Circuit Court for Frederick County
Case No. 10-K-05-037918

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 1132

September Term, 2020

ELSA DOROTHY NEWMAN

v.

STATE OF MARYLAND

Beachley,
Ripken,
Moylan, Charles E.
(Senior Judge, Specially Assigned),

JJ.

Opinion by Ripken, J.

Filed: August 25, 2021

As the long and torturous journey of this case continues, the latest appeal arises from the dismissal of appellant Elsa Dorothy Newman's ("Newman") petition for writ of actual innocence without a hearing on November 2, 2020, in the Circuit Court for Frederick County. Newman now asserts that the court erred in denying her a hearing on the petition. She claims the petition satisfied the procedural requirements and asserted grounds upon which relief could be granted—namely, that a study on gender biases in the courts demonstrates her actual innocence. For the reasons discussed below, we shall affirm the judgment of the circuit court.

FACTUAL AND PROCEDURAL BACKGROUND

The underlying case has a lengthy procedural history and has twice before found its way to this Court. As in our most recent review of this case in *Newman v. State*, No. 2274, Sept. Term 2005, slip op. at 4–6 (Md. Ct. Spec. App. May 4, 2007), we incorporate the facts from Judge Wilner's dissent in the first appeal to the Court of Appeals. Those facts are as follows:

> Since December 1999, Elsa Newman, a lawyer, had been involved in a contentious divorce action with her husband, Arlen Slobodow, that included both financial issues and custody of their two children, [L.] and [H.]. The custody battle, fought in the courts of both the District of Columbia and Montgomery County, embodied claims by each party that the other had physically or sexually abused the children. On at least two occasions, Newman filed claims in the District accusing Slobodow of sexually abusing the children. One such complaint was investigated by the D.C. police and resolved as "Unfounded." The other, involving allegations of child pornography, was investigated by the FBI; it too was closed without action. In early 2001, following an apparent finding by the District of Columbia court that Newman had abused or neglected the children, Slobodow was given custody of the children and Newman was limited to supervised visits. That arrangement was confirmed by the Circuit Court for Montgomery

> County in September, 2001. Trial with respect to "permanent" custody was scheduled for January 28, 2002 in Montgomery County.
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> [Newman] arranged for her long-time girlfriend, Margery Landry, to break into Slobodow's home during the dead of night, kill him, and leave behind packets of pornographic material as evidence that he had been sexually abusing his two sons. The fact that the children were also in the home and might be hurt or killed as well did not seem to matter. Landry, indeed, attempted to carry out that plan and nearly succeeded in doing so. At some point in the early morning hours of January 7, 2002, while Newman was conveniently in New Jersey, Landry, dressed in black and wearing a ski mask and latex gloves, broke into Slobodow's home, assaulted Slobodow as he lay in bed, shot at him twice, wounding him once in the leg, beat him over the head with a telephone, and attempted to flee. When Slobodow attempted to reach another telephone to call for help, she assaulted him a second time and succeeded in escaping through a window, leaving behind a handgun with an obliterated serial number, an empty clip and two spent shell casings, a fanny pack containing a box of nine millimeter ammunition, a pornographic video tape, and pornographic magazines and books.

Newman v. State, 384 Md. 285, 319 (2004) (Wilner, J., dissenting). Judge Moylan, in *Newman*, No. 2274, Sept. Term 2005, continued the factual summary as follows:

> The extremely close relationship between [Newman] and Margery Landry was a key component in the State's conspiracy theory . . . . [Newman] and Landry had been college roommates and remained each other's closest friend thereafter. Throughout the marriage of [Newman] to Slobodow, Landry was a constant presence in their lives. She accompanied them on family vacations. She was the godmother of their two sons, [H.] and [L.] Landry testified as to her love for the two boys, and she was legally designated as their guardian should a guardianship become necessary. [Newman] and Landry owned a condominium together. [Newman] and Landry maintained joint bank accounts.
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> Slobodow described the relationship between [Newman] and Landry as a "subservient-dominant relationship" with [Newman] very definitely in the dominant role. Landry was routinely in the family home and, at [Newman's] direction, would take care of the children or rake the lawn or clean the house. Landry had a job with the U.S. State Department and

[Newman], with the benefit of her law degree and legal training, essentially micromanaged Landry's career. [Newman] participated with Landry in deciding for which foreign assignment posts to apply and then did most of the paperwork in drafting the applications. [Newman] had apparently lost her own job as a research assistant when she had taken time off to travel with Landry to Hawaii.

