Circuit Court for Prince George's County
Case No. CT091041X

UNREPORTED*

IN THE APPELLATE COURT

OF MARYLAND

No. 617

September Term, 2024

FRANKLIN TERRELL GIBBS

v.

STATE OF MARYLAND

Wells, C.J.,
Leahy,
Hotten, Michele D.
(Senior Judge, Specially Assigned),

JJ.

Opinion by Wells, C.J.

Filed: September 19, 2025

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

In 2010, a jury in the Circuit Court for Prince George's County convicted appellant Franklin Terrell Gibbs of first-degree murder and first-degree assault. Gibbs was sentenced to life imprisonment for first-degree murder and 25 years for first-degree assault to be served concurrently. In January 2024, Gibbs filed a Petition for Writ of Actual Innocence.[1] The circuit court denied Gibbs' Petition without a hearing. Gibbs submits one question for our review:

> Did the circuit court err in denying Gibbs' Petition for Writ of Actual Innocence without a hearing?

For the following reasons, we answer in the negative and affirm the circuit court.

FACTUAL AND PROCEDURAL BACKGROUND

The issue in this appeal concerns evidence presented at Gibbs' trial, but we provide some background facts for context. A more thorough account of the facts leading to Gibbs' conviction are available in our unreported opinion from his direct appeal from his conviction in 2013. *See Gibbs v. State,* No. 2979 ("*Gibbs I*") (Ct. Spec. App. Md. May 15, 2013).

Gibbs' conviction stemmed from a June 4, 2009, incident in which he shot a male victim, who was arguing with Gibbs' female acquaintance over a cigarette. *Gibbs I* at *1, 3–4. At trial, the jury was presented with numerous pieces of evidence, including firearm evidence at issue in this appeal and three eyewitnesses who identified Gibbs as the shooter. *Id.* at 3–5. While executing a search warrant at Gibbs' apartment, police found a Hi-Point

[1] We use "Petition for Writ of Actual Innocence" and "Petition" interchangeably.

semiautomatic rifle, another rifle, and a bulletproof vest in a duffel bag. *Id.* at *5. At trial, a firearms examiner with the Prince George's County Forensic Firearms Unit, Joseph Young, testified as an expert in firearms and tool mark identification. *Id.* Young testified that "he test-fired the Hi-Point rifle and obtained three cartridge cases that were then compared to the cartridges recovered by the police from the scene of the shooting. Young concluded that the recovered cartridges that were fired by the Hi-Point rifle recovered at the scene of the shooting were fired by the rifle found in Gibbs' apartment." *Id.*

A jury convicted Gibbs on November 22, 2010. *Id.* at *1. He was sentenced to life imprisonment for first degree murder and a concurrent term of 25 years for first degree assault on January 20, 2011. *Id.* On January 30, 2024, Gibbs filed a Petition for Writ of Actual Innocence, seeking to vacate his conviction based on newly discovered evidence under Maryland Code § 8-301 of the Criminal Procedure ("CP") Article. Gibbs claimed that what constituted "newly discovered evidence" was the Supreme Court of Maryland's decision in *Abruquah v. State*, in which that Court in held that testimony from firearms experts that definitively concluded a specific bullet was fired from a specific firearm, also known as Association of Firearm and Tool Mark Examiners Theory of Identification ("AFTE Theory"), was not supported by scientific evidence and inadmissible.[2] 483 Md.

[2] Gibbs refers to Young's expert testimony matching the firearm in Gibbs' apartment to bullet casings at the shooting as "bullet-matching language." In *Abruquah*, the inadmissible expert conclusion at issue was called the AFTE Theory, which described a specific methodology of comparing a class of characteristics of known and unknown markings on firearms and bullets for "pattern matching" and making a range of conclusions based on observations of the markings under a microscope. 483 Md. at 659–62. The parties

637, 698 (2023). Gibbs also argued numerous scientific studies critical of the foundational validity of expert testimony matching bullet casings to firearms constituted newly discovered evidence supporting his Petition even though some of the studies were published after his conviction and 2013 appeal.

