Circuit Court for Baltimore City
Case Nos. 100014011; 100014015;
100014019; 100014023; 100014027;
100014059; 100014063; 100014079;
100014083

UNREPORTED*

IN THE APPELLATE COURT

OF MARYLAND

No. 1515

September Term, 2023

TARIQ ABDOUL MALIK

v.

STATE OF MARYLAND

Wells, C.J.
Leahy,
Woodward, Patrick L.
(Senior Judge, Specially Assigned),

JJ.

Opinion by Leahy, J.

Filed: July 22, 2025

* This is an unreported opinion. The opinion 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 this appeal, appellant Tariq Abdoul Malik argues that the State's use of comparative bullet lead analysis ("CBLA") in his 2001 criminal trial entitles him to a new trial under Maryland Code (2001, 2018 Repl. Vol.), Criminal Procedure Article ("CP") § 8-301. CBLA was a forensic technique used by the FBI "[f]rom the late-1960s until 2005" primarily to match "bullets found at crime scenes" to "bullets found in a defendant's possession . . . based on the now-debunked theory that each batch of lead used to produce bullets was unique at an elemental level." *Ward v. State*, 221 Md. App. 146, 157 (2015). In 2005, after a series of studies cast doubt on the reliability and accuracy of CBLA methodology, and several years after Malik's conviction, "the FBI announced that it would no longer use CBLA comparisons in criminal prosecutions[,]" *id.* at 161, and the following year, the Supreme Court of Maryland ruled that CBLA evidence was inadmissible in *Clemons v. State*, 392 Md. 339 (2006).

Malik was originally tried by a jury in the Circuit Court for Baltimore City and convicted of multiple crimes in connection with the homicides of five women. After his convictions for first-degree murder and conspiracy to commit murder were vacated on direct appeal, Malik was given five consecutive sentences of life without parole for first-degree felony murder, six consecutive sentences of 20 years for use of a handgun in the commission of a felony, a consecutive sentence of 30 years for conspiracy to kidnap, a consecutive sentence of 30 years for kidnapping, and a consecutive sentence of 20 years for robbery with a deadly weapon.

On March 22, 2023, Malik filed the underlying petition for writ of actual innocence pursuant to CP § 8-301 based on the admission of CBLA evidence at his trial, although he had already filed a similar petition on June 5, 2010, which was denied. The circuit court held a hearing on Malik's second petition on August 22, 2023, and issued a written ruling and order denying it, which was entered on September 5, 2023. Malik timely filed notice of appeal, and raises two questions for our review, which we consolidate into one and rephrase as follows:[1]

> Did the circuit court abuse its discretion in denying Malik's Petition for Writ of Actual Innocence?

We hold that the circuit court did not abuse its discretion. CBLA has been considered inadmissible junk science in the courts of this state since the Supreme Court of Maryland's decision in *Clemons*, and this Court has recognized that scientific studies debunking CBLA constitute "newly discovered evidence" under CP § 8-301 since our decision in *Ward*. Nevertheless, Malik has not distinguished the newly discovered evidence relied on in his second petition from the petition for writ of actual innocence that he filed in 2010, as required under CP § 8-301(b)(5). Despite this deficiency, the circuit court evaluated the merits of Malik's petition, and, we conclude, applied the correct legal

[1] Malik presented the following questions in his brief:

I. Did the circuit court err or abuses [*sic*] its discretion by violating Maryland Rule 4-332(1)(2)?

II. Did the circuit court abuse his [*sic*] discretion when he arbitrarily and capriciously denied Appellant's actual innocence using the wrong standard and/or substituting his judgment for that of the jury?

standards and made no clearly erroneous factual findings. Accordingly, we affirm the judgment of the circuit court.

BACKGROUND

The Events of December 5, 1999, and Subsequent Police Investigation

We glean the relevant factual background from our opinion in *Malik v. State* (*Malik I*), 152 Md. App. 305 (2003), which describes the course of events leading to Malik's arrest.

On the night of December 5, 1999, Alvin Thomas drove to the home of his business partner, Adrian Jones, on Gusryan Street in Baltimore City (the "Gusryan House"), where Malik also resided. *Id.* at 314. As Thomas got out of his car, Ismail Wilson—Malik's brother—and Robert Bryant grabbed Thomas and took him into the basement of the Gusryan House, where Malik and a fourth man, Travon McCoy, were waiting. *Id.* Wilson, Bryant, Malik, and McCoy were all armed. *Id.* They "demanded that Thomas give them drugs and money" and took Thomas's "jewelry, jacket, cell phone, and pager." *Id.*

Wilson, Bryant, Malik, and McCoy then demanded that Thomas call another associate, Darnell Collins, "because the four hoped to lure him to a nearby McDonald's restaurant and take his drugs and money as well." *Id.* After Thomas arranged a meeting with Collins, the four forced Thomas back into his car at gunpoint and drove it to the home of his sister, Mary McNeil Matthews ("Lo"), on Elmley Avenue (the "Elmley House"). *Id.* The four "believed large quantities of drugs and money were there for the taking" given that "they had conducted several drug transactions" with Lo at the Elmley House. *Id.*

When Wilson, Bryant, Malik, and McCoy arrived at the Elmley House, they "propped Thomas up at the door[,]" rang the doorbell, and hid behind him. *Id.* at 315. Makisha Jenkins—who was Thomas's niece and Lo's daughter—opened the door, whereupon Wilson, Bryant, Malik, and McCoy immediately "began assaulting Thomas's half-brother, Ronald McNeil." *Id.* When the four realized that Lo was not at the house, they forced Thomas to call her and tell her to come over. *Id.* Lo arrived "[a]bout twenty minutes later" with Mary Collein—the mother of Lo and Thomas—and Ronald McNeil's girlfriend, Trennell Alston. *Id.* Bryant took Lo upstairs, then returned "shoving money into his pockets." *Id.* The four then gathered Lo, Collein, Alston, Ronald McNeil, and Levanna Spearman—the "girlfriend of Thomas's nephew," who had also been in the house at the time—in the basement. *Id.* Wilson and Bryant forced Thomas back to his car at gunpoint yet again. *Id.* Wilson then sat in the car with Thomas, holding him at gunpoint, while Bryant returned to the Elmley House. *Id.*

