

SUPREME COURT OF THE STATE OF DELAWARE

Purnell v. State

254 A.3d 642 (Del. 2021) · No. No. 113, 2020 · Decided June 17, 2021

SUMMARY

The Delaware Supreme Court reversed Mark Purnell’s murder conviction, vacated the judgment, and remanded for a new trial. The Court held that Purnell satisfied the actual-innocence exception to the procedural bars governing an untimely and successive Rule 61 motion, based on newly available evidence and the circumstances surrounding trial counsel’s conflict of interest. The Court concluded that the conviction followed a manifestly unfair trial.

CASE DETAILS

|                       |                                                                                                                                                                                                                                                                                                                                                                                                                |
|-----------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| COURT                 | Supreme Court of the State of Delaware                                                                                                                                                                                                                                                                                                                                                                         |
| WRITING FOR THE COURT | Valihura, Justice; Seitz, Chief Justice; Vaughn, Justice; Traynor, Justice; Montgomery-Reeves, Justice                                                                                                                                                                                                                                                                                                         |
| JURISDICTION          | Delaware                                                                                                                                                                                                                                                                                                                                                                                                       |
| DECIDED               | June 17, 2021                                                                                                                                                                                                                                                                                                                                                                                                  |
| DOCKET                | No. 113, 2020                                                                                                                                                                                                                                                                                                                                                                                                  |
| DISPOSITION           | reversed_and_remanded                                                                                                                                                                                                                                                                                                                                                                                          |
| PROCEDURAL POSTURE    | Appeal from the Superior Court's denial of Purnell's untimely and successive motion for postconviction relief under Superior Court Criminal Rule 61. The Supreme Court considered whether Purnell satisfied the actual-innocence exception to Rule 61's procedural bars and whether his trial counsel's successive representation of a potential alternative suspect created a disabling conflict of interest. |
| STANDARD OF REVIEW    | The Supreme Court reviewed the Superior Court's application of Rule 61's procedural bars and actual-innocence exception. The opinion also examined the constitutional effect of trial counsel's conflict of interest and the undisputed record concerning counsel's investigation and trial strategy.                                                                                                          |
| PRECEDENTIAL VALUE    | published precedential opinion                                                                                                                                                                                                                                                                                                                                                                                 |
| PARTIES               | Mark Purnell v. State of Delaware                                                                                                                                                                                                                                                                                                                                                                              |

TOPICS

actual innocence

state post-conviction relief

successive petitions

right to counsel

ineffective assistance

## PRACTICE AREAS

criminal law

post-conviction relief

criminal procedure

constitutional law

appellate procedure

## QUESTIONS PRESENTED

1. Whether Purnell's untimely and successive Rule 61 motion satisfied the actual-innocence exception by presenting new evidence that was unavailable at trial despite due diligence and created a strong inference of factual innocence.
2. Whether evidence known or knowable at trial could qualify as new when trial counsel's disabling conflict of interest prevented counsel from investigating or presenting it.
3. Whether trial counsel's prior representation of Dawan Harris created a conflict that materially constrained the defense investigation, theory, cross-examination, and presentation of evidence.
4. Whether the extraordinary circumstances required reversal and a new trial rather than remand for an evidentiary hearing.

## HOLDINGS

1. To qualify for Rule 61's actual-innocence exception, a movant must identify with particularity new evidence that was unavailable at trial and would not have been available despite due diligence, and must show that the evidence, considered with the entire record by a properly instructed jury, would probably change the result and create a strong inference of factual innocence.
2. Evidence that was knowable or even known at the time of trial may nevertheless qualify as new for purposes of the actual-innocence exception when counsel's disabling conflict prevented the defendant from investigating, obtaining, or presenting it.
3. Trial counsel's prior representation of Dawan Harris created a conflict that materially constrained Purnell's defense, including the investigation and presentation of evidence that Dawan and Kellee Mitchell could have committed the robbery and murder.
4. Because Purnell had spent more than fourteen years imprisoned following a manifestly unfair trial and the existing record established the basis for relief, remand for an additional evidentiary hearing would serve no useful purpose; the proper remedy was reversal, vacation of the conviction, and a new trial.

