

Circuit Court for Baltimore City  
Case Nos. 119114006 & 120072020

UNREPORTED\*

IN THE APPELLATE COURT

OF MARYLAND

CONSOLIDATED CASES

September Term, 2023

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No. 582  
BRIAN CAMPBELL

v.

STATE OF MARYLAND

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No. 734  
COREY SHAWN SMITH

v.

STATE OF MARYLAND

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Friedman,  
Beachley,  
Wright, Alexander, Jr.  
(Senior Judge, Specially Assigned),

JJ.

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Opinion by Friedman, J.

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Filed: January 12, 2026

\* This is an unreported opinion. This 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 MD. RULE 1-104(a)(2)(B).

On September 28, 2018, two men participated in the fatal shooting of Beontray Ellis on the 1200 block of Druid Hill Avenue in Baltimore City. Although the scene was crowded when police arrived, no eyewitnesses could identify a suspect. Police did, however, recover video footage taken outside a market near the crime. The video showed that one of the shooters wore a distinctive red, black, and white jacket, and the other wore nondescript all-black clothing. During their investigation, police found photos of appellant Brian Campbell wearing the same distinctive jacket posted to his social media pages. Campbell was charged with murder in March 2019, but a jury trial in October 2019 resulted in a mistrial.

The COVID-19 pandemic delayed Campbell's second trial until March 2022. By this time, the State had also charged appellant Corey Smith as the second suspected shooter, based on their discovery of photos of Campbell and Smith together on Campbell's social media pages. Campbell and Smith were tried together in the Circuit Court for Baltimore City. A jury found both men guilty of Ellis's murder and related handgun offenses. Both men now challenge those convictions in this consolidated appeal. For the reasons that follow, we affirm the conviction of Brian Campbell and vacate the conviction of Corey Smith.

## **DISCUSSION**

In his appeal, Campbell argues that the trial court erred when it (1) denied his request for a postponement to allow newly retained counsel more time to prepare for trial; (2) denied his motion for a mistrial and his motion for a new trial after the State made an improper statement during its rebuttal closing argument; and (3) denied his motion for a

new trial on the grounds that the trial court violated his constitutional right to a public trial.<sup>1</sup>

Smith, in his appeal, argues that the State’s evidence was insufficient to sustain his convictions.<sup>2</sup> We begin our analysis with the arguments Campbell raises in his appeal.

## I. UNPREPARED TRIAL COUNSEL

At the start of his second trial, two defense attorneys, Michael Tomko and Roland Brown, represented Campbell. Tomko had represented Campbell since his first trial, whereas Brown had only recently entered his appearance, ten days before the second trial was set to begin. Brown had, however, been communicating with Campbell for several months prior to officially entering his appearance and had even attempted to request discovery from the State. Before the trial began, the judge asked Brown if he was prepared to move forward with the trial, to which he responded, “Not really … but if I have to, I will.” Tomko replied that he was prepared, but that he was unsure what role Campbell wanted Brown to play at trial. The trial judge then instructed Tomko and Brown to speak to Campbell to discuss “his choice in that regard.” Campbell chose to discharge Tomko

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<sup>1</sup> Smith also raised the issues of the State’s improper rebuttal closing argument and the trial court’s violation of his constitutional right to a public trial on appeal (Campbell’s second and third arguments). We do not, however, address either issue as it pertains to Smith in this Opinion because we vacate Smith’s convictions, and double jeopardy will bar the State from bringing these charges against Smith again. *Benton v. State*, 224 Md. App. 612, 629 (2015) (holding that “a retrial may not occur if the evidence was insufficient to sustain the conviction”).

<sup>2</sup> Campbell makes no such argument in his appeal. In an abundance of caution, however, we have reviewed the evidence the State presented at trial against Campbell and conclude that it is sufficient to sustain his convictions. We discuss the evidence in further detail in footnote 3.

and retain Brown as his sole counsel. Brown then requested a postponement to allow more time to prepare for trial. The court denied this request, explaining that Campbell’s trial had already been delayed by the court closures due to the COVID-19 pandemic and an unrelated case that took longer than expected, that there were concerns with rescheduling the State’s witnesses, and that Campbell had acted too late in deciding to change his counsel.

Campbell now argues that by denying his request for a postponement, the trial court infringed on his right to have effective counsel of his choice. We disagree.

A criminal defendant has a right to counsel at trial. MD. CONST., DECL. OF RIGHTS, art. 21; *Gonzales v. State*, 408 Md. 515, 529 (2009). If a defendant can afford private counsel, then they also have the right to counsel of their choice. *Gonzales*, 408 Md. at 530. This right, however, is not absolute and “may be balanced against the demands of the court’s calendar, namely, the need for an orderly administration of criminal justice.” *State v. Taylor*, 431 Md. 615, 645 (2013) (cleaned up). When a defendant requests different counsel shortly before or during trial, courts must decide if extraordinary circumstances justify rescheduling the trial to accommodate the defendant’s late decision. *Hughes v. State*, 43 Md. App. 698, 704-05 (1979), *rev’d on other grounds*, 288 Md. 216 (1980). We review denials of postponement requests for an abuse of discretion, affording great deference to the trial court, and will reverse only in “exceptional instances where there was prejudicial error.” *Prince v. State*, 216 Md. App. 178, 203 (2014) (quoting *Thanos v. Mitchell*, 220 Md. 389, 392 (1959)).

