Circuit Court for Baltimore County
Case No. 03-K-15-005488

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 1988

September Term, 2016

HASSAN EMMANUEL JONES

v.

STATE OF MARYLAND

Friedman,
Fader,
Kenney, James A., III
(Senior Judge, Specially Assigned),

JJ.

Opinion by Fader, J.

Filed: August 8, 2018

A longstanding rule of law prohibits conviction of a criminal defendant based on accomplice testimony—no matter how overwhelming that testimony may be—in the absence of independent corroboration that tends to either (1) implicate the defendant in the crime or (2) identify the defendant with the perpetrators of the crime at or near the time it was committed. A Baltimore County jury convicted appellant Hassan Jones of conspiracy to commit an armed carjacking that led to a brutal murder. However, the evidence against Mr. Jones all came from or through his alleged accomplices. Based on controlling precedent, we must therefore reverse his conviction.

BACKGROUND

A Body Is Discovered

Early on an August morning in 2015, a neighbor discovered Sandeep Bhulai's dead body lying next to his car in Middle River. Mr. Bhulai had been shot six times, including in the head, neck, left elbow, left arm (twice), and chest. In the grass near the body, police found 9-millimeter and .380 caliber spent shell casings. Police also found a moped, which they later linked to the crime, in a nearby alley.

Through their investigation, the police identified six different individuals as suspects in the crime: Keith Harrison, Kareem Riley, Ramart Wilson, Christian Tyson, Michael Jobes, and Mr. Jones. The police found physical evidence implicating all but Mr. Jones. Messrs. Harrison, Riley, Wilson, and Tyson all left fingerprints on either the moped or Mr. Bhulai's vehicle. The police found Mr. Harrison in possession of the .380 caliber handgun that had fired the shell casings found near Mr. Bhulai's body and they found Mr.

Bhulai's cell phone in Mr. Jobes's home. Cell site locational data also placed Messrs. Harrison, Jobes, and Wilson in the vicinity of the murder that night.

The Night of the Murder, According to the Accomplices

Messrs. Tyson, Riley, and Wilson all testified at Mr. Jones's trial. All testified pursuant to plea agreements[1] and all testified consistently with respect to Mr. Jones's role in the events of that evening. According to all three, Mr. Riley drove the group to a party in Reisterstown and then to an afterparty in Woodlawn. At the afterparty, someone took a photo of the group using Mr. Wilson's cell phone. Mr. Wilson identified all of the men in the picture, including Mr. Jones, by writing one of their names or nicknames beside each of the figures in the picture.

According to the accomplices, following the afterparty, the group decided to steal a vehicle nearby in Middle River. They then parked in a residential area and split up. Messrs. Riley, Wilson, and Harrison attempted to steal a moped. When the moped failed to start, however, they abandoned it in a nearby alley. Mr. Wilson then took Mr. Riley, who was very intoxicated, back to the car, while Mr. Harrison went after the others.

The other members of the group—Messrs. Tyson, Jobes, and Jones, eventually joined by Mr. Harrison—looked for a car to steal. According to Mr. Tyson, who provided

[1] Mr. Riley pleaded guilty to accessory after the fact to first degree murder for a recommended sentence of ten years, suspend all but five years, and five years' probation. Mr. Wilson pleaded guilty to conspiracy to commit armed robbery for a recommended sentence of 20 years, suspend all but ten years, and five years' probation. Mr. Tyson pleaded guilty to first degree murder for a recommended sentence of life, suspend all but 40 years, and five years' probation.

the only testimony about the murder itself, they found Mr. Bhulai sitting in his car and forced him at gunpoint onto the side of the road. Mr. Tyson took Mr. Bhulai's cell phone and then Messrs. Jobes, Harrison, and Jones all shot Mr. Bhulai. Mr. Jobes took Mr. Bhulai's wallet and they all ran back to Mr. Riley's car.

Mr. Riley, who had fallen asleep in the car, testified that he was awakened by the sound of gunshots. Mr. Wilson, in the car with Mr. Riley, testified that he also heard gunshots approximately ten minutes after the group split up. Both Messrs. Riley and Wilson testified that when the rest of the group returned to the car, Messrs. Harrison, Jobes, and Jones all had guns in their hands.[2] According to Mr. Riley, Mr. Jones told him to leave quickly because they had just shot someone.

Mr. Jones's Arrest, Trial, and Conviction

In early September 2015, the police arrested Mr. Jones. During his interrogation, Mr. Jones denied any knowledge of the crime or the other five men, even though his and Mr. Jobes's phone numbers were listed in each other's cell phones. Mr. Jones even initially denied owning a cell phone or having a nickname, although he later admitted to both.

Over a six-day jury trial in August 2016, Mr. Jones was tried on six counts: first degree murder; second degree murder; first degree felony murder; use of a firearm during a crime of violence; conspiracy to commit armed carjacking; and armed robbery. In

[2] Messrs. Riley and Tyson testified that Mr. Harrison had a .380 caliber handgun, Mr. Jobes had a .22 caliber revolver, and Mr. Jones had a 9-millimeter. Mr. Wilson could not identify any of the guns, except that Mr. Jobes carried a revolver that evening.

addition to the testimony of Messrs. Tyson, Riley, and Wilson, the State presented the testimony of the lead homicide detective, forensic experts, and the police officers involved in the investigation. The State introduced physical evidence from the crime scene and historical cell phone locational data for the cell phones of four of Mr. Jones's alleged accomplices. All of this information generally corroborated the accomplices' testimony regarding their movements and activities that evening. No locational data was presented for Mr. Jones's phone, however, nor did any other physical evidence corroborate his involvement.

At the close of the State's case, Mr. Jones moved for acquittal on all charges, arguing that the accomplices' testimony was uncorroborated and therefore insufficient. The trial court denied the motion, finding that the photograph taken with Mr. Wilson's phone on the night of the murder could serve as the necessary independent corroboration. The court instructed the jury regarding the corroboration requirement.

The jury convicted Mr. Jones of conspiracy to commit armed carjacking but acquitted him of the other charges. Mr. Jones restated his argument regarding the lack of corroboration of the accomplices' testimony in an unsuccessful motion for a new trial. The trial court sentenced him to 30 years' incarceration.

