Circuit Court for Wicomico County
Case No. C-22-CR-17-000261

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 1764

September Term, 2017

GREGORY LAVELLE WASHINGTON

v.

STATE OF MARYLAND

Meredith,
Shaw Geter,
Raker, Irma S.
(Senior Judge, Specially Assigned),

JJ.

Opinion by Shaw Geter, J.

Filed: April 1, 2019

A jury, in the Circuit Court for Wicomico County, convicted Gregory Washington, appellant, of conspiracy to commit first-degree arson and possession of a destructive device. Washington was sentenced to a term of 15 years' imprisonment on the first conviction and a concurrent term of 15 years' imprisonment on the second conviction. In this appeal, Washington presents two questions for our review:

1. Is the evidence sufficient to sustain the convictions?

2. Did the circuit court abuse its discretion in denying defense counsel's request to have a witness invoke her Fifth Amendment privilege against self-incrimination in front of the jury?

Finding no error and the evidence sufficient, we affirm the judgments of the circuit court.

BACKGROUND

In the early morning hours of February 12, 2017, Leander Lewis and his nephew returned to Mr. Lewis' home in Salisbury to discover a small fire in his yard adjacent to his house. Upon extinguishing the fire, Mr. Lewis' nephew discovered a bottle that had "gas" in it and "a little rag hanging out of it," which he picked up and deposited into a nearby trashcan. Mr. Lewis eventually called the police, and their subsequent investigation led them to Washington, who was ultimately arrested and charged in connection with the fire.

Evidence adduced at trial

At trial, Salisbury Police Officer Kevin Carroll testified that, on February 12, 2017, he was on "road patrol" when he got a call to respond to Mr. Lewis' home. Upon doing

so, Officer Carroll met with Mr. Lewis, who told the officer about the fire. Officer Carroll then walked to the area where the fire occurred and discovered "a small area that appeared burnt, discolored from the other areas of grass." Officer Carroll also observed "a bottle" located in "a trash can right directly next to the area" where the fire occurred. Upon closer examination of the bottle, which he eventually confiscated, Officer Carroll noticed that the bottle had "burn marks on it;" that there was "a cloth used as a wick sticking out of the bottle;" and that "the bottle smelled like gasoline." Officer Carroll testified that, during the meeting, Mr. Lewis stated that he suspected that his half-sister, Netisha Black, may have been involved in the fire. According to Mr. Lewis, Ms. Black was upset because Mr. Lewis had inherited a car from his late father.

Mr. Lewis testified that, approximately one week after his meeting with Officer Carroll, he received a phone call from Washington, whom Mr. Lewis knew as Ms. Black's boyfriend. During that conversation, Washington informed Mr. Lewis that Ms. Black had "tried to burn down [his] house." When Mr. Lewis asked Washington how he knew that information, Washington stated that he had "dropped her off;" that "she got out of the car with the bottle;" and that, after he "pulled off," he "parked [his] car" and then "walked past [Mr. Lewis'] house on the end of the corner while she [was] doing it." Mr. Lewis testified that, immediately after his conversation with Washington, he called "the fire marshal" and reported the conversation. Approximately four days later, Mr. Lewis was outside of a friend's house when Washington drove up and told Mr. Lewis to "watch [his] back" because Ms. Black had said that she was "going to try to burn [his] house down again."

Cory Hurst, Senior Deputy with the Maryland State Fire Marshal's Office, testified that he was tasked with investigating the fire at Mr. Lewis' home. As part of his investigation, Deputy Hurst contacted Washington by telephone, and the two had a conversation, which the deputy recorded. In that recording, which was played for the jury, Washington stated that he "witnessed" Ms. Black "set the fire" at Mr. Lewis' house and that she "lit the wick and threw the bottle." Washington then told Deputy Hurst that if he wanted "the entire story" he would need to go to Washington's house and talk to him in person.

Deputy Hurst testified that he then went to Washington's house and had a conversation with Washington in person. During that conversation, which was not recorded, Washington stated that, in the early morning hours of February 12, 2017, Ms. Black was at his house "saying that she wanted to do something to [Mr. Lewis]" and that "she was going to blow him up" and "knew how to do it." Washington stated that Ms. Black, who "had two . . . glass bottles in her possession," then asked him "for some rags," which "were to be used with the wicks to the bottles." Washington stated that he provided Ms. Black with the rags and that the two then got into Washington's vehicle and, with Washington behind the wheel and Ms. Black in the passenger seat, drove "to Jefferson Street." After Washington parked the car on Jefferson Street, Ms. Black got out of the vehicle and went "down the street" in "the direction of where [Mr. Lewis] lived." At the time, Washington could see "a glass bottle in her coat pocket" and "a wick . . . sticking out of the neck of the bottle."

