

Circuit Court for Montgomery County
Case No. 117752C

UNREPORTED*

IN THE APPELLATE COURT

OF MARYLAND

No. 2225

September Term, 2024

TRENTON ROBINSON

v.

STATE OF MARYLAND

Wells, C.J.,
Kehoe, S.,
Raker, Irma S.
(Senior Judge, Specially Assigned),

JJ.

Opinion by Kehoe, J.

Filed: June 26, 2026

* This is an unreported opinion. This opinion may not be cited as precedent within the rule of stare decisis. It may be cited for persuasive value only if the citation conforms to Maryland Rule 1-104(a)(2)(B).

On October 18, 2013, a jury sitting in the Circuit Court for Montgomery County found Appellant, Trenton Robinson (“Mr. Robinson”), guilty of first degree felony murder, armed robbery, use of a handgun in the commission of a crime of violence, and conspiracy to commit armed robbery. On May 28, 2014, the circuit court sentenced Mr. Robinson to lifetime incarceration, suspending all but fifty years. On January 5, 2016, we vacated the judgments of conviction and remanded for a new trial. On July 29, 2016, Mr. Robinson waived his right to a trial by jury and entered an *Alford*¹ plea to second degree murder with an agreed upon sentence of thirty years of incarceration, suspending all but fifteen years, followed by five years of supervised probation.

On May 7, 2021, Mr. Robinson filed a petition for writ of actual innocence² raising two grounds: First, “jailhouse informant” and “star witness” James Houck (“Mr. Houck”) “completely recanted his testimony in a letter” in 2017; second, Mr. Robinson’s co-defendant, Corey Yates (“Mr. Yates”), “completely absolves Mr. Robinson for any role in the killing.” The State filed an answer to the petition. On December 19, 2024, the circuit court held a hearing on the matter. This appeal follows the denial of Mr. Robinson’s petition for writ of actual innocence.

Though Mr. Robinson concedes that the circuit court correctly determined that evidence concerning Mr. Yates is not newly discovered, he maintains on appeal that Mr.

¹ See generally *North Carolina v. Alford*, 400 U.S. 25 (1970); see also *Smith v. State*, 484 Md. 1, 5 n.2 (2023).

² Pursuant to Md. Code Ann., Crim. Proc. Art. (“CP”) § 8-301.

Houck’s recantation letter is newly discovered and establishes his actual innocence by clear and convincing evidence. Thus, Mr. Robinson argues that the circuit court abused its discretion in denying his petition for writ of actual innocence. We disagree. We shall affirm the judgment of the circuit court and explain below.

I. FACTUAL & PROCEDURAL BACKGROUND

We previously discussed the underlying facts of the offense in an unreported opinion. *See Robinson v. State*, No. 0595, Sept. Term 2014, 2015 WL 9598302, at *1 (Md. App. Ct. Jan. 5, 2016) (unreported) (“*Robinson I*”).³ We adopt and incorporate our recounting of those facts as set forth therein. *Robinson I*, 2015 WL 9598302, at *1–2. In *Robinson I*, we did not discuss the evidence and testimony adduced at the eight-day trial that occurred in October 2013, as those details were extraneous to our discussion.⁴ *See id.* at *1 n.1; *see also Washington v. State*, 180 Md. App. 458, 461 n.2 (2008) (limiting factual

³ The slip opinion incorrectly lists the date of the decision as January 5, 2015. The correct date is January 5, 2016. *See* CSA-REG-0595-2014. The mandate was issued on February 4, 2016. *See id.*

⁴ Mr. Robinson argued on direct appeal that the circuit court erred in (1) denying Mr. Robinson’s motion to suppress when the evidence at issue was seized after officers illegally entered Mr. Robinson’s residence; (2) admitting into evidence the whole of a witness’s police interview as a prior inconsistent statement when the entirety of the interview was not inconsistent with the witness’s in-court testimony; and, (3) permitting Mr. Robinson to be tried without properly determining whether he was competent to stand trial. *See Robinson I*, 2015 WL 9598302, at *1. In *Robinson I*, we limited our review to Mr. Robinson’s third question and held that “once the circuit court raised the issue of competency *sua sponte* and ordered a competency evaluation, the court was obligated to make a competency determination before proceeding with the ensuing motions to suppress and trial.” *Id.* Thus, we vacated the judgments of conviction and remanded for a new trial. *Id.* at *8–9.

background to “only the portions of the trial evidence necessary to provide a context for our discussion of the issues presented”). Albeit for a different reason, the trial is extraneous to our discussion. When we vacated the convictions and remanded for a new trial in *Robinson I*, that decision entitled Mr. Robinson to a clean slate; put differently, the prior proceedings were effectively wiped out.⁵ We cannot assume that the evidence elicited at that trial would have been identical in a hypothetical new trial that did not occur. Thus, we decline to discuss Mr. Robinson’s October 2013 trial.