On May 1, 2024, the circuit court denied Gibbs' Petition without a hearing, stating:

> The Court disagrees with [Gibbs]' argument that [*Abruquah*] amounts to newly discovered evidence. First, the studies relied on by the Maryland Supreme Court in *Abruquah* and cited by [Gibbs] were published prior to his conviction in November 2010 and prior to exhausting his direct appeals in June 2013. Second, [Gibbs] does not indicate any difference between the reports relied upon in *Abruquah* and the reports published after his conviction that he cites in his petition. Indeed, [Gibbs] asserts these recent studies "have yielded similar results" as the studies prepared prior to his conviction. Additionally, the holding of the Maryland Supreme Court in *Abruquah* is a legal ruling, not evidence, and was not governing law at the time of [Gibbs]' trial, conviction, or period of appellate rights.

Gibbs filed a timely appeal challenging the circuit court's decision to deny his Petition without a hearing.

did not provide transcripts of Young's testimony at trial, nor do they provide direct quotation of Young's testimony in their briefs aside from our summary of events in Gibbs' 2013 appeal to this Court, which did not directly quote or focus on Young's direct examination explaining his analysis or methodology concerning Gibbs' Hi-Point rifle. *See Gibbs I*. However, both parties appear to agree that Young concluded the bullet casings at the crime scene either "matched" or were "fired from" the firearm in Gibbs' apartment, and Young's methodology was similar to AFTE Theory and equally inadmissible. Because we do not know whether Young specifically used AFTE Theory for his analysis of Gibbs' firearm, we will refer to Young's expert methodology and conclusion as "bullet-matching" analysis and assume it is inadmissible under *Abruquah*.

STANDARD OF REVIEW

"[T]he standard of review of a circuit court's grant of a motion to dismiss a petition for writ of actual innocence without a hearing, pursuant to [CP] section 8–301(e)(2), is *de novo*." *Hawes v. State*, 216 Md. App. 105, 133 (2014).

DISCUSSION

I. The Circuit Court Did Not Err in Denying Gibbs' Petition for Writ of Actual Innocence Without a Hearing.

A. Parties' Contentions

Gibbs contends he should have been granted a hearing to argue the merits of his Petition because he sufficiently stated grounds for relief under CP § 8-301(e). Specifically, Gibbs argues that, after his conviction, "numerous scientific studies have shown such definitive 'bullet-matching' language in stating a conclusion to be faulty." Gibbs argues the circuit court's assertation that the studies critiquing bullet-matching opinions were available at his trial was "misplaced" because "the most significant, detailed, and advanced studies were published after [Gibbs'] conviction and direct appeal." Gibbs argues these studies, as well as the Supreme Court of Maryland's ruling in *Abruquah*, both constitute new evidence that would create a substantial possibility of a different result in a new trial if presented during a hearing.

The State responds that the circuit court correctly denied Gibbs' Petition without a hearing for three reasons. *First*, the State argues the *Abruquah* decision was a legal ruling, not factual evidence, and thus does not qualify as "newly discovered evidence" under CP § 8-301. *Second*, the State argues the scientific studies Gibbs cited in his Petition are not

"newly discovered" because, as Gibbs' acknowledged in his own Petition, the studies published after his trial had "similar results" to the studies available before his trial. Further, the *Abruquah* opinion highlighted critical studies from 2008 and 2009 as well as judicial opinions limiting firearms testimony, all of which existed before Gibbs' trial and deadline for filing a motion for a new trial. *Finally,* the State argues that, even if *Abruquah* and the studies are considered new evidence, Gibbs' Petition failed to show a substantial or significant possibility the trial result would have been different. At most, the State argues, *Abruquah* would have changed the firearms expert's testimony from a definitive "match" to stating the casings were "consistent with the gun." Additionally, the State contends there was overwhelming evidence, including eyewitness testimony and other evidence linking Gibbs to the Hi-Point rifle, such that altering or excluding Young's single statement would not have changed the guilty verdict.