DISCUSSION

Mr. Jones contends that the State failed to provide sufficient corroboration of the testimony of his alleged accomplices, which served as the only evidence connecting him to the crime. We review a sufficiency-of-the-evidence claim by determining "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." *Smith v. State*, 415 Md. 174, 184 (2010) (quoting *Jackson v. Virginia*, 443 U.S. 307, 319 (1979)). Weighing the evidence, assessing "the credibility of witnesses and resolving conflicts in the evidence are matters entrusted to the sound discretion of the trier of fact." *In re Heather B.*, 369 Md. 257, 270 (2002) (quoting *In re Timothy F.*, 343 Md. 371, 379 (1996)). Accordingly, both the evidence and all reasonable inferences from that evidence must be viewed in the light most favorable to the State. *Smith*, 415 Md. at 185-86.

I. MARYLAND FOLLOWS THE ACCOMPLICE CORROBORATION RULE.

"The longstanding law in Maryland is that a conviction may not rest on the uncorroborated testimony of an accomplice." *In re Anthony W.*, 388 Md. 251, 264 (2005) (quoting *Williams v. State*, 364 Md. 160, 179 (2001)); *Boggs v. State*, 228 Md. 168, 170 (1962) ("It is unquestionably true that a person accused of crime may not be convicted in this State on the uncorroborated testimony of an accomplice."). Maryland courts "have steadfastly adhered to [this] rule" since its adoption in 1911. *Woods v. State*, 315 Md. 591, 616 (1989). The theory behind the rule is that an accomplice is "contaminated with guilt," and his or her testimony "should be regarded with great suspicion and caution[;] . . . otherwise the life or liberty of an innocent person might be taken away by a witness who makes the accusation either to gratify his [or her] malice or to shield himself [or herself] from punishment, or in the hope of receiving clemency" for his or her own involvement in the crime. *Ayers v. State*, 335 Md. 602, 637-38 (1995) (quoting *Watson v. State*, 208 Md.

210, 217 (1955), *abrogated in part on other grounds by State v. Hawkins*, 326 Md. 270, 284-85 (1992)). Without this rule, it is feared that an accomplice may "point the finger of guilt at one who, for the lack of an alibi or witness, may find himself unlawfully incarcerated. Such would offend our whole system of justice." *Turner v. State*, 294 Md. 640, 642 (1982) (quoting *State v. Foust*, 588 P.2d 170, 173 (Utah 1978)). A necessary but unstated premise of this rule is that, in the absence of at least some corroboration, jurors will be incapable of determining reliably the veracity of the accomplice testimony.

Notwithstanding this concern, "only slight corroboration is required" to send a case that is otherwise wholly reliant on accomplice testimony to a jury. *Ayers*, 335 Md. at 638; *see also Boggs*, 228 Md. at 171 ("[I]t is well settled that not much in the way of corroboration of the testimony of an accomplice is required. It is not necessary that the corroborating testimony be of itself sufficient to convict the accused . . . ."). That slight corroboration, however, must apply to one of two categories of evidence; it "must relate to material facts tending either (1) to identify the accused with the perpetrators of the crime or (2) to show the participation of the accused in the crime itself." *Collins v. State*, 318 Md. 269, 280 (1990) (quoting *Brown v. State*, 281 Md. 241, 244 (1977)) (emphasis omitted). "If with some degree of cogency the corroborative evidence tends to establish either of these matters, the trier of fact may credit the accomplice's testimony even with respect to matters as to which no corroboration was adduced." *Woods*, 315 Md. at 617 (quoting *Brown*, 281 Md. at 244). In this way, Maryland courts have attempted to balance the "presum[ption] that the accomplice's testimony, by itself, is untrustworthy," with the

risk of "depriving the factfinder of evidence from a source intimately connected with the crime . . . ." *Turner*, 294 Md. at 642.

Evidence tending "to identify the defendant with the perpetrators of the crime" must be sufficiently proximate in time and location to the crime to constitute corroboration. *Foxwell v. State*, 13 Md. App. 37, 39-41 (1971); *see also Wright v. State*, 219 Md. 643, 650-52 (1959) (independent evidence that the defendant had been with the accomplices throughout the night in question provided the necessary corroboration). Thus, "independent evidence corroborating the accomplice's testimony that the accused was in the vicinity of the crime at the time it was committed or that he was in the company of the perpetrator or perpetrators either shortly before or shortly after the crime constitutes legally sufficient corroborative evidence." *Wise v. State*, 8 Md. App. 61, 63 (1969); *see also Boggs*, 228 Md. at 171-72 ("[T]hat appellant and [the accomplice] were, by appellant's own admissions, in the vicinity of the crime in apparent companionship may also sufficiently connect the accused with the commission of the crime so as to furnish the necessary corroboration."). But a defendant's admission that he had been with the alleged accomplice at least several hours before the crime and several blocks away is "too remote in time and place from the commission of the crime to be adequate corroboration under all the circumstances." *Foxwell*, 13 Md. App. at 40-41; *see also Jeandell v. State*, 34 Md. App. 108, 110-13 (1976) (distinguishing cases placing the defendant with accomplices proximate to the commission of the crime).

The slight corroboration can come from any number of non-accomplice sources, including a defendant's own testimony, *Boggs*, 228 Md. at 171; *Mulcahy v. State*, 221 Md. 413, 427-28 (1960), the inconsistent testimony of a minor child of the accomplice, *McCray v. State*, 122 Md. App. 598, 606 (1998), or from a non-accomplice bystander, *Collins*, 318 Md. at 280-81. But the "corroboration must be independent of the accomplice's testimony." *Turner*, 294 Md. at 646; *see also id.* at 647 ("We hold, therefore, that in order to satisfy the rule of independent corroboration of accomplice testimony, the proffered evidence must consist of something more substantial than the extrajudicial comments of the accomplice himself."); *McCray*, 122 Md. App. at 606.

II. NO INDEPENDENT EVIDENCE CORROBORATED THE TESTIMONY OF MR. JONES'S ALLEGED ACCOMPLICES AS TO HIS INVOLVEMENT IN THE CRIME OR HIS IDENTITY WITH THE ACCOMPLICES PROXIMATE TO THE CRIME.

The ultimate issue in this case is whether the State presented even slight independent corroboration of the testimony of Mr. Jones's alleged accomplices tending to show either Mr. Jones's involvement in the crime or his presence with the accomplices proximate to the crime. The State contends that it did, in three ways. We address each in turn.

