Circuit Court for Baltimore City
Case No. 119035010

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 145

September Term, 2021

AL DWAYNE SINGLETON

v.

STATE OF MARYLAND

Kehoe,
Nazarian,
Salmon, James P.
(Senior Judge, Specially Assigned),

JJ.

Opinion by Kehoe, J.

Filed: April 5, 2022

On January 4, 2019, hotel security guard Al Dwayne Singleton, appellant, assisted an intoxicated guest to her room. Shortly thereafter, an assailant using an authorized key card entered her hotel room and sexually assaulted the guest.

Although the guest reported to police that she "could not remember what took place due to her being highly intoxicated[,]" she recalled being strangled until she lost consciousness. Based on her account and physical injuries, the condition of her room, security video and records, and statements made by Mr. Singleton, he was charged with first-degree assault, first-degree rape, and related offenses.

On the day trial was scheduled to begin in the Circuit Court for Baltimore City, Mr. Singleton pled guilty to one count of first-degree rape. Eleven months after sentencing, the prosecutor received an email from the victim, expressing uncertainty about the rape conviction. In addition, she revealed that she had not disclosed to the prosecutor that she made prior false police reports accusing two men of violence. The prosecutor forwarded a copy of the email to Mr. Singleton's counsel.

Mr. Singleton moved for a new trial under Md. Rule 4-331(c), arguing that the email was newly discovered evidence containing material information that he could not, with due diligence, have obtained before entering his guilty plea. The State filed a written opposition, asserting that "relief requested by the defendant is unavailable" because he pleaded guilty and that, in any event, both the victim's uncertainties and her prior reports of sexual assault were known and discoverable by the defense before Mr. Singleton entered his plea.

Based on those pleadings, the circuit court denied the motion without a hearing. We will focus our analysis solely on the first argument presented by the State and shall hold that the relief that Mr. Singleton is seeking—a new trial based upon newly discovered evidence—is not available to a defendant whose conviction resulted from a guilty plea.

BACKGROUND

Mr. Singleton's guilty plea and conviction

On the scheduled trial date of October 4, 2019, pursuant to a plea agreement, Mr. Singleton sought to plead guilty to one count of first-degree rape, with a sentence of 60 years with all but 20 suspended, plus five years of supervised probation, a no contact order, and sex offender registration and supervision. At the same time, Mr. Singleton accepted the State's offer to plead guilty to second degree rape in another case that was scheduled for trial on November 14, 2019, with a sentencing recommendation of five years consecutive to this and any other outstanding Maryland sentences.

During a thorough plea advisement, conducted by the court and defense counsel, Mr. Singleton repeatedly acknowledged that he understood the consequences of pleading guilty. Specifically, defense counsel advised his client that "when you tender a guilty plea, [you] are not going to be able to put on [y]our factual or legal defenses on the record." Counsel also advised Mr. Singleton that he would not

> have an opportunity to ask questions of all of the State's witnesses. Those questions would be designed to challenge their credibility, challenge their observations, challenge their memory of what is alleged to have occurred on these dates. . . . Those witnesses would come to court, they would take the stand, they would be placed under oath, and your attorneys would be able to

> ask them questions. And if there [were] any questions that you wanted us to specifically ask during trial, we would ask those questions.

When defense counsel pointed out that "because you're tendering a guilty plea, you are taking on the highest form of incrimination" and "you're not going to have the right to cross-examine the State's witnesses," Mr. Singleton stated that he understood.

Next, Mr. Singleton acknowledged that to prove first-degree rape, "the State has to prove" nonconsensual penetration "while strangling was going on" and agreed that "the State's version of the facts in this case" was sufficient to establish that he committed first-degree rape "by committing the act of strangulation of the victim." In addition, defense counsel and the court pointed out that if the case went to trial, the State would have asked "for a jury instruction . . . that the victim was either mentally incapacitated or physically helpless[,]" such that she "was incapable of giving . . . consent because of her state" of "alcohol intoxication." When the court asked Mr. Singleton whether he understood that the State was proffering that "she was incapable of consenting[,]" he answered, "I do understand."

Finally, the court expressly advised Mr. Singleton that "because you're pleading guilty, you no longer have the automatic right to appeal" and have only a "very narrowly tailored basis upon which you could ask for permission to appeal." Defense counsel identified those "four very limited grounds" as lack of jurisdiction, illegality of the sentence, ineffective assistance of counsel, and involuntariness of the plea.