A major move was made in the Spring of 1998 when Landry, at the strong urging of [Newman], applied for a State Department posting to London and received it. [Newman] prevailed on Slobodow to agree to her and the children going to London with Landry, while Slobodow continued his job in Montgomery [County] so as to help finance the London trip.

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Although the original agreement between [Newman] and Slobodow had been for her and the children to stay in London for just one year, she later indicated to him that she wished to extend the stay. At that point he threatened her with divorce if she did not return to the United States. That immediate crisis resolved itself when, after one year in London on what was supposed to be a three-year assignment, Landry lost her posting. There was no longer a residence, provided by the State Department, in which the group could reside. [Newman] and the children returned to Montgomery County, but the marriage rapidly deteriorated. Slobodow moved into the basement and divorce proceedings began.

In terms of financing the ongoing battle with Slobodow over the custody of the two boys, the efforts of Landry and [Newman] were inextricably intertwined. Landry acted as the "banker," controlling substantial sums of money that had been transferred to her by and through [Newman]. Landry attended attorney's meetings, communicated directly with [Newman's] lawyers, and attended court proceedings. Landry used her own money to pay a significant portion of [Newman's] legal expenses, as well as [Newman's] other personal bills. Landry personally funded the hiring of three separate private investigators to investigate Slobodow and to conduct surveillance of his home.

Phone records were introduced which showed that Landry and [Newman] had called each other on at least 170 occasions in the 36 days immediately preceding the shooting. On January 6, 2002, the day before the 3 A.M. burglary and shooting, Landry was with [Newman] at the family wedding in New Jersey. She left to return to Montgomery County after attending the reception. At the reception, Landry communicated to [Newman] her intentions of "going to try and look in [Slobodow's] basement

> tonight." Between the time that Landry left New Jersey and the three A.M. break-in, there was one other phone call from [Newman] to Landry, in which [Newman] allegedly warned Landry, "You need to stay away from him."
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> Very significant was a conversation [Newman] had on December 27, 2000, at Ruth's Chris Steakhouse in Bethesda with Sandra Ashely, the secretary for [Newman's] at-that-time former domestic relations lawyer, Steven Friedman, Esq . . . . Ashley testified as to the conversation[:]
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> > "The portion of the conversation that was memorable as she began to describe to me that she and Margery Landry were going to kill her husband. That they were each in their own way trying to get an 'untraceable gun,' that Margery had connections with the mob, I think, in Chicago, and that Elsa herself had called, I believe, it was Philadelphia trying to get an untraceable gun, that she even described to me how she would dress in order to do this, that she would dress all in black with a watch cap and gloves, and that she would catch Arlen on the street when the children were not around in D.C. and kill him . . . .
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> > [S]he was having trouble with the custody case, and she had claimed that Mr. Slobodow was, sexually molesting and assaulting her children, and that, she was going, doing, doing [sic] this to save her children."
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> Although Landry rather than [Newman] was the ultimate shooter, the actual crime of January 7, 2002, mirrored in several significant regards the plan that [Newman] outlined to Ashley. Landry, indeed, dressed in dark clothing and wore a dark mask. The serial number was obliterated so that the gun was untraceable. Most significant is that [Newman] and Landry were acting together in a mutual plan to murder Slobodow.

Newman, slip op. at 4–12 (emphasis omitted) (citing *Newman*, 384 Md. at 318–19); *see* Md. Rule 1-104(b) (permitting citation to an unreported opinion "in a criminal action or related proceeding involving the same defendant.").

In an effort to ensure the trial would not devolve into a re-litigating the contentious custody case, rather than offering the live testimony of Detective Q. Wallace, the State

offered a stipulation that was not binding on the defense. *Newman*, slip op. at 30–31. The stipulation provided:

> Detective Q. Wallace did not testify in person in this trial. Had she been called, she would have testified to the following. In summer 2000, Detective Wallace was employed by the Washington, D.C. Metropolitan Youth Division. In July of 2000, she was assigned to investigate an allegation of child sexual abuse against Arlen Slobodow made by Elsa Newman on July 16, 2000.
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> Detective Wallace conducted an investigation. The investigation was closed on August 4, 2000. Mrs. Newman was told of the closure of the allegation.
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> Detective Wallace would testify that allegation of sexual abuse on [L.] and allegation of physical abuse on [H.], made by Elsa Newman against Arlen Slobodow on June 27th, 2000, had just been closed on July 12th, 2000. No charges were brought against Mr. Slobodow. The closure of the investigation was conveyed to Mrs. Newman.
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> Detective Wallace would also testify that another allegation of physical abuse was made by Elsa Newman on January 21st, 2001 against Arlen Slobodow. Detective Wallace conducted an investigation. That allegation was closed on February 6, 2001. No charges were brought against Mr. Slobodow. The closure of the investigation was conveyed to Mrs. Newman.

