Circuit Court for Baltimore County
Case No. 03-K-96-2901

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 989

September Term, 2018

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GREGORY LEON WILEY

v.

STATE OF MARYLAND

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Kehoe,
Beachley,
Kenney, James A., III
(Senior Judge, Specially Assigned),

JJ.

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Opinion by Kenney, J.

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Filed: January 15, 2020

Appellant Gregory Leon Wiley was convicted of the murder of Cornell Antonio Yarbour in 1997. The prosecution's theory was that Mr. Yarbour was killed because he had stolen from Thomas James Anderson, a local drug dealer, and that appellant was ordered by Mr. Anderson to kill Mr. Yarbour.

At trial, the prosecution used comparative bullet-lead analysis (CBLA), a forensic investigation technique which has since been discredited, to establish a connection between Mr. Anderson and Mr. Yarbour's murder.[1] Without that connection, appellant contends that he would not have been convicted. He filed a Petition for a Writ of Actual Innocence on February 28, 2017, which the Circuit Court for Baltimore County denied. On appeal, he asks:

> Did the trial court abuse its discretion in denying appellant's petition for a writ of actual innocence on the ground that newly discovered evidence discrediting CBLA did not create a substantial or significant possibility that the result at trial may have been different?

For the following reasons, we answer that question "no" and affirm the judgment of the circuit court.

## FACTUAL AND PROCEDURAL BACKGROUND

[1] Throughout the 1990s, comparative bullet-lead analysis (CBLA) from used and unused bullets was used to establish a connection between a suspect and a victim. Typically a Federal Bureau of Investigation (FBI) analyst would evaluate the metal compounds in two bullets to determine whether bullets found in possession of a given suspect were from the same batch, manufacturer, and even the same box as those found in a gunshot victim. In 2004, after the National Academy of Sciences concluded that variations in the manufacturing process rendered CBLA analysis "unreliable and potentially misleading," the FBI discontinued CBLA examinations and announced that it would no longer support CBLA testimony. More specifically, the FBI, in 2008, notified the lead prosecutor in this case that it could not support its examiner's testimony in appellant's trial.

Mr. Yarbour was found dead near appellant's father's residence on March 12, 1992. Found nearby was a crack cocaine pipe, fake cocaine, a bloody rock, and some tire impressions. Three .32 caliber bullets were recovered from his body. In the course of the State's investigation, a search warrant was executed at Mr. Anderson's address. There, police recovered an empty black shoulder holster, an "owe sheet," cocaine, and multiple kinds of ammunition, none of which was .32 caliber. During the search, a girlfriend of Mr. Anderson's, Debra Campbell,[2] entered the residence and was arrested and charged for narcotics offenses. When interviewed, she claimed not to know who was responsible for the murder of Mr. Yarbour.

Later that month, police seized a Nissan Stanza vehicle registered to Mr. Anderson with tires that left tracks similar to those found near Mr. Yarbour's body. Inside the vehicle were .32 caliber bullets, an ankle holster, and cocaine paraphernalia. A search of appellant's house yielded documents referring to "coke."

Appellant was charged with murder in September of 1996, and trial began in March of 1997.

*The Trial*

[2] Ms. Campbell, who had been involved in Mr. Anderson's drug operation for about seven months, left Maryland in 1992 with a possession with an intent to distribute charge pending. Police had been unable to locate her until 1996. Detective William Brady interviewed her in the state of California on November 7, 1996 at a jail where she awaited trial for a drug possession offense. Later, he accompanied her to Maryland. Ms. Campbell did not provide any information about this case until she was granted immunity.

Ms. Campbell testified that appellant's involvement in Mr. Anderson's drug operation included "beat[ing] people up" when they owed money. A few days before the murder, her home was broken into and drugs and money were taken out of a box locked in her bedroom. Because Mr. Anderson suspected Mr. Yarbour of the break-in, she, Mr. Anderson, and appellant drove in Mr. Anderson's Nissan Stanza to search for him. Mr. Anderson carried a shotgun; she carried a .25 caliber handgun belonging to Mr. Anderson; and appellant carried Mr. Anderson's .32 caliber revolver.

