

Circuit Court for Talbot County
Case No. 20-K-00-006884

UNREPORTED
IN THE COURT OF SPECIAL APPEALS
OF MARYLAND

No. 619

September Term, 2018

JONATHAN D. SMITH

v.

STATE OF MARYLAND

Meredith,
Graeff,
Reed,

JJ.

Opinion by Graeff, J.

Filed: June 3, 2019

*This is an unreported opinion, and it may not be cited in any paper, brief, motion, or other document filed in this Court or any other Maryland Court as either precedent within the rule of stare decisis or as persuasive authority. Md. Rule 1-104.

This is the fifth 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, Jonathan D. Smith, 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 appellant’s Petition for a Writ of Innocence. *Smith v. State*, 233 Md. App. 372 (2017). We held that the circuit court erred in finding that certain evidence, discussed *infra*, did not qualify as newly discovered evidence. 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.* at 433.² 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: *Smith v. State*, No. 688, Sept. Term, 2001 (filed Jan. 17, 2002) (denying appellant’s claims of error during trial, but remanding for a hearing on appellant’s motion for a new trial), *aff’d*, 371 Md. 496 (2002); *Smith v. State*, No. 1184, Sept. Term, 2003 (filed Nov. 4, 2004) (affirming trial court’s decision on remand to deny appellant’s motion for new trial); *Smith v. State*, No. 850, Sept. Term, 2009 (filed June 9, 2010) (affirming the circuit court’s denial of appellant’s petition for post-conviction relief); *Smith v. State*, 233 Md. App. 372 (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 several questions for this Court's review,³ which we have consolidated and rephrased, as follows:

1. Did the circuit court apply an erroneous materiality standard when assessing appellant's newly discovered evidence?
2. Did the circuit court abuse its discretion in determining that the Bollinger-Haddaway tapes and Ty Brooks' palm prints, when considered together with other relevant evidence, did not warrant a new trial?

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

³ Appellant presents the following questions:

1. Did the circuit court apply an erroneous materiality standard when assessing Smith's newly discovered evidence?
2. Did the circuit err in determining that the match of Ty Brooks' palm prints to crime scene prints, when considered in connection with related evidence including a 1991 statement implicating Brooks in Ms. Wilford's murder, was immaterial?
3. Did the circuit court err in determining that the State's suppression of the Tapes was immaterial?
4. Did the circuit court err in determining that the Tapes and Brooks' prints, when considered together and in conjunction with other relevant evidence, were collectively immaterial?

FACTUAL AND PROCEDURAL BACKGROUND

I.

Facts as Set Forth in Prior Opinion

In *Smith*, 233 Md. App. at 380–408, 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

Appellant's four-day trial began on February 26, 2001. In addition to the evidence discussed, *supra*, Alexander Mankevich, a fingerprint expert for the Maryland State Police Crime Laboratory, testified that he did not match any fingerprints left at the scene to any known suspects. He further explained how a fingerprint typically is left on a surface, why fingerprints might not be located, and the inability to determine the length of time a fingerprint has been on any surface. Sergeant Bollinger testified that, although fingerprint, DNA, and hair samples were taken from appellant, those samples did not match any of the evidence the police had collected from the crime scene.

Ms. Haddaway testified that, on January 5, 1987, she was driving on Black Dog Alley and saw her nephew, appellant, emerge from a cornfield with Mr. Faulkner and Mr. Andrews. She pulled over to the side of the road, and appellant approached her truck. His glasses were broken and repaired with tape or a bandaid, and he was wearing a white t-shirt that had "red dots" around the collar. Ms. Haddaway asked him what he was doing there. Appellant stated that he was waiting for somebody, and he thought that person was in the truck Ms. Haddaway was driving. When asked again what the men were doing, appellant said that he had just killed a dog. Ms. Haddaway called appellant a liar. Appellant started laughing and stated: "Yes I did. I killed him cause [sic] it bit me." He told her that he had stabbed the dog. Another truck then pulled up behind Ms. Haddaway, and the three men got into the truck. As Ms. Haddaway drove away, she saw a number of police vehicles and an ambulance driving fast on Black Dog Alley and then turning left onto Kingston Road.

