Circuit Court for Garrett County
Case No. C-11-CR-24-000001

UNREPORTED*

IN THE APPELLATE COURT

OF MARYLAND

No. 1619

September Term, 2024

ZACHARY RYAN HAER

V.

STATE OF MARYLAND

Shaw,
Friedman,
Kehoe, Christopher B.
(Senior Judge, Specially Assigned)

JJ.

Opinion by Shaw, J.

Filed: December 11, 2025

*This is an unreported opinion. This opinion may not be cited as precedent within the rule of stare decisis. It may be cited for its persuasive value only if the citation conforms to Rule 1-104(a)(2)(B).

Appellant Zachary Ryan Haer was charged by criminal information in the Circuit Court for Garrett County with two counts of first-degree assault and two counts of second-degree assault. Appellant elected a jury trial, and he was subsequently found guilty of two counts of second-degree assault. For each count, Appellant was sentenced to ten years' incarceration, with all but seven years suspended, and five years' probation. Appellant timely appealed and presents three questions for our review, which we have rephrased[1]:

1. Whether the trial court abused its discretion in denying Appellant's request for continuance?

2. Whether the trial court erred, during voir dire, in asking compound questions and questions that required potential jurors to self-assess their impartiality?

[1] Appellant's original questions were the following:

1. Was the failure to allow for the Appellant to be able to call a material witness, Blake Meyers, the ex-husband of the alleged victim, Addison Marie Meyers, in effect an improper denial of a continuance request, given that the state had originally intended to call the witness, when the fact the state was no longer calling the witness was made known to the Appellant with only approximately a one week period notice, rendering the Appellant unable to intelligently consult with his counsel, craft a subpoena and have it served?

2. Was the use of compound questions in voir dire intertwined with questions that required potential jurors to self-assess their impartiality reversable error to the degree that it constitutes plain error since this issue was not raised at trial?

3. Was the rejection of the jury instruction regarding self-defense reversable error, where the court denied a proposed jury instruction on self-defense because the judge felt that the victim taking one step towards the Defendant, separated by five feet in a domestic argument, was a stretch too far, thus preventing the jury from determining whether or not there was self-defense especially where there was scarce corroborating evidence, making credibility a crucial issue in the case?

3. Whether the trial court abused its discretion in denying Appellant's proposed jury instructions regarding self-defense?

We hold that the circuit court did not err or abuse its discretion, and we affirm the judgment.

BACKGROUND

In September 2023, Appellant Zachary Ryan Haer and Addison Meyers became involved in a romantic relationship. Shortly, thereafter, Ms. Meyers reported Appellant assaulted her on two separate occasions on her family property. The first incident occurred on September 18, 2023[2], and the second incident occurred on October 12, 2023. Appellant was charged with four counts of assault arising from the two incidents by criminal information in the Circuit Court for Garrett County.

Appellant elected to be tried by a jury and on the day of trial, Appellant requested a continuance, which the court denied.

> [**DEFENSE COUNSEL**]: Mr. Haer and I, you know, as far as trial prep, um, when we came here, I thought we were prepared as far as witnesses. Mr. Haer is telling me that he would like to have Mr. Blake Meyers, who the State's Attorney and I have had a long discussion about whether the State would call him as a witness, whether we would call him as a witness. Mr. Haer indicates to me this morning he wants to have Mr. Blake Meyers subpoenaed as a witness. He's not under the power of subpoena for this court date. He is not here. So I am just positing that to the Court. You want to have Mr. Meyers as a wit -- I'm hearing that you definitely want that.
>
> **THE DEFENDANT**: Yes, I do
>
> **[DEFENSE COUNSEL]:** I apologize profusely, Judge. Again, I don't want to, you know, I don't want to point fingers but yesterday I thought we had agreed that we were not going to bring Mr. Meyers as a witness. So, we're --

[2] The original date of occurrence for the first assault occurrence was October 6, 2023, however, on January 3, 2024, the State issued a criminal information which amended the occurrence date to September 18, 2023.