When asked by the court whether, "knowing all these rights that . . . you're giving up, and knowing all of the consequences," Mr. Singleton intended to waive those rights and

accept those consequences, he answered that he did. Likewise, when asked whether he understood that he was "waiving or giving up the very important right that you would've otherwise had, which would be to complain about any mistakes, or errors, or irregularities or defects in the State's cases against" him, Mr. Singleton again answered, "Yes, I understand, Your Honor." Moreover, Mr. Singleton specifically stated he understood that all pending defense motions, including "any motions to compel discovery" would be "withdrawn as a result of [his] guilty plea today[.]"

After Mr. Singleton reaffirmed that he wished to plead guilty in both cases, the prosecutor presented a detailed proffer of what the State's evidence would be if this case had proceeded to trial.

The prosecutor told the court that the State would have presented evidence that, on the day in question, Ms. G.[1] had driven to Baltimore for business purposes. After those matters were concluded, she went to a restaurant and became extremely intoxicated. She decided that it would not be safe for her to attempt to drive home. Another patron at the restaurant escorted Ms. G. to a nearby hotel. Because she was intoxicated, a security guard—Mr. Singleton—was tasked with escorting Ms. G. to her room. Ms. G. then fell asleep on the bed with her clothes on. Later, she was awakened by an unknown man who sexually assaulted her. In the course of the assault, her assailant strangled her until she lost consciousness. When she regained consciousness:

[1] "G." is a randomly selected letter. It may or may not be the first letter of the victim's surname.

> she bolted the door. And after assessing her situation, [Ms. G.] decided to wait to report the incident at the front desk because she was afraid that whoever had entered her room must have worked for the hotel. And she wanted to wait until whoever that person was had left for work and their shift was over. When she noticed that it was beginning to be light outside, she went downstairs to the reception desk to report the incident.
>
> The police were called and responded to the location. The officers who arrived on the scene . . . noticed visible injuries on Ms. [G.]. . . . Ms. [G.] was briefly interviewed, and then she was taken to Mercy Hospital for a SAFE exam.

The prosecutor proffered that the SAFE nurse would have testified that Ms. G.'s injuries, as well as other physical evidence recovered from the hotel room, were consistent with her having been beaten, strangled, and sexually assaulted. Mr. Singleton's DNA was recovered from Ms. G's neck. Investigating police officers would have testified that they reviewed security camera footage from the hotel from the night in question. This footage would have shown that Ms. G. was very intoxicated. Employees of the hotel would testify to the same effect. Further, the security camera footage would reveal that Mr. Singleton escorted Ms. G. to her room. The proffer continued:

> Now, . . . on the 5th of January of 2019, a key card interrogation was performed by . . . the assistant director of security at the hotel. And that . . . showed that there was an entry to the room number 8095, Ms. [G.'s] room, at 9:48 p.m. And then there was another key card entry that was recorded at 10:09 p.m.
>
> [Ms. G.'s testimony would be that] in the morning, when [she] woke up . . . she only had one card with her. Now, Mr. Singleton was interviewed by [the BPD sex offense detectives]. And he stated that Ms. [G.] was given two key cards, and that he took her to her room, and that she allowed him to have one key card . . . to go downstairs and obtain toothbrush and toothpaste for Ms. [G.]. And that the idea was that he would come back, use that key card to

> enter her room, and she would receive the toothpaste and toothbrush from him.
>
> His further statement . . . was that he actually got that toothpaste from housekeeping, went back to Ms. [G.'s] room and entered using her key card. His further testimony to them was that, at that time, he sat down on her bed and had a discussion with Ms. [G.]. And then Ms. [G.] made . . . sexual advances, and that they had sexual contact. . . .
>
> Mr. Singleton stated that Ms. [G.] was highly intoxicated. And, even though he said in his statement . . . that Ms. [G.] gave her consent to all of the sexual contact, he also said that he strangled her twice during the commission of all these instances of sexual contact. . . .
>
> Ms. [G.], in her statement to [the detective], said that she didn't remember anything like that. She remembered going to sleep, and then being waken [sic] up by someone in her room who strangled her to the point of unconsciousness.

When the court asked Mr. Singleton whether he was pleading guilty to rape in the first-degree "because you are indeed guilty[,]" he initially responded, "I've reviewed it with my counsel, Your Honor, and I feel as though that is my best interest." Commenting that Mr. Singleton's response reflected a "cost-benefit analysis," the court again asked Mr. Singleton whether he was "pleading guilty because you are, in fact, guilty, yes or no?" Mr. Singleton responded, "Yes, Your Honor." He also told the court that no one had "forced" him to say that and he "agree[d] that the State could prove the facts read into the record . . . as those facts were amended by [defense] counsel[.]"[2]

[2] Defense counsel's amendments to the prosecutor's proffer concerned aspects of the State's forensic evidence. None of the amendments weakened the State's proffer in any meaningful way.