B. Analysis

Petitions for writ of actual innocence are governed by CP § 8-301 and provide an opportunity for convicted individuals to request a new trial in the event of newly discovered evidence outside of the one-year time restraint in Maryland Rule 4-331(c)[3] if the individual

[3] Rule 4-331(c) states in relevant part:

> 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

is "actually innocent." *See Hunt v. State*, 474 Md. 89, 105–07 (2021) (explaining that, unlike motions for a new trial under Rule 4-331(c), a petition must state "that the conviction sought to be vacated is based on an offense that the petitioner did not commit[.]") (quoting Md. Rule 4-322(d)(9)); *Smallwood v. State*, 451 Md. 290, 316 (2017) (explaining the purpose of Rule 8-301 is "to provide an avenue of relief for convicted persons who are 'actually innocent'") (citation omitted). A "court shall hold a hearing on a petition . . . if the petition satisfies the requirements of subsection (b)[4] of this section[,]" however the "court may dismiss a petition without a hearing if the court finds that the petition fails to assert grounds on which relief may be granted." CP § 8-301(e). In order to assert grounds for relief, a petitioner whose conviction resulted from a trial must plead that (1) "there is newly discovered evidence" that (2) "creates a substantial or significant possibility that the result may have been different" and (3) "could not have been discovered in time to move for a new trial under Maryland Rule 4-331." CP § 8-301(a).

> final appellate court to consider a direct appeal from the judgment or a belated appeal permitted as post conviction relief . . . .

Gibbs was sentenced on January 20, 2011, and no appellate court ever mandated that the circuit court consider Gibbs' direct appeal from the judgment. *See Gibbs I*. Thus, the last day for Gibbs to obtain a new trial under Rule 4-331 was January 20, 2012.

[4] The pleading requirements, set out in CP § 8-301(b), state 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."

In *Douglas v. State*, the Supreme Court of Maryland interpreted CP § 8-301, holding the statute allowed a court to dismiss petitions for writ of actual innocence without a hearing if the petitioner failed to assert grounds upon which relief could be granted, explaining further:

> We therefore hold that the statute establishes only a burden of pleading grounds for relief, not of proving them, and that a trial court may dismiss a petition without a hearing when one was requested, pursuant to C.P. § 8–301(e)(2), only when a petitioner fails to satisfy the pleading requirement. The pleading requirement mandates that the trial court determine whether the allegations could afford a petitioner relief, if those allegations would be proven at a hearing, assuming the facts in the light most favorable to the petitioner and accepting all reasonable inferences that can be drawn from the petition. That is, when determining whether to dismiss a petition for writ of actual innocence without a hearing pursuant to C.P. § 8–301(e)(2), provided the petition comports with the procedural requirements under C.P. § 8–301(b), the trial court must consider whether the allegations, if proven, consist of newly discovered evidence that "could not have been discovered in time to move for a new trial under Maryland Rule 4–331" and whether that evidence "creates a substantial or significant possibility that the result may have been different."
>
> This standard does not require that a trial court take impossibilities as truths. For example, if a petition asserts, as "newly discovered," evidence that was clearly known during trial, then the evidence cannot be "newly discovered," and the trial court may dismiss the petition without a hearing.

423 Md. 156, 180–81 (2011).

Petitions for writs of actual innocence are "akin to a motion for new trial on the ground of newly discovered evidence [under Rule 4-331], albeit unencumbered by the time limits of Rule 4-331(c)." *Hunt*, 474 Md. at 106. Accordingly, just as with newly discovered evidence under Rule 4-331, we also assess whether the evidence was "material," which is to say the evidence is "more than 'merely cumulative or impeaching'" in considering if the

newly discovered evidence creates a substantial or significant possibility that the result of the trial may have been different. *Jackson v. State*, 216 Md. App. 347, 367 (2014) (quoting *Argyrou v. State*, 349 Md. 587, 601 (1998)). Additionally, "to qualify as newly discovered, evidence must not have been discovered, or been discoverable by the exercise of due diligence[.]" *Hunt*, 474 Md. at 108 (internal quotation marks and citations omitted).

1. The Abruquah *decision Does Not Constitute "Newly Discovered Evidence" Under CP § 8-301.*

Appellate courts in Maryland have not yet interpreted "newly discovered evidence" to include a legal opinion published after the petitioner's trial, in this case the holding in *Abruquah*, under CP § 8-301 or Rule 4-331.