After Mr. Anderson spoke with a "guy that claim[ed] to be [Mr. Yarbour's] brother," they went to Ms. Campbell's residence. There, Mr. Anderson asked appellant to kill Mr. Yarbour in exchange for $500 in drugs and money. According to her testimony, Mr. Anderson:

> wanted [appellant] to kill him with the [.]32 because he didn't like that gun as much. [Mr. Anderson] wanted [appellant] to take [Mr. Yarbour] in the car, pick [Mr. Yarbour] up at [his] house, and just fake like they were friends . . . but not kill him in the car. . . . Because of the blood.

When appellant returned to Ms. Campbell's home hours later and said that he "did it," Mr. Anderson "looked so happy." When she was asked, "How did he say he did it?" she recounted:

> [Appellant] drove [Mr. Yarbour] down a street . . . I remember asking him why so close to your brother's house . . . I remember near water. He said that they were supposed to get high and they got out of the car. He had him get out of the car.
>
> When [Mr. Yarbour] wasn't paying attention, [appellant] pulled the gun out and [Mr. Yarbour] thought he was playing and asked him, you know, what are you doing, stop playing.

> And then, [appellant] pulled the trigger one time, and . . . shot [Mr. Yarbour] in the stomach, and [Mr. Yarbour] asked him to stop. And when he asked him to stop, he knew he couldn't, so he just shot him four more times.
>
> [Appellant] didn't believe he was dead, and he picked up a brick or a rock and was—because he was still moving—and hit him in the head with it, and he thought he was still alive after that, even when he was back at the apartment.

Ms. Campbell added that she disposed of the gun used by appellant by throwing it in the water at Rocky Point Park.

She denied having been offered any special consideration regarding the outstanding California and Maryland drug charges, but she admitted that the sentencing judge in Maryland would take her "truthful[ness]" into account in deciding her sentence and that she hoped that her testimony in this case would help her.

Donald Ray Bobbitt, an admitted drug dealer and user, worked for Mr. Anderson in 1992. Only after his car was impounded with drug paraphernalia did he contact the police with information relevant to this case, saying that he did not "want to be an accessory to a murder." Police set up a wiretap in the wall of Mr. Bobbitt's motel room, but he was unable to coax Mr. Anderson and appellant into the room to get more information from them. Compounding that failure, Mr. Bobbitt informed police that he had bought drugs instead of paying his motel bill, and needed the police to pay for his room. He denied being offered a deal in exchange for the information he provided.

Mr. Bobbitt testified that appellant was also a drug dealer who did "odds and ends" for Mr. Anderson, such as "snatch[ing] people up" who owed money. According to Mr. Bobbitt, appellant told him, in May of 1992, that "he killed [Mr. Yarbour]" by

shooting him "three or four times in the chest," and that appellant was afraid Mr. Anderson would "turn [him] in for what he done."

Mr. Bobbitt recounted that, in March of 1992, Mr. Anderson admitted that he had "had [Mr. Yarbour] taken care of" by appellant who "shot [Mr. Yarbour] three or four times in the chest, beat him, and . . . took vials of fake cocaine and put it on his person." Mr. Anderson also told him that Ms. Campbell had disposed of the gun. According to Mr. Bobbitt, Mr. Yarbour was murdered because he had broken into an apartment and stolen money and cocaine belonging to Mr. Anderson.

Shirley Ann Scott, another girlfriend of Mr. Anderson's, was living with him at the time of the murder. She testified that appellant told her that he shot Mr. Yarbour three or four times and then beat him.

John Henley, who had been a drug runner for Mr. Anderson, testified that he was Mr. Yarbour's "get-high brother,"[3] and that he had seen appellant "beat people up" at Mr. Anderson's direction. A few days before the murder, Mr. Yarbour told Mr. Henley and appellant that he planned to visit Mr. Anderson's house and that he knew "where [to] get some serious money and drugs." Later that night, when he and Mr. Yarbour were both at a friend's apartment, Mr. Yarbour had a bag containing money and drugs that were in the same type of containers that they would get from Mr. Anderson. Mr. Henley and Mr. Yarbour "[got] high off the crack cocaine" that was in the bag.

[3] At the time of the trial, Mr. Henley was in a super-maximum prison.

When Mr. Henley left the friend's apartment, he encountered a Nissan Stanza driven by a "white female" named Debbie, with Mr. Anderson and two other men as passengers. Mr. Anderson, who was holding a sawed-off shotgun, asked Mr. Henley about Mr. Yarbour's whereabouts**.** Mr. Henley denied having seen him. He stated that he did not see appellant, but he could not identify or describe the other male passengers.

