

SAMMIE CARROLL

v.

STATE OF MARYLAND

* **IN THE**
* **COURT OF APPEALS**
* **OF MARYLAND**
* **Petition Docket No. 228**
* **September Term, 2021**
* **(Nos. 1773 & 1775, Sept. Term, 2019**
* **Court of Special Appeals)**
* **(Nos. 118110003 & 119023004,**
* **Circuit Court for Baltimore City)**

O R D E R

Upon consideration of the petition for a writ of certiorari to the Court of Special Appeals and the supplement filed thereto, in the above-captioned case, it is this 22nd day of November, 2021

ORDERED, by the Court of Appeals of Maryland, that the petition and the supplement be, and they are hereby, DENIED as there has been no showing that review by certiorari is desirable and in the public interest.

/s/ Joseph M. Getty
Chief Judge

APPX. B

Circuit Court for Baltimore City
Case No. 119023004 and 118110003

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 1773 & 1775

September Term, 2019

SAMMIE CARROLL

v.

STATE OF MARYLAND

Wells,
Zic,
Wright, Alexander, Jr.
(Senior Judge, Specially Assigned),

JJ.

Opinion by Wells, J.

Filed: July 27, 2021

*This is an unreported opinion, and it may not be cited in any paper, brief, motion, or other document filed in this Court or any other Maryland Court as either precedent within the rule of stare decisis or as persuasive authority. Md. Rule 1-104.

APPX. A

A jury empaneled in the Circuit Court for Baltimore City convicted appellant, Sammie Carroll, of first-degree murder, attempted first-degree murder, second-degree murder, conspiracy to commit murder, first-degree assault, use of a firearm in the commission of a crime of violence, and possession of a firearm by a prohibited person. The court sentenced Mr. Carroll to a total term of life plus 60 years' imprisonment. In this appeal, he presents two questions for our review:

1. Was the evidence adduced at trial sufficient to sustain the convictions?
2. Did the trial court err in admitting the contents of a recorded telephone conversation appellant had while in jail following his arrest?

For reasons to follow, we hold that the evidence was sufficient and that the trial court did not err in admitting the disputed evidence. We therefore affirm the judgments of the circuit court.

BACKGROUND

At trial, Toby Robinson testified that, on February 19, 2018, he was at a laundromat in Baltimore washing clothes when he observed Mr. Carroll putting clothes in a washing machine on the other side of the laundromat. Mr. Robinson testified that he had known Mr. Carroll for "a year or two" and that Mr. Carroll had "sold marijuana" for him. Upon observing Mr. Carroll in the laundromat, Mr. Robinson approached him to discuss some monies that he purportedly owed him. Mr. Robinson testified that, during the conversation, Mr. Carroll "blew up." Mr. Robinson eventually walked out of the laundromat and Mr. Carroll followed him. Mr. Robinson testified that, during the ensuing conversation, Mr.

Carroll threatened to "beat [him] up." Mr. Robinson eventually got into his vehicle and drove away.

Later that day, Mr. Robinson went to a barbershop he owned in Baltimore, where he met a friend, Kenyen Southers, for a haircut. While Mr. Robinson was cutting Mr. Southers' hair, another individual, Andreas Tamaris, entered the barbershop, took a seat, and waited to have his hair cut. Shortly thereafter, two armed, masked men entered the barbershop. Mr. Robinson grabbed a handgun that he kept on his person and "got ready to fire at them." At the same time, Mr. Tamaris stood up and put his hands in the air. One of the assailants, who was armed with a shotgun, shot Mr. Tamaris in the chest, killing him. Mr. Robinson then "returned fire" and retreated into one of the bathrooms, while the second assailant, armed with a handgun, fired his weapon. A few minutes later, the shooting stopped, and Mr. Robinson came out of the bathroom to find the assailants gone and Mr. Tamaris lying on the ground.

Mr. Robinson testified that, during the shooting, he recognized the assailant with the shotgun as Mr. Carroll. Mr. Robinson explained he could see Mr. Carroll's eyes through the mask and, he also recognized Mr. Carroll's "size" and his "walk." Mr. Robinson testified that he was "fairly sure" he had struck Mr. Carroll when he returned fire.