> In statutory interpretation, our primary goal is always to discern the legislative purpose, the ends to be accomplished, or the evils to be remedied by a particular provision, be it statutory, constitutional or part of the Rules. We begin our analysis by first looking to the normal, plain meaning of the language of the statute, reading the statute as a whole to ensure that no word, clause, sentence or phrase is rendered surplusage, superfluous, meaningless or nugatory. If the language of the statute is clear and unambiguous, we need not look beyond the statute's provisions and our analysis ends. Occasionally we see fit to examine extrinsic sources of legislative intent merely as a check of our reading of a statute's plain language. In such instances, we may find useful the context of a statute, the overall statutory scheme, and archival legislative history of relevant enactments.

Douglas, 423 Md. at 178. In *Hawes v. State*, this Court previously defined evidence in the context of CP § 8-301 and Rule 4-331(c):

> It goes without saying that something that is not "evidence" cannot be "newly discovered evidence." The word "evidence" as used in Rule 4–331(c) necessarily means testimony or an item or thing that is capable of being elicited or introduced and moved into the court record, so as to be put before the trier of fact at trial. Here, evidence means testimony or an item or thing that could have been introduced at the 1994 [] murder trial.

216 Md. App. at 134. Several years after Hawes was convicted, his trial attorney wrote an affidavit stating he realized he should have objected to two jury instructions at Hawes' trial. *Id.* at 134. Hawes argued his trial attorney's affidavit and realization that he should have objected to the jury instructions was newly discovered evidence. *Id.* We explained the attorney's affidavit was not evidence because it was "not a fact or item or thing that could have been admitted into evidence or used in examination or cross-examination of any witness at trial." *Id.* We explained that "when refocused upon the proper time-frame," there "never could have been testimony by" Hawes' trial attorney at trial. *Id.* If Hawes' trial attorney had realized the instructions were faulty at trial, he would have objected to it rather than take the stand and testify about the faulty instructions, therefore the realization was "not evidence at all, in that it is not testimony that was susceptible of being put before the jury during the murder trial." *Id.* at 135. This Court contrasted the trial attorney's affidavit with a police report detailing the interview of a key witness that was created before Hawes' trial occurred and explained it was evidence because it was "a piece of paper that existed prior to the murder trial and was capable of being used or introduced and becoming a part of the record before the jury." *Id.*

The *Abruquah* opinion is like the trial attorney's affidavit in *Hawes* because it could not have been moved into the record at Gibbs' trial. The *Abruquah* decision was published many years after Gibbs' trial and obviously could not have been admitted if it did not exist. Additionally, Gibbs' attorney could not have moved the *Abruquah* decision into the record

like a piece of evidence, rather, he could argue the opinion's relevance through objections, and motions.

Although the plain meaning of "newly discovered evidence" clearly does not include a judicial opinion published after Gibbs' trial, we also observe that this reading is consistent with the legislative history. The General Assembly intended CP § 8-301 to "only apply to a 'narrow subset' of convicted persons" and provide relief for "a small number of defendants[.]" *Smallwood*, 451 Md. at 319–20 (citations omitted). The General Assembly was primarily concerned with allowing wrongfully incarcerated individuals to have access to new scientific evidence that exonerated them—DNA evidence in particular—or new scientific evidence debunking bad science used during a petitioner's trial. *Id.* at 316–18. It was not meant to provide petitioners with a new trial when subsequent rulings were published that would have supported their case at trial.

Therefore, we conclude the opinion in *Abruquah*, published after Gibbs' trial, is not evidence or "newly discovered evidence" under CP § 8-301.

2. The Scientific Studies Cited by Gibbs Are Not Newly Discovered Evidence.

In his petition, Gibbs cited studies published in 2003, 2004, 2005, 2008, and 2009 and stated, "numerous scientific studies have shown such definitive 'bullet-matching' language in stating a conclusion to be faulty." Gibbs then states that "[m]ost recent studies have yielded similar results, which, coupled with the shift from the *Frye-Reed* standard to

the more stringent *Daubert* standard, led to the conclusive decision in *Abruquah* . . . ."[5] Similarly in his brief, Gibbs states that "numerous scientific studies [published one year after his 2011 conviction] have shown such definitive 'bullet-matching' language in stating a conclusion to be faulty"; and the "2016 P-Cast study in particular . . . was heavily critical of the methods and techniques used at the time of the investigation in [Gibbs'] case . . . as well as the lack of demonstrated foundational validity of the conclusions reached." In neither Gibbs' Petition nor his brief to this Court does he argue the post-2012 studies provided new revelations or scientific techniques to evaluate the expert testimony that were not available from the pre-2012 studies.