Mr. Henley acknowledged lying to police by providing a fake name and date of birth. He denied receiving any consideration for his testimony, and claimed that he testified because Mr. Yarbour had a son who "was left behind."

At the time of the murder, Sherry Lee Scarbath lived with Mr. Yarbour and their son. Ms. Scarbath testified that the night before Mr. Yarbour's body was found, appellant came to their residence, and then the two men left together. That was the last time she saw Mr. Yarbour alive.

The medical examiner testified that Mr. Yarbour suffered five or six gunshot wounds as well as lacerations and blunt force trauma to the head. Additionally, the State presented evidence that tire tracks found near the body matched one of the tires on Mr. Anderson's Nissan Stanza.

Agent Ernest Peele of the Federal Bureau of Investigation (FBI) testified as an expert in CBLA. He explained that the technique involved determining the ratios of certain elements within particular lead bullets and then comparing their composition. In this case, he compared a total of three fired bullets with twenty unused bullets from a box of cartridges found inside Mr. Anderson's vehicle. He concluded that the fired bullets

and the twenty compared bullets "[had] the same composition as if all of these bullets were in the same box at one time," and that "they were made at the same time."

During closing argument, the prosecutor referenced Agent Peele's CBLA testimony:

> Ultimately you can say [Agent] Peele is right, the bullets in the body probably came from this box, bullets manufactured on the same day . . . . It makes it probative, it makes it worthwhile evidence, and it makes [Ms.] Campbell correct and consistent.

After two days of deliberations, the jury found appellant guilty of first-degree murder and use of a handgun in the commission of a crime of violence.

*The Petition for Writ of Actual Innocence*

The Circuit Court for Baltimore County held a hearing on appellant's Petition for Writ of Actual Innocence on February 21, 2018. Counsel for appellant and the State agreed that the CBLA evidence was "newly discovered evidence." The State, however, argued that it did not create a substantial or significant possibility of a different result. Counsel for appellant, pointing out that Ms. Campbell, Mr. Bobbitt, and Mr. Henley all had "credibility problems," argued that the State relied on Agent Peele's CBLA testimony to corroborate the testimony of questionable witnesses.

The circuit court, in its April 2, 2018 memorandum opinion, denied appellant's Petition for Writ of Actual Innocence. The court found that the evidence discrediting CBLA was "newly discovered evidence" that could not have been discovered in time to move for a new trial. But it rejected the argument that it created a substantial possibility of a different result:

> After reviewing the trial transcript, considering the testimony and argument made at the Writ of Actual Innocence hearing, and considering relevant case law, this Court finds that Petitioner's allegation that the denigration of CBLA evidence at the time of trial would have created a substantially different outcome is meritless. In reviewing the transcript, it is clear that Petitioner's conviction was supported by ample witness testimony. This Court finds that even considering the unreliability of CBLA evidence as conceded by the State, the witness testimony presented supports the State's position that the Petitioner does not meet his burden as required by Section 8-301 of Maryland's Criminal Procedure Article. It is evident that the CBLA evidence did not have any substantial impact on Petitioner's conviction, as noted in defense counsel's closing at trial.[4] Although the CBLA evidence is newly discovered evidence that could not have been discovered within the time to move for a new trial, this Court finds that the denigration of the CBLA evidence does not create a substantial possibility that the outcome of Petitioner's trial would be different.

This timely appeal followed.

## STANDARD OF REVIEW

We review the denial of a Petition for a Writ of Actual Innocence for an abuse of discretion. *Smith v. State*, 233 Md. App. 372, 411–12 (2017). In doing so, we apply the well-recognized "before and after" test and ask whether there would be a "substantial or significant possibility" of a different outcome had the new evidence been presented to the

[4] In a footnote, the court quoted appellant's counsel's closing at trial:

> The question really comes down to three people in this case. It doesn't come down to whether the .32 caliber bullets came from that box or not, because where is that box found? It is found in [Mr.] Anderson's house. Where is the shotgun found? In [Mr. Anderson's]'s house. Where is the handgun found? In [Mr. Anderson's] car. What is found in my client's house? Essentially nothing.

jury. *Ward v. State*, 221 Md. App. 146, 169 (2015) (citing *Yonga v. State*, 221 Md. App. 45, 108).

