Circuit Court for Calvert County
Case No. 04-K-16-000005

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 831

September Term, 2016

HEATHER GLASGOW DOYLE

v.

STATE OF MARYLAND

Eyler, Deborah S.,
Kehoe,
Rodowsky, Lawrence F.
(Senior Judge, Specially Assigned),

JJ.

Opinion by Eyler, Deborah S., J.

Filed: July 13, 2017

In the Circuit Court for Calvert County, Heather Doyle, the appellant, was charged with making a false statement to law enforcement officers, in violation of Md. Code (2002, 2012 Repl. Vol.), section 9-501(a) of the Criminal Law Article ("CL").[1] A jury convicted her, and she was sentenced to three months' imprisonment, all but 15 days suspended, 240 hours of community service, and two years' probation.

On appeal, Doyle presents five questions for review, which we have reordered and slightly reworded:[2]

I. Was the evidence legally sufficient to support her conviction?

II. Did the trial court err by admitting evidence that she purposefully damaged a police vehicle?

[1] In 1957, this crime was enacted as section 150 of Article 27 of the Maryland Code. In 1991, section 150 was divided into subsections. The predecessor to CL section 9-501(a) was section 150(a) of Article 27. In 2002, section 150 was recodified, without substantive change, to its present codification. For ease of discussion, we shall refer to CL section 9-501 throughout this opinion, even when discussing former sections 150 or 150(a) of Article 27.

[2] Doyle words her questions presented as follows:

I. Was it error to allow other crimes evidence?
II. As a matter of legislative intent or public policy, should the "false statement to a police officer" statute have been applied to criminally punish Appellant for her complaint to internal affairs about unnecessarily risky and rough treatment by arresting officers?
III. Was it error to refuse the defense requested jury instruction on the elements of the offense charged?
IV. Was it error to refuse to give the requested jury instruction on the absence of the non-testifying codefendant?
V. Did some special conditions of probation constitute an illegal sentence?

III. Did the trial court err by refusing to give the defense's requested jury instruction on the elements of the offense?

IV. Did the trial court err by refusing to give a "reverse missing witness" jury instruction?

V. Do the special conditions of her probation constitute an illegal sentence?

For the following reasons, we shall affirm the judgment.

FACTS AND PROCEEDINGS

On the morning of February 3, 2015, Doyle was arrested for trespassing on property owned by Dominion Cove Point, LNG, L.P. ("Dominion"), in Calvert County. She and a woman named Carling Sothoron entered Dominion's construction site without permission and climbed up a large crane to hang a banner protesting Dominion's construction of a facility to export liquefied natural gas. On April 20, 2015, in the District Court of Maryland for Calvert County, Doyle plead guilty to trespassing.[3]

Ten days later, on April 30, 2015, Doyle filed a complaint with the Calvert County Sheriff's Office ("Sheriff's Office").[4,5] She alleged that while Sergeant Vladimir Bortchevsky was removing her from the crane on February 3, 2015, he choked her twice

[3] Doyle also was charged with malicious destruction of property. That charge was *nol prossed* as part of her plea agreement.

[4] Unless indicated otherwise, all the officers we refer to in this opinion were employees of the Sheriff's Office at the relevant time.

[5] Doyle was in jail when her complaint was filed. Her lawyer contacted the Sheriff's Office and had them email a form for complaints to the Calvert County Detention Center where she was serving her sentence for trespassing. Captain Kevin Cross at the detention center printed the form and hand-delivered it to Doyle, which she filled out and returned.

with his forearm and stomped on her chest with his boot; Deputy Robert Brady witnessed the assaults being perpetrated against her; and two Maryland State Troopers held her down while Sergeant Bortchevsky assaulted her. She wrote:

> . . . I was being pulled [across the crane arm] by three large men, I tried to sit down into my rope system as much as I could, which I think angered the cops because it appeared that I was being non-compliant. They eventually pulled me across while I was trying to sit down into my system. When they got me back over to the beginning of the arm where they were able to somewhat stand and balance themselves, *they turned me around and sort of splayed me out against the base of the crane. One of the state troopers each held my arms down sort of behind me.* The cop who had first been on the scene with me was holding the rope that was attached to the other climber. And this other Calvert County Sheriff['s Office officer] stood in front of me, overtop of me. I was completely pinned down at this point . . . and not struggling. I wasn't trying to get away. But *he stood overtop of me, and he put his forearm into my throat and started to press down into my larynx.*
>
> It was a lot of pressure. I could still make noise, so I wasn't being completely strangled, but I was having a hard time breathing, and I was very scared. I was trying to tell him that I was having a hard time breathing, and *he kept the pressure on my throat for about 20 seconds, and then he let off. He stared at me, and then he pushed his forearm back into my throat for about another 15 seconds.* I was very scared at this point. I was surrounded by cops watching this other cop do something to me. There was no one else who could see what was happening to me, and I was all alone at the bottom of the crane. *He was assaulting me because he wanted to, is what I perceived. . . .*
>
> After he let off my throat the second time, *he lifted up his boot, and he put the whole sole of his foot pressing down into my sternum. He was putting a lot of pressure into my ribcage and just pressing down really hard. It felt like he was trying to crush my chest.* Then, he put his foot down and said, [“]Oh, I'm just trying to step over you here,[”] and was sort of smirking and smiling about what he had just done to me.

(Emphasis added.) [6]

Doyle also alleged that the officers involved in her arrest had used unsafe climbing and rope handling techniques to remove her and Sothoron from the crane, thereby endangering both of them.

On May 4, 2015, Doyle's complaint was assigned to Sergeant James Goldsmith, with the Office of Professional Standards of the Sheriff's Office, to investigate.[7] Upon the conclusion of his investigation, at the end of June 2015, Sergeant Goldsmith made determinations of falsity about statements made by Doyle in her complaint and referred the matter to the State's Attorney's Office. The State charged Doyle in the District Court of Maryland for Calvert County with making a false statement to law enforcement officers, in violation of CL section 9-501, based on her statements that Sergeant Bortchevsky, with the help of two State Troopers and as witnessed by Deputy Brady, had assaulted her by choking her twice and stomping on her chest.

Doyle prayed a jury trial, which commenced on May 24, 2016. The evidence showed that the crane in question was 150 feet high. Its major feature was a long arm, referred to as a "boom," that extended up and out at an angle. The boom consisted of large, attached, three-dimensional rectangular open units made of metal bars, so one could climb on top of it, and see inside it, or climb inside it, and see outside of it.

[6] In her complaint, Doyle did not identify the State Troopers she claimed held her arms during the assault.

[7] According to Sergeant Goldsmith, the Professional Standards Office is the internal affairs unit of the Sheriff's Office.

Deputy Brady testified that he was the first officer to arrive at the construction site on February 3, 2015, between 5:30 and 5:45 a.m. Sothoron was about half way up the boom and climbing and Doyle was about 15 to 20 feet up the boom, inside it, feeding rope to Sothoron. It was cold outside and the crane was slippery from frost. Deputy Stephen Esposito was tasked with climbing up the boom to remove Sothoron from the crane. Deputy Brady's purpose in responding to the site was to arrest both women.