After the shooting stopped, Mr. Robinson called 911. He explained that, when the police responded to the scene, he did not provide details about the shooting because he was

“a convicted felon.” Mr. Robinson stated he later felt “obligated to do something right,” so he told the police that Mr. Carroll was one of the gunmen.

Baltimore City Police Detective Andrea Parker testified that, on the day of the shooting, she was dispatched to Johns Hopkins Hospital after receiving a report of “a walk-in shooting victim.” Upon arriving at the hospital, Detective Parker identified Mr. Carroll as the shooting victim. Detective Parker testified that she also encountered a patrol officer and a hospital security guard who were standing by a blue SUV that was parked in the hospital’s parking lot. Also standing by the SUV was the vehicle’s driver. After speaking to the driver, Detective Parker reviewed the security footage taken from the City Watch cameras that were located in the area of Ensor and Eager Streets. In that video, Detective Parker observed an SUV similar to the one she saw at the hospital parked on the side of the road. Detective Parker also noticed several individuals gather around a dark-colored minivan and then walk toward the SUV. After reviewing the security footage, Detective Parker went back to the hospital and searched the blue SUV, where she discovered a flannel shirt with “red stains.”

The next day, Detective Parker returned to the hospital and spoke with Mr. Carroll, who was being treated for gunshot wounds to his leg and abdomen. When Detective Parker asked about the wounds, Mr. Carroll reported he had just left a store and was walking down Eager Street when he was shot. After speaking with Mr. Carroll, Detective Parker went to the store Mr. Carroll claimed he was near when he was shot. Detective Parker, however,

found no evidence that Mr. Carroll had been in the store or that a shooting had occurred in that area.

Suzanne Gray, a forensic scientist with the Baltimore Police Department's Crime Laboratory, testified that she performed a DNA analysis on swabs taken from the flannel shirt Detective Parker recovered from the blue SUV. Ms. Gray testified that her analysis yielded a partial DNA profile consistent with a mixture of at least four people and that Mr. Carroll's DNA matched a "genotype," which meant that he was "included as a contributor."

During trial, the State played for the jury video footage taken from a surveillance camera located near the barbershop where the shooting occurred. In that video, which was taken around the time of the shooting, a dark-colored minivan can be seen coming to a stop in an alleyway, and two individuals exiting the vehicle and walk off camera. One of the individuals is seen pulling a rolling suitcase. Approximately two minutes later, the same individuals can be seen running back to and entering the vehicle, sans suitcase, and the vehicle speeds away. A suitcase similar to the one seen on the video was later found in the barbershop. After reviewing the video footage, Detective Parker issued an arrest warrant, and Mr. Carroll was arrested on February 22, 2018.

Mr. Carroll was ultimately convicted. This timely appeal followed.

DISCUSSION

I.

a. The Parties' Contentions

Mr. Carroll first contends that the evidence adduced at trial was insufficient to sustain his convictions. Specifically, he argues the State failed to establish his identity as the shooter. In support, Mr. Carroll notes that both of the assailants wore masks; the clothing recovered from him during his stay at the hospital did not match the description of the clothing worn by the assailants; the police did not recover any evidence from the scene of the shooting that linked him to the crime; Mr. Robinson did not implicate Mr. Carroll as the shooter when he initially spoke with the police following the shooting; and Mr. Carroll provided an alternative explanation for how he had received the gunshot wounds.

The State counters that Mr. Robinson's identification of Mr. Carroll as the shooter constituted legally sufficient evidence of Mr. Carroll's criminal agency. The State argues there was also ample circumstantial evidence to corroborate Mr. Robinson's identification and establish Mr. Carroll's culpability. The State maintains that all of Mr. Carroll's arguments go to the weight of the evidence, which has no bearing on the legal sufficiency of that evidence.