## DISCUSSION

### *Contentions*

Appellant contends that the court improperly denied his petition for a Writ of Actual Innocence, based on "ample witness testimony" supporting appellant's convictions, for two reasons. First, by "failing to recognize that the prosecutor used the CBLA evidence to *establish the credibility* of the State's critical witness, Ms. Campbell." As he sees it, that evidence was particularly important because it was scientific evidence corroborating Ms. Campbell's testimony that appellant killed the victim with Mr. Anderson's .32 caliber gun. In support, he cites *Clemons v. State*, 392 Md. 339, 372 (2006), where the Court of Appeals stated that "[l]ay jurors tend to give considerable weight to 'scientific' evidence." (quoting *Reed v. State*, 283 Md. 374, 386 (1978)). And second, by "plac[ing] *undue emphasis* on the defense's theory of the case as expressed in closing argument," and "discounting the State's burden to prove the offenses beyond a reasonable doubt."

The State responds that the hearing court acted within its discretion in denying the petition because there was overwhelming witness testimony and forensic evidence as to appellant's involvement in the murder of Mr. Yarbour. It contends that "[e]xcising Agent Peele's testimony" from the trial would not create a substantial likelihood of a different result because all of the admitted forensic evidence—"the tire tracks, the bullets, and the

bullet composition"—implicated Mr. Anderson and not appellant. But, for the jury to convict appellant, "it had to credit the testimony of multiple witnesses that said [Mr.] Anderson ordered appellant to kill [Mr.] Yarbour" and that Agent Peele's testimony "was irrelevant to that determination." The State adds that defense counsel's closing was not the reason the hearing court found that the "exclusion of the CLBA evidence did not create a substantial likelihood of a different outcome." Instead, the hearing court viewed it as an "accurate summary of the significance of the CBLA evidence" and "did not unduly emphasize it."

*Analysis*

Section 8-301(a) of the Criminal Procedure Article ("CP") provides:

> 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)(i) if the conviction resulted from a trial, creates a substantial or significant possibility that the result may have been different, as that standard has been judicially determined[.]

*See also* Md. Rule 4-332(d)(8). The petitioner bears the burden of proof.[5] CP § 8-301(g); Md. Rule 4-332(k).

[5] Viewing various burdens of proof as a continuation running from the highest to the lowest, the most demanding burden would be "beyond a reasonable doubt," followed by "probable," then a "substantial or significant possibility," and then the least demanding, "might." *McGhie v. State*, 449 Md. 494, 510 (2016). The burden of establishing a "substantial or significant possibility" of a different result is less than "probable" but greater than "might." *Id.*

The newly discovered evidence must support the claim of actual innocence. *Smith v. State*, 233 Md. App. 372, 413 (2017). In other words, that the "petitioner did not commit the underlying crime for which he or she was convicted." *Smallwood v. State*, 451 Md. 290, 316 (2017). But it "need not definitively prove his or her innocence." *Smith*, 233 Md. App. at 413. "That the newly discovered evidence does not definitively exonerate appellant, or may be countered by other evidence, goes to the weight of the evidence." *Id*.

We have held previously that evidence undermining the validity of CBLA evidence is newly discovered evidence. *Ward v. State*, 221 Md. App. 146, 149 (2015).[6] And when, as in this case, the CBLA evidence was used to link appellant to the murder, it "speaks to" his actual innocence. *Smith*, 233 Md. App. at 413. A hearing court considering an actual innocence petition "look[s] back to the trial" to "determine whether

[6] In *Ward v. State*, 221 Md. App. 146 (2015), the defendant was found in possession of bullets directly linked to the murder weapon and the scene of the crime, according to expert testimony by Agent Peele—the same agent as in this case. *Id.* at 150, 161–62. The State's eyewitness, a local drug dealer, who knew both Ward and the victim, testified that he saw them arguing about drugs, heard gunshots, and saw the victim on the ground and Ward running away holding a gun. *Id.* at 152. Witnesses for Ward testified that he was home watching television with his parents at the time of the shooting, and another witness testified that he saw an unknown man, not Ward, standing over the victim's body after gunshots were fired. *Id.* at 152–53. The *Ward* Court determined that the "total exclusion of Agent Peele's testimony [ ] would . . . have created a possibility of a different outcome," and "vacate[d] the judgment of the circuit court and remand[ed] the case for further consideration." *Id.* at 170.