We conclude that the trial court did not abuse its discretion in denying Campbell’s request to postpone trial based on the demands of the court’s calendar and its ability to proceed with trial. The trial judge explained that Campbell’s trial was already starting a day late and that any further delays would affect the rest of the trial. The court was subject to space and operational restrictions during the COVID-19 pandemic, which required smaller venire panels and resulted in a prolonged jury selection process. Further, the State informed the court that two of its witnesses had limited availability and that any delays in the trial would complicate its ability to call these witnesses. Because the trial court weighed the effect of another delay on the orderly administration of justice, it acted within its discretion when it denied Campbell’s request for a postponement.

Moreover, Brown’s belated appointment as Campbell’s sole counsel does not constitute an extraordinary circumstance that warrants postponement. Tomko, Brown, and Campbell were all aware of the interests, responsibilities, and preparation involved. Tomko knew Brown was interested in Campbell’s case and discussed the case with him well before Brown entered his appearance. And Brown knew that when he entered his appearance, he accepted the responsibilities of representing Campbell at his quickly approaching trial. Brown acknowledged this obligation when he said, “if I have to, I will.” Moreover, when Campbell discharged Tomko and retained Brown as his sole counsel, Brown was already familiar with the case and did have some time—albeit not much—to prepare and render effective assistance at trial. Further, Campbell knew how much time each lawyer had to prepare for trial and still decided to dismiss his most prepared counsel the morning of trial. We, therefore, conclude that Brown’s familiarity with the case and Campbell’s informed

decision do not establish an extraordinary circumstance sufficient to warrant a postponement.

Finally, Campbell did not suffer prejudicial error that merits a reversal. Despite Brown's claim that he was unprepared, he nevertheless evidenced knowledge of the exhibits, made objections, and competently examined witnesses throughout the trial. Further, the State and the trial court accommodated Brown in any instances where he encountered unfamiliar evidence. For example, the State sought to admit police body cam footage, despite Tomko's assurance to Brown that the State would not offer it. Brown objected to its entry, and the court overruled, but permitted Brown to renew his objection, and the court said that it would strike the record if anything in the footage proved unexpected to Brown. Brown's diligence in trying Campbell's case, through his own knowledge or the court's accommodations, demonstrates that Campbell did not suffer any prejudicial error.

We conclude that, while Campbell has the qualified right to counsel of his choice, the trial court did not abuse its discretion in balancing this right against its ability to administer justice in an orderly manner. We hold that Campbell neither faced extraordinary circumstances that led to his decision to change counsel, nor suffered prejudice from this decision. As a result, we affirm the trial court's denial of his request to postpone.

## **II. IMPROPER CLOSING ARGUMENT**

In his closing argument, Campbell argued that there were no eyewitnesses who could identify him as a suspect. The State countered this in its rebuttal, suggesting twice that “no witnesses were brave enough to come forward” to identify Campbell. Campbell

objected, arguing that these statements alleged witness intimidation and were therefore prejudicial to him. The court overruled the objection because, it said, the State's statements were a fair inference from the video footage of the crime that the jury saw. Because this video footage showed a crowded crime scene with several witnesses, the court concluded that someone might have seen something but decided not to come forward. Campbell then moved for a mistrial, which the court denied. In its jury instructions, the court reminded the jury that they "could draw any reasonable conclusion from the evidence," which did not include opening statements or closing arguments. At the conclusion of trial, Campbell moved for a new trial on the same basis, which the court also denied.

Campbell now asks us to reverse the trial court's denials of his motions for a mistrial and a new trial because the State's "no witnesses were brave enough to come forward" statement was improper and prejudicial. We disagree.

To determine whether a reversal is warranted, we first consider whether the statement was improper, and if so, whether the statement prejudiced the defendant. *Degren v. State*, 352 Md. 400, 430-32 (1999). In this analysis, we give deference to the trial court and will reverse only when the trial court clearly abused its discretion and it prejudiced the defendant. *Hunt v. State*, 321 Md. 387, 435 (1990).

Generally, our courts afford the State great leeway in the content and delivery of its closing arguments. *Degren*, 352 Md. at 429. In its content, the State may make inferences reasonably drawn from the evidence but may not comment on matters not in evidence. *Id.* at 429-30; *Hunt*, 321 Md. at 435. A statement made in its rebuttal that responds to the defendant's closing argument is, generally, proper. *Degren*, 352 Md. at 431; *Evans v. State*,

333 Md. 660, 679 (1994). In its delivery, the State may employ flowery language and embellished phrasing. *Degren*, 352 Md. at 430.