A. Alford Plea

Following remand, on July 29, 2016, Mr. Robinson returned to the circuit court for a status hearing. At the start of the hearing, Mr. Robinson, through counsel, indicated that he would like to accept the State’s offer of an *Alford* plea to second degree murder. Before

⁵ Our Supreme Court recently explained the “clean slate” rule, in other words, the effect of an appellate court’s decision to vacate a defendant’s conviction(s) and grant a new trial, as follows:

When a criminal defendant’s convictions are vacated, the defendant is legally placed back in the same position as one who is awaiting trial on those charges. *See Alston v. State*, 425 Md. 326, 342 (2012); *see also Cottman v. State*, 395 Md. 729, 743 (2006) (explaining that “the effect of granting a new trial is to leave the cause in the same condition as if no previous trial had been held”); *Hagez v. State*, 131 Md. App. 402, 423 (2000) (observing that when a criminal defendant obtains the reversal of a conviction, “the original conviction has, at the defendant’s behest, been wholly nullified and the slate wiped clean” (quoting *North Carolina v. Pearce*, 395 U.S. 711, 721 (1969))). As the Appellate Court has explained, except for the filing of charges or an indictment, a retrial is “in every sense a new criminal proceeding.” *Harrod v. State*, 192 Md. App. 85, 133 (2010); *see also Marshall v. State*, 213 Md. App. 532, 550 (2013) (stating that “a grant of a new trial effectively wipes out the prior proceedings”).

Bivens v. Clark, 491 Md. 345, 368 (2025) (internal citations modified).

proceeding with the *Alford* plea proffer,⁶ the circuit court heard argument from both parties and found Mr. Robinson to be competent. The circuit court then ensured that Mr. Robinson understood the terms of the *Alford* plea and would be entering into it freely and voluntarily. The circuit court directed the State to move forward with the proffer, which we summarize as follows:

- Doodley DeRose (“Mr. DeRose”) died from a single gunshot wound.
- Three individuals, Eirene Dubuche (“Mr. Dubuche”), Mr. Yates, and Mr. Robinson arrived at the DeRose household around 1:00 or 1:30 p.m. on December 21, 2010.
- When the group arrived, Mr. DeRose answered the door. Mr. Yates and Mr. Robinson attempted to commit a robbery of Mr. DeRose. Mr. DeRose pushed Mr. Yates and Mr. Robinson out.
- As Mr. DeRose was trying to shut the door, Mr. Yates and Mr. Robinson produced handguns and each fired one shot. One bullet landed in the refrigerator freezer and the other bullet landed in Mr. DeRose’s chest.
- Mr. DeRose identified Mr. Yates in a dying declaration.
- Law enforcement tracked Mr. Yates’s cellphone to his mother’s home. Mr. Yates’s mother informed police that Mr. Yates borrowed her car on

⁶ “Generally, in Maryland, defendants who enter *Alford* pleas acknowledge that there is sufficient evidence for the jury to find the defendant guilty beyond a reasonable doubt.” *Smith*, 484 Md. at 23. As such, “an *Alford* plea requires a factual basis for a finding of guilt (i.e., a proffer or an agreed statement of facts).” *Id.* at 24 (citation modified); see also *Franklin v. State*, 470 Md. 154, 168 n.1 (2020) (“In an *Alford* plea . . . the defendant, while maintaining innocence, agrees to a proffer of stipulated evidence or to an agreed statement of facts that provides a factual basis for a finding of guilt.”). “One ‘generally accepted method of establishing a factual basis for a guilty plea’ is the ‘prosecutor’s testimony,’ which takes the form ‘of a summary of the evidence the prosecutor expects to present at trial.’” *State v. Smith*, 244 Md. App. 354, 375 (2020) (quoting *State v. Thornton*, 73 Md. App. 247, 257–58 (1987)). Notably, the proffer or “minimalist statement of facts . . . is no equivalent of or substitute for an actual trial.” *Id.* at 377 (quoting *Yonga v. State*, 221 Md. App. 45, 65 (2015), *aff’d*, 446 Md. 183 (2016), *superseded by statute*, 2018 Md. Laws, ch. 602, *codified*, CP § 8-301(a)(1)(ii), *as recognized in Smith*, 244 Md. App. at 377 n.5)).