While sitting in the car, Thomas heard gunshots from within the Elmley House. *Id.* Shortly thereafter, Malik, Bryant, and McCoy came out of the house—still armed—and got into Thomas's car. *Id.* As the car left the house for the McDonald's meetup with Collins, Bryant asked "[w]ho capped Lo." *Id.* McCoy stated that he had shot her. *Id.* The group arrived at the McDonald's and Collins arrived shortly thereafter. *Id.* "Upon seeing Thomas with Wilson, Collins ran into the McDonald's." *Id.* Bryant handed Wilson a gun, and Wilson chased after Collins. *Id.* Off-duty police officer Warren Brooks, who was working a second job as a security guard for the McDonald's, saw the armed Wilson

chasing Collins and fired his gun at Wilson.[2] *Id.* at 315-16. The shot missed and Wilson fled, dropping his gun. *Id.* at 316. Thomas, who had been searching Collins's car "at the behest of Bryant," threw an article of clothing over Bryant's head and ran into a nearby bar, where he told an employee what had happened. *Id.* The employee called the police, who arrived and "took Thomas away." *Id.*

Police investigators later arrived at the Elmley House, where they found Ronald McNeil still alive and "extremely emotional." *Id.* After McNeil became "combative," officers arrested him. *Id.* They searched the house and found the bodies of Lo, Jenkins, Spearman, and Alston in the basement. *Id.* They also found Collein's body in the kitchen. *Id.* "Subsequent autopsies showed that some of the women had been shot with a shotgun and some with a handgun." *Id.* "Police recovered ammunition, including spent cartridge cases, expended bullets, and live cartridges for a shotgun" at the Elmley House. *Id.* The police also searched the Gusryan House and found two boxes of ammunition, along with paperwork filled out by Malik, Wilson, and Bryant, in Malik's room. *Id.* On December 6, 1999, Malik was arrested "when he arrived at a house that police were searching." *Id.*

[2] The statement of facts in *Malik I* reports that Brooks saw Bryant, rather than Wilson, chasing Collins. It appears from context that this is a typo—Wilson was the one who chased Collins, and the opinion states that Brooks fired a shot at Wilson, not Bryant. *Malik I*, 152 Md. App. at 315-16.

The Trial

Malik's trial began on November 8, 2001.[3] *Id.* at 317. The court heard eyewitness testimony from Brenda Cleveland, who lived next door to the Gusryan House and had known both Malik and Wilson since they were "young boys." Cleveland testified that on December 5, the day of the murders, she "went outside to look at" Christmas lights she had put up with her daughter and "heard somebody say, 'Get in the house, Brenda, get in the house.'" She testified that the voice "sounded like" Wilson. When she turned around, she saw Wilson standing "at the tail end of" a car that "looked like the car that [Alvin Thomas]" drove. Cleveland testified that although she had previously told the police that she had seen "two heads in the back of the car," she actually remembered seeing "three heads in the back and one in the front." Cleveland further testified that she had seen Malik, Wilson, McCoy, and Bryant on the back porch of the Gusryan House on December 5 and had cooked dinner for Malik and Wilson earlier in the day.

Alvin Thomas gave eyewitness testimony that added detail to the events of December 5. Thomas recounted that after arriving at the Gusryan House, he was "shoved . . . down the steps" into a living room, held at gunpoint, and robbed by Malik, Wilson, Bryant, and McCoy. Thomas stated that Wilson then walked him out of the house and back to his car, holding a gun to the back of his head, while Malik, Bryant, and McCoy stood "on all sides of" him. Thomas testified that Cleveland was outside on her porch, and

[3] Wilson, McCoy, and Bryant were tried together in a separate proceeding. That trial is the subject of this Court's decision in *Wilson v. State*, 148 Md. App. 601 (2002).

that he "saw that [Malik] had – was saying something to her, and they told her to go back in the house." Thomas was then placed "into the back seat of the car," while Bryant sat in the driver's seat, Malik sat in the passenger seat, and McCoy and Wilson sat in the back with Thomas. Thomas further related that Malik, Wilson, Bryant, and McCoy were all armed during the drive over to the Elmley House, and that they planned to rob his sister, Lo, because they were "hungry."

Thomas then recounted the events that occurred at the Elmley House, culminating in the murders. Though he did not directly witness the murders, Thomas testified that Wilson had taken him to his car, which had been moved to the back door of the house, at gunpoint, and that Wilson had held the gun to his head and told him to "put [his] head down" once the two were in the car. "[S]econds later," he heard "four shots" from the kitchen of the house and then saw Bryant, Malik, and McCoy run from the kitchen out the back door. He testified that Bryant then got back in the driver's seat, Malik returned to the front passenger seat, and McCoy sat to his right in the back seat. At that time, Thomas recalled, Bryant was holding an "automatic . . . in his hand on the steering wheel, and [McCoy] . . . had a sawed-off shotgun, and [Malik] had a . . . small handgun, and [Wilson] had a long revolver." As already detailed, Thomas testified that Bryant had asked whether Malik or McCoy shot Lo, and McCoy had confirmed that he had.

Charles Peters, a forensic physical scientist for the FBI, gave expert testimony as a witness for the State. Peters explained the basics of CBLA methodology, testifying that "every time a melt of lead is produced it has its own distinct signature" of "trace elements"

of other substances, and that bullets made from the same melt of lead all share this distinct signature. Peters stated that he had performed "tens of thousands" of bullet lead analyses in his career and had testified as an expert on the subject at least 60 times. He testified that CBLA is used to "narrow[] down [] the population of all the other bullets that are out there" to match a bullet found at a crime scene to a particular box of ammunition. Peters further testified that he had tested three bullets recovered from the scene of the murders and found them all to be "analytically indistinguishable" from bullets in a box of .357 ammunition found at the Gusryan House. Peters also testified that two other bullets recovered from the scene of the murders were analytically indistinguishable from bullets in a box of .45 ammunition found at the Gusryan House, although the two bullets were distinguishable from each other.

