

UNREPORTED
IN THE COURT OF SPECIAL APPEALS
OF MARYLAND

No. 1101

September Term, 2012

RICARDO VALDEZ VELA

v.

STATE OF MARYLAND

Krauser, C.J.,
Meredith,
Thieme, Raymond G., Jr.
(Retired, Specially Assigned),

JJ.

Opinion by Krauser, C. J.

Filed: January 15, 2015

Convicted of first-degree murder for shooting and killing Shaun Davis, Ricardo Valdez Vela appeals from the hearingless denial of his petition for writ of actual innocence by the Circuit Court for Prince George's County, contending that, contrary to what the circuit court held, his petition did, in fact, allege newly discovered evidence showing that he was wrongly identified as the shooter. We disagree and hold that Vela's newly discovered evidence—an online news article published in May 2010—was not admissible or even capable of being admitted at his original trial, and therefore was not newly discovered evidence under the statute governing petitions for writ of actual innocence. Accordingly, we affirm the decision of the circuit court to deny Vela's petition without a hearing.

BACKGROUND

On December 12, 1998, Shaun Davis was shot fatally at the intersection of Opus Avenue and Marlboro Pike in Capitol Heights. At trial, two witnesses, Charles Wilson and Niccolo Jones, testified that Vela fired the weapon that shot and killed Davis. Vela was thereafter convicted on November 2, 1999, of first-degree murder and use of a handgun in the commission of a crime of violence. After he was later sentenced to a term of life imprisonment plus twenty years, his convictions were affirmed on appeal. *Vela v. State*, No. 2582, Sept. Term 1999 (Md. Ct. Spec. App., filed on July 11, 2000).

Twelve years later, Vela filed *pro se* a petition for writ of actual innocence. In his petition, Vela alleged that Jones and Wilson mistakenly identified him as the shooter and

that the real shooter was an acquaintance of theirs, James Kevin Butler¹, who resembled Vela in physical appearance. In support of this allegation, Vela supplied the “newly discovered evidence,” consisting of a May 11, 2010 online news article containing a photo of Butler.

The May 11, 2010 news article was drawn from the website, www.myfoxdc.com, and was entitled “Md. Police Arrest Suspect Wanted in Robberies of iPods and Other Electronics.” The news article contained a photograph captioned; “James Kevin Butler, 29, Washington” and described the arrest of Butler for his purported role in a theft of iPods and electronic navigation devices. Although the article made no mention of the 1998 shooting, Vela, or any of the other witnesses involved in the 1999 trial, Vela claimed in his petition that the State’s failure to show Butler’s photograph and the news article to the police investigators or testifying witnesses led to his convictions.²

After the circuit court denied Vela’s petition without a hearing, Vela noted this appeal.

DISCUSSION

Vela contends that the circuit court erred in denying his petition for writ of actual innocence without a hearing. We disagree.

¹ In his petition, Vela identified Butler with the pseudonyms by which Wilson and Jones knew Butler: “Little Kevin” or “Kevin.”

² Vela made a second allegation of newly discovered evidence in his petition relating to biases affecting the testimony of witness Jones. He did not, however, argue on appeal that the circuit court erred in denying his petition on these alternative grounds. Because of the absence of argument as to the second allegation of newly discovered evidence, we will not address it.

At the outset, we note that a decision by the circuit court to dismiss a petition for writ of actual innocence without a hearing is reviewed *de novo* by this Court. *Hawes v. State*, 216 Md. App. 105, 133 (2014). That is to say, we make a “legal determination[]” as to whether the petition’s allegations “satisfy the pleading requirements of [Md. Code (2002, 2008 Repl. Vol., 2010 Supp.), § 8-301 of the Criminal Procedure Article (“CP”)] and, if they do, we then decide whether they also satisfy the pleading requirement of section 8-301(a)(1) and (2).” *Id.*

Among other things, a petition must satisfy CP § 8-301(a),³ which requires a petitioner to make a “claim[] that there is newly discovered evidence.” But, before something can be “newly discovered evidence” under CP § 8-301, it must first qualify as evidence. As stated by this Court in *Hawes*:

It goes without saying that something that is not “evidence” cannot be “newly discovered evidence.” The word “evidence” as used in Rule 4-331(c) [and CP § 8-301] necessarily means testimony or an item or thing that is

³ The full text of CP § 8-301(a) is 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.

Id.

capable of being elicited or introduced and moved into the court record, so as to be put before the trier of fact at trial.

Id.

The online news article, which Vela claimed was “newly discovered evidence,” falls short of even being “evidence” under CP § 8-301. The publication date of the news article is May 11, 2010, and the article describes a series of thefts that occurred in April 2010—over eleven years after the date of Vela’s jury trial. As there is no possible way that an article written over a decade after Vela was convicted could have been introduced at Vela’s trial, the article cannot be considered evidence under CP § 8-301. Nor does the article shed any light on Vela’s guilt or innocence of the crimes for which he was convicted. As the article was not evidence, Vela’s petition for writ of actual innocence did not state a valid claim of newly discovered evidence, and the circuit court did not err in dismissing the petition without a hearing.

**ORDER OF THE CIRCUIT COURT FOR
PRINCE GEORGE’S COUNTY
AFFIRMED. COSTS TO BE PAID BY
APPELLANT.**