

# Md. appeals court: Spousal privilege applies to 'sham' marriages

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Marrying the prosecution's star witness to prevent him or her from testifying against you does not constitute witness tampering or obstruction of justice, Maryland's second-highest court has ruled in allowing an accused murderer to invoke spousal privilege at his upcoming trial.

In its reported decision Tuesday, the Court of Special Appeals overturned Darrayl Wilson's conviction for tampering and obstruction based on his "corrupt intent" in marrying Kearra Bannister, whose testimony prosecutors seek to compel in order to link Wilson to the slaying of 29-year-old Crystal Anderson in late 2011 or early 2012.

The appellate court, in its 3-0 decision, cited the "prevailing rule" among U.S. states that judges do not question why people got married in permitting them to invoke the privilege against having one spouse testify against the other.

The Court of Special Appeals rejected the state's argument that Wilson's over-the-jailhouse-phone wedding created a "sham" marriage, one that should not prevent Bannister from testifying against him.

"We shall follow the out-of-state courts that have declined to create a judicial exception to the spousal privilege and hold that a spouse may invoke the privilege even in the context of a sham marriage," Judge Donald E. Beachley wrote for the appellate court.

"Those states simply require a valid marriage in order to invoke the privilege – it is irrelevant for purposes of the privilege whether the marriage serves a fraudulent purpose," Beachley added. "In short, a person cannot be guilty of 'corrupt means' witness tampering or obstruction of justice where the allegedly criminal act – marrying with the express purpose of invoking the spousal privilege – is recognized as a lawful and permissible means for the new spouse to avoid being compelled to testify."

The Maryland Attorney General's Office declined to comment Thursday on the decision or on any plans to seek review by the Court of Appeals.

Wilson's appellate attorney, Joseph B. Tetrault of Baltimore, also declined to comment.

According to court filings, Bannister informed police in 2014 that Wilson told her about three years earlier that he and Raymond Posey III shot and killed Anderson. Bannister also told officers that she had seen the men selling Anderson's possessions after Anderson's

August 2011 disappearance. Anderson's body was found near Purse State Park in Nanjemoy in January 2012.

Wilson and Posey were subsequently indicted for murder.

While being held in the Charles County Detention Center, Wilson called several people between December 2016 and February 2017 to discuss his plan to marry Bannister to prevent her from testifying against him, the court filings state.

On Feb. 9, 2017, Wilson – whose criminal trial is scheduled for October — married Bannister via a conference call among the jailed groom, the bride — who was on a break from work — and a pastor in New Jersey.

The state, after hearing of the nuptials, charged Wilson with obstruction of justice and witness tampering by corrupt means ahead of his upcoming murder case. A Charles County Circuit Court jury found Wilson guilty and he was sentenced to 20 years in prison, with all but three and a half years suspended.

He then appealed successfully to the Court of Special Appeals.

Beachley was joined in the opinion by Judges Stuart R. Berger and Dan Friedman.

The Court of Special Appeals rendered its decision in *Darrayl John Wilson v. State of Maryland*, No. 436, September Term 2018.

Posey essentially pleaded no contest to robbery and conspiracy to commit robbery and was sentenced to 20 years in prison, according to online court records at Maryland Judiciary Case Search.