December 21, 2010. That car matched the description of the vehicle leaving the scene, as observed by two neighbors.

- Law enforcement then tracked Mr. Yates’s cellphone to Mr. Robinson’s home. Believing Mr. Yates to be located inside, law enforcement entered the Robinson household on January 3, 2011.
- Law enforcement located Mr. Robinson in a room in the basement where they observed a handgun in plain view, consistent with a potential manufacturer of one of the handguns used in the shooting. Mr. Robinson claimed ownership of everything inside the room, which included the handgun. Law enforcement seized the handgun.
- The Montgomery County Crime Laboratory performed ballistics tests. Tests revealed that the handgun recovered from Mr. Robinson’s residence was not the gun that fired the bullet that landed in the refrigerator freezer but would be consistent with the bullet that killed Mr. DeRose.
- On January 4, 2011, law enforcement interviewed Alan Fofana (“Mr. Fofana”) who confirmed that on December 21, 2010, Mr. Dubuche, Mr. Yates, and “Smoke” left his house to buy marijuana from Mr. DeRose. Mr. Fofana also advised police that Mr. Yates called and told him that he and “Smoke” shot Mr. DeRose. Mr. Fofana identified Mr. Robinson as “Smoke” in a photo array.
- Mr. Robinson was arrested in Washington, D.C. and was transported to Montgomery County. At that time, Mr. Robinson met Mr. Houck, who was also being transported to Montgomery County on an open warrant for first degree rape. Mr. Houck started a conversation with Mr. Robinson where Mr. Robinson made admissions of involvement in the shooting and knowing the location of the murder weapon.

At the conclusion of the proffer, the State argued that the information provided supported a finding of guilt of second degree murder, under a depraved heart theory (shooting into the door with knowledge that the natural consequence would be death). Defense counsel accepted the State’s proffer without modification. The circuit court found that the State had laid a sufficient factual predicate to support a conviction of second degree murder. The circuit court imposed the agreed upon sentence and credited Mr. Robinson’s time served from January 5, 2011, the date of the initial arrest.

B. Petition for Writ of Actual Innocence

On May 7, 2021, Mr. Robinson, represented by new counsel, filed a petition for writ of actual innocence. Therein, Mr. Robinson outlined the factual and procedural history of the case. In pertinent part,⁷ Mr. Robinson explained the following in his petition:

The State also used a jailhouse informant, James Houck as the star witness against Trenton Robinson. Mr. Houck testified that Mr. Robinson confessed to committing murder in the course of a robbery to him on more than one occasion. [Mr.] Houck stated that he and Mr. Robinson first met when they were being transported from 7 Locks Detention to Clarksburg’s Mental Health Unit. He also testified that Mr. Robinson told him that the police found the murder weapon at his parents’ home. Mr. Robinson and his family had threatened Mr.[] Houck’s life and Mr. Robinson had threatened him the day before he testified. Mr. Houck was moved to protective custody and feared for his life because he informed on Mr. Robinson. [. . .] Mr. Houck stated that he was a police informant and that he was awaiting sentencing on a first degree sex offense that carried a life sentence.

However, Mr. Houck[] completely recanted his testimony in a letter to the Court received near the end of 2017. [. . .]

This letter was written months *after* Mr. Robinson proceeded with the *Alford* plea and neither he nor his attorney had any knowledge as to the completed recantation. In the letter, Mr. Houck writes: “I am writing the Court today to tell you I lie on Trenton Robinson in Court. He do not tell me anything. The police when visit me he told me to said that He told me to lie on Trenton Robinson. Please pass on this information to Trenton Robinson attorney and tell him to come visit me. And call Trenton Robinson back to court so I can said I lie on Trenton Robinson ok.”