Id. at 32–33 (emphasis omitted). Newman's sole objection was to the references in the stipulation that she was the source of the complaints. *Id*. at 32–34.

On August 6, 2002, a jury in the Circuit Court for Montgomery County found Newman guilty of conspiracy to commit first-degree murder, attempted first-degree murder, first-degree assault, first-degree burglary, and use of a handgun in the commission of a felony or crime of violence. On certiorari review, the Court of Appeals reversed the convictions, determining that communications between Newman and her former attorney,

which were admitted at trial, were in violation of the attorney client privilege. *Newman*, 384 Md. at 340. The Court remanded for a new trial, which was held in the Circuit Court for Fredrick County.

On October 7, 2005, a jury in the Circuit Court for Frederick County again found Newman guilty of conspiracy to commit first-degree murder, attempted first-degree murder, first-degree assault, first-degree burglary, and use of a handgun in the commission of a felony or crime of violence. The court imposed a sentence of life imprisonment with all but twenty years suspended for the conspiracy and attempted murder convictions. Newman was sentenced concurrently to twenty years for the first-degree assault and first-degree burglary convictions, as well as fifteen years for the use of a firearm conviction. This Court affirmed the convictions, and the Court of Appeals denied Newman's petition for a writ of certiorari. *Newman v. State*, 402 Md. 38 (2007).

In 2012, Newman filed a petition for writ of actual innocence on the same basis as the one currently before us. However, Newman withdrew the petition, and it was dismissed without prejudice. On March 19, 2020, Newman filed a second petition for writ of actual innocence. In the petition, Newman alleged that a 2012 Study authored by the University of Michigan School of Social Work entitled "Child Custody Evaluators' Beliefs About Domestic Abuse Allegations: Their Relationship to Evaluator Demographics, Background,

Domestic Violence Knowledge and Custody-Visitation Recommendations" ("the Study")[1] was newly discovered evidence of her actual innocence.

The Study collected and analyzed information from two groups: professionals in the legal and domestic violence support community and survivors of domestic violence. The first part of the Study consisted of a survey of professionals with the purpose of furthering the understanding "of what child custody evaluators and other professionals believe regarding allegations of domestic abuse made by parents going through a divorce." The second part of the study included the results of in-depth interviews with twenty-four survivors of domestic violence geared at understanding their perspective of the legal system as it relates to reporting domestic violence and resolving custody disputes.

The Study had a national scope and identified various biases survivors of domestic violence experience during court proceedings, particularly during custody disputes. In addition, the Study referenced gender bias and negative outcomes for women who make allegations of child sexual abuse against men during custody disputes. The Study did not address bias against survivors of domestic violence in criminal cases where they were charged.

In response to the petition, the State filed an opposition and requested that the court deny the petition without a hearing. Upon consideration of the petition and the opposition,

[1] While the Study was funded by the U.S. Department of Justice, the following notice is included: "Opinions or points of view expressed are those of the author(s) and do not necessarily reflect the official position or policies of the U.S. Department of Justice." The full study is available at: https://www.ojp.gov/pdffiles1/nij/grants/238891.pdf (last visited August 17, 2021).

the circuit court issued an opinion and order, docketed on November 2, 2020, denying the petition without a hearing. In support of this disposition, the court reasoned that the veracity of the child abuse allegations was immaterial and irrelevant to Newman's conviction for conspiring to murder Slobodow. In addition, the court emphasized that the State's purpose in admitting the stipulation regarding the child abuse allegations was "to show the effect of the closings of those investigations on [Newman's] state of mind." Last, the court noted that the Court of Special Appeals, has twice before faced challenges regarding the child abuse stipulation, and previously characterized the issue as tangential, "collateral," and "likely irrelevant" to the issue of whether Newman conspired to murder Slobodow. This timely appeal followed.

ISSUE PRESENTED

Newman presents a single issue, which we have rephrased as follows: Did the circuit court err in dismissing Newman's Petition for Writ of Actual Innocence without a hearing for failure to assert grounds upon which relief could be granted?[2] For the reasons stated below, we hold the trial court did not err in dismissing Newman's petition for writ of actual innocence without a hearing. We shall affirm.

