UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 0858

September Term, 2014

SAMUEL WILLIAMS

v.

STATE OF MARYLAND

Kehoe,
Reed,
Sharer, J. Frederick
(Retired, Specially Assigned),

JJ.

Opinion by Kehoe, J.

Filed: August 12, 2015

After a five day jury trial in the Circuit Court for Montgomery County, the Honorable David A. Boynton presiding, Samuel Williams was convicted of attempted second-degree murder and first-degree assault. Mr. Williams presents the following issues, which we have reworded:

> 1. Did the hearing court interfere with Williams's right to due process and a fair trial by inducing a co-defendant to invoke his Fifth Amendment privilege to not testify at Williams's trial?
>
> 2. Did the trial court err in refusing to admit the hearsay statement of the co-defendant as a statement against penal interest exception?
>
> 3. Did the trial court err in providing the jury with the comment to the model jury instruction, in response to a jury question on accomplice liability?

We will affirm the judgments of the trial court.

Statement of Facts

Williams's convictions arose from an altercation involving himself, Sean Stokes, and Joshua Powell, in which Powell was seriously injured. For the purposes of this opinion, the following information is necessary:

On the afternoon of June 14, 2013, Williams and Stokes were drinking alcohol with a young woman, known only in the record as "Jasmine", in the vicinity of Jasmine's apartment in Silver Spring. In the course of the afternoon, Jasmine telephoned a friend, Tshianzi Mulangaphuma, and asked her to join them. When Mulangaphuma received Jasmine's phone call, she was in a vehicle with Powell and Iesha Washburn. At Mulangaphuma's request, Powell and Washburn went with her to Jasmine's apartment.

Upon arriving at the apartment building, Powell pulled into the driveway in front of the building where they waited in the vehicle for Jasmine to come outside. Williams, who had been slumped over a mailbox when they arrived, approached the vehicle and attempted to open the door to the back seat of the car, where Mulangaphuma was sitting. Neither Powell, Washburn, or Mulangaphuma knew Williams. Powell exited the vehicle and exchanged words with Williams, who then walked away. After the encounter, Powell returned to the car and pulled away. Mulangaphuma then saw Jasmine come out of the building, and they drove back to the front of the building. Powell, Washburn, and Mulangaphuma tried to get Jasmine to get in the car, but she demurred. Stokes and Williams then approached the vehicle, Stokes going toward the driver's side and Williams going toward the passenger's side. Powell exited the vehicle and engaged in a fistfight with Stokes. Williams was not involved in this altercation. After getting the better of Stokes, Powell fled on foot.

Williams and Stokes ran after Powell, and caught up with him shortly thereafter. Williams removed his shirt and challenged Powell to a fight, and Stokes pulled a knife. Upon seeing the knife, Powell ran back towards Jasmine's building.

Powell ran into the building's vestibule, pursued by Stokes and Williams. Stokes stabbed Powell in the neck, and Powell fell to the ground, holding Stokes, who was still standing, above him. Williams, who was standing behind Stokes, then hit Powell four to five times. A bystander, David Sneitzer, intervened and, a few moments later, Williams and Stokes fled from the scene.

Powell sustained severe injuries as a result of the attack, including knife wounds to his head and neck. Williams and Stokes were charged with attempted first-degree murder, first-degree assault, and second-degree assault.

Additional facts will be provided as necessary below.

Analysis

I. Stokes's Fifth Amendment Privilege

Stokes and Williams were initially scheduled to be tried together, but their cases were severed after Stokes negotiated a plea agreement with the State. During his trial, Williams called Stokes as a witness but Stokes declined to testify, invoking his Fifth Amendment privilege not to incriminate himself. Williams contends that Stokes invoked his privilege as a result of statements made by the court during Stokes's plea hearing. We turn to Stokes's guilty plea hearing.

Pursuant to his plea agreement, Stokes was to plead guilty to attempted second-degree murder, on the ground that "he and his accomplice, [Williams] attacked the victim," and confirm, on the record, the State's proffer of the facts. In exchange, Stokes was to receive a sentence of not less than 10, but not more than 13, years incarceration. After the prosecutor read her proffer into the record, Stokes took the stand, at the State's request, to confirm the facts set forth in the proffer, under oath. In pertinent part, the proffer provided as follows:

> [b]oth the defendant and Mr. Williams pushed Powell against the wall and Mr. Williams beat and punched Powell while the defendant stabbed Powell in the neck and head. Powell fell to the ground and both the defendant –

both the defendant and Williams continued to assault Powell as he lay on the ground.