First, in a non sequitur, the State points to the significant, perhaps even overwhelming, evidence at trial that corroborated the basic stories told by the three alleged accomplices, including: (1) the consistency among the accounts; (2) cell phone locational data corroborating the accomplices' timeline of events; (3) fingerprints of four accomplices found on the moped and car; (4) the consistency between the coroner's report and Mr. Tyson's description of the murder; (5) shell casings found at the scene matching the types

of firearms the group reportedly used; (6) the .380 caliber handgun recovered from Mr. Harrison's house; and (7) Mr. Bhulai's cell phone found in the possession of Mr. Jobes. Although this evidence was strongly corroborative generally of the stories told by the accomplices, none of it corroborates Mr. Jones's involvement in the crime or his presence with the perpetrators proximate to the crime.

Second, the State points to the photograph taken with Mr. Wilson's phone, which Mr. Wilson testified: (1) was taken on the evening of the murder, shortly before the murder took place; and (2) depicted all six alleged accomplices, including Mr. Jones. The State argues that this picture corroborates Mr. Jones's presence with the other participants proximate to the crime because it shows that they were all together on the night in question. The photograph, however, cannot constitute independent corroboration because it depends entirely on Mr. Wilson's testimony. Notably, the picture itself does not contain any indication of where or when it was taken, nor did the State offer evidence from any non-accomplice witness to provide that information. The only connection made at trial between the photograph and the night in question was in Mr. Wilson's testimony. It thus impermissibly "depends upon the testimony of the accomplices, which needs corroboration, for the establishment of the corroboration." *Jeandell*, 34 Md. App. at 111.

Moreover, the face in the picture that Mr. Wilson identified as Mr. Jones is wholly indiscernible. The photograph, which is of poor quality, depicts little more than half of an ill-defined face. In the absence of Mr. Wilson's testimony identifying the face as belonging to Mr. Jones, it would have been impossible for a jury to have identified him. Because Mr.

Wilson's testimony was essential both in identifying the photograph as having been taken proximate to the crime and in identifying Mr. Jones's depiction in the photograph, it cannot serve as the slight independent corroboration required. If we were to find otherwise, we would essentially be allowing Mr. Wilson to corroborate his own testimony. That we cannot do. *Turner*, 294 Md. at 645; *id.* at 647 ("It would eviscerate the rule to allow an accomplice to corroborate himself.").

Third, the State argues that Mr. Jones's post-arrest false statements to the police—in which he denied knowing any of his alleged accomplices and having a cell phone or a nickname—independently corroborate the accomplices' testimony. Although there are a number of flaws in this argument, the most important is that his false statements do not serve either of the purposes corroborative evidence must accomplish. In other words, although false "statements may of themselves serve to corroborate the accomplice's testimony," *McDowell v. State*, 231 Md. 205, 214 (1963), that is only where those false statements pertain either (1) to information directly connecting the defendant either to the crime itself or (2) to the alleged accomplices proximate to the crime, *see id.* (finding the false statements corroborative because they went "to [the defendant's] *whereabouts at the time of the [crime]* and to *his being . . . with [the accomplice] at about that time*") (emphasis added); *Nolan v. State*, 213 Md. 298, 309 (1957) (stating that "[t]he corroborating evidence may be circumstantial and may consist of . . . untruthful statements made by [the defendant] *in respect to matters connected with the commission of the crime*") (emphasis added); *Mulcahy*, 221 Md. at 427-28 (holding accomplice testimony corroborated where the

defendant's own statements to police placed him with the accomplices around the time and at the scene of the crime); *Wright*, 219 Md. at 651 (finding corroborative false statements about "association with the accomplices a few minutes before the" crime occurred); *Irvin v. State*, 23 Md. App. 457, 468-69 (1974) (finding sufficient corroboration in the defendant's false statements to police about the activities underlying his conviction for obstruction of justice).

Here, Mr. Jones's false statement that he did not know his alleged accomplices does not get the State any closer to either of these points. Setting aside for the moment the testimony of the accomplices, nothing more than pure speculation ties Mr. Jones's denials to the carjacking conspiracy or the accomplices on the evening in question. Mr. Jones's interview took place more than a month after the murder. At that time, he may have lied for any number of reasons: he may not have wanted to be associated with individuals who he believed were involved with criminal activity or who had already been picked up by the police; he may have known one or more of them to be bad actors; he may have engaged in other criminal activity with them; or he may have just distrusted the police. *See Samuels v. State*, 54 Md. App. 486, 494-95 (1983) (discussing how consciousness of guilt can be about an unrelated crime); *People v. Moses*, 63 N.Y.2d 299, 308 (1984) (explaining that "a false alibi may be due not to consciousness of guilt of the crime charged but to consciousness of some incriminating evidence and the justifiable desire to remain free").

Nothing in the record, other than the accomplices' testimony, indicates one of these reasons as being any more likely than any of the others.[3]

The State, relying on the Georgia Supreme Court's decision in *Threatt v. State*, 748 S.E.2d 400 (Ga. 2013), argues that Mr. Jones's false statements are enough because, even if they do not relate to the specifics of this crime, they show consciousness of guilt. We disagree. As an initial matter, *Threatt* does not stand for the proposition that consciousness of guilt evidence alone can provide the necessary corroborative testimony. There, false statements were just one of several corroborative factors, including: (1) the defendant's statement indicating knowledge of the gender of a participant in the events before that was revealed to him; (2) physical descriptions of the height of the culprits provided by a third party; (3) contact between the defendant and an accomplice before and after the shooting; and (4) gunshot primer residue found on the defendant's jacket. *Id.* at 402-03.

Moreover, even if consciousness of guilt were enough by itself, Mr. Jones's denials do not demonstrate consciousness of guilt of the crime at issue. Consciousness of guilt evidence requires four sequential inferences: "(1) from the defendant's behavior to [lying]; (2) from the [lying] to consciousness of guilt; (3) from consciousness of guilt to consciousness of guilt concerning the crime charged; and (4) from consciousness of guilt concerning the crime charged to actual guilt of the crime charged." *State v. Simms*, 420

[3] Nor do Mr. Jones's denials that he owned a cell phone or had a nickname advance the State's case for corroboration. The State never produced any evidence that Mr. Jones's cell phone was identified as near the area of the crime and the only significance of Mr. Jones's nickname is that the accomplices identified him by that name.

