

Circuit Court for Carroll County  
Case No. 06-K-95-022634

UNREPORTED  
IN THE COURT OF SPECIAL APPEALS  
OF MARYLAND

No. 555

September Term, 2018

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MATT GERALD GREEN

v.

STATE OF MARYLAND

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Nazarian,  
Arthur,  
Shaw Geter,

JJ.

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Opinion by Arthur, J.

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Filed: October 7, 2019

\*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.

On April 26, 1996, a jury sitting in the Circuit Court for Carroll County convicted appellant, Matt Gerald Green, of two counts of first-degree murder, one count of kidnapping, and one count of use of a handgun in the commission of a crime of violence. The court sentenced Green to two terms of life imprisonment without the possibility of parole, a consecutive term of 20 years' imprisonment for the handgun violation, and another consecutive term of 18 months' imprisonment for the kidnapping offense.

In 2017 Green filed a petition for writ of actual innocence based on perjured testimony by the late Joseph Kopera, an expert witness at his trial. The Circuit Court for Carroll County denied the petition, and Green appealed.

Green's brief presents two questions, which we have rephrased:

1. Did the circuit court err or abuse its discretion in denying Green's petition for a writ of actual innocence?
2. In considering the petition for a writ of actual innocence, did the circuit court err in not addressing Green's contention that the use of Kopera's perjured testimony resulted in a denial of due process?<sup>1</sup>

For the reasons discussed below, we conclude that the circuit court did not abuse its discretion in denying the petition. Thus we shall affirm.

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<sup>1</sup> Green's two questions presented are as follows:

1. Whether the Circuit Court erred in denying Appellant's Petition for Writ of Actual Innocence where the testimony of Joseph Kopera, who provided perjured testimony at trial, was a critical part of the State's case, and without whose testimony there is a substantial possibility that the result may have been different?
2. Whether the Circuit Court erred in failing to address the issue that Mr. Green's right to due process was violated by Kopera, who provided perjured testimony and was a critical witness at trial?

## **BACKGROUND**

On December 15, 1994, Kurt Benkert, Esteban Santana, and Santana's nine-month-old daughter paid a visit to Green at his house in Arbutus. While they were there, Green shot Santana in the face and the back and then stabbed him in the neck, severing his jugular vein and carotid artery. Green also shot Benkert twice in the face, stabbed him in the neck three times, and ultimately killed him by repeatedly bludgeoning his head with a gun.

After killing Santana and Benkert, Green drove Santana's car, and Santana's infant daughter, to Patapsco State Park, where he abandoned them. He hitchhiked home, dug a hole in his basement, and buried the bodies. He also cleaned up the blood-spattered basement, painted the basement floor and walls, and disposed of the knife and the blood-spattered clothing in the Patapsco River.

Green came to the attention of the police because Santana's wife reported that "Matt" had made a friendly call to him and that he and Benkert were on their way to see him just before they disappeared. On December 17, 1994, two days after the killings, Green gave a recorded statement to the police in which he admitted that he killed Santana and Benkert, but claimed that he acted in self-defense after they attacked and beat him, allegedly in an attempt to collect a drug debt.

On January 9, 1995, Green was indicted on two counts of first-degree murder, two counts of kidnapping, two counts of armed robbery, and one count of unlawful possession of a controlled dangerous substance. At trial, the State's case included Green's recorded statement, as well as testimony from Dr. Ann Dixon, the Deputy

Medical Examiner, and Joseph Kopera, an expert in the field of ballistics.<sup>2</sup>

Kopera testified that Santana and Benkert were shot with hollow-point bullets that mushroom to approximately three times their physical diameter upon impact. He explained that these bullets are used for their “devastation properties” and “knock down power.” Kopera also explained that, when he examined Green’s firearm, it was inoperable because the trigger guard was bent, jamming the trigger.<sup>3</sup> Finally, Kopera testified that he examined the sweatshirt and thermal undershirt worn by Santana on the day of his death. He said that a bullet hole in the sweatshirt measured “approximately three eighths of an inch in diameter” and that the shirt showed no evidence of gunpowder residue. The thermal undershirt had a hole in the same location as the hole in the sweatshirt, and it too showed no evidence of gunpowder residue. Kopera explained that the lack of gunpowder residue meant the shot had been fired from a distance of at least 18 inches away from Santana.