> I'm in a position now where my client is telling me that he wants a witness that we don't have.
>
> **[THE STATE]**: Your Honor, the State – the State does object to any motion to continue. I do think it's late for that. Mr. Hughes and I have had a number of conversations about this matter. Mr. Hughes has diligently prepared this case. I did have a conversation with him last week, in fact, where I advised that although the State had at one point disclosed Mr. Meyers as a potential witness, that we would not be calling him and that I had excused him from or released him from the State's subpoena.
>
> Mr. Hughes and I have had a number of conversations about this matter. Mr. Hughes has diligently prepared this case. I did have a conversation with him last week, in fact, where I advised that although the State had at one point disclosed Mr. Meyers as a potential witness, that we would not be calling him and that I had excused him from or released him from the State's subpoena. So, that being said, uh, I don't think it's justified. We're here on the morning of trial. Um, there's dozens of jurors over there.
>
> **THE COURT:** Right. I'm not going to continue the trial but, certainly, if you can secure Mr. Meyers as a witness, I don't believe the State would have any objection to –
>
> **[THE STATE]:** Oh, no, certainly.
>
> **THE COURT:** -- calling that witness.
>
> **[THE STATE]:** They're certainly free to call whoever they wish.

The court then proceeded to conduct voir dire of the jury panel. Appellant did not object to any of the questions posed by the court, either when they were asked or at the conclusion of the process. The jury was empaneled, and following opening statements, the State presented its case in chief. At its conclusion, Appellant made a motion for judgment of acquittal. The court denied the motion, and no further witnesses were called. The parties then discussed jury instructions with the court. Appellant requested an instruction on the issue of self-defense, which the court denied.

> **[THE STATE]:** …the State would also assert the issue of self-defense has not been raised. Ms. uh, Ms. Meyers did not raise the issue. Self-defense must be an issue generated by the evidence. There has been no testimony that she did anything to provoke or cause, by physical aggression, any sort of assaultive response by the Defendant. Uh, there's been -- there's a lack of evidence. Uh, there's case law there must be some evidence of self-defense to generate an issue and entitle the Defendant to a self-defense instruction. Um, and there -- we -- there's, simply put, there's been no -- no evidence to support that.
>
> **THE COURT:** Mr. Hughes.
>
> **[DEFENSE COUNSEL]:** The evidence that we placed into the record, Judge, was the testimony of Ms. Meyers that she went towards the Defendant. That should -- that's not -- doesn't say how weighty the evidence has to be. There is some evidence there that she started towards him. Therefore, he should -- could have acted in self-defense.
>
> **[THE STATE]:** My recollection of that testimony was that, according to him, I took a step toward him. Even in the, again, the light most favorable to the Defendant, that -- that cannot generate a self-defense instruction, because it would be so extremely unreasonable to justify such, uh, such a response, such an out-of-proportion response that if a person took a -- one step towards somebody, her testimony was they were five feet away, and if she stepped toward him, it was one step.
>
> **THE COURT:** I agree. I think that's a stretch --
>
> **[THE STATE]:** Thank you, Judge --
>
> **THE COURT:** -- to get to self-defense. So we're -- of Defense, we're eliminating No. 1 because it's already in the State's, No. 6 because it's unnecessary, and No. 8 I am eliminating.
>
> **[DEFENSE COUNSEL]:** Judge, would the Court note the Defense objection to the removal of the self-defense instruction.
>
> **THE COURT**: Yes, objection is noted. It looks like 3:10 is also in the State's. Your number –

Following jury instructions and arguments of counsel, the jury began their deliberations.

Appellant was ultimately found guilty of two counts of second-degree assault. On July 27,

2024, Appellant was sentenced to ten years' incarceration with all, but seven years suspended and five years of probation for the first count, and ten years with all but seven years suspended concurrent for the second count. Appellant timely appealed.

STANDARD OF REVIEW

"The decision of whether to grant a request for continuance is committed to the sound discretion of the court." *Davis v. State*, 207 Md. App. 298, 308 (2012) (quoting *Abeokuto v. State*, 391 Md. 289, 329 (2006)) (citation omitted). "[S]uch a discretion will not be disturbed absent a showing of abuse prejudicial to the defendant." *Jackson v. State*, 288 Md. 191, 194 (1980) (citation omitted).

An appellate court's "discretion to recognize plain error is plenary." *Frazier v. State*, 197 Md. App. 264, 278 (2011) (citation omitted). We "review [an] unpreserved claim only where the unobjected to error can be characterized as compelling, extraordinary, exceptional, or fundamental to assure the defendant a fair trial by applying the plain error standard." *Id*. (quoting *Abeokuto*, 391 Md. at 327) (citations omitted).