Md. 705, 729 (2011) (quoting *Decker v. State*, 408 Md. 631, 642 (2009)). The circumstances here do not support this inferential chain. Stripped of the testimony of the accomplices, there is nothing more than sheer speculation to tie Mr. Jones's denial that he knew his alleged accomplices—coming more than a month after the murder—to consciousness of guilt of *this* crime. *See Decker*, 408 Md. at 642 (asserting that each inference requires evidentiary support).

Furthermore, if the accomplice corroboration rule can be defeated by a defendant's general denial of any knowledge of his alleged accomplices—without tying that in some way to the crime itself or the time and location of the crime—it is difficult to see how the rule would not be rendered meaningless. Corroboration need only be slight, but that does not mean that it can be wholly speculative.

In sum, other than through accomplice testimony, the State presented no evidence corroborating Mr. Jones's participation in the carjacking conspiracy or his presence with the accomplices on the evening in question. Because "a person accused of a crime may not be convicted on the uncorroborated testimony of an accomplice," *Turner*, 294 Md. at 641-42, Mr. Jones's conviction for conspiracy to commit carjacking must be reversed.

III. THE COURT OF APPEALS MAY CHOOSE TO REVISIT THE ACCOMPLICE CORROBORATION RULE.

Our holding here is a straightforward application of a rule that the Court of Appeals established in 1911 and which we are bound to apply. It is a minority rule among the states and a rule that the Court of Appeals has previously recognized "may be of limited utility," but which thus far the Court has deemed safer to keep. *Brown*, 281 Md. at 246.

We readily acknowledge that the main factor underlying the Court of Appeals's 1977 decision to reaffirm the rule—"the escalating prosecutorial trend freely to utilize accomplices as State witnesses," *id.*—has, if anything, only grown stronger.[4] And we agree that an accomplice's testimony should "be regarded with great suspicion and caution" because an accomplice is "admittedly contaminated with guilt" and may turn State's evidence "to gratify his malice or to shield himself from punishment." *Id.* at 244 (quoting *Watson*, 208 Md. at 217); *Turner*, 294 Md. at 648-49 (same); *In re Anthony W.*, 388 Md. at 264 (same).[5] Indeed, as in 1977, "the evidence of an accomplice is universally received with caution and weighed and scrutinized with great care." *Brown*, 281 Md. at 243 (quoting *Luery v. State*, 116 Md. 284, 292 (1911)).[6] But, as exemplified by the facts of this case,

[4] *See* Jessica A. Roth, *Informant Witnesses and the Risk of Wrongful Convictions*, 53 Am. Crim. L. Rev. 737, 748-50 (2016) (discussing the prevalence of informant witnesses).

[5] *See also* Roth, *Informant Witnesses*, 53 Am. Crim. L. Rev. at 765-84 (discussing inherent, structural, and societal risks of accomplice testimony); Christine J. Saverda, *Accomplices in Federal Court: A Case for Increased Evidentiary Standards*, 100 Yale L.J. 785, 786-87 (1990) (discussing why accomplice-witness testimony should "be afforded special scrutiny").

[6] Even those jurisdictions that allow conviction on the uncorroborated testimony of an accomplice express the same concern about the unreliability of that testimony. *E.g.*, *People v. Gomez*, 537 P.2d 297, 300 (Colo. 1975); *State v. Moore*, 981 A.2d 1030, 1059 (Conn. 2009); *Brooks v. State*, 40 A.3d 346, 350 (Del. 2012) (requiring a jury instruction stating "the testimony of an alleged accomplice should be examined . . . with more care and caution than" that of other witnesses); *Bryan v. United States*, 836 A.2d 581, 584 n.3 (D.C. 2003) (Glickman, J., concurring) (collecting cases for the proposition that accomplice testimony is presumptively unreliable); *Dennis v. State*, 817 So. 2d 741, 751 (Fla. 2002) (discussing a jury instruction that directs jurors to "use great caution in relying on the testimony of a witness who claims to have helped the defendant commit a crime"); *State v. Okumura*, 894 P.2d 80, 103-04 (Haw. 1995), *abrogated on other grounds by State*

we are skeptical that the accomplice corroboration rule strikes the best balance between the potential dangers of accomplice testimony and its potential value. *Turner*, 294 Md. at 642 (indicating the purpose of the rule is to balance the risk of incarcerating defendants based on untrustworthy testimony with the need to leverage those "intimately connected with the crime" as sources of evidence).

The goal of requiring corroboration is to prevent the conviction of a criminal defendant based on testimony that is inherently unreliable. The validity and importance of that goal is unquestionable. But whether the rule is well-suited to accomplishing that

v. Cabagbag, 277 P.3d 1027, 1038-39 (Haw. 2012); *People v. McLaurin*, 703 N.E.2d 11, 21 (Ill. 1998); *Brown v. State*, 671 N.E.2d 401, 410 (Ind. 1996) (indicating "the danger of convictions resulting from purchased testimony") (quoting *Tidwell v. State*, 644 N.E.2d 557, 560 (Ind. 1994)); *State v. McLaughlin*, 485 P.2d 1360, 1364 (Kan. 1971) (quoting favorably the trial court's jury instruction that accomplice testimony "should be received with great caution"); *State v. Prince*, 211 So. 3d 481, 503 (La. Ct. App.), *writ denied*, 211 So. 3d 481 (La. 2017) & 237 So. 3d 1190 (La. 2018), *petition for cert. filed*, __ U.S.L.W. __ (May 22, 2018) (No. 17-9016); *State v. Jewell*, 285 A.2d 847, 851 (Me. 1972); *People v. Young*, 693 N.W.2d 801, 804 (Mich. 2005); *Williams v. State*, 32 So. 3d 486, 490 (Miss. 2010); *State v. West*, 295 A.2d 457, 458 (N.H. 1972); *State v. Adams*, 943 A.2d 851, 864 (N.J. 2008); *State v. Sarracino*, 964 P.2d 72, 77-78 (N.M. 1998); *State v. Morston*, 445 S.E.2d 1, 12 (N.C. 1994) (quoting the pattern jury instruction with approval); *Commonwealth v. Rega*, 933 A.2d 997, 1014 (Pa. 2007); *State v. Padilla*, __ P.3d __, 2018 UT App 108, ¶ 13 (2018) (quoting Utah Code Ann. § 77-17-7); *State v. Briggs*, 568 A.2d 779, 784 (Vt. 1989) (quoting the trial court's jury instruction with approval); *Via v. Commonwealth*, 762 S.E.2d 88, 88-89 (Va. 2014); *State v. Harris*, 685 P.2d 584, 586-87 (Wash. 1984), *overruled in part on other grounds by State v. McKinsey*, 810 P.2d 907 (Wash. 1991); *State v. Vance*, 262 S.E.2d 423, 426-27 (W. Va. 1980); *Linse v. State*, 286 N.W.2d 554, 558 (Wis. 1980) ("[A]ccomplice testimony should be weighed with greater caution than the testimony of other witnesses."); *Phillips v. State*, 553 P.2d 1037, 1040 (Wyo. 1976); *Caminetti v. United States*, 242 U.S. 470, 495 (1917) (indicating that "it was the better practice for courts to caution juries against too much reliance upon the testimony of accomplices, and to require corroborating testimony before giving credence to such evidence").