Mr. Andrews testified, consistent with his statement to the police, that he waited in a wooded area while appellant and Mr. Faulkner went to Ms. Wilford's house, and after they came running back, the three men ran until they arrived at Black Dog Alley and saw Ms. Haddaway in her vehicle. Ms. Haddaway asked appellant what happened to him, and appellant responded that he had been attacked by a dog. Mr. Andrews believed that someone was with Ms. Haddaway that day, but he was "not sure if it was a man or not." The three then went to appellant's house. Appellant and Mr. Faulkner did not talk about what happened, but they pulled out of their pockets a large quantity of cash, approximately \$300 to \$400. Mr. Andrews did not get any of the money. Appellant and Mr. Faulkner never talked to him about what occurred that afternoon. When Mr. Andrews saw a report in a newspaper the next day, appellant and Mr. Faulkner told him "to keep quiet."

On cross-examination, Mr. Andrews acknowledged that, in exchange for his testimony against appellant and his agreement to enter an *Alford* plea to the crime of involuntary manslaughter for his role in Ms. Wilford's murder, the prosecutor would recommend that he be sentenced to five years. Mr. Andrews testified, however, that he had not been promised any financial reward or incentive to testify.

Michael Snow, a former Baltimore City police officer who had been convicted of bank robbery, testified that he was housed with appellant in the same protective custody ward at the Talbot County Detention Center. At one point during their detention, he asked appellant if he really killed "that lady." Appellant "just looked at [him] and said uh-hum." When Mr. Snow asked how appellant killed her, appellant "had his hand kind of just folded like if he was holding something," and he made stabbing motions. When Mr. Snow asked appellant why he killed the woman, appellant stated that "she was an old lady" who "startled him when she came in." Appellant explained that "he was fighting with her trying to get away" when "she bit him," and he then "went crazy."

Mr. Snow testified that he did not receive a plea deal or anything else in exchange for his testimony. He stated that he testified against the advice of his attorney because he found what appellant said to him "appalling."

After the State concluded its case-in-chief, the defense recalled Ms. Haddaway. Defense counsel questioned her about inconsistencies between her testimony and the police report of her conversation with Sergeant Bollinger on January 17, 2000. Ms. Haddaway stated that a "lot of things that they wrote down [were] wrong."

Ms. Haddaway acknowledged that she had visited Mr. Andrews in jail. There were occasions that Mr. Andrews' lawyer was present when she went to visit him.

Ms. Haddaway also testified that she received a \$10,000 deposit on a \$25,000 reward for providing information that led to an arrest. The police told her that, to get the \$25,000 reward, all she had to do was testify, which she agreed to do "as long as [she could] tell the truth and only the truth."

On the last day of trial, appellant testified. He recalled his April 11, 2000, recorded conversation with Ms. Haddaway, but he stated that the "whole time [he] did not ever know what she was saying, referring to or what she was talking about or nothing." He denied admitting to Ms. Haddaway that he killed Ms. Wilford. Although he did tell her that "all three got the money," and they "all split \$20,000 apiece," that statement was not true. He testified that he lied to Ms. Haddaway because she kept asking him questions "about something that happened that I had no knowledge [of]" and "that was the only way [he] could think of to get her to leave [him] alone."

Appellant also testified about his interview with Sergeant Bollinger. He stated that he could not hear the recording Sergeant Bollinger tried to play for him. Sergeant Bollinger then advised that if he did not "come clean you'll never, ever see your wife or your kids again." At that point, and because Sergeant McCauley told him that he would see appellant "strapped down and [given] lethal injection," he told Sergeant Bollinger that he "did it, David did it. Ray was there. I didn't know what else to do."