the newly discovered evidence created a substantial or significant possibility that the result may have been different." *McGhie*, 449 Md. at 511.[7]

In this case, the hearing court found that "the denigration of the CBLA evidence [did] not create a substantial possibility that the outcome of [appellant's] trial would be different" after summarizing Agent's Peele's testimony and then detailing other witness testimony and physical evidence directed at his guilt:

> [Ms.] Campbell's testimony included being present when [Mr. Anderson] hired Petitioner to kill the victim, being present when Petitioner returned from the murder, wiping Petitioner's fingerprints off of the gun, and hearing Petitioner acknowledge and describe the murder.
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> The State presented additional evidence at trial. [Mr.] Bobbitt, a frequent drug customer of the [Mr. Anderson] who hired Petitioner to commit the murder, testified that Petitioner confessed the murder to him. Multiple other witnesses corroborated Petitioner's use of [Mr. Anderson's] car, association with [Mr. Anderson], and location on the night of the crime. Alex Mankovich, a Maryland State Police Officer, testified that the

[7] In *McGhie v. State*, 449 Md. 494 (2016), the petitioner, convicted of murder and attempted murder, offered newly-discovered evidence that the State's ballistic expert had lied about his qualifications. The hearing judge denied the petition, reasoning that even without the ballistics evidence, there was "'ample testimony' from other witnesses that directly implicated the petitioner. *Id.* at 513. A witness testified that petitioner and his three co-conspirators came to her home the afternoon after the murder and left two handguns on her bed. Another witness testified that, after watching a television news segment describing the murder, the petitioner directed him to drive by the murder scene, "presumably to see what investigation was taking place." *Id.* at 764. The man who shot the murder victim testified to petitioner's presence during the planning stage of the crime and during the getaway. *Id.* The Court held that the hearing judge did not abuse his discretion in ruling that the "[p]etitioner was unable to prove that [the expert's] lies create[d] a substantial or significant possibility that the result may have been different" given "the weight of the evidence presented against [the petitioner] at trial." *Id.* at 514 (internal quotation marks omitted).

> car Petitioner used left tire marks found in the mud next to the victim's body.

Appellant contends that the CBLA evidence was critical to "corroborat[ing] Ms. Campbell's testimony that Mr. Yarbour was likely killed with .32 caliber bullets from the box found in [Mr.] Anderson's car." He argues that the hearing court failed to consider the prosecutor's use of the CBLA evidence to bolster the credibility of the State's key witness, Ms. Campbell, who otherwise could have been discredited. In his view, because Ms. Campbell's credibility was "explicitly connected to the reliability of the CBLA," its exclusion would create a significant possibility of a different outcome.

Ms. Campbell was, of course, an important witness in the State's case. She was the only witness who testified to what happened on the night of the murder from start to finish. She testified that shortly after it happened, appellant described the murder to her in graphic detail: that he drove Mr. Yarbour to where his body was found for the purpose of getting high; that when they got out of the car, he pulled the gun out and Mr. Yarbour thought he was playing around; that he shot Mr. Yarbour once in the stomach and then four more times; and, because he did not believe Mr. Yarbour was dead, he picked up a brick or rock and hit Mr. Yarbour in the head with it. And Ms. Campbell also admitted to disposing of the murder weapon by throwing it in the water at Rocky Point Park.

The prosecutor did seek to use the CBLA evidence to bolster Ms. Campbell's testimony:

> Agent Peele is an agent of the FBI and he is trained in chemical analysis. . . . [H]e says to you . . . look[ing] at the three bullets that are

> coming out of the body, and I do the same analysis on those bullets as I do the bullets that are there this box that came out of [Mr. Anderson's] car.
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> What I say to you is simply this; they are so similar in the amounts of these trace elements that we look for what I can say to you that bullets that came out of the body within a reasonable degree of scientific certainty came from this box or the box manufactured by the same company on or about the same day.
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> * * *
>
> [U]ltimately you can say [Agent] Peele is right, the bullets in the body probably came from this box, bullets manufactured on the same day that have survived eighteen years. It makes it probative, it makes it worthwhile evidence, **and it makes [Ms.] Campbell correct and consistent**.