goal—in other words, whether it really does effectively distinguish cases in which evidence of guilt is reliable from those in which it is not—is less certain. On one hand, the rule can act as a complete bar to a factfinder's consideration of potentially overwhelming evidence of guilt for want of a specific type of evidence. On the other hand, the restriction—and any protective value it might offer—evaporates entirely if the State is able to offer any slight piece of evidence of that type, even if that evidence is itself of minimal persuasive value. Stated differently, under this rule, a factfinder's consideration of evidence she or he might conclude is highly reliable can be forbidden in one case, while in a different case the same factfinder may be permitted to weigh a much lesser quantum of much more suspect evidence. *See* Roth, *Informant Witnesses*, 53 Am. Crim. L. Rev. at 760-61 (discussing the "anemic corroboration requirements" in those jurisdictions that do require corroboration of accomplice testimony).

"A basic principle of a criminal jury trial, incorporated in the Maryland Constitution, is that the jury is the judge of the facts. A corollary is that it is 'the province of the jury' to determine the credibility of the witnesses who provide evidence about those facts." *Fallin v. State*, ___ Md. ___, 2018 WL 3410022, at *1 (July 12, 2018) (quoting *Bohnert v. State*, 312 Md. 266, 277 (1988)); *see also Brown v. State*, 368 Md. 320, 328 (2002) ("[T]here have been numerous cases confirming that in jury trials the credibility of witnesses is a jury issue."). Courts must be "mindful of the respective roles of the court and the jury; it is the jury's task, not the court's, to measure the weight of evidence and to judge the credibility of witnesses." *Dawson v. State*, 329 Md. 275, 281 (1993). That is

true even in areas in which jurors would ordinarily be thought to have relatively little competence, such as the assessment and application of complex expert testimony. *See, e.g., Levitas v. Christian*, 454 Md. 233, 246-47 (2017) (It is the jury that "assess[es] how much weight to give [an expert's] testimony," which the jury need not accept at all.). It is also why, when an appellate court conducts a sufficiency-of-the-evidence review of a criminal conviction, the court only asks "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." *Smith*, 415 Md. at 184 (quoting *Jackson*, 443 U.S. at 319).

The accomplice corroboration rule is an exception to that ordinary division of roles that runs contrary to "a modern trend towards removing evidentiary disabilities and permitting the jury to weigh all of the available evidence." Derek J. T. Adler, *Ex Post Facto Limitations on Changes in Evidentiary Law: Repeal of Accomplice Corroboration Requirements*, 55 Fordham L. Rev. 1191, 1205 (1987); *see also* 2 Wigmore, Evidence § 488, at 647 (Little, Brown & Co. 1979) (opining that the common law rules on witness qualification "were highly restrictive," but "came to be recognized as illiberal and unnecessary in many instances"). In line with this trend, Federal Rule of Evidence 601, on which Maryland's Rule 5-601 is based, Rule 5-601, Cmte. Note, "eliminate[d] all grounds of witness incompetency," including "age, religious belief, mental incapacity, color of skin, moral incapacity, conviction of a crime, marital relationship, and connection with the

litigation as a party, attorney, or interested person," Michael H. Graham, *Handbook of Federal Evidence* 492-93 (8th ed. 2016) (internal footnotes omitted).

By our count, Maryland, along with Tennessee, *State v. Hawkins*, 519 S.W.3d 1, 58 (Tenn. 2017), is one of two states that impose the accomplice corroboration requirement as a judicially-imposed rule. Sixteen other states have adopted some form of the rule by statute.[7] The rest of the states, plus the federal courts and the District of Columbia, follow the traditional common law rule, which does not require corroboration.[8] *Brown*, 281 Md.

[7] *McGowan v. State*, 990 So. 2d 931, 987 (Ala. Crim. App. 2003) (citing Ala. Code § 12-21-222); *M.H. v. State*, 382 P.3d 1201, 1205 (Alaska Ct. App. 2016) (citing Alaska Stat. § 12.45.020); *MacKool v. State*, 231 S.W.3d 676, 688 (Ark. 2006) (citing Ark. Code Ann. § 16-89-111(e)(1)(A)); *People v. Whalen*, 294 P.3d 915, 959 (Cal. 2013) (citing Cal. Penal Code § 1111), *disapproved of on other grounds by People v. Romero*, 354 P.3d 983, 1014 n.17 (Cal. 2015); *Robinson v. State*, 812 S.E.2d 232, 235 (Ga. 2018) (citing Ga. Code Ann. § 24-14-8); *State v. Lankford*, 399 P.3d 804, 834 (Idaho 2017) (citing Idaho Code § 19-2117); *State v. Barnes*, 791 N.W.2d 817, 823 (Iowa 2010) (citing Iowa R. Crim. P. 2.21(3)); *Commonwealth v. Resende*, 65 N.E.3d 1148, 1158 (Mass. 2017) (citing Mass. Gen. Laws ch. 233, § 201); *State v. Horst*, 880 N.W.2d 24, 37 (Minn. 2016) (citing Minn. Stat. § 634.04); *State v. Kills on Top*, 793 P.2d 1273, 1294 (Mont. 1990) (citing Mont. Code Ann. § 46-16-213); *Evans v. State*, 944 P.2d 253, 257 (Nev. 1997) (citing Nev. Rev. Stat. § 175.291); *People v. Davis*, 66 N.E.3d 1076, 1082 (N.Y. 2016) (citing N.Y. Crim. Proc. Law § 60.22); *State v. Reddig*, 876 N.W.2d 34, 36 (N.D. 2016) (citing N.D. Cent. Code § 29-21-14); *Postelle v. State*, 267 P.3d 114, 126 (Okla. Crim. App. 2011) (citing Okla. Stat. tit. 22, § 742); *State v. Washington*, 330 P.3d 596, 604 (Or. 2014) (citing Or. Rev. Stat. § 136.440); *State v. Dunkelberger*, 909 N.W.2d 398, 400 (S.D. 2018) (citing S.D. Codified Laws § 23A-22-8); *Smith v. State*, 436 S.W.3d 353, 369 (Tex. Crim. App. 2014) (citing Tex. Code Crim. Proc. Ann. art. 38.14).

