Circuit Court for Baltimore County
Case No. 03-K-12-001040

UNREPORTED*

IN THE APPELLATE COURT

OF MARYLAND

No. 1485

September Term, 2022

MONTRAY EUGENE WILLIAMS

v.

STATE OF MARYLAND

Wells, C.J.,
Nazarian,
Storm, Harry C.
(Circuit Judge, Specially Assigned),

JJ.

Opinion by Nazarian, J.

Filed: November 1, 2023

After a jury trial in the Circuit Court for Baltimore County, Montray Eugene Williams was found guilty of two counts of robbery. Nine years later, he filed a Petition for Writ of Actual Innocence under Maryland Code (2001, 2018 Repl. Vol., 2015 Supp.), § 8-301 of the Criminal Procedure Article ("CP"). The circuit court denied the petition without a hearing. On appeal, Mr. Williams argues that the information alleged in his petition would, if proven, constitute newly discovered evidence that would create a substantial or significant possibility of a different result at trial. We disagree and affirm.

I. BACKGROUND

A. The Robbery & The Arrest.

On January 10, 2012, at approximately 10:30 a.m., Baltimore County Police responded to a robbery at an M&T Bank. When the officers arrived, the bank teller explained that the robber had presented a demand note and began shouting for her to hand over money. The teller then gave the robber approximately $516.00 from her drawer. When handing over the money, the teller included a stack of twenty-dollar bills that contained a dye pack. The stack of twenty-dollar bills consisted of eighteen bills with holes cut in the center to surround the dye pack and four serialized "bait" bills (two on the top and two on the bottom of the dye pack).

Shortly after the robbery, police officers reviewed the bank's video surveillance footage of the robbery. The footage showed the robber to be an African-American man, approximately 5'5" to 5'8" tall. The robber was wearing a dark-colored knitted hat, tan pants, a tan winter-style jacket, and what looked like a gold-colored horseshoe ring.

Police also reviewed video surveillance footage from a pole camera located near Mr. Williams's residence. Mr. Williams lived two to three miles (about a five-minute car ride) from the bank. The footage revealed that an hour-and-a-half before the robbery, at approximately 9:00 a.m., Mr. Williams left his home wearing a dark knitted hat, tan pants, and carrying a tan jacket. Mr. Williams's girlfriend at the time confirmed that Mr. Williams wore a silver or gold crescent-shaped ring on his finger and that Mr. Williams owned a winter jacket that looked like the jacket the robber wore.

About four hours after the robbery, police officers saw Mr. Williams walking toward his residence. He was no longer wearing the same dark knitted hat, tan pants, or tan jacket. When approached by the officers, Mr. Williams fled immediately. As he ran, police officers saw Mr. Williams discard a jacket, cell phone, and U.S. currency. The loose currency totaled $300. The officers also observed that the discarded currency included two of the serialized "bait" bills attached to the dye pack. The officers arrested Mr. Williams and he was charged with eleven counts related to the bank robbery.

B. Recovery Of The Dye Pack.

Within a short time after the robbery, police officers recovered the stolen dye pack. Earl Jordan, who was walking to work, found the dye pack lying on the ground not far from the M&T Bank. Mr. Jordan took the dye pack and the money to his work, and he and other employees decided that they should report the finding to police. Mr. Jordan flagged down Trooper Dante Briley, who was walking by, and gave him the dye pack.

Mr. Jordan was not called to testify at trial by Mr. Williams or the State, but the

State provided defense counsel with police reports documenting Mr. Jordan's statements at the time of the robbery. As documented in the police reports, Mr. Jordan explained that he had "picked up the pile of money" and "found that all the bills had the center cut away from the bill. . . ." He also described finding that some sort of electrical device had been inserted in the money.

Scott Sewell, who worked as a security representative for M&T Bank, also responded to the scene. Mr. Sewell was asked to remove the battery from the undetonated dye pack so that it would not explode accidentally. At trial, Mr. Sewell testified that the dye pack shown to him on the stand had been "taken apart," but that "it was more or less one piece" on the day of the robbery. Technician Carrie Frietag, who worked for a forensic crime lab, responded to the scene as well. She testified that she took photographs of the dye pack when she recovered it, but the State never located the photographs. Corporal Matt Walsh, who also was on the scene, documented in a police report that the dye pack was missing the four serialized bills.