Deputy Brady verbally ordered Doyle to come down off the crane. When she refused, he climbed up to her position so he could unhook her rope and climbing system and remove her from the crane. By then, Sergeant Bortchevsky had arrived on the scene. He climbed up the crane to assist Deputy Brady. Sergeant Bortchevsky is six feet four inches tall and weighs 285 pounds. He climbed up the outside of the boom and then "maneuver[ed]" himself to get inside the boom beside Doyle to assist in unhooking her. Deputy Brady saw that Sergeant Bortchevsky's feet "were dangling" as he lowered himself into the boom and that his boot brushed against Doyle's front for "one to two seconds." According to Deputy Brady, this contact was not purposeful; neither Sergeant Bortchevsky nor anyone else assaulted Doyle. Once Deputy Brady got Doyle unhooked, Sergeant Bortchevsky helped him guide her down the crane and into the custody of other officers.

Sergeant Bortchevsky testified that he arrived at the construction site just before 6:00 a.m., at the same time as Corporal Gary Shrawder. Two State Troopers and Deputy Troy Holt were standing on the ground by the cab of the crane. Sergeant Bortchevsky saw Deputy Brady on the boom and heard him ordering Doyle not to climb any farther up

the crane. When she started climbing farther up the crane instead, Deputy Brady tried to hold on to her to keep her from doing so. Because Doyle was being noncompliant, Sergeant Bortchevsky climbed up the outside of the boom, on its top, to assist Deputy Brady. He got to where Deputy Brady was located, also on the outside top of the boom, but to the right side. Doyle was inside the boom. Sergeant Bortchevsky passed Deputy Brady and "lowered [himself] into the boom" "[f]eet first." As he did so, the "bottom of [his] boot brushed up against [Doyle's] coat" and made a "swish sound[.]" He did not "apply any force or pressure" with his boot or "step on her[.]"

Once he was inside the boom, Sergeant Bortchevsky "held [Doyle] by her shoulder area on her jacket . . . to keep her from going further up the crane" while Deputy Brady "worked [on] [Doyle's] restraint and the ropes to untie her from the crane." It took Deputy Brady about five to seven minutes to untie Doyle. When he was finished, Sergeant Bortchevsky "immediately" "passed" Doyle to Deputy Brady, "who was just below [him]," and then Doyle was passed to other officers and finally removed from the crane.

For the entire time he was assisting in removing Doyle from the crane, Sergeant Bortchevsky was unrestrained. When he was on top of the boom, he had to hold on to it with both hands to keep his balance so he would not fall. When he was inside the boom, he used one hand to "hold onto the structure" so he would not fall and his other hand to restrain Doyle. He could not let go of the boom at any time he was on it because his feet were not in a secure enough position to ensure that he would not fall. He did not place his forearm against Doyle's throat and could not have done so without risking falling

through the "open areas" between the "couple [of] support beams" on which he was standing. Likewise, Doyle could not have been "laid across the bottom of the crane" or held down against the sides of the boom, as she had claimed, without falling through it. If he had pressed his boot down on Doyle's chest in any of those positions, she would have fallen through the openings between the metal bars. Sergeant Bortchevsky testified that during the whole time that he was holding Doyle and Deputy Brady was untying her ropes, no one else got inside the boom with them. No one else could have gotten inside, because there was no room and there were not enough metal beams for everyone to "hold onto or stand on[.]"

After Doyle was on the ground and handcuffed, she complained to Sergeant Bortchevsky that she was cold. Doyle could not be placed in a police vehicle for warmth without being thoroughly searched, and they were waiting for a female officer to arrive to search her and transport her to the Calvert County Detention Center. (There were no female officers on the scene.) Sergeant Bortchevsky called the transporting officer and gave her permission to use her lights and sirens so she would arrive more quickly. He then placed Doyle next to the right rear wheel of one of the marked police vehicles that was running, to help her get warm. A little while later, he noticed that she was "moving side to side up against the front right quarter panel of the police vehicle." He testified:

> Knowing that [Doyle] was handcuffed behind her back with medal [sic] handcuffs, I went over to [her] to find out why she was rocking side to side, and once she was removed from the quarter panel, I observed the damage that she created on the right front quarter panel of the police vehicle. . . . Once [Doyle] was turned around, the area around [her] handcuffs was examined and it contained white paint flakes from the [police vehicle], and

> the handcuffs contained white paint scrapings like they were being scraped against the paint.

At no time during his encounter with Doyle, both on the crane and after she was on the ground, did Sergeant Bortchevsky observe any "injuries" or "red marks" on her or see her experiencing shortness of breath or coughing. Sergeant Bortchevsky testified that he used no force upon Doyle; also, he did not file a use of force report, which is required by the Sheriff's Office if "[f]orce is used to effect an arrest or apprehend a suspect."

Troopers Willie Smith and Justin Oles, with the Maryland State Police, testified that they were present at the scene of Doyle's arrest and, from their positions on the ground at the crane's base, assisted her in getting off the crane and onto the ground. Trooper Smith testified that he did not climb onto the crane at any time. Trooper Oles testified that he and Trooper Smith were the only troopers present. Both troopers testified that there was no assault on Doyle.

Corporal Shrawder testified that he was present at the scene and did not recall seeing any Maryland State Troopers on the crane. He also testified that the assault never happened. Deputy Holt; Dave Marko, a security manager for the Dominion construction site; and Captain Steven Jones, in the Special Operations Bureau of the Sheriff's Office, all were present and testified that the assault did not happen. They and Deputy Nikki Gilmore, who transported Doyle to the detention center, testified that Doyle had no injuries and made no mention of anything about being assaulted or being unable to breathe. The health service administrator at the detention center, who medically "pre[-

]screen[ed]" Doyle during booking, and another booking officer there both testified likewise.

The officers who climbed on the crane to remove Sothoron and Doyle were called to the scene because they were members of the Sheriff's Office's Special Operations Team. Officers are selected for that team after being trained in making high risk arrests. They attend SWAT school, where they are trained as EMTs, and receive further training in firefighting, rappelling, helicopter rappelling, using ropes and knots, and waterborne operations. The SWAT and firefighting training provides them special instruction in securing knots, rappelling, and belaying. Officers in the Special Operations Team are called to make arrests when a suspect is in a "high location" that requires the officers to climb. [8]

Sergeant Goldsmith testified that although Doyle's complaint was on one complaint form, it was not a single complaint. It was one complaint "of brutality, an assault against her person from police officers," and another complaint about "the way that [the police officers] handled the rope situation." He identified the police brutality complaint as consisting of Doyle's statements about "the forearm to the larynx, being pinned down, having the foot pressed into her ribcage area," and "pressure to . . . [her] chest."

[8] The Special Operations Team officers also are trained to handle barricades, hostage situations, and emergency petitions for people suffering from mental illness. The members of the team all are sworn as U.S. Marshalls.

Sergeant Goldsmith interviewed Doyle as part of his investigation. An audio recording of the interview was played for the jury, and a transcript was admitted into evidence. In the interview, when Sergeant Goldsmith asked Doyle what she hoped would be a good outcome of her complaint, she said "an assessment" of the rope and climbing techniques the officers used and "some disciplinary action against the officer who choked me and pushed his foot into my sternum." In addition, she told Sergeant Goldsmith that she would be willing to testify if any criminal charges were pressed.[9]

Doyle testified in her own defense. She maintained that all the statements she made in her complaint were true.[10]

On May 27, 2016, the jury found Doyle guilty of making a false statement to law enforcement officers. She was sentenced the same day and noted a timely appeal.