[2] Rephrased from: Whether the Circuit Court for Frederick County erred in dismissing the Petition for Writ of Actual Innocence without a hearing for failure to assert grounds upon which relief could be granted because it misunderstood the nature of Ms. Newman's position[?]

DISCUSSION

In her petition for writ of actual innocence, Newman asserts the Study is newly discovered evidence which demonstrates "the judicial system's tendency to view skeptically parents who voice concerns of child abuse in divorce proceedings." Newman contends that the stipulation offered at her trial was incorrect and that she did not make child abuse allegations against Mr. Slobodow. Newman alleges this misattribution is the result of bias against "protective mothers" when child abuse claims arise during divorce proceedings. On appeal, Newman asserts the trial court misapprehended her writ of actual innocence by focusing on the truth or falsity of the child abuse allegations, rather than the truth or falsity of the assertion within the stipulation that Newman made the allegations.[3]

In response, the State contends the trial court properly denied Newman's petition without a hearing because the issue was previously decided on Newman's direct appeal in 2005. In addition, the State argues that the evidence of institutional bias against mothers is not new. Last, the State contends that even if the Study is newly discovered evidence, it does not create a substantial possibility of a different outcome. Before reaching the merits

[3] In support of this argument, Newman relies on our unreported opinion in *Wise v. State*, No. 875 (Md. Ct. Spec. App., filed April 20, 2018). Pursuant to Md. Rule 1-104(b), an unreported opinion from this Court cannot be cited "as precedent within the rule of stare decisis or as persuasive authority." Newman acknowledges that unreported decisions cannot be cited for either stare decisis or persuasive authority. However, she maintains that she cites *Wise* for neither, but as an example of the "inarguable legal proposition" she believes this Court should adopt. Regardless of how she characterizes her citation of the case, we find it difficult to interpret the citation as anything other than reliance on persuasive authority. As such, we decline Newman's invitation to engage in an analysis of the *Wise* case. *See Roane v. Md. Bd. of Physicians*, 213 Md. App. 619, 634 (2013) ("[T]he substance of unpublished decisions of this Court may not be relied upon or even referred to as precedent[.]") (emphasis omitted).

of Newman's arguments, we first address the State's initial contention that the law of the case doctrine bars review of this appeal.

I. THE LAW OF THE CASE DOCTRINE DOES NOT BAR NEWMAN'S PETITION.

The State argues that Newman's contention is barred by the law of the case doctrine because her previous appeal in this case included an argument that the circuit court "erroneously ordered her to stipulate to the State's version of the abuse investigations and their outcomes." *Newman*, slip op. at 3, 30–35. On appeal, this Court rejected her argument and held there was no error. *Id.* at 44–46. In response, Newman alleges that applying the law of the case doctrine would be paradoxical given Newman alleges there is newly discovered evidence—the 2012 Study—which was unavailable to her during the 2005 trial.

The law of the case doctrine "operates to bar litigants from raising arguments on questions that have been decided previously or could have been decided in that case." *Dabbs v. Anne Arundel Cnty.*, 458 Md. 331, 345 n.15 (2018). When the doctrine is applied to appellate court decisions:

> [I]t serves the dual function of enforcing the mandate and precluding multiple appeals to review the same error. Like stare decisis, the doctrine of the law of the case is quite rigidly applied to force obedience of an inferior court, but more flexibly in its application to reconsideration by the court that made the earlier decision.

Tu v. State, 336 Md. 406, 416 (1994) (quoting 1B J.W. Moore, J.D. Lucas & T.S. Currier, Moore's Federal Practice ¶ 0.401, at I–2 to I–3 (2d ed. 1993) (footnotes omitted) (Moore)). Failure to raise issues that could have been raised during a first appeal precludes further litigation on the general issue. *See Holloway v. State*, 232 Md. App. 272, 284–85 (2017)

(holding that the law of the case doctrine precluded a petitioner's second *coram nobis* petition, which for the first time alleged that he was not advised of the presumption of innocence when pleading guilty, when the petitioner's first *coram nobis* petition claimed he was not advised of the nature of the charges against him).

While the child abuse allegations remain tangential at best,[4] we conclude that the law of the case doctrine does not preclude our review of Newman's petition. The issue before this Court during Newman's last appeal was whether the stipulation was "forced," not whether there was newly discovered evidence relating to the stipulation. The nature of newly discovered evidence required for a writ of actual innocence is such that the law of the case doctrine does not limit our review of such evidence. Therefore, we continue our analysis by addressing Newman's petition on the merits.