Deputy Hurst testified that Washington then stated that, after he dropped Ms. Black off on Jefferson Street, he drove away and "parked down the street." Moments later, Washington observed "a bright flash coming from the area of [Mr. Lewis'] house" and Ms. Black "running back to the car." When Ms. Black got back to the car, she got in and stated that "she did it." Washington then drove the two to Ms. Black's mother's house.

Deputy Hurst testified that, after his conversation with Washington at Washington's home, he traveled to Mr. Lewis' home and examined the area where the fire had occurred. Upon doing so, Deputy Hurst observed "a dirty towel or a rag" and "what appeared to be a bottle laying to the right of that." Deputy Hurst then turned the bottle over and observed that there "was a rag inside of that bottle as well as an amount of some type of liquid in the bottom of that bottle" and that there was "a strong odor of gasoline coming from inside of the bottle." Deputy Hurst confiscated the bottle and rag, which, along with the bottle and rag recovered by Officer Carroll, were later turned over to the Maryland State Police for forensic testing.

Deputy Hurst testified that, following Washington's arrest, the deputy obtained recordings of several telephone calls made by Washington to his mother from jail. During one of those conversations, which was played for the jury, Washington told his mother to "tell [Ms. Black] I don't care what the paperwork said, all I want her to do is keep straight and none of this happened. Ain't none of us going to say what happened, none of us." In another recording, which was also played for the jury, Washington told his mother that "they are not going to get it because as long as [Ms. Black] don't panic, they don't have

nothing." During a third recording, which was played for the jury, Washington told his mother to call Ms. Black's mother and see if she "would come and testify that she was at the house[.]" Also in that recording, Washington stated that "she just needs to be quiet, not say anything" and that "all [Ms. Black] got to do is keep the lie and everything and keep her mouth shut."

Holeatheia Rene, a forensic scientist with the Maryland State Police, testified that, as part of her duties in Washington's case, she performed various tests on the rags recovered by Officer Carroll and Deputy Hurst from the scene of the fire at Mr. Lewis' house. According to Ms. Rene, the results of those tests showed that the rags contained gasoline.

Washington testified in his own defense, denying that he saw Ms. Black in possession of the bottles or that he saw her throw anything anywhere near Mr. Lewis' house. Washington explained that he "concocted the lie" after Ms. Black's son and her daughter's boyfriend attacked him at Ms. Black's behest.

Ms. Black's invocation of her right against self-incrimination

Outside the presence of the jury, Ms. Black invoked her Fifth Amendment right to remain silent.[1] Prior to her doing so, defense counsel asked the circuit court to permit Ms. Black to invoke her Fifth Amendment privilege in front of the jury. The State objected, and the court, after hearing arguments from counsel, sustained the objection:

[1] The Fifth Amendment to the United States Constitution states, in relevant part, that "[n]o person shall . . . be compelled in any criminal case to be a witness against himself[.]"

> So this is not a case where the State's calling a witness just so they can take the stance and draw an inference that they are guilty . . . . [H]e's actually charged with conspiring with Netisha Black to commit these crimes. And, in fact, if she were to take the Fifth it would be there for the jury to go – I mean, I think it could cut either way, so she clearly committed the crime. Up until this moment my understanding is that the defense was that they didn't do anything wrong so it's not exculpatory for her to take the fifth in this case, in my opinion, based upon everything that I have seen in this trial. In other words, he made it up. If he made it up why would she be taking the Fifth?
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> * * *
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> On the other hand, if she's taking the Fifth, and they don't know why she's taking the Fifth, if she's taking the Fifth because she's the person who threw the Molotov cocktails or placed them carefully by the side of the home, I don't find that to be exculpatory either.
>
> So I just don't think it's going to be meaningful in any way for her to do that in front of the jury so I'm going to deny the request to have her invoke in front of the jury.

DISCUSSION

I.

