Circuit Court for Baltimore City
Case No. 120189007

UNREPORTED*

IN THE APPELLATE COURT

OF MARYLAND**

No. 1731

September Term, 2021

RICHARD CURTIS

v.

STATE OF MARYLAND

Zic,
Tang,
Battaglia, Lynne A.
(Senior Judge, Specially Assigned),

JJ.

Opinion by Battaglia, J.

Filed: August 14, 2023

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

**At the November 8, 2022 general election, the voters of Maryland ratified a constitutional amendment changing the name of the Court of Special Appeals of Maryland to the Appellate Court of Maryland. The name change took effect on December 14, 2022.

In July of 2020, Richard Curtis, Appellant, was indicted in the Circuit Court for Baltimore City for possession with intent to distribute a controlled dangerous substance (cocaine) in violation of Section 5-602(2) of the Criminal Law Article, Maryland Code (2002, 2012 Repl. Vol., 2019 Supp.),[1] possession of a controlled dangerous substance (cocaine) in violation of Section 5-601(a)(1) of the Criminal Law Article,[2] and possession with intent to use drug paraphernalia in violation of Section 5-619(c) of the Criminal Law Article.[3]

On December 14 and 15, 2021, Judge Althea M. Handy of the Circuit Court for Baltimore City presided over a jury trial. At the outset, the State dismissed the charges of

[1] All statutory references to the Criminal Law Article are to Maryland Code (2002, 2012 Repl. Vol., 2019 Supp.).

Section 5-602(2) of the Criminal Law Article provides:

> Except as otherwise provided in this title, a person may not:
> …
> (2) possess a controlled dangerous substance in sufficient quantity reasonably to indicate under all circumstances an intent to distribute or dispense a controlled dangerous substance.

[2] Section 5-601(a)(1) of the Criminal Law Article provides:

> (a) Except as otherwise provided in this title, a person may not:
> (1) possess or administer to another a controlled dangerous substance, unless obtained directly or by prescription or order from an authorized provider acting in the course of professional practice[.]

[3] Section 5-619(c) of the Criminal Law Article provides, in pertinent part:

> (2) Unless authorized under this title, a person may not use or possess with intent to use drug paraphernalia to:
> (i) plant, propagate, cultivate, grow, harvest, manufacture, compound, convert, produce, process, prepare, pack, repack, store, contain, or conceal a controlled dangerous substance[.]

possession of a controlled dangerous substance and possession of drug paraphernalia. At the end of the case, Judge Handy gave the State's requested instruction on destruction of evidence, to which the Defense objected. Curtis was convicted of possession with intent to distribute a controlled dangerous substance, and thereafter, Judge Handy sentenced him to ten years' imprisonment.

Curtis timely filed this appeal. He presents two questions for our review:

1. Was the evidence legally insufficient to support Appellant's conviction for possession with intent to distribute?
2. Did the trial court err in propounding a destruction of evidence instruction?

We shall hold that the evidence was sufficient to sustain Curtis's conviction for possession with intent to distribute a controlled dangerous substance and that the trial judge did not err in giving an instruction regarding destruction of evidence.

DISCUSSION

Sufficiency of Evidence

Curtis argues that the evidence was insufficient to establish that he was "in possession of the cocaine found in the bathroom and, even if so, that he possessed it with intent to distribute," because the "State's theory was based on assumptions not evidence." The State contends that there was "sufficient evidence to reasonably infer that Curtis was in constructive possession of the cocaine," and that "he possessed it with the intent to distribute it."

In March of 2020, police executed a search warrant for a rowhouse in Baltimore City. At trial, Detective Patrick Carpenter of the Baltimore Police Department testified, and his body camera footage was admitted in evidence.

The footage revealed that the rowhouse searched consisted of two floors. The first floor was comprised of a living room facing the front of the house in which there were two chairs, as well as a staircase leading to the second floor. The first floor also contained an empty room and a kitchen facing the back of the house.