C. Procedural History.

After a three-day trial, a jury convicted Mr. Williams of two counts of robbery. The court sentenced Mr. Williams to life without the possibility of parole for each of the two counts of robbery, and the court merged one of the sentences into the other. On direct appeal, this Court affirmed Mr. Williams's convictions but remanded the case for resentencing on one of the robbery counts. *Williams v. State*, 220 Md. App. 27 (2014). Mr. Williams then received a sentence of life without the possibility of parole for one count of

robbery and a sentence of fifteen years of incarceration for the other count.

On October 9, 2015, Mr. Williams filed a Motion to Correct Illegal Sentence that later was denied. This Court affirmed the denial. *Williams v. State*, No. 2338, Sept. Term 2015 (App. Ct. Md. filed Jan. 5, 2017) (unreported opinion). On December 20, 2017, Mr. Williams also filed a Petition for Post-Conviction Relief that was denied after a hearing on the merits.

D. Petition For Writ Of Actual Innocence.

On July 13, 2022, Mr. Williams filed a Petition for Writ of Actual Innocence and a Request for a Hearing. In his petition, Mr. Williams asserted that he obtained newly discovered evidence that the serialized bills were still attached to the dye pack when Mr. Jordan found it and gave it to police. Mr. Williams stated that he obtained this evidence in the form of an affidavit signed by Mr. Jordan in 2021, nine years after the trial. In the affidavit, Mr. Jordan states that after picking up the dye pack on the day of the robbery, he "noticed that the bills on the outside were whole" and "still attached with the band wrapped around it when the police took it."[1]

Mr. Williams argued that the information in Mr. Jordan's affidavit constituted newly discovered evidence because he "had no way of knowing that a material witness would later come forward and reveal new information. . . ." Mr. Williams also contended that Mr.

[1] Mr. Williams didn't attach a copy of the affidavit to his petition and has not supplied a copy of the affidavit to this Court. At oral argument, Mr. Williams asserted that he included the entire affidavit within the text of the petition. We proceed, therefore, from the assumption that the circuit court denied the petition on the merits after considering the substance of the affidavit as reproduced in the text of the petition.

Jordan's statement that the serialized bills remained attached to the dye pack created a substantial possibility of a different result at trial because "[t]he only piece of evidence that tied [Mr. Williams] to the crime in question was the bills that were allegedly found on him when he was apprehended." The State responded that the information in Mr. Jordan's affidavit did not qualify as newly discovered evidence because defense counsel was aware of Mr. Jordan but chose not to interview him. The circuit court denied Mr. Williams's petition without a hearing, finding "no basis for requested relief to be granted."

II. DISCUSSION

Mr. Williams raises one question before this Court: did the circuit court err in denying his Petition for Writ of Actual innocence without a hearing?[2] We hold that it didn't. The new information alleged in Mr. Williams's petition does not qualify as "newly discovered evidence" under CP § 8-301 because Mr. Williams could have discovered the information by exercising due diligence at the time of the trial. And even if the information alleged in the petition constituted "newly discovered evidence," it would not create a substantial likelihood of a different result at trial considering the other evidence pointing to Mr. Williams's guilt. Mr. Williams failed to state grounds upon which relief could be granted under CP § 8-301 and the circuit court denied his petition without a hearing properly.

[2] Mr. Williams phrased his Question Presented as: "Did the Circuit Court err in denying the Appellant's Petition for Writ of Actual Innocence without a hearing?"

The State phrased its Question Presented as: "Did the circuit court correctly deny Williams' Petition for Writ of Actual Innocence without a hearing?"

"[T]he standard of review of a circuit court's grant of a motion to dismiss a petition for writ of actual innocence without a hearing, pursuant to section 8-301(e)(2), is *de novo*." *Hawes v. State*, 216 Md. App. 105, 133 (2014); *Keyes v. State*, 215 Md. App. 660, 669–70 (2014) (citation omitted) ("[W]e recognize that, generally, appellate review of a circuit court's denial of a motion for new trial is limited to whether the trial court abused its discretion but, because the issue before us is the legal sufficiency of the petition, our review is *de novo*.").

