Circuit Court for Washington County
Case No. C-21-CR-18-000850

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 2475

September Term, 2019

RAHIM GIBSON

v.

STATE OF MARYLAND

Berger,
Friedman,
Wells,

JJ.

Opinion by Berger, J.

Filed: April 1, 2021

Following a jury trial in the Circuit Court for Washington County, Rahim Gibson ("Gibson"), Appellant, was convicted of first-degree murder, first-degree assault, second-degree assault, reckless endangerment, and use of a firearm in the commission of a crime of violence. For the charge of first-degree murder, Gibson received a sentence of life in prison, with all but thirty years suspended. For the charge of use of a firearm in a crime of violence, Gibson received a sentence of ten years in prison, with all but five years suspended, to be served consecutively. The trial court merged the charges of first-degree assault, second-degree assault, and reckless endangerment into the conviction for first-degree murder. Gibson presents three issues for our consideration on appeal,[1] which we have rephrased as follows:

> I. Whether the evidence presented at trial was sufficient to convict Gibson of first-degree murder and related charges.
>
> II. Whether the trial court's imposed sentence was inherently illegal based on an alleged violation of Gibson's constitutional right to equal protection by a racially selective prosecution.

[1] Gibson's original questions presented are as follows:

> 1. Is Mr. Gibson's presence at the crime scene insufficient to withstand his conviction?
>
> 2. Does the violation of Mr. Gibson's constitutional right to equal protection arising from the State's racial selective prosecution make his sentence inherently illegal?
>
> 3. Did Mr. Nalli's failure to introduce notarized exculpatory letters from Mr. Dawkins and subpoena both Mr. Dawkins and Ms. McAboy violate Mr. Gibson's right to counsel?

III. Whether Gibson's ineffective assistance of counsel claim must be made via a petition for post-conviction relief.

For the reasons explained herein, we shall affirm.

FACTS AND PROCEEDINGS

On November 12, 2018, Angelique Booker ("Booker"), Dewayne Dawkins ("Dawkins"), Hannah Ingram ("Ingram"), and Chelsea McAboy ("McAboy") were driving to Hagerstown, Maryland from Frederick, Maryland. Once in Frederick, Dawkins asked Booker, Ingram, and McAboy if they knew anyone who wanted to buy cocaine. That evening, at 6:12 p.m., Ingram texted Brandon Whittaker ("Whittaker") and arranged for a sale of ten grams of cocaine for $375.00.

The sale was arranged to take place at 216 North Locust Street. Ingram and McAboy met Whittaker in the walkway on the side of the house and then walked towards the back of the house. Whittaker went inside to weigh the drugs on a scale and a man named "Zomo" grabbed the drugs and ran out of the house. Ingram and McAboy returned to the vehicle and told Dawkins what happened. Dawkins became very angry and began threatening people and cussing. While angry, Dawkins placed a phone call to Gibson. In his initial statement, Gibson told the police that Dawkins told him what happened and asked him to come outside. Dawkins told Gibson he wanted him to come with him to "talk to this lady" because she might know something about the missing drugs and money.

Booker testified that when Gibson got into the car, the group discussed the identity of the person who stole Dawkins' drugs. McAboy and Ingram stated that it was a person

named Zomo. Gibson told them that Zomo was part of the "Yo gang" and that they were known to carry guns. Ingram and McAboy showed the group pictures posted on social media of Zomo holding guns. Gibson allegedly told Dawkins not to approach Zomo without a weapon. Dawkins asked Gibson if he had a gun and Gibson said that he did not. Dawkins allegedly said he would need to drive to Frederick to get his own gun.

Simultaneously, Ingram was exchanging text messages with Whittaker attempting to obtain the address where Zomo was located. Dawkins then told Gibson and the rest of the group that he was going to go back to the apartment complex where Zomo had stolen the drugs to confront the people there. Dawkins stated he was going to get his money by "any means necessary."

Gibson remained in Hagerstown and the rest of the group traveled to Frederick. Gibson told Dawkins to call him when he returned from Frederick if he still wanted to go "see the lady." In Frederick, the group drove to a tow yard and Booker retrieved a bag from the trunk of a car. Booker then gave the bag to Dawkins. Dawkins pulled a gun and a ski mask from the bag. Dawkins then put a clip in the gun and put the ski mask on the top of his head rolled up like a cap. The group then returned to Hagerstown and picked up Gibson. Dawkins allegedly told Gibson that they were planning on going somewhere, and Ingram was going to show them the door of the apartment where Zomo stole the drugs. They drove into an alley behind 216 North Locust Street. While still in the car, Dawkins cocked the gun and Gibson allegedly said, "you should have brung [sic] me something."