On the second floor, a bedroom, in which a bed, dresser, tables, and a television existed, faced the front of the house. To the right of the bedroom, there was a hallway leading to the back of the house. On the right side of the hallway, there was a room with one chair and a plastic container filled with a trash bag, as well as an empty hallway closet, and a bathroom. At the end of the hallway, there was another room, which consisted only of a bucket and a boarded-up door on the side.

During his testimony, Detective Carpenter related that two individuals were found on the second floor of the house: "there was a female that was in the second-floor front bedroom" who police encountered first, and then "the defendant came from down the hall to our right, and came around the corner." Detective Carpenter identified the individual in the second-floor hallway as Curtis and testified that "[Curtis's] hands were wet." When asked whether he could tell what room Curtis was coming from, Detective Carpenter said that he only "saw [Curtis] come around the corner from down the hall," but noted that "[Curtis's] hands were very wet." He also stated that Curtis "was the only person from that area of the house," referring to the second-floor hallway.

Detective Carpenter then testified that, after Curtis and the female were taken to the first floor by other officers, he began to search the house:

> [State]: Where did you first search?
>
> [Detective Carpenter]: I believe I went directly to the bathroom where [Curtis] came from, that location down the hall.
>
> [State]: And were there any items that you located and recovered from the bathroom?
>
> [Detective Carpenter]: Yes. The – there was a bucket with a plunger in it, and on top of the plunger was a clear plastic bag, and it had ten clear vials – clear-top vials – with white rock substance suspected cocaine inside. I pulled that out. I then picked up the plunger and located a clear sandwich bag containing 65 orange-top vials containing white rock substance, suspected cocaine. Both bags were wet. The bucket was – had no water inside of it.

In total, seventy-five vials of suspected cocaine were recovered from the bathroom, which consisted of ten clear-top vials in one plastic bag and sixty-five orange-top vials in a second plastic bag; chemical analyses later confirmed that the suspected substances were, in fact, cocaine.

On cross-examination related to Curtis's wet hands, Detective Carpenter testified that he believed "[Curtis] had just came out of the bathroom, possibly flushing drugs":

> [Counsel for Curtis]: When you first saw Mr. Curtis and you believed his hands to be wet, what were you thinking?
>
> [Detective Carpenter]: I believed that he had just came out of the bathroom, possibly flushing drugs.
>
> [Counsel for Curtis]: Okay. But the drugs weren't flushed; correct?
>
> [Detective Carpenter]: No. I guess they were too big.
>
> [Counsel for Curtis]: They were in – looked like some was underneath, like up in the plunger. And then there was that little pack of 10 that was just sitting right on top of the plunger.
>
> [Detective Carpenter]: Right.

Detective Carpenter also testified regarding his search of the second-floor front bedroom. He related that other officers located a digital scale with residue on the radiator, clear-top vials used "to package cocaine" on a glass table, and mail bearing Curtis's name, but a different address, in the closet. His body camera footage reflected Detective Carpenter locating packaging materials such as "yellow-top vials" and a second "digital scale" in a bag on top of the dresser, as well as "silver-top vials," a sifter which he said contained "residue," and several pieces of mail addressed to "Richard Curtis," but at a different location, in the dresser drawers.

Detective Carpenter also was offered to and accepted by the court as an "expert in the sale, identification, use and distribution of controlled dangerous substances." As bases for his qualification, Detective Carpenter testified that he had been employed by the Baltimore City Police Department for sixteen years, participated in over 4,000 investigations of drug crimes, and had been qualified as an expert in "the sale, identification, use and distribution of controlled dangerous substances" in approximately fifty cases. Detective Carpenter expressed that in Baltimore City, cocaine for distribution could be packaged "in vials with different colored tops, sometimes clear, with the glass vials," as well as "in little, small ziploc baggies, different colors." He explained that, on average, the estimated street value of one vial of cocaine is "either $5 or $10."

