

21-7280

ORIGINAL

No. \_\_\_\_\_

FILED

FEB 16 2022

OFFICE OF THE CLERK  
SUPREME COURT, U.S.

IN THE

SUPREME COURT OF THE UNITED STATES

Sammie Carroll — PETITIONER  
(Your Name)

vs.

Jer Welter AAG. — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

Court of Appeals of Maryland  
(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

Sammie Carroll #476062  
(Your Name)

14100 McMullen Hwy S.W.  
(Address)

Cumberland, MD, 21502  
(City, State, Zip Code)

(410) 533-2040  
(Phone Number)

QUESTION(S) PRESENTED

- 1) Did the Court of Special Appeals of Maryland err in ruling that the evidence adduced at trial was sufficient to sustain a conviction?
- 2) Did the Court of Special Appeals of Maryland err in ruling the admittance of contents of two different jail calls the Appellant had following his arrest was proper?

## LIST OF PARTIES

All parties appear in the caption of the case on the cover page.

All parties **do not** appear in the caption of the case on the cover page. A list of all parties to the proceeding in the court whose judgment is the subject of this petition is as follows:

TABLE OF AUTHORITIES CITED

CASES	PAGE NUMBER
Jackson v. Virginia, 443 U.S. 307 (1979)	14
Wilson v. State, 319 Md. 530, 535 (1990)	14
West v. State, 312 Md. 197, 207 (1988)	14
Taylor v. State, 346 Md. 452, 458 (1997)	14
Schmitt v. State, 140 Md. App. 1, 30 (2001)	14
Spencer v. State, 1 Md. App. 264 at 268	15
Ware v. State, 360 Md. 650, 708-09 (2000); cert. denied, 531 U.S. 1115 (2001)	16
Thomas v. State, 372 Md. 342, 351 (2002)	17
Simms, 420 Md. at 731	17
Bedford v. State, 317 Md. 659, 668 (1989)	17
Snyder, 361 Md. at 596	17
Dorsey v. State, 276 Md. 638, 659 (1976)	18

STATUTES AND RULES

Md. Rule 5-401. Definition of "Relevant Evidence"

Md. Rule 5-402. Relevant Evidence Generally Admissible; Irrelevant Evidence  
Inadmissible

Md. Rule 5-403. Exclusion of Relevant Evidence on grounds of prejudice, confusion or  
waste of time

OTHER

## TABLE OF CONTENTS

OPINIONS BELOW .....	1
JURISDICTION.....	2
CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED.....	3
STATEMENT OF THE CASE.....	4
REASONS FOR GRANTING THE WRIT.....	14
CONCLUSION.....	19

## INDEX TO APPENDICES

### APPENDIX A

**Decision of Court of Appeals (unreported)**

### APPENDIX B

**Decision of Court of Appeals (Writ of Certiorari)**

### APPENDIX C

**Decision of State Trial Court (Motion for new trial)**

IN THE  
SUPREME COURT OF THE UNITED STATES  
PETITION FOR WRIT OF CERTIORARI

Petitioner respectfully prays that a writ of certiorari issue to review the judgment below.

OPINIONS BELOW

For cases from **federal courts**:

The opinion of the United States court of appeals appears at Appendix \_\_\_\_\_ to the petition and is

reported at \_\_\_\_\_; or,  
 has been designated for publication but is not yet reported; or,  
 is unpublished.

The opinion of the United States district court appears at Appendix \_\_\_\_\_ to the petition and is

reported at \_\_\_\_\_; or,  
 has been designated for publication but is not yet reported; or,  
 is unpublished.

For cases from **state courts**:

The opinion of the highest state court to review the merits appears at Appendix A to the petition and is

reported at \_\_\_\_\_; or,  
 has been designated for publication but is not yet reported; or,  
 is unpublished.

The opinion of the Baltimore City Circuit court appears at Appendix C to the petition and is

reported at \_\_\_\_\_; or,  
 has been designated for publication but is not yet reported; or,  
 is unpublished.

