Circuit Court for Talbot County
Case No. 20-K-00-006883

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 615

September Term, 2018

DAVID R. FAULKNER

v.

STATE OF MARYLAND

Meredith,
Graeff,
Reed,
JJ.

Opinion by Graeff, J.

Filed: June 3, 2019

This is the fourth time this Court has considered challenges to appellant's convictions relating to the murder of 64-year-old Adeline Wilford, who was stabbed to death in the kitchen of her farmhouse on January 5, 1987.[1] In this appeal, David R. Faulkner, appellant, challenges the ruling of the Circuit Court for Talbot County denying his Petition for a Writ of Innocence.

In appellant's prior appeal, this Court vacated the circuit court's initial denial of his Petition for a Writ of Innocence. *Faulkner v. State*, No. 1066 & 1878, Sept. Term, 2016, slip op. at 20 (filed July 26, 2017). We held that the circuit court erred in finding that certain evidence, discussed *infra*, did not qualify as newly discovered evidence. *Id.* at 17. We remanded for further proceedings, i.e., to determine if the newly discovered evidence created "a substantial or significant possibility that the result of the trial would have been different." *Id.*[2] On remand, the circuit court held an evidentiary hearing and again denied appellant's Petition for a Writ of Innocence.

[1] Prior cases regarding appellant's involvement in the murder of Ms. Wilford include: *Faulkner v. State*, No. 926, Sept. Term, 2001 (filed July 8, 2002) (denying appellant's claims of error), *cert. denied*, 371 Md. 614 (2002); *Faulkner v. State*, No. 556, Sept. Term, 2005 (filed May 3, 2006) (denying appellant's application for leave to appeal); *Faulkner v. State*, No. 1066 & 1878, Sept. Term, 2016 (filed July 26, 2017) (vacating judgments denying petition for a writ of innocence and motion to reopen post-conviction proceedings and remanding for further proceedings).

[2] The last appeal also involved appellant's claim that the circuit court erred in denying his motion to reopen the case for further post-conviction proceedings. We vacated the court's denial in that regard. On remand, the court granted this motion, a ruling that has not been challenged in this appeal. The State advised at oral argument that post-conviction proceedings remain pending.

On appeal, appellant raises the following question for this Court's review:

> 1. Did the circuit court abuse its discretion in failing to analyze the Bollinger-Haddaway tapes under the correct legal standard?
>
> 2. Did the circuit court abuse its discretion in failing to analyze the Ty Brooks evidence under the correct legal standard?
>
> 3. Did the circuit court improperly redact "Ty Brooks" from the confession of William Thomas implicating both in the Wilford murder?

For the reasons set forth below, we shall affirm the judgments of the circuit court.

FACTUAL AND PROCEDURAL BACKGROUND

I.

Murder of Ms. Wilford and Subsequent Investigation

In *Smith v. State*, 233 Md. App. 372 (2017), we set out extensively facts related to the murder of Ms. Wilford, as well as the subsequent investigation and trial. We will incorporate these facts, as relevant to the disposition of this appeal.

A

Murder of Adeline Wilford

> On January 5, 1987, at approximately 3:00 p.m., Jack Ripley, Ms. Wilford's friend, discovered Ms. Wilford's body in her kitchen and called the police. Ms. Wilford had been photographed by her bank's security system driving her car through the bank drive-through that day at 2:10 p.m., and therefore, the murder appeared to have been committed at some point in the 50-minute period of time between when she left the bank and when her body was found.
>
> Maryland State Police ("MSP") officers responded to the scene shortly after the call. A window on the west side of the house was propped open with a stick. The police believed that entry to the home had been made through that window, which led to a utility room.

> When the police entered the house, they saw that the keys to the house were still in the door lock, and Ms. Wilford was lying face up on the floor. She was wearing a blue coat, and she had a set of glasses on a cord around her neck. There were numerous stab wounds to her hands and face, and a large butcher knife with an eight-inch blade was "shoved right through the side of [her] cheek and head." There were groceries on the kitchen table that had not been taken out of the bag, which suggested that she had surprised someone in the house.
>
> The officers performed a sweep of the house to ensure that no one else was inside. Items inside the home seemed "out of place," and dressers were opened with "stuff taken out," which suggested that "someone had broken into the house and was looking for money or other goods." The police lifted fingerprints and palm prints from various places in the house, including the outside of the utility room window and the washing machine in the utility room.

Id. at 380–81.

B.

Subsequent Investigations

After years passed and the murder investigation stalled, the victim's son, Charles Curry Wilford, "offered a reward of $10,000 for information leading to the arrest of the perpetrator(s) and an additional $15,000 if there was a conviction." *Id.* at 381. On January 14, 2000, Beverly Haddaway told Sergeant John Bollinger that her nephew, appellant, previously had confessed to her that he had killed Ms. Wilford. *Id.*

> Ms. Haddaway agreed to wear a "wire" and surreptitiously record appellant. On April 11, 2000, she recorded a conversation with appellant that occurred in a shed behind her house. During that conversation, Ms. Haddaway asked appellant about the day she saw him on "Kingston Road when that old woman got murdered and you told me the dog bit ya and you stabbed it." She asked who killed the woman. After appellant initially stated, while laughing, that he did not know, the following occurred:
>
> > [BH:] Why were you in that field with blood all over ya? And they take, I seen ya goin' up the road that day, you

know it? And you had a blue coat on and Ray [Andrews] and you both had huntin' hats on. And then when I come back by there and you were in that cornfield and you said that blood come off a dog, but I think that you held her and David [Faulkner] killed her or one of you three done it.

[JS:] They never found out yet have they?

[BH:] I know, that's why I want to know 'fore I die. I seen ya, did I ever tell anybody? You know I ain't gonna tell on ya, goddamn, you're my blood. I just wanted to know if you done it. I didn't really think you did. I think crazy David did.

[JS:] It's a secret. It's a secret when one person knows[.] It aint [sic] a secret when two people know.

[BH:] Well, the three of you know.

[JS:] Right, there's only two left.

[BH:] It was you and Ray and David.

[JS:] Ray wasn't there until after it was over.

[BH:] Where was he?

[JS:] Down the road.

[BH:] Ray was right with you in the goddamn field.

[JS:] Yeah. That was after it was all done with.

Ms. Haddaway asked again who killed the victim. When appellant responded that he could not remember, Ms. Haddaway stated: "Jonathan, you're lying 'cause you're laughing." The conversation continued, as follows:

[BH:] Well why do you think I would tell anybody. I ain't told nobody in 12 goddamn years. I just wanted to know.

[JS:] (Inaudible) she had money.

[BH:] Huh?

[JS:] She had money.

[BH:] She had money?

[JS:] Uh huh.

* * *

[BH:] [Dick] said that he'd heard three or four times that you had tried to get somebody to . . . . But, ah . . . .

[JS:] It's been a long time. I don't even remember it no more.

[BH:] Oh. You know whether you done it or David done it if Ray weren't there. I'll tell ya reason I ask. . . . [T]his lady that lived over Ridgley . . . . told me that David's foster mother had something and . . . the old woman said that they had bought David out of a murder. And I was wondering, you know, if she knew anything or did she tell you, I just wondered if he did it or you. Tell me. I ain't gonna tell nobody, I just want to know (inaudible).

[JS:] He didn't do it.

[BH:] You done it.

[JS:] Uh huh.

[BH:] You said you did it before. Why did you kill her? I thought she let you in there when you went fishin'[.] . . . What, you didn't know her?

[JS:] I knew she had money.

[BH:] You knew she had money.

[JS:] She had money.

[BH:] But you didn't get none?

[JS:] Uh huh.

[BH:] You did get it.

[JS:] Uh huh.

Appellant then stated that the men got $60,000, and they split it three ways.

In response to Ms. Haddaway's question regarding why Mr. Faulkner had appellant's coat, appellant said that Mr. Faulkner "got cut" and had too much blood on his coat, so he got rid of it. Appellant then stated that both he and Mr. Faulkner had stabbed the victim, and the conversation continued as follows:

> [BH:] [T]hat day you told me I thought no, he ain't done it, that stupid David if he, anybody done it.
>
> [JS:] If there's enough money I'll do it.
>
> [BH:] Enough money. Well, it's alright if you don't get caught.
>
> [JS:] I won't get caught.

Id. at 381–84. (footnote omitted).

On April 25, 2000, the police questioned appellant, Mr. Faulkner, and Mr. Andrews at the Easton MSP barrack. *Id.* at 384.