Appellant acknowledged that he was placed in protective custody with Mr. Snow. He denied, however, that he told Mr. Snow that he killed Ms. Wilford or that he made "stabbing motions" with his hand.

Appellant denied taking part in Ms. Wilford's murder. He testified that he was not with Mr. Faulkner and Mr. Andrews at the time because he "did not know neither of the (inaudible) at all, neither one." He also denied seeing Ms. Haddaway on Black Dog Alley that day.

Sergeant McCauley was recalled as a rebuttal witness for the State. He testified that he had reviewed various newspaper articles from 1987 through 1999, and none of the articles that he reviewed contained a description of what Ms. Wilford was wearing when she was killed.

As indicated, on March 1, 2001, a jury found appellant guilty of felony murder and daytime house breaking.

Id. at 386–90. (footnotes omitted).

D.

Petition for Writ of Actual Innocence and Motion to Reopen

On June 11, 2015, appellant filed for a petition for writ of actual innocence. 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. *Id.* at 392. On April 11, 2016, the circuit court began a seven-day hearing on the petition.

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."

Id. 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 a writ of actual innocence. The court stated that it was not “persuaded that there is 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. *Id.* at 408. 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 would have been different,” a remand was required. *Id.* at 430, 432.

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 analyst with the MSP.⁴ 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.”

⁴ The parties stipulated to Mr. Mankevich’s expertise as a “latent print examiner.”

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 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 by discussing the Bollinger-Haddaway 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 Mr. Faulkner, 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 Mr. Faulkner, [appellant], or Ray 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 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.”⁵

Based on the case law, the court stated that the question was 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

⁵ 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 these tapes are evidence that Ms. Haddaway so corrupted the State’s case that none of its evidence is credible.

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 prosequing* 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.

* * *

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 Mr. Faulkner, [appellant], and Mr. Andrews in the farm field off Black Dog Alley on the day of the murder to be less credible.

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.

The court further noted that Ms. Haddaway’s trial testimony was consistent with other evidence. This evidence included: (1) the monitored conversation between appellant and Ms. Haddaway, during which appellant confessed to murdering Ms. Wilford; (2) Sgt. Bollinger’s trial testimony that appellant told him that he broke into Ms. Wilford’s home with David Faulkner and that Ms. Wilford, who was wearing a blue coat and glasses on a chain around her neck, was stabbed; (3) the trial testimony of Michael Snow that, while appellant was incarcerated with him, appellant admitted that he killed “the woman”; and (4) Mr. Andrew’s testimony that he waited outside while appellant and Mr. Faulkner went into Ms. Wilford’s house, and they subsequently saw Ms. Haddaway. Given this evidence, the circuit court concluded:

Although th[e] tapes might provide some insight into Ms. Haddaway’s character, they do not establish that she testified falsely. . . . Indeed, as noted, there was considerable effort to attack Ms. Haddaway’s credibility. . . . Although 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 suggest 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 defined.^[6]

⁶ Defense counsel argued that the tapes, by themselves, required a new trial.

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.^[7]

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.”

The court stated that appellant’s argument that this 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

⁷ The name of the accomplice, Ty Brooks, was redacted from the copy of the statement that was admitted at the hearing. 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, however, that he did not “know anything,” and he insisted that his election not to testify was not because he would incriminate himself.

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.⁸

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

⁸ 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 Brooks 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.

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. Her 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 there might have been another car in the driveway when she parked it. 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 at the time was burglarizing houses in Easton, had manifestly been at [Ms.] Wilford’s house 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 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, Mr. Andrews, Sgt. McCauley, and Mr. Snow.” The court found that those witnesses pieced “together a fairly consistent narrative that Mr. Faulkner, [appellant], 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:

Mr. Faulkner, [appellant], and Mr. Andrews were in a farm field along Black Dog Alley, shortly after the murder. [Appellant] admitted the crime to Mr. Snow. [Appellant] admitted to having been to [Ms.] Wilford's house to rob it, and that, when she came home, he and Mr. Faulkner stabbed her. He told Sgt. Bollinger that [Ms.] Wilford wore a blue coat with her glasses on a string around her neck. Those facts are consistent with the forensic photographs.