## JURISDICTION

### For cases from federal courts:

The date on which the United States Court of Appeals decided my case was \_\_\_\_\_

No petition for rehearing was timely filed in my case.

A timely petition for rehearing was denied by the United States Court of Appeals on the following date: \_\_\_\_\_, and a copy of the order denying rehearing appears at Appendix \_\_\_\_\_.

An extension of time to file the petition for a writ of certiorari was granted to and including \_\_\_\_\_ (date) on \_\_\_\_\_ (date) in Application No. \_\_\_ A \_\_\_\_\_.

The jurisdiction of this Court is invoked under 28 U. S. C. §1254(1).

### For cases from state courts:

The date on which the highest state court decided my case was July 27, 2021.  
A copy of that decision appears at Appendix A.

A timely petition for rehearing was thereafter denied on the following date: November, 22, 2021, and a copy of the order denying rehearing appears at Appendix B.

An extension of time to file the petition for a writ of certiorari was granted to and including \_\_\_\_\_ (date) on \_\_\_\_\_ (date) in Application No. \_\_\_ A \_\_\_\_\_.

The jurisdiction of this Court is invoked under 28 U. S. C. §1257(a).

## CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

### Md. Rule 5-401. Definition of "Relevant Evidence"

"Relevant Evidence" means having any 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 5-402. Relevant Evidence Generally

#### Admissible; Irrelevant Evidence Inadmissible.

Except as otherwise provided by constitutions, statutes, or those rules, or by decisional law not inconsistent with these rules, all relevant evidence is admissible. Evidence that is not relevant is not admissible.

### Md. Rule 5-403. Exclusion of Relevant Evidence on Grounds

#### of Prejudice, Confusion or Waste of Time.

Although relevant, evidence may be excluded if it's probative value is substantially outweighed by the danger of unfair prejudice, confusion of the issues, or misleading the jury, or by considerations of undue delay, waste of time, or needless presentation of cumulative evidence.

## STATEMENT OF FACTS<sup>1</sup>

Toby Robinson had known Appellant for approximately two years. (T4. 75). Mr. Robinson knew Appellant from cutting his hair and because Appellant had sold marijuana for him. (T4.75-76) About six months before the incident on February 19, 2018. Mr. Robinson's relationship with Appellant came to an end because Appellant owed Mr. Robinson \$1,400. (T4.76, 81).

On February 19, 2018. Mr. Robinson was at the Laundry City on Moravia Boulevard. (T4. 76-77). After putting his clothes in the washing machine, Mr. Robinson realized that Appellant was also in the laundromat putting clothes in a washing machine.(T4. 78). Mr. Robinson approached Appellant to ask Appellant what was going on with the money that Appellant owed to him. (T4. 78-82). Appellant told Mr. Robinson that he was going to pay Mr. Robinson some of the money and confronted Mr. Robinson with some information that Appellant had heard. (T4. 82). Mr. Robinson denied what Appellant was saying and, according to Mr. Robinson, Appellant "blew up." (T4. 82). Mr. Robinson walked away from Appellant and Appellant followed Mr. Robinson outside of the laundromat. (T4. 82-83). Appellant followed Mr. Robinson to his black Lexus and threatened to

---

<sup>1</sup> Transcript references are as follows:

"T1" - morning session of transcript dated July 15, 2019,

"T2" - afternoon session of transcript dated July 15, 2019,

"T3" - transcript dated July 16, 2019,

"T4" - transcript dated July 17, 2019,

"T5" - transcript dated July 18, 2019,

"T6" - transcript dated July 19, 2019, and

"S" - transcript dated September 27, 2019.

beat up Mr. Robinson. (T4. 77, 82-84). Mr. Robinson offered to go around the corner with Appellant, but Appellant would not do that. (T4. 84-85). Mr. Robinson got into his vehicle and as he drove off, Appellant tried to grab the door of the car. (T4. 85-86). Mr. Robinson drove away, leaving his clothes in the washing machine of the laundromat. (T4. 86-87).