> Appellant was advised of his rights, and although he initially "almost seemed happy to be answering [their] questions," his demeanor changed when Sergeant Jack McCauley asked if appellant and Mr. Faulkner had been involved in any criminal activity together. At that point, appellant "became somewhat withdrawn, dropped his head . . . . [a]nd he became very evasive, fidgety in his seat." Appellant denied any involvement with the murder of a woman. He acknowledged his conversation with Ms. Haddaway, but he claimed that he admitted involvement in the murder because he wanted Ms. Haddaway to think that he was a tough person.
>
> Sergeant Bollinger and another officer interviewed appellant again later that day. Sergeant Bollinger advised appellant of his *Miranda* rights, giving him a copy of the form to "follow along as [Sergeant Bollinger] was reading it to him." Before Sergeant Bollinger asked any questions, appellant volunteered his narrative of what had happened, and Sergeant Bollinger listened for several minutes without interrupting. Appellant stated that "he, David Faulkner, [and] Ray Andrews, had gone to the residence," and "he and David Faulkner broke into the residence," but Mr. Andrews stayed outside. While appellant and Mr. Faulkner were in the house, Ms. Wilford returned, and when appellant "noticed her she was standing in front of him screaming

> and . . . David Faulkner was stabbing her." Appellant stated that Ms. Wilford was wearing a blue coat and had glasses on a chain around her neck, and "she was fighting and moving her arms about." As Mr. Faulkner was stabbing Ms. Wilford, she fell back on appellant, getting blood on his shirt. Sergeant Bollinger then asked appellant if he had stabbed Ms. Wilford, and at that point, appellant asked for an attorney.
>
> Mr. Andrews also talked to the police. He told Sergeant Joseph Gamble that appellant and Mr. Faulkner discussed burglarizing Ms. Wilford's house, but he did not want to, so they told him to stay in the wooded area. Approximately 20 minutes after appellant and Mr. Faulkner approached the house, Mr. Andrews saw a vehicle pull up the Wilford driveway. A few minutes later, appellant and Mr. Faulkner ran from the house. Appellant had blood on his shirt. The three men then ran through woods and fields until they reached Black Dog Alley, where they saw Ms. Haddaway driving down the road. Ms. Haddaway asked appellant why he had blood on his shirt, and appellant replied that he had been attacked by a dog. The three men then went to appellant's house, where appellant changed his clothes. Appellant and Mr. Faulkner removed money from their pockets and divided it up. The next day, appellant told him that the woman at the house was dead, and Mr. Andrews should never tell anybody about it.

Id. at 384–86. (footnotes omitted).

C.

Appellant's Trial

In *Faulkner*, No. 1066, slip op. at 3-9, we set forth the following facts regarding appellant's trial:

> Appellant's trial began on April 2, 2001. The State called a number of officers and crime scene technicians who testified, as they did in Mr. Smith's case, about their observations at the crime scene. No fingerprints or other physical evidence at the scene tied appellant to the crime.
>
> The State called Alexander Mankevich, the State's fingerprint expert. Mr. Mankevich testified, as he did in Mr. Smith's trial, that he was not able to match any of the latent prints recovered from the crime scene to appellant, Mr. Smith, or Mr. Andrews.
>
> Norman Lee Jacobs, who previously had been housed in the same unit as appellant at the Talbot County Detention Center, testified that appellant

stated that he was involved in "a murder case . . . about a woman back in 1987." Appellant told Mr. Jacobs that he, Mr. Smith, and "another guy" went to Ms. Wilford's "big white barn looking house" to rob "the lady." She returned home, and during a struggle bit Mr. Smith on the finger. Appellant stated, however, that the State did not have any evidence on him because appellant "had gloves on." After the stabbing, the three men walked through "what was supposed to be a big cornfield," and then Mr. Smith's aunt picked them up and gave them a ride back to town. Mr. Jacobs also testified that he overheard appellant "[a]rguing and cussing" at Mr. Smith and "talking about who did the most stabbing."

Mr. Jacobs contacted Sergeant Jack McCauley about appellant's statements because appellant "kept bragging about it like he thought it was a joke." On cross-examination, however, Mr. Jacobs explained that he used his cooperation in this case to "get leniency" in his federal drug case. Mr. Jacobs denied making up a story based on what he read in the newspapers, stating that he did not read anything about the murder in the papers until after talking with appellant, and the information he was providing was "from David." He explained that appellant "used to come to [his] room day and night . . . and tell [him] his case, show [him] his paperwork and that's all he talked about was the case."

Susan Fitzhugh testified that, on January 5, 1987, she and Beverly Haddaway, Mr. Smith's aunt, were passing through the area of Kingston Road and Black Dog Alley, when she saw appellant, Mr. Smith, and Mr. Andrews "[c]oming up out of the ditch, out of the hedgerow." She noted that the men "had blood on them." Mr. Andrews had some blood on his pants as if he wiped his hands on them, and Mr. Smith had blood on his shirt, "down on his pants" and "on his feet, boots." Appellant was wearing Mr. Smith's jacket, and "he had more blood on him than either one of the others."

Ms. Fitzhugh and Ms. Haddaway "pulled over and . . . spoke to them." "[T]hey said that they were on their way in town." Ms. Fitzhugh asked Mr. Smith what they had been doing, and Mr. Smith showed her his hunting knife and told her that he had killed a deer. They told Mr. Smith and his companions that they could not give them a ride into town because there was not enough room in the vehicle. Mr. Smith told them that he and his companions "were going to go in town and get [someone] to come back and get the deer."

After speaking with Mr. Smith for approximately three to five minutes, Ms. Haddaway drove away. As they were pulling away, Ms.

Fitzhugh observed the three "start[ ] walking towards town . . . [in] the same direction [Ms. Fitzhugh and Ms. Haddaway] were going."

Ms. Fitzhugh saw appellant, Mr. Smith, and Mr. Andrews later that night at Mr. Smith's residence. Ms. Fitzhugh recalled that they were in the living room "fighting and arguing and wrestling."

Ms. Haddaway testified that, on January 5, 1987, at approximately 2:00 or 2:15 p.m., she and Ms. Fitzhugh arrived at Ms. Fitzhugh's trailer near Black Dog Alley. They left shortly thereafter and turned onto Black Dog Alley, where they saw appellant, Mr. Smith, and Mr. Andrews. Mr. Smith was not wearing a coat, and he had blood spatter on his shirt and blood smeared under his chin and on the side of his face. Appellant was wearing black gloves and had "blood from his kneecaps down over his white tennis shoes and all over his tennis shoes." She also noted that appellant was wearing Mr. Smith's coat, which was "too big" for him, and Mr. Andrews was wearing an identical blue coat. Although appellant, Mr. Smith, and Mr. Andrews regularly carried hunting knives on their backs, she did not see the knives that day.

Ms. Haddaway asked Mr. Smith what they were doing there, and Mr. Smith stated that "a dog had tried to bite him, and he killed it." Ms. Haddaway accused him of lying, and Mr. Smith pointed out where he supposedly had been bitten on the hand, but Ms. Haddaway did not see a dog bite.

The three men asked Ms. Haddaway to give them a ride, but she said that she could not. At that point, appellant said "here he comes now, and a blue truck . . . pulled up behind" Ms. Haddaway with two men inside. Ms. Haddaway saw the three men go behind the truck, but she did not see them get inside. The truck backed up and went toward Denton [R]oad.

Later that evening, Ms. Haddaway's daughter called her, stating that Mr. Smith, appellant, and Mr. Andrews were fighting and "tearing up everything." Ms. Haddaway went over there, and she observed the three men "arguing and fighting." She saw "some money and a piece of jewelry" on the dining room table, and she recalled that appellant said: "Ray wasn't going to get any money because he didn't do anything."

Ms. Haddaway also testified about the reward offered in the case. She testified that she was not aware of the reward until Corporal Roger Layton mentioned it, and she told him she did not care, but she had since claimed the reward. In June 2000, she received $10,000 as a "down payment" of a

$25,000 reward "offered by the family and friends through the [S]tate police for information leading to [an] arrest." She noted that the remaining $15,000 was for a conviction.

Mr. Andrews testified that, on January 5, 1987, he, appellant, and Mr. Smith walked from a friend's house near Black Dog Alley to Ms. Wilford's house. Appellant and Mr. Smith left him alone for a "good forty minutes" while they burglarized Ms. Wilford's residence. When they returned, appellant had something red on the side of his face.

When the three men reached Black Dog Alley, they encountered Ms. Haddaway who was in a vehicle. The men then continued walking, up Black Dog Alley, down Route 50, to Mr. Smith's house.

At Mr. Smith's house, Mr. Andrews overheard appellant "say something about I hit her." Appellant and Mr. Smith removed some money from their pockets and divided it up, but appellant said Mr. Andrews "wasn't part of it," so he did not get any of the money. Mr. Andrews denied seeing any other property that Mr. Smith and appellant brought from the house.

Sergeant McCauley testified about a recorded conversation between Ms. Haddaway and Mr. Smith. During that conversation, Mr. Smith told Ms. Haddaway that "he had been to the house of [Ms.]. Adeline Wilford" to "get money, to rob," and "he had stabbed her."

The sole witness called by the defense was Geraldine Francis Huber, the Human Resources Director at Tidewater Publishing Corporation. She testified that Tidewater's personnel records indicated that appellant had been employed by the company from August 26, 1985, through May 1, 1987, that the company's payroll records indicated that appellant was paid for approximately 46 hours of work during the week that included January 5, 1987, and his records did not indicate any absences during that week. Ms. Huber also noted that certain pages from a supervisor's journal indicated whether any employee was absent on January 5, 1987, and appellant's name was not on the list. Appellant's name did appear in a record indicating that he took a vacation day on January 23, 1987.

On cross-examination, Ms. Huber testified that her payroll records indicated only the total number of hours that appellant worked for that week, and the company did not have time cards that would indicate what days and hours he actually worked. She further testified that there had been errors in the payroll in the past, and if such an error occurred, it was possible that

> unpaid time from a previous week could be included in the payroll for the following week.
>
> On April 5, 2001, a jury found appellant guilty of first degree murder, felony murder, involuntary manslaughter, theft under $300, and daytime house breaking. On May 31, 2001, the circuit court sentenced him to life for the murder conviction and 10 years, consecutive, for the daytime housebreaking conviction. The remaining convictions were merged for sentencing purposes.

(Footnotes omitted.)

D.

Petition for Writ of Actual Innocence and Motion to Reopen

On July 2, 2015, appellant filed a petition for writ of actual innocence. *Id.* at 11. In this petition, he asserted three claims of newly discovered evidence, two of which are relevant to this appeal: (1) the subsequent determination that the source of the palm prints found on Ms. Wilford's washing machine and on the outside of the utility room window belonged to Tyrone Anthony Brooks ("Ty Brooks"); and (2) tape cassettes containing recorded conversations between Ms. Haddaway and Sergeant Bollinger. *See Id.* at 3. On April 11, 2016, the circuit court began a seven-day hearing on appellant's and Mr. Smith's petitions.