II. THE CIRCUIT COURT DID NOT ERR IN DENYING NEWMAN'S PETITION WITHOUT A HEARING.

"[T]he denial of a petition for writ of actual innocence is an immediately appealable order, regardless of whether the trial court held a hearing before denying the petition." *Douglas v. State*, 423 Md. 156, 165 (2011). "[T]he standard of review when appellate courts consider the legal sufficiency of a petition for writ of actual innocence is de novo."

[4] During the second appeal before this Court, Newman alleged that the trial court "erroneously ordered her to stipulate to the State's version of the abuse investigations and their outcomes." *Newman*, slip op. at 3. In holding that the trial court did not abuse its discretion in permitting the proffer, we noted that the trial court gave Newman an "open invitation" to call Detective Wallace to supplement any deficiencies in the stipulation, which Newman declined to do. *Id.* at 33. In addition, we noted that this issue "[lays] on a tangent down which [Newman] persistently attempted to take the trial." *Id.* at 25.

State v. Hunt, 443 Md. 238, 247 (2015). Prior to our review of Newman's argument, we offer a brief overview of the legislative history of the statute to better understand its purpose.

A. The Purpose Behind Writs of Actual Innocence

The actual innocence statute provides "a mechanism for relief to one very specific class of people—individuals who are factually innocent and who have been *wrongfully convicted*—and to circumscribe relief to that class of people." *McGhie v. State*, 449 Md. 494, 521 (2016) (Raker, J., dissenting). Prior to the statute's enactment, there was little recourse for convicted individuals who had non-DNA evidence of their *actual* innocence when the time for requesting a new trial under Md. Rule 4-331 had elapsed.[5] MD. DEPT. OF LEG. SERVS., MD. FISCAL AND POLICY NOTE, S.B. 486, 2009 Sess. (2009). Accordingly,

[5] Maryland Rule 4-331(c) reads as follows:

> 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:
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> (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
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> (2) on motion filed at any time if the motion is based on DNA identification testing not subject to the procedures of Code, Criminal Procedure Article § 8-201 or other generally 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.

the legislative history of the statute reflects its purpose was to "extend the right to seek a new trial on the basis of newly discovered evidence beyond that afforded a convicted defendant under Maryland Rule 4-331(c)." *Douglas v. State*, 423 Md. at 176; *see* MD. FISCAL AND POLICY NOTE, S.B. 486, 2009 Sess. The statute "creates a new legal right that heretofore did not exist—*i.e.* the right to move for a new trial after the one year time-bar in Rule 4-331(c) where the motion is premised on newly discovered, non-DNA evidence." *McGhie*, 449 Md. at 520 (Raker, J., dissenting).

The Fiscal and Policy Note accompanying the Maryland Senate bill, later codified at Md. Code, Criminal Procedure ("CP") § 8-301 (2018 Repl.), noted that Maryland's actual innocence legislation was based on Virginia's 2004 actual innocence statute involving non-biological evidence.[6] MD. FISCAL AND POLICY NOTE, S.B. 486, 2009 Sess. The Supreme Court of Virginia emphasized the primary purpose of Virginia's statute—to provide relief for those who are actually innocent:

> By enacting these provisions, the General Assembly intended to provide relief only to those individuals who can establish that they did not, as a matter of fact, commit the crimes for which they were convicted. The statutes governing writs of actual innocence based on non-biological evidence considered as a whole, and Code § 19.2-327.11 in particular, were not intended to provide relief to individuals who merely produce evidence contrary to the evidence presented at their criminal trial.

Carpitcher v. Commonwealth, 641 S.E.2d 486, 492 (Va. 2007). Against this backdrop, our review of Maryland's actual innocence statute and its legislative history draws us to the

[6] *See* Va. Code Ann. §§ 19.2-327.10–14 (2020) (originally enacted as Va. Code Ann. §§ 19.2-321.10–14 (2004).

conclusion that Maryland's statute likewise does not contemplate relief for those who uncover contrary evidence after the time for filing for a new trial under Maryland Rule 4-331 has passed. Rather, the legislature intended to provide a narrow yet timeless avenue of relief for those that were wrongfully convicted and now have evidence that creates a substantial possibility that they are *actually innocent*. Therefore, the type of evidence presented in a writ of actual innocence must be capable of satisfying the notable standard of actual innocence.