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, which she placed 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*, 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

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, 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*, 449 Md. at 510). *Accord State v. Ebb*, 452 Md. 634, 655–56 (2017) (McDonald, J., concurring, joined by Watts, J.). This standard mirrors the materiality standard set forth in *Yorke v. State*, 315 Md. 578, 588 (1989), relating to a motion for a new trial pursuant to Maryland Rule 4-331(a), 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*, 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 (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.

Appellant first contends that the circuit court “applied an erroneously heightened legal standard” in assessing the impact of the newly discovered evidence. He asserts that the court “improperly placed the burden on [him] to ‘disabuse the jury’ of the State’s case,” suggesting that he “needed to prove Brooks and Thomas’ guilt beyond a reasonable doubt.” By contrast, he asserts that, “[u]nder the applicable standard, new evidence that

speaks to innocence and does no more than create a ‘faint possibility of a different’ outcome is sufficient to merit relief[.]”

We disagree, both on the legal proposition appellant sets forth and his reading of the court’s ruling. Initially, we disagree that a “‘faint possibility of a different’ outcome is sufficient to merit relief.” As indicated, the Court of Appeals has construed the test, creating a “substantial or significant possibility that a result may have been different,” as requiring that “[t]he likelihood of a different result be substantial, not just conceivable.” *Syed*, 463 Md. at 87 (quoting *Harrington*, 562 U.S. at 112).

Moreover, we disagree with appellant’s characterization of the legal standard that the court employed. 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.⁹

⁹ The court correctly determined that appellant had the burden of proof in this regard. *See* CP § 8-301(g). As this Court recently explained:

Appellant further contends, citing *Jackson*, 164 Md. App. at 697–98; and *McGhie*, 449 Md. at 512, that the circuit court’s “analysis rested on the now abandoned distinction” between “merely impeaching” evidence that does not warrant a new trial and impeachment evidence that was “directly exculpatory evidence on the merits’ necessitating a new trial.” He argues that this distinction no longer exists and “an innocence writ must be granted if there is any new evidence that creates a substantial or significant possibility of a different outcome, regardless of the character of the evidence.”

To be sure, the court, in assessing the Bollinger-Haddaway tapes, did discuss 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 its reasoning in assessing the impact of the tapes was consistent with the

[The §8-301(g)] burden stands in stark contrast to an appellant’s burden in a direct appeal from a criminal conviction. If an appellant establishes error in a direct appeal from a criminal conviction, the burden shifts to the State to show “that the error in no way influenced the verdict.” *Dionas v. State*, 436 Md. 97, 108, 80 A.3d 1058 (2013) (quoting *Dorsey v. State*, 276 Md. 638, 659, 350 A.2d 665 (1976)). By contrast, in a petition for a writ of actual innocence, the petitioner must show that “there [is] a substantial possibility that a different result would have occurred in the trial, whether jury or bench, as a result of the newly discovered evidence.” *Yonga v. State*, 446 Md. 183, 208, 130 A.3d 486 (2016); see CP § 8–301(a)(1) (petitioner must show “a substantial or significant possibility that the result may have been different”).

Patterson v. State, 229 Md. App. 630, 638–39 (2016), cert. denied, 451 Md. 596 (2017).

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).

Here, 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 “that she was making a deal for her grandson add[ed] to the argument that she was mercenary, but it did not contradict anything that she [, or other witnesses,] had said.” The court noted that there was ample other evidence that corroborated Ms. Haddaway’s testimony that she saw appellant, Mr. Faulkner, and Mr. Andrews as she was driving on Black Dog Alley on the day of the murder. This evidence included appellant’s admissions to three separate persons, on three different occasions: (1) to Ms. Haddaway, during the intercepted conversation; (2) to the police, where appellant described the coat the victim was wearing when she was murdered; and (3) to Mr. Snow. Additionally, Mr. Andrews’ testimony, that he waited outside while appellant and Mr. Faulkner went into Ms. Wilford’s house, and they subsequently saw Ms. Haddaway in a farm field, corroborated her testimony.