We shall include additional facts as necessary to our discussion.

DISCUSSION

I. ***Sufficiency of the Evidence***

Legal sufficiency of the evidence is a question of law that we review *de novo. Polk v. State*, 378 Md. 1, 7–8 (2003). Our standard is "'whether, after viewing the

[9] Sergeant Goldsmith testified to this. The very end of the audio recording, which contained this question and response, was cut off due to technological problems with the recording device.

[10] As we shall discuss, Sothoron did not testify. She was removed from the crane after Doyle was arrested. Deputy Esposito reached her on the boom of the crane and stayed there until a crane operator arrived and lowered the boom to the ground. Sothoron was then taken off the crane.

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.'" *Handy v. State*, 175 Md. App. 538, 561 (2007) (quoting *Jackson v. Virginia*, 443 U.S. 307, 319 (1979)).

CL section 9-501(a) states:

> *Prohibited*. – A person may not make, or cause to be made, a statement, report, or complaint that the person knows to be false as a whole or in material part, to a law enforcement officer of the State, of a county, municipal corporation, or other political subdivision of the State, or of the Maryland-National Capital Park and Planning Police with intent to deceive and to cause an investigation or other action to be taken as a result of the statement, report, or complaint.[11]

From the statutory narrative, this Court has created a list of the elements of the offense, as follows:

> [A] person [commits the offense if he or she]
>
> "1) makes or causes to be made a false statement, report or complaint
> 2) to any police officer of this State, or of any county, city or other political subdivision thereof
> 3) knowing the same, or any material part thereof, to be false, and
> 4) with intent:
> a) to deceive, and
> b) to cause an investigation or other action to be taken as a result thereof."

[11] CL section 9-501(b) sets the penalty for a violation of the statute:

> *Penalty*. – A person who violates this section is guilty of a misdemeanor and on conviction is subject to imprisonment not exceeding 6 months or a fine not exceeding $500 or both.

Johnson v. State, 75 Md. App. 621, 634–35 (1988) (quoting *Thomas v. State*, 9 Md. App. 94, 100 (1970)).

"In general, [CL section 9-501] prohibits the making of false statements to police officers with the intent to cause an investigation or other action to be taken." *Jones v. State*, 362 Md. 331, 335 (2001). The defendant must have made a false statement to the police with the intent to deceive *and* the intent to cause an investigation or other action. "The offense is only committed by one whose false statement causes the police initially to undertake an investigation or other action." *Id*. at 336 (citing *Choi v. State*, 316 Md. 529, 547 (1989)). The offense is "intended to proscribe false reports of crimes and other statements which instigate totally unnecessary police investigations." *Choi*, 316 Md. at 547. "The statute . . . does not expressly proscribe a false response to police questioning after an investigation already has begun." *Id*.; *see also Johnson*, 75 Md. App. at 639 (same) (quoted with approval in *Jones*, *supra*, at 336–37).

Doyle offers two reasons why the evidence was legally insufficient to support her conviction for making a false statement to law enforcement officers. We shall address them individually.

A.

Doyle argues that, as a matter of law, the evidence adduced did not satisfy what we listed in *Johnson* as element 4(b) of the offense—acting with "intent to cause an investigation or other action to be taken as a result" of the false statement to the police. She points out that in addition to her allegations of police brutality, her complaint included allegations of unsafe climbing and rope handling practices, which, according to

Doyle, also triggered the investigation and were not proven false.[12,13] She maintains that the purpose of the offense is to prohibit people from causing "totally unnecessary" police investigations, *see Choi*, 316 Md. at 347, and here the investigation was not totally unnecessary. Doyle relies upon *Johnson, supra*, and *Choi* to support her position.

The State responds that Doyle's false statements of police brutality "unquestionably instigated" Sergeant Goldsmith's investigation and were not incidental to that investigation; and that *Johnson* and *Choi* are distinguishable.

[12] Doyle's suggestion that the allegations she made about climbing and rope handling techniques were not proven false is misleading. The State's Attorney's Office pursued criminal charges against Doyle based only on her false statements about police brutality. So, evidence about the falsity or not of the other statements in Doyle's complaint was not relevant. In Sergeant Goldsmith's report, which was not admitted in evidence but was marked and used to refresh another witness's recollection about an unrelated fact, he concluded that Doyle's factual allegations about the officers' climbing and rope handling techniques also were false.

[13] Doyle makes the somewhat related argument that the statements of fact in her complaint were not "entirely fabricated" because Sergeant Bortchevsky acknowledged having had some physical contact with her during her arrest. Therefore, according to Doyle, her statement that he touched her was not false, and the extent of the physical contact he had with her simply was a matter in dispute.

This argument is spurious. There was no dispute about whether Sergeant Bortchevsky had any physical contact with Doyle at all when he participated in removing her from the crane. The issue was whether Doyle's statements in her complaint that Sergeant Bortchevsky *choked her* and *stomped on her chest* were false. There was ample evidence to support a reasonable factual finding by the jury that these statements indeed were false. All of the witnesses to Doyle's removal from the crane testified that no such assault happened, and there was evidence that the assault could not have happened, *i.e.*, it would have been impossible for Sergeant Bortchevsky to have done what Doyle accused him of doing without one or both of them falling off the crane. The evidence that Sergeant Bortchevsky touched Doyle in removing her from the crane, and that his foot accidentally brushed against her when he lowered himself into the boom to assist Deputy Brady in unhooking her from the crane, did not make any part of Doyle's testimony about being assaulted true.

Although *Johnson* and *Choi* serve as examples of circumstances not within the purview of CL section 9-501, neither one supports Doyle's position in this case. In *Johnson*, the defendant was arrested for possession of cocaine with intent to distribute, vehicle theft, and fleeing from the police. He was transported to the local jail, where, in response to routine booking questions, he gave false identifying information. On that basis, he was charged with making a false statement to law enforcement officers. He was tried and convicted and appealed to this Court. We reversed for insufficiency of the evidence.

The central issue in *Johnson* was whether the statute covers a situation in which the defendant makes a false statement in the course of an already commenced and ongoing police investigation. We explained that the General Assembly's 1957 enactment of a law criminalizing the making of a false statement to law enforcement officers had as its "genesis . . . the British case of *The King v. Manley* [1933] 1 K.B. 529 (C.C.A. 1932)." *Johnson*, 75 Md. App. at 631. Manley reported to the police that she had been robbed, giving a description of the robber. In response, the police conducted an investigation, including "placing under suspicion certain individuals who matched the alleged robber's description." *Id.* It turned out that Manley's robbery report was fabricated. For making a false report that diverted police time and services, depriving the public of their services, and putting innocent citizens under suspicion, all of which constituted a public mischief, she was charged with a misdemeanor. She was convicted and ultimately the conviction was affirmed, even though there was no statute creating the offense. The appellate court considered the offense to have arisen from the common law.