1.

The Utility Room Palm Prints

> Mr. Mankevich testified that, after the police discovered the palm prints on the outside of the utility room window and on the washing machine at Ms. Wilford's residence, the local MSP implemented a policy, in several jurisdictions, of collecting palm prints from all arrestees, on the chance that, if the perpetrators were engaging in a pattern of burglaries, they might return to the area and commit more offenses. From 1987 to 2000, Mr. Mankevich

> performed 72 manual comparisons of the prints lifted from Ms. Wilford's residence.
>
> In October 2008, the State's vendor for the [Maryland Automated Fingerprint Identification System ("MAFIS")] "went online" with the ability to perform electronic fingerprint searches, and in 2009, the vendor added the ability to perform electronic palm print searches.
>
> * * *
>
> On October 16, 2013 . . . the Office of the State's Attorney for Talbot County, ... contacted Mr. Mankevich and asked him to run the palm prints lifted from the crime scene through the MAFIS database. He retrieved the lift cards from the Hall of Records and personally put them into the MAFIS system. After receiving the computer generated list of potential matches, Mr. Mankevich compared Ty Brooks' known prints to the palm print taken from Ms. Wilford's washing machine and the palm print taken from the bottom pane of the "point of entry" utility room window. He concluded that Ty Brooks was the source of those prints.
>
> On March 22, 2016, Mr. Mankevich received a request from appellant's defense counsel to compare the remaining prints with known samples from William ("Boozie") Clarence Thomas. Of the eight remaining "unidentified latent print impressions," Mr. Mankevich eliminated Mr. Thomas as the source for seven of the prints, but he was unable to perform a full comparison of the eighth print, which was taken from the porch door. The methodology used to perform a manual comparison was the same that he used in 2000, i.e., the science had been the same since 1987, and the "development of the AFIS system played no part in [his] ability to examine the prints and [make a] comparison for [Mr.] Thomas."

Smith, 233 Md. App. at 393–95 (footnotes omitted). On cross-examination, Mr. Mankevich testified that there was no way to determine how long a fingerprint had been present. *Id.* at 396.

> Kate Wilford Carraher and Evelyn Wilford Lippincott, the daughters of Ms. Wilford, testified that, in the months leading up to the murder, the window in the utility room was propped open with "a stick" because there was a "persistent," "God awful" odor that smelled "like a family of dead mice." The window being open was particularly memorable to Ms.

Lippincott because Ms. Wilford had the window open "in the middle of the winter," and she gave her mother "a hard time about it."

Mr. Butler, a member of the MSP evidence collection unit, noted that, if the utility room window was opened, the lower portion where a palm print was found would be "pushed up" behind the upper portion, rendering the exterior panes "[i]naccessible to anyone's hand."

Id.

2.

James Brooks Testimony

James Brooks, Jr., testified that he grew up in Trappe, Maryland, and he was a longtime friend of Mr. Thomas. At some point around 1991, he contacted MSP and advised that Mr. Thomas had told him that he and Ty Brooks had murdered Ms. Wilford.

James Brooks testified, consistent with his statement to the police, that Mr. Thomas confessed to him in late 1989 or early 1990. Mr. Thomas told him that he had borrowed his uncle's car to get to Ms. Wilford's house, Ms. Wilford "might have wrote [sic] down the tag number" of the car when she came home that day, and Mr. Thomas instructed him not to tell anyone about his confession. When asked if he could recall if Mr. Thomas said where the victim had been stabbed during the murder, he said "it might have been in the back."

As discussed in more detail, *infra*, the court sustained the State's objection to the question whether Mr. Thomas had named another individual involved in breaking into the house, on the ground that this hearsay statement did not fall within the hearsay exception for a statement against penal interest because the "particular identification of who the accomplice is ... goes beyond [a] statement against penal interest." James Brooks subsequently testified, without naming the person, that Mr. Thomas told him that he was with another person when Ms. Wilford was murdered. James Brooks stated that he was acquainted with Ty Brooks, and Mr. Thomas and Ty Brooks were brothers-in-law and knew each other in 1987.

Counsel for Mr. Faulkner subsequently moved to admit into evidence James Brooks' written statement to the police. In this statement, he explained that he and Mr. Thomas were on a drinking binge one night, and Mr. Thomas confessed to killing Ms. Wilford, as follows:

> [H]e said that him and a guy named Ty Brooks were in her house stealing and the lady came home early on them[.] [H]e had borrowed his sister's car [and] she noticed the car parked near her house and wrote the tag # of the car down before she entered the house[.] [H]e took a butcher knife I believe[] [and] hid behind the kitchen door[.] [W]hen she came in he stabbed her to death and left her for dead.

The circuit court admitted the statement, over the State's objection, but it ruled that it would redact two words, i.e., "Ty Brooks," to be "consistent with [its] earlier ruling [on] the identity of any other person."

When counsel for Mr. Faulkner asked James Brooks about his motivation for contacting the police, he testified: "I was strung out on drugs. I was trying to cash in on the reward." James Brooks admitted that he previously had been convicted of a number of offenses, including uttering a false document, taking a car without the owner's permission, and various thefts. When asked whether there was any motivation for him "to be testifying here today other than to tell the truth," James Brooks responded: "Yeah. I mean I was told to do what was right and turn it over to God."

Id. at 399–400.

3.

Ty Anthony Brooks and William Clarence Thomas

Appellant introduced evidence of Ty Brooks' extensive criminal history, including breaking and entering and burglary charges in 1986. The State stipulated that Ty Brooks and Mr. Thomas were not incarcerated in Maryland at the time of Ms. Wilford's murder.

Appellant attempted to call Ty Brooks as a witness and to introduce a portion of Ty Brooks' 2015 recorded interview with the police. In this interview, Ty Brooks admitted that he had committed numerous offenses in Easton, but he did not recall going to Ms. Wilford's house, stating that murder was not his "MO." . . . [T]he court sustained the State's objection to the admission of this evidence on the ground that Ty Brooks had been convicted of perjury, and therefore, he was not a competent witness.

Appellant also introduced a statement of charges that alleged that, on March 12, 1987, Ty Brooks was observed riding as a passenger in a blue

> 1982 Oldsmobile. Donald M. Stoop, a staff investigator with the MidAtlantic Innocence Project, testified that his investigation revealed that Ty Brooks "had access to multiple vehicles," but "none [were] registered to him at the time."

Id. at 400–01.

4.

The Bollinger–Haddaway Tapes

Sergeant Bollinger, who became lead investigator on the Wilford murder case in 1999, testified that he spoke to Ms. Haddaway "several hundred times" before appellant's trial. One of the reasons Ms. Haddaway contacted Sergeant Bollinger in 2001 was to request that the criminal charges pending against her grandson, Landon Janda, be dropped. When questioned whether Ms. Haddaway asked "in an aggressive manner," Sergeant Bollinger stated that Ms. Haddaway "did everything in an aggressive manner."

* * *

Sergeant Bollinger recorded some of his conversations with Ms. Haddaway because they were "directly involved with [his] homicide investigation." One of these conversations occurred on February 2, 2001, during which Sergeant Bollinger told Ms. Haddaway that the State was not going to drop the charges against her grandson. Sergeant Bollinger tried to clarify whether she was "still going to come and tell the truth," and Ms. Haddaway replied: "I'm going to come in and tell the truth but I don't think the truth is going to want to be known."

Sergeant Bollinger then stated that he could ask the State to reconsider its position regarding her grandson after the trial, and the following occurred:

> Haddaway: Well, it won't be no need to ask after the trial's over because [defense counsel is] going to win hands down. They'll be doubt in everybody on the jurors' mind and I'm the one that's going to roll the iceberg right down there and watch that son of a bitch hit everybody in that fucking courtroom. Do you think I'm kidding, John? I'm not. You can go get the newspaper to start printing: Three People Found Innocent and I've got just one little piece of paper and it can all be had with one word that nobody knows but I know and I got the paper and I got the proof and one word, just one word out of the

> English language will let all three of them walk and for my grandson, you don't think I'll use that fucking word? ...
> Bollinger: [Chuckles]
> Haddaway: Now . . . . Do you think I'm kidding?
> Bollinger: No, I know you're not kidding. You just make me laugh sometimes.

Ms. Haddaway subsequently stated that the one word was "crazy," meaning that she was crazy. She showed Sergeant Bollinger a document from a doctor that she had "an extensive emotional and psychological problem."

During that conversation, Ms. Haddaway suggested that Sergeant Bollinger go over [the Assistant State's Attorney's] head to "the boss," i.e., the State's Attorney, to get the charges against Mr. Janda dropped. Sergeant Bollinger stated that he would talk to the State's Attorney.

During their conversations that day, statements were made indicating that Ms. Haddaway had access to case files related to the Wilford murder. For example, Sergeant Bollinger stated that he "got the stuff [she] wanted [him] to get," that she could "see the pictures if you want," and he got her "two pages of a letter" and a drawing of a ring. Ms. Haddaway indicated that defense counsel gave her things illegally, such as a report which she then underlined.

Sergeant Bollinger testified that he did not allow Ms. Haddaway to look through his "investigative file," but he did show her some photographs of the Wilford property and "a letter." Although it was not common practice for the police to permit a witness to look at case files before trial, he showed Ms. Haddaway the evidence "at the direction of the State's Attorney's Office." Counsel asked Sergeant Bollinger why he would "show a witness who was not by Ms. Wilford's house on January 5th, 1987 pictures of the property," and he responded: "She wanted to see them." Sergeant Bollinger could not recall whether he showed Ms. Haddaway an illustration of Ms. Wilford's ring, which the police believed was taken from Ms. Wilford's residence.