Detective Carpenter also reviewed a photo depicting the seized items from the search as well as the physical evidence of the contraband recovered from the house. In response to the prosecutor's question that, "in your expert opinion, would the cocaine that

was recovered be indicative of drug distribution," Detective Carpenter replied, "Yes, I believe so."

He further testified that in his expert opinion, scales and sifters such as those recovered from the search are used "to package controlled dangerous substances." During cross examination, when counsel for Curtis inquired as to whether scales could be used for other purposes, Detective Carpenter replied, "Not when there's residue on them of suspected CDS [controlled dangerous substances]," as had been discovered in the second-floor front bedroom by other officers.

Detective Joshua Rutzen of the Baltimore Police Department testified, and his body camera footage also was admitted in evidence. Detective Rutzen related that he had located "seven blue zips with the white rock substance and two pink zips with the white rock substance," under the mattress in the second-floor front bedroom; chemical analyses later confirmed that the substances were cocaine.

Detective Thomas Kirby also of the Baltimore Police Department testified that after police brought Curtis and the other person to the living room, they were read their Miranda Rights. Detective Kirby testified that "Post-Miranda, [Curtis] advised that he was coming from the bathroom area on the second floor." Detective Kirby also remarked that "[Curtis's] hands were visibly wet."

Detective Kirby further testified that a black 2014 Honda Accord was "parked directly outside" the house, which was identified as belonging to Curtis. Detective Kirby testified that Curtis consented to a search of the vehicle and that inside the "2014 Honda Accord," police located "one clear plastic bag containing empty clear glass-top vials, which

is packaging material, specifically for cocaine." Officers discovered the keys to the Honda on a table in the second-floor front bedroom, where cocaine and packaging materials, including two scales, a sifter, and empty yellow-top, silver-top, and clear-top vials, were also found.

The State then rested, and the jury, ultimately, convicted Curtis of possession of cocaine with intent to distribute.

When reviewing the sufficiency of evidence to support a criminal conviction, "we ask '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.'" *Stanley v. State*, 248 Md. App. 539, 564 (2020) (quoting *McClurkin v. State*, 222 Md. App. 461, 486 (2015)). "Because 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). Further, "the finder of fact has the 'ability to choose among differing inferences that might possibly be made from a factual situation….' That is the fact-finder's role, not that of an appellate court." *Smith*, 415 Md. at 183 (quoting *State v. Smith*, 374 Md. 527, 534 (2003)). *See Neal v. State*, 191 Md. App. 297, 318 (2010) ("An inference 'need only be reasonable and possible; it need not be necessary or inescapable.'" (quoting *Smith*, 374 Md. at 539)). "If the evidence 'either showed directly, or circumstantially, or supported a rational inference of facts which could fairly convince a trier of fact of the defendant's guilt

of the offenses beyond a reasonable doubt[,]' then we will affirm the conviction." *Bible v. State*, 411 Md. 138, 156 (2009) (quoting *State v. Stanley*, 351 Md. 733, 750 (1998)).

With respect to the conviction under review, "possess," as an element of the crime of possession with intent to distribute, means "to exercise actual or constructive dominion or control over a thing by one or more persons." Section 5-101(v) of the Criminal Law Article. "[T]he evidence must show directly or support a rational inference that the accused…exercised some restraining or directing influence over" the contraband. *State v. Gutierrez*, 446 Md. 221, 233 (2016) (quoting *Moye v. State*, 369 Md. 2, 13 (2002)). "Possession may be established by actual or constructive control and 'the mere fact that contraband is not found on the defendant's person does not prevent the trier of fact from drawing the inference that the defendant was in possession of that contraband.'" *Id*. at 234 (quoting *Smith*, 415 Md. at 187).

Our Supreme Court has identified four factors to consider relative to whether there is sufficient evidence of possession:

> (1) the defendant's proximity to the drugs, (2) whether the drugs were in plain view of and/or accessible to the defendant, (3) whether there was indicia of mutual use and enjoyment of drugs, and (4) whether the defendant has an ownership or possessory interest in the location where the police discovered the drugs.