"[W]e review a trial court's ruling to grant or decline a proposed jury instruction . . . under an abuse of discretion, and '[t]he court's failure to fulfill this function can amount to error, that ordinarily requires reversal.'" *Atkins v. State*, 421 Md. 434, 446 (2011) (quoting *Gunning v. State*, 347 Md. 332, 348 (1997)). An appellate court's "determination of whether the evidence is sufficient to generate the desired instruction is a question of law and thus is reviewed *de novo*." *Hollins v. State*, 489 Md. 296, 309 (2024) (citing *Bazzle v. State*, 426 Md. 541, 550 (2012)) (citation omitted). "In determining whether there was

'some evidence' to support the instruction, we review the evidence in the light most favorable to the accused." *Id*.

DISCUSSION

I. The trial court did not abuse its discretion in denying Appellant's motion for continuance.

Appellant asserts the court abused its discretion in denying his request for a continuance in order to subpoena Addison Meyers' ex-husband, Blake Meyers, to testify at trial. Appellant argues that the "last minute" switch by the State releasing Mr. Meyers as a witness "hindered his ability to exercise his [United States] and Maryland Constitutional rights to either confront or compel the testimony of his witness," and "to have effective representation by counsel." Appellant contends that Mr. Meyers would have been "a material witness for the Defense" because much of the case "rest[s] on credibility, with no eyewitness to either assault allegation[s] and scant corroboration." Appellant asserts the trial court's cure was "an obviously arbitrary way of handling the issue," and that granting the continuance would have been "relatively easy" as Appellant's request was made prior to the empanelment of the jury.

The State argues the court did not abuse its discretion. According to the State, the granting of a postponement would have been an inconvenience to the jurors and the witnesses, and it was without merit. The State contends that Appellant "failed to demonstrate whether he could produce the witness within a reasonable time, did not explain how the testimony was material, and did not show diligent efforts to secure the witness." The State argues Mr. Meyers' testimony would have been "duplicative" and "immaterial."

Generally, a party may move or "on its own initiative, the court may continue or postpone a trial or other proceeding as justice may require." Maryland Rule 2-508. The trial court has the discretion to grant or deny a motion for continuance "to locate a defense witness and such discretion will not be disturbed absent a showing of abuse prejudicial to the defendant." *Jackson*, 288 Md. at 194 (citations omitted).

The Maryland Supreme Court examined whether a trial court had abused its discretion in denying a continuance request to obtain witness testimony in *Rodney Leonard Jackson v. State*. *Jackson, 288 Md.* at 192-95. In its analysis, the Court quoted its earlier *William Jackson v. State* opinion, stating that the requesting party must show:

> that he had a reasonable expectation of securing the evidence of the absent witness or witnesses within some reasonable time; that the evidence was competent and material, and he believed that the case could not be fairly tried without it; and that he had made diligent and proper efforts to secure the evidence.

Id. *(*quoting *William Jackson v. State*, 214 Md. 454, 459 (1957)).

In *Rodney Leonard Jackson*, the petitioner was charged with robbery with a deadly weapon and other related charges. *Id*. at 192. At the close of his case-in chief, he requested a brief continuance because his witness "had apparently gone to Virginia and would likely return the next day." *Id*. at 193. The trial court denied his request, and he was subsequently convicted. He noted an appeal. *Id*. at 192.

The Supreme Court granted certiorari, prior to this Court's consideration of the appeal, and found that the petitioner had failed to show a "diligent effort to secure [his] witness even though petitioner knew of the witness a "month prior to trial." *Id*. at 194. The Court noted that the petitioner "never spoke with the witness" and concluded that he

could not "proffer her testimony to establish its materiality, relevancy and competency." *Id*. As a result, the Court stated that it could not conclude that the testimony would have been "vital to the defense or necessary for a fair trial." *Id*. at 195. The Court also noted that the petitioner failed to "offer any indication of when the witness could be obtained." *Id*. The Court held that the trial court acted within its sound discretion in denying the request for continuance. *Id*. at 194.