In *Johnson*, we concluded from our analysis of *Manley* and of the legislative history of CL section 9-501 that "the giving of false information in response to routine questioning by the police, even though it is likely to hinder or delay an investigation *already underway*," is not "the type of false statement, report or complaint that comes within the 'false alarm' public mischief the General Assembly intended to criminalize when it enacted [Art. 27,] §150." 75 Md. App. at 639 (emphasis added). In enacting the statute, the legislature did not intend

> to criminalize conduct other than . . . the making of false reports to the police *which cause the police to conduct investigations that divert them from their proper duties of preventing crime and investigating actual incidents of crime.*

Id. at 638 (emphasis added). We emphasized that the crime not only requires intent to deceive by the false statement but also intent to cause an investigation to be taken as a result of the false statement. Because the defendant's "purpose" in giving false identifying information during booking was "not to initiate police action, but, at most, to obstruct or divert an investigation already underway[,]" the evidence did not support the intent element of the crime. *Id.* at 639.[14]

Choi, decided by the Court of Appeals one year after *Johnson*, concerned the same issue. On the night of her mother's murder, the defendant was interviewed by the police and gave them a written statement inculpating her father. At her father's murder trial, she

[14] The General Assembly reacted to our decision in *Johnson* by amending Article 27, section 150 in 1991 to add new subsection (b), criminalizing the giving of false information to the police at booking. That offense now appears at CL section 9-502.

was called as a witness by the State. When she refused to answer questions, she was held in criminal contempt. She appealed, and the case reached the Court of Appeals. The defendant argued that she legitimately had invoked her privilege against self-incrimination so as to avoid prosecution for making a false statement to law enforcement officers. Apparently, her trial testimony would have differed materially from her written statement to the police, and the prosecutors had threatened to prosecute her for giving a false statement to law enforcement officers.

The Court reversed the contempt conviction, concluding that the defendant had had "a reasonable basis" "to fear prosecution because of the State's interpretation of" CL section 9-501. *Choi*, 316 Md. at 548. It went on to explain, however, that the State's interpretation of the statute was incorrect, and the defendant could *not* have been prosecuted for that crime. Any false statement she had given to the police had been made "as part of an ongoing police investigation" and therefore was not a false statement made with the intent to cause a police investigation or other action. *Id.* at 547. "[The defendant's] statement did not instigate the investigation. . . . [She] was a witness who was questioned by the police after the investigation began." *Id.* at 548; *see also Jones v. State*, 362 Md. at 339 (holding that the defendant could not have committed the crime of making a false statement to law enforcement officers by giving the police a false statement about a shooting the police already were investigating).

The defendants in *Johnson* and *Choi* made false statements to the police in the course of police investigations that had started before their false statements were made, and were ongoing. In Johnson's case, the police already were investigating the very

crimes he had been arrested for, and, in Choi's case, the police already were investigating the crime she had witnessed. In both cases, the defendants could not have made their false statements with the intent to trigger an investigation or other action by the police because they knew the police already were conducting an investigation. To include within the scope of the offense a false statement made in the course of an already initiated and ongoing police investigation not only would be inconsistent with the intent requirement of the statute but also would not protect against the "mischief" that CL section 9-501 was meant to criminalize.

In this case, unlike *Johnson*, *Choi*, and *Jones*, there was no investigation already underway when Doyle filed her complaint with the Sheriff's Office. Indeed, there was no investigation at all. The investigation into her climbing on the crane was over and had resulted in her pleading guilty to trespassing. She was in jail, serving her sentence for that crime. Sergeant Goldsmith's investigation had not started, and did not start until Doyle filed her complaint. His investigation clearly was triggered by her filing her complaint.

The issue here, which was not an issue in the cases Doyle relies upon, is whether the intent to cause an investigation element of the crime can be satisfied when the defendant filed a complaint with the police containing some false statements that instigated a police investigation into them and also containing other statements, not proven to be false, that also instigated an investigation into them. Seizing on the "totally unnecessary" investigation language in *Choi*, Doyle argues that because Sergeant

Goldsmith's investigation resulted partially, but not entirely, from her false statements to the police, the intent element of the crime was not proven.

As Sergeant Goldsmith testified, Doyle's complaint was really two complaints set forth on a single complaint form. Her allegations all stemmed, generally, from the crane climbing incident on February 3, 2015; and from her refusal to come down off the crane when ordered to do so, which made it necessary for the police officers to bring her down. Her allegations fell into two separate categories, however: police brutality, *i.e.*, that she was physically attacked, and police unsafety, *i.e.*, that safe climbing and roping practices were not used in removing her from the crane. Sergeant Goldsmith explained that the investigations of the two allegations differed in nature and scope.

Because the police brutality allegations could result in criminal charges against the officers, Sergeant Goldsmith conducted a criminal investigation of them. He gathered photographs of the scene, identified the witnesses to Doyle's removal from the crane, interviewed them, obtained social media postings by Doyle from February 3, 2015 (in which she said nothing about being assaulted), obtained recordings of telephone calls Doyle had made from jail (in which she said nothing about having been assaulted), interviewed the transporting officer and the detention center witnesses, and obtained recordings of 911 calls and of radio transmissions by law enforcement officers made during the incident. He focused not only on evidence about what transpired at the crane on February 3, 2015, but also on evidence pertinent to Doyle's credibility.

The safety allegations did not prompt a criminal investigation.[15] Sergeant Goldsmith investigated and determined that the Special Operations Team officers who removed Doyle from the crane had received training in climbing and rope handling techniques to use in situations such as the one that unfolded on February 3, 2015. From the law enforcement radio transmissions made during the incident, he determined that the officers involved had expressed concern for the safety of the two climbers and had not acted in a rushed or slipshod manner in removing the climbers from the crane. And he compared one of Doyle's jail calls, in which she asked a friend for information about climbing so she would not sound like a fool talking about it, with her complaint, in which she stated that she was an expert in climbing.

The statements in Doyle's complaint about police brutality, which were her core accusations, triggered a discrete and in-depth criminal investigation by Sergeant Goldsmith, and were found by the jury to be false. That criminal investigation resulted solely from Doyle's false statements; and if her complaint only had alleged unsafe climbing and rope handling techniques, the police would not have conducted a criminal investigation at all. The criminal/police brutality portion of Sergeant Goldsmith's investigation was instigated by Doyle's false statements, was "totally unnecessary," and

[15] As recited in our statement of facts, Doyle herself distinguished the consequences she hoped would come from her accusations of police brutality from her accusations of unsafe rope and climbing techniques. For the former, she wanted a "disciplinary action" to be taken against Sergeant Bortchevsky and was willing to testify at a criminal trial. For the latter, she wanted an "assessment" of the officers' rope and climbing techniques.

was a waste of police services. We see no reason why the mere fact that Doyle's complaint, in addition to stating allegations of police brutality, also stated allegations of safety violations that were not found to be false (because they were not prosecuted for being false) that triggered a limited non-criminal investigation should insulate Doyle from criminal liability under CL section 9-501. So long as a discrete part of the investigation resulted from Doyle's false statements of police brutality and the evidence was otherwise sufficient to show that Doyle intended her false statements to result in a police investigation of the subject of those statements, the elements of the crime were proven.

B.

Doyle's second argument is premised on public policy. In her view, the evidence was legally insufficient to support her conviction because CL section 9-501 should not apply when

> the [law enforcement] agency that is the subject of the allegedly false complaint of police brutality or misconduct was the same agency that conducted the investigation that determined the complaint was false; and . . . the agency's conclusions are not clearly supported by impartial observers or other forms of neutral and reliable evidence.