The State's rebuttal that "there were no witnesses brave enough to come forward" was not improper. There are many inferences that can be made as to why an eyewitness might not be willing to come forward, including a desire not to involve oneself, fear of social ostracism, and fear of retribution. Fear of retribution by Campbell is only one of the possible reasons that a witness might not be "brave enough" to come forward. At bottom, the "brave enough" statement simply reflected what the video showed and both the defendant and State argued—that despite the crowded scene, no eyewitnesses identified the shooters. By saying that no one was "brave enough," the State simply used theatrical phrasing. This statement, therefore, was not improper.<sup>3</sup> Accordingly, we hold that the trial

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<sup>3</sup> Even if the "brave enough" statement was improper, Campbell would not have succeeded in arguing that it was prejudicial error. To determine whether an improper statement is prejudicial, we weigh three factors: (1) the severity of the statement; (2) the measures taken to prevent potential prejudice; and (3) the weight of the evidence against the defendant. *Sivells v. State*, 196 Md. App. 254, 289 (2010). *First*, the statement was not severe. Our courts recognize that a single, isolated statement that does not "pervade the entire trial" is not the type of severe statement that constitutes reversible error. *Spain v. State*, 386 Md. 145, 159 (2005). Here, the State made the "brave enough" statement twice, separated by a single sentence. These two statements were made in close succession and effectively isolated from the rest of the trial. *Second*, the trial court took adequate measures in its jury instructions to prevent prejudice. These instructions told jurors that they could draw reasonable inferences from the evidence, which excludes opening statements and closing arguments. Maryland courts presume that juries follow the instructions given to them by the trial judge. *Id.* at 160. For the *third* factor, our courts have held that when the evidence against a defendant is overwhelming, an improper statement is less likely to be prejudicial. *Wilhelm v. State*, 272 Md. 404, 427 (1974). Here, the State offered circumstantial evidence that the jurors used to identify Campbell as the shooter in the distinctive jacket and establish his culpability for Ellis's murder. To identify Campbell as one of the shooters, the State found photos of him posted on various social media accounts, in which he wore the same distinctive jacket. Other information related to these photos

court did not abuse its discretion and thus affirm its denials of Campbell’s motions for a mistrial and a new trial.

### **III. RIGHT TO A PUBLIC TRIAL**

Shortly after Campbell’s mistrial in 2019, the COVID-19 pandemic necessitated the closure or limited operations of all Maryland courts. It was not until April 2022 that courts resumed full, normal operations. Because Campbell’s second trial occurred in March 2022, the trial court was subject to operational restrictions set by federal, state, and local guidelines, orders from the Supreme Court of Maryland, and phased reopening plans.<sup>4</sup> The morning Campbell’s trial began, the judge informed the parties and spectators that, due to social distancing requirements and space limitations, the court would not be able to fit all the spectators and potential jurors. As a result, the court instituted a “two spectator rule,” limiting the number of spectators for Campbell, Smith, and Ellis to two each. The trial judge also made it clear that once a spectator was in the courtroom, they were not allowed

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showed that Campbell owned this jacket when Ellis was murdered. The State also introduced a phone call Campbell made to the police inquiring about the status of their investigation into Ellis’s death, after which Campbell deleted the photos of himself in the jacket from his social media pages. This evidence is sufficient to support a rational factfinder’s conclusion that Campbell was the shooter wearing the distinctive jacket. *See Donati v. State*, 215 Md. App. 686, 718 (2014). It is not, however, truly overwhelming evidence of Campbell’s guilt. This third factor, therefore, weighs in favor of the statement’s prejudicial effect on Campbell. Nonetheless, it does not outweigh the other two factors on balance. Because the “brave enough” statement was not severe and the court took adequate measures to prevent prejudice through its jury instructions, we are not convinced the statement would have influenced the jury and prejudiced Campbell.

<sup>4</sup> For simplicity, we refer to these guidelines, orders, and plans that courts had to follow as “mandated operational restrictions.”

to leave until a recess; otherwise, they would not be allowed back in the courtroom. Neither party challenged these limitations at any point during the trial.

After the trial, however, Smith’s counsel learned sheriff’s deputies had acted independently of the trial court’s directions and excluded spectators from voir dire and direct examination of certain witnesses. As a result, Campbell moved for a new trial on the grounds that the trial court had violated his Sixth Amendment right to a public trial.<sup>5</sup> At a subsequent motions hearing, the judge heard testimony from ten spectators who were excluded from voir dire or portions of witness examinations. The judge denied Campbell’s motion for a new trial, holding that the trial court “dealt with the [circumstances] as best [it] could” and that no other reasonable alternatives could abide by the mandated operational restrictions. Campbell asserts the same argument on appeal. We disagree and affirm the denial of his motion for a new trial.