(Emphasis added). On the other hand, the CBLA evidence was not the only evidence advanced by the prosecutor to support Ms. Campbell's credibility. The prosecutor also pointed to: her testimony about Mr. Anderson's drug organization and its consistency with Mr. Henley's and Mr. Bobbitt's testimony; her testimony about the types of weapons that Mr. Anderson possessed and the ammunition found in Mr. Anderson's car; her testimony about Mr. Anderson's motive to kill Mr. Yarbour; and the consistency between her testimony about where Mr. Yarbour could be found and Ms. Scarbath's testimony about where appellant found Mr. Yarbour. [8]

[8] During closing argument, the prosecutor argued:

> How do you know that [Ms. Campbell is telling the truth]? You know that by beginning to look at what she tells you. She explains to you how this drug operation works. Well, that is consistent with the fact that there is a drug operation. It is consistent with the fact that they are dealing

(…continued)

drugs with the other witnesses – [Mr.] Henley, [Mr.] Bobbit. It is undisputed. This is a drug dealing operation.

When asked, Did you carry weapons? Yes. What weapons? There was a .25 caliber, there was a .32 caliber handgun, there was a sawed off shotgun, and there was another shotgun. Well, we have shotgun shells in the car and we have shotgun shells in the [Mr. Anderson's] apartment . . . . Does that support what she says? Yes. .25 caliber semi-automatic ammo out of [his apartment]. Does that support what she said? Yes. .25 caliber handgun recovered from the car. Does that support what she says? Yes.

Ladies and gentlemen, you go on and on. This is the kind of analysis that you do. .32 calibers from the apartment and in the car. Plenty of .32 calibers. What does that tell you? Where you have .32 caliber ammunition, you have a .32 caliber gun. You have two holsters and only one handgun. These are the things that you look at. So, yes, that part of her testimony is supported by the evidence that you have. Then you say to yourself, okay, what does she tell you. She tells you how this murder occurs. She tells you about why it occurs.

Do you remember what the [j]udge said? Motive. It is not something that we have to prove, but for you to understand why this murder occurred it helps. She arrives a couple of days before the murder at her apartment [] with [Mr.] Anderson and there has been a break-in and property is removed. What is the property behind that locked bedroom with the padlock? The property is drugs, drugs and money. Now, what do you think [Mr. Anderson] is going to do? He is going to be madder than hell. So is she. They are involved in this. This is their living, this is their habit. Yeah, they are going to be mad. You see, it is not a drug collection, it is not just somebody owes you money and then you send big guy here. That's not what we're talking about. We're talking about ripping off the dealer. That, ladies and gentlemen, it is not tolerated. You cannot ripoff these guys like this. Why do you think they carry guns? For their safety, for their methods that [Ms. Campbell] said just by seeing it that is sends?

So, you know there is motive here. But how do you know that motive is true? What does [Mr.] Henley tell you? He tells you that is where he was going because he knew where to get some drugs and money and then he sees him with [Mr. Anderson's] stuff after the fact. Consistent? Yes, very consistent. After all of these years it is still consistent. So, you have motive and [Ms.] Campbell is right.

* * *

And, in addition to the CBLA evidence and the testimonial evidence of Mr. Henley and Mr. Bobbitt, her testimony that appellant drove Mr. Anderson's vehicle to commit the offenses was supported by tire track evidence.[9] And the medical examiner's findings that Mr. Yarbour suffered five or six gunshot wounds as well as lacerations and blunt force trauma to the head was not significantly inconsistent with her testimony of what appellant told her.[10]

(…continued)

> But she tells you a little bit more. You see, she says we know where he can be found because [appellant] said it, over at his girlfriend's apartment. Ladies and gentlemen, [Ms. Scarbath] testified that the evening before he was murdered the victim left with the [appellant]. That's consistent with what [Ms.] Campbell is telling you. Do you think this is something that she can just make up? Of course not. It falls into place.

[9] The opinion of the tire track examiner of the Maryland State Police Crime Lab regarding the left-rear tire track of the Nissan Stanza was not objected to.