Dawkins, Ingram, and Gibson got out of the car and Dawkins pulled the ski mask down to cover his face while Gibson and Ingram pulled their hoods up. The group of three then walked to the door that Ingram identified as the one that Whittaker went into when he was going to weigh the drugs. When the group got to the porch, Dawkins pulled out the gun. Dawkins knocked on the door, but no one answered. Dawkins then unscrewed the lightbulb on the porch and started attempting to kick the door in. Once Dawkins began kicking the door, Gibson walked around to the side of the house and looked into the windows. He then walked back to the porch and told Dawkins that there were people in the house and that somebody was coming to the door.

Cody Lynn ("Lynn") then opened the door. Once he saw Dawkins and the rest of the group outside, he tried to slam the door shut. Dawkins began shooting through the door. Lynn was struck both in the chest and in the inner thigh. Lynn later died from the gunshot wounds. After Dawkins fired the gun, Gibson, Dawkins, and Ingram ran back to the car. Once inside, Gibson allegedly stated that "he wasn't the one kicking in the door" because "he didn't have a gun." On November 18, 2018, Gibson was arrested. Dawkins and Booker were arrested the same day, and both pled guilty.

Gibson was charged with first-degree murder, second-degree murder, first-degree assault, second-degree assault, reckless endangerment, use of a firearm in a crime of

violence, carrying a handgun on one's person, carrying a loaded handgun in a vehicle, conspiracy to commit first-degree murder, and conspiracy to commit first-degree assault.[2]

On July 31, 2019, Gibson filed a *pro se* motion to dismiss all charges, arguing that his right to a speedy trial had been violated. Gibson also argued that his codefendant, Dawkins, wrote a notarized statement completely exonerating Gibson from the crime. On August 19, 2019, the trial court issued an order summarily denying Gibson's motion. Gibson and his attorney appeared before the trial court on September 25, 2019 and again argued the motion to dismiss. The trial court determined that the right to a speedy trial was not violated and that the letter from Dawkins was a factual issue to be raised at trial. The trial court, therefore, denied the motion and instructed the clerk to refile the motion for that date, September 25, 2019.

The three-day trial for Gibson also began on September 25, 2019. The State argued that Gibson was an accomplice to the murder of Lynn when Dawkins shot and killed him by shooting through the door. Gibson moved for a judgment of acquittal, arguing that no reasonable jury could find him guilty beyond a reasonable doubt because he was merely present at the scene, all the witnesses were biased, and there was no forensic evidence. The trial court denied the motion and again denied the motion when Gibson renewed it at the end of trial.

[2] The State *nolle prossed* the charges regarding carrying a loaded handgun on one's person and transporting a loaded handgun in a vehicle.

The jury found Gibson guilty of first-degree murder, first-degree assault, second-degree assault, reckless endangerment, and use of a firearm in the commission of a crime of violence. On January 29, 2020, Gibson appeared before the trial court for sentencing. For the charge of first-degree murder, the trial court sentenced Gibson to life in prison, with all but thirty years suspended. For the charge of use of a firearm in a crime of violence, Gibson received a sentence of ten years in prison, with all but five years suspended, both sentences to be served consecutively. The trial court merged the charges of first-degree assault, second-degree assault, and reckless endangerment into the conviction for first-degree murder. On February 18, 2020, Gibson noted a timely appeal to this Court.

DISCUSSION

Standard of Review

Upon review of a sufficiency of the evidence claim, the appropriate inquiry for us to make is "whether, after viewing the evidence in the light most favorable to the prosecution, any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt." *Nicholson v. State*, 239 Md. App. 228, 252 (2018) (internal quotations and citation omitted). We have explained:

> Our role is not to retry the case: "[b]ecause the fact-finder possesses the unique opportunity to view the evidence and to observe first-hand the demeanor and to assess the credibility of witnesses during their live testimony, we do not re-weigh the credibility of witnesses or attempt to resolve any conflicts in the evidence." *Smith v. State*, 415 Md. 174, 185 (2010) (citations omitted).