The Sixth Amendment to the United States Constitution guarantees that, “[i]n all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial.” U.S. CONST. AMEND. VI. Accordingly, criminal trials, including the voir dire and jury selection process, are open to the public “as a matter of course,” and any courtroom closures must

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<sup>5</sup> The State argues Campbell waived his Sixth Amendment claim for appellate review because Campbell did not object to the court’s spectator restrictions at trial. The record paints a more complex picture. Neither party nor the court was aware that the sheriff’s deputies, who controlled who entered and exited the courtroom, further excluded individuals from the courtroom during voir dire and witness examination. It was only after the trial that Campbell learned about these courtroom exclusions. Upon learning this, Campbell raised the issue before the trial court in his motion for a new trial. We are hesitant to find waiver in these circumstances. Accordingly, we use our discretion to review Campbell’s Sixth Amendment claim. *See* MD. R. 8-131(a).

be done with great caution. *Robinson v. State*, 410 Md. 91, 102 (1990); *Campbell v. State*, 240 Md. App. 428, 441-42 (2019). This right is not absolute and may yield to the court’s legitimate and substantial interests, such as maintaining security and order in the courtroom, preserving the dignity of the court, safeguarding witnesses, and protecting confidentiality. *Robinson*, 410 Md. at 102; *Walker v. State*, 125 Md. App. 48, 69 (1999).

Because courtroom closures can take a variety of forms, our review must proceed in a couple of steps. First, we must determine whether the closure implicates the Sixth Amendment right to a public trial. *Watters v. State*, 328 Md. 38, 49 (1992). A *de minimis* closure is a minor interference that does not cause constitutional concern and, therefore, does not implicate this right. *Kelly v. State*, 195 Md. App. 403, 421-22 (2010). If a closure is more than *de minimis*, we then evaluate whether the courtroom closure was justified. *Watters*, 328 Md. at 46. If the closure was justified, then the trial court did not violate the defendant’s Sixth Amendment right to a public trial. *Campbell*, 240 Md. App. at 458. We elaborate on the considerations that inform the *de minimis* and justification analyses below. In undertaking this review, we give deference to the trial court’s findings of fact. *Longus v. State*, 416 Md. 433, 457 (2010).

A. The Closure Was Not *De Minimus*

We evaluate three factors in our determination of whether the closure was *de minimis*: (1) the length of the closure; (2) the significance of the proceedings; and

(3) whether the closure was total or partial. *Kelly*, 195 Md. App. at 421-22. Based on these factors, we conclude that the trial court’s closure was more than *de minimus*.

*First*, the length of the closure here does not support a conclusion that the closure was *de minimus*. Our courts have held that “a closure of at least three hours during significant proceedings weighed against concluding the closure was *de minimus*.<sup>10</sup>” *Campbell*, 240 Md. App. at 449. Here, the closure lasted all eight days of trial.

*Second*, voir dire and witness examination are significant portions of the trial, and our courts have recognized that excluding the public from these proceedings does not support a finding that the closure was *de minimus*. *Id.* at 433.

*Third*, the trial court’s two-spectator rule partially closed the trial to some, but not all, members of the public. We are compelled to weigh such a partial closure in favor of it being a *de minimus* closure. This factor, however, does not overcome the combined weight of the length of the closure—the entire trial—and the significance of the proceedings—voir dire and certain witness examinations—that were closed.

Accordingly, we hold that the courtroom closure was more than *de minimus* and, therefore, implicated Campbell’s Sixth Amendment right to a public trial. We turn next to the justification for the closure.

#### B. The Closure Was Justified

Just because a defendant’s Sixth Amendment right is implicated does not mean that this right was violated. *Kelly*, 195 Md. App. at 417-18. Rather, our courts afford trial judges the discretion to place reasonable limitations on access to court proceedings, so long as it is justified by “an overriding interest likely to be prejudiced if the closure is not employed,

in light of the factors enunciated in *Waller*.” *Longus*, 416 Md. at 438 (citing *Waller v. Georgia*, 467 U.S. 39 (1984)). Those factors are: (1) the party seeking to close the proceeding must advance an overriding interest that is likely to be prejudiced; (2) the closure must be no broader than necessary to protect that interest; (3) the trial court must consider the reasonable alternatives to closing the proceeding; and (4) the trial court must make findings adequate to support the closure. *Waller*, 467 U.S. at 48. Viewing these factors collectively, we conclude that the trial court did not violate Campbell’s right to a public trial.

#### 1. *COVID-19 was an Overriding Interest*

The first factor favors a justified courtroom closure. The trial court advanced an overriding interest that was likely to be prejudiced—public health in the wake of a turbulent global pandemic. ALEC TYSON, MICHAEL LIPKA & CLAUDIA DEANE, 5 YEARS LATER: AMERICA LOOKS BACK AT THE IMPACT OF COVID-19, 23 (Pew Research Center 2025), <https://perma.cc/47S8-GTZL> (citing the public health, political, and socioeconomic effects of the COVID-19 pandemic). Courts have consistently held that “limiting the transmission of COVID … [is] an overriding interest.” *United States v. Allen*, 34 F.4th 789, 797 (2022); *see also Roman Catholic Diocese of Brooklyn v. Cuomo*, 592 U.S. 14, 18 (2020) (holding that “stemming the spread of COVID-19 is unquestionably a compelling interest”). Moreover, courts were required to comply with the mandated operational restrictions. Being unable to limit the number of spectators in the courtroom would prejudice the court’s interests by potentially exposing more individuals to COVID-19 and undermine the court’s

obligation to act in accordance with the mandated operational restrictions. This factor, therefore, supports a finding that the closure was justified.