In *Prince v. State*, this Court, also, examined whether the denial of a continuance by the trial court was an abuse of discretion. *Prince v. State,* 216 Md. App. 178, 203-05 (2014). There, the petitioner was charged with attempted first-degree murder and other offenses. *Prince,* 216 Md. App. at 185. Three days prior to trial, the petitioner requested a continuance to "obtain . . . a preliminary report from a psychologist . . . in which, he said, she opined that [petitioner] "*most likely* suffered" from PTSD at the time of the incident." *Id*. The trial court denied the petitioner's request, holding that his "mental health issue had nothing to do with the events in question[.]" *Id*. at 186. The petitioner was subsequently convicted, and on appeal, he argued that the trial court improperly denied his request for a continuance to "develop expert testimony regarding his mental state." *Id*. at 182.

This Court analyzed petitioner's claim in accordance with the factors established in the *Jackson* opinions and their progeny. *Id*. at 204. We held that the petitioner did not offer sufficient information "on which the circuit court could have based a 'reasonable expectation' that admissible or relevant evidence would be secured; at most he offered hope." *Id*. The petitioner's proposed witness failed to offer "'competent and material' evidence that would tie [petitioner's] previously diagnosed PTSD to the crime at issue."

Id. In addition, Petitioner's inability to secure a preliminary diagnosis and opinion within a reasonable time, "did not constitute diligent and proper efforts to secure the evidence." *Id*. We determined that the circuit court did not abuse its discretion in denying the continuance request. *Id*. at 203, 205.

In the case at bar, Appellant's attorney made an oral motion for a continuance, on the morning of trial, to secure Mr. Meyers as a witness for the defense, stating:

> **[DEFENSE COUNSEL]:** Mr. Haer is telling me that he would like to have Mr. Blake Meyers, who the State's Attorney and I have had a long discussion about whether the State would call him as a witness, whether we would call him as a witness. Mr. Haer indicates to me this morning he wants to have Mr. Blake Meyers subpoenaed as a witness. He's not under the power of subpoena for this court date. He is not here. So I am just positing that to the Court.

The State responded that the absence of Mr. Meyers in court had been discussed with counsel prior to trial. The State argued that granting a continuance would be an inconvenience to the potential jurors. The court then denied Appellant's request, but stated, "… if you can secure Mr. Meyers as a witness, I don't believe the State would have any objection [.]"

We observe that Appellant did not offer any information to the court that he had "a reasonable expectation of securing" Mr. Meyers' testimony. *Prince*, 216 Md. App. at 204. Appellant did not provide an explanation for not requesting a continuance prior to trial. Rather, he stated that there had been a "change of mind" moments before the trial was to commence. *Bright v. State*, 1 Md. App. 657, 661. There was no proffer as to the competency or materiality of Mr. Meyers' testimony. *See Jackson*, 288 Md. at 194. Appellant also did not indicate to the court that he had spoken to the witness about his

potential testimony. *Id*. (Petitioner "never spok[e] with the witness" and therefore was "unable to proffer her testimony to establish its materiality, relevancy and competency").

Appellant asserts, on appeal, the theory that Mr. Meyers' absence was a "strategy call" by the State or an indication that his testimony could have changed. However, Appellant's counsel conceded at the trial level, that, through his discussions with the State, he was aware that the State planned not to call Mr. Meyers as the State's witness at least a week prior to trial.

In sum, we hold the trial court acted within its sound discretion in denying Appellant's motion for a continuance. The record is devoid of any showing that Appellant had a reasonable expectation of securing Mr. Meyers' testimony within a reasonable timeframe; that Mr. Meyers' testimony was competent and material to his defense, that he believed that the case could not be fairly tried without it; and that he had made diligent and proper efforts to secure Mr. Meyers' testimony.

II. We decline to address the trial's court use of compound questions during voir dire.

Appellant argues the court erred in asking compound questions to the prospective jurors during voir dire. Appellant acknowledges that no objections were raised below and he, therefore, requests this court consider the issue as plain error. Appellant contends that there were "multiple compound questions" that confused the jurors and required the jurors to retain "all the subparts of the questions" and to "self-assess," which constituted a reversible error.

The State responds that Appellant's claim for plain error fails because he did not provide any specific questions utilized during voir dire that he claims were error in his brief, nor did he provide an explanation as to why such questions were "defective." The State argues, in the alternative, that this court should decline to review because Appellant waived his assignment of error at trial. The State asserts that Appellant has failed to meet the threshold requirements of the plain error standard.