Mr. Robinson stated that he had “no knowledge” of Mr. Houck’s recantation. Mr. Robinson argued that his “request for a writ of actual innocence is based on newly discovered evidence which, with due diligence, could not have been discovered in time to

⁷ Before this Court, Mr. Robinson only argues that “the court incorrectly concluded that [Mr.] Houck’s letters did not speak to innocence and did not meet the clear and convincing test.” Consequently, we omit details from the petition that pertain to Mr. Yates.

move for a new trial pursuant to Rule 4-331 because at no time on July 29, 2016 or within 30 days of that date” had Mr. Houck recanted his testimony. Mr. Robinson argued that the case against him was “wholly circumstantial” and absent Mr. Houck’s testimony—that Mr. Robinson confessed on multiple occasions and told Mr. Houck where the murder weapon was located—there “would be no case.”

On April 20, 2022, the parties jointly requested that the circuit court hold the petition in abeyance while the Conviction Integrity Unit of the Montgomery County State’s Attorney’s Office reviewed the matter and conducted additional investigation. On April 25, 2022, the circuit court granted the parties’ request and ordered that Mr. Robinson’s petition “shall be held in abeyance pending a request for a hearing.” On March 12, 2024, Mr. Robinson requested that a hearing be set.

On May 21, 2024, the State filed an answer to Mr. Robinson’s petition. Among other things, the State argued that evidence regarding Mr. Houck does not establish actual innocence. First, the State argued that Mr. Houck testified on the second to last day of a multi-day trial, and “was not given any [pride] of place by the State.” Next, the State argued that the letter at issue is “just one letter of what has been a lengthy letter writing campaign” by Mr. Houck, which appears to be motivated by concerns about his safety following threats by Mr. Robinson and his friends. The State believed it was unlikely that Mr. Houck was “acting on a sincere pang of [conscience].” Lastly, the State averred that the “prospective testimony, even if credited [is not] the kind that can establish actual innocence under the statute.” According to the State, the evidence would, at best, negate evidence of

Mr. Robinson’s guilt, “but would not do anything to prove his innocence” given that Mr. Houck’s prospective testimony “makes up only a short section of the State’s proffer in support of the plea.”

C. Circuit Court Hearing & Ruling

On December 19, 2024, the circuit court, the Hon. Harry C. Storm presiding, held a hearing on Mr. Robinson’s petition for writ of actual innocence. Several exhibits were admitted during the hearing, including: two letters that Mr. Houck wrote to the court from 2017 and 2024, a letter from a psychologist documenting Mr. Houck’s various mental health diagnoses in 2014, a document summarizing Mr. Yates’s proffer with the State on January 5, 2012, and the transcript from Mr. Robinson’s *Alford* plea hearing July 29, 2016.

In one letter from 2017 (“recantation letter”), Mr. Houck stated that he had lied about Mr. Robinson and that Mr. Robinson had not told him anything. In another letter dated January 1, 2024, Mr. Houck stated that he had been threatened by Mr. Robinson’s friend and was seeking protective custody. At the hearing, Mr. Houck, represented by counsel, asserted his Fifth Amendment right against self-incrimination and refused to testify. This included declining to answer any questions about whether he had written letters to the circuit court.

The summary of Mr. Yates’s proffer stated that Mr. Robinson stayed behind at Mr. Fofana’s house and did not accompany Mr. Yates to the DeRose household on the day Mr. DeRose was shot. Mr. Yates testified consistently at the hearing and stated that Mr. Robinson was not involved and was not with him. But at the hearing, Mr. Yates testified

that he did not know the identity of the second person with him during the shooting, despite his previous identification of another man as the second shooter. The State argued that all information pertaining to Mr. Yates had been shared with defense counsel at trial and known to Mr. Robinson when he entered the *Alford* plea.

The court recessed, and upon return, began its ruling with a brief overview of the history of the case. After finding that the evidence related to Mr. Yates was not newly discovered, the court made the following findings regarding the evidence related to Mr. Houck:

As to Mr. Houck and the claim that he lied during the trial, this claim also fails the test. First, he did not testify today, having asserted his Fifth Amendment privilege. Again, what he was is, I guess, referred to as a jailhouse informant. He sent multiple letters expressing a willingness to testify essentially in whatever way would benefit him the most. But even if he had testified here today that the defendant did not tell him, or that the defendant did not confess to the murder, and that he lied during the first trial, Mr. Houck would have had little, if any, credibility. And certainly anything he would say would not rise to satisfy the clear and convincing standard to show that the defendant was actually innocent.