Washington first contends that the evidence was insufficient to sustain his convictions of conspiracy to commit first-degree arson and possession of a destructive device. Washington maintains that the evidence was insufficient to sustain his conspiracy conviction because the evidence did not show that he "had the intent to willfully and maliciously set fire to or burn Mr. Lewis's home, or have Ms. Black do so." Washington maintains that the evidence was insufficient to sustain his possession conviction because "he never participated with [Ms. Black] in the mutual use and enjoyment of [the

destructive] devices and he never exercised any directing influence or dominion or control over them."

The State responds that the evidence was sufficient to sustain both convictions. Regarding the conspiracy conviction, the State asserts that a jury could conclude that there had been a "meeting of the minds" between Washington and Ms. Black based on the fact that, after Ms. Black told Washington that she intended to "blow up" Mr. Lewis, Washington "not only provided transportation to and from [Mr. Lewis'] house, but rags to use as wicks for 'Molotov cocktails.'" As for Washington's conviction of possession, the State notes that Washington was "in the immediate proximity" of the destructive devices during the drive from his house to Mr. Lewis' house; that Washington was aware of their presence during the drive; that Washington had a possessory interest in the vehicle used; and that, as the driver, Washington had "direct control" over where the devices were going. The State maintains that those facts, when considered in conjunction with a reasonable inference that Washington and Ms. Black were engaged in a joint criminal enterprise involving the destructive devices, were more than sufficient to establish that Washington had joint constructive possession of the devices.

"The test of appellate review of evidentiary sufficiency is 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.'" *Donati v. State*, 215 Md. App. 686, 718 (2014) (quoting *State v. Coleman*, 423 Md. 666, 672 (2011)). That standard applies to all criminal cases, "including those resting upon circumstantial

evidence, since, generally, proof of guilt based in whole or in part on circumstantial evidence is no different from proof of guilt based on direct eye-witnesses accounts." *Neal v. State*, 191 Md. App. 297, 314 (2010). Moreover, "[t]he test is 'not whether the evidence *should have or probably would have* persuaded the majority of fact finders but only whether it *possibly could have* persuaded *any* rational fact finder.'" *Painter v. State*, 157 Md. App. 1, 11 (2004) (citations omitted) (emphasis in original). In making that determination, "[w]e 'must give deference to all reasonable inferences [that] the fact-finder draws, regardless of whether [we] would have chosen a different reasonable inference.'" *Donati*, 215 Md. App. at 718 (quoting *Cox v. State*, 421 Md. 630, 657 (2011)). In so doing, '[w]e defer to the fact finder's 'opportunity to assess the credibility of witnesses, weigh the evidence, and resolve conflicts in the evidence[.]'" *Neal*, 191 Md. App. at 314 (citations omitted).

Conspiracy to Commit First-Degree Arson

"To establish a conspiracy, the State must prove that two or more persons combined or agreed to accomplish some unlawful purpose, or to accomplish a lawful purpose by unlawful means." *Savage v. State*, 226 Md. App. 166, 174 (2015). "When the object of the conspiracy is the commission of another crime, . . . the specific intent required for the conspiracy is not only the intent required for the agreement but also, pursuant to that agreement, the intent to assist in some way in causing that crime to be committed." *Mitchell v. State*, 363 Md. 130, 146 (2001). Nevertheless, the essence of a criminal conspiracy is the unlawful agreement, and the crime "is complete when the agreement to

undertake the illegal act is formed." *Savage*, 226 Md. App. at 174. "The agreement need not be formal or spoken, provided there is a meeting of the minds reflecting a unity of purpose and design." *Townes v. State*, 314 Md. 71, 75 (1988). "A conspiracy may be shown through circumstantial evidence, from which a common scheme may be inferred." *Hall v. State*, 233 Md. App. 118, 138 (2017).

Here, the "unlawful purpose" was the commission of first-degree arson. That crime is proscribed by § 6-102(a) of the Criminal Law Article of the Maryland Code, which states that "[a] person may not willfully and maliciously set fire to or burn . . . a dwelling."[2] "'Willfully' means acting intentionally, knowingly, and purposely." Md. Code, Crim. Law § 6-101(e). "'Maliciously' means acting with intent to harm a person or property." Md. Code, Crim. Law § 6-101(c).