Gutierrez, 446 Md. at 234 (quoting *Smith*, 415 Md. at 198). No one factor is conclusive and, ultimately, "possession is determined by examining the facts and circumstances of each case." *Smith*, 415 Md. at 198.

In the present case, the evidence was sufficient to find that Curtis constructively possessed cocaine.

Curtis was in close proximity to and had access to the seventy-five vials of cocaine apparent in the second-floor bathroom, as he was found coming out of the second-floor bathroom area, and he admitted to having been in the bathroom when questioned. Curtis having wet hands is significant, because the plastic bags containing both groups of vials were wet also, although the bucket containing the vials was not, supporting the opinion of Detective Carpenter that Curtis had been handling the plastic containers.

The car keys to Curtis's Honda, as well as mail with his name on it, were found in the second-floor front bedroom, along with seven blue ziplocs and two pink ziplocs of cocaine, two scales and a sifter, and clear-top, yellow-top and silver-top vials used for drug packaging. The existence of Curtis's mail and car keys in the second-floor front bedroom where cocaine and packaging materials were recovered supports an inference that Curtis had possession and control of the contraband found in that room. *See Kamara v. State*, 205 Md. App. 607, 633 (2012) ("several items of mail in appellant's name" found in a room where the drugs were found supported a reasonable inference that appellant possessed the drugs found in that room).

Moreover, the empty clear-top vials recovered from Curtis's car matched vials discovered inside the bedroom, which supports the inference that he exercised dominion and control over the drugs. *See Spell v. State*, 239 Md. App. 495, 513 (2018) ("the yellow-top vials of cocaine [in the utility room] [that] matched the yellow-topped vials of cocaine found on the appellant's person…permitted a rational trier of fact to infer that appellant was participating in the use and enjoyment of the drugs in the utility room and that he exercised dominion and control over them.").

Accordingly, Curtis constructively possessed the cocaine recovered from the premises.[4]

Curtis, however, relies on *Taylor v. State*, 346 Md. 452 (1997) and *Moye v. State*, 369 Md. 2 (2002), to support his argument that the evidence was insufficient to prove constructive possession.

In *Taylor*, our Supreme Court reversed Taylor's conviction for possession of marijuana, because the evidence established only that "Taylor was present in a room where marijuana had been smoked recently, that he was aware that it had been smoked, and that Taylor was in proximity to contraband that was concealed in a container belonging to another." 346 Md. at 459. The Court concluded that, "the contraband was secreted in a hidden place not otherwise shown to be within [Taylor's] control." *Id*. Accordingly, the Court held that the evidence "cannot permit a rational trier of fact to infer that Taylor exercised a restraining or directing influence over marijuana that was concealed in personal carrying bags of another occupant of the room." *Id*. at 463.

In the present case, unlike *Taylor*, the drugs in the second-floor bathroom were not "secreted in a hidden place not otherwise shown to be within [Taylor's] control," but were apparent and within Curtis's dominion and control in the bathroom in which he admitted to being. In addition, mail in Curtis's name and car keys to his Honda were discovered in

[4] Our holding is not dependent on any inference that Curtis was attempting to destroy the cocaine in the second-floor bathroom, although evidence of destruction certainly supports sufficiency.

the second-floor front bedroom where cocaine and paraphernalia also were found, indicating a possessory interest.

In *Moye*, our Supreme Court reversed Moye's drug possession convictions, because there was no evidence to establish Moye's proximity, knowledge or access to the drugs for which he had been indicted for possession, or that he was sharing in the mutual use and enjoyment of the drugs. 369 Md. at 18. Moreover, "Moye did not have any ownership or possessory right in the premises where the drugs and paraphernalia were found." *Id*. at 17-18. Accordingly, the Court was "left with nothing but speculation as to Moye's knowledge or exercise of dominion or control over the drugs and paraphernalia found." *Id*. at 17.

