

Circuit Court for Cecil County  
Case No. CR-19-726

UNREPORTED  
IN THE COURT OF SPECIAL APPEALS  
OF MARYLAND

No. 651

September Term, 2020

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ALAINA ROBBINS

v.

STATE OF MARYLAND

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Berger,  
Nazarian,  
Leahy,

JJ.

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Opinion by Nazarian, J.

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Filed: September 13, 2021

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

Alaina Robbins suffered an acute episode of mental health crisis, took a knife and rifle, and ran out into a Cecil County roadway. Officers from the Cecil County Sheriff's Office were able to de-escalate the situation, brought her back to the Sheriff's Office, and placed her in a holding cell. She remained in an agitated state while in the cell for about twenty minutes—she paced back and forth, yelled to officers through the locked door, and removed her clothes—after which a group of officers removed her forcibly from the cell, carried her out of the building, and took her to the hospital. All of the events in the Sheriff's Office were captured on video.

Ms. Robbins was charged with and, after a jury trial in the Circuit Court for Cecil County, convicted of, four counts of first-degree assault, three counts of second-degree assault, resisting arrest, attempted escape, and malicious destruction of property. She was sentenced to concurrent terms of fifteen years for each first-degree assault conviction and concurrent terms of ten years for each second-degree assault conviction.<sup>1</sup> The charges and convictions all stemmed from the officers' testimony that Ms. Robbins actively resisted, attacked them, and stabbed them with a hypodermic needle that, they said she claimed, would transmit HIV and hepatitis C to them. At trial, though, she was convicted entirely on the testimony of the officers—the State produced no needle, no other physical evidence, no medical evidence or expert testimony about the officers' injuries, no testimony from any other witness, and no evidence that Ms. Robbins in fact had either disease. Nor did the

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<sup>1</sup> She received suspended sentences for resisting arrest, attempted escape, and malicious destruction of property.

jury ever see the video from the Sheriff’s Office—before trial, the State claimed that none existed, but one of the officers found it after trial after the defense raised the issue again.

On appeal, Ms. Robbins challenges her convictions for first-degree assault on the ground that there is insufficient evidence to support them, and argues as well that the circuit court abused its discretion when it denied her motion for a new trial on the ground that the newly discovered surveillance video qualifies as a *Brady*<sup>2</sup> violation. We agree, reverse the convictions, and remand for further proceedings on the charges of second-degree assault, resisting arrest, attempted escape, and malicious destruction of property.

## I. BACKGROUND

### A. The Incidents

A few years before the incidents at issue in this case, Ms. Robbins was the victim of an assault. We need not recount the details of that event; it is enough for present purposes to note that a gun was involved and that she suffers from post-traumatic stress syndrome (PTSD) as a result.

On April 16, 2019, around 3:00 pm, Ms. Robbins was cleaning the house she shared with a friend when she found a gun hidden in a stack of blankets. This discovery triggered her PTSD, and she instantly wanted to remove it from the house. She picked up the gun and ran into the road.

Deputies Ryan Stewart and Jonathan Pristash were off duty, wearing street clothes, and driving in a patrol vehicle near the 2900 block of Old Elk Neck Road, when they saw

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<sup>2</sup> 373 U.S. 83 (1963).

what appeared to be a traffic jam. When the deputies spotted Ms. Robbins, she was walking in the middle of the road with a long object in her arms. When the deputies got closer, they realized that Ms. Robbins was holding a gun. The deputies stopped their vehicle, got out, drew their firearms, and started yelling commands at her.

Ms. Robbins pointed the gun in different directions as the officers yelled for her to drop it and walk towards them with her hands in the air. Once Deputy Pristash used the loudspeaker to communicate the commands to Ms. Robbins, she complied and dropped the gun. Next, Ms. Robbins dropped to her knees and placed her hands behind her back.

In the seconds that Deputy Stewart holstered his firearm to approach Ms. Robbins and handcuff her, she reached into her pocket and withdrew a knife. Deputy Pristash commanded her to drop the knife, which she did, and Deputy Stewart was able to handcuff her.