First-degree arson is a specific intent crime, which requires "'not simply the intent to do the immediate act but embraces the requirement that the mind be conscious of a more remote purpose or design which shall eventuate from the doing of the immediate act.'" *In re David P.*, 234 Md. App. 127, 135 (2017) (citations omitted). In other words, "the *mens rea* requires not only having an intent to do the immediate act of setting a fire, but also embracing the purpose of causing harm to person or property." *Id.* Such an intent need not be proved by direct evidence but "may be inferred as a matter of fact from the actor's conduct and the attendant circumstances." *Young v. State*, 303 Md. 298, 306 (1985). That

[2] Section 6-101(b)(1) of the Criminal Law Article of the Maryland Code defines "dwelling" as "a structure any part of which has been adapted for overnight accommodation of an individual, regardless of whether an individual is actually present."

is, "'[s]ince intent is subjective and, without the cooperation of the accused, cannot be directly and objectively proven, its presence must be shown by established facts which permit a proper inference of its existence.'" *Spencer v. State*, 450 Md. 530, 568 (2016) (citations omitted).

We hold that the evidence adduced at trial, when viewed in a light most favorable to the State, was sufficient to sustain Washington's conviction of conspiracy to commit first-degree arson. That evidence showed that, in the early morning hours on the day of the fire, Washington and Ms. Black were together at Washington's house when Ms. Black informed Washington that she wanted to "blow [Mr. Lewis] up" and that "she knew how to do it." Upon making those statements, Ms. Black obtained two glass bottles and asked Washington for rags to use as "wicks," which Washington provided. Washington and Ms. Black then got in Washington's vehicle, and Washington drove them to an area near Mr. Lewis' house. After dropping off Ms. Black, who at the time had a glass bottle with a wick protruding from her pocket, Washington drove away and, shortly thereafter, observed a "bright flash" coming from the direction of Mr. Lewis' house. When Ms. Black returned to Washington's vehicle, she said that she "did it," and the two drove away. Around the same time, Mr. Lewis returned to his home to find a small fire and a glass bottle with a rag in it near his home. The police later discovered a second bottle with a rag in it in the same vicinity, and test results on the rags recovered from the scene of the fire revealed the presence of gasoline. Lastly, after Washington was arrested, he had several telephone conversations with his mother, which were recorded. During those conversations,

Washington made several comments regarding Ms. Black, including that "she just needs to be quiet, not say anything" and that "all she got to do is keep the lie and everything and keep her mouth shut."

From that evidence, a reasonable factfinder could conclude that Washington and Ms. Black had a "meeting of the minds" to willfully and maliciously set fire to Mr. Lewis' house. After Ms. Black obtained two glass bottles and told Washington that she wanted to blow Mr. Lewis up, Washington provided her with rags that he knew were going to be used as "wicks." Given that two bottles with rags in them were later discovered at the scene of the fire, a reasonable inference can be drawn that those bottles were the same bottles from Washington's house. And, given that the rags recovered from the scene contained gasoline, a reasonable inference can be drawn that Washington and Ms. Black constructed the bottles for the purpose of setting fire to Mr. Lewis' house. *See In re David P.*, 234 Md. App. at 139 (noting that the "presence of an accelerant is a common characteristic in convictions for arson" and that the "use of an accelerant allows a reasonable inference of intent[.]").

Moreover, after Washington provided Ms. Black with the rags, he drove her to the area of Mr. Lewis' house, where she exited the vehicle and headed in the direction of Mr. Lewis' house while in possession of at least one bottle with a wick sticking out of it. Washington then drove a short distance away, parked his car, and waited for Ms. Black to return. When she did, she told him that she "did it," and the two drove away. Those actions suggest a "unity of purpose and design" sufficient to establish that Washington conspired with Ms. Black to set fire to Mr. Lewis' home. *See Jones v. State*, 132 Md. App. 657, 660

(2000) ("If two or more persons act in what appears to be a concerted way to perpetrate a crime, we may . . . infer a prior agreement by them to act in such a way."). In addition, after Washington was arrested, he made statements to his mother that suggested that he wanted Ms. Black to lie or remain silent about what happened. *See Claybourne v. State*, 209 Md. App. 706, 742-43 (2013) (noting that a defendant's "attempts to induce a witness not to testify or to testify falsely [are] generally admissible as substantive evidence of guilt.") (citations and quotations omitted).