[8] *State v. Johnson*, 179 A.3d 780, 786 (Conn. App. 2017); *Brooks*, 40 A.3d at 350; *Ali v. United States*, 581 A.2d 368, 377 n.17 (D.C. 1990); *Smith v. State*, 507 So. 2d 788, 790 (Fla. D. Ct. App. 1987); *People v. Nitti*, 133 N.E.2d 12, 13 (Ill. 1956); *Lowery v. State*, 547 N.E.2d 1046, 1053 (Ind. 1989); *State v. Bey*, 535 P.2d 881, 888 (Kan. 1975); *State v. Kyles*, 233 So. 3d 150, 157-58 (La. Ct. App. 2016); *State v. Reardon*, 486 A.2d 112, 119 (Me. 1984); *People v. Lemmon*, 576 N.W.2d 129, 137 n.22 (Mich. 1998); *Jones v. State*,

at 242. The states that do not follow the accomplice corroboration rule have taken different approaches to the problem of the unreliability of accomplice testimony. Some that previously followed the rule have revoked it or limited it to certain types of cases.[9] Other jurisdictions allow juries to convict on the uncorroborated testimony of an accomplice as

203 So. 3d 600, 607 (Miss. 2016); *State v. Sistrunk*, 414 S.W.3d 592, 598 (Mo. Ct. App. 2013); *State v. Huffman*, 385 N.W.2d 85, 90 (Neb. 1986); *State v. Thresher*, 442 A.2d 578, 582 (N.H. 1982); *State v. Spruill*, 106 A.2d 278, 280-82 (N.J. 1954); *State v. Montoya*, 384 P.3d 1114, 1121 (N.M. App. 2016); *State v. Keller*, 256 S.E.2d 710, 714 (N.C. 1979); *State v. O'Dell*, 543 N.E.2d 1220, 1225 (Ohio 1989); *Commonwealth v. Brown*, 52 A.3d 1139, 1165 (Pa. 2012); *State v. Pona*, 66 A.3d 454, 471 (R.I. 2013); *State v. Hicks*, 185 S.E.2d 746, 749 (S.C. 1971); *State v. Dana*, 10 A. 727, 729 (Vt. 1887); *Johnson v. Commonwealth*, 298 S.E.2d 99, 101 (Va. 1982); *Vance*, 262 S.E.2d at 426; *Linse*, 286 N.W.2d at 558; *Adams v. State*, 79 P.3d 526, 529, 532 (Wyo. 2003); *Caminetti*, 242 U.S. at 495.

[9] Four states have revoked the rule: Arizona, *State v. Edwards*, 665 P.2d 59, 67 (Ariz. 1983); Kansas, *McLaughlin*, 485 P.2d at 1363-64; Kentucky, *Martin v. Commonwealth*, 409 S.W.3d 340, 344 n.1 (Ky. 2013); and Utah, *Padilla*, 2018 UT App. 108 at ¶ 13. Prior to 1973, New Hampshire prohibited conviction for fornication based only on the uncorroborated testimony of the "partner in guilt." N.H. Rev. Stat. § 579:4 (repealed); N.H. Rev. Ann. Stat. tit. LVIII, Ch. 579 (repealed). Ohio used to require corroboration for several specific offenses, but now only requires it for "sexual imposition." *State v. Economo*, 666 N.E.2d 225, 227-28 (Ohio 1996). And most states prohibit convictions for perjury or solicitation of perjury based solely on the uncorroborated testimony of a single witness. *E.g.*, *Mason v. State*, 225 Md. App. 467, 477-81 (2015); *State v. O'Donnell*, 166 A.3d 646, 658-59 (Conn. App. 2017), *cert. denied*, 172 A.3d 205 (Conn. 2017); *State v. Ellis*, 957 P.2d 520, 521 (Kan. App. 1998); *State v. Alhweiti*, 2017 Ohio 8886, ¶ 19, 100 N.E.3d 1139, 1143 (Ohio App. 2017), *motion to file delayed appeal granted*, 2018-Ohio-1600, ¶ 19, 96 N.E.3d 296 (Ohio App. 25, 2018), *appeal not allowed*, 2018-Ohio-2639, ¶ 19, 96 N.E.3d 296 (Ohio July 5, 2018); *Cossitt-Manica v. Commonwealth*, 778 S.E.2d 513, 516 (Va. App. 2015).

long as the testimony is not inherently incredible.[10] A handful of states allow the testimony of one accomplice to corroborate that of another.[11]

In an accommodation that is at least arguably more consistent with the deference generally afforded to juries to assess credibility, several states allow conviction based on

[10] *See McCoy v. State*, 112 A.3d 239, 267 (Del. 2015) ("[I]n the rare case where there is an irreconcilable conflict in the State's evidence concerning the defendant's guilt, such as would preclude a conviction beyond a reasonable doubt, the trial court must remove the case from the jury's consideration and grant a motion for judgment of acquittal."); *Kyles*, 233 So. 3d at 157-58 (allowing conviction on uncorroborated accomplice testimony "provided the testimony is not incredible or otherwise insubstantial on its face"); *Jones*, 203 So. 3d at 606 ("[T]he uncorroborated testimony of an accomplice may be sufficient to convict an accused" if it is not "unreasonable, self-contradictory or substantially impeached.") (quoting *Osborne v. State*, 54 So. 3d 841, 846 (Miss. 2011)); *State v. Tressler*, 503 S.W.2d 13, 17 (Mo. 1973) (defendant may be convicted on uncorroborated testimony of an accomplice unless it is "so lacking in probative force as not to amount to substantial evidence") (quoting *State v. Powell*, 433 S.W.2d 33, 34 (Mo. 1968)); *Brown*, 52 A.3d at 1165 (jury can convict on the uncorroborated testimony of an accomplice "except in those exceptional instances . . . where the evidence is so patently unreliable that the jury was forced to engage in surmise and conjecture in arriving at a verdict based upon that evidence"); *Rohl v. State*, 219 N.W.2d 385, 389 (Wis. 1974) (stating that the uncorroborated testimony of an accomplice is "competent evidence upon which to base a verdict of guilty if it is of such a nature that it is entitled to belief and the jury believes it") (quoting *Sparkman v. State*, 133 N.W.2d 776, 778 (Wis. 1965)); *Commonwealth of the Northern Mariana Islands v. Muna*, 2016 MP 10, ¶ 14 (2016) ("[A] conviction may be based solely upon an accomplice's uncorroborated testimony, provided the testimony is not inherently implausible.") (internal quotation omitted).