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 erroneously heightened legal 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.¹⁰

II.

Appellant next contends that the court erred in finding that the evidence implicating Ty Brooks and Mr. Thomas in the murder of Ms. Wilford, along with the Bollinger-Haddaway tapes, did not create a significant or substantial possibility of a different result. He makes several arguments in that regard.

¹⁰ 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 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.

A.

Palm Prints

Appellant first argues that the discovery of Ty Brooks’ palm prints on the exterior window and washing machine inside Ms. Wilford’s home, by itself, created “a substantial or significant possibility of a different outcome at [appellant’s] trial.” We disagree.

Initially, as the circuit court noted, Mr. Mankevich testified at the hearing that there was no way scientifically to determine when Ty Brooks left the palm prints, and therefore, Ty Brooks could have left the palm prints at Ms. Wilford’s residence at a time other than the time she was murdered. Moreover, the cases appellant cites in support of his contention, i.e., *Colvin v. State*, 299 Md. 88, *cert. denied*, 469 U.S. 873 (1984), and *Lawless v. State*, 3 Md. App. 652 (1968), addressed the sufficiency of the evidence to convict the defendant. Here, the issue is not whether Ty Brooks prints would have been sufficient to support a conviction of Ty Brooks for the murder. Rather, as discussed, the issue is whether Ty Brooks’ palm print created a substantial possibility of a different result in appellant’s trial, which requires a weighing of that evidence against the other evidence presented at trial. Accordingly, contrary to appellant’s assertion, palm print evidence, by itself, did not “satisfy the materiality standard.”

Appellant next contends that “[a]ny notion that these palm prints were unrelated to the murder is dispelled” by “other context evidence” that flowed from the newly discovered print identification. In that regard, he asserts that the court admitted: (1) “James Brooks’ signed statement and testimony regarding recounting Thomas’ confession”; (2) “Ty Brooks’ 2015 admissions and false denials to MSP investigators,

constituting consciousness of guilt”; (3) “Ty Brooks’ and Thomas’ Fifth Amendment assertions”; (4) “MSP’s investigation showing [Ty] Brooks and [Mr.] Thomas were at large at the time of the murder”; and (5) “[p]rior residential burglaries committed by [Ty] Brooks and [Mr.] Thomas around the time of the crime.”

The circuit court, however, did not find that evidence credible or of significant weight. With respect to James Brooks’ statement that Mr. Thomas confessed to him in 1989 or 1990 that Mr. Thomas and another person broke into Ms. Wilford’s home and she was stabbed, the court found that this testimony “lacked credibility.” We will not look behind that finding because credibility is quintessentially a question for the trial court. *See Nathans Assocs. v. Mayor & City Council of Ocean City*, 239 Md. App. 638, 646 (2018).¹¹

Appellant next argues that the circuit court erred in failing to credit evidence implicating Ty Brooks and Mr. Thomas through their consciousness of guilt. First, he claims that the court failed to give proper weight to the assertion of their Fifth Amendment rights against self-incrimination, which he contends supported an inference of their guilt.

¹¹Appellant argued in his brief that the court erred in redacting Ty Brooks’ name as the accomplice listed in the report James Brooks gave to the police. At oral argument, however, counsel stated that we need not spend time on this issue because the court inferred that Ty Brooks was the person named as Mr. Thomas’ accomplice. We agree. In any event, we find no error in the circuit court’s ruling that, although Mr. Thomas’ statements regarding his own role in the murder were statements against interest, which were admissible under Maryland Rule 8-504(b)(3), Mr. Thomas’ identification of Ty Brooks as an accomplice was not admissible. *See State v. Matusky*, 343 Md. 467, 488–490 (1996). And we are not persuaded that exceptional circumstances existed to justify admission of the statement under the residual hearsay exception set forth in Rule 5-803(b)(24).

