] A & B were documents from someone else’s case that were erroneously deposited into [his] police file.” He claimed, however, that further MPIA requests failed to produce any files related to the case numbers found on Documents “A” and “B” or to Mr. Garland or Mr. McNeil or the victims listed on those reports. Mr. Barber alleged that Detective Nicholson, “a rogue cop” and the detective in his case, was part of a vast conspiracy to frame him for Ms. Hair’s murder.

The circuit court dismissed the petition without a hearing. The court concluded that “the two analyses [of the condom and cigarette butt] are not evidence in Petitioner’s case as they relate to evidence recovered in another case being investigated by the same Detective, Daniel Nicholson, as in Petitioner’s case.” The court noted the two forensic reports “clearly reference another case or investigation involving a different victim with a different date of offense[.]”

### 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]

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(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.

In this appeal, Mr. Barber continues to insist that the condom and cigarette butt that were referenced in Documents “A” and “B” were collected from the crime scene of Ms. Hair’s murder and that Detective Nicholson and others conspired to frame him for the murder. He also maintains that the circuit court erred in “develop[ing] arguments on behalf of the State” and dismissing his petition for writ of actual innocence by concluding that Documents “A” and “B” were from another case. He complains that the circuit court “made itself an advocate of the State” by ruling against him when the State had not filed a response to his petition.<sup>1</sup> He also claims that the court “is duty-bound to review the case in the light most favorable to him[.]”

We find no error in the circuit court’s dismissal of Mr. Barber’s petition. Documents “A” and “B” are not related to the murder of Ms. Hair but rather were associated with the unsolved murder of Leonard Hunt that took place on November 8, 2007—several months

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<sup>1</sup> The circuit court ruled on Mr. Barber’s petition prior to the time allotted to the State to file a response.

prior to the murder of Ms. Hair. Mr. Barber’s assertions that Detective Nicholson and a host of others conspired to frame him for Ms. Hair’s murder is nothing but speculation on his part.

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