The court, finding that Mr. Singleton "has freely, knowingly, voluntarily, and intelligently given his guilty plea here today, with full understanding of all the rights he has waived and the cons[e]quences of his plea[,]" accepted that plea and convicted him of first-degree rape.[3] On December 8, after considering the victim's written impact statement, the court sentenced him in accordance with the negotiated plea.

Ms. G.'s email to the prosecutor

On September 15, 2020, the prosecutor received the following email from Ms. G.:

> I am reaching out because I have a concern about the case. I clearly remember being strangled by a large . . . man[4] in my bed on January 5/6, 2019. I inferred/deduced that I had been raped by the state of the room and my injuries. However, I don't know. For all I know, I had consensual sex that I didn't remember. Yet, I was still strangled. What I am trying to communicate is that I believe you need to have sought to prosecute a man for assault (i.e., strangling me), but I am not certain that a rape occurred. I think one did, but I have a reasonable doubt in my mind.
>
> I am reaching out in part because I am dealing with a federal investigation on my end. The FBI (or some other organization) is investigating me for reasons not entirely unbeknownst to me. However, I did file two police reports in New York state several years ago that were false. Both of these reports accused men of violence. I did lie to the police, but was not seeking to get anyone wrongly arrested. I can go into more detail as to the context/circumstances if you'd like. I obviously didn't tell you this when we were working together because I was afraid to—such a fact would obviously

[3] The court then considered the statement proffered to support Mr. Singleton's guilty plea in the second rape case, in which he offered a ride to a pedestrian on the morning of October 11, 2018. According to the State's evidence proffer, Mr. Singleton drove the victim to an alley, where he strangled and sexually assaulted her. DNA collected from the ensuing SAFE exam was forensically matched to Mr. Singleton.

[4] Ms. G. identified the race of her assailant. Mr. Singleton is the same race.

> eradicate any and all credibility I had regarding my January 2019 complaint, which was entirely genuine.
>
> After months and months of reflection and questioning by the FBI, it has become clear to me that there is a minute possibility that I was merely assaulted that night in the hotel—not raped as well. Given that someone is presumably in prison for a long time, I want to ensure the nature of my complaint is accurate so that justice may be served.

On October 9, 2020, the prosecutor sent a printed copy of this email, by first class mail, to defense counsel.

Mr. Singleton's motion for a new trial

On December 30, 2020,[5] Mr. Singleton moved for a new trial under Md. Rule 4-331(c), requesting a hearing and citing "the newly discovered evidence that Ms. [G.] has a reasonable doubt that she was raped" and that "she previously lied and filed two false allegations against men in New York accusing them of violence."

In support, Mr. Singleton averred that, according to the investigation conducted by defense counsel, Ms. G. was in Baltimore that night to prepare for a hearing on her complaint of sexual coercion and inappropriate conduct against a former substance abuse

[5] Md. Rule 4-331(c)(1) provides that a motion for a new trial or other appropriate relief based upon newly discovered evidence must be filed within a year of the date that the defendant's right to file a motion for a new trial expired. A motion for a new trial must be filed within ten days of the verdict. Md. Rule 4-331(a). Mr. Singleton asserts that his motion was nonetheless timely because the running of this filing window was stayed for a total of 126 days by the Fifth Revised Administrative Order On the Emergency Tolling or Suspension of Statutes of Limitations and Statutory and Rules Deadlines Related to the Initiation of Matters and Certain Statutory and Rules Deadlines in Pending Matters. The State does not contest this.

counselor. Defense counsel's pretrial discovery requests for impeaching information on Ms. G., "including a medical or psychiatric condition or addiction that may impair the witness's ability to testify truthfully or accurately[,]" had been answered with the State's repeated assertions that the prosecutor was not aware of any such information.

According to defense counsel, the State, at a July 8, 2019, hearing, had "asserted that Ms. [G.] only has depression and depression would not impact her ability to testify truthfully or accurately." Yet "[a]t the same hearing, Attorney [N.], who represented Ms. [G.], stated that she suffers from posttraumatic stress disorder." At a hearing on August 14, 2019, the prosecutor responded to further defense requests for past sexual assault allegations by asserting "that the requested information was not discoverable." As a result, defense counsel moved to compel discovery of such potentially impeaching material.

Mr. Singleton further averred that while that motion was still pending the court, at a chambers conference that occurred two days before the scheduled trial date of October 4, indicated that it would not allow defense experts in PTSD and intoxication memory to testify and further "stated that Ms. [G.]'s mental health would not be an issue or on trial in this case." Mr. Singleton claimed that: "Due to these rulings, and the State's refusal to comply with their discovery obligations regarding Ms. [G.]'s mental health and history of complaints against other men," he "entered into a plea as he was denied his ability to present a full and fair defense."