The circuit court further explained its reasoning as follows:

Moreover, I did review and as part of the record, State’s Exhibit 3, the proffer from the plea hearing[, a]nd the evidence that the State proffered at that time. That included evidence of cell phone evidence that tracked the defendant’s cell phone from the location of the murder, back down to the residence in the District of Columbia where he was ultimately found. There was the .357 Magnum handgun that was recovered at the residence that the defendant admitted was his. . . .^[8]

⁸ The record makes clear that, in addition to the prospective evidence from the State’s proffer, the circuit court recognized the belief of the trial judge (who also presided over Mr. Robinson’s *Alford* plea hearing) that “there was no doubt in [her] mind that [Mr.

Anyway, for all the reasons that I have just stated, the Court concludes that Mr. Robinson has not met his burden under Criminal Procedure 8-301. Accordingly, his petition for a writ of actual innocence is denied. There is nothing that has been shown to convince me of the defendant’s actual innocence by clear and convincing evidence. So the petition will be denied.

An order memorializing the ruling was entered on January 15, 2025. On January 16, 2025, Mr. Robinson noted an appeal in a timely manner. Additional facts may be included in the discussion as they become relevant.

II. DISCUSSION

In the instant appeal, Mr. Robinson asks us to review whether the circuit court erred in denying his petition for writ of actual innocence. Upon review, we conclude that the circuit court properly determined that Mr. Houck’s letter did not establish Mr. Robinson’s actual innocence by clear and convincing evidence. Accordingly, we hold that the circuit court did not abuse its discretion.

A. Parties’ Contentions

Mr. Robinson principally argues that the court incorrectly concluded that Mr. Houck’s recantation letter did not speak to innocence and did not meet the clear and convincing test. Mr. Robinson asserts that the court’s “total disregard for the newly discovered evidence in this case was improper.” In support of his contention that Mr. Houck’s recantation letter “speaks to” innocence, Mr. Robinson notes that Mr. Houck’s entire trial testimony stemmed from a conversation he claimed to have had with Mr.

Robinson] was involved in it by shooting into the door, by trying to make a marijuana sale and by being with [Mr. Yates.]”

Robinson at the jail. Thus, Mr. Robinson argues, if Mr. Houck’s recantation letter states that no conversation happened, it “stands to reason” that Mr. Robinson did not confess to Mr. Houck. According to the State, however, “[e]liminating that confession from the proffer made it less likely that Mr. Robinson was guilty (because it removed a piece of evidence against him), but it did not establish by clear and convincing evidence that Mr. Robinson was actually innocent.” The State maintains that Mr. Houck’s recantation letter, “coming as it did from someone who did not witness the crime, did not have the potential to *exonerate* Mr. Robinson.”

Next, Mr. Robinson argues that Mr. Houck’s recantation letter should have been considered “in conjunction with the other evidence presented at the hearing.” According to Mr. Robinson, it was incumbent upon the court to consider additional evidence (admittedly not newly discovered) such as Mr. Yates’s testimony and the summary of the proffer supporting the guilty plea entered in Mr. Yates’s case. Mr. Robinson contends that Mr. Yates’s testimony at the hearing “corroborated” Mr. Houck’s recantation letter, which he argues was “competent” and “powerfully persuasive evidence.” But for Mr. Houck’s testimony, Mr. Robinson argues, “the case against [him] was completely circumstantial.” The State counters that “nothing about Mr. Yates’s testimony made Mr. Houck a more credible witness” as Mr. Yates’s testimony “had nothing to do with Mr. Houck.” The State points out that “Mr. Houck was not involved in the planned robbery, did not participate in the shooting, and had no apparent ties to Mr. Yates, Mr. Robinson, or any of the other individuals in the case.”

Mr. Robinson contends that *Faulkner v. State*, 468 Md. 418, 464 (2020), elucidates the necessity of applying a “cumulative materiality analysis” in this case because the proffer from Mr. Yates’s case and his testimony at the hearing “buttressed” Mr. Houck’s implication that Mr. Robinson was innocent. In the State’s view, Mr. Robinson’s “[c]ouching [Mr. Yates’s testimony] in the guise of a cumulative review of the evidence or as speaking to Mr. Houck’s credibility is merely a backdoor attempt to bring evidence into the case that would not otherwise meet the statutory standard.”