b. Standard of Review

"The test of appellate review of evidentiary sufficiency is whether, 'after viewing the evidence in the light most favorable to the prosecution, any rational trier of fact could

have found the essential elements of the crime beyond a reasonable doubt.”” *Donati v. State*, 215 Md. App. 686, 718 (2014) (citing *State v. Coleman*, 423 Md. 666, 672 (2011)). That standard applies to all criminal cases, “including those resting upon circumstantial evidence, since, generally, proof of guilt based in whole or in part on circumstantial evidence is no different from proof of guilt based on direct eye-witnesses accounts.” *Neal v. State*, 191 Md. App. 297, 314 (2010). Moreover, “the limited question before an appellate court is not whether the evidence *should have or probably would have* persuaded the majority of fact finders but only whether it *possibly could have* persuaded *any* rational fact finder.”” *Darling v. State*, 232 Md. App. 430, 465 (2017) (citations and quotations omitted) (emphasis in original). In making that determination, “[w]e ‘must give deference to all reasonable inferences [that] the fact-finder draws, regardless of whether [we] would have chosen a different reasonable inference.’”” *Donati*, 215 Md. App. at 718 (citing *Cox v. State*, 421 Md. 630, 657 (2011)). Further, “[w]e defer to the fact finder’s ‘opportunity to assess the credibility of witnesses, weigh the evidence, and resolve conflicts in the evidence[.]’”” *Neal*, 191 Md. App. at 314 (citations omitted).

c. Analysis

We hold that the evidence adduced at trial was sufficient to show beyond a reasonable doubt that Mr. Carroll was one of the gunmen who opened fire in Mr. Robinson’s barbershop. Mr. Robinson, one of the victims involved in the shooting, identified Mr. Carroll, both prior to and during trial, as the individual with the shotgun who shot and killed Mr. Tamaris. Mr. Robinson testified that he had known Mr. Carroll for

more than a year prior to the shooting and that, during the shooting, he recognized appellant's eyes, build, and gait. Mr. Robinson's testimony was, by itself, sufficient to establish Mr. Carroll's criminal agency. *See Small v. State*, 235 Md. App. 648, 704-06 (2018) (holding that the identification testimony of a single eyewitness was sufficient to sustain the defendant's convictions where the witness expressed familiarity with the defendant, provided a description of the defendant's physical features, and subsequently identified the defendant in court), *aff'd* 464 Md. 68. Whether Mr. Robinson's testimony was credible in light of the other evidence (or lack thereof) was for the jury to decide. *Id.* at 706.

Even so, the State presented additional evidence to corroborate Mr. Robinson's identification and to solidify Mr. Carroll's identity as one of the gunmen. Mr. Robinson testified that he had an argument with Mr. Carroll at a laundromat just prior to the shooting. Security footage from the area of the shooting showed two men getting out of a dark-colored minivan around the time of the shooting and then getting back into the van approximately two minutes later and driving away. One of the individuals can be seen pulling a rolling suitcase upon getting out of the van, and a similar suitcase was later found inside the barbershop following the shooting. Shortly thereafter, security cameras located a short drive from the barbershop captured several individuals congregating around a dark-colored minivan and then approaching a blue SUV. That blue SUV was later identified as being similar to the blue SUV driven by the individual who picked Mr. Carroll up around the time of the shooting and drove him to the hospital to be treated for gunshot wounds.

Mr. Robinson testified that he had fired a handgun at the assailants and that he was fairly certain that he had struck at least one of them. Although Mr. Carroll provided an explanation for how he had received the gunshot wounds, Detective Parker's subsequent investigation uncovered no evidence to support Mr. Carroll's story.

Considering the aforementioned evidence in conjunction with Mr. Robinson's identification of Mr. Carroll as the assailant who shot Mr. Tamaris, a reasonable inference can be drawn that Mr. Carroll was one of the gunmen. Accordingly, the evidence was sufficient to sustain appellant's convictions.

II.

a. The Parties' Contentions

Mr. Carroll's next claim of error concerns the admission of a recording of a telephone conversation Mr. Carroll had while in jail following his arrest on the charges in the instant case. The telephone conversation occurred on March 26, 2018, and involved Mr. Carroll, an unidentified woman, and an unidentified man. In the recording, Mr. Carroll asks the woman if she had received his "mail," which included his "trial statements, with that pink highlighter on there." Mr. Carroll then tells the woman to show the papers to another person and to tell that person to get on "Case Search, Inmate Locator, whatever" and "take care of that shit." A short time later, the unidentified man joins the conversation, and Mr. Carroll tells him to "look at them papers." Mr. Carroll then states: "Yo, I'm talking about Case Search, Inmate Locator, yo, whatever. Yo got to go. Yo's singing like a fucking

canary.” The unidentified man then states, “He is?,” and Mr. Carroll responds, “I mean, like a fucking canary.”