[11] *Pittman v. State*, 799 S.E.2d 215, 218 (Ga. 2017); *State v. Tyler*, 553 N.E.2d 576, 589 (Ohio 1990), *superseded by state constitutional amendment on other grounds as recognized by State v. Smith*, 684 N.E.2d 668, 683 n.4 (Ohio 1997); *see also People v. Bowers*, 801 P.2d 511, 524 (Colo. 1990) (allowing corroboration by another accomplice for purposes of avoiding jury instruction on uncorroborated accomplice testimony); *State v. Little*, 174 So. 3d 1219, 1227 (La. Ct. App. 2015) (same); *State v. Klein*, 258 P.3d 528, 534 (Or. 2011) (holding that an accomplice's out-of-court statements can corroborate that accomplice's or another accomplice's in-court testimony).

the uncorroborated testimony of an accomplice but either require or permit the trial court to instruct the jury as to its inherent unreliability. These courts diverge as to whether such an instruction is required whenever an accomplice testifies,[12] required only when such testimony is uncorroborated,[13] required only when requested by the defendant,[14] or left to

[12] *See McCoy*, 112 A.3d at 268 (stating "that a trial court must give a[n] . . . instruction to the jury any time an accomplice witness testifies"); *People v. Cobb*, 455 N.E.2d 31, 35 (Ill. 1983) (stating defendant is "entitled" to an accomplice witness instruction and finding error where it is not given); *State v. Quintana*, 621 N.W.2d 121, 139 (Neb. 2001) ("It is the rule in this state that a defendant is entitled to a cautionary instruction on the weight and credibility to be given to the testimony of an accomplice, and the failure to give such an instruction is reversible error.").

[13] *See People v. Petschow*, 119 P.3d 495, 504-05 (Colo. App. 2004); *Williams*, 32 So. 3d at 491 ("[F]or a defendant to be entitled to a cautionary jury instruction, it is only necessary that the accomplice's testimony be uncorroborated."); *Commonwealth v. Wholaver*, 177 A.3d 136, 165 (Pa. 2018) (indicating "that the corrupt and polluted source instruction pertains only to the uncorroborated testimony of an accomplice") (internal quotations omitted); *Holloman v. Commonwealth*, 775 S.E.2d 434, 448 (Va. App. 2015) ("Although . . . a trial court must warn the jury against the danger of convicting upon [an accomplice's] uncorroborated testimony[,] where [such] testimony is corroborated, it is not error to refuse a cautionary instruction.") (internal quotations and citation omitted); *State v. Everybodytalksabout*, 39 P.3d 294, 307 (Wash. 2002) ("Cautionary instructions must be given where the testimony of an accomplice is uncorroborated."); *Linse*, 286 N.W.2d at 558 ("[I]t is error to deny a request for an accomplice instruction only where the accomplice's testimony is totally uncorroborated.").

[14] *See Fields v. United States*, 396 A.2d 522, 526 (D.C. 1978) ("When a witness has a strong motivation to lie, the trial court's failure to give a cautioning instruction when requested is reversible error. . . . The failure to give an accomplice instruction, however, is not plain error when the testimony of the accomplice is corroborated by other evidence."), *disagreed with on other grounds by Dorman v. United States*, 491 A.2d 455 (D.C. 1984); *Young*, 693 N.W.2d at 807-08 (holding that the jury instruction must be requested by defendant and that an appellate court must conduct harmless error analysis on a rejected accomplice credibility instruction); *Adams*, 943 A.2d at 864 ("[B]ecause of the inherent conflict in [an accomplice's] testimony, a defendant has a right, upon request, to a specific jury instruction that the evidence of an accomplice is to be carefully scrutinized and assessed in the context of his specific interest in the proceeding.") (internal quotations

the discretion of the trial judge.[15] [16] But all of these approaches provide some measure of protection to the defendant—by ensuring that, in appropriate cases, the jury is instructed to

omitted); *State v. Rowsey*, 472 S.E.2d 903, 911 (N.C. 1996) ("An accomplice testifying for the prosecution is generally regarded as an interested witness, and a defendant, upon timely request, is entitled to an instruction that the testimony of an accomplice should be carefully scrutinized.") (quoting *State v. Harris*, 288 S.E.2d 437, 447 (N.C. 1976)); *State ex rel. Franklin v. McBride*, 701 S.E.2d 97, 103, 103 n.14 (W. Va. 2009) (stating that the "instruction is required when an accomplice to the crime testifies for the State," but only when requested by the defendant).

[15] *See Moore*, 981 A.2d at 1059-60 (indicating that the defendant is entitled to an instruction on the credibility of accomplice witnesses when "[t]he conditions of character and interest most inconsistent with a credible witness" exist); *Dennis*, 817 So. 2d at 751 (Not providing the instruction "was not fundamental error which would justify reversing the jury's verdict. It is discretionary.") (quoting *Boykin v. State*, 257 So. 2d 251, 252 (Fla. 1971), *vacated in part on other grounds by Boykin v. Florida*, 408 U.S. 940 (1972)); *Okumura*, 894 P.2d at 105 (holding "that in some cases in which the testimony of an accomplice substantially aids the prosecution's proof, a trial court may act properly within its discretion if it refuses or otherwise fails to give an accomplice witness instruction"); *State v. Hughes*, 943 So. 2d 1047, 1051 (La. 2006) (stating that "the jury should be instructed to treat the [accomplice's] testimony with great caution," but that "[w]hen the accomplice's testimony is materially corroborated by other evidence, such language is not required"); *State v. Johnson*, 434 A.2d 532, 537 (Me. 1981) (indicating the "failure to give [a] cautionary instruction [is] not obvious error when not requested and not automatic error, even if requested"); *State v. Guzman*, 95 P.3d 302, 312 (Utah App. 2004) (explaining that "a cautionary instruction *may* be given if the accomplice testimony is 'uncorroborated' and *shall* be given if the trial judge finds the accomplice testimony 'self-contradictory, uncertain or improbable'") (quoting Utah Code Ann. § 77-17-7(2)); *Vlahos v. State*, 75 P.3d 628, 639 (Wyo. 2003) (indicating that no "clear precedent in Wyoming require[s] cautionary instructions on accomplice testimony"); *Muna*, 2016 MP 10 at ¶ 14-16 (holding that trial courts are not required to issue accomplice witness instruction *sua sponte*, though it is unclear whether the defendant is entitled to the instruction if requested).