The deputies got Ms. Robbins to her feet and began escorting her to their marked patrol vehicle. At that time, Ms. Robbins “stated that she didn’t believe [they] were the cops, she didn’t think we were the police.” Deputy Stewart took out his badge to show Ms. Robbins that they were police officers. Ms. Robbins then became combative, and the deputies had to restrain her after she started kicking. Ms. Robbins continued to pull away and not to comprehend that Deputies Stewart and Pristash actually were police officers. Eventually, she was put into the back of a patrol vehicle with Officers Caleb Griffiths and Charles Dix.

Once Ms. Robbins was in the vehicle, the officers transported her to the Sheriff’s

Office. During transport, Ms. Robbins urinated on herself and remained resistant. It took several officers to remove her from the patrol vehicle and into a cell at the Sheriff's Office:

[OFFICER DIX]: As soon as we get to the sheriffs office we had multiple deputies at the sheriffs office waiting just because of the situation already at hand. As soon as we opened the door she continued to scream, not listen to any commands. She was trying to use her feet and hands to stay within the vehicle, so we had to pull her out, carry her into the cells in the back of the sheriffs office. When we got her into the cell we had to actually lay her down and pull the handcuffs and leg shackles one at a time because she continued to yell, scream and try to get away.

After Ms. Robbins was placed in the cell and searched, she was monitored via the surveillance system. At trial, Ms. Robbins testified that she felt trapped and remained scared and agitated:

There's all men. There was no female. If there was, it would have probably helped. But even so, I can't be sure. All male officers are standing outside the door and I'm not hearing anything they're saying because I just know that they're going to kill me. Because these things run through your mind, you know, like there's all men out there and they have me in this cell and this is like being trapped. I'm like being held hostage all over again. It was terrifying.

The officers "observed Miss Robbins taking her wrist and placing it on the metal edge of the cell, on the outer side of the door there's a metal frame." Based on this behavior, they became concerned for her safety and welfare.

While in the cell, Ms. Robbins continued to rub her wrist along the metal door frame and began to undress herself. Officer Vivino testified that he and Officer Kalinsky were assigned to remove her from the cell:

[T]o assist with moving Miss Robbins from the cell, being able to get her outside to a patrol car over to Union Hospital, at that

time she was fully nude, there was a smell of urine and feces in the cell, she was acting erratic, screaming that she has AIDS and HIV and she hopes that we all get Hep C, was using a lot of profanity, calling us several different names.

Next, the officers opened the cell door to remove Ms. Robbins and take her to the hospital:

[OFFICER BREWER]: At that time we opened the cell door and we went in to secure her. She almost came out of -- it was like she came out of the cell door like a bull, like, the door had just opened and she came out real quick.

Ms. Robbins resisted having handcuffs put on her again. The officers put her on the ground so they could handcuff her. Officer Kalinsky testified that he pried open her left hand, and she was holding money. Then Officer Brewer said, “Be careful, she’s got [controlled dangerous substances] in her vagina.” Another officer said, “She’s got a needle, be careful”:

[PROSECUTION]: With the flailing around and then you observed the needle, what did you do next?

[OFFICER BREWER]: I initially shouted to the other deputies that she had a *syringe* in her hand. So we were able to gain further control and basically had to pry the said syringe out of her hand while trying to continue to gain control and get her back secured with leg irons and handcuffs.

(Emphasis added.) Officer Griffiths was the only officer to testify that he actually saw a needle:

[OFFICER GRIFFITS]: I heard Sergeant Kalinsky and Deputy First Class Dix shout commands for her to drop the needle. At that time when they were doing that I looked down and observed a hypodermic needle, which I’ve been trained to identify, in her hand. I was able to see the tip at the base of her hand right here sticking out.

At some point during the struggle, Ms. Robbins yelled that she had hepatitis and AIDS, “I have HIV and hepatitis, fuckers. That’s what she was saying over and over again.” A syringe plunger was found on the floor next to Ms. Robbins, but the needle was never found.

Officer Kalinsky testified that his wrist was punctured during the struggle. Officer Vivino testified that his pinky finger was punctured. Both officers were admitted to the ER and required to wash the scratched areas and to get follow-up blood work:

[OFFICER KALINSKY]: [W]ere admitted to the ER, spent about half hour scrubbing the wound area, was tested for a variety of different diseases based on what she had said. We also had to wait for her HIV test to come back. So we were there for I want to say about two hours, and then we were advised that we had to follow up with occupational medicine for testing for hepatitis because she had told us that she had it.