Unlike *Moye*, in the instant case, sufficient evidence was adduced that Curtis was in close proximity to, had knowledge of, as well as had access to the drugs recovered from the second-floor bathroom and bedroom, as well as the paraphernalia and packaging materials, some of which matched those found in Curtis's Honda. As already discussed, Curtis's car keys and mail with his name in the bedroom also reflects his possessory influence.

Curtis, nonetheless, argues that even if his possession of cocaine were established, there was insufficient proof that he possessed the drugs with an intent to distribute.

Section 5-602 of the Criminal Law Article states that a person may not "possess a controlled dangerous substance in sufficient quantity reasonably to indicate under all circumstances an intent to distribute or dispense a controlled dangerous substance." We have held that, "[i]n Maryland, no specific quantity of drugs has been delineated that distinguishes between a quantity from which one can infer and a quantity from which one

cannot make such an inference." *Purnell v. State*, 171 Md. App. 582, 612 (2006). Moreover, "[i]ntent to distribute controlled dangerous substances is seldom proved directly but is more often found by drawing inferences from facts proved which reasonably indicate under all circumstances the existence of the required intent." *Id.* at 612 (quoting *Salzman v. State*, 49 Md. App. 25, 55 (1981)) (internal quotations omitted).

The evidence was sufficient to establish that Curtis possessed cocaine with an intent to distribute. The evidence adduced at trial reflected that cocaine was housed in ten clear-top vials and sixty-five orange-top vials retrieved from the bathroom, as well as in seven blue ziploc bags and two pink ziploc bags in the second-floor front bedroom, which, in Detective Carpenter's expert opinion, was "indicative of drug distribution." Packaging materials recovered from the property clearly reflect a distribution intent, because not only were two digital scales, a sifter, and clear-top, yellow-top, and silver-top vials found in the second-floor front bedroom, but matching clear-top vials also were retrieved from Curtis's Honda.

Curtis argues, however, that Detective Carpenter "was unable to repudiate Appellant's suggestion that the cocaine was for personal consumption rather than sale," because, while he was accepted as an expert, "his only experience working with 'people addicted to drugs' consisted of arresting them," and that "his determination of 'whether it's for distribution or not' is based on his 'interviews with arrestees.'" We disagree, because Detective Carpenter had been qualified by the court as an expert "in the sale, identification, use and distribution of controlled dangerous substances," based upon his education, training, and experience.

"[T]he determination of whether a witness is qualified as an expert witness is generally within the discretion of the trial court, and will not be overturned unless the discretion has been manifestly abused to the prejudice of the complaining party." *In re Yve S.*, 373 Md. 551, 612-13 (2003) (quoting *Beahm v. Shortall*, 279 Md. 321, 338 (1977)). *See Wantz v. Afzal*, 197 Md. App. 675, 682 (2011) ("It is well-settled that the determination by the trial court of the experiential qualifications of a witness will only be disturbed on appeal if there has been a clear showing of abuse of the trial court's discretion.") (citations omitted).

The qualifications of an expert are governed by Maryland Rule 5-702, which provides:

> Expert testimony may be admitted, in the form of an opinion or otherwise, if the court determines that the testimony will assist the trier of fact to understand the evidence or to determine a fact in issue. In making that determination, the court shall determine (1) whether the witness is qualified as an expert by knowledge, skill, experience, training, or education, (2) the appropriateness of the expert testimony on the particular subject, and (3) whether a sufficient factual basis exists to support the expert testimony.

See also Rochkind v. Stevenson, 471 Md. 1 (2020); *Donati v. State*, 215 Md. App. 686, 742 (2014) ("To qualify as an expert, one need only possess such skill, knowledge, or experience in that field or calling as to make it appear that [the] opinion or inference will probably aid the trier [of fact] in his search for the truth." (quoting *Morton v. State*, 200 Md. App. 529, 545 (2011))). Our Supreme Court has stated that, "an expert may be qualified to testify if he 'is reasonably familiar with the subject under investigation'" and such "familiarity can come from 'professional training, observation, actual experience, or

any combination of these factors.'" *Levitas v. Christian*, 454 Md. 233, 245 (2017) (quoting *Radman v. Harold*, 279 Md. 167, 169 (1977)).

