

Circuit Court for Baltimore City
Case No.: 199189027

UNREPORTED
IN THE COURT OF SPECIAL APPEALS
OF MARYLAND

No. 2638

September Term, 2019

DONNELL J. CROSS

v.

STATE OF MARYLAND

Fader, C.J.,
Leahy,
Moylan, Charles E., Jr.
(Senior Judge, Specially Assigned),

JJ.

PER CURIAM

Filed: November 23, 2021

*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.

In 2000, a jury in the Circuit Court for Baltimore City found Donnell J. Cross, appellant, guilty of first-degree murder, first-degree assault, use of a handgun in the commission of a crime of violence, and related handgun offenses. The court sentenced him to a total term of life imprisonment, plus 20 years. On direct appeal, Mr. Cross argued that the trial court had erred in finding that the State had made reasonable efforts to procure two eyewitnesses, Katina Wise and Lakala McCloud, for trial and, therefore, the court erred in allowing into evidence their videotaped testimony from a prior trial that had ended in a mistrial. This Court rejected the contention and affirmed the judgments. *Cross v. State*, 144 Md. App. 77, 94 *cert. denied*, 369 Md. 180 (2000).

In 2016, Mr. Cross, representing himself, filed a petition for writ of actual innocence based on documents he had purportedly first obtained that year pursuant to a Maryland Public Information Act request. The documents consisted of photographs of a white car and fingerprint reports. The reports indicated that 22 latent fingerprints were lifted from the vehicle—one print from the interior and the remainder from the exterior—and none matched Mr. Cross's prints. Mr. Cross claimed that this evidence was exculpatory because Ms. Wise had testified that she had observed him (and about three other persons) get out of a white car shortly before the murder.

Following a hearing, the circuit court denied the petition. The court found that, even assuming that the evidence was newly discovered, there was not a substantial or significant possibility that the result of his trial would have differed had the defense been in possession

of the documents at trial.¹ Moreover, the court found that “the mere fact that the Petitioner’s prints were not found on or in a car allegedly used in the shooting does not remotely speak to Petitioner’s innocence.” Accordingly, the court denied the request for a writ of actual innocence. For the reasons to be discussed, we shall affirm the judgment.

BACKGROUND²

Trial

Ms. Wise testified that in April of 1999 she was living at 110 South Monroe Street in Baltimore. 144 Md. App. at 81. Although she did not see him often, she had known Mr. Cross for “for a long time before then” and he had spent the night of April 28th at her apartment. *Id.* Ms. Wise organized a “strip party” for the night of April 29th and Mr. Cross arrived that evening with three of his friends. *Id.* Mr. Cross left, but his friends stayed. *Id.* Four female friends of Ms. Wise were also at the party, including Ms. McCloud. *Id.* Carlton Finch (the murder victim in this case) arrived with three other men, one of whom began arguing with a friend of Mr. Cross’s. *Id.* Ms. Wise then asked all the men to leave,

¹ The court was “skeptical of the Petitioner’s ability to show, without testimony from his trial counsel, or anyone else involved in Petitioner’s trial, whether or not his trial counsel may have received documents in discovery over *eighteen* years ago,” but found “for the purposes of this [actual innocence] opinion, that the reports and photographs alleged by the Petitioner are newly discovered evidence.” *Ruling and Order* of the Circuit Court for Baltimore City dated January 21, 2020, p. 3.

² The trial transcripts are not in the limited record before us. The facts set forth here are gleaned from the few transcript excerpts attached to documents in the record, from this Court’s opinion on direct appeal, and from the circuit court’s written *Ruling and Order* denying actual innocence relief, which cited the trial transcripts.

which they did. *Id.* The argument between the men, however, continued in the street in front of Ms. Wise’s apartment. *Id.*

From a window inside her residence, Ms. Wise saw Ms. McCloud standing on the top of the steps leading to the apartment. *Ruling and Order of Circuit Court* at 4 (citing September 11, 2000 Trial Tr. at 12). She also observed a white vehicle and a dark colored vehicle pull up and she saw about three men get out of each car. *Id.* (citing September 11, 2000 Trial Tr. at 14-15). Mr. Cross was one of the men, *id.*, but she did not recall from which car he exited. *Id.* (citing September 11, 2000 Trial Tr. at 15). Mr. Cross approached Mr. Finch, who was standing outside by the steps, and stood in front of him. 144 Md. App. at 81. Someone retrieved a gun from the white car and handed it to Mr. Cross, who then shot Mr. Finch in the head. *Id.*

Ms. McCloud recalled that a white car pulled up before the shooting, and about four people got out, including Mr. Cross. *September 11, 2000, Trial Tr. at 50.* She did not recall seeing another car arrive. *Id.* Mr. Cross stood at the bottom of the steps, facing Mr. Finch. *Id.* at 52. She testified that Mr. Cross shot Mr. Finch in the head. *Id.*; 144 Md. App. at 82.