Officer Vivino washed his hands for several minutes at the ER and was required “to go over the next several months to Pivot Occupational Health for mandatory blood draws.” When Ms. Robbins’s HIV and Hepatitis test results came back, they were negative.

### **B. Procedural History and Trial**

Approximately three weeks later, on May 8, 2019, Ms. Robbins was indicted on thirty-five counts of the following offenses: first-degree assault, second-degree assault, reckless endangerment, use of a firearm in the commission of a crime of violence, resisting arrest, malicious destruction of property, unlawfully possessing a shotgun, attempted second-degree escape, and possession of drug paraphernalia.

A two-day jury trial was held on January 21 to 22, 2020. At trial, the State entered

into evidence the long gun and the knife brandished by Ms. Robbins on Old Elk Neck Road. The State also offered testimony from Deputies Stewart, Pristash, Kalinsky, Vivino, Dix, Brewer, and Griffiths about the events on Old Elk Neck Road and at the Sheriff's Depot on April 16, 2019. The needle Ms. Robbins allegedly weaponized was neither recovered nor entered into evidence:

[DEFENSE COUNSEL]: So you recovered the barrel of the syringe and the plunger. Right?

[OFFICER GRIFFITS]: Yes, sir.

[DEFENSE COUNSEL]: Did anybody ever recover the needle?

[OFFICER GRIFFITS]: I do not recall.

At the close of the State's case, Ms. Robbins moved for judgment of acquittal as to all thirty-five charges against her, arguing insufficient evidence. The trial court granted the motion as to twelve of the charges. During the defense's case, Ms. Robbins testified. After the defense rested, Ms. Robbins renewed her motion for acquittal, arguing insufficiency of evidence as to the first- and second-degree assault charges. The trial court denied the motion. The jury convicted Ms. Robbins of ten counts: four counts of first-degree assault, three counts of second-degree assault, resisting arrest, attempted escape, and malicious destruction of property.

Ten days after trial, and after the State produced the surveillance video of the events that occurred at the Sheriff's Office on April 16, 2019, Ms. Robbins filed a motion for a new trial. A hearing for the motion was held on August 26, 2020 in conjunction with sentencing. The circuit court denied the motion. It determined the defense had acted with

diligence—counsel had asked the State to produce the video, but the State claimed none existed—but the court found that there was not a substantial possibility that the jury or the verdict would have been affected by the video. The court sentenced Ms. Robbins to concurrent terms of fifteen years for each first-degree assault conviction and concurrent terms of ten years for each second-degree assault conviction. She received suspended sentences for resisting arrest, attempted escape, and malicious destruction of property.

Ms. Robbins filed a timely notice of appeal. We will supply additional facts as necessary below.

## II. DISCUSSION

Ms. Robbins raises two questions on appeal. *First*, she argues that the evidence presented at trial was insufficient to support her convictions for first-degree assault. *Second*, she contends that the trial court abused its discretion when it found that the State had not violated *Brady* for failing to produce the Sheriff’s Office video and when the court denied her motion for a new trial. The State responds that the evidence presented at trial is sufficient to sustain Ms. Robbins’s convictions and that the trial court properly denied Ms. Robbins’s motion for a new trial because the newly discovered evidence was not exculpatory or impeaching.

### A. The Evidence Was Insufficient To Support Ms. Robbins’s Convictions For First-Degree Assault.

*First*, Ms. Robbins argues on appeal that the evidence presented by the State is insufficient to support her convictions for first-degree assault because, even viewing everything in a light most favorable to the State, the State failed to prove either that she

caused serious physical injury to the officers or that she had the specific intent to cause serious physical injury to them. The State counters that the evidence allowed the jury to infer that Ms. Robbins intended to cause serious bodily harm. We hold that the evidence presented at trial was insufficient because Ms. Robbins’s first-degree assault convictions were based solely on the testimony and credibility of the police officers, and the testimony didn’t establish harm or intent.

“We are mindful that, in an appeal based upon insufficiency of evidence, it is not the function of the appellate court to undertake a review of the record that would amount to a retrial of the case.” *State v. Pagotto*, 361 Md. 528, 533 (2000) (citing *State v. Albrecht*, 336 Md. 475, 478 (1994)). That said, to reverse a judgement due to insufficient evidence, we must find that no rational juror could have found the elements of the crime. *Id.* We “ask[] ‘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.’” *Id.* at 534 (quoting *Jackson v. Virginia*, 443 U.S. 307, 319 (1979)).