[10] In closing, defense counsel advanced the argument that the medical examiner's findings were inconsistent with Ms. Campbell's account:

> [Ms. Campbell] tells you that the murder is admitted to her by [appellant] . . . . She says that [appellant] said the first shot was to the stomach or the abdomen. . . . None of the shots were to the abdomen. The abdomen, as she described, is the stomach. It is not even close. The Medical Examiner had the shot a third of the way down my tie in the chest area, which is the chest. The bullet ultimately winds up, because it is going in a downward direction, it does not damage to the stomach area, but the person does the shooting is not going in a downward direction, it does no damage in the stomach area, but the person doing the shooting is not going to say they shot the person in the stomach if they shot him in the chest. I would submit to you she never got an admission.

The medical examiner testified:

Ms. Campbell testified that at the time of the murder, appellant was employed by Mr. Anderson as an enforcer, and that his duties included collecting debts by "beat[ing] people up" if they failed to pay. Mr. Henley and Mr. Bobbitt both corroborated that testimony. Ms. Campbell recounted that someone broke into her apartment and stole drugs and money, that Mr. Anderson suspected it was Mr. Yarbour, that Mr. Anderson wanted him "taken care of" by appellant, and that she and appellant accompanied Mr. Anderson to search for Mr. Yarbour. Mr. Henley corroborated aspects of that account by testifying that he saw Mr. Anderson, shotgun in hand, looking for Mr. Yarbour in the company of Ms. Campbell.

In sum, three witnesses, Ms. Campbell, Mr. Bobbitt, and Ms. Scott, implicated appellant as the one who shot Mr. Yarbour. Each of them testified that appellant told them that he killed Mr. Yarbour. Ms. Campbell testified that appellant killed the victim, at Mr. Anderson's request, in exchange for $500 in drugs and money. Mr. Bobbitt testified that Mr. Anderson had admitted to ordering appellant to murder Mr. Yarbour. He also testified that appellant admitted to shooting Mr. Yarbour "three or four times in the chest" and then beating him up. Ms. Scott, a girlfriend of Mr. Anderson, testified that appellant told her that he shot Mr. Yarbour three or four times. And Ms. Scarbath, the

(…continued)

> There were five, essentially six gunshot wounds; five located on the back front of the chest, right arm, and then the superficial wound to the right middle finger.

mother of Mr. Yarbour's son, testified that appellant came to their house and left with Mr. Yarbour on the night of the murder and that was the last time she saw him alive.

Appellant correctly points out that Ms. Campbell, Mr. Bobbitt, and Mr. Henley had credibility problems. All of them were users and traffickers of illegal drugs and had, in the past, been connected to Mr. Anderson's narcotics operation. And, at trial, the credibility of each was attacked by defense counsel. Ms. Campbell denied knowing who was responsible for the murder when she was first arrested. She agreed to testify only after receiving immunity for her cooperation, and admitted that she hoped to receive a favorable disposition in her pending drug case. Mr. Bobbitt only contacted police after drug paraphernalia was found in his vehicle, and relied on police to pay his overdue rent. Mr. Henley was confined in a super-maximum prison, and had a history of lying to the police. All of this was heard by the jury, and, in the end, it was for the jury to assess and weigh their credibility. *See Yonga*, 221 Md. App. at 95.

Appellant also contends that, in reaching its conclusion, that the hearing court "plac[ed] undue emphasis" on defense counsel's suggestion that Mr. Anderson killed the victim. In closing, defense counsel argued:

> The question really comes down to three people in this case. It doesn't come down to whether the .32 caliber bullets came from that box or not, because where is that box found? It is found in [Mr.] Anderson's house. Where is the shotgun found? In [Mr. Anderson's]'s house. Where is the handgun found? In [Mr. Anderson's] car. What is found in my client's house? Essentially nothing.

Appellant posits that he "may well have made a different argument if the CBLA evidence had been excluded."

We are not persuaded that the hearing court relied on defense counsel's closing to find no substantial likelihood of a different outcome. The court stated "it is evident that the CBLA evidence did not have any substantial impact on [appellant's] conviction," because the CBLA evidence pointed more to Mr. Anderson than it did appellant—as summarized in defense counsel's argument—and "[e]ssentially nothing" related to weapons and ammunition was found in appellant's possession. Alternatively, appellant's conviction rested on the testimony of witnesses and the other evidence presented.

In short, the hearing court did not err or abuse its discretion in determining that omitting CBLA from the evidence in this case would not create a substantial or significant possibility of a different outcome.

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