Malik's Conviction and Sentencing

Malik was ultimately convicted of five counts of first-degree premeditated murder, five counts of first-degree felony murder, six counts of use of a handgun in the commission of a felony, five counts of conspiracy to murder, two counts of robbery with a deadly weapon, one count of kidnapping, and one count of conspiracy to kidnap. *Malik I*, 152 Md. App. at 334-35. In *Malik I*, we vacated Malik's convictions and sentences for first-degree premeditated murder and conspiracy to commit murder because we found that the circuit court erred in failing to instruct the jury on second-degree murder. *See id.* at 329-38. On remand, the circuit court imposed five consecutive sentences of life without parole for the felony murder convictions, six consecutive sentences of 20 years for use of a

handgun in the commission of a felony, a consecutive sentence of 30 years for kidnapping Alvin Thomas, a consecutive sentence of 30 years for conspiracy to kidnap Alvin Thomas, and a consecutive sentence of 20 years for robbery with a deadly weapon of Alvin Thomas.

The Debunking of CBLA

As this Court observed in *Ward*, questions about the reliability of CBLA methodology were raised as early as 1991. 221 Md. App. at 157. That year, at the "International Symposium on the Forensic Aspects of Trace Evidence," experts in CBLA expressed concerns that there were no "comprehensive stud[ies]" on how much variation there was in the elemental makeup of different melts of lead. *Id.* at 157-58 (quoting *Clemons*, 392 Md. at 368). The experts detailed these concerns in what is now known as the "Peele Report." *Id.* at 158. In *Ward*, a petitioner for writ of actual innocence challenged the use of CBLA at his trial based on two later studies, "both of which were more critical of the FBI's use of CBLA than the 1991 Peele Report had been." *Id.* at 159. The first of these studies—known as the "Randich Study" —was published in 2002, and demonstrated both that bullets could have the *same elemental makeup* despite coming from *different* melts of lead, and that bullets could have *different* elemental makeups despite coming from *the same melt* of lead. *Id.* The Randich Study therefore undermined CBLA's central premise: that one could "infer that bullets with indistinguishable compositions must have come from the same source of molten lead."

The second study cited by the petitioner in *Ward* was conducted in 2004 by the National Research Council ("NRC") at the request of the FBI. *Id.* Although the NRC

deemed CBLA reliable enough to support testimony that two bullets from the same melt of lead are more likely to be analytically indistinguishable from each other than two bullets from different melts of lead, there was "no generally reliably evidence that" two analytically indistinguishable bullets were any likelier to have come from "the same box" than two analytically *distinguishable* bullets. *Id.* at 160 (quoting *Kulbicki v. State*, 207 Md. App. 412, 439-40 (2012), *rev'd on other grounds*, 440 Md. 33 (2014)). In 2005, after the NRC's report was released, the FBI "announced that it would no longer use CBLA comparisons in criminal prosecutions." *Id.* at 161.

The following year, in *Clemons*, the Supreme Court of Maryland considered "whether certain conclusory aspects of [CBLA] are admissible under the standard" then in use for determining the admissibility of expert testimony.[4] 392 Md. at 343. After

[4] When the Supreme Court decided *Clemons*, Maryland assessed the admissibility of scientific expert testimony under the "*Frye-Reed* standard." Named for the cases in which it was first established (*Frye v. United States*, 293 F. 1013 (D.C. Cir. 1923)) and first adopted in Maryland (*Reed v. State*, 283 Md. 374 (1978)), the *Frye-Reed* standard assessed the reliability of a scientific opinion in terms of "whether the basis of that opinion is generally accepted as reliable within the expert's particular scientific field." *Clemons*, 392 Md. at 364 (quoting *Wilson v. State*, 370 Md. 191, 201 (2002)). In *Rochkind v. Stevenson*, 471 Md. 1 (2020), the Supreme Court abrogated the *Frye-Reed* standard, reasoning that "using acceptance as the only measure of reliability presents a conundrum: a generally accepted methodology may produce 'bad science' and be admitted, while a methodology not yet accepted may be excluded, even if it produces 'good science." *Id.* at 30. The Court then adopted the "*Daubert* standard," first announced by the Supreme Court of the United States in *Daubert v. Merrell Dow Pharms., Inc.*, 508 U.S. 579 (1993), and subsequently adopted by a "supermajority of jurisdictions." 471 Md. at 15. Under the *Daubert* standard—still the standard for assessing the admissibility of scientific expert testimony in Maryland today—courts assess "the reliability of the methodology used to reach a particular result" under Maryland Rule 5-702 by applying a flexible list of factors, including, but not limited to:

surveying the findings of the numerous studies conducted on the reliability of CBLA, including the Randich Study and NRC report, the Court opined that "[t]he only consensus that can be derived from all of this is that more studies must be conducted regarding the validity and reliability of CBLA" and concluded "that a genuine controversy exists within the relevant scientific community about the reliability and validity of CBLA." *Id.* at 371. The Court held that under these circumstances, CBLA was not admissible. *Id.* at 372.

Malik's First Petition for Writ of Actual Innocence

On June 15, 2010, over four years after the Supreme Court's decision in *Clemons*, Malik filed a Petition for Writ of Actual Innocence (the "First Petition") in the circuit court. Malik contended that "it has been newly discovered . . . that comparative bullet lead analysis (CBLA) testimony by [a] prosecution witness violates [the Supreme Court of Maryland's] standard for admission of scientific evidence." Malik stated that this evidence could not have been discovered in time for him to move for a new trial because the Supreme Court of Maryland's *Clemons* decision came out in 2006—years after his conviction and sentencing. Malik averred that *Clemons* applied retroactively to his case, entitling him to a new trial. He further argued that the admission of the CBLA testimony was not a harmless error because there was "no eye witness to the murders" in his case.

