Circuit Court for Baltimore City
Case No. 198103001

UNREPORTED

IN THE APPELLATE COURT

OF MARYLAND

No. 2098

September Term, 2024

RAMONT KIRBY

v.

STATE OF MARYLAND

Leahy,
Albright,
Kehoe, Christopher B.
(Senior Judge, Specially Assigned),

JJ.

PER CURIAM

Filed: October 28, 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.

Ramont Kirby, appellant, appeals from the dismissal, by the Circuit Court for Baltimore City, of a petition for writ of actual innocence. For the reasons that follow, we shall affirm the judgment of the circuit court.

We recount some of the pertinent facts from our previous opinion in Mr. Kirby's case:

> Around 9:30 p.m. on October 12, 1996, Alcinder Lyons was shot and killed on Edmondson Avenue in Baltimore, Maryland. During the same incident, Roy Chandler suffered a gunshot wound to his lower back, but survived.
>
> A year and four months after the shooting, Terrence LaRue Carroll was asked, during a police interview for events not related to this case, whether he had any information regarding any unsolved crimes. Carroll told the officers about the shooting and gave them a taped statement, during which Carroll stated that he knew Lyons and [Mr. Kirby], all three of them having grown up in the same neighborhood. Carroll stated that he was standing about forty feet from Lyons when he:
>
> > witnessed a . . . dark vehicle pull up to the corner of . . . Edmondson and Dukeland Street. I saw [Mr. Kirby] get out of the car, walk up to [Lyons] with the gun[,] an automatic weapon in his hand. Said something to him, fired 2 rounds at him at first. Then he walked over top of him, fired additional rounds. Then he jumped in the car[.]
>
> Carroll identified [Mr. Kirby's] picture from a photo array, and on the back of [the] photo, Carroll wrote: "This is the person who killed [Lyons] on the corner of Edmondson & Dukeland." Carroll was the only eyewitness to the shooting that the State produced at trial.
>
> Charmaine Washington, Lyons's sister, testified that minutes before the shooting, she, her boyfriend, and Lyons were walking down Edmondson Street when they passed [Mr. Kirby] and some others on the street. A short time later, she saw [Mr. Kirby] in the passenger seat of a car that drove past them. A short time later, the car drove past them again. When the car drove past a third time, she told her brother, "Look, let's go, it's time to go. I don't know what's going on, what's getting ready to happen, let's go." Her brother replied, "I ain't going nowhere." Her brother then walked down the street

> toward a restaurant and, a few moments later, she heard gunshots. Washington ran toward her brother and, as she did so, she passed [Mr. Kirby], who, with a gun in his hand, was running in the other direction. Washington saw [Mr. Kirby] jump into the same vehicle she had seen him in earlier and ride away. She testified that, although she told her family what had happened, she did not tell the police because she believed that there was an open warrant for her arrest.
>
> [Mr. Kirby] was arrested almost a year and a half after the shooting and, on April 8, 1999, he was convicted by a jury of first degree murder, use of a handgun in a crime of violence, and carrying a handgun.

Ramon Kurby, a/k/a Ramont Kirby v. State, No. 769, Sept. Term 1999 (filed July 26, 2000), slip op. at 1-3.

On May 3, 2024, Mr. Kirby filed the petition for writ of actual innocence, which he "based upon" what he contended to be "newly discovered evidence concerning undisclosed statements of" a woman named Dinel Prentice. Mr. Kirby contended that on March 20, 2023, he received a response to a request made pursuant to the Maryland Public Information Act. Mr. Kirby contended that in the response, he discovered a document, dated October 22, 1996, which stated in pertinent part:

Dinel Prentice

> I was on Poplar Grove coming down to Edmon[d]son Avenue and I was calling Al, and he wouldn't answer back. I caught up to him and I said "what you going to do, take someone out". He said "yeah", I knew he was going to rob someone, or take some dope cause that's what he does. I just knew that he was going to do something like that cause I know how he is. So I stopped at the cut rate on the corner. I saw a guy, Bey. I hadn't seen him in a long time so I gave him a hug. Al kept walking[,] he turned the corner from Edmon[d]son onto Dukeland. I spoke to Bey about 5-10 minutes. Then I heard the gunshots. There was another tall guy, he pushed us all down into the cut rate so we wouldn't get shot.