Nicholson, *supra*, 239 Md. App. at 252. (quoting *Cagle v. State*, 235 Md. 593, 603–04 (2018), *aff'd* 462 Md. 67 (2018)).

This Court gives "deference to all reasonable inferences [that] the fact-finder draws, regardless of whether [the appellate court] would have chosen a different reasonable inference." *Pinheiro v. State*, 244 Md. App. 703, 711 (2012) (internal quotations and citations omitted). Therefore, if there are evidentiary facts sufficiently supporting the inferences made by the jury or the trial court acting as the fact-finder, this Court defers to the fact-finder. *Neal v. State*, 191 Md. App. 297, 315 (2010) (citing *State v. Smith*, 374 Md. 527, 547 (2003)).

This Court applies a *de novo* standard of review in connection with the appellant's claim that he has been sentenced illegally. *Rainey v. State*, 236 Md. App. 368, 374 (2018) (internal citation omitted). "[Maryland] Rule 4-345(a) appellate review deals only with legal questions, not factual or procedural questions." *Carlini v. State*, 215 Md. App. 415, 443 (2013). There is no factfinding deference nor discretionary decision making involved. *See id.* "Once the outer boundary markers for a sentence are objectively established, the only question is whether the ultimate sentence itself is or is not inherently illegal." *Id.*

I. The evidence presented to the jury was sufficient to convict Gibson of first-degree murder and related charges.

A. *Gibson does not challenge or provide argument that the evidence presented to prove the felony murder modality of first-degree murder was insufficient, and, to prevail on his sufficiency of the evidence claim, Gibson must show that the evidence was insufficient to support any theory presented to the jury.*

We first consider the issue of whether there was sufficient evidence presented to the jury to support Gibson's conviction of first-degree murder. The jury in this case was instructed on two theories of first-degree murder: premeditated murder and felony murder, with burglary as the underlying felony. The jury was instructed that it need not be unanimous as to the theory on which the verdict was based. Indeed, the jury was not asked to specify, and it did not specify, upon which theory it based its verdict. On appeal, Gibson argues that the evidence presented at trial was insufficient to prove that he was guilty as an accomplice to premeditated first-degree murder. Gibson argues that more than mere presence is required to prove him guilty.[3]

To successfully challenge his conviction, Gibson must show that the evidence was insufficient to support any theory of first-degree murder presented to the jury at trial. *See State v. Gross*, 134 Md. App. 528, 567 (2000), *aff'd* 371 Md. 334 (2002) ("[Appellant] had to attack his most significant conviction by challenging the legal sufficiency of the evidence to support either rationale [presented]."). This Court has specifically addressed the effect of multiple theories of conviction presented to the jury on a sufficiency claim. *See Wallace v. State*, 237 Md. App. 415, 434–36 (2018). In that case, Wallace was convicted of second-degree murder. *Id.* At trial, multiple theories of second-degree murder were presented to the jury. *Id.* On appeal, Wallace challenged the sufficiency of

[3] Gibson also argues that the witnesses who testified against him were inherently unreliable. Accordingly, Gibson contends that due to the lack of credibility, the evidence was insufficient to convict. The credibility of witnesses is within the province of the jury to determine. *Smith*, *supra*, 374 Md. at 534. Accordingly, it is not a relevant ground to argue a lack of sufficiency of the evidence.

the evidence of his conviction, but only as to the theory of depraved heart murder. *Id.* at 433. This Court held that the claim was not preserved. *Id.* at 433–35. Regardless, we also noted that it would not have prevailed because a contention that the evidence was insufficient to support only one theory of second-degree murder is "not legally sufficient to support a [challenge to a] conviction for second-degree murder generally." *Id.* at 433–34.

We explained that many crimes, specifically murder, "are widely embracing enough to be perpetrated by different modalities just as they may be explained by alternative and different theories of guilt." *Id.* at 434–35. When one of those crimes is at issue, "[t]he legal sufficiency or insufficiency of the evidence to prove one theory of guilt does not foreclose . . . the evidence's being legally sufficient to prove other possible theories of guilt." *Id.* at 435–36. Therefore, because Gibson does not attack the sufficiency of the evidence to convict him of first-degree felony murder -- regardless of our ruling on Gibson's sufficiency of the evidence claims -- we will affirm Gibson's conviction.