Stokes was then placed under oath and asked whether the State's version of events was accurate (Def. Ex. 1 at 20), whereupon this exchange occurred (emphasis added):

[THE COURT]: And what she read about Mr. Williams did; that's correct also. Is that true?

[STOKES]: No, sir.

[THE COURT]: It's not true.

[STOKES]: No, sir.

[THE COURT]: So what - - what she read about Mr. Williams is not true.

[STOKES]: No, sir.

[THE COURT]: Okay. So what -- what was different about Mr. Williams did versus what the State said.

[STOKES]: *What Mr. Williams did is basically Mr. Williams repeatedly hit Mr. Powell screaming. Mr. Williams was trying to get me off Mr. Powell.*

[THE COURT]: *So - - so your - - your recollection is that Mr. Williams did not repeatedly hit the victim, but he was trying to get you off the victim.*

[STOKES]: Yes, sir.

* * *

THE COURT: I guess it – one of the things that occurred to me as I was sitting here that if – that I guess the concern of the State is that if this defendant for example testified at the codefendant's trial, for the defendant and gave an explanation then that would be very against the plea agreement. So I guess what I was contemplating is that one of the – one

way of dealing with that is that if he's unwilling to admit those facts in court today, that if he -if he does or does appear and testifies for the codefendant during his trial and testifies adversely to the facts that were presented today then the limitations of this plea would matter.

[STOKES'S DEFENSE COUNSEL]: Your honor, I don't have an issue with that, your honor, if my client at this current time does. The thing about it though is if he went to –

[PROSECUTOR]: If he talked to someone.

THE COURT: Right.

[STOKES'S DEFENSE COUNSEL]: *I have a problem that if they called him and he went to testify and he definitely lied about the facts of this case then he could invalidate the plea.* He makes his own decision. His plea is already taken and then it just gets to you're free to ask whatever you want.

THE COURT: Right. So what – *I guess all I'm saying is that I guess it should be clear to him now*. Now that the plea is taken that if he goes – *if he testifies contrary to the State's proffer that was given today [that] his plea will remain, but the cap would not*.

[PROSECUTOR]: That he will face up to 30 years.

THE COURT: Yep and that he wouldn't [have a] basis for withdrawing his plea.

[STOKES'S DEFENSE COUNSEL]: I understand.

THE COURT: Okay. I know you understand, but I just want to make sure that he understands.

[STOKES'S DEFENSE COUNSEL]: No, I'll explain it to him.

The prosecutor then raised a concern about having Stokes later agree to the State's proffer. The colloquy continued (emphasis added):

[PROSECUTOR]: I just wanted to make sure this is clear. *My concern is: I don't think we can go back on the record and have him give a different*

answer because he's already under oath said one thing. And so changing his answer under oath to say something else to then have –

THE COURT: *Oh, I'm not asking him to change.*

[PROSECUTOR]: Yeah.

THE COURT: That's why –

[PROSECUTOR]: Yeah. I just want that to be clear here.

THE COURT: That' why I think this might be a better way of dealing with it.

[PROSECUTOR]: Yeah.

THE COURT: *Because if he goes back on the record now and changes his answer, then he could be subject to a perjury charge.*

[PROSECUTOR]: *Right.*

THE COURT: But instead of asking him a second question today about the facts just simply – I mean advise him that the plea agreement will remain in place. I'm not going to ask him about anymore questions today to change his story, but to tell him that if he in the future if he appears at trial for the codefendant and testifies for the codefendant and he testifies inconsistent with the State's proffer, then that would invalidate the cap in this plea then he would be subject to 30 years. If he doesn't testify at the trial or testifies consistent with the State; then – then the cap remains.

The court then gave the prosecutors an opportunity to confer among themselves as how to best proceed, and then the bench conference was resumed:

THE COURT: I'm not telling you how to do this.

[PROSECUTOR]: Yeah.

THE COURT: If you think he's not abiding by the terms of the plea agreement then you can do what you want. I'm just offering to throw that out there as an alternative to withdrawing the plea and going to trial with

codefendants. You could keep the plea and just tell him that if he testifies inconsistently the cap doesn't apply, but it's your decision about what to do because you all reached the agreement; I wasn't part of the agreement.

[PROSECUTOR]: Uh-huh.