Possession of a Destructive Device

As noted, Washington also claims that the evidence was insufficient to sustain his conviction of possession of a destructive device.[3] Washington does not dispute that the bottles found at Mr. Lewis' home were "destructive devices," nor does he claim that neither he nor Ms. Black ever had possession of a destructive device. Instead, Washington claims that Ms. Black, alone, "exercised exclusive control over the devices" and that he "never participated with [Ms. Black] in the mutual use and enjoyment of these devices and he never exercised any directing influence or dominion or control over them."

"[I]n order to support a conviction for a possessory offense, the 'evidence must show directly or support a rational inference that the accused did in fact exercise some

[3] "A person may not knowingly . . . manufacture, transport, possess, control, store, sell, distribute, or use a destructive device[.]" Md. Code, Crim. Law § 4-503(a)(1); *See also* Md. Code, Crim. Law § 4-501(b)(1) (defining "destructive device," in relevant part, as "explosive material, incendiary material, or toxic material that is . . . combined with a delivery or detonating apparatus so as to be capable of inflicting injury to persons or damage to property[.]").

dominion or control over the prohibited [item.]"[4] *Jefferson v. State*, 194 Md. App. 190, 214 (2010) (citations omitted). Moreover, "[c]ontraband need not be on a defendant's person to establish possession." *Handy v. State*, 175 Md. App. 538, 563 (2007). "Rather, a person may have actual or constructive possession of the [contraband], and the possession may be either exclusive or joint in nature." *Moye v. State*, 369 Md. 2, 14 (2002). "To prove possession of contraband, whether actual or constructive, joint or individual, the State must prove, beyond a reasonable doubt, that the accused knew 'of both the presence and the general character or illicit nature of the substance.'" *Handy*, 175 Md. App. at 563 (citations omitted).

When considering whether the evidence is sufficient to establish joint possession, we generally look at the following factors: 1) the proximity between the defendant and the contraband; 2) whether the contraband was within the view or knowledge of the defendant; 3) whether the defendant had ownership of or some possessory right in where the contraband was found; and 4) whether a reasonable inference can be drawn that the defendant was participating in the mutual use and enjoyment of the contraband. *Cerrato-Molina v. State*, 223 Md. App. 329, 335 (2015) (citing *Folk v. State*, 11 Md. App. 508, 518 (1971)). That said, possession is not determined by any one factor or set of factors but rather "by examining the facts and circumstances of each case." *Smith v. State*, 415 Md. 174, 198 (2010).

[4] Although "possession cases" typically address the possession of controlled dangerous substances, the same analysis is generally applicable in cases involving other illegal items. *State v. Smith*, 374 Md. 527, 549 (2003).

Against that backdrop, we hold that the evidence adduced at trial was sufficient to establish that Washington possessed a destructive device, *i.e.*, the bottles containing rags and gasoline that were found near the fire at Mr. Lewis' house. As previously discussed, Washington provided Ms. Black with the "wicks" for the two bottles and then traveled, in his car, with Ms. Black to Mr. Lewis' house, where he observed Ms. Black in possession of at least one of those bottles. Washington was therefore in direct proximity to at least one of the destructive devices while in a vehicle that he owned. *See Johnson v. State*, 142 Md. App. 172, 197 (2002) (holding that the evidence of possession was sufficient where the defendant was the front seat passenger in a vehicle and the contraband was "within arm's reach."). Moreover, Washington exhibited "dominion and control" over the bottles by not only aiding in their construction but also driving Ms. Black, who had one of the bottles in her pocket, to Mr. Lewis' house. In so doing, Washington was fully aware that Ms. Black intended to use the bottles to "blow up" Mr. Lewis. From those facts, a reasonable inference can be drawn that Washington was participating in the "mutual use and enjoyment" of the destructive devices. Thus, sufficient evidence was presented to establish that Washington had joint, constructive possession of a destructive device.

II.

Washington next contends that the circuit court erred in refusing defense counsel's request to have Ms. Black invoke her right against self-incrimination in front of the jury. Relying exclusively on *Gray v. State*, 368 Md. 529 (2002), Washington maintains that,

because "a reasonable defense in this case was that Ms. Black committed the crime by herself," the court should have permitted the request.