Sergeant Bollinger did note, however, that Mr. Eckel, who represented Mr. Andrews, had "allowed [Ms. Haddaway] to view everything he had in his possession." He did not know whether she had access to "everything or not," but he did "know she had access to his files."

Sergeant Bollinger identified Ms. Haddaway's handwriting on a seven-page police report, written by Sergeant Gamble on June 8, 2000, that detailed an interview with Mr. Andrews. Ms. Haddaway wrote "lie" a number of times on the report. Sergeant Bollinger could not say when Ms. Haddaway made those annotations.

The February 2, 2001, conversation between Ms. Haddaway and Sergeant Bollinger also indicated that Ms. Haddaway had a conversation with Mr. Andrews before she testified at appellant's trial. Ms. Haddaway advised that she had gone to the jail with defense counsel and talked with "Ray." Although Sergeant Bollinger knew that Ms. Haddaway, a fact witness, had met with another fact witness, Mr. Andrews, he did not inform appellant's trial counsel of this fact.

On February 8, 2001, Sergeant Bollinger had another conversation with Ms. Haddaway, which he also recorded. That conversation referred to a conversation the previous day, where Sergeant Bollinger told Ms. Haddaway that the State's Attorney had decided to "nolle [pros] Landon's case." Ms. Haddaway wanted the decision to be in writing, but Sergeant Bollinger told her that was not going to happen. Ms. Haddaway was not happy, and Sergeant Bollinger then said: "I don't know what they're gonna do. But, but the only thing we want, and protecting whatever we're trying her[e], our interest, is all we're doing. We have three murder trials coming up."

As soon as Sergeant Bollinger finished recording these conversations, he put them in the case file, which "was sent to [a] centralized location . . . for the Maryland State Police homicide files." He could not say whether the tapes made it to the State's Attorney's Office. On cross-examination, Sergeant Bollinger agreed that he "made no effort to inform anybody of [the] alleged deal" with Ms. Haddaway," but he "also made no effort to hide it from anybody." On redirect, counsel asked Sergeant Bollinger whether he "purposely . . . refused to put [the deal with Ms. Haddaway] in writing so that it would remain secret," and he responded: "That was not my decision."

Id. at 401, 403–05. (footnotes omitted).

II.

Appeal of June 21, 2016, Order Denying Petition

On June 21, 2016, the circuit court denied appellant's petition for writ of actual innocence. The court stated that it was not "persuaded that there [was] newly discovered evidence that would lead to a substantial or significant possibility of a different result in the Petitioners' respective trials."

On appeal, we concluded that the identification of Ty Brooks as the person who left the palm prints on a window on the exterior of Ms. Wilford's utility room and the washing machine inside the room and the "Bollinger-Haddaway tapes discussing . . . the nol pros of the charges against Ms. Haddaway's grandson" constituted newly discovered evidence. *Faulkner*, No. 1066, slip op. at 12, 16. We held that, because the circuit court made inadequate findings with regard to whether, if that evidence had been admitted at trial, there was a '"substantial or significant possibility that the result of the trial would have been different," a remand was required. *Id.* at 17.

III.

Remand Hearing

The circuit court held a three-day remand hearing in January 2018, during which appellant elicited testimony from Mr. Mankevich and Sgt. Metzger, witnesses who had testified at the previous hearing. Ty Brooks also was called as a witness, but he invoked his Fifth Amendment right against self-incrimination, and therefore, he did not testify at the hearing.

Mr. Mankevich testified that he still was employed as a forensic analysist with the MSP.[3] Mr. Mankevich identified the prints that had been lifted from a window in Ms. Wilford's house as belonging to Ty Brooks. He stated that Ty Brooks could not have been wearing gloves at the time he left the print because "no barrier . . . was able to transfer the pattern from his skin onto the surface."

Counsel directed Mr. Mankevich's attention to a "u-shaped artifact" on one of the lifts, and Mr. Mankevich testified that the artifact most likely was caused by moisture that had been on the surface of the window when the prints were lifted. The mark likely was made by rain, but that it could have been made by Windex or some other liquid. When asked whether he could determine when the prints were lifted based on the moisture mark, Mr. Mankevich stated that there was "no scientific way" to determine the age of the moisture mark or whether the palm print preceded the moisture event.

Mr. Mankevich testified that he also found prints matching Ty Brooks on the laundry machine inside Ms. Wilford's house. He noted, however, that he did not find prints matching Ty Brooks at any other location in the house.

Sgt. Metzger testified that, on February 19, 2015, after investigators had determined that the palm print extracted from the window at Ms. Wilford's residence matched Ty Brooks, she and her boss, Detective Steve Hall, interviewed Ty Brooks at the Metropolitan Transit Center in Baltimore, where Ty Brooks was serving a sentence of incarceration on an unrelated matter. During the interview, Ty Brooks was shown pictures

[3] The parties stipulated to Mr. Mankevich's expertise as a "latent print examiner."

of Ms. Wilford's house, including an aerial photo, and he stated that he had never seen Ms. Wilford's home or broken into it. Ty Brooks told Sgt. Metzger about burglaries and other crimes that he had committed in Easton, including crimes for which he had not been charged. He explained that, in 1986 and 1987, he did not have a car, but instead, he rode a bike.

Ty Brooks told Sgt. Metzger that, in selecting a location to burglarize, he would look for residences with an unlocked window or door. When he found an unlocked window, he would lift the window up and then enter the residence. He stated that he always used latex gloves when he broke into houses.

When Sgt. Metzger confronted Ty Brooks with evidence that his palm print had been discovered on the window at Ms. Wilford's residence, he maintained his denial that he had been at the house. Although Ty Brooks indicated that he was familiar with Black Dog Alley where Ms. Wilford's home was located, he stated that the location was too far for him to reach by bike. He later told Sgt. Metzger, however, that he travelled to several out-of-state locations in 1986, including Washington, D.C., Arlington, and Richmond. Sgt. Metzger testified that, in preparation for her testimony, she checked the incarceration status of Ty Brooks and Mr. Thomas on January 5, 1987, the date of the murder, and she confirmed that neither individual had been incarcerated on that date.

On January 25, 2018, after the second day of the hearings, the parties submitted Joint Exhibit One, which stipulated to the following facts:

> 1. On January 9, 1987, [Maryland State Police ("MSP")] published a notice stating that a $10,000 reward was being offered for information leading to

the arrest or indictment of the parties responsible for the murder of Adeline Wilford.

2. On June 8, 1987, an article was published noting that the reward was increased to $25,000

3. In September 1987, Beverly Haddaway told [Easton Police Department Captain] Walter Chase that she had information regarding the persons who committed the Wilford murder.

4. On August 28, 1993, the Application for Statement of Charges was filed in Case No. 00606367N3, *State v. Shawn Haddaway*.

5. On February 10, 1994, the Application for Statement of Charges was filed in Case No. 00606749N3, *State v. Shawn Haddaway*.

6. On February 16, 1994, the Application for Statement of Charges was filed in Case No. 00606759N6, *State v. Shawn Haddaway*.

7. On March 4, 1994, [Trooper] Ben Blue took Beverly Haddaway to Roger Layton to whom she stated that she saw Smith, Andrews, and Faulkner in the area of the Wilford home on January 5, 1987.

8. On January 14, 2000, Beverly Haddaway stated to John Bollinger that she saw Smith, Andrews and Faulkner in the area of the Wilford home on January 5, 1987.

IV.

Circuit Court's Opinion on Remand

On May 23, 2018, the circuit court issued its decision on the Petition for a Writ of Actual Innocence. As discussed below, the circuit court denied the petition.

A.

Bollinger-Haddaway Tape

The circuit court began its analysis of the Bollinger-Haddaway tapes by discussing the content of the tapes, which it characterized as a "series of conversations between Ms. Haddaway and Sgt. Bollinger."

> These conversations largely consist of Ms. Haddaway's pontificating about her distrust of [the Assistant State's Attorneys prosecuting appellant, and] the case against her grandson, Landon Janda. . . . Ms. Haddaway apparently felt a need to voice her distrust of that office because she insisted on a written commitment that the State's Attorney would enter the charges against her grandson, Mr. Janda, *nolle prosequi*. She repeatedly voiced a concern that the State might *nolle pros* the case as an inducement for her to testify against [appellant], Mr. Smith, or Ray Andrews ("Mr. Andrews") and then refile the charges after the murder trials had concluded. Throughout these recorded conversations, Sgt. Bollinger appears to be cajoling Ms. Haddaway in order to keep an important witness, in an important case, happy. Sgt. Bollinger did take Ms. Haddaway's requests for a written commitment to *nolle pros* the charges against Mr. Janda to the State's Attorney; however, Sgt. Bollinger repeatedly indicated that it was not his call as to whether she got something in writing regarding Mr. Janda's charges. Sgt. Bollinger also repeatedly pointed out to Ms. Haddaway that he would tell the absolute truth as he knew it and that he expected that every other witness to do the same.