Dr. Dixon also testified that Santana and Benkert had been shot with large-caliber bullets with a hollowed-out nose. Santana, she said, had suffered a bullet wound in the face and one in the back. Because neither wound had soiling or powder deposition, Dr. Dixon opined that they were not close-range gunshot wounds. One of the bullets entered

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<sup>2</sup> Although the killings occurred in Baltimore County, Green’s case was transferred to Carroll County. A Baltimore County judge presided over the trial.

<sup>3</sup> Evidently, the trigger guard had been bent when Green used the gun to bludgeon Benkert to death.

Santana’s back between his spine and right shoulder blade, traveling to the left through his body, penetrating his left lung and ending in his left arm. Dr. Dixon explained that, based on the entrance wound and path of the bullet, it was a “very tangential shot.”<sup>4</sup>

As previously mentioned, Green was convicted of two counts of first-degree murder, one count of kidnapping and one count of use of a handgun in the commission of a crime of violence.

On August 11, 2017, Green filed a petition for writ of actual innocence. In his petition, he claimed that Kopera had lied about his academic credentials<sup>5</sup> and that Kopera’s perjury was newly-discovered evidence tending to prove that he was actually innocent of the 1994 murders. Following a hearing, the circuit court denied Green’s petition.

Although the court agreed that the evidence of Kopera’s perjury was newly discovered, it determined that Kopera’s testimony was largely cumulative of Dr. Dixon’s testimony. In addition, the court stressed the considerable body of other evidence against

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<sup>4</sup> According to Dr. Dixon, Santana did not die of his bullet wounds; he died from a wound to the right side of the neck, which was “a combination of cutting and stabbing.” This wound penetrated the internal jugular vein and the common carotid artery. Benkert, too, did not die of his bullet wounds (which, Dr. Dixon said, were not from close range), or of his stab wounds. Rather, he died of blunt-force trauma to the head, which was evidenced by about 35 lacerations. Notably, Benkert suffered stab and cutting wounds on his hands, which Dr. Dixon testified were “defensive type injuries” that he incurred as he tried “to protect [himself] from the knife thrusts.”

<sup>5</sup> Kopera falsely claimed to have engineering degrees from the University of Maryland and the Rochester Institute of Technology. It appears that he also falsely claimed to have graduated from the FBI Training Academy. *See McGhie v. State*, 449 Md. 494, 505 (2016).

Green, including the lack of any significant injuries to his person (which undermined his claim of self-defense); the lack of any damage in Green’s house (which undermined his claim that a violent confrontation broke out on the first floor of his house and continued as the alleged combatants fought their way downstairs to the basement); Green’s apparent attempt to prepare for the killings by getting his family out of the house and painting the basement windows black before he asked Santana to come over; the absence of gunpowder residue on the victims’ clothing (which refuted Green’s contention that he shot them at close range); Green’s efforts to conceal the crime by burying the bodies, painting the basement, and disposing of incriminating evidence in the river (which arguably evidenced forethought and planning); and the “sheer disparity” between Green’s injuries and the fatal injuries inflicted on Santana (who was shot twice before suffering the stab wound that killed him) and Benkert (who was shot twice and stabbed, sustained defensive injuries, and was bludgeoned a total of about 35 times with a gun). Thus, the court concluded that, even without Kopera’s testimony, Green could not show a “substantial or significant possibility that the result” of his trial may have been different.

Green noted this timely appeal.

### ANALYSIS

A petition for writ of actual innocence, under Maryland Code (2001, 2008 Repl. Vol.), § 8-301 of the Criminal Procedure Article (“CP”), “gives a convicted person ‘an opportunity to seek a new trial based on newly discovered evidence that speaks to his or her actual innocence.’” *Patterson v. State*, 229 Md. App. 630, 637 (2016) (quoting *Douglas v. State*, 423 Md. 156, 176 (2011)). “Section 8-301 gives a person this

opportunity by establishing the functional equivalent of a motion for new trial on the ground of newly-discovered evidence, but without the strict time limits imposed by Maryland Rule 4-331(c).” *Id.*

At the time of Green’s petition, CP § 8-301 provided, in pertinent part, as follows:

(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) 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.