The circuit court did not err in denying Mr. Williams's petition without a hearing. Mr. Williams argues that the information contained in Mr. Jordan's affidavit satisfied the pleading requirements under CP § 8-301 and that the circuit court should have granted a hearing on his petition. He maintains that the observations Mr. Jordan described in his affidavit constitute newly discovered evidence because he only "became aware of this information nine years after his trial" and "there was nothing contained in the police reports that should have compelled [defense] counsel to interview Mr. Jordan." Mr. Williams contends further that Mr. Jordan's testimony that the serialized bills remained attached to the dye pack would create a substantial or significant possibility of a different result at trial because "[t]he only piece of evidence that tied [Mr. Williams] to the crime in question was the bills that were allegedly found on him. . . ."

The State responds that the information in Mr. Jordan's affidavit didn't qualify as newly discovered evidence because "[Mr.] Williams would have uncovered any further detail from [Mr.] Jordan by the exercise of due diligence at the time of trial." Additionally,

the State argues that Mr. Jordan's statements, even if proven, would not have created a substantial or significant possibility of a different result at trial because the statements could not undercut the "panoply of evidence" that established Mr. Williams's guilt independently. Thus, the State argues, Mr. Williams failed to assert grounds upon which relief may be granted and the circuit court denied the petition without a hearing correctly.

A petition for writ of actual innocence, as authorized by CP § 8-301, "provides a defendant [with] an opportunity to seek a new trial based on newly discovered evidence that speaks to his or her actual innocence. . . ." *Douglas v. State*, 423 Md. 156, 176 (2011). To prevail on a petition for actual innocence, a petitioner must produce newly discovered evidence that: "(1) 'speaks to' the petitioner's actual innocence; (2) could not have been discovered in time to move for a new trial under Md. Rule 4-331; and (3) creates a 'substantial or significant possibility' that, if the jury had received such evidence, the result of the trial may have been different.'" *Faulkner v. State*, 468 Md. 418, 459–60 (2020) (cleaned up) (*quoting Smith v. State*, 233 Md. App. 372, 411 (2017)).

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.'" *Carver v. State*, 482 Md. 469, 490 (2022) (*quoting Faulkner*, 468 Md. at 460). The second prong requires the petitioner to "show that he or she could not have located the newly discovered evidence with the exercise of 'due diligence' by the deadline to file a motion for a new trial

under Rule 4-331."[3] *Faulkner*, 468 Md. at 460 (*quoting Smith*, 233 Md. App. at 416). The due diligence standard "contemplates that the defendant act reasonably and in good faith to obtain the evidence, in light of the totality of the circumstances and the facts known to him or her." *Argyrou v. State*, 349 Md. 587, 605 (1998).

The third prong "requires the petitioner to show that, if the jury had had the benefit of the newly discovered evidence as well as the evidence that was introduced at the trial, there is a 'substantial or significant possibility that the result would have been different.'" *Faulkner*, 468 Md. at 460 (*quoting Yonga v. State*, 221 Md. App. 45, 69 (2015), *aff'd*, 446 Md. 183 (2016). "[T]he substantial or significant possibility standard falls between 'probable,' which is less demanding than 'beyond a reasonable doubt,' and 'might' which is less stringent than 'probable.'" *Id.* at (*quoting McGhie v. State*, 449 Md. 494, 510 (2016)).

At the threshold, the petitioner bears the burden of pleading grounds for relief that can satisfy CP § 8-301. *Douglas*, 423 Md. at 187. "[A] trial court may dismiss a petition

[3] Maryland Rule 4-331 establishes a one-year or post-mandate deadline for seeking a new trial based on newly discovered evidence:

> (c) 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 section (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.

without a hearing when one was requested, pursuant to [CP] § 8-301(e)(2), only when a petitioner fails to satisfy the pleading requirement." *Id.* at 180. The pleading requirement mandates "that a petition 'assert' grounds for relief; it does not require the petitioner to satisfy the burden of proving those grounds in the papers submitted." *Id.* at 179 (*quoting* CP § 8-301). When determining whether the allegations, if proven, could entitle a petitioner to relief, the court must "assum[e] the facts in the light most favorable to the petitioner and accept[] all reasonable inferences that can be drawn from the petition[.]" *Id.* at 187.