The court stated that it needed to "look at the newly discovered evidence and weigh it against the evidence that had been presented at trial in order to determine whether there would be a significant or substantial possibility of a different result." It noted this Court's decision in *Jackson v. State*, 164 Md. App. 679, 696–97 (2005), *cert denied*, 390 Md. 501 (2006), discussing the difference between evidence that is "impeaching" versus "merely

impeaching," but it stated that the Court of Appeals, in *State v. Hunt*, 443 Md. 238, 263–64 (2015), had "rejected this standard as overly rigid."[4]

Based on the case law, the court stated that the questions were whether the conversations on the tape showed that "Ms. Haddaway was mistaken or deliberately false about the subject matter of her testimony, *McGhie* [*v. State*, 449 Md. 494, 512 (2016)]; or whether these statements indicate that she intended to mislead the jury. *Campbell* [*v. State*, 373 Md. 637 (2003)]." In that regard, the court addressed appellant's contention that "Ms. Haddaway's threat to say that she was crazy completely undermines the credibility of her testimony," and that the "tapes indicated that Ms. Haddaway intimidated Sgt. Bollinger." In rejecting this argument, the court stated:

> These exchanges appear to be little more than bluster by Ms. Haddaway in an attempt to put more pressure on the State into *nolle prossing* the charges against her grandson. They do not indicate that she would contradict any evidence or change her story on the core question of guilt or innocence. Instead she threatened to make herself seem less credible, not to make the story that she had to tell less credible. This exchange does not contradict any of her testimony nor any other facts adduced at trial.
>
> * * *

[4] The circuit court stated:

> The Court of Appeals, however, rejected this standard as overly rigid in *State v. Hunt*, 443 Md. 238, 263–64 (2015). In that context, a court is to determine whether false statements by an expert witness might reasonably cause a jury to believe that other aspects of that witness' testimony are false. *McGhie*, 449 Md. [494, 512 (2016)]. The [Bollinger-Haddaway] tapes do not involve expert testimony. [Appellant] posits, however, that Ms. Haddaway's motives for testifying, as revealed in these tapes, undermine her credibility to such an extent as to render her testimony not believable. [Appellant] further argues that Ms. Haddaway so corrupted the State's case against him to such an extent that it is not believable.

> During these exchanges, Sgt. Bollinger raised his voice slightly when he told Ms. Haddaway that he learned protecting himself from her. Nevertheless, Sgt. Bollinger laughed later. At no point did he appear to be intimidated or overwhelmed by her. At no point does Sgt. Bollinger indicate that he is being blackmailed. Sgt. Bollinger acknowledged that he would take steps to protect his case and told Ms. Haddaway that he learned the importance of protecting one's self from her. Ms. Haddaway then goes on to state how she feels that she needs to be protected. Again, Ms. Haddaway is cravenly seeking a break for her grandson and using the State's need for her testimony as leverage. This effort might affect her credibility, but it does not go to the core issue as to whether [appellant] is guilty or innocent. It does not undermine or contradict any facts to which she would testify. In other words, none of Ms. Haddaway's bluster renders any of her testimony about seeing [appellant], Mr. Smith, and Mr. Andrews in the farm field off Black Dog Alley on the day of the murder to be less credible.
>
> [Appellant] argues that were the jury to consider the [Bollinger-Haddaway] tapes, it would not have believed Ms. Haddaway's testimony and would, therefore, have believed his alibi. Although the [Bollinger-Haddaway] tapes might cast a further shadow over Ms. Haddaway's testimony, their content does not contradict her testimony. The content is cumulative to the lines of attack on her credibility that had already been presented at trial. The notion that she was making a deal for her grandson adds to the argument that she was mercenary, but it does not contradict anything that she had said. Nor does it contradict anything that any other witness said.

Additionally, the court noted that Ms. Haddaway's trial testimony was consistent with other evidence. This evidence included: (1) Sergeant McCauley's testimony that Mr. Smith stated, in a monitored conversation with Ms. Haddaway, that he stabbed Ms. Wilford while he was in her house to rob her; (2) Mr. Andrews' testimony that he, appellant, and Mr. Smith went to Ms. Wilford's home, and after Ms. Wilford entered the residence, he observed appellant and Mr. Smith exit the residence with blood on them; (3) Ms. Fitzhugh's testimony that, on the day of the murder, she was driving with Ms. Haddaway and saw appellant, Mr. Smith, and Mr. Andrews come out of a farm field with

blood on them; and (4) Mr. Jacobs' testimony that "three guys," including appellant and Mr. Smith, went out to Ms. Wilford's house, i.e., a "big white barn looking house," waited for Ms. Wilford to arrive, and upon her arrival, she looked like "she came from some kind of store shopping or something."

Given all this evidence, the circuit court concluded:

> Although th[e] tapes might provide some insight into Ms. Haddaway's testimony, they do not establish that she testified falsely. . . . Indeed, as noted, there was considerable effort to attack Ms. Haddaway's credibility. . . . [A]lthough Ms. Haddaway may have been a less credible witness, the erosion of her credibility does not render her testimony false. Therefore, the [c]ourt finds that the [Bollinger-Haddaway] tapes do not merit the granting of a new trial because they do not cause the jury to disbelieve the core of Ms. Haddaway's testimony, that she saw [appellant] and his co-defendants on the day of the murder. Although these tapes indicate that Ms. Haddaway is craven, mercenary, opportunistic and bombastic, nothing in these tapes suggests that she will change her story or how she would change her story. The mere fact that Ms. Haddaway, in order to get the State's cooperation, threatened to undermine her credibility by telling the jury that she was crazy does not contradict her testimony. Therefore, the [c]ourt finds that the content of the [Bollinger-Haddaway] tapes, in and of themselves, would not have contradicted any other evidence nor have persuaded the jury to disbelieve Ms. Haddaway's testimony and do not create a substantial or significant possibility of a different result as that term has been judicially determined.

B.

Palm Prints

The court next addressed Ty Brooks' palm prints, which placed Ty Brooks at Ms. Wilford's home. It noted, however, that Mr. Mankevich testified that he could not determine from this evidence when Ty Brooks was at the home.

The court addressed appellant's argument that Ty Brooks' statement to the police, in which he admitted to a rash of burglaries in Easton around the time of the murder but

denied entering Ms. Wilford's home, supported an inference of guilt, i.e., it was evidence of consciousness of guilt. In that regard, the court stated that it was "difficult to assess the overall credibility of this statement, which was given by a convicted perjurer and which was offered, in part, for the falsity of the matter asserted."

The court then addressed appellant's argument regarding James Brooks, who testified at the first hearing on the petition, that Boozie Thomas confessed to him, in early 1989 or 1990, that he and another person broke into Ms. Wilford's house, that she wrote down the tag number of the car when she got home, and she was then stabbed. James Brooks also had given a written statement to the police, which provided, in pertinent part, as follows:

> [Mr. Thomas] told me he did it and I called him a liar I laughed for a while then he said that he was going to tell me something and that I was to tell no one for if I did and he found out then he would know that I told so I agreed he said that him and a guy named [accomplice] were in her house stealing and the lady came home early on them he had borrowed his sister's car she noticed the car parked near her house and wrote the tag # of the car down before she entered the house he took a butcher knife I believe[] hid behind the kitchen door when she came in he stabbed her to death and left her for dead.[5]

Appellant argued that "the testimony of James Brooks, coupled with the palm prints of Ty Brooks, affirmatively establish[ed] that Mr. Thomas and Ty Brooks were responsible for the murder of [Ms.] Wilford."

[5] The name of the accomplice, Ty Brooks, was redacted from the copy of the statement that was admitted into evidence at trial. Mr. Thomas was an unavailable witness because he was called to the stand and invoked his Fifth Amendment privilege not to testify. He repeatedly stated that he did not "know anything," and he insisted that his election not to testify was not because he would incriminate himself.

The court stated that appellant's argument that Mr. Thomas' statement confirmed that Ty Brooks was Mr. Thomas' accomplice in the robbery and murder of Ms. Wilford depended on "the credibility of James Brooks' written statement to the MSP and [his] testimony in court." The court then reaffirmed its finding from the first proceeding that Mr. Thomas' statement that he "did it" satisfied the statement against penal interest exception to the hearsay rule, but the implication of Ty Brooks as an accomplice was collateral and went beyond the scope of that exception.

The court then addressed the reliability of the statement. It noted that it previously had found James Brooks' testimony "to be equivocal." It went on to find that James Brooks' testimony at the second hearing "lacked credibility as to affirmative proof that Mr. Thomas and Ty Brooks killed [Ms.] Wilford."

In determining that James Brooks' testimony was not credible, the circuit court found: (1) the suggestion that Ms. Wilford was so concerned about the strange car in her driveway that she wrote down the tag number, but she then entered her home with her groceries and placed them on the kitchen table was incredible; (2) James Brooks' statement that Ms. Wilford might have been stabbed in the back, i.e., "I think it might have been in the back," appeared to be speculation and was inconsistent with the forensic evidence; and (3) James Brooks' testimony, at one level, seemed to be that no one told him that they murdered someone.

C.