Mr. Robinson continued to explain that he owned a barbershop at 3219 Eastern Avenue in a building that was owned by Andreas Tamaris. (T4. 87-88). Normally, Mr. Robinson did not work on Mondays, however, Kenyen Southers, (T3. 80-83), who Mr. Robinson knew as KK, had called Mr. Robinson to schedule a haircut. (T4. 89-93). Mr. Robinson drove from the laundromat to Lexington Market where he met Mr. Southers. (T3. 83-85; T4. 92-93). The two men then drove to the barber shop and arrived at the same time. (T3. 83-86; T4. 93-94). They entered the barbershop and went upstairs to where Mr. Robinson's station was located. (T3. 86). Mr. Robinson immediately started to cut Mr. Southers hair. (T3. 87). While Mr. Robinson was cutting Mr. Southers's hair, Mr. Tamaris entered the barbershop and Mr. Robinson said that he would be able to cut his hair. (T4. 94-95). Mr. Tamaris had a seat on the left hand side of the barbershop where all of the waiting seats were located. (T3. 87-89; T4. 96-98).

Mr. Robinson explained that the barbershop had a security system that operated so that when the door to the shop was opened, the alarm would chime and say "Front door open."(T4. 100, 104). While Mr. Robinson was cutting Mr. Southers hair, the door chimed. (T3. 94: T4.104). Mr. Robinson and Mr. Southers

both saw two masked men enter the barbershop. (T3. 94; T4. 104). One of the masked men carried a shotgun and the other masked carried a handgun. (T3. 94-95; T4. 105). Neither of the masked men said anything as they moved towards Mr. Robinson, Mr. Tamaris, and Mr. Southers (T3. 95; T4. 105. Mr. Robinson had a gun him, so he took off the safety and put a bullet in the chamber of the gun. (T4. 105). Mr. Robinson pushed Mr. Southers out of the way and Mr. Souther moved against the left wall of the barbershop and got underneath of the chairs. (T3. 95; T4. 106-07). Mr. Tamaris jumped out of his chair and put his hands in the air. (T4. 107). The masked man who had the shotgun shot Mr. Tamaris. (T4.107). Mr. Robinson then fired his gun at the masked men. (T4. 109). The second masked man with the handgun was shooting his weapon. (T4. 109). Mr. Robinson testified that the men were shooting at every one, so Mr. Robinson did not know who the masked men were actually shooting at. (T4. 109). Mr. Robinson continued to return fire with his weapon as he headed towards the bathroom. (T4. 109). The masked man with the shotgun followed him. (T4. 109). After Mr. Robinson entered the bathroom, the shooting stopped. (T4. 110).

While Mr. Robinson was retreating to the bathroom, Mr. Southers saw the feet of the masked men move past the chair he was hiding underneath. (T3. 97). Mr. Southers knew he had to take a chance, so he got up, saw that Mr. Tamaris had been shot, and ran out the door of the barbershop. (T3. 97-98). Mr. Southers went to his car and saw people leaving the barbershop.(T3. 98-99). Mr. Southers did not pay attention to which direction the men went.(T3. 98-100). While in his

car, Mr. Southers realized that the index finger on his right hand was bleeding badly. (T3. 100-01). Mr. Southers drove himself to Patient First and learned that the tissue was torn off his finger and the artery in his finger had been damaged (T3. 101-02). Two police officers came to Patient First and took Mr. Southers to the police station, where he spoke to a detective. (T3. 102). While he was at the police station, Mr. Southers saw Mr. Robinson. (T3.104).