* * *

> I came out of the cut-rate and saw someone laying on the ground. I knew it was Al, but Fat Peaches was standing over him. She said "that's Al, go get Charmaine." I ran up to Poplar Grove and spoke to Charmaine. We ran back to Edmo[nd]son Avenue.

Mr. Kirby attached the document to the petition.

Mr. Kirby contended that after he discovered the document, he "reached out to his trial attorney and asked him if he [could] send . . . any reports that the [S]tate may have handed over to him concerning [Ms.] Prentice during her interviews with . . . detectives." Trial counsel subsequently sent to Mr. Kirby a letter, dated January 2, 2024, in which trial counsel stated:

> I was able to review my file. I don't have any copy of a statement that witness Prentice might have made to the police. I only received a report in discovery that Prentice was transported to Homicide. You may recall that our own investigator was able to interview Prentice, who stated that she only heard shots, but never saw any suspects or their vehicle and could not identify anyone. She further stated that the police continued to press her into making an ID and she refused to do so. I am enclosing copies of these records.

Mr. Kirby attached the letter to the petition.

The court subsequently issued an order in which it dismissed the petition, stating in pertinent part:

> Even "assuming the facts in the light most favorable to the petitioner and accepting all reasonable inferences that can be drawn from the petition," *Douglas v. State*, 423 Md. 156, 180 (2011), [Mr. Kirby] has not identified newly discovered evidence that qualifies as the basis for a petition for writ of actual innocence. [Mr. Kirby] acknowledges that he was aware of Ms. Prentice as a potential witness before trial. He does not dispute that he had [a] report indicating that Ms. Prentice was transported to the homicide unit on the day of the murder. He also acknowledges that his attorney had an investigator locate Ms. Prentice and interview her before trial. The notes of that interview indicate that [Mr. Kirby] was aware that Ms. Prentice stated "the police were trying to make her say she saw things she didn't see" and "the police have continued to badger her into making an ID of suspect, but

> she can't do it." Thus, even assuming that [Mr. Kirby] did not have the summary of Ms. Prentice's alleged statement on October 22, 1996, [he] was aware of the police talking to Ms. Prentice more than once and had access to learn from her what she did know about the crime. Even assuming the statement summary itself is newly discovered by [Mr. Kirby], the fact of Ms. Prentice as a potential witness is not newly discovered evidence.

(Exhibit reference omitted.)

Mr. Kirby contends that, for numerous reasons, the court erred in dismissing the petition. We disagree. The Supreme Court of Maryland has stated that one who petitions for a writ of actual innocence "must produce newly discovered evidence that: (1) speaks to his or her actual innocence; (2) could not have been discovered in time to move for a new trial under . . . Rule 4-331; and (3) creates a substantial or significant possibility that, if his or her jury had received such evidence, the outcome of his or her trial may have been different." *Carver v. State*, 482 Md. 469, 489-90 (2022) (internal citations, quotations, and footnote omitted).

> The first prong limits relief 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. . . . . The third prong requires 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." 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. at 490 (internal citations and quotations omitted).

Here, the statements contained in the document cited by Mr. Kirby, if actually made by Ms. Prentice,[1] relate not to whether Mr. Kirby was the person who shot Mr. Lyons, but to Mr. Lyons's actions and statements prior to the shooting, and Ms. Washington's actions following the shooting. Even if the document should have been disclosed to Mr. Kirby prior to trial, the record indicates that trial counsel spoke to Ms. Prentice prior to trial, and Ms. Prentice indicated that she could not identify the person who shot Mr. Lyons. Hence, Mr. Kirby did not make a threshold showing that he may be actually innocent. Also, Mr. Carroll told police that he saw Mr. Kirby shoot Mr. Lyons, and subsequently identified Mr. Kirby in a photo array. In light of this evidence, the cumulative effect of the statements contained in the document does not undermine confidence in the verdict. There is no substantial or significant possibility that, if the jury had received the statements contained in the document, the outcome of trial would have been different, and hence, the court did not err in dismissing the petition.

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

[1]We note that the document is not signed, nor does the record contain any other evidence, such as an affidavit, that the statements contained in the document were made by Ms. Prentice.