Materiality of the Newly Discovered Evidence

Finally, the circuit court considered whether the newly discovered evidence would "lead to a significant or substantial possibility of a different result." In making this determination, the circuit court stated that it considered all of the evidence appellant presented, which the court construed would allow appellant to present the following "counter-narrative" to a jury on retrial:

> Ms. Haddaway, the State's key witness was always trying to make a deal with the State in exchange for her testimony. She told Sgt. Bollinger that if Mr. Patterson, the State's Attorney, did not *nolle pros* the charges against her grandson, that she would blow up her testimony by telling the jury that she was crazy because she had been diagnosed with a mental illness. Ms. Haddaway's interest was mercenary and not truthful. In 1994, when Ms. Haddaway met with Officer Ben Blue and Trooper Roger Layton, she told them that she knew three white boys had committed the murder. When asked for their names, she would not divulge. It was only later when there was an award did Ms. Haddaway give the names of these white boys.
>
> Mr. Thomas broke into [Ms.] Wilford's home with an accomplice. Mr. Thomas and the accomplice had borrowed a car from the accomplice's sister. Mr. Keene saw a car in [Ms.] Wilford's driveway that was similar to a car in which Ty Brooks was found several days after the murder. [Ms.] Wilford pulled into the driveway, saw the car and wrote down the tag number. The location of [Ms.] Wilford's car in her driveway indicated that another car might have been parked in her driveway when she arrived at her house. Mr. Thomas grabbed a butcher knife. [Ms.] Wilford was stabbed to death.
>
> Ty Brooks knew Mr. Thomas and had committed some burglaries with him. Ty Brooks acknowledged that he had burglarized a number of houses and businesses in Easton. Ty Brooks described himself as terrorizing Easton around the time of the murder. Ty Brooks denies, falsely, that he had ever been to [Ms.] Wilford's home. His palm print is found on the window through which one could enter the house, and on the washing machine near that window. Ty Brooks, who burglarized houses in Easton, was manifestly

> at [Ms.] Wilford's home and likely entered through the window. Ty Brooks and Mr. Thomas, therefore, are responsible for the murder of [Ms.] Wilford.
>
> Because of the presence of the palm prints, it is apparent that Ty Brooks' statement that he had never been to Ms. Wilford's home is false. As noted, [appellant] posits that this statement was evidence of a guilty conscience and, therefore, evidence that Ty Brooks was involved in the murder that he contends Mr. Thomas described.
>
> Taking James Brooks' statement and Ty Brooks' statement together with the other evidence presented in the case, the jury could reasonably have concluded that Mr. Thomas and Ty Brooks broke into [Ms.]. Wilford's home, and that she came home and surprised them.

The court found, however, that "other than the statement by [James] Brooks that Mr. Thomas told him that he picked up a butcher knife, nothing ties them to the murder in a sufficient[ly] compelling manner to disabuse the jury of the impact of the testimony of Ms. Haddaway, Ms. Fitzhugh, Mr. Andrews, Sgt. McCauley, and Mr. Jacobs." The court found that "those witnesses piece together a fairly consistent narrative that [appellant], Mr. Smith, and Mr. Andrews set out to rob [Ms.] Wilford's home on January 5, 1987," that "during the course of the robbery, [Ms.] Wilford came home from doing her errands, and that she was killed." The court stated:

> [Appellant], Mr. Smith, and Mr. Andrews were in a farm field along Black Dog Alley, shortly after the murder. [Appellant] admitted the crime to Mr. Jacobs, but more significantly acknowledged that he and Mr. Smith, and Mr. Andrews were in the farm field where Ms. Haddaway and Ms. Fitzhugh found them. This encounter is corroborated by the testimony of Mr. Andrews. Again, the [c]ourt finds that the statement that [Ms.] Wilford saw a car apparently belonging to intruders in her driveway, wrote down the license plate number, picked up her groceries and walked into the house and placed them on the kitchen table to be preposterous. The [c]ourt also finds that since Mr. Brooks' statement about how the murder occurred to have come after he wrote "I believed" to be his own description of how the murder occurred and not what Mr. Thomas told him.

In determining whether the newly discovered evidence created a substantial or significant possibility that the result may have been different, the court stated that the question was whether appellant's counter-narrative "would have generated a reasonable doubt in the jury's mind." The court continued:

> The principal strength of [appellant's] counter-narrative is that Ty Brooks was clearly at [Ms.] Wilford's home. The weakness in [appellant's] counter-narrative is that it hinges on the implausible notion that [Ms.] Wilford would have entered her house, with her groceries, and placed them on her kitchen table despite knowing that a prowler was in her house by way of a stranger's car parked in her driveway. There is no greater insight into [Ms.] Wilford's mindset when she arrived at her house on January 5, 1987, than the placement of her groceries on her kitchen table. This fact indicates that [Ms.] Wilford had absolutely no reason to be apprehensive when she arrived at her house. The proposition that [Ms.] Wilford came into her home with her groceries despite the evident presence of a prowler is so incredible that the [c]ourt finds that there is no substantial or significant . . . possibility that a reasonable juror would have acted on that proposition without reservation in an important matter in his or her own business or personal affairs. Accordingly, there is no substantial or significant possibility that a jury would have acquitted [appellant].

STANDARD OF REVIEW

A decision on the merits of a petition for writ of actual innocence is a matter for the circuit court's discretion. *McGhie v. State*, 449 Md. at 509. *Accord Smith*, 233 Md. App. at 411. We review the court's decision in this regard for an abuse of discretion. *Smallwood v. State*, 451 Md. 290, 308–09 (2017). *See also Jackson*, 164 Md. App. at 712–13, (the "ultimate review" of whether newly discovered evidence merits a new trial is "clearly under the abuse of discretion standard"). Under the abuse of discretion standard, "this 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*, 233 Md. App. at 411–12.

DISCUSSION

I.

Before addressing appellant's individual claims, we will discuss generally the law regarding petitions for a writ of actual innocence. Maryland Code (2016 Supp.) § 8-301 of the Criminal Procedure article ("CP"), which was enacted in 2009, states, in pertinent part, 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.
>
> * * *
>
> (g) A petitioner in a proceeding under this section has the burden of proof.

In our prior appeal in this case and *Smith*, we noted that relief under CP § 8-301 was available only if the petitioner produced evidence that was "newly discovered, i.e., evidence that was not known to petitioner at trial." *Smith*, 233 Md. App. at 410. We stated:

> Pursuant to CP § 8-301, the newly discovered evidence must satisfy two requirements: (1) it must be such that it "could not have been discovered in time to move for a new trial under Maryland Rule 4-331"; and (2) it must

> create "a substantial or significant possibility that the result may have been different."

Id. We remanded for the circuit court to address the second prong of the analysis, whether the newly discovered evidence created a substantial possibility of a different result. The court's finding that it did not is the subject of this appeal.

The requirement that the newly discovered evidence creates a '"substantial or significant possibility that the result may have been different' is simply the weight or level of persuasion that the newly discovered evidence of actual innocence must possess in order to justify the issuance of the writ." *Yonga v. State*, 221 Md. App. 45, 62 (2015), *aff'd*, 446 Md. 183 (2016). '"The claim must be substantial enough for the hearing judge to conclude that there may, indeed, be a plausible case of actual innocence."' *Smith*, 233 Md. App. at 412 n.30 (quoting *Yonga*, 221 Md. App. at 62).

The "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 430–31 (quoting *McGhie v. State*, 449 Md. at 510). *Accord State v. Ebb*, 452 Md. 634, 655–56 (2017). This standard mirrors the standard set forth in *Yorke v. State*, 315 Md. 578, 588 (1989), relating to a motion for new trial under Maryland Rule 4-331(c), i.e., the evidence '"may well have produced a different result, that is, there was a substantial or significant possibility that the verdict of the trier of fact would have been affected."' *Accord Campbell v. State*, 373 Md. at 666–67. It also is synonymous with the standard used in the context of determining whether a defendant received ineffective assistance of counsel. *See Bowers v. State*, 320 Md. 416, 426 (1990)

(holding that the *Strickland* standard is best described as "a substantial or significant possibility that the verdict of the trier of fact would have been affected."). In the latter context, the Court of Appeals recently held that "'[t]he likelihood of a different result must be substantial, not just conceivable.'" *State v. Syed*, 463 Md. 60, 97 (Mar. 8, 2019) (quoting *Harrington v. Richter*, 562 U.S. 86, 112 (2011)).

With this background in mind, we address the contentions raised in this case.

I.

Bollinger-Haddaway Tapes

Appellant contends that the circuit court abused its discretion "in failing to analyze the Bollinger-Haddaway tapes under the correct legal standard." In support, he relies on cases addressing the State's failure to disclose exculpatory evidence pursuant to *Brady v. Maryland*, 373 U.S. 83 (1963). In *Brady*, the Supreme Court held that "the suppression by the prosecution of evidence favorable to an accused upon request violates due process where the evidence is material to either the guilt or to punishment, irrespective of the good faith or bad faith of the prosecution." *Id.* at 87. Appellant asserts that *Brady* cases are analogous here because the *Brady* materiality prong is "materially identical to the third prong of CP §8-301, 'substantial or significant possibility that the result may have been different.'"

We agree that the standards for materiality in *Brady* and relief under CP § 8-301(a)(1) are essentially the same. In determining materiality under the *Brady* standard, the test is whether "there is a reasonable probability that, had the evidence been disclosed to the defense, the result of the proceeding would have been different." *Conyers v. State*,

367 Md. 571, 610–11 (quoting *Wilson v. State*, 363 Md. 333 (2001)), *cert. denied*, 537 U.S. 942 (2002). The reasonable probability standard has been interpreted to mean a substantial possibility that the result of the trial would have been different. *Id.* at 611. The *Brady* cases upon which appellant relies, however, do not convince us that the circuit court failed to apply the correct legal standard.

Initially, appellant appears to seek a categorical rule that "[a]n undisclosed agreement between the State and a key witness, in a case with no physical evidence, is material." The cases upon which he relies, however, make clear that the court's analysis of whether the suppression of a plea agreement with a witness is material requires consideration of several factors. *See Conyers*, 367 Md. at 571; *Wilson*, 363 Md. at 333. Appellant focuses on three of these factors, but the Court of Appeals set forth multiple factors relevant to determining the materiality of a suppressed plea agreement, including: (1) "the closeness of the case against the defendant and the cumulative weight of the other independent evidence of guilt"; (2) "the centrality of the particular witness to the State's case"; (3) "the significance of the inducement to testify"; (4) "whether and to what extent the witness' credibility is already in question"; and (5) "the prosecutorial emphasis on the witness's credibility in closing arguments." *Wilson*, 363 Md. at 352.