[STOKES'S DEFENSE COUNSEL]: I have to say this; obviously the plea agreement right now is the best. You're not going to ask any additional corrections to this case. *We stated there was no additional corrections; accept it have their facts*. [sic] Now pertaining to you know, putting him under oath I – *I don't think he truly -- I'm not trying to get over on the State. I just don't think he really understood what he was getting into here. Let me explain it to him, your honor, he's in over his head. He indicates that he wants to accept the plea and he has no intention to you know, --*

THE COURT: *Testifying at trial?*

[STOKES'S DEFENSE COUNSEL]: *Testifying at trial*. And that's what I want to happen. *As his counsel, advised him that it might be his best decision that he not testify at trial. . . .*

* * *

[STOKES'S DEFENSE COUNSEL]: He had a chance that this affects his –

THE COURT: Well, I guess – let's see –

[PROSECUTOR]: Here's my concern. Oh –

THE COURT: Because he hasn't been sentenced yet, for example, if he was subpoenaed to appear as a witness he hasn't been sentenced yet so this case is still pending. So I suppose you could advise him –

[STOKES'S DEFENSE COUNSEL]: Yes.

THE COURT: And he could – he could agree to take the 5th because –

[STOKES'S DEFENSE COUNSEL]: Exactly.

> THE COURT: The final judgment hasn't been entered; he hasn't been sentenced and his testimony in trial could affect –
>
> [STOKES'S DEFENSE COUNSEL]: Similar if you know, if State don't agree in the codefendant's case and they indicated to me that my client testifies favorably to the codefendant. The plea agreement that you have is off the table. So now he does have his sentencing – your honor, if he was to testify, he hasn't been sentenced; you can pull the plea. It is in his best interest.
>
> THE COURT: No, I understand that, *but there's a difference between – there's a difference between whether he can be compelled to testify or whether he choose to testify and whether he chooses how to testify. My only concern today is that he be told what the consequences of his interactions are going to be.*
>
> [STOKES'S DEFENSE COUNSEL]: I know, your honor. Thank you.
>
> THE COURT: Is – is the consequence of what he just said that the State is withdrawing the plea or is the consequences of what he just said that what I just spoke about.
>
> [PROSECUTOR]: Uh-huh.
>
> THE COURT: So that's what – *the only thing that I'm concerned about now is he understand what the consequences of what just happened are.*

Williams contends that the court violated his right to due process and a fair trial by causing Stokes to invoke his Fifth Amendment right when called to testify at Williams's trial. He asserts:

> The trial judge departed from a neutral judicial role, acted as an advocate and likely caused a witness to change his testimony when he, on his own accord, advised Mr. Stokes, if called as a witness at [Willliams's] trial, to either: (a) refuse to testify; or (b) testify consistent with the State's version of events; and that his failure to exercise one of these two options could result in his being imprisoned for up to thirty years.

The State counters that the court's comments, when viewed in context, were not coercive and form no basis to reverse appellant's convictions.[1] We agree with the State.

Courts have long recognized the Sixth Amendment's guarantee that the criminally accused "have compulsory process for obtaining witnesses in [their] favor" as fundamental to the due process of law. *State v. Stanley*, 351 Md. 733, 742-43 (1998) (citing *Washington v. Texas*, 388 U.S. 14, 19 (1967)). Courts have also recognized that efforts on the part of the trial court to compel a witness to testify or to silence a witness through threats of punishment for perjury or contempt violate the accused's right to due process. *See Archer v. State*, 383 Md. 329, 350-56 (2004).

Courts are not prohibited from addressing witnesses, however. Rather, the Court of Appeals has recommended that, in addressing witnesses, trial courts advise witnesses of the legal implications of their testimony, or lack thereof, "in a neutral and objective manner." *Id* at 358-59 (internal citation and quotation marks omitted).

Williams attempts to analogize the circumstances of Stokes's plea hearing to what happened in *Archer* and *Webb v. Texas*, 409 U.S. 95 (1972), but the attempt is unconvincing. Both *Archer* and *Webb* involved egregious, coercive conduct on the part of the trial court. In *Archer*, after a witness refused to testify, the trial judge, through the

[1]The State also notes that the court's statements were made to counsel during a bench conference and outside of the presence of Stokes. We do not think it matters whether the court addressed his comments to counsel or directly to Williams himself. We assume that counsel passed on to Williams the substance of the court's concerns and comments.

witness's counsel, threatened the witness with a contempt hearing, asserted that the hearing judge would give the witness the longest sentence possible—identifying life in prison as a possibility, and called the potential hearing judge from the bench. *Archer*, 383 Md. at 350-52. The judge also advised the witness as to how he could testify. *Id.* at 350-51. The witness ultimately took the stand, and the Court of Appeals found that the judge's conduct was "prejudicial to Archer and denied him a fair trial." *Id*. at 360.