Second, he contends that the court failed to give weight to Ty Brooks’ “false denial” that he had ever been to Ms. Wilford’s house, which, given his palm prints there, “cried out for an inculpatory inference.”

Initially, with respect to Ty Brooks’ invocation of his Fifth Amendment right against self-incrimination, the circuit court acknowledged this fact, stating that “Ty Brooks took the stand and invoked his Fifth Amendment privilege against self-incrimination.” Although the court did not state that it concluded that this fact was entitled to little or no weight, 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)). And it was not unreasonable to conclude that Ty Brooks’ invocation of his Fifth Amendment right did not lead to the inference that he committed the murder; he could have refused to testify because he did not want to implicate himself in court on a breaking and entering on a different date.

With respect to appellant’s argument that Ty Brooks’ denial that he had ever been to Ms. Wilford’s house, despite the prints found, “cried out for an inculpatory inference,” the circuit court did address this. It 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.” We perceive no abuse of discretion in the circuit court’s assessment of this evidence.

B.

New Haddaway Evidence

Appellant next claims that the court “failed to consider the full exculpatory impact of the new Haddaway evidence.” He makes several arguments in this regard.

1.

First, appellant argues that the “secret deal [Ms.] Haddaway extracted from the State to dismiss felony drug charges against her grandson *alone* created a substantial or significant possibility of a different result.” In support of this position, appellant states that “cases consistently hold that suppressing a deal with a key prosecution witness is material.” The cases he cites, *Wearry v. Cain*, 136 S.Ct. 1002, 1007 (2016); *Wilson v. State*, 363 Md. 333, 352 (2011); *Harris v. State*, 407 Md. 503, 522–23 (2009); *Conyers v. State*, 367 Md. 571, 592 (2002); *Ware v. State*, 348 Md. 19, 41 (1997), *cert. denied*, 531 U.S. 1115 (2001), address *Brady* violations.¹²

None of the cases appellant cites, however, stated a bright-line rule that suppression of a deal requires a new trial. Indeed, in *Wilson*, 363 Md. at 352, the Court of Appeals set

¹² In *Brady v. Maryland*, 373 U.S. 83, 87 (1963), 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.” 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.

forth several factors to consider in determining whether the suppression of a plea deal is material in the *Brady* context, including: (1) “the closeness of the case against the defendant and the cumulative weight of the other independent evidence of guilty”; (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’s credibility is already in question”; and (5) the “prosecutorial emphasis on the witness’s credibility in closing arguments.”

Here, the circuit court noted that Ms. Haddaway’s credibility had been attacked on other grounds.¹³ It found that the tapes would not “cause the jury to disbelieve the core of Ms. Haddaway’s testimony.” It then, as discussed *infra*, assessed the impact of the tapes and the other evidence appellant presented against the substantial weight of the other evidence of appellant’s guilt.

2.

Appellant contends that the court failed to consider other aspects of the tapes besides the plea deal, asserting that the “disclosure of the Tapes would have inflicted incalculable damage to Bollinger’s credibility, to the credibility of the MSP investigation as a whole, and to the credibility of the prosecutors who acceded to Haddaway’s relentless demands.” The record, however, shows that the trial court addressed more than the deal

¹³At 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.

in assessing the potential impact of this evidence. In discussing the “counter-narrative” appellant was presenting, the court noted that Ms. Haddaway told Sgt. Bollinger that if 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.” The court also noted appellant’s argument that the tapes were “evidence that Ms. Haddaway so corrupted the State’s case that none of its evidence is credible.”