## KEY QUOTATIONS

*"To qualify for an exception to Rule 61's procedural bars against untimely, successive motions, Purnell must identify with particularity new evidence that creates a strong inference that he is actually innocent in fact of the acts underlying the charges."* (at 3)

*"Much of the evidence Purnell presents, though knowable or even known at the time, was unavailable to him at trial because his counsel was not permitted to withdraw and was precluded from obtaining or presenting it due to his ethical duties to his former client."* (at 4)

*“Instead, we reverse and remand for a new trial.” (at 4)*

## FACTUAL BACKGROUND

Tameka Giles was fatally shot during an attempted robbery in Wilmington on January 30, 2006. The State's case against Purnell depended primarily on statements attributed to Corey Hammond and Kellee Mitchell and testimony from Ronald Harris, who received a favorable plea agreement in exchange for testifying. Purnell's trial counsel had previously represented Dawan Harris, a potential alternative suspect who had possessed a .38-caliber revolver connected to the investigation, and counsel failed to investigate or present substantial evidence implicating Dawan. The jury convicted Purnell, although later-developed evidence included recantations, evidence undermining the State's witnesses, evidence implicating Dawan and Mitchell, and evidence challenging the State's ballistic and medical theories.

## PROCEDURAL HISTORY

Purnell was convicted in the Superior Court of second-degree murder and related offenses and sentenced to seventy-seven years at Level V, with twenty-one years mandatory. The Supreme Court affirmed on direct appeal in 2009 and affirmed denial of his first counseled Rule 61 motion in 2014. Purnell then filed a second Rule 61 motion asserting actual innocence and claims arising from trial counsel's prior representation of Dawan Harris; the Superior Court held the motion procedurally barred and denied relief. The Supreme Court reversed, vacated the conviction, and remanded for a new trial without requiring an additional evidentiary hearing.

## DISPOSITION

reversed\_and\_remanded

## REMAND INSTRUCTIONS

Reverse the Superior Court judgment, vacate Purnell's conviction, and remand for a new trial.

## CASES CITED

- Purnell v. State, 979 A.2d 1102, 1104 (Del. 2009)
- Purnell v. State, 106 A.3d 337, 347-49 (Del. 2014)
- Hicks v. State, 913 A.2d 1189, 1194 (Del. 2006)
- Brown v. State, 117 A.3d 568, 580 (Del. 2015)
- Schlup v. Delo, 513 U.S. 298 (1995)
- Downes v. State, 771 A.2d 289, 291 (Del. 2001)
- Strickland v. Washington, 466 U.S. 668, 687 (1984)
- Bland v. State, 263 A.2d 286, 289-90 (Del. 1970)
- Barnes v. State, 858 A.2d 942, 944 (Del. 2004)
- Hatcher v. State, 337 A.2d 30, 32 (Del. 1975)
- Keys v. State, 337 A.2d 18 (Del. 1975)

- Alfred Lewis v. State, 21 A.3d 8, 14 (Del. 2011)
- Morse v. State, 120 A.3d 1, 14 (Del. 2015)
- Jones v. State, 940 A.2d 1, 13-14 (Del. 2007)
- Page v. State, 934 A.2d 891, 901 (Del. 2007)
- Flonnory v. State, 893 A.2d 507, 525-27 (Del. 2006)
- Brady v. Maryland, 373 U.S. 83, 87 (1963)
- Claudio v. State, 585 A.2d 1278, 1305 (Del. 1991)
- Brown v. State, 369 A.2d 682, 684 (Del. 1976)
- Desmond v. State, 654 A.2d 821, 824-25 (Del. 1994)

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