Here, the circuit court, in its opinion, relied heavily on the weight of the other evidence of appellant's guilt and that Ms. Haddaway's credibility was already in question. The court noted that, apart from Ms. Haddaway's testimony, there was strong evidence of appellant's guilt. Mr. Jacobs and Mr. Andrews each testified that, on the day of the murder, appellant and Mr. Smith burglarized Ms. Wilford's house. Mr. Jacobs also

testified that appellant admitted his involvement in the incident, he overheard appellant and Mr. Smith arguing about "who did the most stabbing," and appellant told him that the police would not find any inculpatory evidence because he "had gloves on" during the crime.[6] Ms. Fitzhugh testified that she saw appellant on Black Dog Alley on the day of the murder, and he was covered in blood. Finally, Sgt. McCauley testified about a recorded conversation between Mr. Smith and Ms. Haddaway, in which Mr. Smith confessed to stabbing Ms. Wilford. This testimony was strong evidence of appellant's guilt in the murder of Ms. Wilford.

Weighed against this strong evidence of guilt was Ms. Haddaway's testimony and the undisclosed tapes. Although Ms. Haddaway was a key witness in the sense that she placed appellant, Mr. Smith, and Mr. Andrews near the scene of the crime with blood on them, the trial court properly recognized that her testimony was cumulative to the testimony of Mr. Andrews, Mr. Jacobs, and Ms. Fitzhugh. And the court properly took into consideration that Ms. Haddaway's credibility already had been called into question at trial.[7]

[6] Sgt. McCauley testified that some of the information Jacobs provided was not available in the press.

[7] At trial, Ms. Haddaway was questioned regarding inconsistencies in her statements regarding who she was travelling with when she saw appellant on the day of the murder. It also was established that she received a $10,000 deposit on a $25,000 reward for providing information that led to an arrest, and she was told that she would get the remaining sum in exchange for her trial testimony.

With respect to the other factors, the agreement not disclosed was that, in 2001, the State's Attorney agreed not to pursue criminal charges against her grandson. The parties stipulated, however, that many years prior to this agreement, in 1994, Ms. Haddaway had advised the police that she saw appellant, Mr. Smith, and Mr. Andrews in the area of Ms. Wilford's home on the day of the murder. And although the State, during closing argument, did state that no bias had been shown regarding why Ms. Haddaway would implicate appellant, it did so in the context of pointing out, correctly, that both of the other people she identified, Mr. Smith and Mr. Andrews, admitted their involvement. The State merely noted that, in light of that, there was no reason shown why she would include appellant, "[e]xcept that he was there."[8]

As appellant notes, the circuit court did not specifically address *Wilson*. He does not, however, cite any cases standing for the proposition that a court considering a petition for a writ of innocence errs in failing to specifically cite cases addressing the *Brady* materiality analysis. Rather, he asserts that, instead of following the analysis in those cases, "the court concluded that the Bollinger-Haddaway tapes were 'merely impeaching'

[8] During closing argument, the prosecutor stated:

> [Mr. Smith] admitted in his conversation with [Ms.] Haddaway, his involvement. He also, in a statement to the police, to [Sgt.] Bollinger, was able to describe what the victim wore that day. Now I put it to you. That if for some reason, which has not been presented to you, [Ms.] Haddaway made it up. It strikes me very odd, and I submit it should strike you odd, that in fact two people of the three she named admitted, [Mr.] Andrews to the police, [Mr.] Smith to [Ms.] Haddaway, of their involvement. There has been no bias, no motive shown, but why she would include [appellant]? Except that he was there.

because they *only* affect [Ms.] Haddaway's credibility, were cumulative of other efforts to impeach her, and therefore do not impact the 'core issue' of [Mr.] Faulkner's innocence." He contends that this was legal error for several reasons.

Initially, appellant asserts that the court's reference to the "merely impeaching" standard that was set forth in *Jackson*, 164 Md. App. at 696–97 has since been rejected. The circuit court did discuss, in assessing the Bollinger-Haddaway tapes, prior case law regarding the difference in evidence that was "impeaching" and "merely impeaching." It ultimately noted, however, that this standard was rejected by the Court of Appeals in a case involving expert testimony, and it stated that "a new trial should be declared if the evidence indicates that a jury has been misled" (citing *Campbell*, 373 Md. at 666). And a review of the court's reasoning, as a whole, shows that it was consistent with the recent statement by the Court of Appeals that newly discovered evidence must be material to the result, which means that it must be more than "merely cumulative or impeaching." *Cornish v.* State, 461 Md. 518, 529–30 (2018).

A review of the entire opinion shows that the court properly focused on the relevant inquiry, whether the tapes created a substantial possibility of a different result. In finding that they did not, the court stated that they were cumulative to other attacks on Ms. Haddaway's credibility, and although they "might cast a further shadow over Ms. Haddaway's testimony, their content does not contradict her testimony" or "anything that any other witness said." The court noted that there was ample other evidence that corroborated Ms. Haddaway's testimony that she saw appellant, Mr. Smith, and Mr. Andrews as she was driving on Black Dog Alley on the day of the murder. We note that

this evidence included: (1) Sgt. McCauley's testimony that Mr. Smith, in his monitored conversation with Ms. Haddaway, said that he had stabbed Ms. Wilford while he robbed her at her home; (2) Mr. Jacobs' testimony that appellant admitted to participating in the crime, and that he, and "another guy" walked through a cornfield to a highway after they had left Ms. Wilford's house; (3) Ms. Fitzhugh's testimony that she saw the three men in the farm field the day of the murder; and (4) Mr. Andrews' testimony that, on the day of the murder, appellant and Mr. Smith burglarized Ms. Wilford's home while he waited outside, they subsequently saw Ms. Haddaway, and that appellant and Mr. Smith subsequently divided up money.

In *McGhie*, 449 Md. at 510, the Court of Appeals addressed a claim that the false testimony of the State's expert witness regarding his academic credentials entitled the defendant to a new trial. The circuit court weighed this evidence with the "ample testimony directly implicating [McGhie] in the murder." *Id.* at 513. The Court of Appeals held that, "given the weight of the evidence presented against" McGhie, the circuit court did not abuse its discretion in finding that McGhie failed to meet his burden to show that the expert's lies created a "substantial or significant possibility that the result may have been different." *Id.* at 514.

The circuit court here similarly considered the new evidence with the other evidence presented at trial. Based on a reading of the opinion as a whole, we conclude that the court did not apply an erroneous standard, but rather, it applied the proper analysis, i.e., whether the newly discovered evidence created a substantial or significant possibility of a different result.

Next, appellant argues that the circuit court considered only the non-prosecution deal and "gave no attention to the other ways in which the tapes show[ed] [Ms.] Haddaway manipulated the trial process (with the assistance of the police, the prosecution, and [Mr.] Andrew's counsel.)" The record, however, shows that the circuit court considered more than the deal in assessing the potential impact of the tapes. The court specifically noted appellant's argument that the tapes were "evidence that Ms. Haddaway so corrupted the State's case against him to such an extent that it is not believable." Therefore, it obviously was aware of this argument. That it did not deem it persuasive enough to specifically discuss it does not warrant reversal. Counsel does not cite any case holding that the court's failure to mention a particular argument in its opinion, which in this case was 30 pages long, compels a finding that the court did not consider the argument. Rather, this Court has made clear that the circuit court is not required to "spell out every step in weighing the considerations that culminate in a ruling." *Wisneski v. State*, 169 Md. App. 527, 556 (2006), *aff'd*, 398 Md. 578 (2007). A trial court's findings are sufficient when "the record supports a reasonable conclusion that appropriate factors were taken into account in the exercise of discretion." *Cobrand v. Adventist Healthcare, Inc.*, 149 Md. App. 431, 445 (2003). The record here shows that the circuit court considered all of the evidence and argument presented by appellant.

II.

Palm Prints

Appellant contends that the "circuit court analyzed the Ty Brooks evidence using the wrong legal standard." Specifically, he argues that: (1) the "circuit court's false

'counter-narrative' improperly shifted the ultimate burden . . . to [appellant]"; (2) the circuit court "failed to consider all aspects of the Ty Brooks evidence"; and (3) the circuit court "clearly erred in its analysis of James Brooks' statement and testimony."

The State contends that the "court did not apply the wrong legal standard when it determined that the Ty Brooks evidence did not give rise to a substantial possibility that the outcome of [appellant's] trial would have been different if the jury had been aware of the match." It claims, first, that the only "newly discovered evidence" related to Ty Brooks was "the 2011 match of the palmprint found on the laundry room window and washing machine to Ty Brooks." It then asserts that "[t]elling the jury that the palmprints were matched to Ty Brooks, without any evidence about Ty Brooks (which was available to [appellant] at trial yet not presented to the jury) does not present a substantial possibility of a different outcome." It noted that the jury was aware of the unidentified print and giving "a name without context offers little more in the way of evidence." In any event, the State asserts that the "court's opinion makes clear that it included the non-newly discovered Ty Brooks evidence when it considered whether the evidence would give rise to the substantial possibility of a different outcome if the jury at [appellant's] trial had been made aware of it."[9]

[9] In our prior opinion, we raised the issue whether, in assessing the probability of a different result, the court should consider only the newly discovered evidence, or whether it also could consider other "context evidence" that related to the value of the newly discovered evidence. *Smith*, 233 Md. App. at 434 (comparing *State v. Hess*, 290 P.3d 473 (Az. App. Ct. 2012) ("in determining whether newly discovered evidence probably would result in a different verdict, court should consider other evidence affecting value of new evidence"), *with Commonwealth v. Reese*, 663 A.2d 206, 209–10 (Pa. Super. Ct. 1995) ("in determining whether newly discovered evidence would have affected the outcome of

A.