The court, therefore, obviously was aware of these arguments. That it did not deem them persuasive enough to specifically discuss them 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 37 pages long, compels a finding that the court did not consider it. Rather, we have made clear that the 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).¹⁴

¹⁴ Pursuant to CP § 8-301(f)(3), the circuit court was required to “state the reasons for its ruling on the record.” *See Smith*, 233 Md. App. at 432. Although this provision prohibits the court from summarily denying a writ of actual innocence, we do not interpret it as requiring that the circuit court make specific findings about every piece of evidence in the record.

3.

Appellant next contends that the circuit court “improperly credited the confessions of [Mr.] Andrews and [appellant] without considering [appellant’s] proffered expert testimony on false confessions.” He asserts that the court erroneously excluded expert evidence that he “was particularly vulnerable to both manipulation by [Ms.] Haddaway . . . and coercion by the MSP.” This contention fails for a couple reasons.

First, this evidence is not context evidence regarding the value of the newly discovered evidence. It does not relate to the tapes or palm prints. A petition for a writ of innocence “is not an open-ended, deadline-free vehicle for raising any alleged defect that can [be] framed as ‘newly discovered evidence’ relevant to a conviction that has already been affirmed on direct appeal.” *State v. Ebb*, 452 Md. at 663.

Second, this evidence was excluded at the 2016 hearing, and appellant did not raise the issue in the prior appeal. Accordingly, this argument is not properly before this Court. *See Dabbs v. Anne Arundel Cty.*, 458 Md. 331, 345 n.15, *cert. denied*, 139 S.Ct. 230 (2018) (“The law of the case doctrine operates to bar litigants from raising arguments on questions that have been decided previously or could have been decided in that case.”).

C.

Assessment of the Collective Evidence

Appellant finally asserts that the court “failed to properly consider all of the newly discovered and related context evidence presented in [appellant’s] proceedings collectively.” The record shows that this contention is without merit.

The circuit court specifically stated that it “considered all of the evidence appellant presented.” And it specifically discussed much of that evidence in explaining its decision. The court, however, determined that the evidence deserved less weight than appellant thinks it deserves.

In assessing the materiality of all the evidence appellant presented, the court relied heavily on the substantial weight of the other evidence of appellant’s guilt. As indicated, this evidence included: (1) appellant’s confession to Ms. Haddaway that he murdered Ms. Wilford, which was surreptitiously recorded on a wire worn by Ms. Haddaway; (2) appellant’s confession to murdering Ms. Wilford to Mr. Snow, a former police officer who had been convicted of robbery and was serving a sentence with appellant at the Talbot County Detention Center; (3) appellant’s statement to Sgt. Bollinger that he was in Ms. Wilford’s home with Mr. Faulkner at the time Ms. Wilford was murdered, and that Ms. Wilford was wearing a blue coat and glasses, which was corroborated by the forensic evidence; and (4) Mr. Andrews’ testimony that, during the time of the murder, he was waiting outside Ms. Wilford’s home while appellant and Mr. Faulkner went inside, and afterwards, the three of them ran to Black Dog Alley where they encountered Ms. Haddaway. *Id.* at 381–87.¹⁵

Based on the circuit court’s statements, we are persuaded that it adequately examined all the evidence in determining whether there was a “significant or substantial possibility” that the newly discovered evidence would have affected the outcome of

¹⁵ We also note that the State did not make any effort to emphasize Ms. Haddaway’s credibility during closing argument.

appellant’s trial. And, as indicated, in making that determination, the court was required to assess whether “[t]he likelihood of a different result [was] substantial, not just conceivable.” *Syed*, 463 Md. at 87 (quoting *Harrington*, 562 U.S. at 112).

We are cognizant of our role in assessing the circuit court’s decision in this regard. We do not make our own independent determination. Rather, we assess whether the circuit court abused its discretion. In light of that standard, and considering the record here as a whole, including the State’s strong evidence of appellant’s guilt, we cannot conclude that the court abused its discretion in concluding that the newly discovered evidence did not create a substantial likelihood of a different result.

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