

IN THE SUPREME COURT OF THE STATE OF DELAWARE

AUGUSTUS H. EVANS, JR.,	§
	§
Defendant Below,	§ No. 341, 2021
Appellant,	§
	§ Court Below—Superior Court
v.	§ of the State of Delaware
	§
STATE OF DELAWARE,	§ Cr. ID No. 0609011528A (S)
	§
Plaintiff Below,	§
Appellee.	§

Submitted: April 26, 2022

Decided: June 15, 2022

Before **SEITZ**, Chief Justice; **VALIHURA** and **MONTGOMERY-REEVES**, Justices.

**ORDER**

After consideration of the appellant’s opening brief, the appellee’s motion to affirm,<sup>1</sup> and the record on appeal, we conclude that the judgment below should be affirmed on the basis of the Superior Court’s decision, dated October 8, 2021, denying the appellant’s tenth motion for postconviction relief, motion for appointment of counsel, and motion for an evidentiary hearing. The appellant’s reliance on changes in an eyewitness’s statement that he has been aware of since

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<sup>1</sup> The appellant’s request for leave to respond to the motion to affirm is denied. Under Supreme Court Rule 25(a), a response to a motion to affirm is not permitted unless requested by the Court. The Court did not request a response to the motion to affirm and finds no reason to request a response after considering the appellant’s motion.

2007 and submission of a notarized statement from a person stating that they did not see a gun when the appellant was fighting with a police officer, which was contrary to the police officer's trial testimony, did not satisfy the actual innocence standard set forth in *Purnell v. State*.<sup>2</sup>

NOW, THEREFORE, IT IS ORDERED that the motion to affirm is GRANTED and the judgment of the Superior Court is AFFIRMED.

BY THE COURT:

/s/ Collins J. Seitz, Jr.  
Chief Justice

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<sup>2</sup> 254 A.3d 1053, 1095-1122 (Del. 2021) (concluding that the appellant met the heavy burden of pleading actual innocence to overcome the Rule 61 procedural bars where the new evidence included ballistics evidence, recantation by person who previously claimed the defendant had confessed to him, evidence inculcating others, and medical evidence). The appellant claims another person made a similar statement but failed to provide any such statement.