Section 8-301(a) “imposes three requirements upon a petitioner: (1) he or she must come forward with ‘newly discovered evidence’; which (2) ‘creates a substantial or significant possibility that the result [of his or her trial] may have been different’; and which (3) ‘could not have been discovered in time to move for a new trial under Maryland Rule 4-331[.]’” *Patterson v. State*, 229 Md. App. at 638 (footnote omitted). The petitioner bears the burden of proof. CP § 8-301(g).

The standard of review is twofold. In general, when a circuit court denies a petition for actual innocence after a hearing, we review the decision for abuse of discretion. *See, e.g., State v. Hunt*, 443 Md. 238, 247-48 (2015); *Patterson v. State*, 229 Md. App. at 639. But we conduct *de novo* review of a claim that the circuit court applied

an incorrect legal standard in evaluating an actual innocence petition. *See McGhie v. State*, 449 Md. 494, 510 (2016).

### **I. The Circuit Court Applied the Correct Standard**

Green contends that the circuit court misapplied the legal standard that governs review of an actual innocence claim based upon perjured testimony. He specifically contends that the circuit court improperly considered the effect of the jury’s knowledge of Kopera’s false credentials instead of excising all of Kopera’s testimony and derivative evidence.

In *McGhie v. State*, 449 Md. 494 (2016), the Court of Appeals considered how a court should evaluate the impact of newly-discovered evidence of perjury in deciding a petition for actual innocence. Like this case, *McGhie* involved newly-discovered evidence of Kopera’s false testimony about his academic credentials. Because of the substantial or significant possibility that one or more of the jurors “would have discredited his testimony in its entirety,” “had they known of Kopera’s false testimony about his credentials[,]” the *McGhie* Court held that a court should excise the witness’s entire testimony. *Id.* at 511.

In complaining that the circuit court misapplied the applicable standard, Green cites the circuit court’s statement that, “even if the jury was aware of Mr. Kopera’s perjured academic credentials at the time of the trial and discounted his testimony in full, no substantial or significant possibility exists that the result of the trial would have been different.” He also cites the circuit court’s statement that “[t]he jury’s knowledge of [Kopera’s] falsified credentials would not have created a substantial or significant



possibility of a different verdict, since his testimony on this point is not inconsistent with that of the Medical Examiner [Dr. Dixon].” He faults the court for referring to the jurors’ hypothetical knowledge of Kopera’s perjury, which he sees as inconsistent with *McGhie*’s directive to excise Kopera’s testimony in its entirety.

Green is invoking a distinction without a difference. The circuit court’s analysis in this case differs little from that of the circuit court judge in *McGhie*, who was held to have “correctly addressed the petition . . . by considering whether there was a substantial or significant possibility that, had the jury known of Kopera’s lies about his academic credentials, the jury would have discounted his testimony in its entirety.” *Id.* at 512. As in *McGhie*, “[w]e discern no legal error or abuse of discretion on the part of the hearing judge in properly analyzing the petition by recognizing the reasonable possibility that the jury, aware of Kopera’s lies about his academic credentials, would have discounted his testimony on the merits[.]” *Id.* at 514.

## **II. Kopera’s Testimony Was Not Essential to the State’s Argument that Santana Was Shot in the Back as He Turned and Ran**

In closing argument in Green’s criminal trial, the State told the jury that Santana “turned and ran,” which is why he “got shot in the back.” At the trial, the State argued that the “shot in the back” evidenced premeditation on Green’s part. The State also argued that the “shot in the back” disproved Green’s claim of self-defense — specifically, his claim that Santana continued to fight after he had been shot.

Green contends that Kopera’s testimony was the only evidence supporting the State’s theory that Santana was shot in the back while turning and running away. In

support of that contention, Green points to Kopera’s statement that the bullet hole on the back of Santana’s sweatshirt was “approximately three eighths of an inch in *diameter*.” Because Kopera said that the hole had a “diameter,” Green argues that it must have been circular. From his premise that the hole must have been circular, Green proceeds to argue that the bullet must have been fired at an angle perpendicular to Santana’s body. Otherwise, he says, citing Dr. Dixon’s testimony and a treatise on criminal investigations, the wound would have been “eccentric” or “oblong” in shape.<sup>6</sup>

On the basis of Green’s elaborate argument, he concludes that, according to Kopera’s testimony, Green must have been perpendicular to Santana when he fired the bullet that hit Santana in the back. Green argues that this alleged testimony was the sole basis for the State’s argument that Santana was “shot in the back” after he “turned and ran.” He goes on to argue that the alleged testimony was false, because Dr. Dixon described the shot as “very tangential,” meaning that the bullet was fired at something less than a right angle from Santana’s body.