Detective Carpenter was qualified as an expert "in the sale, identification, use and distribution of controlled dangerous substances," based upon his sixteen years at the Baltimore City Police Department, his specialized training in "High Intensity Drug Trafficking Area," as well as his involvement in 4,000 drug crime investigations, 700 arrests of people suspected of illegal drug activity and conversations with them, 400 executions of search warrants pertaining to controlled dangerous substances, sixty of which he authored, and his participation as a qualified expert in the "sale, identification, use and distribution of controlled dangerous substances" in approximately fifty cases. Accordingly, Judge Handy did not abuse her discretion in qualifying Detective Carpenter as an expert, and we will not disturb Detective Carpenter's opinion.

Jury Instruction

Curtis also argues that the trial judge erred in propounding a destruction of evidence instruction, because the "instruction was not generated by the evidence." The State, conversely, disagrees, and posits that "there was, in fact, some evidence adduced at trial that supported the instruction."

At trial, the State requested that the court give the pattern instruction on concealment

or destruction of evidence,[5] and counsel for Curtis objected, arguing that there was "no actual evidence" to support concealment or destruction:

> The Court: All right. Let's look at the instructions. Now, [counsel for Curtis], the first thing is she objected to the concealment of evidence on page 8.
>
> [Counsel for Curtis]: Yeah.
>
> The Court: Did you – and the reason she says she objects – and you can state this again—the police have a theory, but no actual evidence. The drugs were in the plunger, not the toilet. Concealing them would have been putting them in the tank or bowl. It's just a –it's just as plausible that he was recovering them. Do you want to be heard, State?

The State responded, explaining that "there was evidence that was presented by several of the detectives that, in their belief, the defendant was attempting to flush down" the drugs found in the second-floor bathroom:

> [The State]: Your Honor, similar to the argument that I was making on the MJOA motions, there was evidence that was presented by several of the detectives that, in their belief, the defendant was attempting to flush down the 65-orange top vials, as well as the 10 – 10 vials that were located on top of and directly underneath the plunger.
>
> The detectives testified that they saw the defendant's hands when they first entered the house, and that they were wet; that the suspected drugs at that

[5] Maryland Criminal Pattern Jury Instruction 3:26, "Concealment or Destruction of Evidence as Consciousness of Guilt," provides:

> You have heard that the defendant _____ evidence in this case. Concealment or destruction of evidence is not enough by itself to establish guilt, but may be considered as evidence of guilt. Concealment or destruction of evidence may be motivated by a variety of factors, some of which are fully consistent with innocence.
>
> You must first decide whether the defendant _____ evidence in this case. If you find that the defendant _____ evidence in this case, then you must decide whether that conduct shows a consciousness of guilt.

The pattern jury instruction further provides that the court may insert into the blanks the alleged conduct, including "attempted to conceal, concealed, attempted to destroy, destroyed."

> time were wet; and that the bucket that the plunger was in, itself, was dry. Given the evidence that the detectives said on the stand, a reasonable juror could conclude that the defendant was indeed attempting to conceal or destroy those drugs by flushing them down the toilet.

Judge Handy agreed, finding that "a reasonable inference could be drawn from" the evidence, sufficient to support giving the instruction:

> Okay. I agree with the State. A reasonable inference could be drawn from the fact that there's a plunger; there's drugs that are wet in the bathroom; the defendant comes out of –out of the bathroom, if the testimony is believed, with wet hands. So I am going to give the instruction.

The judge, thereafter, gave the following instruction to the jury:

> You have heard that the defendant attempted to destroy evidence in this case. Destruction of evidence is not enough by itself to establish guilt, but may be considered as evidence of guilt. Destruction of evidence may be motivated by a variety of facts, some of which are fully consistent with innocence.
>
> You must first decide whether the defendant attempted to destroy evidence in this case. If you find that the defendant destroyed evidence in this case, then you must decide whether that conduct shows a consciousness of guilt.