2. *The Closure was No Broader than Necessary*

The second factor, that the closure was no broader than necessary to protect Campbell’s rights while also addressing the court’s overriding interests, also supports finding that the closure was justified.

*First*, there were physical and logistical constraints that necessitated the trial court’s two-spectator rule. Campbell’s trial occurred in Courtroom 400 of the Mitchell Courthouse, which could seat “about 100 people shoulder-to-shoulder,” absent any space restrictions. The mandated operational restrictions, however, “limit[ed] the concentration of individuals [in courtrooms to] allow social distancing.” Fifth Administrative Order Expanding Statewide Judiciary Operations in Light of the COVID-19 Emergency, 4 (Mar. 1, 2022), <https://perma.cc/9NLC-D3JD>. These space limitations complicated the trial court’s logistics throughout the trial, requiring the court to frequently rearrange Smith and Campbell, counsel, and materials to maintain juror visibility and social distancing.

*Second*, additional jury-related concerns further restricted the trial court’s ability to manage spectators. In addition to the courtroom’s limited capacity due to its size and the mandated operational restrictions, the trial court had to accommodate three venire panels of approximately 70 prospective jurors. Moreover, the State informed the trial court that, during Campbell’s first trial, jurors reported feeling intimidated by spectators who positioned themselves outside the courtroom to be seen by them. As a result, the trial judge required spectators to enter and exit the courtroom only during recesses, so the sheriff’s

deputies could control spectator access and prevent spectators from positioning themselves in view of jurors outside the courtroom.

*Third*, the two-spectator rule was applied to allow adjustments that preserved spectator access. The trial court allowed Campbell and Smith to choose which two spectators stayed in the courtroom during voir dire. Once voir dire and jury selection finished and more space became available in the courtroom, the court relaxed the two-spectator rule to allow for more spectators. Although the trial court never articulated this change to the two-spectator rule, both parties presented evidence of this relaxation at Campbell's subsequent motions hearing. The State offered still photographs from courtroom video showing numerous spectators throughout the trial. Several spectators testified for Campbell, recalling being excluded from voir dire but allowed into the courtroom during witness examination, so long as they entered during a recess.

The physical and logistical constraints of the trial court, along with concerns about jury intimidation, justified the court's decision to implement the two-spectator rule. Because this closure was flexible and able to accommodate the preferences of who Campbell and Smith wanted to observe the trial and the changing capacity of the courtroom during different portions of the trial, we conclude that the courtroom closure was no broader than necessary to protect the trial court's overriding interest to limit the transmission of COVID-19 and comply with mandated operational restrictions. Accordingly, this factor favors a finding that the closure was justified.

3. *There were No Reasonable Alternatives*

The third factor is the most challenging aspect of our analysis. The record does not reflect that the trial court considered reasonable alternatives to the two-spectator rule, because neither Campbell, Smith, nor the State challenged the closure or proposed any alternatives during the trial. Regardless, courts must consider possible alternatives to a closure, “even when they are not offered by the parties.” *Presley v. Georgia*, 558 U.S. 209, 214 (2010). Consistent with this requirement, the record from Campbell’s motions hearing does not suggest that any reasonable alternatives to the closure existed.

At Campbell’s motions hearing, the judge heard testimony from excluded spectators to examine how the closure operated during the trial. None of the ten testifying spectators identified any exclusions beyond those stated by the trial court at the outset of the trial. Spectators excluded from voir dire and jury selection testified that their exclusion resulted from Campbell reaching his two-spectator limit. Those excluded during witness examinations testified that they were not allowed in because they arrived late or tried to enter during witness examinations, instead of during a recess, as the court requested. This testimony established that the trial court applied the closure rules consistently throughout the trial.

This consistency, however, does not reflect inflexibility. As mentioned previously, the State offered photographs showing spectators entering and leaving the courtroom. Spectators also testified that, although excluded during voir dire, they were allowed in

when more space became available. Thus, the trial court allowed more spectators when possible.

We are not convinced that Campbell’s suggestion, which he made at his motions hearing, to subdivide the venire into smaller panels and allow more spectators would have been a reasonable alternative. The venire was already divided into three panels, and jury selection lasted nearly three of Campbell’s eight-day trial. As mentioned, the court’s calendar and trial delays were significant concerns. Campbell’s suggestion would have further delayed proceedings and frustrated the State’s ability to call witnesses.

While the trial court did not expressly discuss reasonable alternatives, the record from the motions hearing shows that none existed that would have allowed more spectators. Under these circumstances, even with the benefit of hindsight, we have not been able to envision a better alternative to accommodate the safety, security, and efficiency of the proceedings. Accordingly, this factor weighs in favor of finding that the closure was justified.