When Mr. Robinson exited the bathroom at the barbershop after the shooting stopped, he saw that Mr. Tamaris was on the floor, and everyone else had left. (T4. 111-12). Mr. Robinson went to check on Mr. Tamaris, who was not responsive. (T4. 117). Mr. Robinson called 9-1-1. (T4. 117). Mr. Robinson then gathered up his gun shells and flushed them down the toilet. (T4. 118). Mr. Robinson gave the gun that he had used to another barber who had been in a different part of the barbershop during the incident. (T4. 119). Mr. Robinson had not wanted to tell the police anything about the incident because he was a convicted felon. (T4. 120). When the police arrived, he was taken to the police station for questioning and was ultimately arrested for marijuana that had been in the basement of the barbershop. (T4. 120-21). Mr. Robinson was released the next day , at which time he returned to the barbershop. (T4. 122-23).

In the first statements that Mr. Robinson made to the police, has not provided them with information about the shooters or many details.(T4. 120, 125). However, since Mr. Tamaris had been killed. Mr. Robinson felt like he needed to do the right thing. (T4. 126). Mr. Robinson testified that he had recognized the

masked man with the shotgun as Appellant. (T4. 112). While acknowledging that the shooter wore all black and a mask that did not expose any of the face. Mr. Robinson recognized the eyes, the size of the man, and the way the man walked. (T4. 112-15).

On February 19, 2018, Detective Andrea Parker was dispatched to Johns Hopkins Hospital at 5:36 p.m. for a walk-in shooting victim (T3. 211-13, 216-17). When Detective Parker arrived, a patrol officer and hospital security were standing by a vehicle that was parked at the main entrance. (T3. 213). The vehicle was a blue Hyundai Tucson and the driver of the vehicle, Wade Taylor, was standing with the officer. (T3. 213). Detective Parker learned from the patrol officer that he was there to see Sammie Carroll who was in surgery at that time. (T3. 217).

Detective Parker spoke to the driver of the vehicle that drove Appellant to the hospital and tried to gather information about where the shooting had occurred. (T3. 217). Based on the information obtained from Mr. Taylor, Detective Parker went to the area of Ensor and Eager Street to look for evidence of a shooting or anyone who might have heard gunshots. (T3. 217-18). Detective Parker learned that there had not been any calls for shots fired in that particular area and it was too dark out to be effective in looking for evidence. (T3. 218-19). Detective Parker reviewed the surveillance cameras for that area and notices a vehicle on the video that looked similar to the vehicle that was at the hospital. (T3. 219-227). Detective Parker noticed that the vehicle was coming from eastbound off of Eager Street and turned onto Ensor. (T3. 227). Detective Parker observed that there was an individual beside the vehicle and there was another individual in the middle of 3 other individuals who were walking towards the car. (T3. 231). Detective Parker noticed a gathering around the minivan and the doors of the minivan were open. (T3. 235). Detective Parker was able to see people walk from the van towards the parked vehicle where a

man was standing by the driver's side. (T3. 235).

The Hyundai SUV that had been at the hospital was towed to the police station. (T3. 236). A search of the vehicle was done by consent of the driver. (T3. 237). On the passenger seat, there was a greenish, grey and white, flannel shirt on the seat. (T3. 238). There were red stains on the shirt and there were red stains on the seat. (T3. 238-39).

On February 20, 2018, Detective Parker spoke to Appellant at the hospital. (T3. 236, 242). Detective Parker learned that Appellant had a gunshot wound to the lower right leg and a gunshot wound to the left abdomen. (T3. 242-43). At that time, Detective Parker learned from Appellant that Appellant had been on Eager Street and was going to the store. (T3. 249-251). Appellant said that he heard the first shot and felt the impact in his hip. (T3. 249). Appellant took off running and went up to Abbott Court. (T3. 249). Appellant told people that they needed to call an ambulance. (T3. 249). Appellant flagged down a "hack." (T3. 250). Appellant started to panic, thought he was going to die, and started throwing up in the car that was taking him to the hospital. (T3. 250). Appellant told detective that he never saw where the shots had come from. (T3. 260).

With this information, Detective Parker went to the corner store at Greenmount and Eager Street. (T3. 262). The store had surveillance for the interior and the exterior of the store. (T3. 262). There was no evidence that Appellant had been in the store. (T3. 262). Detective Parker also walked the path that Appellant said that he had been on and did not see any evidence of a shooting. (T3. 263).