Green’s argument is imaginative, but unmeritorious. In his testimony, Kopera actually said nothing about the angle at which the bullet entered Santana’s body. Kopera certainly did not testify that Santana was shot while he was running away from Green. For those reasons, it is pure surmise and conjecture to say that the jury would have

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<sup>6</sup> Contrary to Green’s implicit premise that only a circle can have a diameter, the term “diameter” is sometimes used to refer to a line segment passing through the center of an ellipse. See, e.g., <https://www.mathopenref.com/ellipse.html> (last visited Sept. 27, 2019). The “major axis” is the longest diameter of an ellipse, and the “minor axis” is the shortest. See <https://www.mathopenref.com/ellipseaxes.html> (last visited Sept. 27, 2019).

understood Kopera's reference to "diameter" to mean that the bullet had been fired at an angle perpendicular to Santana's body.<sup>7</sup>

Nor was Kopera's testimony inconsistent with Dr. Dixon's. Dr. Dixon opined that the back wound was the product of a "very tangential" shot. Kopera, on the other hand, said nothing about the angle of the shot. Kopera, therefore, did not contradict Dr. Dixon's testimony about the angle of the shot or the trajectory of the bullet.<sup>8</sup>

Finally, Kopera's testimony was not the sole basis for the State's inference that Santana "turned and ran" before he was shot in the back. In fact, there was no dispute that Santana was shot in the back, between his right shoulder blade and his spine. The only dispute was whether Santana was shot in the back as he was (in defense counsel's words) "twisting and turning" while grappling with Green, or whether he was some distance away from Green when he was shot (as both Kopera and Dr. Dixon concluded).

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<sup>7</sup> Green argues that Kopera used demonstrative photographs that, he says, showed a gun being held at a perpendicular angle. The record reflects that Kopera used a visual aid, consisting of two photographs, to show that the closer a gun is to its target, the more residue it leaves when it is fired. The visual aid is not part of the record, so we cannot evaluate Green's contention about the angle at which the gun was held.

<sup>8</sup> According to the circuit court, Kopera testified: "a) that there were bullet holes in the back of the victim's [Santana's] two shirts found on the victim's body, and b) that the shots that caused such holes were fired from a distance of eighteen inches or more." Seizing on the court's reference to bullet "holes," Green argues that Kopera's testimony was inconsistent with Dr. Dixon's testimony that Santana sustained only a single wound to his back. The argument has no merit. Kopera referred to bullet "holes" because a single bullet had made holes both in Santana's sweatshirt and in the thermal undershirt that he was wearing under it. Kopera did not testify that Santana suffered more than one bullet wound to the back.

On this record, the circuit court did not abuse its discretion in rejecting the contention that Kopera’s testimony was essential to the State’s argument that Santana was shot after he turned and ran.<sup>9</sup>

### **III. Kopera’s Other Testimony Was Largely Cumulative**

Green complains of additional aspects of Kopera’s testimony, but in our view, they were largely cumulative of other evidence in the case. For that reason, the excision of that testimony could not create a substantial or significant possibility that the result at trial might have been different.

First, Kopera testified that Santana was shot in the back from a distance of at least 18 inches. Dr. Dixon similarly testified that none of the gunshots were fired at “close range,” because the wounds did not exhibit stippling or sooting. Dr. Dixon did not precisely define what she meant by “close range,” but under no reading of Green’s statement could he have shot Santana and Bankert at anything other than close range, as he claimed that the shootings occurred in the midst of hand-to-hand combat. In these circumstances, Kopera’s testimony is cumulative of Dr. Dixon’s, so that the excision of his testimony would not create a substantial or significant possibility that the result at trial might have been different.

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<sup>9</sup> In reaching its decision, the circuit court wrote, in a single sentence that even if Kopera’s testimony were excluded, Santana’s sweatshirt and undershirt remained in evidence. Green argues that the court’s assertion is ground for reversal, because, he says, the damaged shirts had no meaning or significance apart from Kopera’s testimony. The State disagrees. We need not resolve that dispute, because there is no substantial or significant possibility that the result at trial might have been different even if the shirts were excised from the record along with all of Kopera’s testimony.

