

Circuit Court for Worcester County  
Case No. C-23-CR-22-000200

UNREPORTED  
IN THE APPELLATE COURT  
OF MARYLAND\*

No. 173

September Term, 2024

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ALLEN KENNETH SIMMONS, JR.

v.

STATE OF MARYLAND

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

JJ.

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Opinion by Friedman, J.

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Filed: February 5, 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 persuasive value only if the citation conforms to MD. RULE 1-104(a)(2)(B).

Following a jury trial in the Circuit Court for Worcester County, appellant Allen Kenneth Simmons, Jr., was convicted of possession with intent to distribute and distribution of cocaine. In this appeal,<sup>1</sup> Simmons asks us to consider (1) whether the trial court erred in precluding defense counsel from arguing to the jury that reasonable doubt existed, in part, because the State had not called a key witness; and (2) whether the trial court erred in admitting testimony that a non-testifying witness communicated to the undercover officer that Simmons was his “supplier.” For the reasons that follow, we affirm the judgments of the trial court.

### **BACKGROUND**

In August 2022, Ocean City Police Department Detective Michael Kirkland, assigned to the Worcester County Sheriff’s Office drug task force, was working undercover at the Rambler Hotel in West Ocean City, conducting a long-term investigation of several individuals, including Montro Fisher, a known drug dealer. On the afternoon of August 10, 2022, as part of his investigation, Det. Kirkland asked to purchase \$100 worth of cocaine from Fisher.

That evening, Det. Kirkland agreed to drive Fisher to meet his supplier to purchase the cocaine. The two men first stopped at a church near Berlin, where Fisher counted out \$400 and then asked Det. Kirkland for the agreed-upon \$100 for the cocaine. Det. Kirkland gave the money to Fisher, and the two men continued their drive to a wooden bridge on an

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<sup>1</sup> Simmons did not file a notice of appeal within 30 days of his sentencing proceeding, but he was granted post-conviction relief, which permitted him to file a belated notice of appeal within 30 days of the trial court’s order. Simmons thereafter timely filed a notice of appeal.

uninhabited dirt road. A white BMW was already parked by the bridge. A man, later identified as Simmons, was standing beside it.

Fisher walked over to Simmons, while Det. Kirkland remained by his truck. Det. Kirkland observed Simmons and Fisher in conversation, after which Fisher handed Simmons money. Simmons put the money in his pocket. He then walked around the two vehicles to the opposite side of the bridge, where he bent down and retrieved a plastic bag. Upon his return, Simmons placed the bag on the hood of Det. Kirkland's vehicle, removed what appeared to be several "little balloons filled with some sort of substance" from the bag, and put them into a second bag. Fisher took the second bag, and after some casual conversation with Det. Kirkland, Simmons drove away. On their drive back to the Rambler Hotel, Fisher handed Det. Kirkland two of the balloons from the bag. The balloons contained a substance later confirmed to be .881 gram of cocaine.<sup>2</sup>

## **DISCUSSION**

### **I. MISSING WITNESS**

Simmons first contends that the trial court erred in precluding defense counsel from arguing to the jury in closing that reasonable doubt existed as to Simmons's guilt because the State had not presented witness testimony from Fisher, who did not appear at trial. Simmons maintains that the trial court improperly precluded his attorney from pointing out that the State had failed to produce relevant evidence, which would have allowed an inference to be made against the State. We disagree.

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<sup>2</sup> In a separate proceeding, Fisher pleaded guilty to distribution of cocaine.

During his opening argument, defense counsel stated:

[DEFENSE COUNSEL]: What the State [in its opening statement] didn't do was [ ] to truly introduce you to the characters in this story. The main character in this story is Montro Fisher. Montro Fisher, the evidence, I suggest, will show, is a drug dealer. Montro Fisher ... is the one who sold Detective Kirkland the cocaine in this case, the very cocaine that [the prosecutor] is going to have the chemist come up here and tell you about how she tested it. What [the prosecutor] didn't tell you is that my client did not sell that cocaine to Detective Kirkland. Mr. Fisher did. The problem is Mr. Fisher isn't going to be here today.

So as the evidence is coming in, you need to ask yourselves questions. And the questions are: Why isn't Mr. Fisher going to be here today? Why didn't the State tell you anything about Mr. Fisher?