At trial, prior to the admission of the recording, Mr. Carroll argued that the statements made during the call, namely, his reference to certain papers containing his “trial statements” and his assertions that some unidentified individual named in those statements “got to go” because he was “singing like a fucking canary,” were inadmissible. Mr. Carroll noted that, at the time the call was made, he was also facing domestic violence charges in an unrelated case. Mr. Carroll argued that, because it was not clear from the context of the recording whether he was talking about the domestic violence charges or the charges in the instant case, the statements could not be properly considered as “consciousness of guilt” as to the instant charges.

Ultimately, the trial court admitted the recording, finding that the evidence was probative and not unduly prejudicial. The State thereafter played for the jury the recording from March 26 and another recording of a telephone call Mr. Carroll had on March 15, 2018, which also occurred while he was in jail. In the recording from March 15th, Mr. Carroll tells an unidentified woman that “they got the video from there” and that “you all saying he shot me.” The unidentified woman then states, “He said he shot you?,” and Mr. Carroll responds, “Yeah, he saying he shot me.”

Mr. Carroll now claims that the trial court erred in admitting the recording from March 26th. Mr. Carroll asserts, as he did below, that the recording was inadmissible because it did not establish his consciousness of guilt as to the particular crimes for which

he was being tried. The State counters that the jury could reasonably infer that Mr. Carroll was referring to the instant case and that, consequently, the trial court did not abuse its discretion in admitting the recording.

b. Standard of Review

Evidence is relevant if it makes “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. Evidence that is relevant is generally admissible; evidence that is not relevant is not admissible. Md. Rule 5-402. Establishing relevancy “is a very low bar to meet.” *Williams v. State*, 457 Md. 551, 564 (2018). We review the court’s determination of relevancy under a *de novo* standard. *State v. Simms*, 420 Md. 705, 725 (2011).

Even if legally relevant, “evidence may be excluded if its 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.” Md. Rule 5-403. “We determine whether a particular piece of evidence is unfairly prejudicial by balancing the inflammatory character of the evidence against the utility the evidence will provide to the [fact-finder’s] evaluation of the issues in the case.” *Smith v. State*, 218 Md. App. 689, 705 (2014). In so doing, “[w]hat must be balanced against ‘probative value’ is not ‘prejudice’ but, as expressly stated by Rule 5-403, only ‘unfair prejudice.’” *Newman v. State*, 236 Md. App. 533, 549 (2018). Moreover, “the fact that evidence prejudices one party or the other, in the sense

that it hurts his or her case, is not the undesirable prejudice referred to in Maryland Rule 5-403.” *Ford v. State*, 462 Md. 3, 58-59 (2018) (citations and quotations omitted). “This inquiry is left to the sound discretion of the trial judge and will be reversed only upon a clear showing of abuse of discretion.” *Malik v. State*, 152 Md. App. 305, 324 (2003).

“If relevant, circumstantial evidence regarding a defendant’s conduct may be admissible under Maryland Rule 5-403, not as conclusive evidence of guilt, but as a circumstance tending to show consciousness of guilt.” *Ford*, 462 Md. at 47 (citations and quotations omitted). Such evidence “can take various forms, including flight after a crime, escape from confinement, use of a false name, and destruction or concealment of evidence.” *Id.* (citations and quotations omitted). To be relevant, consciousness of guilt pertaining to the concealment of evidence requires the existence of four inferences: (1) from the defendant’s behavior to a desire to conceal evidence; (2) from a desire to conceal evidence to a consciousness of guilt; (3) from a consciousness of guilt to a consciousness of guilt concerning the crime charged; and (4) from a consciousness of guilt concerning the crime charged to actual guilt. *Id.* at 48.