She reasons that if it is otherwise, there will be a chilling effect on the rights of victims of police brutality to petition the government for redress, in violation of the First Amendment, and the burden of proof will be "impermissibly shift[ed] . . . to the defendant" to prove her complaint was not false.

The State counters that there is no exception in CL section 9-501 for complaints filed with police internal affairs departments. It points out that police resources are

equally "squandered" and the subject of the investigation is equally "inconvenienced" whether he or she is a police officer or a civilian; the statute only criminalizes "deliberate falsehoods"; and the State bears the burden of proof on all elements, including falsity of the allegations. Accordingly, CL section 9-501 does not chill the filing of complaints to internal investigation departments and fulfills the intention of the legislature in enacting it.

We determine the scope of a statute by examining its "'normal, plain meaning'" to "'ascertain and effectuate the real and actual intent of the Legislature.'" *State v. Weems*, 429 Md. 329, 337 (2012) (quoting *Gardner v. State*, 420 Md. 1, 8-9 (2011)) (additional citations omitted). "'If the language of the statute is unambiguous and clearly consistent with the statute's apparent purpose, our inquiry as to the legislative intent ends ordinarily and we apply the statute as written[.]'" *Id.* (quoting *Gardner*, 420 Md. at 8–9). The plain language of CL section 9-501 criminalizes the making of *any* "statement, report, or complaint that the person knows to be false" to a "law enforcement officer" with the "intent to deceive and cause an investigation or other action to be taken as a result[.]" CL § 9-501(a). As we explained in *Johnson*, the intent of the legislature in enacting CL section 9-501 was to punish "false alarm" reports of crime that deprive the public of police resources that otherwise would be devoted to investigating actual criminal conduct.

CL section 9-501 does not carve out an exception for complaints made to law enforcement officers about police brutality or misconduct. Nor do we see a reason on the record before us for a judicially created exception to the plain language of the statute.

Doyle seems to overlook that falsity of the statement is central to this crime. A person who makes a false statement to a police internal affairs department of police brutality or misconduct, intending to deceive and intending to trigger an investigation by internal affairs, has diverted police resources and created a public mischief. The conduct has diverted the internal affairs department from investigating legitimate complaints of police brutality and misconduct, to the detriment of the public. And to the extent Doyle is suggesting that the very officers who are falsely accused are conducting the investigation into their own behavior, the facts in this case illustrate that that is not the case. The Professional Standards unit in which Sergeant Goldsmith functioned was independent of the Sheriff's Office, as he testified.

The language and purpose of CL section 9-501 cover false statements to law enforcement whether or not the subject of the false complaint is a law enforcement officer. Accordingly, the statute applied in this case and the evidence was sufficient to support Doyle's conviction.

II. ***Admission of Prior Bad Acts Evidence***

Before opening statements, defense counsel moved *in limine* to preclude the State from introducing the evidence that Doyle defaced the police vehicle with her handcuffs after she was arrested. He argued that the evidence was not relevant and, to the extent it was relevant, was "highly prejudicial, and . . . substantially outweighed by the prejudice." The prosecutor responded that the evidence was relevant to Doyle's "state of mind" during and after her arrest and therefore was admissible.

The court denied the motion, stating:

> All evidence that the State is going to provide will be prejudicial to your client in some form or the other. The question is to weigh the prejudice versus the probative value. You indicated that you felt that the evidence was not relevant.
>
> Based on the proffer by the Deputy State's Attorneys, the Court finds it certainly is relevant to this case, and that the probative value far exceeds the prejudicial value, and your last motion in limine will be denied.

Defense counsel objected on the same grounds during Sergeant Bortchevsky's testimony, during which the evidence was admitted. On appeal, Doyle contends the trial court abused its discretion in admitting this evidence. The State disagrees.

"[T]he admission of evidence is committed to the considerable and sound discretion of the trial court." *Merzbacher v. State*, 346 Md. 391, 404 (1997) (additional citations omitted). Of course, the trial court has no discretion to admit irrelevant evidence. *State v. Simms*, 420 Md. 705, 724 (2011). Therefore,

> we must consider first, whether the evidence is legally relevant, and, if relevant, then whether the evidence is inadmissible because its probative value is outweighed by the danger of unfair prejudice, or other countervailing concerns as outlined in Maryland Rule 5-403. During the first consideration, we test for legal error, while the second consideration requires review of the trial judge's discretionary weighing and is thus tested for abuse of that discretion.

Id. at 725 (internal citations omitted).

When, as here, the evidence offered for admission is of a prior bad act committed by the defendant, general relevance is not enough. The purpose for which the evidence is offered is critical. Such evidence is not admissible to prove the defendant's criminal propensity. Md. Rule 5-404(b) ("Evidence of other crimes, wrongs, or acts . . . is not admissible to prove the character of a person in order to show action in conformity

therewith."). It is admissible, however, "for other purposes, such as proof of motive, opportunity, intent, preparation, common scheme or plan, knowledge, identity, or absence of mistake or accident." *Id.*

Whether evidence of a prior bad act (or crime or wrong) by the defendant may be admitted under Rule 5-404(b) is a three-part inquiry. *State v. Faulkner*, 314 Md. 630, 634–35 (1989). First, the court decides the question whether the evidence fits into an exception under the rule. Second, if so, the court decides the factual question whether, by clear and convincing evidence, the defendant committed the other crime, wrong, or bad act. Finally, the court exercises its discretion over whether to admit the evidence by carefully weighing its necessity and probative value against any undue prejudice its admission is likely to cause. *Id.*

Doyle challenges the court's ruling based on the first and third *Faulkner* factors (not the second). On the first factor, Doyle argues that the evidence that she defaced a police vehicle upon being arrested was not relevant "whatsoever, [to] the credibility of her complaint [to internal affairs]" and, simply was inadmissible "bad acts" evidence under Rule 5-404(b). The State responds primarily that the evidence was specially relevant under Rule 5-404(b) because it tended to show that Doyle was "motivated" to intentionally "make false accusations against the police because she . . . was angered by the indignity of being treated like a criminal when she was arrested for committing a crime."

Whether the evidence that Doyle purposefully defaced a police vehicle after she was removed from the crane and handcuffed was specially relevant under Rule 5-404(b)

presents a question of law. Our standard of review therefore is *de novo*. *See Cousar v. State*, 198 Md. App. 486, 497 (2011) (quoting *Faulkner*, 314 Md. at 634–35).

CL section 9-501 is a specific intent crime. As discussed, in this case, the State was required to prove that Doyle filed her complaint falsely stating that Sergeant Bortchevsky, assisted by other officers, physically assaulted her, with the "intent to deceive and to cause an investigation or other action to be taken[.]" CL §9-501(a). Thus, Doyle's intent was integral to the charge against her. Evidence that she purposefully defaced a police vehicle with her handcuffs, immediately after being arrested, tended to show that she was angry with the police officers who arrested her, which in turn tended to show that she was motivated to file the complaint out of retaliation and spite toward those officers. This evidence was highly probative of whether she intended, through her complaint, to deceive and to cause an investigation of the officers who arrested her, since those consequences align with her motives.[16] *See Snyder v. State*, 361 Md. 580, 604 (2000) (noting motive "is the catalyst that provides the reason for a person to engage in criminal activity" and is relevant to proving intent). The first prong of the *Faulkner* analysis was satisfied.