Second, Kopera testified that Green used hollow-point bullets, which he described as “knock down” rounds that are used for their “devastation properties,” i.e. to make a “larger hole.” Dr. Dixon testified, similarly, that Green used “large caliber,” “hollow nosed” bullets, “with a central post in the hollowed out portion.” Unlike Kopera, Dr. Dixon did not elaborate on the characteristics of hollow-point bullets. But those characteristics were reasonably apparent from other evidence in the case, such as Dr. Dixon’s medical testimony and the photographs of the victims’ wounds. Again, Kopera’s testimony was cumulative.

Finally, Kopera testified about the characteristics of Green’s gun, saying that it was made of “high density airplane steel,” that it had become inoperable because the trigger guard was bent, and that a trigger guard could be bent if a gun were used to hit someone in the head. His testimony added little to Green’s admission that he had hit Benkert in the head with his gun and to Dr. Dixon’s testimony that Benkert suffered several dozen blows to his skull, that he had a compound skull fracture and brain contusion, and that he died as a result of blunt-force trauma to the head. In short, there is really no dispute that Green used his gun to beat a wounded man to death. Once again, Kopera’s testimony was cumulative.

In summary, the circuit court correctly concluded that Kopera’s testimony was largely cumulative of other evidence in the case. The court, therefore, did not abuse its discretion in finding no substantial or significant possibility that the result at trial might have been different had Kopera’s testimony been excised in its entirety.

#### **IV. The Evidence of Guilt Was Overwhelming**

In rejecting Green’s petition, the circuit court detailed the overwhelming evidence of his guilt. In brief summary: Santana and Benkert did not show up unbidden, with Santana’s infant daughter in tow, to collect a drug debt; rather Green invited Santana to come over in what Santana’s widow described as a “friendly” call. Green appears to have been prepared to confront Santana and Benkert when they arrived, because he got his family out of the house and took steps to prevent witnesses from seeing what was happening in the basement, where he evidently expected the killings to occur. Green’s claims of self-defense are untenable given the absence of any damage or disruption to the contents of the house (despite the tumultuous battle that he recounts), given the minimal injuries that he suffered, given Dr. Dixon’s testimony that he fired none of the shots at “close range,” and given what the court aptly described as the “gross disparity” between his minimal injuries and the many wounds that he inflicted on his victims. Finally, Green’s arduous efforts to conceal the killing reflect both consciousness of guilt and meticulous planning, forethought, and premeditation.

In view of the overwhelming evidence of Green’s guilt, the circuit court did not abuse its discretion in finding no substantial or significant possibility that the result at trial might have been different had Kopera’s testimony been excised in its entirety.<sup>10</sup>

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<sup>10</sup> At pages 25 to 27 of his brief, Green takes issue with a few of the circuit court’s characterizations of the factual record, terming them “clearly erroneous.” For example, Green disputes the circuit court’s statement that his “elaborate” model train set somehow

**V. Green’s Due Process Claim is Not Cognizable on a Petition for a Writ of Actual Innocence**

In the circuit court, Green argued that he was denied due process of law because of the State’s use of perjury in securing his conviction. He complains that the circuit court did not address that argument in rejecting his petition for a writ of actual innocence.

Green’s complaint has no merit, because a petition for a writ of actual innocence pertains to newly discovered evidence that “speaks to” the petitioner’s actual innocence. *See, e.g., Douglas v. State*, 423 Md. at 176. Yet, as Judge Moylan wrote in *Yonga v. State*, 221 Md. App. 45, 57 (2015), *aff’d*, 446 Md. 183 (2016), “[a]n actually guilty person may, as readily as an actually innocent person, suffer due process violations.” It follows that a due process violation, untethered to a claim that newly discovered evidence creates a substantial or significant possibility that the result at trial might have been different, cannot form the basis for a petition for a writ of actual innocence.

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

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remained unscathed despite the alleged mortal conflict between Green and his victims; according to Green, he had only a “simple rudimentary train set,” not an “elaborate” one. Similarly, Green argues that the circuit court discounted his injuries; he points out that after his arrest the law enforcement officers saw “light bruising on his stomach” and “slight bruising on his back.” Suffice it to say that, even if we were to give full weight to these and other criticisms of the circuit court’s recounting of the evidence, it would not detract from the conclusion that the evidence at trial (minus Kopera’s testimony) overwhelmingly supported the jury’s findings.