B. *The evidence presented to the jury was sufficient to support Gibson's conviction for first-degree murder as an accomplice to premeditated murder.*

Gibson argues that he lacked the requisite intent to be convicted as an accomplice to first-degree murder. Gibson contends that he did not, and could not, have known that Dawkins intended to commit a crime. According to Gibson, he was unaware of the issue concerning the botched drug trade and that Dawkins did not tell him anything about intending to hurt anyone. Gibson argues that he did not share in Dawkins' deliberation and premeditation to commit the murder and, therefore, he cannot be convicted as an

accomplice to first-degree murder. Additionally, Gibson argues that his mere presence at the crime scene was not a crime and is not sufficient for a conviction.

The State argued at trial that Gibson was guilty of first-degree murder as an accomplice, or an aider and abettor, to premeditated first-degree murder. An aider and abettor is also known as a "principal in the second degree." *Smith*, *supra*, 284 Md. at 188 (citing *Pope v. State*, 284 Md. 309, 326 (1979)). This is someone who "is actually or constructively present when a felony is committed, and who aids or abets in its commission." *Pope*, *supra*, 284 Md. at 326. The principal in the second degree does not commit the crime himself, but rather "in some way participates in the commission of the felony by aiding, commanding, counseling, or encouraging the actual perpetrator." *Id.* at 331.

The Court of Appeals has explained: "the [principal in the second degree] must actually participate by assisting, supporting or supplementing the efforts of another, or, if not actively participating, then the person must be present and advise or encourage the commission of a crime to be considered an accomplice." *Silva v. State*, 422 Md. 17, 28 (2011) (internal quotations and citation omitted). This may be shown through "acts, words, signs, motions, or any conduct which unmistakably evinces a design to encourage, incite, or approve of the crime." *Pope*, *supra*, 284 Md. at 331–32 (internal citation omitted). It is possible to give aid "by merely standing by for the purpose of giving aid to the perpetrator if necessary, provided the latter is aware of this purpose." *Id.* (internal citation omitted).

The State must present evidence to the jury "that the alleged aider and abettor participated [in the crime] by knowingly associating with the criminal venture with the intent to help commit the crime." *Davis v. State*, 207 Md. App. 298, 319 (2012) (internal citation omitted). The finder of fact can infer knowledge and intent based on the surrounding facts and circumstances of the case. *Smith*, *supra*, 374 Md. at 542–43. Although a person's mere presence at the scene of a crime is not in and of itself sufficient to establish that the person was either a principal or an accessory to the crime, the person's presence "at the immediate and exact spot where a crime is in the process of being committed is a very important factor to be considered in determining guilt." *Williams v. State*, 3 Md. App. 58, 61 (1968). Notably, it is possible for a person to be guilty of a crime which he did not intend to commit. *Diggs & Allen v. State*, 213 Md. App. 28, 85 (2013) (citing *Sheppard v. State*, 312 Md. 118 (1988)). If a crime was committed by a person's accomplice, the person can be held responsible for that additional crime if it was done in furtherance, or in the escape from, the principal offense. *Id.*

The jury in the instant case was informed of the various definitions of accomplice liability. When viewing the evidence in the light most favorable to the prosecution, Dawkins called Gibson while very angry about the missing money from the drug deal. *See Nicholson*, *supra*, 239 Md. App. at 252 (internal quotation and citation omitted). Dawkins then asked Gibson to come with him to "talk to some lady" about the missing money. Once Gibson was in the car with the group, the group discussed the missing money and the botched drug deal. Gibson informed Dawkins and the group that the person who stole the

money is known to carry guns and that Dawkins should not confront him unless armed. Dawkins then told Gibson that he was going to drive to Frederick to obtain a gun.

The group then drove to Frederick, obtained the gun, and then returned to pick up Gibson. While in the car together, Dawkins cocked the gun and put on gloves. At the house, Gibson got out of the car with Dawkins and watched as Dawkins pulled his ski mask over his face and approached the apartment door. At the entrance to the apartment, Gibson stood with Dawkins as he removed the gun, unscrewed the lightbulb from the porch light, and attempted to kick the door in. Gibson looked in the apartment windows for Dawkins and alerted him that someone was coming to the door. Gibson then returned to the porch and stood next to Dawkins as he shot the gun through the door and killed Lynn.