c. Analysis

At issue here is the third prong – whether appellant’s statements during the telephone conversation concerned the crimes charged. To be sure, there have been instances in which a defendant’s conduct has been held to be “too ambiguous and equivocal to be admissible as evidence of consciousness of guilt[.]” *Id.* at 48-49 (citations and quotations omitted). -In *Simms*, previously cited, the Court of Appeals held that evidence

of the defendant’s redacted alibi notice was too ambiguous and equivocal to be admissible as consciousness of guilt evidence because the evidence was not inconsistent with the defendant’s pretrial claims regarding his presence at the scene of the crime and because the evidence required the jury to speculate that the defendant intentionally falsified the notice to create exculpatory evidence. *Simms*, 420 Md. at 731-32. In *Snyder v. State*, 361 Md. 580 (2000), the Court held that the defendant’s failure to inquire as to the status of the investigation into his wife’s disappearance over a seven year period was too ambiguous and equivocal to support any inference that such conduct constituted a consciousness of guilt. *Id.* at 596. And, in *Thomas v. State*, 372 Md. 342 (2002) (“*Thomas I*”), the Court held that evidence of the defendant’s refusal to submit to a blood test by the police was inadmissible as consciousness of guilt evidence where there was no evidence that the defendant was aware that the police wanted to test his blood in connection with the crimes for which he was ultimately tried. *Id.* at 356-58.

That said, the Court of Appeals has made clear that, “to be relevant, it is not necessary that evidence of this nature conclusively establish guilt. The proper inquiry is whether the evidence *could* support an inference that the defendant’s conduct demonstrates a consciousness of guilt.” *Ford*, 462 Md. at 50 (citations and quotations omitted) (emphasis in original). “As such, simply because there is a possibility that there exists some innocent, or alternate, explanation for the conduct does not mean that the proffered evidence is *per se* inadmissible.” *Id.* (citations and quotations omitted). In *Thomas v. State*, 397 Md. 557 (2007) (“*Thomas II*”), for example, the Court held that the defendant’s refusal to submit to

the blood test was admissible at his retrial because the State offered evidence showing that the police had informed the defendant that the blood test was being requested in reference to the crimes charged. *Id.* at 576.

Against that backdrop, we hold that the trial court did not err in admitting the March 26th recording. As in *Thomas II*, there was sufficient evidence from which the jury could infer that Mr. Carroll’s “consciousness of guilt,” *i.e.* his statement alluding to the elimination of a witness, was related to the charges in the instant case.¹ Prior to playing the March 26th recording, the State played a recording from March 15, 2018, in which Mr. Carroll tells an unidentified woman about the presence of certain “video” and about an unidentified man (a “he”), who was claiming that he had shot Mr. Carroll. Then, on March 26th, Mr. Carroll had the conversation at issue, in which Mr. Carroll refers to certain “trial statements” and declares that the witness referenced in the statements “got to go” because “he” is “singing like a fucking canary.”

From that, a reasonable inference could be made that Mr. Carroll was referring to Mr. Robinson and the shooting at the barbershop when he made the statements during the March 26th telephone conversation. The possibility of an alternative explanation for the statements did not render the recording inadmissible. *See Ford*, 462 Md. at 50-52. We hold, therefore, that the trial court did not err in admitting the evidence as relevant.

We likewise hold that the trial court did not abuse its discretion in finding that the evidence was not unduly prejudicial. The court properly considered the probative value of

¹ Mr. Carroll does not dispute that the statements made during the recorded conversation permitted an inference of a consciousness of guilt.

the evidence and reasonably concluded that the evidence's probative value was not outweighed by the danger of unfair prejudice.

Mr. Carroll, relying exclusively on *Thompson v. State*, 393 Md. 291 (2006), argues that the recording should have been excluded because the jury was never made aware of his pending domestic violence charges, which precluded the jury from making a reliable inference that his statements during the March 26th conversation were related to the shooting at the barbershop. Mr. Carroll further argues that the recording was inadmissible because there was nothing in the conversation to indicate that he was talking about the shooting at the barbershop.