On February 21, 2018, Detective Parker was contracted by homicide and his investigation merged with a homicide investigation that was being conducted by Detective Ray Hunter. (T3. 263-66).

Dr. Ling Li, an Assistant Medical Examiner for the State of Maryland, was admitted as an expert in the field of forensic pathology. (T4. 23-25). Dr Li testified that on February 20, 2018, an autopsy was performed on Andreas Tamaris. (T4. 26). Dr. Li observed that there was a gunshot wound to the body. (T4. 27). The entrance wound of the shotgun projectile was on the outside of the left arm. (T4. 29). The projectile entered the arm and traveled from left to right, went through to the left arm and fractured the left humerus. (T4. 29). The wound was huge. (T4. 29). The arm of Mr. Tamaris must have been close to the chest because the injury pushed the arm against the chest, which caused which caused the bruising of the sub-tissue of the chest. (T4. 31). The projectile re-entered the chest cavity and injured the left lung and traveled from left to right all the way through the entire heart. (T4. 31). The heart was fully ruptured from the projectile. (T4. 31). The

projectile traveled further to the right side of the chest where there was a big slug and some wadding material. (T4. 31).

Dr. Li testified that the cause of death was a shotgun wound of the left arm and chest. (T4. 34). The manner of death of Mr. Tamaris was homicide. (T4. 34).

Technician Rachel Hare, a crime laboratory technician with the Baltimore City Police Department, testified that she was dispatched to the 2300 block of Eastern Avenue on February 19, 2018. (T3. 128-130). After a search warrant had been obtained, Technician Hare and Detective Hunter walked through the scene to discuss what needed to be collected. (T3. 132-33). Technician Hare then collected a roller bag that was at the entrance of the barbershop. (T3. 53, 140). Inside of the roller bag was a chess kit and a white t-shirt. (T3. 140). Technician Hare swabbed suspect blood on the floor. (T3. 138). A live shotgun shell was recovered from another blue bag and the shell was stamped as a 12-gauge. (T3. 141-42). There was suspected blood on the banister going up to the second level of the barbershop. (T3. 143). Additional Shotgun shell were recovered. (T3. 145-150). Technician Hare saw suspected firearms damage in the drywall, to the floor, and to the rear wall. (T3. 145, 151, 153, 155).

Suzanne Gray, a forensic scientist II, was admitted as an expert in forensic biology and DNA analysis. (T4. 36-38). Ms. Gray analyzed the swabs from the handles and zippers of the roller bag and found that they yielded a DNA profile that was consistent with an indeterminate mixture of at least five contributors. (T4. 43-44). The Sample from the t-shirt was consistent with a major male contributor

and at least two minor contributors. (T4. 45). Mr. Tamaris and Mr. Southers were excluded as possible contributors, while Appellant could not be included or excluded. (T4. 45-46). Ms. Gray found that Mr. Southers was the source of the profile for the blood swabs on the interior of the front door. Mr. Southers was the source of the major profile from the second blood sample on the railing, and Mr. Tamaris was the source of the blood on the floor. (T4. 46-47). Swabs that were collected from the flannel jacket were compared to the known DNA standard of Appellant. (T4.48). The results showed that there was a mixture of at least four people, from which TrueAllel found that Appellant matched a genotype. (T4. 48-49).

Detective Raymond Hunter explained to the jury that he spoke to Mr. Robinson on February 21, 2018, when Mr. Robinson called to retrieve his car. (T4. 250). Detective Hunter had already been briefed on Mr. Robinson's first interview that had taken place with Detective Jones. (T4. 250). On February 21, 2018, Mr. Robinson identified Appellant in a photo array as the person he had an argument with at the Laundry City Laundromat but classified it as not that serious, no big deal. (T5. 13, T4. 155-56). Mr. Robinson, however, did not go on the record about Appellant's role in the incident until June 6, 2018, after Mr. Robinson was offered a letter of immunity. (T5. 20-21).