A. We Are Not Persuaded That The Information Alleged In Mr. Williams's Petition Speaks to His Actual Innocence.

We begin our analysis by assessing whether Mr. Williams's allegations "speak to" or make a "threshold showing" of his actual innocence. *Carver*, 482 Md. at 490. Even if proven, Mr. Williams's allegations cast doubt on only one of the many pieces of evidence that pointed to his guilt. Mr. Williams's petition relied on an affidavit from Mr. Jordan, the passerby who encountered the dye pack and gave it to police officers. In his affidavit, Mr. Jordan states that after picking up the dye pack on the day of the robbery, he "noticed that the bills on the outside were whole. . . ." Mr. Jordan also stated that "the [whole] bills were still attached with the band wrapped around it when the police took it."

Viewing the facts in the light most favorable to Mr. Williams, we assume that the "whole" bills Mr. Jordan refers to are the serialized "bait" bills that were originally attached to the dye pack. We assume further that all four serialized bills were still attached to the dye pack when Mr. Jordan gave it to the police. We also infer for these purposes that Mr. Jordan could not have possessed the serialized bills at the time of his arrest if all four

serialized bills were attached to the dye pack when the police recovered it.

But the fact that Mr. Williams did not possess the serialized bills at the time of his arrest doesn't necessarily "speak to" his actual innocence. For evidence to "speak to" one's actual innocence, it "must be substantial enough for the hearing judge to conclude that there may, indeed, be a plausible case of actual innocence." *Yonga*, 221 Md. App. at 62. Although the evidence need not "definitively exonerate the petitioner[,]" *Smith*, 233 Md. App. at 413, "the General Assembly focused [CP § 8-301] on newly discovered evidence that 'would *potentially exonerate*'" the petitioner. *Carver*, 482 Md. at 493 (*quoting Smallwood v. State*, 451 Md. 290, 319 (2017)).

Given the compelling evidence that puts Mr. Williams at the scene of the bank robbery, we are skeptical that uncertainty about whether Mr. Williams possessed the serialized bills at the time of his arrest could "potentially exonerate" him. The bank's video surveillance footage showed the robber wearing a dark knitted hat, tan pants, a tan winter-style jacket, and what looked like a gold-colored horseshoe ring. The video surveillance footage capturing Mr. Williams's residence revealed that just about an hour and a half before the robbery, Mr. Williams left his home wearing similar clothing. Mr. Williams's girlfriend at the time also confirmed that Mr. Williams sometimes wore a silver or gold crescent-shaped ring. So contrary to Mr. Williams's assertion that "[t]he only piece of evidence that tied [him] to the crime in question was the bills that were allegedly found on him[,]" the surveillance footage reveals multiple similarities that tied Mr. Williams to the robbery. The statements in Mr. Jordan's affidavit don't weaken those ties in any way, nor

do they tie another suspect to the robbery. And this leaves us doubtful that Mr. Jordan's statements regarding the serialized bills "speak to" or create "a plausible case" of Mr. William's actual innocence under the first prong.

B. The Information In Mr. Jordan's Affidavit Does Not Constitute "Newly Discovered Evidence."

But even assuming that the first prong had been met, Mr. Williams's petition fails to satisfy the second and third. To satisfy the second prong of the CP § 8-301 analysis, the petitioner must allege not only "newly discovered evidence," but rather, the petitioner must show "'newly discovered evidence which could not have been discovered by due diligence.'" *Yonga*, 221 Md. App. at 97 (*quoting Love v. State*, 95 Md. App. 420, 429 (1993)). Mr. Williams contends that the information in Mr. Jordan's affidavit could not have been discovered by due diligence because "there was nothing contained in the police reports that should have compelled counsel to interview Mr. Jordan." But the police reports provided to Mr. Williams during discovery identified Mr. Jordan as the person who noticed the dye pack and gave it to police officers. Mr. Williams doesn't dispute that he was aware before trial that Mr. Jordan was the person who recovered the dye pack.