In our review, we found that Appellant's brief does not provide any specific questions that he takes issue with, nor does he provide the reasons for his assertion that certain questions were improper. Appellant, in a single paragraph, uses "broadly worded" statements without cited precedent or "particular statements" in support thereof. *Fraidin v. State*, 85 Md. App. 231, 271 (1991) (declining to review petitioner's argument because he "failed to specify in his brief the particular statement(s) he is challenging [] and has failed to provide argument in support of his position"). Based on the rule that "arguments . . . not presented with particularity will not be considered on appeal," we decline review of Appellant's argument. *Diallo v. State*, 413 Md. 678, 692-93 (2010) (quoting *Klauenberg v. State*, 355 Md. 528, 552 (1999)).

To preserve on appeal "any claim involving a trial court's decision about whether to propound a voir dire question, a defendant must object to the court's ruling." *Robson*, 257 Md. App. at 252-53 (quoting *Foster v. State*, 247 Md. App. 642, 647 (2020), *cert. denied*, 475 Md. 687 (2021). "The appellate courts of this state 'ordinarily will not decide any other issue unless it plainly appears by the record to have been raised in or decided by the

trial court.'" *Robson v. State*, 257 Md. App. 421, 459 (2023), *cert. denied*, 483 Md. 52 (2023) (quoting *Small v. State*, 235 Md. App. 648, 696 (2018); Maryland Rule 8-131.

We review "an unpreserved error under the plain error doctrine only when the unobjected to error [is] compelling, extraordinary, exceptional or fundamental to assure the defendant a fair trial." *Kelly v. State*, 195 Md. App. 403, 432 (2010) (quoting *Turner v. State*, 181 Md. App. 477, 483 (2008) (citation omitted) (citation modified). The discretion to review is "rarely exercise[d]" and "only [exercised] when doing so furthers, rather than undermines, the purpose of the rules." *Id*. (citing *Robinson v. State*, 410 Md. 91, 104 (2009)). The following conditions must be met:

> [T]he error must not have been 'intentionally relinquished or abandoned, i.e., affirmatively waived'; . . . the error must be 'clear or obvious rather than subject to a reasonable dispute'; and . . . the error must have affected the 'substantial rights' of the appellant, which means 'he must demonstrate that it affected the outcome of the district court proceedings[.]' Even if these three requirements are met, this Court should exercise its discretion to review the error only if it 'seriously affects the fairness, integrity or public reputation of judicial proceedings.'

Mungo v. State, 258 Md. App. 332, 370 (2023) (quoting *State v. Rich*, 415 Md. 567, 578 (2010)).

Assuming, *arguendo*, that the issue here was adequately particularized, we hold that plain error review is not available as none of the required conditions have been satisfied. Following the final questioning of juror number sixteen, the court provided the parties with the opportunity to raise concerns or questions:

> **THE COURT:** Okay. We're going to let you go. You'll get out of here, here in a minute.
>
> **[DEFENSE COUNSEL]:** You're excused; condolences.

[THE STATE]: Thank you.

JUROR #16: Thank you.

THE COURT: That it?

[DEFENSE COUNSEL]: Yeah.

THE COURT: Anything else?

[DEFENSE COUNSEL]: Not that I can think of.

***

THE CLERK: Mr. Mash, are you satisfied with the jury?

[THE STATE]: Yes, sir.

THE CLERK: Mr. Hughes?

[DEFENSE COUNSEL]: Yes, sir.

Appellant did not raise any objections to the court's voir dire questions or process. As a result, he affirmatively waived any error. *See Brice v. State*, 225 Md. App. 666, 679 (2015) (holding appellant waived error when "responding 'No' to the courts request for any further comment or objection to the *voir dire* questions"); *see also Booth v. State,* 327 Md. 142, 180 (1992), *cert. denied,* 506 U.S. 988 (1992) (holding that plain error review was not required, because defense counsel response "affirmatively advised the court that there was no objection to the [jury] instruction.").

We find, also that, in addition to waiving any error, Appellant has not demonstrated that any such error was clear and obvious, and that it affected the outcome of the case or the fairness of the proceedings. As such, we decline to exercise our discretion.