First-degree assault is a statutory crime that requires proof that a person “intentionally cause[d] or attempt[ed] to cause serious physical injury to another.” Md. Code (2002, 2021 Repl. Vol.), § 3-202(b)(1) of the Criminal Law Article (“CL”).

Serious physical injury is injury that:

- (1) creates a substantial risk of death; or
- (2) causes permanent or protracted serious:
  - (i) disfigurement;
  - (ii) loss of the function of any bodily member or organ;or
  - (iii) impairment of the function of any bodily member

or organ.

CL § 3-201(d).

First-degree assault is a specific intent crime. *See, e.g., Dixon v. State*, 364 Md. 209, 239 (2001). “Specific intent, unlike general criminal intent, is ‘not simply the intent to do an immediate act, but the additional deliberate and conscious purpose or design of accomplishing a very specific and more remote result.’” *Genies v. State*, 426 Md. 148, 159 (2012) (quoting *Chow v. State*, 393 Md. 431, 464 (2006)). For example, breaking and entering is a general intent crime, but burglary requires the specific intent of committing a felony after entry. *Harris*, 353 Md. at 603 (citing *Shell v. State*, 307 Md. 46, 62–63 (1986)). Another example is trespass, which only requires general intent, compared to larceny, which requires the specific intent to deprive the owner permanently of a specific good. *Id.* Voluntary intoxication can negate specific intent crimes but not general intent crimes. *Id.*

For a defendant to be convicted of first-degree assault, the State must prove either that they caused serious physical injury or that they acted with the specific intent to cause serious physical injury. *See id.* In this case, there was no serious physical injury—minor puncture wounds and scratches don’t qualify—and, to its credit, the State concedes this point. For Ms. Robbins to be convicted of first-degree assault, then, the State needed to prove, and the jury needed to find beyond a reasonable doubt, that Ms. Robbins had the specific intent to cause serious physical injury to the officers.

At trial, the State argued to the jury that Ms. Robbins intended to cause serious bodily harm by using a hypodermic needle or by transmitting HIV and Hepatitis C to the

officers. The argument has narrowed on appeal: the State argues that Ms. Robbins's statements about HIV and Hepatitis C support a specific intent to cause serious physical injury with the needle, and not an intent to cause serious physical injury via the pathogens themselves:

Under these particular circumstances, the State relies on Robbins's statements about having HIV/AIDS and Hepatitis-C only as additional evidence that [Ms.] Robbins intended to cause serious physical injury with the needle itself, not as evidence that she intended to cause such injury via any pathogens.

But notwithstanding the State's narrowed argument, the threatened presence of these blood-borne diseases doesn't raise the minor threat level from a needle to a threat of serious physical injury. In *Smallwood v. State*, an HIV-positive defendant had raped or attempted to rape three women and was convicted of first-degree assault. 343 Md. 97, 100–101 (1996). On appeal, he argued that evidence failed to establish his specific intent to kill the victims by giving them HIV through unprotected sexual intercourse. The Court of Appeals held that the State needed to prove that serious physical harm through infection was sufficiently *probable* in order to support an inference that the defendant intended to kill them, and in that case it didn't. *Id.* at 106. This case is the inverse—Ms. Robbins didn't actually have HIV or Hepatitis C, at least so far as this record reveals, and a verbal threat to transmit a disease can't make the serious physical harm from that disease sufficiently probable, especially where the actual physical harm isn't serious.

This leaves, then, the trial evidence underlying the jury's finding that Ms. Robbins had specific intent to cause serious physical injury using the hypodermic needle—the

needle that was never found.<sup>3</sup> We hold, for several reasons, that the evidence was insufficient. The State’s sole evidence at trial took the form of testimony by the officers involved in the incident. (There was a video from the Sheriff’s Office itself, but as we discuss later, the jury never saw this.) The officers’ testimony varied—one said that Ms. Robbins “came out of the cell door like a bull,” another claimed “she kind of went towards them in an aggressive manner,” and a third testified that the officers were “attempting to get her out of the cell”:

[STATE’S ATTORNEY]: Okay. What, if anything, were you observing the other deputies who had the door open doing? What was happening?

OFFICER KALINSKY: They were attempting to get her out of the cell. She was actively resisting.

[STATE’S ATTORNEY]: And what do you mean actively resisting?