After Appellant had been arrested, Detective Hunter and other officers listened to Appellant's jail calls. (T5. 21). A call from March 15, 2019, was played, in which Appellant was talking about the fact that the police had a video of him and that he did not have anything to do with it. (T5. 24; R. State's Exhibit 43A). Appellant was also heard saying that "he saying he shot me." (T5. 24; R. State's Exhibit 43A).

Over defense objection, a call from March 26, 2019, was playing, in which Appellant was asking if the person had received his mail with the charge statement he had highlighted. (T5. 24-25). Appellant continued to tell the other person on the phone that the person needed to use case search and talked about the person who was "singing like a ... canary." (T5. 25-27).

After hearing this and other evidence, the jury found Appellant guilty of First degree Murder of Mr. Tamaris, Second-degree Murder of Mr. Tamaris, Use of a Firearm in the commission of a crime of violence, possession of a shotgun by a prohibited person, Attempted First degree Murder of Mr. Robinson, First degree Assault of Mr. Robinson, and Conspiracy to murder Mr. Robinson. (T6. 9-12). Appellant was found Not guilty of Attempted First degree Murder of Mr. Southers, Attempted Second degree Murder of Mr. Southers, First degree Assault of Mr. Southers, Conspiracy to murder Mr. Tamaris and Conspiracy to Murder Mr. Southers. (T6. 9-12).

REASONS FOR GRANTING THE PETITION

I. THE EVIDENCE WAS LEGALLY INSUFFICIENT  
TO SUPPORT APPELLANT'S CONVICTION

At trial, defense counsel argued that the State failed to show that the Appellant has had been identified as the shooter (T5 90-92, 97). The trial court denied the defense's motion. (T5 97-98). That denial was in error and reversal is required.

Where the evidence presented at trial is insufficient to sustain a defendant's conviction, that conviction must be reversed on appeal. Jackson v. Virginia, 443 U.S. 307 (1979). The proper standard of review for sufficiency of the evidence is "whether after considering the evidence in light most favorable to the prosecution, any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt." Wilson v. State, 319 Md. 530, 535 (1990), quoting West v. State, 312 Md. 197, 207 (1988). While a conviction can rest on circumstantial evidence alone, a conviction "cannot be sustained on proof amounting to strong suspicion or mere probability." Taylor v. State, 346 Md./ 452, 458 (1997).

The Appellant asks this court to recognize that there are several deficiencies in the prosecution's proof of identity.

In a criminal agency beyond a reasonable doubt. Schmitt v. State, 140 Md. App 1, 30 (2001). Here, there was no doubt that Mr. Tamaris was shot and killed and Mr. Robinson shot at two masked individuals who had entered his barbershop. However, the prosecution failed to prove beyond a reasonable doubt that the Appellant was one of the masked men who entered the barbershop or that the Appellant was the shooter wielding the shotgun.

First, the testimony of Mr. Robinson and Mr. Suthers established that both of the individuals who entered the barbershop were masked. (T3. 94; T4. 104. Mr. Robinson specifically stated the individual with the shotgun had on "black and a mask." (T4. 114). Mr. Suthers gave a general description (T3. 106-08). Mr. Robinson also, in a general description, stated

"two men who wore all black clothing." (T4.106, 160-61).

Second, the clothing recovered from the Appellant at the hospital did not match the description of the clothing that both witnesses stated the shooters wore. Mr. Suthers' description given to the police, gray hoodie underneath a black jacket. (T4.157). Appellant, however, did not have anything black in his possession at the hospital. (T3.268). Detective Parker recovered a white shirt, white socks, a gray shirt, white undershirt, gray tennis shoes and gray sweatpants. (T3.268). Also recovered from the vehicle that transported Appellant to the hospital was a green, gray and white flannel shirt on the passenger seat. (T3. 238). The State presented video evidence showing an individual immediately before and after the shooting wearing a green, gray and white flannel jacket pulling a rollerbag, that was recovered at the barbershop. (T4. 228-49)(T3. 53,140). As evidence that was clearly contradictory to both State witnesses testimony of the individuals responsible for the incident. Mere presence at the scene without any proof of the crime is not sufficient to find the Appellant guilty. Spencer v. State, 1 Md. App. 264 at 268.