Doyle argues that the third *Faulkner* prong was not satisfied because to the extent the evidence that she defaced the police vehicle was relevant it was "unfairly prejudicial."

[16] Because we conclude that the evidence was admissible to prove Doyle's motive and intent, we do not reach the State's argument that the evidence was relevant because it impeached the credibility of Doyle's testimony that she was too scared and distrustful of law enforcement to mention her assault to anyone on the day of her arrest.

The State responds that the probative value of the evidence outweighed any likely prejudicial effect.

There also is no merit in Doyle's argument about the third step of the *Faulkner* analysis. The court did not abuse its discretion by ruling that the evidence's "probative value far exceed[ed] [its] prejudicial value[.]" "Prejudice in the evidentiary sense which can outweigh probative value involves more than mere damage to the opponent's cause.'" *State v. Allewalt*, 308 Md. 89, 102 (1986). Instead, evidence is "unfairly prejudicial" when "it might influence the jury to disregard the evidence or lack of evidence regarding the particular crime with which [the defendant] is being charged." *Odum v. State*, 412 Md. 593, 615 (2010) (internal quotation marks and citations omitted). While Doyle's actions in damaging the police car certainly hurt her case, they were not of a nature that would lure the jury from the actual facts before it. The evidence was highly probative for a specific purpose and damaging a police vehicle is sufficiently different in kind from the crime of making a false statement to law enforcement, such that a jury would be far less likely to mistakenly use the evidence as proof that Doyle had a propensity to file false complaints to law enforcement or to commit crimes in general.

III. ***Jury Instruction on Making a False Statement to Law Enforcement***

At the close of all the evidence, defense counsel requested the following jury instruction about the crime of making a false statement to law enforcement officers:

> Heather Doyle is charged with the crime of making a false statement to a law enforcement officer. In order to convict Ms. Doyle of this crime, the State must prove each and all of the following beyond a reasonable doubt:
>
> (1.) The defendant made a statement to a law enforcement officer.

(2.) The entire statement or an important part of it was false.
(3.) An investigation was not already underway regarding the subject matter of the false statement.
(4.) The defendant intended to deceive and to cause an investigation or other action to be taken as a result of the false statement. And
(5.) A false and important part of the statement caused an investigation or other action to be taken.

The court denied the defense's request and gave the following instruction on the elements of the crime instead:

> The defendant is charged with the crime of false statement to a law enforcement officer with regard to police conduct, specifically police brutality, with regard to her arrest for her participation in scaling a crane on February 3 of 2015. In order to convict the defendant of false statement to a law enforcement officer, the State must prove:
>
> [(1)] [T]hat the defendant made or caused to be made a statement, report or complaint that she knew to be false as a whole or a material part;
>
> [(2)] [T]hat the statement, report or complaint was made to a law enforcement officer of the State, specifically in this case Sergeant Goldsmith of the Calvert County Sheriff's Department; and
>
> [(3)] [T]hat the defendant intended to deceive and to cause an investigation [or] other action to be taken as a result of the statement, report or complaint.[17]

Defense counsel objected to the instruction that was given. He argued that it was deficient because it did not state that Doyle could not be convicted if her false statements were made after an investigation had already begun; and it did not state that Doyle could not be convicted unless the jury found all of her allegations of police brutality to be false. He further argued that the instruction was deficient because it failed to inform the jury

[17] This instruction combines elements 1 and 3 as listed in *Johnson*.

that the only facts asserted in Doyle's complaint that could support a conviction if proven false were "the arm to the throat and the boot to the chest." Alternatively, defense counsel argued that "the court should instruct the jury that the only allegations in the complaint that [can] support a conviction are the allegations of police brutality."

The court denied the objection on all grounds. It found that there was no evidence that an investigation had commenced before Doyle filed her complaint. It concluded that the instruction properly advised the jury of the causation element of the crime:

> The jury has been instructed that the defendant is charged with making a false statement complaint with regard to the police conduct, specifically police brutality. It's not broken down by boot to the chest or arm to the throat, so certainly one could argue that [if] they found the boot to the chest but not arm to the throat, and in their, the jury's mind, if that's police brutality, that's it.
>
> * * *
>
> You are parsing the two, that if they believe the boot or the boot to the chest and not [arm] to [throat] or vice versa, but indeed there is testimony if believed by this jury that there were two officers that had splayed her arms, that held her down while the boot to the chest and the [arm] to the [throat] was [sic] occurring, so I think that encompasses the police brutality, and I don't think parsing it down to the two elements is proper, but again I'll note your objection.
>
> The testimony that has been before the jury is while those officers were holding her arms back Sergeant Bortchevsky was applying pressure to her throat twice, 20 seconds and then 15 seconds, and then boot to her chest, so it was all in that same time. That's the testimony that this jury has. . . . So I noted your objection, but I think that covers what Ms. [Doyle] was charged with . . . , and I think it is a proper instruction to the jury.

For the same reasons she argued below, Doyle contends on appeal that the trial court erred by declining to give her requested instruction. In addition, she argues for the first time that the trial court's instruction failed to "properly emphasiz[e]" that her false

statements must have been made with the intention to cause "an investigation or other action" similar to an investigation. This was error, she argues, because the jury could have concluded that her only intention in making the false statements was to "generate publicity for her cause."

The State points out that the only phrase in Doyle's proposed instruction that was not included in the instruction actually given by the court is that "[a]n investigation was not already underway regarding the subject matter of the false statement." The State argues that the court correctly declined to include this phrase in its instruction because it was not generated by the evidence. The State further points out that Doyle's proposed instruction included no more explanation of the meaning of "other action" in the statute than did the instruction as given.

We review for abuse of discretion a court's ruling denying a requested jury instruction. *Stabb v. State*, 423 Md. 454, 465 (2011) (citing *Gunning v. State*, 347 Md. 332, 351 (1997)). "[S]o long as the law is fairly covered by the jury instructions, reviewing courts should not disturb them." *Farley v. Allstate Ins. Co.*, 355 Md. 34, 46 (1999) (citing *Jacobson v. Julian*, 246 Md. 549, 561 (1967)); Md. Rule 4-325(c) ("The court need not grant a requested instruction if the matter is fairly covered by instructions actually given."). In determining whether a court abused its discretion by declining to give a proposed jury instruction, we must "examine 'whether the requested instruction was a correct exposition of the law, whether that law was applicable in light of the evidence before the jury, and finally whether the substance of the requested instruction

was fairly covered by the instruction actually given.'" *Farley*, 355 Md. at 47 (quoting *Wegad v. Howard Street Jewelers*, 326 Md. 409, 414 (1992)).

The trial court did not abuse its discretion by declining to give Doyle's requested instruction on the elements of the offense charged. The instruction given by the court mirrors precisely the language of CL section 9-501. The instruction proffered by Doyle is substantially the same as the court's instruction, except that it includes two additional phrases: "[a]n investigation was not already underway regarding the subject matter of the false statement[,]" and "[a] false and important part of the statement caused an investigation or other action to be taken." The first, while a correct statement of the law, was not generated by the evidence. Doyle presented absolutely no evidence at trial that an investigation into her allegations began before she filed her complaint.