After defense counsel completed his opening statement, the prosecutor asked to approach the bench:

[PROSECUTOR]: I just want to get this out in the open. [Defense counsel] said that he was abandoning the missing witness instruction, and he – I'm not asking for a mistrial or anything at this point, but I just want to caution [defense counsel]

that he is inferencing or making reference to missing witness, such as Montro Fisher. He said in the opening that, well, you're not going to hear from Mr. Fisher. He needs to completely refrain from saying any of that stuff in reference to Mr. Fisher testifying or not. That is the basis and the substance of the missing witness instruction, which he said that he is abandoning and is not going further anymore. If he wanted to make that argument, we could still make that argument if Your Honor would allow, but I don't think it's appropriate for him to talk about whether Mr. Fisher is here or testifying. We've made that abundantly clear, and he referenced that in his opening.

THE COURT:

Care to be heard?

[DEFENSE COUNSEL]: Yeah, absolutely. What I referenced in the opening was the fact that they would not hear evidence from Mr. Fisher's testimony and that Mr. Fisher was not here. That's a fact, and that's what I expect the evidence to show, not asking them to draw any adverse inferences to the fact that the State didn't call this witness, but I think it's fair game that the person who gave the drugs to Detective Kirkland they should be able to question whether or not -- why he's not being called as a witness. I don't think --

THE COURT:

But isn't that -- isn't that the same thing as arguing missing witness?

I mean, if you generate the evidence to -- or you present evidence to generate a missing witness instruction, then I'll give it. But when we were in chambers before, you said you had abandoned -- because you had submitted a missing witness instruction, and you said that you had abandoned that, so --

[DEFENSE COUNSEL]: I withdrew that, the request for that instruction. But that instruction makes an adverse inference - - instructs the jury to take an adverse inference against the State, and that's not what I'm asking. I'm just simply stating, at least in opening, they're not going to hear from --

COURT REPORTER: I'm sorry. You're stating in opening what?

[DEFENSE COUNSEL]: That they're just not going to hear from this witness.

[PROSECUTOR]: And that's the same thing, Your Honor. Your Honor has the ability --

THE COURT: Well, but I think -- I think where we -- where the difficulty is -- and I think [the prosecutor] drew a reasonable inference that that wasn't going to be argued today. And I think if you're going to argue that or you're going to try to present evidence, I mean, put on evidence to generate the missing witness. But if you know that you don't have sufficient evidence to generate the missing witness

instruction, I agree with [the prosecutor], you just need to tread lightly in that regard. Okay.

[PROSECUTOR]: Thank you, Your Honor.

THE COURT: All right. Thank you.

Simmons argues that “[p]ursuant to this ruling, defense counsel did not argue that the State had not presented witness testimony from Fisher in his closing argument.” He suggests that the trial court’s preclusion of this argument in closing constitutes reversible error. We conclude, however, that the trial court’s comment was not a ruling and did not preclude any specific argument by the defense.

From the quoted conference at the bench, it appears that at some point before trial, the parties and the trial court had an off-the-record discussion about jury instructions during which defense counsel withdrew a request for the missing witness instruction.<sup>3</sup> When defense counsel, in his opening statement, stated that Fisher would not be called as a State’s witness during trial, the prosecutor pointed out to the court that defense counsel had drawn the jury’s attention to the very basis and substance of the missing witness instruction the defense had abandoned. The trial court agreed that unless defense counsel could present

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<sup>3</sup> Maryland Pattern Jury Instruction-Criminal 3:29, the “missing witness” instruction, reads: “You have heard testimony about (witness’s name), who was not called as a witness in this case. If a witness could have given important testimony on an issue in this case and if the witness was peculiarly within the power of the [State] [defendant] to produce, but was not called as a witness by the [State] [defendant] and the absence of that witness was not sufficiently accounted for or explained, then you may decide that the testimony of that witness would have been unfavorable to the [State] [defendant].”

sufficient evidence to generate the missing witness instruction—which the court would then give—counsel “should tread lightly in that regard.”

Simmons asks us to find error in the trial court’s ruling prohibiting him from addressing Fisher’s absence as a witness in his closing argument, but the trial court’s admonition to “tread lightly” was not a ruling that placed any specific restriction upon closing argument or any other aspect of Simmons’s defense. Simmons’s closing argument referenced Fisher numerous times, without objection by the State, and framed Fisher as the drug dealer.<sup>4</sup> Defense counsel’s choice to not attempt to characterize Fisher as a missing witness was, if not a strategic decision, presumably based on his own misinterpretation that the trial court’s comment to “tread lightly” prohibited him from highlighting Fisher’s absence. The trial court, however, made no such ruling. In the absence of any actual adverse ruling by the trial court, there is nothing for us to review and no error to find.