[16] At least six states preclude the trial court from commenting on the credibility of an accomplice's testimony. *State v. Bussdieker*, 621 P.2d 26, 29 (Ariz. 1980); *Noojin v. State*, 730 N.E.2d 672, 678 (Ind. 2000); *State v. Lang*, 515 S.W.2d 507, 510-11 (Mo. 1974); *Sarracino*, 964 P.2d at 76; *Pona*, 66 A.3d at 471; *State v. Stukes*, 787 S.E.2d 480, 483 (S.C. 2016).

consider accomplice testimony with an appropriate amount of skepticism—while also leaving to the jury its usual role as the trier-of-fact and assessor of witness credibility. *See Brown*, 281 Md. at 246 (observing "that a jury instruction that accomplice testimony be examined with care and viewed with suspicion serves much the same purpose as the Maryland rule requiring corroboration").[17]

[17] The Maryland State Bar Association's Criminal Pattern Jury Instruction 3:11A, which covers the accomplice corroboration rule, includes a modest warning regarding the reliability of accomplice testimony: "If you find that the testimony of (name) has been corroborated, you may consider it, but you should do so with caution and give it the weight you believe it deserves." A trial court must give the instruction if it is requested and there is "some evidence" to support it. *Coleman-Fuller v. State*, 192 Md. App. 577, 592-94 (2010); *see also Gaskins v. State*, 7 Md. App. 99, 104-06 (1969) (finding reversible error where trial court declined the defendant's request for an accomplice-witness jury instruction).

As examples, we include excerpts from model jury instructions in three other states that do not employ the accomplice corroboration rule:

> ***Colorado:***
>
> The prosecution has presented a witness who claims to have been a participant with the defendant in the crime charged. There is no evidence other than the testimony of this witness which tends to establish the participation of the defendant in the crime.
>
> While you may convict upon this testimony alone, you should act upon it with great caution. Give it careful examination in the light of other evidence in the case. You are not to convict upon this testimony alone, unless you are convinced beyond a reasonable doubt that it is true.

Model Criminal Jury Instructions Committee of the Colorado Supreme Court, *Colorado Jury Instructions—Criminal*, D:05 (2017) (excerpt).

> ***Connecticut:***
>
> In weighing the testimony of an accomplice, who is a self-confessed criminal, you must consider that fact. All else being equal, it may be that you would not believe a person who has committed a crime such as this,

involving moral wrong, as readily as you would believe a person of good character. The amount of moral wrong involved in the participation of the witness in the crime should be weighed. Also, in weighing the testimony of an accomplice who has not yet been sentenced or whose case has not yet been disposed of, or who has not been charged with offenses of which the state has evidence, you should keep in mind that he may, in his own mind, be looking for or hoping for some favorable treatment in the sentence or disposition of his own case, and that, therefore, he may have such an interest in the outcome of this case that his testimony may have been colored by that fact. Therefore, the jury must look with particular care at the testimony of an accomplice and scrutinize it very carefully before you accept it.

On the other hand, there are many offenses that are of such a character that the only persons capable of giving useful testimony are those who are themselves implicated in the crime. Each accomplice's testimony is an admission by him against his own natural interest in not incriminating himself; and, therefore, it may itself be evidence of his testimony's reliability.

It is for you, the jury, to decide what credibility you will give to a witness who has admitted his involvement in criminal wrongdoing—whether you will believe or disbelieve the testimony of a person who, by his own admission, has committed the crime(s) charged by the state here. Like all other questions of credibility, this is a question you must decide based on all the evidence presented to you.

Connecticut Judicial Branch, *Criminal Jury Instructions*, § 3.10 (4th ed. 2017) (excerpt).

Michigan:

(1) You should examine an accomplice's testimony closely and be very careful about accepting it.

(2) You may think about whether the accomplice's testimony is supported by other evidence, because then it may be more reliable. However, there is nothing wrong with the prosecutor's using an accomplice as a witness. You may convict the defendant based only on an accomplice's testimony if you believe the testimony and it proves the defendant's guilt beyond a reasonable doubt.

(3) When you decide whether you believe an accomplice, consider the following:

We need look no further than this case for proof that juries are capable of discernment in assessing the testimony of accomplices. Had the jury accepted all of the accomplices' testimony, it would have convicted Mr. Jones of murder. Instead, it credited enough of the testimony to convict him of conspiracy to commit an armed carjacking, but acquitted him on all other counts.

JUDGMENT OF THE CIRCUIT COURT FOR BALTIMORE COUNTY REVERSED. CASE REMANDED FOR PROCEEDINGS CONSISTENT WITH THIS OPINION. COSTS TO BE PAID BY BALTIMORE COUNTY.

> (a) Was the accomplice's testimony falsely slanted to make the defendant seem guilty because of the accomplice's own interests, biases, or for some other reason?
>
> (b) Has the accomplice been offered a reward or been promised anything that might lead [him / her] to give false testimony? [State what the evidence has shown. Enumerate or define reward.]
>
> (c) Has the accomplice been promised that [he / she] will not be prosecuted, or promised a lighter sentence or allowed to plead guilty to a less serious charge? If so, could this have influenced [his / her] testimony?
>
> [(d) Does the accomplice have a criminal record?]
>
> (4) In general, you should consider an accomplice's testimony more cautiously than you would that of an ordinary witness. You should be sure you have examined it closely before you base a conviction on it.

The Michigan Supreme Court Committee on Model Criminal Jury Instructions, *Michigan Model Criminal Jury Instructions*, 5.6 (1991) (excerpt).