(1) whether a theory or technique can be (and has been) tested;
(2) whether a theory or technique has been subjected to peer review and publication;
(3) whether a particular scientific technique has a known or potential rate of error;
(4) the existence and maintenance of standards and controls; and
(5) whether a theory or technique is generally accepted.

Id. at 31, 35 (quoting *Daubert*, 509 U.S. at 593-94).

On August 19, 2010, the circuit court denied Malik's First Petition, finding that "the Petition fails to state a claim or assert grounds for which relief may be granted pursuant to Md. Ann. Code Criminal Procedure § 8-301(a)[.]"[5]

Malik's Second Petition for Writ of Actual Innocence

Petition and State's Response

On March 22, 2023, Malik filed his second Petition for Writ of Actual Innocence (the "Second Petition"), citing a May 27, 2008 letter from the FBI to the Baltimore City State's Attorney's Office (the "FBI letter") as "newly discovered evidence concerning the admission by [the FBI] . . . that the type of expert testimony central to the State's convictions concerning [CBLA] 'exceeds the limits of the science and cannot be supported by the FBI.'" Specifically, the FBI letter stated:

> Re: Case Name: Tariq Malik
>
> * * *
>
> Dear Sirs:
>
> This letter follows up on our previous communications regarding bullet lead analysis conducted by the FBI Laboratory. Thank you for providing the information requested from the above-referenced case.
>
> After reviewing the testimony of the FBI's examiner, it is the opinion of the Federal Bureau of Investigation Laboratory that the examiner stated or implied that the evidentiary specimen(s) could be associated to a single box of ammunition. This type of testimony exceeds the limits of the science and cannot be supported by the FBI.

[5] There is no indication in the record that Malik appealed the circuit court's denial of his First Petition, and Malik does not claim otherwise.

Malik asserted that the FBI letter "undoubtedly" speaks to his actual innocence, "because it casts serious doubt on the reliability of scientific evidence used against him, . . . eroding the factual premise upon which he was convicted." He emphasized that the FBI letter created a "substantial or significant possibility" of changing his trial's outcome because "[t]he ripple effect of the exclusion of the CBLA would have completely undercut" Thomas's trial testimony. Malik also claimed that he could not have discovered the FBI letter in time for him to move for a new trial because it "did not exist" at the time. Finally, Malik argued that the evidence in his Second Petition was distinct from that of his First Petition because the First Petition (1) did not address the FBI letter and (2) was dismissed on "procedural grounds," not on "the merits of the case."

The State filed a response to Malik's Second Petition on May 23, 2023, urging the circuit court to deny the petition without a hearing. Citing CP § 8-301(b)(5), the State argued that Malik's Second Petition failed to "distinguish the newly discovered evidence claimed from the newly discovered evidence described in the prior petition." Although Malik's First Petition did not "referenc[e] the 2008 FBI notification letter," the State asserted that the "crux of the instant petition's newly discovered evidence[,]" like that on which Malik's First Petition was based, "is that CBLA has been discredited and should be excluded." The State contended that the FBI letter is "merely cumulative of the newly discovered evidence in the First Petition." As "[b]oth petitions point to the same newly discovered evidence" and "assert the same challenge," the State argued, Malik's Second

Petition failed to meet the "statutory requirement" that the petitioner distinguish the evidence claimed to be newly discovered from the evidence described in any prior petition.

In the alternative, the State argued that the newly discovered evidence in Malik's Second Petition "does not impact [the] outcome of [his] trial at all due to the overwhelming evidence of guilt, especially for a felony murder conviction." Characterizing the CBLA evidence presented at Malik's trial as "cumulative in nature to the other evidence presented" and of "trivial weight," the State argued that excluding it would not have created "a substantial or significant possibility of a different result." The State highlighted Alvin Thomas's testimony that he knew Malik, that Malik had been present and armed throughout the events of December 5, 1999, that he had seen Malik, still armed, enter Elmley, and that he had also seen Malik, still armed, running out of the house immediately after gunshots went off in the kitchen. The State also highlighted "forensic evidence demonstrating that the murder victims had been shot with a shotgun and some with a handgun" and James Waxter's expert testimony matching discarded ammunition found at the scene to the gun recovered from the McDonald's parking lot and the boxes of ammunition found in Malik's room at the Gusryan House.

Taken together, the State argued, this evidence "establishes felony murder regardless of" whether the CBLA testimony is considered, and Thomas's testimony in particular provides "direct evidence of kidnapping, robbery with a deadly weapon, and use of a handgun in the commission of a felony." In summary, the State asserted that Malik's "alleged newly discovered evidence is not distinguished from prior petitions, does not

support his claim of actual innocence, and . . . does not create a substantial or significant possibility that the result would be different[.]" The State then urged the circuit court to deny Malik's Second Petition without a hearing.

Hearing on Malik's Second Petition

On August 22, 2023, the circuit court held a hearing on Malik's Second Petition. Malik's counsel argued that his guilt "rose and f[e]ll" with Alvin Thomas's credibility because Thomas's testimony was the only evidence that "placed [] Malik" at the Elmley House. Counsel again highlighted the discrepancy between Thomas's testimony that Malik had told Brenda Cleveland to go back inside her house and Cleveland's testimony that "the person she saw was [Ismail Wilson], not [Malik]." Characterizing Cleveland as the "only potential corroborating witness" to Thomas's account of the events, counsel asserted that her testimony contradicted, rather than corroborated, Thomas's story. Pointing out that the jury did not reach "a fast immediate verdict" on the issue of Malik's guilt, counsel hypothesized that this contradiction "gave the jury substantial pause and reservation," which was ultimately only overridden by evidence from "the FBI and the CBLA and all of this junk science." Malik's counsel also emphasized "other facts" that "show that [Malik] is very separate from" the other defendants in the murders. For example, according to counsel, Malik "was not with" the others when they got hotel rooms after the events and later "present[ed] himself" to police after being "slashed through the throat." Counsel asserted that Thomas may have "falsely implicat[ed]" Malik in the murders because his

brother, Ismail Wilson, had participated in the murders or because Adrian Jones—who Thomas had "indicated" that he was "dating to police"—lived in the same house as Malik.