B. Threshold Requirements for a Writ of Actual Innocence

Pursuant to CP § 8-301, the pertinent requirements for a petition for writ of actual innocence are as follows:

> (a) A person charged by indictment or criminal information with a crime triable in circuit court and convicted of that crime may, at any time, file a petition for writ of actual innocence in the circuit court for the county in which the conviction was imposed if the person claims that there is newly discovered evidence that:
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> > (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; . . .[and] (2) could not have been discovered in time to move for a new trial under Maryland Rule 4-331.
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> (b) A petition filed under this section shall:
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> > (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 a hearing if a hearing is sought; and (5) distinguish the newly discovered evidence claimed in the petition from any claims made in prior petitions.

The State does not contest that Newman's petition meets the requirements under CP § 8-301(b). As such, we continue our analysis to determine whether Newman's petition satisfies CP § 8-301(a).

CP § 8-301(a) requires a petitioner to plead grounds upon which relief may be granted, but the petitioner need not prove those grounds in the petition. *Douglas*, 423 Md. at 180. "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." *Id.* If a hearing is requested, it is mandatory unless "the court finds that the petition fails to assert grounds on which relief may be granted." CP § 8-301(e); *id*.

As noted, the parties agree that Newman's petition met the form requirements of CP § 8-301(b), focusing our review solely on whether the petition asserts grounds upon which relief may be granted. If so, Newman is entitled to a hearing on the petition. This inquiry demands us to review two elements: (1) is the evidence "newly discovered" and (2) if it is newly discovered, does it create a substantial possibility that the outcome of Newman's trial would have been different. However, embedded in those two requirements is an additional threshold element: we must determine whether the Report constitutes "evidence." We conclude that the Report does not qualify as evidence, nor can it be considered newly discovered, but even if it were evidence, viewed in a light most favorable

to Newman and with all reasonable inferences drawn in her favor, it does not create a substantial possibility that the outcome of trial would have been different.

1. Evidence

> 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.

Hawes v. State, 216 Md. App. 105, 134 (2014). "The fundamental test in assessing admissibility is relevance." *Thomas v. State*, 372 Md. 342, 350 (2002). Relevant evidence is that which has a tendency "to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence." Md. Rule 5-401. Irrelevant evidence is inadmissible. Md. Rule 5-402.

We are unconvinced that the Study would satisfy the low bar of relevancy so as to be considered admissible evidence. The Study focused on custody determinations and gender bias when domestic violence is involved. The Study sought to understand the beliefs and biases that legal professionals and domestic violence support professionals hold, which may unknowingly influence custody determinations. The qualitative interviews with the twenty-four survivors of domestic violence offered unique perspectives on the impacts of bias in the survivors' lives and gave insight into areas that may be reformed in the custody determination process. However, the study is lacking in certain areas as it relates to Newman's argument. Nowhere does the study discuss bias in criminal cases, a specific analysis of bias in Maryland courts, or a breakdown of the geographic locations for all surveyed individuals.

The stipulations regarding the sexual abuse allegations were offered to demonstrate Newman's knowledge that the investigations occurred and were closed, *not* for the truth of the matter asserted. Indeed, in *Newman*, No. 2274, Sept. Term 2005, we reemphasized this point, also stated in our opinion following Newman's appeal from her first trial: "whether the underlying accusations of sexual abuse were true or not is, at best, collateral and more likely irrelevant." *Newman*, slip op. at 31 (quoting *Newman v. State*, 156 Md. App. 20, 66 (2003), *rev'd on other grounds*, 384 Md. at 340). Moreover, the stipulations were offered in place of live testimony for expediency and to avoid confusing the jury with the contentious custody case between Newman and Slobodow—a peripheral path down which Newman frequently attempted to take the trial. We conclude that the Study is not relevant to Newman's convictions relating to the conspiracy to commit first-degree murder of Slobodow, therefore it cannot qualify as newly discovered evidence to support Newman's petition. Despite this, we will assume for Newman's sake that the Study could be considered relevant and thus admissible evidence and will continue with our analysis.