On February 17, 2021, the State filed a written opposition to Mr. Singleton's motion for a new trial, arguing that under *Yonga v. State*, 446 Md. 183 (2016), such relief is

unavailable after his guilty plea. Moreover, in the State's view, Ms. G.'s reports to police and the SAFE nurse, in which she admitted that she could not remember everything but insisted she was strangled into unconsciousness, establish that "the idea that the victim did not know what happened to her in this case is not a new one." Nor was "the victim's history of charging other defendants in New York . . . new in this case[,]" because, according to the prosecutor, at the October 2 hearing conducted in chambers, "the defense requested . . . to cross-examine the victim on these matters and was denied due to the Rape Shield statute."

By order entered March 4, 2021, the court, "[u]pon consideration of" these pleadings, denied the motion without a hearing. Mr. Singleton noted this timely appeal.

ANALYSIS

The standards governing motions for a new trial under Md. Rule 4-331(c)

Md. Rule 4-331 provides in pertinent part:

> (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.
>
> * * *
>
> (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 [.]
>
> * * *

> (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.

(Emphasis added.)

In *Cornish v. State*, 461 Md. 518, 529 (2018), the Court of Appeals explained that under Rule 4-331(c), "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." When the court denies both the motion and a hearing based on the parties' written pleadings, appellate review is restricted to asking whether the court erred in denying a hearing because the movant established a *prima facie* case for relief, by proffering "newly discovered evidence which could not have been discovered by due diligence in time to move for a new trial" within the time constraints of the rule. *See id*. at 528-29. If the motion presents sufficient facts to do so, the remedy is reversal and remand for a hearing on the motion. *See id.* at 539-40.

The circuit court's ruling

The circuit court did not err in denying Mr. Singleton's motion for a new trial without a hearing because Mr. Singleton pled guilty and relief from a guilty plea is not available under Md. Rule 4-331(c).

Applying the reasoning and dicta in *Yonga v. State*, 446 Md. 183 (2016), we agree with the State that relief from a guilty plea is not available under Md. Rule 4-331(c). In that case, the Court of Appeals interpreted and applied Md. Code, Crim. Proc. § 8-301,[6] the statute governing post-conviction petitions for a writ of actual innocence, by examining whether an analogous motion for a new trial under Md. Rule 4-331(c) may be predicated on a guilty plea. In its unanimous opinion, the Court explained:

> No case has been located, nor have the parties provided a citation to any, in which a motion for new trial under Rule 4-331(c)(1) has been asserted when the proponent pled guilty.[7] In every case found, the opinion grappled with

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[6] Md. Code Crim. Proc. § 8-301 states in pertinent part:

> (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)(ii) if the conviction resulted from a guilty plea, an Alford plea, or a plea of nolo contendere, establishes by clear and convincing evidence the petitioner's actual innocence of the offense or offenses that are the subject of the petitioner's motion; and
>
> (2) could not have been discovered in time to move for a new trial under Maryland Rule 4-331.
>
> * * *

[7] In support of its conclusion, the Court cited: *Grandison v. State*, 425 Md. 34 (2012); *Evans v. State*, 382 Md. 248 (2004); *Campbell v. State*, 373 Md. 637 (2003); *Argyrou v. State*, 349 Md. 587 (1998); *Wiggins v. State*, 324 Md. 551 (1991); *Yorke v. State*, 315 Md. 578 (1089); *Stevenson v. State*, 299 Md. 297 (1984); *Crippen v. State*, 207 Md. App. 236 (2012); *Ramirez v. State*, 178 Md. App. 257 (2008); *Fields v. State*, 168 Md. App. 22 (2006); *Mack v. State*, 166 Md. App. 670 (2006); *Jackson v. State*, 164

> whether there was a substantial possibility that a different result would have occurred in the trial, whether jury or bench, as a result of the newly discovered evidence.

Id. at 208.