In *Webb v. Texas*, the trial judge's admonishment had the opposite effect – the witness, who was also serving a prison sentence, refused to take the stand after the trial court went on at length about the dangers of perjury. 409 U.S. at 95-96. The judge assured the witness that if he were to lie under oath, his case would go to a grand jury, he would be indicted and most likely convicted of perjury, his sentence would be added to the sentence he was currently serving, and that it would effect his parole, when the time came. *Id*. at 96. The Supreme Court concluded that "the judge's threatening remarks, directed only at the single witness for the defense, effectively drove that witness off the stand, and thus deprived the petitioner of due process of law under the Fourteenth Amendment." *Id.* at 98.

The case before us presents a very different scenario. The transcript reveals that the court did nothing more than to identify the legal obstacles created after Stokes testified contrary to the State's proffer. The court made it clear on multiple occasions that its concern was that Stokes "understand . . . the consequences of what just happened[.]" In a guilty plea proceeding, the court is obligated to assure itself that the guilty plea is

voluntary. Md. Rule 4-243(d). A guilty plea can be voluntary only if the defendant knows the consequences of the plea. *See Blinken v. State*, 291 Md. 297, 307-09 (1981). We see nothing inappropriate or coercive in the court's calling to the attention of counsel some of the possible ramifications of the conflict between Stoke's testimony and the State's proffer. The court made it clear that the problem was one for Stokes, his counsel, and the State, to solve. The court did not violate Williams's due process rights because those parties ultimately reached a resolution that was not to Williams's advantage.

II. A Statement Against Penal Interest?

Williams's second contention arises out of Stokes's plea hearing as well. As we have explained at his guilty plea hearing, Stokes testified contrary to the State's proffer with regard to Williams's participation in the attack on Powell. Prior to the start of appellant's trial, defense counsel sought a pre-trial ruling on the admissibility of the portion of Stokes's plea hearing transcript containing the following colloquy between Stokes and the guilty plea court:[2]

> THE COURT: So – so your – your recollection is that Mr. Williams did not repeatedly hit the victim, but he was trying to get you off the victim.
>
> STOKES: Yes, sir.

At appellant's trial, his counsel argued that Stoke's testimony was admissible as a statement against penal interest because Stokes had jeopardized his plea by refusing to confirm the State's account of Williams's involvement. As a result, argued counsel,

[2]The same judge presided over Stokes's guilty plea hearing and Williams's trial.

Stokes put himself at risk of being sentenced to 30 years incarceration. The State countered that Stokes's statement was not a statement against his penal interest, because he was testifying to Williams's conduct, as opposed to his own, and, even if it were, it would be inadmissible because there was no evidence to corroborate the statement, and the statement was inherently unreliable. In support of the latter contention, the State pointed to the fact that Stokes and Williams had denied knowing one another in their statements to the police after their arrest. The court refused to admit Stokes's statement, explaining:

> I guess I would make a determination that saying someone else didn't punch the victim is not a statement against penal interest. In this particular case if the allegation was if there was one person that committed this assault, by Mr. Stokes saying, "Mr. Williams didn't do it, I did it," that might be a statement against penal interest.
>
> However, in this particular case, from the very get-go there's two people that are involved in this assault by every person's statement about the facts. And so by – Mr. Stokes admitted during the course of the plea that he was the one that stabbed. [T]hat would be an admission against penal interest. However, by saying that Mr. Williams didn't punch, that's not a statement against Mr. Stokes's penal interest. [And additionally,] there has to be a finding by the court that the statement is reliable. And there has to be a lack of some bias or motive for making a statement against penal interest[].
>
> [T]he statement he made about his friend Mr. Williams, that he was not involved, was certainly -- well, it appears to be motivated by friendship or some allegiance that Mr. Stokes had to Mr. Williams. And therefore there would be a motive . . . for making that statement[.]

Md. Rule 5-804(b)(3) provides an exception to the general prohibition against hearsay, where the declarant is unavailable[3] to testify and makes a statement against his or her pecuniary, proprietary, or liberty interest. Md. Rule 5-804(b)(3) defines a statement against interest, as follows:

> A statement which was at the time of its making so contrary to the declarant's pecuniary or proprietary interest, so tended to subject the declarant to civil or criminal liability, or so tended to render invalid a claim by the declarant against another, that a reasonable person in the declarant's position would not have made the statement unless the person believed it to be true. A statement tending to expose the declarant to criminal liability and offered in a criminal case is not admissible unless corroborating circumstances clearly indicate the trustworthiness of the statement.