Washington is mistaken, as *Gray v. State* is inapposite. In that case, the defendant, James Gray, on trial for murder, requested permission from the trial court to call a witness so that the witness could invoke his Fifth Amendment privilege in front of the jury. *Id.* at 547–48. Gray, who claimed that the witness, not he, had committed the murder, argued that it would be "unfair" to disallow the request "because the very invocation of the privilege contain[ed] relevant evidentiary inferences supporting the theory of the defense." *Id.* at 548. The trial court ultimately denied the request, ruling that it did not have the discretion to permit a witness to invoke his Fifth Amendment privilege in front of the jury. *Id.* at 549.

After Gray was convicted and this Court affirmed that conviction, the Court of Appeals reversed on other grounds.[5] *Id.* at 537. The Court of Appeals also determined that, because of the importance of the issue, it would address, for guidance purposes, whether a trial court has the discretion to permit a witness to invoke his Fifth Amendment privilege in front of the jury. *Id.* at 547. In so doing, the Court noted that the issue was one of first impression for the Court because, prior to that time, the relevant case law all involved "a witness being called to testify by the prosecution or the court, when they knew or should have known that the witness was going to invoke his Fifth Amendment

[5] The Court of Appeals reversed on the grounds that the trial court erred in not admitting certain hearsay statements. *Gray*, 368 Md. at 537.

privilege." *Id.* at 558. The Court further noted that Gray's case was distinguishable because it involved a defendant "who want[ed] to call a witness [], who was not an accomplice, but rather the person the defendant claims committed the crime, to testify or invoke his Fifth Amendment privilege in the presence of the jury." *Id.* at 558. The Court nevertheless concluded that, in those circumstances, it "believe[d] that a trial court has some discretion to consider [the request.]" *Id.* at 558–59. The Court explained that, "just as a trial court must determine whether a witness is properly invoking his Fifth Amendment privilege, the trial court must exercise its discretion and determine if a defendant will be unfairly prejudiced by the court not allowing the defendant to call a potentially exculpatory witness that . . . will invoke . . . in the presence of the jury." *Id.* at 561. The Court added that a trial court, in considering such a request, should first make sure that sufficient evidence has been presented "so that any trier of fact might possibly and reasonably believe that the proposed witness might have committed the crime instead of the defendant." *Id.* at 562. If such evidence does exist, the Court explained, "then the trial court has the discretion to permit, and limit as normally may be appropriate, the defendant to question the witness, generally, about his involvement in the offense and have him invoke his Fifth Amendment right in the jury's presence." *Id.* at 564. As noted, however, the Court did not hold that the trial court erred; instead, the Court concluded that, "[b]ecause we are reversing on [other] grounds, we do not have to determine whether the trial court abused its discretion on this issue, although, we note, that our cases hold that the actual failure to exercise discretion is an abuse of discretion." *Id.* at 565.

When we apply the facts of *Gray* to those of the instant case, several important distinctions emerge that show that the circuit court's actions in the instant case were not erroneous. First, unlike the court in *Gray*, the court in the instant case did not refuse to exercise its discretion; rather, the court, in denying Washington's request, considered Washington's arguments, exercised its discretion, and provided a reasonable explanation for its decision. In fact, the court considered both the relevance of the evidence and the effect that precluding the evidence would have had on the defense's theory of the case, which is precisely what the Court of Appeals in *Gray* said that a court is supposed to do in such a situation.

Moreover, in *Gray*, the defense's theory of the case was that the witness, not Gray, had committed the murder for which Gray was being tried. For that reason, having the witness invoke his Fifth Amendment privilege in front of the jury could reasonably have exculpated Gray because "any trier of fact might possibly and reasonably believe that the proposed witness might have committed the crime instead of the defendant." *Gray*, 368 Md. at 562. Here, by contrast, no such inference could be made because the charged crimes were based on Washington having acted in concert with Ms. Black. Thus, had Ms. Black invoked her Fifth Amendment privilege in front of the jury, her testimony, unlike the testimony of the witness in *Gray*, would not have exculpated Washington because no trier of fact could have reasonably believed that Ms. Black had committed the crimes *instead of* Washington. If anything, that testimony would have inculpated Washington because it would have suggested that Ms. Black, his accomplice, was guilty. It also would have

undercut Washington's testimony that he had "concocted a lie" about Ms. Black's involvement in the crime. For those reasons, the court did not abuse its discretion in denying Washington's request to have Ms. Black invoke her Fifth Amendment privilege in front of the jury.

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