"The main purpose of jury instructions 'is to aid the jury in clearly understanding the case, to provide guidance for the jury's deliberations, and to help the jury arrive at a correct verdict.'" *Dickey v. State*, 404 Md. 187, 197 (2008) (quoting *General v. State*, 367 Md. 475, 485 (2002)). Maryland Rule 4-325(c) addresses the giving of instructions to the jury and provides that, "[t]he court may, and at the request of any party shall, instruct the jury as to the applicable law[.]"

"A requested jury instruction is applicable if the evidence is sufficient to permit a jury to find its factual predicate." *Page v. State*, 222 Md. App. 648, 668 (2015) (quoting *Bazzle v. State*, 426 Md. 541, 550 (2012)). The minimum threshold of evidence required to generate a jury instruction is low; the requesting party "needs only to produce 'some

evidence' that supports the requested instruction[.]" *Bazzle*, 426 Md. at 551. Explaining this low standard for giving an instruction, our Supreme Court has stated:

> *Some evidence* is not strictured by the test of a specific standard. It calls for no more than what it says—"some," as that word is understood in common, everyday usage. It need not rise to the level of "beyond reasonable doubt" or "clear and convincing" or "preponderance."

Dykes v. State, 319 Md. 206, 216-17 (1990) (emphasis in original).

"We review a trial judge's decision whether to give a jury instruction under the abuse of discretion standard." *Thompson v. State*, 393 Md. 291, 311 (2006). In reviewing whether there was "some evidence" to generate the instruction, "we must determine whether the requesting party 'produced that minimum threshold of evidence necessary to establish a *prima facie* case that would allow a jury to rationally conclude that the evidence supports the application of the legal theory desired.'" *Page*, 222 Md. App. at 668 (quoting *Bazzle*, 426 Md. at 550). Upon review, "we view the facts in the light most favorable to the requesting party, here being the State." *Id*. at 668-69 (citing *Hoerauf v. State*, 178 Md. App. 292, 326 (2008)).

"Post-crime behavior, including destruction or concealment of evidence, is admissible as evidence of consciousness of guilt" and "may be demonstrated by a wide spectrum of behaviors." *Rainey v. State*, 480 Md. 230, 256, 259 (2022). A destruction of evidence instruction is appropriately given when four inferences may reasonably be drawn from the evidence: (1) the defendant's behavior suggests destruction of evidence; (2) the destruction of evidence suggests consciousness of guilt; (3) the consciousness of guilt suggests consciousness of guilt of the crime charged; and (4) the consciousness of guilt of

the crime charged suggests actual guilt of the crime charged. *See Thompson*, 393 Md. at 312; *Rainey*, 480 Md. at 257-60.

Curtis asserts that the instruction regarding destruction of evidence should not have been given, because "the detectives on the scene assumed that [Curtis] had attempted to flush drugs down the toilet, but there was no evidence to back up that assumption."

Curtis admitted to being in the second-floor bathroom and left that room with wet hands. The plastic bags containing the cocaine vials recovered from the bathroom also were wet when discovered, although the bucket in which they were held had no water in it. Detective Carpenter testified that, in his opinion, Curtis's wet hands were indicative that Curtis was "possibly flushing drugs," and later concluded that Curtis had been unsuccessful because the bags were "too big." The evidence upon which Detective Carpenter relied and his opinion sufficed to support the giving of the instruction.

Accordingly, Judge Handy did not abuse her discretion in giving the instruction on destruction of evidence to the jury.

CONCLUSION

In conclusion, we hold that the evidence was sufficient to sustain Curtis's conviction for possession of cocaine with intent to distribute, and the judge did not abuse her discretion in giving a requested jury instruction on the destruction of evidence.

JUDGMENT OF THE CIRCUIT COURT FOR BALTIMORE CITY AFFIRMED. COSTS TO BE PAID BY APPELLANT.