In support, Gibbs cites *Ward v.* State, 221 Md. App. 146 (2015), for the proposition that "[n]ew scientific studies can constitute newly discovered evidence when the study was published after the initial trial." In *Ward*, the petitioner argued he should be granted a new trial because two scientific studies published after his conviction constituted new evidence that cast doubt on the Federal Bureau of Investigation's expert testimony regarding comparative bullet lead analysis ("CBLA"). *Id.* at 148. CBLA was a now-debunked theory that "could establish with a reasonably degree of scientific certainty that two bullets were from the same batch." *Id.* at 157. However, at the time of Ward's trial, there was only one report published on CBLA, which merely "cautioned that the variability (of the elemental

[5] The standards for admitting scientific evidence articulated in *Frye v. United States*, 54 App. D.C. 46 (1923), and *Reed v. State*, 283 Md. 374 (1978), were overruled in federal courts in *Daubert v. Merrell Dow Pharmaceuticals, Inc.*, 509 U.S. 579 (1993), and in Maryland courts in *Rochkind v. Stevenson*, 471 Md. 1 (2020).

mix) within a production run . . . has not been addressed in a comprehensive study." *Id.* at 158 (citations and quotation marks omitted). The two studies published after Ward's conviction, among other things, "concluded that bullets produced at different times could be compositionally identical[,]" and "noted that the FBI was 'overstating some of the conclusions that could be drawn from CBLA evidence.'" *Id.* at 159–60.

In *Ward*, this Court then distinguished the scientific studies advanced by Ward with reports and documents found after a petitioner's trial that were alleged to be newly discovered in *Keys v. State*, 215 Md. App. 660 (2014), *abrogation recognized by Snead v. State*, 224 Md. App. 99 (2015). We observed the reports in *Keys*, which were written after the defendant's trial, were not newly discovered because the reports were written "after appellant was convicted and sentenced" and "could have had no effect on [defendant's] trial." *Id.* at 162. We explained that the studies in *Ward*, which were also created after trial, were distinguishable from the reports in *Keys* because

> a different rule applies to later discovered scientific evidence which casts doubt upon the validity and admissibility of evidence that was introduced at the time of trial. Courts in other states have recognized that "newly discovered evidence" can include "new testing methods or techniques that did not exist at the time of trial, but are used to test evidence introduced at the original trial."

Id. at 162–63 (citations omitted).

The key distinction is that the scientific studies in *Ward* were newly discovered because, although they would not have been available at trial, the studies "cast[] doubt upon the validity and admissibility of evidence that was introduced at the time of trial." *Id.* at 162. The reports in *Keys*, however, "could have had no effect on his trial[.]" *Id.*

Here, Gibbs is arguing studies conducted after his trial are similar to those in *Ward* because, although they could not have been discovered at trial, they cast doubt on the specific firearms expert's bullet-matching testimony. However, by Gibbs' own admission, the studies contain the same findings and conclusions as those available to him at the time of his trial. He also makes no attempt to claim the post-2012 studies provide "new testing methods or techniques" like in *Ward*. Gibbs did not provide these studies for our review, but even taking his characterizations of the studies as true and "assuming the facts in the light most favorable to the petitioner," we conclude the post-2012 studies are merely cumulative of the studies known at the time of Gibbs' trial and do not meet the pleading requirements under CP § 8-301. *See Douglas*, 423 Md. at 187 ("Exculpatory evidence known . . . prior to the expiration of the time for filing a motion for a new trial, though *unavailable*, in fact, is not newly discovered evidence." (quoting *Argyrou*, 349 Md. at 600 n.9) (cleaned up) (emphasis in original))).

Because we conclude Gibbs failed to plead the existence of newly discovered evidence, we do not need to decide whether the evidence would have created "a substantial or significant possibility that the result may have been different" at trial. We affirm the judgment of the circuit court.

THE JUDGMENTS OF THE CIRCUIT COURT FOR PRINCE GEORGE'S COUNTY ARE AFFIRMED. APPELLANT TO PAY THE COSTS.