#### 4. *The Trial Court Made Adequate Findings*

The last factor, that the trial court must make adequate findings to support the closure, also supports a finding that the closure was justified. This factor requires that the trial court make factual findings on the record to support the closure to allow “the reviewing court [to] determine whether the closure was properly entered.” *Waller*, 467 U.S. at 45; *see also Campbell*, 240 Md. App. at 459.

Just before voir dire, the trial judge addressed the spectators in the courtroom:

We'll have about 70 jurors in here and you all can't fit in here with 70 other jurors. Some of you might be able to sit over here and some of you might be able to sit over there, but you all won't fit in here. So, you'll have to select amongst yourselves who you want to stay and you want to go.

By explicitly identifying the courtroom's size as the reason for limiting the number of spectators in the courtroom, the trial court provided a factual basis for its decision. Although the trial court did not explicitly state it on the record, the limitation on spectators reflected the social distancing requirements imposed by the mandated operational restrictions. Because these facts were universally known at the time of Campbell's trial, the court's failure to articulate those requirements does not obscure them as factual considerations in its decision to implement the two-spectator rule. In ruling on Campbell's motion for a new trial, the judge reasoned, "It's important to be mindful of the time when this was happening. It was during COVID—we were coming out of the COVID pandemic, but there were still restrictions as to the areas where people could be seated during this time." Accordingly, the trial court provided, both explicitly and implicitly, adequate findings that supported its two-spectator rule. As a result, this factor favors a finding that the closure was justified.

These factors, taken together, justify the courtroom closure. The court advanced an overriding interest in preventing the spread of COVID-19 and complying with mandated operational restrictions. It used means no broader than necessary. There were no reasonable alternatives. The court articulated factual findings to support the protection of its interest. Because this closure was justified, we conclude that the trial court did not violate

Campbell's Sixth Amendment right to a public trial. We, therefore, affirm the trial court's denial of Campbell's motion for a new trial.

#### **IV. SUFFICIENCY OF THE EVIDENCE AGAINST SMITH**

We now turn to Smith's challenge that the evidence against him was insufficient to sustain his convictions.

In its case against Smith, the State argued that Smith was the shooter wearing the nondescript all-black clothing from the video footage recovered from the crime scene. To prove this, the State relied on circumstantial evidence, which, it argued, allowed the jury to infer connections between Smith and Campbell, and connections between Smith and the crime itself, that when taken together supported a finding of guilt beyond a reasonable doubt. This circumstantial evidence consisted of: (1) video footage of the crime; (2) a Facebook photo from Campbell's page; (3) a recorded phone call of Smith discussing Ellis's death; (4) three-way phone calls between Smith, Campbell, and another individual; and (5) expert testimony on cell phone records and mapping. At the close of the State's case in chief, Smith moved for a judgment of acquittal because, according to him, the State failed to produce sufficient evidence to prove his guilt beyond a reasonable doubt. The circuit court denied Smith's motion. Smith then renewed his motion at the end of the case, which was also denied.

As he did in moving for judgment of acquittal at trial, on appeal Smith contends that no reasonable jury could have found him guilty because nothing in the evidence presented by the State identified him as one of the shooters, connected him to Campbell at the time of the crime, or connected him to the crime itself. We agree.

We review sufficiency of the evidence claims based on ““whether, after viewing the evidence in the light most favorable to the prosecution, *any* rational fact finder could have found the essential elements of the crime beyond a reasonable doubt.”” *Donati v. State*, 215 Md. App. 686, 718 (2014) (citation omitted) (emphasis added). We are not concerned with the weight of the evidence, but rather with whether the evidence, directly, circumstantially, or through rational inference of facts, could fairly convince a juror and thus support the verdict. *Id.* Convictions based on circumstantial evidence “cannot be sustained on proof amounting only to strong suspicion or mere probability.” *Taylor v. State*, 346 Md. 452, 458 (2002). We give deference to the jury’s reasonable inferences, based on their opportunity to assess witnesses, weigh the evidence, and resolve conflicts in that evidence. *Donati*, 215 Md. App. at 718.

As previously mentioned, the State did not offer any direct evidence identifying Smith as the shooter who wore nondescript all-black clothing. Instead, the State’s case relied on circumstantial evidence to connect Smith to Campbell and to the crime. Smith’s appeal, therefore, turns on whether those asserted connections could constitute sufficient evidence for the jury to have found Smith guilty of the crime with which he was charged. As explained below, the record does not sufficiently establish these connections, and even if it did, those connections taken together are insufficient to support an inference that Smith was the unidentified suspect in black. We, therefore, conclude that no reasonable juror could find Smith guilty beyond a reasonable doubt.