The second additional element in Doyle's instruction is also an accurate statement of the law, as it merely re-states the requirement in CL section 9-501 that the defendant's materially false statement cause an investigation or other action to occur.[18] *See Johnson, supra.* However, that was covered by the instruction given to the jury, which recites, almost verbatim from the statute, that the "statement, report, or complaint" must be "false as a whole or in material part" and must have been made by the defendant with intent to "cause an investigation or other action to be taken as a result[.]" Importantly, Doyle's overarching concern that the given instruction did not properly explain to the jury that her

[18] The "important" parts of a statement must be false in order for the statement to be materially false. Thus an investigation caused by a "false and important part" of a statement is the same as an investigation caused by a statement that is materially false.

false statement must be the *sole* cause of the "investigation or other action" is not remedied by the instruction she requested, which does not elucidate that point. Accordingly, the court did not abuse its discretion in refusing to give Doyle's requested instruction on the elements of the offense charged.

Doyle's argument that the instruction given by the court did not properly define the phrase "or other action" in CL section 9-501 was not made below. Thus, it is waived on appeal. Md. Rule 4-325(e) ("No party may assign as error the giving or failure to give an instruction unless the party objects on the record promptly after the court instructs the jury, stating distinctly the matter to which the party objects and the grounds of the objection."). Even if it were not waived, it is without merit. Doyle's instruction uses the same exact phrase, "or other action," as the instruction given by the court. It provides no further clarification. Accordingly, her contention that the given instruction did not properly clarify the meaning of "or other action" would not have been remedied by the instruction she requested.

IV. ***"Reverse Missing Witness" Jury Instruction***

On the first day of trial, defense counsel informed the court that if called to testify Sothoron would invoke her Fifth Amendment right to remain silent. Defense counsel then asked the court to give the following jury instruction at the close of the evidence:

> During the course of this trial you may have heard . . . the name of Carling Sothoron who did not appear here to testify. You should not draw any conclusions as to what Ms. Sothoron would have testified to had she been called. Her absence should not affect your judgment in any way[.]

Defense counsel argued that this "reverse missing witness" instruction was necessary because "a reasonable jury would be wondering where is [Sothoron] and why wasn't she here to testify for [Doyle][.]"

The prosecutor opposed the instruction, arguing that it would become clear for the jury during Sergeant Goldsmith's testimony that Sothoron was not a witness to whatever happened during Doyle's removal from the crane, because she could not see that part of the crane from her location. The prosecutor stated that because Sothoron was not going to be called to testify and therefore would not assert her Fifth Amendment right before the jury, the requested instruction would "draw more attention" to Sothoron's absence and "make an issue of it." The prosecutor assured the court that she would not "mention[] . . . what [Sothoron] might say, might have said or anything as [to] that[.]" Defense counsel replied that even if Sothoron did not witness the alleged assault, there was evidence that she and Doyle were placed in the same holding cell after they were arrested, and Sothoron might have testified about "matters that happened in the holding cell about [Doyle's] appearance and her attitude and what they were doing." Therefore, the jury nevertheless could infer from Sothoron's absence that she would have testified unfavorably for Doyle.

Based on the State's proffer about Sergeant Goldsmith's testimony, the court declined to give the requested instruction:

> [T]he arguments that I have heard and the testimony apparently that the jury will soon hear from Sergeant Goldsmith[—]from your client's mouth[—] says that [Sothoron] was not in a position to see what's going on. She wasn't there. She wasn't a witness, and am I right, [State's Attorney], that the State is not going to highlight [that]? . . . So the State is

> looking at it, she's not a witness, and I've read your reverse missing witness instruction. I see no risk of prejudice whatsoever and will deny your request for the reverse missing witness instruction.

As noted, Sergeant Goldsmith's interview with Doyle was played to the jury and admitted into evidence. It detailed the following colloquy regarding Sothoron:

> SERGEANT GOLDSMITH: Are there any other witnesses to what happened there that day [on February 3, 2015]?
>
> DOYLE: The particular events that happened to me down at the base of the crane, no there aren't besides all the different cops and state police that were there as well as some of the [sic] and Dominion Employees. There was another person at the top of the crane but we weren't in visual contact so[—]
>
> SERGEANT GOLDSMITH: Ok[,] [a]lright[.]
>
> DOYLE: But she was there with me participating actually[.]
>
> * * *
>
> DOYLE: The person that was farther up on the crane there were photos that came out of her camera[.]
>
> SERGEANT BORTCHEVSKY: —okay, what do they show[?]
>
> DOYLE: [—]but like I said she was a lot farther of [sic] the crane there was no visual contact with her, so like I couldn't see her like where she was and she wouldn't have been able to take any pictures of like what was happening to me and *also we weren't in . . . voice or visual contact so she had no idea what was happening to me*[.]
>
> SERGEANT GOLDSMITH: [O]kay, alright. *Okay, so she's not a witness we can establish she won't be a witness*[.]
>
> DOYLE: *Mmhmm*[.]
>
> * * *
>
> SERGEANT GOLDSMITH: Ok, alright oops. Her name is Ms. Sothoron is that right[?]

DOYLE: Yeah.

(Emphasis added.)

At the close of all the evidence, defense counsel again asked the court to give the proposed "reverse missing witness" instruction. The court again refused.

On appeal, Doyle makes the same arguments she did below. She takes the position that under *Christensen v. State*, 274 Md. 133 (1975), a "reverse missing witness" jury instruction was required. She argues that *Robinson v. State*, 315 Md. 309 (1989), in which the Court of Appeals held that the defendant was not prejudiced by the trial court's instruction to the jury that they *could* draw an adverse inference from the defendant's failure to call the alleged true perpetrator of the crime, is distinguishable.

The State responds that the court was within its broad discretion to decline to give an instruction on weighing or evaluating the evidence. It argues that *Christensen* is inapplicable because there was no evidence that Sothoron was an accomplice or codefendant, there was no evidence that Sothoron "had any meaningful testimony to offer about the truth or falsity of Doyle's allegations," and the State "did not argue that the jury should draw an adverse influence from Sothoron's absence."

As noted previously, we review a court's decision to give or decline to give a requested jury instruction for abuse of discretion. *Stabb*, *supra*. The State is correct that the court's discretion is at its broadest when the requested instruction concerns weighing the evidence. While a court is required by Rule 4-325 to give jury instructions about the applicable law (assuming they are legally correct and not otherwise covered),

"[i]nstructions as to facts and inferences of fact[,]" such as those about missing evidence and missing witnesses, "are normally not required." *Patterson v. State*, 356 Md. 677, 684 (1999). "A determination as to the presence of such inferences does not normally support a jury instruction." *Id.* at 685.

A missing witness instruction informs the jurors that the "'failure to call a material witness raises a presumption or inference that the testimony of such person would be unfavorable to the party failing to call him[.]'" *Christensen*, 274 Md. at 134 (quoting 1 Underhill, Criminal Evidence §45 (rev. 6th ed. P. Herrick 1973)). In *Christensen*, the Court of Appeals held that the trial court committed reversible error by refusing to give a reverse missing witness instruction, *i.e.*, that the jury could not infer from the defendant's failure to call his alleged accomplice that the accomplice, if called, would testify adversely to him. The Court pointed out that, even if an accomplice's testimony might corroborate that of the defendant, the accomplice might not testify at trial for other reasons, such as having been advised to invoke his Fifth Amendment right. The reverse missing witness instruction was required in that case because, with no anticipated evidence that the accomplice's version of events would be adverse to the defendant's version, the prosecutor, in opening statement, had been permitted to invite the jury to draw such an adverse inference.