On cross-examination, both Ms. Wise and Ms. McCloud admitted that, when initially interviewed by the police, they did not inform the police that they had observed Mr. Cross shoot the victim. *Id.* They withheld that information because they were “scared.” *Ruling and Order of the Circuit Court* at 6 (citing September 11, 2000 Trial Tr. at 32-36, 63-66). On re-direct, Ms. McCloud testified that, after she admitted to the police that she had witnessed the shooting, she identified a photograph of Mr. Cross as the shooter. 144 Md. App. at 82.

Mr. Finch died from a gunshot wound to the head. *Id.* at 83.

Petition for Writ of Actual Innocence

As noted, in his petition for writ of actual innocence, Mr. Cross maintained that the photographs of the white car and the fingerprint reports stating that none of the 22 latent prints lifted from the vehicle matched his prints constituted “exculpatory evidence.” He asserted that the State had “withheld that the white car was recovered and impounded in this case” and also withheld the fingerprint reports. He maintained that, “[h]ad this information been presented to [his] jury, the jury would have found [him] not guilty of all charges.”

*Ruling and Order of the Circuit Court*³

The circuit court noted that, at the hearing on the petition, Mr. Cross did not produce any evidence “regarding the connection between the white car identified in the reports, and the white car involved in the incident in question.” *Ruling and Order of the Circuit Court* at 7 n. 6. The court pointed out that the reports indicated only that the “vehicle possibly was used during a homicide.” *Id.* (Emphasis added by the court.) After reviewing the trial testimony of Ms. Wise and Ms. McCloud, the circuit court noted that “they both consistently testified . . . that they had at least some familiarity with the Petitioner; that they had close, unobstructed views of the Petitioner and the victim; and that they watched the Petitioner shoot the victim one time in the head at close range.” *Id.* at 6. The court further noted that the “location of the victim’s body as well as the bullet wound to the

³ Although a hearing was held on Mr. Cross’s petition, the transcript of that hearing is not in the record before us. We presume that the hearing has not been transcribed.

victim’s head corroborated the witnesses’ testimony.” *Id.* at 7. Moreover, the court found significant that “the Petitioner failed to offer either at trial, or in these [actual innocence] proceedings, any plausible reason why these two women would commit perjury to allegedly frame the Petitioner.” *Id.*

The circuit court gave little credence to Mr. Cross’s position that, if his trial counsel had been aware of the documents, counsel could have used them to attack the State’s case. *Id.* Rather, the court found “that the photographs themselves provide little to nothing of evidentiary value.” *Id.* As for the fingerprint reports, the circuit court concluded that “Petitioner’s counsel, at best, could have argued that there was some *very* limited evidence that Petitioner may have not been in this particular vehicle.” *Id.* But the court found that such evidence “certainly did not eliminate the possibility that the Petitioner had been in the vehicle.” *Id.* Accordingly, the court concluded that the reports and photographs “would not have resulted in a different outcome at Petitioner’s trial[.]” *Id.* Finally, the court found that the “mere fact that the Petitioner’s prints were not found on or in a car allegedly used in the shooting does not remotely speak to Petitioner’s innocence.” *Id.* at 8.

DISCUSSION

Certain convicted persons may file a petition for a writ of actual innocence “based on newly discovered evidence.” *See* Md. Code Ann., Criminal Procedure § 8-301; Md. Rule 4-332. 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]

(2) could not have been discovered in time to move for a new trial under Maryland Rule 4-331.

(g) A petitioner in a proceeding under this section has the burden of proof.

Crim. Proc. § 8-301.

“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). 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).

“Both evaluating the credibility of the [newly discovered] evidence, in the first place, and then weighing the significance of the evidence, in the second place, remain within the broad discretion of the trial judge[,]” thus the “ultimate review” by the appellate court of whether newly discovered evidence merits a new trial is “clearly under the abuse of discretion standard.” *Jackson v. State*, 164 Md. App. 679, 712–13 (2005), *cert. denied*, 390 Md. 501 (2006). Under this standard, the appellate court “will not disturb the circuit court’s ruling unless it is well removed from any center mark imagined by the reviewing

court and beyond the fringe of what the court deems minimally acceptable.” *Smith v. State*, 233 Md. App. 372, 411-12 (2017) (quotation omitted). Factual findings made by the circuit court are given deference by the appellate court, unless they are clearly erroneous. *Yonga v. State*, 221 Md. App. 45, 95 (2015).

On appeal, Mr. Cross does not dispute any factual findings made by the circuit court. Rather, he claims that the court abused its discretion in denying relief based upon its legal conclusions that (1) the newly discovered evidence did not create a substantial or significantly possibility of a different result and (2) the evidence did not speak to his actual innocence.

We concur with the circuit court that the photographs and fingerprint reports did not speak to Mr. Cross’s innocence nor did they undermine the critical testimony of the eyewitnesses. Accordingly, we hold that the circuit court did not abuse its discretion in denying relief.

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