The State countered that "even taking out the [CBLA]," Thomas's testimony was "very compelling." The State emphasized that the victims in the murders were Thomas's family members, which was "a motive for him to tell the truth, to seek justice for himself and for his family and not frame someone who had nothing to do with it." Furthermore, the State observed, Thomas's testimony "led to police recovering a gun," which Thomas was able to identify "in court without having a forensic expert called." Though Thomas "did not witness the actual killings," he testified that he saw Malik enter the house armed, knew the victims were in the house, heard gunshots, and "saw [Malik] still armed with the other co-[d]efendants coming out of the house." This testimony, the State argued, permitted the jury to draw the "obvious inference" that at least one of the armed people who entered the house "did the shooting." In fact, the State pointed out, a "forensic examiner" presented evidence that "multiple weapons were used" to kill the victims.

The State also emphasized that Malik's Second Petition was "the third time" he had based an actual innocence argument on the CBLA evidence admitted at his trial. Pointing to Malik's First Petition and to "a pro se petition for post-conviction relief" that was denied "in March of 2014," the State argued that Malik's Second Petition failed to "meet the statutory requirements in that this issue's been raised before."

Circuit Court Ruling

In a written ruling and order entered September 5, 2023, the circuit court denied Malik's Second Petition. The court characterized the newly discovered evidence put forth by Malik as "the post[-]appeal debunking of the . . . CBLA . . . introduced at [Malik]'s trial." Although the circuit court concluded that the State "d[id] not contest" that this evidence was newly discovered, it held that Malik's Second Petition was nevertheless "statutorily deficient" because Malik "failed to comply with" the requirement in CP § 8-301(b)(5) that a petition for writ of actual innocence "distinguish the newly discovered evidence claimed in the petition from any claims made in prior petitions."[6]

Despite this holding, the circuit court addressed the merits of Malik's petition. Quoting *Clemons v. State*, 392 Md. 339, 372 (2006), the circuit court observed that "[i]t is undisputed that [] CBLA evidence is inadmissible and 'not generally accepted by the scientific community.'" However, the court determined that "absent the CBLA evidence," the case against Malik was still "very strong." The court recounted Alvin Thomas's testimony implicating Malik in the murders, along with testimony from Adrian Jones and Brenda Cleveland corroborating Thomas's account of events. The court also dismissed Malik's contention that Cleveland's testimony conflicted with Thomas's and

[6] The circuit court also opined that "[t]he elements of *res judicata* have been met in this case and [Malik] should be barred from relitigating the same claims in another petition." The State argues that Malik's Second Petition is "barred by the doctrine of res judicata." We find no reported Maryland decisions in which the doctrine of res judicata has been applied to a petition for writ of actual innocence. Furthermore, we observe that the circuit court appears to assert that a hypothetical *future* petition based on the same evidence would be barred by that doctrine, not that the Second Petition is barred.

"exculpat[ed]" Malik, stating that it was unable to "find any testimony where Cleveland stated that [Malik] was not present" when she saw Wilson standing by Thomas's car and heard him tell her to go back inside. Furthermore, though Cleveland acknowledged telling the police she had seen two heads in the back seat of Thomas's car, the court credited her testimony at trial that she actually saw three heads in the back and one in the front. Additionally, "considering that any observations made were in the dark, for a short duration and under possibly stressful situations," the court gave little weight to the apparent inconsistency between Cleveland's recollection of who told her to go back inside her house and Thomas's recollection of the episode.

The court also observed that Thomas's account of the robbery and murders that took place at the Elmley House was corroborated "by . . . admissible ballistics evidence." Specifically, the court noted that the State's ballistics expert testified that four different firearms were used to kill the victims, which was consistent with Thomas's testimony that each of the perpetrators—Malik, Wilson, Bryant, and McCoy—was armed with a different type of gun. The same ballistics expert testified that ammunition found in a bedroom at the Gusryan House, where Malik lived, "were made from the same machine," were made by the same manufacturer, and were of the same caliber as some of the ammunition found at the scene of the murders. "[T]he testimony of another State's witness, a security guard, Warren Brooks, as well as physical evidence recovered at the crime scene," corroborated Thomas's account of the attempted robbery of Darnell Collins at McDonald's. The court observed that Brooks corroborated Thomas's testimony that Wilson chased Collins into the

McDonald's while wielding a handgun and witnessed "two unidentified men holding a third man on the ground" in the parking lot, consistent with Thomas's testimony that Bryant chased him down and tackled him outside the McDonald's, then pinned him to the ground while another man approached him. Furthermore, Thomas's testimony that Bryant dropped a gun in the parking lot while chasing him was corroborated when a revolver containing five spent shell casings was later recovered in that location.

Finally, the court detailed testimony concerning the aftermath of the murders from Melanie Russell, a neighbor of Adrian Jones and Malik, and Rochelle Dorsey, Bryant's girlfriend. Russell testified that Malik had called her "on the morning after the murders" and, upon discovering that Jones and her mother had been arrested, stated that he thought he should turn himself in. Dorsey testified that Malik had called her the day before the murders, and that he and Bryant had arranged to meet with her the next day. Dorsey stated further that at 10:00 p.m. the next day, after the murders had taken place, Bryant and Wilson came to her house and she booked a motel room for them. At the motel room, Dorsey said, Bryant and Wilson took out "a substantial amount of money" and handed her two rings. The following day, police arrested Dorsey and Wilson outside her house and later arrested Malik when he approached them with a "severe laceration to his neck."