III. The trial court did not abuse its discretion in denying Appellant's request to instruct the jury on self-defense.

Appellant argues the trial court abused its discretion in declining to instruct the jury on self-defense. Appellant contends that the "'scant corroborative evidence and the importance of credibility in this case' should have allowed the jury to consider self-defense," and the omission of the instruction could have "fundamentally affected the fairness of the trial." Appellant adds that the self-defense instructions were a "correct statement of the law," "generated by the evidence," and the court's refusal was an abuse of discretion that "prevented the jury from considering a legally valid defense."

The State argues the trial court properly exercised its discretion in refusing to give the self-defense instruction. The State asserts the instructions were not generated by the evidence. The State contends that Appellant failed to produce "some evidence," that demonstrates it was "necessary to assault [Ms. Meyers] . . . in light of any perceived threat."

"In a criminal jury trial, the trial court 'may, and at the request of a party shall, instruct the jury as to the applicable law and the extent to which the instructions are binding.'" *Hollins v. State*, 489 Md. 296, 307–08 (2024) (quoting Maryland Rule 4-325(c)). A trial court must give instruction on the "[e]lements, affirmative defenses and certain presumptions relate[d] to the requirement that a party meet a burden of proof that is set by a legal standard . . . because it sets the legal guidelines for the jury to act effectively as the trier of fact." *Id*. at 308-09. In order to grant a party's request for instruction, the requesting party has to "produc[e] 'some evidence' on the issue or mitigation or self-defense." *Hayes v. State*, 247 Md. App. 252, 297 (2020) (quoting *Porter v. State*, 455 Md. 220, 240 (2017)). If a "issue has been generated by the evidence, the defendant is entitled to a jury instruction[.]" *Id.* ("the defendant's burden is minimal—if there is any evidence relied on

by the defendant, which, if believed, would support his claim that he acted in self-defense, the defendant has met his burden."). "Some evidence is not strictured by the test of a specific standard. It calls for no more than what it says—'some,' . . . It need not rise to the level of 'beyond reasonable doubt' or 'clear and convincing' or 'preponderance.'" *Bazzle v. State*, 426 Md. 541, 55 (2012) (quoting *Dykes v. State*, 319 Md. 206, 216-17 (1990)).

In order for a trial court to properly provide a jury with a self-defense instruction, the requesting party must generate some evidence for each of the following elements:

> (1) The accused must have had reasonable grounds to believe himself ... in apparent imminent or immediate danger of death or serious bodily harm from his ... assailant or potential assailant;
> (2) The accused must have in fact believed himself ... in this danger;
> (3) The accused claiming the right of self-defense must not have been the aggressor or provoked the conflict; and
> (4) The force used must have not been unreasonable and excessive, that is, the force must not have been more force than the exigency demanded.

Johnson v. State, 223 Md. App. 128, 149 (2015); *Bynes v. State*, 237 Md. App. 439, 449 (2018) ("The evidence, moreover, must be generated not simply with respect to self-defense generally, but with respect to each of its constituent components specifically.").

Here, Ms. Meyers testified that during the incident in October 2023, she took a "half step towards him and [told] him to leave." The half step occurred from five feet away and before Appellant pushed her into the wall of her home.

Appellant argued:

> **[DEFENSE COUNSEL]:** The evidence that we placed into the record, Judge, was the testimony of Ms. Meyers that she went towards the Defendant. That should -- that's not -- doesn't say how weighty the evidence has to be. There is some evidence there that she started towards him. Therefore, he should -- could have acted in self-defense.

Based on the record before us, we agree with the trial court that a self-defense jury instruction was not warranted. There was no testimony that Appellant was in fear of bodily harm, rather the evidence pointed to him as being the sole aggressor. Further, the step taken by Ms. Meyers towards Appellant, if considered a force at all, could not have been considered the type of force that was unreasonable or excessive. *Johnson v. State*, 223 Md. App. 128, 150 (2015) (holding the evidence was insufficient to generate self-defense instruction because there was "no evidence of aggressive conduct by [the victim] towards Appellant and Appellant acted with excessive force when hitting and spitting on [the victim]"); *Hayes v. State*, 247 Md. App. 252, 298 (2020) ("An aggressor is not entitled the defense of self-defense.").

Given these circumstances, the trial court did not abuse its discretion in denying Appellant's proposed self-defense jury instruction.

JUDGMENT OF THE CIRCUIT COURT FOR GARRETT COUNTY AFFIRMED. COST TO BE PAID BY APPELLANT.