Third, police officers conducted a search of the barbershop but they did not find any weapons or evidence that linked the Appellant to the crime. There was no biological or forensic evidence, such as blood, DNA or fingerprints linking Appellant to the barbershop. (T4. 36-50, T5. 59-60).

Fourth, Mr. Robinson did not implicate Appellant in the shooting incident at the barbershop when he initially spoke to the police on February 19 and 20, 2018. (T5. 33-34). Mr. Robinson later only stated that he had an interaction with the Appellant earlier at Laundry City the morning of February 19, 2018, but classified it in the signed photo array as "nothing serious." (Defense ex. No.3). Mr. Robinson did not identify the Appellant as the shooter on record until after he was given approximately twenty thousand dollars (\$20,000) in witness benefits and immunity from prosecution for any role he played in the incident. He went on record on June 6, 2018, when he signed the deal, the agreement had been drawn up since April 16, 2018. (T5. 48-49).

Finally, Appellant provided an explanation as to how he received his gunshot wounds that led to his hospitalization. (T3. 246-261). Appellant

voluntarily spoke with Detective Parker while he was in the hospital and told Detective Parker that he was shot while near Eager Street. (T3. 242-261).

For reasons set forth above, each of the Appellants convictions must be reversed. Re-trial is prohibited. See Ware v. State, 360 Md. 650, 708-09 (2000); Cert. denied, 531 U.S. 1115 (2001)(re-trial is barred when the reversal on appeal is based on insufficiency of evidence).

II. THE TRIAL COURT ERRED IN ADMITTING THE  
CONTENTS OF THE APPELLANT'S RECORDED JAIL  
CALL THAT WAS MADE ON MARCH 26, 2018.

During trial, Appellant moved to preclude the State from introducing the contents of a recorded phone call that the Appellant had made from jail on March 26, 2018, at 6:52pm. (T4. 6-22). Subject to a renewed objection, the recording of the jail call was ultimately admitted as State's exhibit 43A. (T5.22, 24-28; R exhibits envelope).

In the jail call, Appellant was heard to ask the person that he called whether they have received the mail with the charging statement that he had highlighted, that he needed the person he called to look on through Case Search, and that person was "singing like a ...Canary." (T3.7-14). Defense counsel argued that when the call was made by Appellant on March 26, 2018, Appellant had been charged with two separate offenses - Domestic Violence and the Murder charges at issue in the instant case. (T3.14).

The charging papers for the Domestic Violence case listed who the witnesses were, while the charging papers for the Murder case did not specify who the witnesses were. (T3.14). Therefore, when Appellant told the person to look at the charge papers to find out who had implicated him, Appellant could not possibly have been referring to the instant case. (T3.16). Defense counsel argued that it was not clear what charge papers were being referred to, there was a reasonable alternative explanation than consciousness of guilt for the instant case, and the jail call would be unduly prejudicial. (T3.17).

The trial court ruled that the jail call made on March 26, 2018, was admissible. ((T3.21-22). The court ruled that the jury could infer that

the witness referred to in the case was the witness in this case. (T3.21).

Appellant renewed his objection when the State played the recorded call in front of the jury. (T5.22).

"A person's behavior after the commission of a crime may be admissible as circumstantial evidence from which guilt may be inferred." Thomas v. State, 372 Md. 342, 351 (2002). But the Court of Appeals has routinely reversed convictions where alleged "consciousness of guilt" evidence was too ambiguous. See e.g. Simms, 420 Md. at 731 (holding that "the redacted alibi notice was too ambiguous and equivocal' to support the inferences connecting [the Petitioner's] pre-trial conduct to the actual crimes"); Bedford v. State, 317 Md. 659, 668 (1989)(holding that "possession of the wire is so equivocal... it's admittance into evidence was more prejudicial to Bedford than probative of an intent to escape and should have been excluded"). Evidence is too "ambiguous" and "equivocal" to be admissible if, "at best, the admission or the evidence invites the jury to speculate." Snyder, 361 Md. at 596.