As this Court explained in *Roebuck v. State*, 148 Md. App. 563, 578 (2002), "[i]n order to admit a hearsay statement under Rule 5-804(b)(3), the trial court must determine that: 1) the declarant's statement was against his or her penal interest; 2) the declarant is an unavailable witness; and 3) corroborating circumstances exist to establish the trustworthiness of the statement." Moreover, the "burden is on the proponent of the statement to establish that it is cloaked with indicia of reliability, which means that there must be a showing of particularized guarantees of trustworthiness." *Id.* at 579 (bracketing and quotations marks omitted).

Our review of a trial court's hearsay determinations is two-fold. Whether a statement is hearsay, or satisfies an exception to the prohibition against hearsay, is a legal

[3]The trial court found that Stokes rendered himself "unavailable" for the purposes of Rule 5-804(b)(3) when he invoked his Fifth Amendment privilege not to testify.

conclusion that we review *de novo*. *Gordon v. State*, 431 Md. 527, 538 (2013). Whether there are sufficient corroborating circumstances to establish the trustworthiness of the out-of-court statement is a factual inquiry that is subject to review under the clearly erroneous standard. *Id*.; *State v. Matusky*, 343 Md. 467, 486 (1996).

"A statement against penal interest is a statement which, if true, means that the declarant is subject to criminal liability." 6A LYNN MCLAIN, MARYLAND EVIDENCE: STATE AND FEDERAL § 804(3):1(e)(i) (3d ed. 2013). As the Court of Appeals has explained, the statement need not amount to "a full confession but must involve substantial exposure to criminal liability." *State v. Standifur*, 310 Md. 3, 13 (1987). A critical consideration in a courts assessment of a statement as a statement against penal interest is whether a reasonable person in the position of the declarant would have understood the statement to be against his or her interest. *Id*. at 13. The Court of Appeals has instructed that, in making the reasonableness determination, courts should not only consider the words spoken, but "the totality of the circumstances under which the statement was made." *Id*.

Williams does not challenge the trial court's conclusion that Stokes's statement exculpating Williams did not inculpate Stokes under the facts of this case. Instead, he argues that Stokes's statement was against his penal interest because it jeopardized his plea agreement and thus exposed him to a significantly increased sentence. The difficulty with the argument is that circumstances surrounding Stokes's statement do not support the conclusion that Stokes understood that his testimony threatened his plea agreement.

In fact, the transcript of the guilty plea proceeding indicates to the contrary. During that proceeding, Stokes's counsel made it clear to the court that Stokes did *not* understand that making an exculpatory statement about Williams would jeopardize his plea agreement. Specifically, at one point in the guilty plea proceeding, counsel stated: "I just don't think he really understood what he was getting into here. Let me explain it to him, your honor, he's in over his head. He indicates that he wants to accept the plea and he has no intention to you know, –[.]" Later, after conferring with his client, counsel stated:

> I would vote a change in the agreement, your honor. It's been a situation where Mr. Stokes and I had a lengthy conversation essentially, sir; he wants to take advantage of the agreement.

As an alternative basis for its decision, the trial court concluded that the statement lacked the "particularized guarantees of trustworthiness" that is required for admission *Roebuck,* 148 Md. App. at 578. We cannot say that the trial court was clearly erroneous in its conclusion. There was an ample basis on which to conclude that Williams and Stokes were friends or that some other form of "allegiance" motivated Stokes's statement. There was certainly evidence that Stokes and Williams were friends; they had socialized together with Jasmine for most of the day on which the assault occurred; they consulted with one another before approaching Powell's automobile; after Powell bested Stokes in the initial confrontation, both men pursued Powell and joined together to beat and stab him. This was a sufficent basis for the court to conclude that the two had some form of of allegiance towards one another.

We conclude that the trial court did not err when it refused to permit Williams to introduce Stokes's statement.