OFFICER KALINSKY: Trying to pull away from them, not give up her hands or arms to allow her to be handcuffed.

[STATE’S ATTORNEY]: And what happened next?

OFFICER KALINSKY: At some point we got her into the hallway, there’s a hall outside of the three holding cells, and started to guide her down to the floor so that we could safely get the handcuffs on her. At some point once we got her down on the floor she continued to actively resist and would not unclench her hands, that’s where I was, was at her hands, and I ordered her several times to open her hand, eventually pried open I want to say it was her left hand and she had money in her hand and she was laughing at us.

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<sup>3</sup> In its brief, the State argued that Ms. Robbins intended to “cause serious physical injuries including scarring.” But at oral argument, the State conceded that the jury was not instructed that serious physical injury could include disfigurement, including scarring, so any alleged scarring can’t support a finding of serious physical injury.

The only physical evidence admitted at trial were the gun and knife Ms. Robbins took out of her house with her and dropped before she was arrested. But those weapons have no connection to her first-degree assault charges—she never used them, wielded them, or is alleged in any of the thirty-five original charges to have pointed them at anyone or threatened anyone with them. The State argued at trial that the officers’ minor injuries rose to the level of first-degree assault because Ms. Robbins allegedly “weaponized” a hypodermic needle against them,<sup>4</sup> but no needle was ever found or offered as evidence at trial. Only one of the officers, Officer Griffiths, testified that he even saw a needle. All of the other officers testified that that they saw a syringe, not a needle.

The State conceded, appropriately, at oral argument that the only evidence supporting the first-degree assault convictions was the testimony of the officers. The State’s entire case turned on the jury’s assessment of the officers’ testimony about what Ms. Robbins did, how she acted, and what she intended. The State says that the officers’ testimony that Ms. Robbins was acting erratically and flailing with the hypodermic needle while they tried to restrain her allowed the jury to infer that she had the specific intent to cause them serious physical injury. But even if we assume the factual truth of those statements (again, the jury never saw the video), we disagree that the officers’ testimony, standing alone, could support a finding that Ms. Robbins had the conscious and deliberate

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<sup>4</sup> The prosecutor argued that “[t]he reason that this is first degree assault for some of the deputies who were injured is because Ms. Robbins used, weaponized, the needle. Stabbing someone with a weapon is the first degree assault. That’s what adds that element, that seriousness to it.”

purpose to cause them serious physical injury. At most, and viewed in the light most favorable to the State, the officers describe an unarmed woman in mental health crisis flailing against a group of officers. The officers' testimony could, on its face, support a finding that she yelled threatening things, that she resisted their directives, and that she caused minor physical injuries in the process. Nothing they said, though, and nothing else produced at trial could allow a rational juror to have reached the conclusion that Ms. Robbins intended to cause the officers serious physical injury. We reverse Ms. Robbins's four first-degree assault convictions on the ground that the evidence was insufficient as a matter of law.

**B. The State Violated *Brady* By Failing To Produce The Sheriff's Office Video.**

*Second*, Ms. Robbins argues that the trial court erred when it denied her motion for new trial on the ground that the Sheriff's Office video was *Brady* material that the State failed to produce. She contends that the video contains exculpatory footage and provided grounds for her to impeach the State's witnesses. The State does not dispute that the video tape was suppressed, but argues that the motion for a new trial was properly denied because it does not provide a factually different account from the officers' testimony at trial. We agree with Ms. Robbins—the video contains *Brady* material that is exculpatory and counters, if it doesn't outright contradict, the officers' testimony about her actions and theirs during the Sheriff's Office phase of events.

A *Brady* violation is a constitutional claim grounded in the Due Process Clauses of the Fifth and Fourteenth Amendments. *See, e.g., United States v. Agurs*, 427 U.S. 97, 107

(1976). A *Brady* violation calls into question whether the State met its obligation and duty to disclose “evidence favorable to an accused upon request . . . where the evidence is material either to guilt or to punishment, irrespective of the good faith or bad faith of the prosecution.” *Brady*, 373 U.S. 83, 87 (1963). We review *de novo* whether the trial court reached the correct constitutional conclusion. See *Ware v. State*, 348 Md. 19, 48 (1997).