2. "Newly Discovered"

Even if we assume that the Report would have been admissible evidence, we are unpersuaded that it is "newly discovered." The Court of Appeals first interpreted Maryland's actual innocence statute in *Douglas v. State*, 423 Md. at 163. The Court issued a writ of certiorari and consolidated two appeals, one from appellant Douglas and one from appellant Curtis, where their respective petitions for writ of actual innocence were denied without hearings. *Id.* at 164. In the early 1990s, a jury convicted Douglas of attempted

second-degree murder, assault, and related handgun offenses. *Id.* at 165. As part of its case-in-chief, the State called Joseph Kopera, Head of the Maryland State Police Firearm Unit, to testify regarding the ballistics evidence. *Id.* at 166. Specifically, Kopera testified that the bullet removed from the victim was fired from the gun taken from Douglas. *Id.* In 2007, the Baltimore Sun revealed that Kopera had falsified his credentials and perjured himself in countless Maryland criminal trials—including Douglas's trial. *Id.* at 167.

In 2009, the same year that the writ of actual innocence statute came into effect in Maryland, Douglas filed a petition for a writ of actual innocence, which was based in part on the newly discovered evidence relating to Kopera's false credentials and calling into question the veracity of his ballistics analysis. *Id.* at 166–67. The petition was denied without a hearing. *Id.* at 167. On appeal, the Court noted that Douglas's *pro se* petition substantially complied with the form requirements as outlined by CP § 8-301(b). *Id.* at 186. As to the requirement that Douglas assert grounds upon which relief may be granted under CP § 8-301(e), the Court noted that Kopera's false credentials, if proven, could entitle Douglas to relief, therefore Douglas was entitled to a hearing on his petition. *Id.*

The second petition, brought by appellant Curtis, arose after a jury convicted him of attempted first-degree murder, assault, and related handgun offenses after a 1994 shooting. *Id.* at 167–68. During the investigation, a police officer interviewed Curtis's grandmother, Margaret Adkinson, and wrote her name, as well as "Margaret Eri" on his report. *Id.* at 168. The defense called Wayne Miles to testify for the defense as an eyewitness. *Id.* On cross-examination, the State asked how Miles came to testify in the

case, at which point he indicated that a friend named Aaron asked him whether he knew anything about the shooting, and Miles stated he witnessed the whole thing. *Id.* On the last day of trial, the State asked a detective on the case whether he knew someone named "Airy," to which the detective responded that the name "Margaret Airy" came from the interview with Curtis's grandmother. *Id.* at 168–69. During closing arguments, the State alleged that Miles's friend Aaron was really a friend of Curtis's named "Airy" or "Eri," who coerced Miles into testifying. *Id.* at 169.

In his 2010 *pro se* petition for a writ of actual innocence, Curtis included an affidavit from his grandmother that she never mentioned the name "Airy" or "Eri" to police. *Id.* at 169. On appeal, the Court concluded that Curtis failed to articulate why the evidence was not obtainable within the time to file for a new trial under Rule 4-331, and moreover that the evidence was not newly discovered, noting that "[e]xculpatory 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." *Id.* at 187 (quoting *Argyrou v. State*, 349 Md. 587, 600 n.9 (1998)). Given that the evidence was not newly discovered, the Court held that the trial court properly denied Curtis's petition without a hearing. *Id.*

Against this backdrop, we conclude that the Report, similar to the evidence put forth by Curtis in *Douglas*, did not constitute "newly-discovered" evidence. In 1987, the Court of Appeals created a Special Joint Committee on Gender Bias in the Courts to "make people aware of the many ways in which gender bias can affect decision-making and the outcome of litigation, and to recommend ways to eliminate it from the judicial system."

Report of the Special Joint Committee on Gender Bias in the Courts, May 1989, 20 U. BALT. L. REV. 1, 9 (1990) ("Maryland Report"). As part of its investigation, the Committee surveyed legal professionals and heard testimony from numerous witnesses on gender bias. *Id.* at 7. Following the two-year investigation, the Committee found that "gender bias exists in the courts of Maryland, and it affects decision-making as well as participants" and "that women are harmed by gender bias in more ways than men." *Id.* at 6, 8.

The 2012 Study expanded upon the area of research in the Maryland Report and offered additional insight on how survivors of domestic abuse experience negative custody outcomes. However, the issue of gender bias in Maryland courts had already been studied and was available via the Maryland Report. Moreover, the "newly discovered" information in the 2012 Study does not elucidate the issue that Newman wishes to contort it to in this petition; namely, that gender bias led to the stipulation's "misattribution," of the child abuse reports to Newman, which led to her false conviction. Nevertheless, we continue with our analysis, assuming *arguendo* the Report was admissible and newly discovered, and consider whether it created a substantial possibility of a different result.