Because Mr. Williams knew that Mr. Jordan encountered the dye pack and provided it to police, Mr. Williams knew that Mr. Jordan could offer information about how the dye pack looked when he found it. From the moment Mr. Jordan found the dye pack, he would have been able to say whether or not the four serialized bills were attached to it. Mr. Williams doesn't argue that Mr. Jordan recanted or changed his observations about the dye pack at any point. Indeed, Mr. Williams asserts that Mr. Jordan "attempted to provide" this

"valuable exculpatory information" to the detectives during the investigation. If Mr. Williams interviewed Mr. Jordan before the trial, he would have uncovered Mr. Jordan's observations that the serialized bills remained attached to the dye pack.

Mr. Williams had the information necessary to contact Mr. Jordan for an interview—the police reports provided in discovery contained Mr. Jordan's full name, address, and phone number—but Mr. Williams chose not to interview Mr. Jordan until nine years after the trial. Although Mr. Williams only learned of Mr. Jordan's observations about the serialized bills nine years after the trial, he could have discovered this information much sooner through ordinary diligence.

Our analysis is not changed by Mr. Williams's argument that the due diligence requirement doesn't "plac[e] the burden on the attorney to assume that a witness has information that could potentially be beneficial to his or her client." The due diligence standard may not require attorneys to "assume" that a witness has beneficial information, but it does require attorneys to "act reasonably and in good faith to obtain the evidence, in light of the totality of the circumstances and the facts known to him or her." *Argyrou*, 349 Md. at 605.

In this case, the State alleged that Mr. Williams possessed two serialized bills from a dye pack stolen from the bank. Mr. Williams knew that Mr. Jordan found the stolen dye pack and could say whether the serialized bills were still attached. Under these circumstances, Mr. Williams could have asked Mr. Jordan whether the serialized bills were still attached to the dye pack in time for trial. Because the observations stated in Mr.

Jordan's affidavit could have been discovered with due diligence at the time of the trial, the observations do not qualify as "newly discovered evidence" under CP § 8-301. The circuit court did not err in dismissing Mr. Williams's petition without a hearing.

C. The Fact That Mr. Williams Did Not Have The Serialized Bills At The Time Of His Arrest Does Not Create A Substantial Possibility Of A Different Result At Trial.

Even if the first two prongs were satisfied, Mr. Williams's petition falls short at the third as well. He argues that Mr. Jordan's testimony would have created a substantial or significant possibility of a different result at trial because "[t]he only piece of evidence that tied [Mr. Williams] to the crime in question was the bills that were allegedly found on him when he was apprehended." But again, the alleged possession of the serialized bills was not remotely the "only piece of evidence" tying Mr. Williams to the bank robbery. Multiple pieces of evidence, including the precise similarities in Mr. Williams's clothing and accessories, pointed to Mr. Williams as the robber. On the morning of the robbery, both Mr. Williams and the robber carried or wore a dark knitted hat, tan pants, and a tan jacket. Mr. Williams owned a silver or gold crescent-shaped ring similar to the "gold-colored horseshoe ring" that the robber wore. And in addition to those incriminating parallels, Mr. Williams's behavior after the bank robbery could have supported a finding that he committed this robbery. For example, when police officers saw Mr. Williams about four hours after the robbery, he no longer was wearing the clothing that matched the clothing worn during the robbery. And when officers approached Mr. Williams, he fled and threw away $300 in cash.

None of this evidence related in any way to whether Mr. Williams possessed the serialized bills at the time of his arrest, and nothing in Mr. Jordan's affidavit responds to or contradicts this independent evidence of his guilt. So even if we were to assume that the information in the affidavit is true, the jury would still have ample evidence to support a decision to convict Mr. Williams. Stated differently, a reasonable jury readily could have concluded that Mr. Williams robbed the bank even without believing that he possessed the serialized bills. And as such, the statements in Mr. Jordan's affidavit, even if true, could not have created a substantial possibility of a different result at trial. Mr. Williams failed to plead grounds for relief under CP § 8-301, and the circuit court did not err in dismissing his petition for writ of actual innocence without a hearing.

JUDGMENT OF THE CIRCUIT COURT FOR BALTIMORE COUNTY AFFIRMED. APPELLANT TO PAY COSTS.