The Court in *Yonga* approved and applied the reasoning of this Court as to why Rule 4-331(c) relief is not available after a guilty plea:

> Judge Moylan, writing for the Court of Special Appeals, eloquently described the reasons why trials present the essential paradigm in the weighing process against which the "substantial or significant possibility" standard manifest in Rule 4-331(c)(1) and a bedrock of 8-301 is measured:
>
> > There is, however, no way to compare the trial that was with the trial that might have been when there was no trial that was. Where there was no trial, it would be utter speculation to attempt to construct what the imaginary trial might have consisted of. We may not hypothesize a mythical trial. The statement of facts offered in support of the guilty plea is only minimalist. A State's Attorney's Office going before a jury would almost certainly opt for a more maximal case of guilt. We do not know, therefore, what witnesses would have been called or what, under direct and cross-examination, they might have said. We do not know whether the appellant would or would not have testified and, if he did testify, how his testimony would have held up. We do not know what medical reports might have been submitted. There would be self-evidently no way to make the prescribed comparison. Newly discovered evidence simply cannot be measured in the case of a conviction based on a guilty plea. With what cast of characters, moreover, would we people our hypothetical testing? Do we ask whether the hypothetical jury that might have rendered a guilty verdict after a hypothetical trial would probably have rendered a different verdict? Or do we ask, as in this case, whether [the trial judge] would

Md. App. 679 (2005); *Gravely v. State*, 164 Md. App. 76 (2005); *Newman v. State*, 156 Md. App. 20 (2003), *rev'd on other grounds*, 384 Md. 285 (2004); *Berringer v. Steele*, 133 Md. App. 442 (2000); *Love v. State*, 95 Md. App. 420 (1993); and *Bloodsworth v. State*, 76 Md. App. 23 (1988).

> still have accepted the guilty plea? These are very different questions. The criteria for rendering a trial verdict and the criteria for accepting a guilty plea are not remotely the same.

Yonga, 221 Md. App. at 68-69. As a result of the different criteria utilized at trial and a guilty plea, the test of the persuasive weight of the newly discovered evidence contained in 8-301(A)(1), with its foundation in 4–331(c)(1), would not be applicable where the defendant had pled guilty:

> The acid test is to ask whether, if that jury had had the benefit of the newly discovered evidence as well as the evidence that was before them, would there be "a substantial or significant possibility that the result would have been different?" There is no way that such a test can be applied, however, to a conviction based on a guilty plea rather than upon a trial. The minimalist statement of facts offered in factual support of a guilty plea is no equivalent of or substitute for an actual trial. It was never intended to be.

Yonga, 446 Md. at 210-11.

As is its prerogative, the General Assembly thereafter amended Crim. Proc. § 8-301 to authorize petitions for a writ of actual innocence in cases where the petitioner pled guilty. *See* 2018 Md. Laws, ch. 602 (effective Oct. 1, 2018); and *Hunt v. State*, 474 Md. 89, 107 n.16 (2021) ("In response to *Yonga*, which held that a person convicted via a guilty plea was ineligible to invoke the remedy afforded under section 8-301, the General Assembly amended the statute to permit, under a heightened burden of persuasion, a person convicted via a guilty plea to raise thereafter a claim of actual innocence."). Thus, since 2018, relief has been available under this statute when the petitioner establishes (1) "by clear and convincing evidence the petitioner's actual innocence of the offense or offenses" that are the subject of the petition, and (2) that the newly discovered evidence "could not have been discovered in time to move for a new trial under Maryland Rule 4-331."

Citing the 2018 amendment to Crim. Proc. § 8-301, Mr. Singleton argues that his motion for a new trial "was properly before the circuit court" because the holding in *Yonga* that "'a person who has pled guilty may not later avail himself or herself of the relief afforded by the [analogous] Petition for a Writ of Actual Innocence' 446 Md. at 195, has been superseded by statute." This contention is not persuasive.

Although the General Assembly amended Crim. Proc. § 8-301, the Court of Appeals has not followed suit by revising Md. Rule 4-331 to authorize relief from a guilty plea. Because the Court has not amended Rule 4-331, we apply the rationale articulated and approved in *Yonga*, explaining why relief under Rule 4-331(c) is restricted to convictions predicated on a trial verdict. For this reason, we hold that because Mr. Singleton's guilty plea foreclosed a new trial based on newly-discovered evidence under Rule 4-331(c), the circuit court did not err in denying his motion for a new trial without a hearing.[8]

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

[8] In its brief, the State sets out other contentions as to why the circuit court did not err in denying Mr. Singleton's motion. These contentions relate to whether his counsel could have discovered evidence of Ms. G.'s prior accusations of assault through discovery or interviewing Ms. G. as part of pre-trial discovery or investigation. Mr. Singleton vigorously contests each of the State's arguments.

It is not necessary for us to address these matters in order to conclude that the circuit court did not err in denying his motion for a new trial. Because it is not necessary for us to address them, we decline to do so. *See Garner v. Archers Glen Partners*, 405 Md. 43, 46 (2008) ("[A]n appellate court should use great caution in exercising its discretion to comment gratuitously on issues beyond those necessary to be decided.").