III. The Supplemental Jury Instruction

Included in the instructions provided to the jury, and consistent with the State's theory of the case, the court instructed the jury on accomplice liability.[4] After the jury retired, they sent a note asking, "for accomplice liability does the defendant need to know the intent of the primary actor involved in the crime?" In response, the trial court sent a note instructing the jurors to reread the accomplice liability instruction and providing

[4]The court's instruction tracked Maryland Pattern Instructions - Criminal, 6.0. The court told the jury:

> The defendant may be guilty of – let's see. The defendant may be guilty of attempted first degree murder, attempted second degree murder, first degree assault, and second degree assault as an accomplice even though the defendant did not personally commit the acts that constitute each of those crimes. In order to convict the defendant of either first degree murder, attempted second degree murder, first degree assault, or second degree assault as an accomplice, the State must prove that any one of those crimes occurred and that the defendant, with the intent to make the crime happen, knowingly aided, counseled, commanded, or encouraged the commission of the crime or communicated to the primary actor in the crime that he was ready, willing, and able to lend support if needed.
>
> The mere presence of the defendant at the time of the place of the commission of the crime is not enough to prove the defendant is an accomplice. If presence at the scene of the crime is proven, that fact may be considered along with all the surrounding circumstances in determining whether the defendant intended to and was willing to aid the primary actor, for example by standing by as a lookout to warn the primary actor of danger, and whether the defendant communicated that willingness to the primary actor.

them additional information about the knowledge required of an accomplice, specifically, a modified version of the pertinent part of the commentary to Maryland Criminal Pattern Jury Instruction 6.0.[5] Over the course of their deliberation, the jurors sent a number of other notes inquiring about accomplice liability.

Williams's final contention arises from the court's supplemental instruction on accomplice liability. Williams asserts that providing the jury with two paragraphs from the comment to the model jury instruction caused confusion amongst the jurors, and

[5]The trial court's handwritten note to the jury reads, in pertinent part, as follows:

> Jurors –
>
> Please reread the accomplice instruction that was previously provided. Additionally, I have attached some additional instructions that relate to the 'knowledge' requirement of an accomplice that you have requested.

The document attached to the note contained the following language:

> The accomplice must possess criminal intent. Aid or encouragement will not make the accomplice guilty unless she or he knew or had reason to know of the intent of the principal actor and shared it. When specific intent is a necessary element of a particular crime, one cannot be an accessory for that crime unless such person entertained the requisite intent, or knew that the principal actor entertained such intent. That intent includes not only the purpose in mind but also such results as are known to be substantially certain to follow. The mens rea for each and every principal and accessory floats free and must be determined separately for each.
>
> An accomplice's liability extends not only to the planned or principal offense, but to all other crimes incidental thereto, if done in furtherance of the commission of the offense and escape therefrom. Thus, when an actor aids and abets in the main thrust of the criminal design, it is not necessary that she or he aid and abet in the consequential crimes in order to be responsible for them.

ultimately resulted in the jurors misapplying the law to the facts of the case before them. The State counters that the contention is not preserved for appellate review because Williams's defense counsel failed to object to the instruction after it was given. Further, the State contends that even if the issue were preserved, the trial court acted within its discretion in providing the jury with the comment to the model instruction.

Md. Rule 4-325(e) provides that "[n]o party may assign as error the giving or the 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." The transcript indicates that Williams's defense counsel stated that he would prefer that the trial court respond to the note by referring the jurors to the instruction that was initially given, but at no point objected to the court's supplemental instruction. Pursuant to Md. Rule 4-325(e), Williams's contention is not preserved.

In his reply brief, Williams asks us to exercise our discretion to review the trial court's action under the plain error doctrine. We decline to do so.

In *McCree v. State*, 214 Md. App. 238 (2013), *aff'd*, 441 Md. 4 (2014), this Court discussed the circumstances in which we may exercise our discretion to engage in plain error review. We stated that plain error review is reserved to "address unpreserved errors by a trial court which 'vitally affect a defendant's right to a fair and impartial trial.'" *Id.* at 271 (quoting *Diggs v. State*, 409 Md. 260, 286 (2009)). We also noted that our discretion to exercise plain error review should be "rarely exercise[d]" because, for considerations of fairness and judiciary efficiency, all challenges should be first raised

before the trial court so that "1) a proper record can be made with respect to the challenge, and 2) the other parties and the trial judge are given an opportunity to consider and respond to the challenge." *Id.* (quoting *Chaney v. State*, 397 Md. 460, 468 (2007)). We should engage in plain error review only when we are confronted with an outcome-affecting error of such magnitude that it "seriously affect[s] the fairness, integrity or public reputation of judicial proceedings." *State v. Rich*, 415 Md. 567, 578 (2010) (quotation marks and citation omitted). Any suppositional error on the part of the trial court falls well short of these exacting standards and we decline to exercise our discretion to engage in plain error review.

THE JUDGMENTS OF THE CIRCUIT COURT FOR MONTGOMERY COUNTY ARE AFFIRMED. APPELLANT TO PAY COSTS.