Finally, Mr. Robinson avers that no adverse inference should have been applied to Mr. Houck’s invocation of his Fifth Amendment right against self-incrimination, nor should it have had any bearing on Mr. Houck’s credibility. The State contends that “it does not appear that the court held this action in any way against Mr. Houck,” but simply noted that he asserted his privilege. The State maintains that, “[i]f anything, it appears that the court mentioned Mr. Houck’s invocation to clarify why there was no substantive testimony from him in the record.”

B. Standard of Review

Courts reviewing actions taken by a circuit court after a hearing on a petition for writ of actual innocence limit their review . . . to whether the trial court abused its discretion.” *Hunt v. State*, 474 Md. 89, 102–03 (2021). We will “accept the factual findings of the circuit court unless clearly erroneous and will ‘not reverse a [circuit court’s] discretionary determination unless it is well removed from any center mark imagined by

the reviewing court and beyond the fringe of what that court deems minimally acceptable.”
Carver v. State, 482 Md. 469, 485 (2022) (quoting *Faulkner*, 468 Md. at 460).

C. Relevant Provisions of CP § 8-301

A petition for writ of actual innocence, pursuant to CP § 8-301, “provides a defendant [with] an opportunity to seek a new trial based on newly discovered evidence that speaks to his or her actual innocence” *Douglas v. State*, 423 Md. 156, 176 (2011). To prevail on a petition for actual innocence, a petitioner must satisfy three elements. First, the petitioner must produce newly discovered evidence that “‘speaks to’ their actual innocence.” *Faulkner*, 468 Md. at 459; *Carver*, 482 Md. at 490 (“The first prong limits relief to ‘a petitioner who makes a threshold showing that he or she may be actually innocent, meaning he or she did not commit the crime.’”) (quoting *Faulkner*, 468 Md. at 460). Second, the “petitioner must show that [they] could not have located the newly discovered evidence with the exercise of ‘due diligence’ by the deadline to file a motion for a new trial under Rule 4-331.”⁹ *Faulkner*, 468 Md. at 460. Due diligence “has both a

⁹ Maryland Rule 4-331(c) establishes the deadline for seeking a new trial based on newly discovered evidence:

The court may grant a new trial or other appropriate relief on the ground of newly discovered evidence which could not have been discovered by due diligence in time to move for a new trial pursuant to section (a) of this Rule:

- (1) on motion filed within one year after the later of (A) the date the court imposed sentence or (B) the date the court received a mandate issued by the final appellate court to consider a direct appeal from the judgment or a belated appeal permitted as post conviction relief; and
- (2) on motion filed at any time if the motion is based on DNA identification testing not subject to the procedures of [CP § 8-201] or other generally

time component and a good faith component,” in other words, “the movant for a new trial must not only act in a timely fashion in gathering evidence in support of the motion, but [the movant] must act reasonably and in good faith as well.” *Argyrou v. State*, 349 Md. 587, 604–05 (1998). Third, if the petitioner’s conviction resulted from a guilty plea, *Alford* plea, or plea of nolo contendere, the petitioner must show that the newly discovered evidence “establishes by clear and convincing evidence the petitioner’s actual innocence of the offense or offenses that are the subject of the petitioner’s motion[.]” CP § 8-301(a)(1)(ii); *see also Scipio v. State*, No. 2046, Sept. Term 2022, 2024 WL 69939, at *4 (Md. App. Ct. Jan. 3, 2024) (unreported).

If the petition satisfies the pleading requirements,¹⁰ and the circuit court determines that the petition asserts grounds on which relief may be granted, “the court shall hold a

accepted scientific techniques the results of which, if proved, would show that the defendant is innocent of the crime of which the defendant was convicted.

Md. Rule 4-331(c).

¹⁰ CP § 8-301(b) states that a petition for writ of actual innocence shall:

- (1) be in writing;
- (2) state in detail the grounds on which the petition is based;
- (3) describe the newly discovered evidence;
- (4) contain or be accompanied by a request for hearing if a hearing is sought;
and
- (5) distinguish the newly discovered evidence claimed in the petition from any claims made in prior petitions.