A. Height

At trial, the State introduced the video footage that police recovered from the crime scene. The video showed one individual wearing nondescript all-black clothing standing on a sidewalk and calling out to Ellis. As Ellis was approaching, a second individual wearing a distinctive red, black, and white jacket was crossing the street. Once the three of them were together, the suspects opened fire on Ellis and then ran away. Due to distance and camera angle, the suspects' only identifiable features were their clothing and relative heights—the suspect wearing the nondescript all-black clothing, even while standing on a sidewalk curb, was shorter than the suspect in the distinctive jacket, who remained on the street.

The State argued that because the jurors could see that Smith was shorter than Campbell, Smith had to be the shorter shooter who wore nondescript all-black clothing. We disagree. According to his arrest records, Campbell is 6'5", which makes him taller than average. Most people are visibly shorter than Campbell, and Smith, at 5'8", is in this majority. This height comparison provides no basis for concluding that Smith, as opposed to any other person who is shorter than Campbell, was the suspect in all-black clothing. The State's evidence—that the second shooter was shorter than Campbell and that Smith is also shorter than Campbell—is insufficient to support an inference identifying Smith as the shooter who wore nondescript all-black clothing.

B. Connection to Campbell

Unable to directly identify Smith as the second shooter in the video, the State offered circumstantial evidence to attempt to connect Smith to Campbell in two ways. First, the

State sought to prove that Smith and Campbell were together when Ellis was shot. Then, the State tried to prove a general connection between Smith and Campbell. The circumstantial evidence the State used to build these connections, however, is insufficient to infer any connection between Smith and Campbell at the time of the crime.

The State first sought to prove Smith and Campbell were together at the time of the murder through cell phone mapping evidence. The State's expert testified that Smith's phone "pinged" a cell tower on an apartment complex near the crime scene four minutes after the shooting, while Campbell's phone pinged a different tower across the street around the same time. The State argued this placed both men together at the scene.

But this expert also explained that cell phone mapping is imprecise because a tower's coverage varies with network conditions, geography, and nearby towers. The expert estimated that Smith's phone was likely within .6 to .72 miles of the tower it pinged, but noted that it could have been farther, extending into the overlapping coverage of other towers—potentially up to 1.27 to 1.45 miles away, the distance to the next towers. For the same reasons, the expert could not pinpoint Campbell's exact location by his phone's ping.

This testimony does not support an inference that Smith and Campbell were together when Ellis was killed. Rather, it simply established that Smith and Campbell were both within .6 to 1.45 miles of cell phone towers near the crime scene, as were numerous other people, as documented in the video footage. Moreover, Smith's presence in the area was not notable or unusual—Smith's grandmother lived nearby and Smith frequented a recreation center close to the crime scene. In addition, neither Smith nor Campbell's phone records show any calls between them on the day of the shooting. Far from connecting Smith

to Campbell, the State's cell mapping evidence proved only that Smith and Campbell were in general proximity to each other. The same connection could be made between Campbell and any other person in the area who had a cell phone. This evidence was, therefore, insufficient to support the specific inference that Smith and Campbell were together when the crime occurred.

In the absence of proof that Smith and Campbell were together at the time of the crime, the State also attempted to prove a more general connection between Smith and Campbell. The State relied on two pieces of evidence: three-way phone calls between Smith, Campbell, and a third-party known to each of them, Avery Rich, as well as a Facebook photo from Campbell's social media page. These three-way phone calls, however, did not discuss Ellis in any way, and more importantly for our purposes, these phone calls occurred approximately five months *after* the shooting. The only other evidence the State introduced to connect Smith and Campbell was a photo from Campbell's Facebook page, which showed Smith, Campbell, and two other individuals—one of whom was Rich. But that photo, too, was after the fact, as it was posted about one month after the shooting. While this evidence shows that at some point after the crime Smith and Campbell had a mutual friend and may have interacted socially, those facts are insufficient to connect Smith and Campbell at the time of the crime.

### C. Connection to the Crime

The State used similar circumstantial evidence to try to connect Smith directly to the crime itself. To prove this connection, the State offered three items of evidence: (1) the cell phone mapping expert testimony placing Smith at the crime scene; (2) a phone call

recording of Smith discussing Ellis's murder; and (3) the three-way phone calls between Smith, Campbell, and Rich allegedly showing consciousness of guilt. None of this evidence, however, is sufficient to support a reasonable inference connecting Smith to the crime.

As discussed above, the State's expert testimony on cell phone mapping established only that Smith's phone was somewhere within a .6 to 1.45-mile radius of the tower it pinged. The expert acknowledged that they could only testify to the general location of Smith's phone, which was, according to them, "a big area." Without more, this evidence cannot support an inference that Smith was in the very specific location of the crime scene. But even if we assume that this evidence could place Smith at the crime scene, our courts have long accepted that "mere presence of a person at the scene of a crime is not itself sufficient to prove ... guilt." *Fleming v. State*, 373 Md. 426, 433 (2003). Indeed, the jury heard testimony that the 1200 block of Druid Hill Avenue was crowded at the time of the crime. It is no more reasonable to infer that Smith's presence in that area identified him as the suspect in black than it would be reasonable to infer that any of the other numerous people within the general area of the crime scene was the suspect in black.