“There are three components of a true *Brady* violation: The evidence at issue must be favorable to the accused, either because it is exculpatory or because it is impeaching; that evidence must have been suppressed by the State, either willfully or inadvertently; and prejudice must have ensued.” *Strickler v. Greene*, 527 U.S. 263, 281–82 (1999). *First*, “[f]avorable evidence includes not only evidence that is directly exculpatory, but also evidence that can be used to impeach witnesses against the accused.” *Ware v. State*, 348 Md. 19, 41 (1997) (quoting *Giglio v. United States*, 405 U.S. 150, 154 (1972)). *Second*, “suppression is inextricably intertwined with the timing of disclosure and the defendant’s independent duty to investigate, especially in a situation where the defense ‘was aware of the potentially exculpatory nature of the evidence as well as its existence.’” *Yearby v. State*, 414 Md. 708, 722–23 (2010) (quoting 6 Wayne R. LaFare et al., *Criminal Procedure* § 24.3(b), at 362 (3d. ed. 2007)). And *third*, prejudice can be likened to materiality, and turns on whether there was a reasonable probability that the evidence would have produced a different result. *Kyles v. Whitley*, 514 U.S. 419, 434 (1995). “[T]he burdens of production and persuasion regarding a *Brady* violation fall on the defendant.” *Yearby*, 414 Md. at 720 (citing *Diallo v. State*, 413 Md. 678, 704 (2010)).

As to the *first* component, the evidence must be favorable either because it is exculpatory or because its impeaching. *See Wilson v. State*, 363 Md. 333, 346 (2001). This video is both. This entire case, and especially the assault charges, turn on the officers’ testimony (again, unsupported by any other evidence) that Ms. Robbins inflicted and sought to inflict serious physical harm on them. The officers testified at trial that Ms. Robbins charged out of the holding cell “like a bull,” that she flailed and swung at them and stabbed them with a syringe and needle, that she came toward them and tried to pull away from them. But without the video, the jury was put to a choice between their word and hers; with it, the jury would have had an opportunity to see what happened for themselves. And although it is not our role to weigh the evidence, we have viewed this video and there simply is no way that this video would not be critical evidence for a jury charged with assessing Ms. Robbins’s actions vis-à-vis these officers to consider, either for the purpose of exculpating Ms. Robbins or disputing the officers’ testimony. And because the video would have been favorable to Ms. Robbins, it satisfies the first element of the *Brady* analysis. *See United States v. Bagley*, 473 U.S. 667, 676 (1985).

We look *second* at whether the evidence was suppressed by the State, either intentionally or inadvertently. *See Yearby*, 414 Md. at 722–23. It was. Before trial, defense counsel requested photos or video of the incident at the Sheriff’s Office, but was told that the Sheriff’s Department could not locate the video due to a change in surveillance system. At the hearing on Ms. Robbins’s motion for a new trial, defense counsel noted that he had spoken several times with the prosecutor about photos or video from the Sheriff’s Office

and was told there weren't any:

[DEFENSE COUNSEL]: First of all, let's start with the video itself. And I think it's pretty clear from the State's answer that both [the State] and I were under the impression at the time of trial that this video did not exist. Didn't really know why, weren't really sure why, but we had had a number of conversations. The most recent in terms of the trial was I believe it was approximately one week prior to trial, again, and I had asked [the State], I said, Is there anything else? Is there anything we are missing? Are there any pictures? Was anybody ever able to locate the video? And he basically indicated to me, no, that there were none.

The trial court determined that the State and defense acted diligently to discover the video prior to trial, but due to a change in the surveillance system at the Sheriff's Office, the video was unavailable at no fault to either party:

THE COURT: Okay. Well, I am satisfied - - I think everybody is in agreement that this video, based upon all of the facts and circumstances that are really laid out in the supplemental discovery dealing report with Corporal Stroecker, there was due diligence before that looking to see if there was any videos and, again, for reasons that the video system had been replaced and then everything was transferred initially to I guess the provider, so, I mean, I'm convinced that this newly discovered evidence could not have been discovered by due diligence prior to the trial, and I don't fault either party. I think everybody was acting in good faith trying to determine whether, in fact, there was any video.

The second element of a *Brady* violation is satisfied easily.