CP § 8-301(b); *see* Md. Rule 4-332 (setting forth procedural guidance on how to implement CP § 8-301 properly); *see also Smallwood v. State*, 451 Md. 290, 320–21 (2017) (clarifying relationship between Md. Rule 4-332 and CP § 8-301).

hearing on a petition . . . [if] a hearing was requested.” CP § 8-301(e). As applicable to plea agreements, CP § 8-301(f) provides as follows:

(2)

- (i) If the conviction resulted from a guilty plea, an *Alford* plea, or a plea of nolo contendere, when assessing the impact of the newly discovered evidence on the strength of the State’s case against the petitioner at the time of the plea, *the court may consider admissible evidence submitted by either party, in addition to the evidence presented as part of the factual support of the plea, that was contained in law enforcement files in existence at the time the plea was entered.*

* * *

(3) The court shall state the reasons for its ruling on the record.

CP § 8-301(f)(2)–(3) (emphasis added). The petitioner bears the burden of proof. *See* CP § 8-301(g).

D. Analysis

We hold that the circuit court did not abuse its discretion in denying Mr. Robinson’s petition for writ of actual innocence. Upon review, the circuit court grounded its ruling on Mr. Robinson’s failure to satisfy his burden to establish his actual innocence by clear and convincing evidence. As the State aptly argues, “[t]he circuit court was simply not persuaded that Mr. Houck’s letter met that standard.” We too are unpersuaded. We discern no error with the circuit court’s ruling and reasoning.

“To be clear and convincing, evidence should be ‘clear’ in the sense that it is certain, plain to the understanding, and unambiguous and ‘convincing’ in the sense that it is so reasonable and persuasive as to cause one to believe it.” *Mathis v. Hargrove*, 166 Md. App. 286, 312 (2005) (quoting *Wills v. State*, 329 Md. 370, 374 n.1 (1993)); *Spengler v. Sears*,

Roebuck & Co., 163 Md. App. 220, 247 (2005) (explaining that clear and convincing means highly probable, not merely probable); *see also Whittington v. State*, 8 Md. App. 676, 679, n.3 (1970) (defining clear and convincing evidence as more than preponderance of the evidence and less than evidence beyond a reasonable doubt). As 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,’” *see Faulkner*, 468 Md. App. at 460 (quoting *McGhie v. State*, 449 Md. 494, 510 (2016)), the clear and convincing evidence standard set forth in CP § 8-301(a)(2)(ii) sets a higher bar for petitioners whose convictions result from a plea agreement as opposed to a trial. *Compare* CP § 8-301(a)(1)(i) (“creates a substantial and significant possibility that the result may have been different”), *with* CP § 8-301(a)(1)(ii) (“establishes by clear and convincing evidence the petitioner’s actual innocence”).

Evidence from a jailhouse informant, who did not witness any events surrounding the crime, often does raise significant credibility concerns; accordingly, the circuit court fairly considered Mr. Houck’s recantation letter “with a degree of skepticism.” *Preston v. State*, 444 Md. 67, 83 (2015), *aff’g*, 218 Md. App. 60, 74 (2014) (“The testimony of a jailhouse informant—someone who did not witness the events surrounding the crime—arguably raises more serious credibility concerns.”). Moreover, the circuit court did not err in considering Mr. Houck’s pattern of expressing a “willingness to testify essentially in whatever way would benefit him the most” in its credibility calculus. In light of Mr. Houck’s decision to exercise his privilege against self-incrimination at the hearing—in

direct contradiction with his previous request to recant in court—the circuit court rightly questioned and discounted Mr. Houck’s credibility. Circuit courts “have authority to weigh the evidence and to consider credibility of witnesses when the motion is grounded on newly discovered evidence.” *Argyrou*, 349 Md. at 600 (quoting *Yorke v. State*, 315 Md. 578, 582 (1989)); *see id.* (“Where there is a grave question of the credibility of after-discovered evidence . . . the role of the trial judge is that of the fact[]finder.”) (quoting *Jones v. United States*, 279 F.2d 433, 436 (4th Cir. 1960), *cert. denied*, 364 U.S. 893 (1960)). When we review for an abuse of discretion, “we may not substitute our judgment for that of the factfinder” *Flanagan v. Flanagan*, 181 Md. App. 492, 521–22 (2008) (quoting *Innerbichler v. Innerbichler*, 132 Md. App. 207, 230 (2000)). “It is not for an appellate court to decide whether it thinks a piece of newly discovered evidence might have made a difference.” *Jackson v. State*, 164 Md. App. 679, 713 (2005).