Gibson accompanied the perpetrator to the house of someone who stole money from him. Gibson knew that Dawkins was angry and that he was bringing a gun. Gibson looked into the windows and alerted Dawkins when someone was coming. This evidence presented to the jury was sufficient for a reasonable jury to conclude that Gibson aided and abetted Dawkins in the commission of first-degree murder. Gibson stood by and was ready, willing, and able to give aid if necessary. He assisted Dawkins by alerting him that someone was coming to the door. *See Pope*, *supra*, 284 Md. 331–32. The evidence further supports the jury's reasonable conclusion that Gibson aided and abetted Dawkins in the commission of the crime of burglary, and that Dawkins committed first-degree murder in furtherance of that crime. Accordingly, the evidence presented to the jury was sufficient

to support a conviction of Gibson for first-degree murder as an accomplice or principal in the second-degree to Dawkins.

C. *The evidence presented to the jury was sufficient to support Gibson's conviction for first-degree felony murder.*

Gibson made no argument in his brief that the evidence presented to the jury was insufficient to support his conviction for first-degree felony murder. At oral argument, Gibson raised this issue for the first time. Nevertheless, this argument holds no merit. A "person commits felony murder when the person's conduct [brings] about an unintended death in the commission or attempted commission of a felony." *State v. Goldsberry*, 419 Md. 100, 135 (2011) (internal citation and quotation omitted).

The Maryland statute proscribing the prohibition of first-degree felony murder describes felony murder as a killing "committed in the perpetration of or an attempt to perpetrate" any of the felonies listed in the statute. Md. Code (2002, 2012 Repl. Vol., 2020 Suppl.), § 2-201(a)(4) of the Criminal Law Article. Specifically, one of the prohibited felonies is burglary in the first, second, or third degree. *Id.* § 2-201(a)(4)(iii).

In the instant case, the State instructed the jury on felony murder, with third-degree burglary as the underlying felony. Pursuant to the Maryland statute, "[a] person may not break and enter the dwelling of another with the intent to commit a crime." Md. Code (2002, 2012 Repl. Vol.), § 6-204(a) of the Criminal Law Article.

The evidence presented to the jury, taken in the light most favorable to the prosecution, was sufficient to convict Gibson of felony murder with burglary in the third degree as the underlying felony. Gibson accompanied Dawkins, who was angry about a

botched drug deal and missing money, to the home of someone who might know something about the details. Gibson watched as Dawkins, armed with a weapon, attempted to kick in the door of the apartment. Further, Gibson acted as a look-out and warned Dawkins someone was coming to the door.

Gibson was an accomplice to the attempted third-degree burglary. Gibson informed Dawkins of Zomo's inclination for weapons and warned him not to go to the house without a weapon. He watched as Dawkins unscrewed the lightbulb and pulled the gun out from his waistband on the porch of the home. A reasonable jury could have concluded that Dawkins intended to break into the home with the intent to commit a felony inside, such as harming the occupants with his weapon. Further, a reasonable jury could have concluded that Dawkins killed Lynn during the commission of that attempted burglary. Therefore, the evidence presented to the jury was sufficient to convict Gibson of felony murder.

II. Gibson's sentence is legal and any claim of racially selective tactics adopted by the prosecution does not make a sentence inherently illegal.

We next consider Gibson's contention that his sentence was illegal because he was the victim of a racially selective prosecution.[4] Maryland Rule 4-345(a) provides that the court "may correct an illegal sentence at any time." We are permitted to correct an illegal sentence, even if no objection was made in the trial court, so long as the sentence is

[4] Critically, Gibson's argument that the prosecution's use of racially selective tactics resulted in an illegal sentence was not preserved. Therefore, we will not address the merits of his bald contentions.

inherently illegal. *See Leopold v. State*, 216 Md. App. 586, 609 (2014). The Court of Appeals has held that an illegal sentence for purposes of Maryland Rule 4-345(a)

> is one in which the illegality "inheres in the sentence itself; *i.e.*, there either has been no conviction warranting any sentence for the particular offense or the sentence is not a permitted one for the conviction upon which it was imposed and, for either reason, is intrinsically and substantively unlawful."

Colvin v. State, 450 Md. 718, 725 (2016) (quoting *Chaney v. State*, 397 Md. 460, 466 (2007)). An illegal sentence is a "sentence not permitted by law." *Haskins v. State*, 171 Md. App. 182, 188 (2006).