The *third* and final component of a *Brady* violation is prejudice, *i.e.*, “whether we can be confident that the jury’s verdict would have been the same.” *Kyles*, 514 U.S. at 453. The State argued, and the trial court found, that there was not a substantial possibility that the jury or the verdict would have been affected by the video:

But, anyway, the Court cannot find that there is a substantial or significant possibility that the verdict or the trier of fact would have been affected by this video. So for those reasons, the Court doesn't find any Brady violations and the Court's going to deny the motion for new trial.

The trial court found that the video was not materially inconsistent with the testimony at trial, and thus no reasonable probability that there would have been a different outcome if the video was available to Ms. Robbins or had been considered by the jury. But in a case where the *only* evidence the jury had to weigh was the testimony of the officers—to its credit, the State conceded at oral argument that the trial boiled down to the credibility of the officers—it is difficult to imagine how a jury would not value or find material a video of the incident their testimony described. Again, it is not our role to weigh the evidence, but we struggle to square the officers' description of events with the video we watched; it may be that a new jury would reach the same conclusion after viewing the video as the first one did without seeing it, but we cannot say with any confidence that that would have to be the case. And to the extent that the video cast doubt on the credibility of the officers' testimony about the events it captured, as it absolutely could, a jury readily could doubt the officers' testimony on other matters as well. We hold, therefore, that the prosecutors violated *Brady* by failing to produce the Sheriff's Office video to defense counsel before trial.<sup>5</sup>

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<sup>5</sup> The State argues that we should not vacate Ms. Robbins's second-degree assault, resisting arrest, attempted escape, and malicious destruction of property convictions because the surveillance video only shows the events at the sheriff's depot and not the charges born from the incident on Old Elk Neck Road. But those convictions also were grounded entirely in the trial testimony, and thus the credibility, of the same officers

**C. The Trial Court Abused Its Discretion When It Denied Ms. Robbins’s Motion For A New Trial.**

Finally, Ms. Robbins argues that because there was a *Brady* violation, the trial court abused its discretion in denying her motion for a new trial. We agree. For newly discovered evidence to warrant a new trial, it must “produce[] a different result, that is, there was a substantial or significant possibility that the verdict of the trier of fact would [] be[] affected.” *Campbell v. State*, 373 Md. 637, 667 (2003). We examine whether, in denying a motion for a new trial, “the trial court abused its discretion in concluding that the [*Brady*] test had not been met.” *Miller v. State*, 380 Md. 1, 28 (2004). “There is an abuse of discretion ‘where no reasonable person would take the view adopted by the trial court.’” *In re Adoption/Guardianship No. 3598*, 347 Md. 295, 312 (1997) (quoting *North v. North*, 102 Md. App. 1, 13 (1994)). “[A]buse of discretion may also be found where the ruling under consideration is ‘clearly against the logic and effect of facts and inference before the court.’” *Id.* (quoting *North*, 102 Md. App. at 13).

For the reasons underlying our analysis of the *Brady* issue, we hold as well that the trial court abused its discretion in denying Ms. Robbins’s motion for a new trial. The video represented newly discovered evidence that qualifies as exculpatory, impeaching, and material to Ms. Robbins’s case. The convictions other than first-degree assault were grounded entirely in the trial testimony of officers depicted in the video. A jury readily

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depicted in the surveillance video. It is for a jury to determine on remand whether and to what extent to credit their testimony, and we decline to limit the impeachment value of the video solely to the charges deriving from the captured portion of the afternoon.

could, after watching the video, have reached different conclusions about the relative credibility of the officers' versions of events and Ms. Robbins's, and could have judged for themselves whether her actions satisfied the elements of the crimes depicted in the video itself. We reverse the judgments and remand for further proceedings consistent with this opinion.<sup>6</sup>

**JUDGMENTS OF THE CIRCUIT COURT  
FOR CECIL COUNTY REVERSED AND  
CASE REMANDED FOR FURTHER  
PROCEEDINGS CONSISTENT WITH  
THIS OPINION AS TO ALL CHARGES  
OTHER THAN FIRST-DEGREE  
ASSAULT. CECIL COUNTY TO PAY  
COSTS.**

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<sup>6</sup> This decision leaves us with no occasion to consider Ms. Robbins's argument that we should remand her case for a new trial in the interest of justice, even if we didn't find a *Brady* violation or the State's argument that, having found the evidence insufficient to sustain the first-degree assault convictions, we should remand the case to the trial court for re-sentencing consistent with *Twigg v. State*. 447 Md. 1 (2014).