We do not believe the court improperly applied an adverse inference to Mr. Houck’s invocation of his Fifth Amendment right. Nonetheless, any information that Mr. Houck would have provided had he testified, would have been minimally significant to Mr. Robinson’s actual innocence given the additional facts supporting the conviction described in the State’s proffer. Notably, at the hearing on the *Alford* plea, defense counsel accepted the State’s proffer without modification. Even if the court agreed that Mr. Robinson never confessed anything to Mr. Houck, this would have merely negated one item of evidence that the State relied upon. As several pieces of circumstantial evidence remained intact,

sufficient to sustain a conviction for second degree murder, Mr. Houck “did not have the potential to *exonerate* Mr. Robinson.”

In his reply brief, Mr. Robinson further argues that, “[i]f Mr. Houck is truly not credible, then the court cannot rely on the testimony he now recants to sustain the conviction.” We emphasize, however, that Mr. Houck’s trial testimony was, in fact, not what the circuit court relied upon to sustain the conviction. At the hearing, the circuit court asked whether Mr. Houck’s statement implicating Mr. Robinson “was [] even part of the State’s proffer at the plea hearing?” The State responded, and the record reflects, that it was only a “*small portion* of the State’s proffer.” (emphasis added). After reviewing the *Alford* plea proffer in its entirety, Judge Storm made clear during the ruling that “[t]here is nothing that [was] shown to convince [the court] of the defendant’s actual innocence by clear and convincing evidence.” Judge Storm relied on the State’s proffer to sustain the *Alford* plea which included “cell phone evidence that tracked the defendant’s cell phone from the location of the murder, back down to the residence in the District of Columbia where he was ultimately found” and the “handgun that was recovered at that residence that the defendant admitted was his.”

Additionally, the State correctly identifies Mr. Robinson’s misapplication of the “cumulative materiality” analysis as explained in *Faulkner*, 468 Md. at 463–64. We emphasize that our Supreme Court held that “in analyzing the materiality of *multiple items of newly discovered evidence* for purposes of an actual innocence petition, a circuit court must conduct a cumulative analysis.” *Id.* at 464. Before the circuit court and in this appeal,

the parties agree that Mr. Yates’s proffer was known to defense counsel prior to the entry of the *Alford* plea. Thus, only one item of newly discovered evidence—Mr. Houck’s recantation letter—exists and was required to be considered.¹¹ We reject Mr. Robinson’s invitation to adopt any requirement that the circuit court consider newly discovered evidence with non-newly discovered evidence as part of its overall analysis. That is not what *Faulkner* mandates. 468 Md. at 464.

Lastly, Mr. Robinson’s contention that the circuit court erred by declining to consider favorable evidence from the October 2013 trial also fails.¹² CP § 8-301(f)(2)(i) states that “the court may consider admissible evidence submitted by either party, in addition to the evidence presented as part of the factual support of the plea,” but notably, CP § 8-301(f)(2)(i) places no obligation on the circuit court to review additional evidence not submitted by the parties, in this case, the entire transcript from the October 2013 trial by jury. The court properly limited its review to the State’s proffer in support of the *Alford* plea and explained which “evidence presented as part of the factual support of the plea” it found most persuasive, specifically cell phone data from the location of the crime and Mr. Robinson’s admission of ownership of the handgun recovered. The circuit court committed no error in this regard.

¹¹ Because the State conceded that Mr. Houck’s recantation letter constitutes newly discovered evidence, we will assume, as did the circuit court, that it is. *See Miller v. State*, No. 1155, Sept. Term 2023, 2025 WL 211141 at *7 (Md. App. Ct. Jan. 16, 2025) (unreported) (concluding that a written plea agreement constitutes newly discovered evidence in light of the State’s concession and the hearing court’s reliance thereupon).

¹² *See supra* note 5 and accompanying text.

III. CONCLUSION

In short, we are unconvinced that the circuit court’s discretionary decision to deny Mr. Robinson’s petition for writ of actual innocence was “well removed from any center mark imagined by the reviewing court and beyond the fringe of what that court deems minimally acceptable.”” *Carver*, 482 Md. at 485 (quoting *Faulkner*, 468 Md. at 460). For the reasons discussed, Mr. Houck’s recantation letter, plagued with credibility issues, is not as powerful as Mr. Robinson suggests. Ultimately, we agree that Mr. Robinson failed to meet his burden of establishing his actual innocence by clear and convincing evidence, pursuant to CP § 8-301(a)(1)(ii). The circuit court did not abuse its discretion in denying Mr. Robinson’s petition.

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