Notably, "[a] sentence does not become 'an illegal sentence because of some arguable procedural flaw in the sentencing procedure.'" *Tshiwala v. State*, 424 Md. 612, 619 (2012) (quoting *State v. Wilkins*, 393 Md. 269, 273 (2006)). "No matter what antecedent procedural improprieties a Rule 4-345(a) hearing might show, the underlying sentence itself is not in jeopardy." *Carlini, supra*, 215 Md. App. at 442. "[A] motion to correct an illegal sentence is not an alternative method of obtaining belated appellate review of the proceedings that led to the imposition of judgment and sentence in a criminal case." *Wilkins, supra*, 393 Md. at 273.

A sentence is permitted by law and is legal so long as it comports with the boundaries prescribed by statute for the offense and the terms of the sentence are themselves not statutorily or constitutionally invalid. *Id.* at 272–73; *see also Chilcoat v. State*, 155 Md. App. 394, 413 n.4 (2004) ("A sentence is 'illegal' . . . if it is beyond the statutory power of the court to impose.").

Gibson was convicted of first-degree murder and the use of a handgun in a crime of violence. For the charge of first-degree murder, Gibson received a sentence of life in prison, with all but thirty years suspended. For the charge of use of a firearm in a crime of violence, Gibson received a sentence of ten years in prison, with all but five years suspended, to be served consecutively. A person convicted of first-degree murder, in any modality, is eligible for sentencing of either life imprisonment or life imprisonment without the possibility of parole. Criminal Law § 2-201(b)(1). A person convicted of using a handgun in a crime of violence is eligible to be sentenced between five and twenty years of imprisonment. Md. Code (2002, 2012 Repl. Vol., 2020 Suppl.), § 4-204(c)(1) of the Criminal Law Article. Both of Gibson's sentences ordered by the trial court were within the limits enumerated in the relevant statutes. Accordingly, we hold that Gibson's sentence was not inherently illegal and, therefore, not eligible to be corrected under Maryland Rule 4-345(a).[5]

III. Gibson's ineffective assistance of counsel claim must be made via petition for post-conviction and, therefore, is not properly before this Court.

Gibson's final appellate issue is that his former attorney's representation of him during the three-day trial was ineffective. Gibson asserts that his prior attorney, Mr. Nalli, failed to introduce notarized exculpatory letters from Dawkins. Gibson argues that no

[5] Alternatively, Gibson contends that we should grant him a new trial because of his former attorney's failure to raise the issue of racially selective prosecutive was ineffective assistance counsel. This argument is not properly before this Court. Indeed, should Gibson wish to present this contention, he must do so via a petition for post-conviction relief. *See infra* Section III.

reasonable attorney in Mr. Nalli's position would have failed to introduce these letters which exculpate Gibson. Gibson claims that these letters would have resulted in an acquittal at trial rather than a conviction. Further, Gibson argues that Mr. Nalli's failure to subpoena Dawkins and McAboy to testify at the trial was deficient performance. Gibson contends that any reasonable attorney would have subpoenaed these witnesses to impeach other testimony and to testify about the exculpatory letters. This failure, Gibson claims, unduly prejudiced his trial.

"Generally, in Maryland, a defendant's attack of a criminal conviction due to ineffective assistance of counsel occurs at post-conviction review. This is because a post-conviction hearing presents the opportunity for further fact-finding." *Crippen v. State*, 207 Md. App. 236, 250 (2012) (quotation marks and citation omitted). Ineffective assistance of counsel claims are evaluated on direct appeal only in "extremely rare situations" when "the facts in the trial record sufficiently illuminate the basis for the claim of ineffectiveness of counsel." *Id.* (quotation marks and citation omitted). Indeed, post-conviction claims are "preferred with respect to ineffective assistance of counsel claims because the trial record rarely reveals why counsel acted or omitted to act." *Mosley v. State*, 378 Md. 548, 572–73 (2003). Further, an evidentiary record can be created in a post-conviction claim as to whether defense counsel had a strategic basis for decisions made at trial. *Id.*

This case does not present one of the extremely rare situations in which consideration of ineffective assistance of counsel on direct appeal is appropriate. To do so, "the trial record must illuminate why counsel's actions were ineffective because,

otherwise, the Maryland appellate courts would be entangled in the perilous process of second-guessing without the benefit of potentially essential information." *Id.* at 561. That is not the case here. Accordingly, we will not address the merits of Gibson's ineffective assistance of counsel claim.

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