Next, the State argued that Smith demonstrated his connection to the crime when he called his friend, Tyrone Jones, four days after the shooting and discussed Ellis's death. The State played a recording of that call for the jury:

JONES: Who got killed in Druid Hill? What's his name?  
SMITH: Beontray  
JONES: Deontray? Where ... he from?

SMITH: No, yo, name like Beontray. He fell down violent. How ... you hear about that?

JONES: Heard it on the news. Watch Channel 13.

SMITH: Yo, I can't wait for you to come home.

JONES: Why? What happened?

SMITH: You put two and two together.

JONES: I'm about them drugs, for real.

SMITH: Shorty [inaudible] drugs ... shouldn't been hanging out with them little kids.

The State argued that Smith was bragging about committing the murder when he told Jones, “You put two and two together.” The State also alleged that when Smith said that Ellis “shouldn’t have been hanging out with them little kids,” Smith revealed his motive for committing the crime.<sup>6</sup> Neither statement supports the inference that Smith was involved in Ellis’s death.

We note first that Ellis’s murder was a serious crime that had occurred only a few days before the recorded phone call took place, and it had been reported on the local news. There is nothing inherently suspicious about it being a topic of conversation amongst people who were familiar with the area. Smith’s comment “You put two and two together” was specifically in response to Jones asking why Smith was eager for Jones to come home. Although the State argues that what Smith meant by “[putting] two and two together” was that Smith was happy Jones had correctly guessed that he was involved in Ellis’s death, it

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<sup>6</sup> An audio recording of this phone call was played for the jury, but it was not transcribed. Portions of the audio were difficult to understand. At trial and in their briefs, the parties quote Smith’s final statement as, alternately, “hanging out with” or “been playing with” kids. We adopt “hanging out with” in this Opinion.

is at least as likely that it referred to something unrelated. Indeed, when Jones asked Smith about who had been killed, Jones seemed unfamiliar with Ellis's name. If Jones didn't even know who Ellis was, it is highly improbable that he somehow guessed who was responsible for Ellis's death.

In contrast, the State's argument that the recorded call identified a possible motive for Ellis's murder is better supported by the record. Smith's statement that Ellis "shouldn't been hanging out with them little kids" suggests that Ellis was involved in objectionable activities involving kids and drugs. Viewed in the light most favorable to the prosecution, the recorded call could support an inference that Smith knew of, or even had, a possible motive for Ellis's murder. The context of Smith's comment suggests the motive was not personal, but rather that Ellis's activities were generally known and had put him in danger. But even if we assume that Smith had a motive to kill Ellis, motive is not an element of the crime. *Snyder v. State*, 361 Md. 580, 604 (2000). Motive may support the introduction of otherwise admissible evidence, such as evidence of other crimes, or may be relevant to intent or identity. *Id.* Here, however, the State presented no other evidence connecting Smith to the crime. Motive alone is not evidence of guilt.

Finally, the State sought to prove Smith's connection to the crime through a series of three-way phone calls between Smith, Campbell, and Rich. The State argued that these calls showed Rich acted as a "go-between" by initiating the three-way calls that connected Smith and Campbell, and that using such a "go-between" reflected Smith's desire "not [to] get caught." At no time during any of these three-way calls did Smith, Campbell, or Rich mention Ellis or how he died. Similar to the previously discussed photograph of Smith,

Campbell, and Rich, evidence of the three-way calls establishes only that Smith and Campbell had a mutual friend. The existence of a mutual friend, without more, does not support an inference that the mutual friend was a “go-between” to prevent detection of a crime. There is simply no basis to infer that Smith or Campbell relied on Rich to secretly convey information to avoid detection for a crime about which there is no evidence that they ever discussed. Accordingly, these three-way phone calls are insufficient to prove a connection between Smith and the crime that would support an inference that Smith was the suspect who wore all-black.

The evidence the State presented at trial was insufficient to identify Smith as the shooter who wore nondescript all-black clothing, was insufficient to connect Smith to Campbell at the time of the crime, and was insufficient to connect Smith to the crime itself. The State’s case against Smith was based on nothing more than speculation falling far short of proof beyond a reasonable doubt.

## **CONCLUSION**

In sum, we conclude that the trial court did not abuse its discretion in denying Campbell’s request for a postponement, his motion for a mistrial, or his motions for a new trial. We also conclude that Smith’s convictions were based on “mere speculation or conjecture” such that no reasonable juror could find Smith guilty beyond a reasonable doubt. Accordingly, we vacate his convictions.

**JUDGMENT OF THE CIRCUIT COURT  
FOR BALTIMORE CITY IN CASE NO. 582  
IS AFFIRMED.**

**JUDGMENT OF THE CIRCUIT COURT  
FOR BALTIMORE CITY IN CASE NO. 734  
IS VACATED.**

**ONE HALF OF COSTS TO BE PAID BY  
APPELLANT CAMPBELL AND ONE  
HALF OF COSTS TO BE PAID BY  
BALTIMORE CITY.**