Summarizing this evidence, the court opined that while "the State's case was certainly dependent on the credibility of Alvin Thomas," Thomas's testimony was "bolstered time and time again by multiple other witnesses as well as by physical and forensic evidence." Given the strength of the evidence against Malik, the court reasoned,

"the CBLA evidence added little to the State's case." The court emphasized that the case "hinged not on whether the murderers had a connection to Gusryan," where police discovered ammunition that the State's CBLA expert "match[ed]" to ammunition found at the scene of the murders, but on whether Malik "was in fact one of the murderers." Because it was "well established" by other evidence presented at trial that Malik was a participant in the murders, the court concluded that "the exclusion of the CBLA testimony" did not create "a substantial or significant possibility" of a different result.

Quoting *Faulkner v. State*, 468 Md. 418, 460 (2020), the court also concluded that Malik had failed to make "a threshold showing that he . . . may be actually innocent." As "the CBLA evidence had very little material probative value relative to the remaining evidence presented by the State," the court reasoned that its exclusion did not make it any more likely that Malik was innocent of the crimes of which he was convicted.

On September 19, 2023, Malik noted this appeal from the circuit court's denial of his Second Petition.

DISCUSSION

Parties' Contentions

Malik reiterates the argument he made in the circuit court that Alvin Thomas's "credibility . . . was substantially called into doubt," and the CBLA evidence introduced at trial was used to "overcome the core inconsistency of Thomas'[s] testimony." He asserts that the "cumulative impact of discrediting [the CBLA] testimony would have undermined confidence in other pieces of evidence at trial, especially Mr. Thomas's already

controverted testimony that purported to place [Malik] at . . . Elmley . . . before the murders occurred." Malik also details the intricacies of CBLA methodology and recounts the testimony provided by Charles Peters at his trial, arguing that he was convicted "[b]ased largely on" this testimony.

Malik contends it was not "logical and reasonable" for the circuit court to "look back at a trial [it] didn't participate in" and conclude that the CBLA evidence "had very little material probative value relative to the remaining evidence presented by the State[.]" He suggests, without citing to any evidence, that Thomas "feared that [Malik] might take offense that he (Thomas)" planned to testify against Wilson, and therefore falsely implicated Malik in the murders. Without "fingerprints, DNA, or other conclusive physical evidence placing [him] at the scene," Malik argues, the jury would not have convicted him had it "known that the State's FBI Expert was testifying falsely," given Thomas's past drug convictions and desire "to place some misguided distance and protection between him and [Malik]." In concluding otherwise, Malik contends, the circuit court improperly substituted its judgment for the judgment of the jury. Malik also argues that it was error for the court not to rule on his petition for writ of actual innocence "at the conclusion of the hearing." Citing Maryland Rule 4-332, Malik contends that the court was required to "state the reasons for its[] ruling on the record," and that it erred in instead issuing a written decision on a later date.

As a threshold matter, the State urges us to affirm the circuit court's decision on the grounds that Malik's petition "is barred by the doctrine of res judicata." The State argues

that "Malik's second petition is based on the same evidence as his first petition and presents the same basis (i.e., the discrediting of CBLA evidence) for concluding that the result of his trial would have been different." Relatedly, the State contends, "Malik did not explain . . . how the claims in this Petition differed from those he raised" in his First Petition, in which he "already raised *Clemons* and argued the scientific findings that attack CBLA evidence."

Even if we do reach the merits, the State continues, Malik's petition fails to "show the substantial possibility of a different outcome or that the evidence he produced 'speaks to' his actual innocence." The State details the evidence pointing towards Malik's guilt, which it argues "included far more than Thomas'[s] testimony, and the presence or absence of CBLA evidence would not have changed it." The State highlights the circuit court's finding that "Malik really did little or nothing to undercut" Thomas's credibility on the stand, and that his testimony "was bolstered *time and again* by multiple other witnesses as well as by physical and forensic evidence, *other than the CBLA*." Indeed, the State argues, Malik's petition "did nothing to show" that he did not commit the crimes of which he was convicted.

The State also argues that the circuit court was not required to issue a ruling on Malik's petition immediately after the August 22, 2023, characterizing Malik's argument to the contrary as "meritless." The State contends that Rule 4-332's "common-sense reading is . . . that [the court] has to *articulate* the reasons for its ruling when that ruling issues, such that the parties are provided with a rationale for the court's conclusions."

Finally, the State asserts that the circuit court did not apply "the wrong standard" or "substitute . . . [its] judgment for that of the jury" as Malik contends, but rather "correctly applied the 'substantial possibility' test and 'actual innocence' requirement that the law requires."

Standard of Review

We review a circuit court's denial of a petition for writ of actual innocence for an abuse of discretion. *Carver v. State*, 482 Md. 469, 485 (2022); *Ward v. State*, 221 Md. App. 146, 156 (2015). We accept the findings of fact of the circuit court, unless they are clearly erroneous. *Carver*, 482 Md. at 485. Further, we will only reverse a discretionary determination of the circuit court when it is "well removed from any center mark" we can imagine and "beyond the fringe" of what we consider "minimally acceptable." *Id.* (quoting *King v. State*, 407 Md. 682, 697 (2009)). However, we review "[w]hether the circuit court applied the correct standard in making its evaluation" of the merits of a petition for writ of actual innocence *de novo*. *Ward*, 221 Md. App. at 156. Indeed, the circuit court's failure to "exercise its discretion in accordance with correct legal standards" constitutes an abuse of discretion. *Faulkner v. State*, 468 Md. 418, 460-61 (2020).

Legal Framework

Under Maryland Code (2001, 2018 Repl. Vol.), Criminal Procedure Article ("CP") § 8-301(a), a person who is convicted of a crime as a result of a trial:

> [M]ay, 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 . . . creates a substantial or significant possibility that the result may have been different, as that

> standard has been judicially determined . . . and . . . could not have been discovered in time to move for a new trial under Maryland Rule 4-331.[7]

The petitioner carries the burden of proving every element of the actual innocence claim. *See* CP § 8-301(g) ("A petitioner in a proceeding under this section has the burden of proof."); *also* Rule 4-332(k) ("The petitioner has the burden of proof to establish a right to relief.").