We begin by addressing appellant's claim that the circuit court improperly shifted the ultimate burden to him to "affirmatively establish that Mr. Thomas and Ty Brooks were responsible for the murder of [Ms.] Wilford." We disagree.

Initially, we start with the presumption that the "trial judge knows and follows the law." *John O. v. John O.*, 90 Md. App. 406, 429 (1992). *Accord Mobuary v. State*, 435 Md. 417, 440 (2013). Although appellant cites several isolated statements that he contends show that the court misconstrued the proper standard, we must review the opinion as a whole. *See Riner v. Commonwealth*, 579 S.E.2d 671, 690 (Va. 2003) (Isolated statements by the court that are "taken out of the full context in which they were made" cannot rebut the presumption that the correct legal standard was applied.).

Here, the circuit court, in rendering its opinion, repeatedly stated that the question was whether the new evidence created a "substantial or significant possibility of a different result." The court's opinion, read as a whole, indicates that the court understood and applied the "substantial or significant possibility" standard. [10]

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the trial if it had been introduced, court should not consider other evidence that was not introduced at the original trial")). Here, the court stated that it was considering all the evidence presented by appellant. Given our resolution of the appeal, i.e., that we are affirming the court's denial of the petition after considering the "context evidence" that was beneficial to appellant, we need not resolve this issue. We leave that for another day.

[10] Appellant's contention that the court ignored his defense that he was at work at the time of the murder is belied by the record. In the facts set forth in the court's Memorandum Opinion dated June 22, 2016, which the court incorporated in its January 2019 Memorandum Opinion, the court stated:

B.

We next address appellant's contention that the circuit court failed to consider "all aspects of the Ty Brooks evidence." Specifically, appellant asserts that the circuit court failed to consider: (1) the "powerful exculpatory value of matching the palm prints left on and inside the point of entry to Ty Brooks," a serial burglar; and (2) "the effect of Ty Brooks, having been linked to the murder scene through physical evidence, taking the stand and invoking his Fifth Amendment right against self-incrimination." He asserts that this evidence "would have been a powerful supplement to [his] alibi defense."

Appellant's contentions notwithstanding, the circuit court specifically stated in its opinion that it considered all of the evidence that appellant presented. With respect to the match of Ty Brooks' prints, the court noted that Mr. Mankevich testified that there was no way to determine when Ty Brooks left the palm prints. With respect to Ty Brooks' criminal history, the court acknowledged this history when it considered that Ty Brooks was a "convicted perjurer" who had burglarized homes in the Easton area. With respect to Ty Brooks' invocation of his Fifth Amendment privilege against self-incrimination, the circuit court similarly acknowledged this fact, stating that "Ty Brooks took the stand and invoked his Fifth Amendment privilege against self-incrimination." Although the court

> [Appellant's] attorneys presented evidence that on the day of the murder, he was employed by Tidewater Publishing. Although there were no timecards from that time, the records indicate that he had not requested January 5, 1987, as a day off and that he may well have been at work that day. There was no evidence as to which shift that he worked.

(Footnote omitted.)

did not specifically address the weight, if any, of this evidence, a trial court is '"not obliged to spell out in words every thought and step of logic."' *North River Ins. Co. v. Mayor and City Council of Balt.*, 343 Md. 34, 93 (1996) (quoting *Beales v. State*, 329 Md. 263, 273 (1993)).

C.

Appellant next contends that the circuit court "clearly erred in its analysis of James Brooks' statement and testimony." Specifically, he argues that the circuit court committed "legal error" because it "disbelieved one aspect relating to James Brooks." He asserts that the court concluded that the testimony "lack[ed] credibility."

Initially, we note that findings regarding the "weight of evidence and the credibility of witnesses . . . are matters entrusted to the sound discretion of the trier of fact," and they will be set aside only if they are clearly erroneous. *In re Timothy F.*, 343 Md. 371, 379 (1996); *Nathans Assocs. v. Mayor & City Council of Ocean City*, 239 Md. App. 638, 646 (2018). *See Small v. State*, 235 Md. App. 648, 706 (2018) (the '"issue of credibility[ ] is one for the trier of fact,"' and not for the appellate court) (quoting *Branch v. State*, 305 Md. 177, 184 (1986)), *cert. granted*, 459 Md. 399 (2018)).

Here, in determining that James Brooks' testimony was not credible, the circuit court found: (1) the suggestion that Ms. Wilford was so concerned about the strange car in her driveway that she wrote down the tag number, but she then entered her home with her groceries and placed them on the kitchen table, was incredible; (2) James Brooks' statement that Ms. Wilford might have been stabbed in the back, i.e., "I think it might have been in the back," appeared to be speculation and was inconsistent with the forensic

evidence; and (3) James Brooks' testimony, at one level, seemed to be that no one told him that they murdered someone.[11] Based on our review of the record, we cannot conclude that the court clearly erred in concluding that James' Brooks' testimony and statement lacked credibility.[12]

III.

Appellant next contends that the circuit court "improperly redacted 'Ty Brooks' name from [Mr.] Thomas's confession implicating both in [Ms.] Wilford's murder." In this regard, he asserts:

> During the 2016 innocence hearing, the circuit court admitted into evidence much of a statement against interest that [Mr.] Thomas made to this

[11] The court noted that James Brooks testified that Mr. Thomas told him that "some people broke into her place," but he did not recollect if Mr. Thomas indicated his personal involvement. When counsel pressed James Brook regarding whether the events were fresh in his mind when he went to the police, the following occurred:

> A. Well, well yeah. Because sometimes when you ride around with a friend that type of conversation ain't to like common, talking about you know I mean somebody doing something to somebody like that.
>
> Q. How many times have you had someone tell you that they murdered . . .
>
> A. Nobody.
>
> Q. Other than this?
>
> A. Nobody.
>
> Q. Other than this situation?
>
> A. Oh, nobody.

[12] The prosecutor argued that James Brooks' statement was not credible because he was a drug addict who, after hearing about the award, made up a story to get drug money.

> longtime friend James Brooks in 1989 or 1990. *Smith*, 233 Md. App. at 399–400. In this statement, [Mr.] Thomas "confessed to killing Ms. Wilford" together with an accomplice. *Id.* at 400. The critical portion of the confession that the circuit court did not admit, by both redacting James Brooks's 1992 statement to police and by limiting his testimony at the 2016 innocence hearing, was that the accomplice was "Ty Brooks." *Id.* In this Court's last opinion in this case, it instructed the circuit court to revisit this matter on remand by assessing the credibility of James Brooks as well as by applying the "more nuanced test" articulated in *State v. Matusky*, 343 Md. 467 (1996). *Smith*, 233 Md. App. at 436–37.
>
> On remand, the circuit court affirmed the general admissibility of [Mr.] Thomas's confession to James Brooks as a statement against interest by an unavailable declarant. *See* App. B at 18–19. But the court continued to hold that "the identification of an accomplice does not add to Mr. Thomas' statement, 'I did it,'" and thus excluded the "mention of Ty Brooks" as "beyond the declaration against penal interest exception to hearsay evidence." *Id.* at 19. This was legal error.

The State acknowledges that, as to Mr. Thomas, the statement was against his penal interest. It contends, however, that the circuit court "properly redacted Ty Brooks' name from James Brooks' statement."

"[A] trial judge considering the admission of a hearsay statement offered as a declaration against penal interest must carefully consider the content of the statement . . . [and] whether a reasonable person in the [declarant's] situation . . . would have perceived that it was against his penal interest at the time it was made." *Roebuck v. State*, 148 Md. App. 563, 581 (2002), *cert. denied*, 374 Md. 84 (2003). "[O]nly those portions of the extended declaration that incriminate the defendant should be admitted." *Matusky*, 343 Md. at 487. A trial court, therefore, must "parse the entire extended declaration to determine which portions of it are directly contrary to the declarant's penal interest, and which collateral portions are so closely related as to be equally trustworthy." *Id.* at 482.

Here, Mr. Thomas' statements regarding his own role in the murder were clearly self-inculpatory and admissible under Rule 5-804(b)(3).[13] Mr. Thomas' identification of Ty Brooks, however, was not self-inculpatory, and we conclude that the trial court did not abuse its discretion in determining that it was not sufficiently trustworthy to be admissible.

In any event, even if the court erred in redacting the name Ty Brooks, there was no prejudice to appellant. Counsel for Mr. Smith, whose case was considered at the same hearing as appellant's case in the circuit court, and the same day of argument in this Court, acknowledged at oral argument that the circuit court, in considering the petition, inferred that Ty Brooks was the person named as Mr. Thomas' accomplice. We concur with that assessment. Accordingly, even if the court erred in redacting Ty Brooks' name from Mr. Thomas' statement, there was no prejudice to appellant, and he states no claim for relief in this regard.

JUDGMENTS OF THE CIRCUIT COURT FOR TALBOT COUNTY AFFIRMED. COSTS TO BE PAID BY APPELLANT.

[13] Rule 5-804(b)(3) provides that, if the declarant is unavailable as a witness, the following is not excluded by the hearsay rule:

> Statement against interest. A statement which was at the time of its making so contrary to the declarant's pecuniary or proprietary interest, so tended to subject the declarant to civil or criminal liability, or so tended to render invalid a claim by the declarant against another, that a reasonable person in the declarant's position would not have made the statement unless the person believed it to be true. A statement tending to expose the declarant to criminal liability and offered in a criminal case is not admissible unless corroborating circumstances clearly indicate the trustworthiness of the statement.