3. Substantial Possibility of a Different Result

In order to measure the persuasive weight of newly discovered evidence, we ask two questions:

> We first look at the evidence of guilt before the jury at the trial that led to the conviction. We then look at the newly discovered evidence. The acid test is to ask whether, if that jury had had the benefit of the newly discovered evidence as well as the evidence that was before them, would there be "a substantial or significant possibility that the result would have been different?"

Yonga v. State, 221 Md. App. 45, 69 (2015), *aff'd* 446 Md. 183 (2016). In order to satisfy this pleading requirement set forth in CP § 3-801(a), we assume "the facts in the light most favorable to the petitioner and accept[] all reasonable inferences that can be drawn from the petition." *Douglas*, 423 Md. at 180. The petitioner bears the burden of proof under the "substantial or significant possibility" standard, which "falls between 'probable,' which is less demanding than 'beyond a reasonable doubt,' and 'might' which is less stringent than 'probable.'" *Faulker v. State*, 468 Md. 418, 460 (2020) (quoting *McGhie*, 449 Md. at 510).

We conclude that the 2012 Study, assuming *arguendo* it was admissible evidence and was newly discovered, does not create a substantial possibility of a different outcome at Newman's trial. First, we look to the evidence from Newman's trial supporting her guilt. The State's case was circumstantial, but strong. As we stated in *Newman*, No. 2274, Sept. Term 2005, "[t]he extremely close relationship between [Newman] and Margery Landry was a key component in the State's conspiracy theory . . . . Slobodow described the relationship between [Newman] and Landry as a 'subservient-dominant relationship' with [Newman] very definitely in the dominant role." *Newman*, slip op. at 5–7. Once the divorce and custody proceedings started, Landry was present at all attorney meetings and court proceedings with Newman. *Id.* at 8–9. During a dinner with her former attorney's secretary approximately one year prior to the attempted murder, Newman confided that she and Landry were going to kill Slobodow with an "untraceable gun." *Id.* at 12. In the thirty-six days before the burglary and shooting of Slobodow, phone records showed Landry and Newman called each other at least 170 times. *Id.* at 10. On the day before the attempted

murder of Slobodow, Newman and Landry attended a family wedding together in New Jersey. *Id*. Before leaving the reception, Landry stated to Newman that she was "going to try and look in [Slobodow's] basement tonight." *Id.* There was an additional phone call between the time Landry left New Jersey and the early morning break-in, during which Newman "allegedly warned Landry, 'You need to stay away from him.'" *Id.*

Next, we look to the newly discovered evidence itself—the Study. The 2012 Study surveyed over one thousand professionals across the nation and interviewed twenty-four women who experienced institutional bias in custody proceedings when abuse was alleged. While the Study documents the phenomenon of institutional bias in custody trials, it does not address the issues in Newman's attempted first-degree murder trial. Assuming Newman's assertions are true—that she did not report the child abuse allegations, that the misattribution was the result of institutional bias, and that the Study supports these assertions—admission of the Study still does not yield a substantial likelihood that the outcome of her trial would have been different.

The Study that Newman puts forth in her petition is incongruous with the type of evidence presented in Douglas's petition in *Douglas*, which required a hearing. 423 Md. at 185–86. In *Douglas*, there was a substantial possibility that the verdict may have been different when the newly discovered evidence showed that the firearms examiner—a key witness in the prosecution's case—falsified his credentials, calling into question the ballistics evidence that connected Douglas's gun to the bullet recovered from the victim. *Douglas*, 423 Md. at 185–86. In this case, the purported "newly discovered evidence" is

the 2012 Study which related to Newman's custody case—an issue each appellate court has identified as tangential or collateral at most to her attempted first-degree murder case. There is not a substantial likelihood that evidence relating to the custody case would change the verdict in Newman's attempted first-degree murder case. As the trial court stated, "the abuse allegations are irrelevant because the presence of abuse, even if true, do not make it more or less probable that Newman is guilty of conspiracy to commit murder."

Similarly, information about the source of the child abuse allegations and the State's alleged bias in attributing the disclosure of the allegations to Newman, do not make it more or less probable that Newman is guilty of conspiracy to commit murder. Our analysis of the sufficiency of the evidence of Newman's conviction for conspiracy to commit murder in *Newman v. State*, No. 2274, Sept. Term 2005—which at no point references the stipulation as evidence supporting the conviction—further demonstrates that the Study does not, and could not, create a substantial possibility of a different verdict. As Newman fails to assert grounds upon which relief may be granted, the trial court did not err in denying her petition for writ of actual innocence without a hearing.

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