Among other things, CP § 8-301(b) requires a petition for writ of actual innocence to "distinguish the newly discovered evidence claimed in the petition from any claims made in prior petitions." If a petitioner satisfies the requirements of CP § 8-301(b) and requests a hearing, the court must hold a hearing provided that the petition asserts grounds upon which relief may be granted. CP § 8-301(e).

Rule 4-332 further requires the petitioner to assert "that the conviction sought to be vacated is based on an offense that the petitioner did not commit[.]" Consequently, "relief under [CP] § 8-301 is limited to a petitioner who makes a threshold showing that he or she may be actually innocent, 'meaning he or she did not commit the crime.'" *Faulkner*, 468 Md. at 460 (quoting *Smallwood v. State*, 451 Md. 290, 323 (2017)); *see also Smith v. State*, 233 Md. App. 372, 410-11 (2017) (holding that petitioner must show "newly discovered evidence that supports a claim that the petitioner is innocent of the crime of which he or

[7] Maryland Rule 4-331 provides for the ordering of a new trial "[o]n motion of the defendant filed within ten days after a verdict . . . in the interest of justice" or based on "newly discovered evidence which could not have been discovered by due diligence" within ten days of a verdict "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" an appeal from the judgment.

she was convicted" in order to prevail under CP § 8-301). In *Smallwood*, the Supreme Court of Maryland recounted the legislative history of CP § 8-301 and acknowledged that the following types of evidence could support a finding of actual innocence:

> (1) a confession by another individual to having committed the crime; (2) acknowledgement by an eyewitness or other evidence indicating he was mistaken; (3) acknowledgement by an eyewitness or other evidence indicating that the witness intentionally lied; or (4) evidence casting serious doubt on the reliability of scientific evidence used against the defendant.

451 Md. at 319. Regardless of its type, the evidence put forth by the petitioner must "erode the factual premise" of the petitioner's conviction and "potentially exonerate" the petitioner to satisfy this requirement. *Carver*, 482 Md. at 493 (quoting *Smallwood*, 451 Md. at 319) (emphasis removed).

In demonstrating that the "newly discovered evidence" asserted in the petition "could not have been discovered in time to move for a new trial under Maryland Rule 4-331," the petitioner must show that the petitioner acted "reasonably and in good faith to obtain the evidence, in light of the totality of the circumstances and the facts known" by the petitioner at the time of trial. *Id.* at 489-90 (quoting *Hunt v. State*, 474 Md. 89, 108 (2021)) (emphasis removed).

Finally, whether evidence "creates a substantial or significant possibility that the result may have been different," CP § 8-301(a), is assessed by a reviewing court using "a materiality analysis." *Faulkner*, 468 Md. at 460. This analysis employs a standard that "falls between 'probable,' which is less demanding than 'beyond a reasonable doubt,' and 'might' which is less stringent than probable." *McGhie v. State*, 449 Md. 494, 510 (2016)

(internal quotation omitted). "[C]ourts evaluating the materiality of newly discovered evidence" must evaluate the cumulative impact of that evidence on "(1) any evidence admitted at trial; (2) any evidence available at the time of trial, including evidence both (a) offered but excluded and (b) not offered but available; and (3) the defendant's or defense counsel's trial strategy." *Carver*, 482 Md. at 492. A reviewing court must "look back to the trial that occurred" in determining whether a petitioner for writ of actual innocence has proved entitlement to relief. *McGhie*, 449 Md. at 511. "[T]he cumulative effect of newly discovered evidence, viewed in the context of the entire record, must undermine confidence in the verdict." *Carver*, 482 Md. at 490 (internal quotation marks removed).

Analysis

We hold that the circuit court did not abuse its discretion in denying Malik's Second Petition for Writ of Actual Innocence. Although the debunking of CBLA undoubtedly qualifies as "newly discovered evidence" under CP § 8-301, Malik has not distinguished the evidence in his Second Petition from the evidence presented in the First Petition. Furthermore, he has not demonstrated that he may actually be innocent of any of the crimes for which he was originally convicted or that the exclusion of CBLA evidence would have changed the result of his trial.

We first observe, as did the circuit court, that Malik has not adequately distinguished the evidence raised in his Second Petition from that raised in his First Petition as required

by CP § 8-301(b)(5).[8] Indeed, the debunking of CBLA forms the basis of both petitions. Although Malik emphasizes that he never mentioned the FBI's 2008 letter disavowing CBLA evidence in his First Petition, the FBI letter is simply an additional source of the same "newly discovered evidence" from that petition: the determination that CBLA methodology is not reliable or admissible in court. Since the *Clemons* decision in 2006, CBLA has been thoroughly discredited in the courts of this state. The FBI letter does not change that fact and did not tell the circuit court anything it did not already know. The circuit court did not err in concluding, on this basis, that Malik's Second Petition failed to meet the pleading requirements of CP § 8-301(b).

Looking beyond the pleading deficiency, we agree with the circuit court's determination that Malik's Second Petition also fails on the merits.[9] As an initial point, Malik has not made a threshold showing that he may be actually innocent. *Faulkner*, 468 Md. at 460. We acknowledge that the debunking of CBLA is clearly "evidence casting serious doubt on the reliability of scientific evidence used against the defendant[,]" which the *Smallwood* Court listed as among the forms of evidence that could support a finding of

[8] Before the circuit court, the State argued that Malik had also failed to distinguish the claims in his Second Petition from those asserted in "a pro se petition for post-conviction relief" that was denied "in March of 2014." In *Douglas v. State*, 423 Md. 156 (2011), the Supreme Court of Maryland clarified that the phrase "prior petitions" in CP § 8-301(b)(5) refers only to prior petitions under CP § 8-301, not to all postconviction actions. *See id.* at 184-85.

[9] The State did not contend that Malik could have discovered that CBLA was unreliable in time to move for a new trial under Rule 4-331. Accordingly, the circuit court treated the "post[-]appeal debunking" of CBLA as newly discovered evidence for purposes of its ruling.

actual innocence. 451 Md. at 319. Further, in a technical sense, the debunking of CBLA "erode[s] the factual premise" upon which Malik was convicted because it renders Peters's testimony against him inadmissible. *Carver*, 482 Md. at 493. Yet given the other facts adduced at trial, we are persuaded that the post-conviction debunking of CBLA would not exonerate Malik.