Here, four references were required in order for the recorded conversation to be relevant as consciousness of guilt: (1) from the conversation, a recognition by Appellant that his statement of charges contained the identity of the witnesses against him, that the witnesses were providing evidence against him, and he needed the person on the phone to take care of the witness; (2) from this recognition and information, a consciousness of guilt; (3) from a consciousness of guilt, a consciousness of guilt of the crimes at issues at this trial; and (4) from a consciousness of guilt of those crimes to actual guilt of those crimes. See Simms, 420 Md. at 730; Thomas, 372 Md. at 356; Snyder, 351 Md. at 596.

The recorded conversation was inadmissible because of a failure of the third inference in the analysis: consciousness of guilt of the particular crimes that were the subject of this trial. The prosecution misled the jury by playing a phone call from March 15, 2018, first, where the Appellant was stating what detectives had told him "we have video and witness who said they shot you." Immediately followed by the jail call from March 26, 2018, that is in question, to try and make it seem as if the Appellant is committing consciousness of guilt. When in fact they are

two (2) different conversations ten (10) days apart.

The Appellant was also awaiting trial on a Domestic Violence case. (T4.14). The jury was unaware that Appellant had this other pending case when he made the call on March 26, 2018. Thus the jury could not have made a reliable inference that the recording revealed his consciousness of guilt of the particular crimes for which he was on trial, as opposed to those other pending charges.

Moreover, there was 'nothing in the recorded phone call that connected the conversation to the crimes at issue in this trial. There was a mention of looking at the statement of charges for the witness who was implicating him. (State's exhibit 43A). What the jury did not know was that the statement of probable cause for this instant case did not specify the identities of the witnesses or that the statement of probable cause for the Domestic Violence case did refer to the witnesses for that case. (T4.14). The jury, not knowing about the Domestic Violence case or the two statements of probable cause, was left to infer only that Appellant was talking about Mr. Robinson or Mr. Suthers and that Appellant wanted the person he was talking with to take care of one of those men.

In short, the recorded phone call was inadmissible because there was nothing in the conversation that indicated Appellant was talking about the witnesses in this case or the incident from February 19, 2018. All that the jail call accomplished was to allow the jury to infer that Appellant was guilty of something for which a witness was implicating him. Under the circumstances, where there was more than one pending case against Appellant, the jury could not make a reliable inference of consciousness of guilt and thus the evidence was irrelevant under Rule 5-401 and inadmissible under rule 5-402 and 5-403.

Finally, admission of the recorded telephone call was not harmless beyond a reasonable doubt. Dorsey v. State, 276 Md. 638, 659 (1976). The State's case rested on circumstantial evidence. There was no direct evidence that tied the Appellant to the barbershop where two masked men entered and fired multiple gunshots. The identification of Appellant by Mr. Robinson was highly unreliable as the identification was not made until months later after the shooting (T5.45-49), after an immunity agreement had been signed (T5.48-49), after approximately twenty thousand

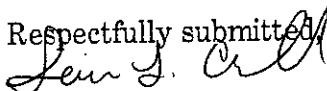
dollars (\$20,000) in witness benefits (T5. 122-126), and after his own Possession of Marijuana case had been dismissed. (T4. 191-94). Faced with a lack of evidence of identification of the shooter and an unreliable identification, the recorded jail call could easily have tipped the scales in the juror's minds in favor of Mr. Robinson's story.

Because the trial court erred in admitting the recording of the jail call from March 26, 2018, and because of admission of this evidence was not harmless, Appellant is entitled to a new trial.

#### CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted

  
Sammie L. Carroll

Date: 2/14/22