## **II. “SUPPLIER”**

Simmons also argues that the trial court erred in permitting Det. Kirkland to characterize Simmons as Fisher’s drug “supplier.” Simmons argues that the testimony amounted to inadmissible prior bad acts evidence or, in light of Fisher’s absence from trial, a violation of Simmons’s right to confront a witness against him. We are not persuaded.

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<sup>4</sup> We note that the trial court did not strike defense counsel’s comment about Fisher’s absence during his opening statement. Thus, any inference the jurors might have drawn about the lack of Fisher’s appearance at trial as a State’s witness remained available to them. Moreover, in closing Simmons presented to the jury an alternate theory that it was not Simmons who sold the cocaine to Fisher, but rather that Fisher had manipulated Det. Kirkland into driving him to meet Simmons so that Fisher could sell drugs that had been in his pocket to both Simmons and Det. Kirkland.



During direct examination, the prosecutor elicited the following from Det. Kirkland:

[PROSECUTOR]: Did you say anything to Mr. Fisher specifically about purchasing or trying to obtain controlled dangerous substances, specifically cocaine?

[DET. KIRKLAND]: Yes.

[PROSECUTOR]: What did you tell him?

[DET. KIRKLAND]: I offered to drive him to meet *his source of supply* in order to purchase cocaine.

[DEFENSE COUNSEL]: Objection, Your Honor.

THE COURT: Overruled.

[PROSECUTOR]: Can you repeat that, please?

[DET. KIRKLAND]: I offered to drive Mr. Fisher to meet his source of supply in order to purchase cocaine.

[PROSECUTOR]: So you met with Mr. Fisher at 3:45; you met with him again at 7:30?

[DET. KIRKLAND]: Correct.

[PROSECUTOR]: For the purpose of doing what?

[DET. KIRKLAND]: To purchase—

[DEFENSE COUNSEL]: Objection, Your Honor, asked and answered.

THE COURT: Overruled.

[DET. KIRKLAND]: *To meet a supplier to purchase cocaine.*

[PROSECUTOR]: Okay. When you asked to purchase cocaine at 7:30 from Mr. Fisher, did you receive any cocaine or controlled dangerous substances from him?

[DET. KIRKLAND]: No.

[PROSECUTOR]: When you testify—or you just testified and you say you offered to take him, what did that entail?

[DET. KIRKLAND]: That entails my driving Mr. Fisher to a location in order *to meet his source of supply*.

(Emphasis added).

Pursuant to Maryland Rule 4-323(a), “[a]n objection to the admission of evidence shall be made at the time the evidence is offered or as soon thereafter as the grounds for objection become apparent. Otherwise, the objection is waived.” When objectionable evidence is admitted on multiple occasions, defense counsel must ““object each time a question concerning [the objectionable issue] was posed”” or ““request a continuing objection to the entire line of questioning”” in order to preserve the issue for appellate review. *Fowlkes v. State*, 117 Md. App. 573, 588 (1997) (quoting *Snyder v. State*, 104 Md. App. 533, 557 (1995)). Here, Simmons objected to only one of the at least three times the prosecutor elicited from Det. Kirkland that Simmons was Fisher’s supplier.<sup>5</sup> In failing to offer a specific objection to the testimony on more than one occasion, or to request a continuing objection, Simmons has not preserved this issue for appellate review.<sup>6</sup>

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<sup>5</sup> Although Simmons did object to a second instance of the reference to him as Fisher’s drug supplier, defense counsel made the specific objection that the question had been asked and answered. “[W]hen specific grounds are given at trial for an objection, the party objecting will be held to those grounds and ordinarily waives any grounds not specified that are later raised on appeal.” *Klaunenberg v. State*, 355 Md. 528, 541 (1999).

<sup>6</sup> Even if Simmons had preserved the question for our review, his argument would not have been successful. Simmons argues that the testimony referring to him as Fisher’s “supplier” constituted evidence of inadmissible prior bad acts because it indicated that he had sold drugs to Fisher in the past. While the word “supplier” could be used to characterize Simmons as someone who supplied drugs to others on a regular basis, “supplier” can also

**JUDGMENTS OF THE CIRCUIT COURT  
FOR WORCESTER COUNTY AFFIRMED;  
COSTS TO BE PAID BY APPELLANT.**

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explain that Simmons was going to supply Fisher with drugs that night. The State did not attempt to present evidence of previous sales between Fisher and Simmons, only evidence showing that Simmons supplied cocaine to Fisher that night. Thus, referring to Simmons as Fisher’s supplier was linguistically appropriate. Speculation that the jury could have inferred an alternate meaning that was not suggested by either the State or the defense, and for which no evidence was presented, does not constitute reversible error.