In *Robinson*, *supra*, the Court of Appeals clarified that *Christensen* did not stand for the blanket proposition that the missing witness rule is never applicable "whenever it appears probable that the witness is entitled to, and will, invoke the privilege against self-incrimination." 315 Md. at 315–16. Instead, there must be a "reasonable possibility that

the defendant's case would be harmed even if [the missing witness] were called and he claimed the privilege in the presence of the jury." *Id.* at 320.

Unlike *Christensen* and *Robinson*, the evidence presented by the State in this case showed that Sothoron was not a witness to the events for which Doyle was on trial. Doyle expressly stated in her interview with Sergeant Goldsmith that Sothoron could not see or hear what "was happening to [her]" on the crane. When Sergeant Goldsmith asked if he could conclude, therefore, that Sothoron was not a witness to the events Doyle was alleging transpired, Doyle responded affirmatively.

Doyle argues that Sothoron could have testified about Doyle's "appearance and attitude" while sharing a holding cell at the Calvert County Detention Center after their arrests. Doyle did not present any evidence to that effect, however, such as evidence that she told Sothoron about the alleged assault or showed Sothoron her injuries during that time. In fact, Doyle testified that she did not tell anyone about the alleged assault until she was released from the detention center that day and picked up by her friends.

The evidence before the jury was that Sothoron would not have provided any material testimony in this case. The prosecutor never argued otherwise. The prosecutor made no reference or argument about Sothoron's absence. The court did not abuse its discretion by refusing to instruct the jury not to draw an adverse inference from Sothoron's absence when no such inference was generated by the evidence in the first place.

V. ***Conditions of Probation***

At sentencing, the prosecutor asked the court to impose as a condition of Doyle's probation that she "have no contact with the officers that she accused of the assault, either directly or indirectly, including social media contact."

In imposing sentence, the court stated:

> [T]he officers that you accused, their lives have been on hold for a year plus. They have been under a cloud of a police brutality complaint for over a year, and the presentation of the trial and pictures of the crane show very clearly what happened on that day, and it was certainly not police brutality.
>
> * * *
>
> [S]o first and foremost I think there should be punishment, and the punishment is going to come in two forms. One is going to be a brief stint in our Calvert County Detention Center, and the second is going to be community service hours, and then there's going to be a period of probation, *and the terms and conditions of your probation will be simple, to stay away from any Dominion Power or its affiliate companies, to have no contact with the officers that were under that cloud for the last year*, and to have no contact, either direct or indirect, with the Dominion plant down there in Solomons or Lusby.
>
> * * *
>
> The sentence of the Court to the Calvert County Detention Center is three months, suspend all but 15 days to begin today; 240 hours of community service to be done during the time of the probation, which will be two years; your court costs of $165.
>
> *The conditions of probation, as I indicated to you, stay away from Dominion Power; no contact, direct or indirect, with them*; *no contact with law enforcement.*

(Emphasis added.)

The terms of Doyle's probation were memorialized in a probation order, dated May 27, 2016. Under the category "Special Conditions," the following is handwritten on the order:

> Have no contact with Dominion/or any affiliated company Cove Point, Direct/Indirect w/the Officers (victims) or @ Cove Point Facilities in Lusby, MD
>
> Do not enter or be found near Cove Point Facilities in Lusby, MD

Next to the first handwritten condition, and also in handwriting, is a list entitled "Victims" that states the full names of Deputy Brady, Sergeant Bortchevsky, Trooper Smith, and Trooper Oles.

Doyle contends the special conditions of her probation, which she characterizes as "no contact with law enforcement" and "no contact, direct or indirect" with Dominion—are illegal. She argues that they violate her First Amendment rights of freedom of speech and to petition the government for redress of grievances, and her Fourteenth Amendment right to equal protection of the laws. She also argues that they are impossible for her to comply with.

The State agrees that a condition of probation that Doyle have no contact with "law enforcement" would be "overbroad." It disagrees that any such condition of probation was imposed or that the court abused its discretion in any of its conditions of probation.

We review a sentencing court's imposition of conditions of probation for abuse of discretion. *Allen v. State*, 449 Md. 98, 111 (2016) ("[T]he court has broad discretion to impose conditions that curtail the defendant's liberty while on probation."). So long as

the conditions imposed are not "'vague, indefinite[,] . . . uncertain[,]'" *id.* (quoting *Smith v. State*, 306 Md. 1, 7 (1986)), "'arbitrary[,] or capricious[,]'" *id.* (quoting *Smith v. State*, 80 Md. App. 371, 375 (1989) (additional citations omitted)), and are "'reasonable and have a rational connection to the offense[,]'" *id.* (quoting *Meyer v. State*, 445 Md. 648, 680 (2015)), we will not disturb them.

It is clear from the record that the sentencing court did not order Doyle to "have no contact with law enforcement" as a condition of probation. Rather, it ordered Doyle to have no contact with specifically identified law enforcement officers—the officers "that [Doyle] accused" and placed "under a cloud of a police brutality complaint for over a year[.]" When the court stated later on that Doyle was to "have no contact with law enforcement" during her probation, it was merely summarizing and referring back to the condition it already had announced. This is evident from the court's preceding language, highlighted in the excerpt above. Finally, if it were not clear enough from the record of the sentencing hearing, the probation order notes, by name, the officers that Doyle may not have contact with as a "Special Condition" of her probation. Each officer listed was accused by Doyle of police brutality, either directly or by assisting in it or failing to intervene. Nowhere on the probation order does it state that Doyle may not have contact "with law enforcement" generally. Accordingly, Doyle's constitutional contentions lack merit. The condition actually imposed by the sentencing court pertains to the direct victims of Doyle's false allegations and, for that reason, was specific, reasonable in scope, and rationally related to the crime for which Doyle was sentenced.

We also conclude that the conditions of Doyle's probation regarding Dominion were well within the sentencing court's discretion. As the State correctly points out, Doyle's trespass on Dominion's property was the catalyst for her arrest and false statements to the Sheriff's Office. Ordering Doyle "to stay away from" and have no contact with Dominion, its affiliates, and the Cove Point construction site she trespassed on was rationally related to her criminal conduct. Any limitations on Doyle's freedom of expression imposed by the condition were reasonable. Doyle does not live in Calvert County, where the Dominion construction site is located, and there is no evidence that she requires contact with Dominion to receive electricity in her home. Furthermore, Doyle retains her right to speak publicly about Dominion. Her contention that the conditions violate her constitutional right "to petition for redress of grievances" is totally without merit. The First Amendment grants citizens the right to petition "government" for redress of grievances. U.S. Const. amend. I. Dominion is a private party. The court was within its discretion to impose the special conditions of Doyle's probation regarding contact with Dominion.

JUDGMENT OF THE CIRCUIT COURT FOR CALVERT COUNTY AFFIRMED. COSTS TO BE PAID BY THE APPELLANT.