We remain unpersuaded. First, we disagree that there was “nothing” to indicate that Mr. Carroll was referring to the shooting at the barbershop when he made the statements during the March 26th call. As discussed, the contents of that call, when considered in conjunction with the contents of the call from March 15th, permitted such an inference. That there may have been an additional inference in light of Mr. Carroll’s other charges did not render the recording inadmissible. Again, the question of admissibility hinges upon whether the evidence *could* support an inference of guilt, not whether the evidence necessitates such an inference. *Ford*, 462 Md. at 50.

Moreover, Mr. Carroll’s reliance on *Thompson* is misplaced. The issue in that case was the propriety of a “flight instruction” where the defendant had an alternative explanation for his flight that was unrelated to the charged crimes, and where the defendant chose not to reveal that explanation to the jury because it would have prejudiced the

defendant. *Thompson*, 393 Md. at 315. The Court of Appeals held that giving a flight instruction under those circumstances was erroneous because the circumstances "impaired the confidence with which the inference that [the defendant] fled from the police due to a consciousness of guilt with respect to the crimes charged could be drawn and rendered the instruction misleading as to the existence of an alternative basis for [the defendant's] flight from the police." *Id.*

Here, we are not dealing with the propriety of a jury instruction, because Mr. Carroll has not raised the issue. Instead, the issue here is the admissibility of evidence concerning consciousness of guilt. That issue was not raised in *Thompson*. Therefore, *Thompson* is inapposite. *See Ford*, 462 Md. at 55-56 (discussing the inapplicability of *Thompson* in the context of a challenge to the admissibility of consciousness of guilt evidence).

**JUDGMENTS OF THE CIRCUIT COURT
FOR BALTIMORE CITY AFFIRMED;
APPELLANT TO PAY THE COSTS.**

STATE OF MARYLAND * IN THE
v, * CIRCUIT COURT
SAMMIE CARROLL * FOR BALTIMORE CITY
Defendant * CASE NO.: 118137003

* * * * *

AMENDED ORDER DENYING MOTION FOR NEW TRIAL

Defendant Carroll having filed on July 26, 2019 a Motion for New Trial, this court having considered the motion and the State's response to the motion filed on August 8, 2019, and having determined no hearing on the motion shall be granted, it is this 29th day of August 2019, by the Circuit Court for Baltimore City, Part 05:

FOUND, that the jury's verdict is not contrary to the weight of the evidence; and it is further

FOUND, that there is found in the record sufficient evidence of premeditation to have allowed the jury to consider first degree murder; and it is further

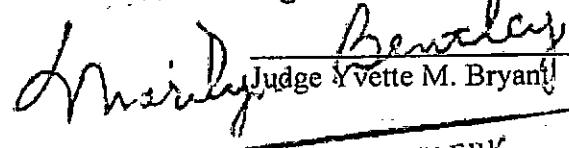
FOUND, for the reasons stated on the record in open court, that this court stands by its determination that the jail calls at issue in this case were probative, and that there probative value outweighed any risk of undue prejudice; and it is further

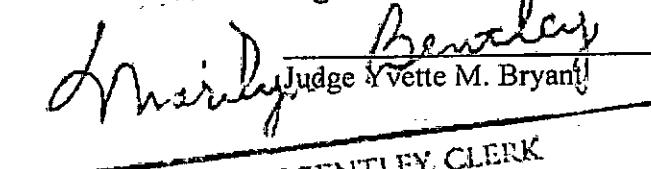
FOUND, for the reasons stated on the record in open court, that this court stands by its determination that Defendant could not use the witness' prior recorded statement for what would have amounted to substantive evidence, rather than impeachment evidence; and it is further

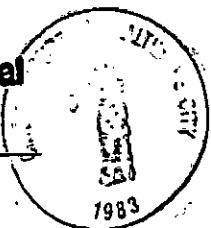
ORDERED, that Defendant's request for a hearing on the Motion for New Trial
is denied; and it is further

ORDERED, that Defendant's Motion for New Trial is denied.

Judge Yvette M. Bryant
Signature Appears on Original


Judge Yvette M. Bryant


Marilyn Bentley
Marilyn Bentley, Clerk



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