CBLA was principally used in Malik's case to show that ammunition found at the scene of the murders came from boxes of ammunition found at the Gusryan House. By that point, Alvin Thomas's testimony had already provided direct evidence of kidnapping, robbery with a deadly weapon, and use of a handgun in the commission of a felony. Thomas also testified that Malik had been participating in the robberies at the Elmley House and ran out immediately after four gunshots were fired, providing ample evidence to support the felony murder convictions. To sustain a conviction on a felony murder theory, the State need only prove that the defendant intentionally committed an underlying felony, and that "the intent to commit the underlying felony" existed "prior to or concurrent with [an] act causing the death of the victim." *Morris v. State*, 192 Md. App. 1, 34 (2010) (quoting *State v. Allen*, 387 Md. 389, 402 (2005)). "[A] conviction for felony murder requires no specific intent to kill." *Hamrick v. State*, 263 Md. App. 270, 303 (2024) (quoting *Bruce v. State*, 317 Md. 642, 646 (1989)). Accordingly, the State did not need to prove that Malik ever fired any of the bullets found at the scene of the murders, or that he intended to kill any of the victims. It simply had to prove that Malik intended to commit a qualifying underlying felony—here, robbery—and that the victims died in the course of

that robbery. There was ample evidence adduced at trial to support that conclusion through Thomas's testimony. The CBLA evidence neither contradicts that testimony nor shows that the victims did not die in the course of a robbery in which Malik participated.

We agree with the circuit court that exclusion of the CBLA evidence would not have made Thomas's testimony any less persuasive, notwithstanding Malik's speculative contention that the jury would have found Thomas less credible had it discovered that Peters's methodology was faulty. Simply put, Malik has not presented evidence showing that he did not commit any of the crimes of which he was convicted. *Faulkner*, 468 Md. at 460.

For the same reason, the circuit court did not abuse its discretion in concluding that exclusion of the CBLA testimony does not create a substantial or significant possibility that the result of Malik's trial would have been different. The court correctly identified and applied the materiality analysis presented in *McGhie*, and thoroughly considered the record through the lens of "the trial that occurred." 449 Md. at 511. Again, we agree with the court that Alvin Thomas's testimony is not placed in doubt by the removal of the CBLA evidence. We also agree that Thomas's credibility was not, as Malik argues, called into question by Brenda Cleveland's testimony. Although Cleveland disagreed with Thomas about the identity of the individual who told her to return to her house, she never affirmatively testified that Malik was not present at the Gusryan House on December 5,

and most of her testimony corroborated Thomas's testimony.[10]

Moreover, Cleveland was not the only witness to corroborate Thomas's account. As the circuit court mentioned, Thomas's testimony concerning the attempted robbery of Darnell Collins was substantially corroborated by both the testimony given by Warren Brooks and physical evidence recovered during the subsequent police investigation. Other evidence from the crime scene further corroborated Thomas's account of the murders—Thomas testified that the four perpetrators were each armed with a different weapon, and a non-CBLA expert for the State testified that four different kinds of ammunition were found at the scene of the murders. The "cumulative impact" of excluding the CBLA testimony would have been minimal as the jury still had ample basis upon which to convict Malik. *Carver*, 482 Md. at 492. Thus, we agree with the circuit court that exclusion of the CBLA testimony does not "undermine confidence in the verdict" in this case. *Id.* at 490.

We briefly address two further arguments advanced by Malik in his brief. Malik contends that the circuit court abused its discretion by "look[ing] back at a trial [the court] didn't participate in" and assessing the weight placed by the jury on the CBLA testimony relative to the remainder of the State's case. Yet the materiality analysis requires the court to "look back to the trial that occurred" and determine whether newly discovered evidence would have changed jurors' minds. *McGhie*, 449 Md. at 511. Far from abusing his discretion, the circuit court judge in this case properly considered Malik's Second Petition

[10] Furthermore, as already noted, Cleveland contradicted herself numerous times during her testimony and made these identifications at night, from a distance.

under CP § 8-301 and the relevant case law. He then concluded that the case against Malik remained strong without the CBLA testimony, and accordingly, that the removal of that testimony would likely not have changed jurors' minds about whether Malik committed the crimes for which he was convicted. Examining the judge's thorough and well-reasoned written opinion and the record in this case, we cannot say that his decision was "well removed from any center mark" or "beyond the fringe" of what is "minimally acceptable." *Carver*, 482 Md. at 485.

Malik also contends that the court was required to rule on his Second Petition "at the conclusion of the hearing" it held on August 22, 2023. But as the State points out, under Rule 4-332(j)(1), the court is not required to even *hold* a hearing on a petition unless "the petition substantially complies with" certain requirements set out in Rule 4-332(d). It is obviously impossible for the court to rule at the conclusion of a hearing it did not hold. Moreover, Malik fails to cite any cases supporting his interpretation of Rule 4-332. To the contrary, circuit courts routinely issue written decisions on petition for writs of actual innocence well after holding a hearing on them. *See, e.g.*, *Smith v. State*, 233 Md. App. 372, 392, 408 (2017); *Carver*, 482 Md. at 482, 483.

In sum, although we have previously recognized that the debunking of CBLA constitutes the kind of "newly discovered evidence" contemplated by CP § 8-301, the use of CBLA in Malik's case does not entitle him to a new trial. As a threshold matter, Malik failed to distinguish the newly discovered evidence relied on in his Second Petition from that of his First Petition, as required under CP § 8-301(b)(5). Reaching the merits, we

discern no abuse of discretion by the circuit court in evaluating Malik's Second Petition. The court's written decision thoroughly considered the petition using the appropriate legal standards and did not include any clearly erroneous factual findings. Accordingly, we affirm.

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