UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 0174

September Term, 2014

CHENA WOODWARD

v.

STATE OF MARYLAND

Wright,
Hotten,
Salmon, James P.
(Retired, Specially Assigned),

JJ.

Opinion by Salmon, J.

Filed: May 6, 2015

A jury in the Circuit Court for Baltimore City convicted Chena Woodward of second degree assault. Ms. Woodward received a suspended sentence of eighteen months and was placed on one year of supervised probation. She presents the following question for our review:

> Did the circuit court commit reversible error by limiting [appellant's] cross-examination of a key witness, whom [appellant] sought to question about his motive to testify and his vested interest in the outcome of the trial?

For the reasons set forth below, we shall affirm Ms. Woodward's conviction.

FACTS AND LEGAL PROCEEDINGS

Appellant and her husband, Nehemiah Woodward ("Mr. Woodward") are the parents of two children. In January 2014, appellant and Mr. Woodward were separated and in the process of getting a divorce. On January 6, 2014, appellant and her child from another relationship, along with the parties two children all were living with Reginald Hope ("Mr. Hope"). That morning, Mr. Woodward came to Mr. Hope's house to take his eight-year-old son, Myshar, to school.

Mr. Woodward testified that he arrived at Mr. Hope's home at around 7:15 a.m., but appellant did not have Myshar ready. About fifteen minutes later, Mr. Woodward saw Mr. Hope leave his residence to take the two youngest children in the household to day care while he [Mr. Woodward] waited outside. When appellant finally brought Myshar outside,

she confronted Mr. Woodward about missed child support payments. According to Mr. Woodward, the following then occurred:

> [appellant] was holding Myshar back. And then, as [appellant] was holding Myshar back. She was talking – we was talking and going back and forth, talking about child support. You know, she know the situation (indiscernible) whatever and I was telling her, hey, I was trying to do this. I was trying to do that. And she said, when am I going to get my money. (Indiscernible.) And as she was saying, when she's going to get her money. You know, she was holding Myshar back. And as she was holding Myshar back, she came down off the step, and hit me in my right eye.

According to Mr. Woodward, appellant struck him with her closed fist.

Mr. Woodward was "stunned" but did not retaliate because "Myshar told me to stop." Instead, he "walked on down the sidewalk and left." Although he did not require medical treatment, he called 911 and then took his son to school in Baltimore County, traveling by subway and bus. Mr. Woodward then went to his home and reported the assault to the police. He later went to work, where he put ice on his eye.

The defense called Mr. Hope, who disputed Mr. Woodward's account of the altercation. Mr. Hope testified that as he was getting the two younger children ready that morning, appellant took Myshar downstairs, where Mr. Woodward was waiting. Mr. Hope then heard "a lot of noise downstairs. They were arguing and fussing." He ran downstairs and saw Mr. Woodward "on top of" appellant. Mr. Hope "grabbed him off," and "pushed

him out the door." Mr. Woodward then came "running back up the steps," but appellant stopped him by closing the front door. Afterwards, when appellant and Mr. Hope left the house with the other two children, they discovered that Mr. Woodward had left Myshar standing outside. Appellant thereafter took Myshar to school, according to Mr. Hope.

The defense also called Officer Amy Miller, who went to Mr. Woodward's residence at approximately 10:30 a.m. that morning to investigate his assault complaint. Mr. Woodward had no visible injuries and declined medical treatment. Officer Miller described him as "a little shaken up" and "in a rush because he had to get to work and just wanted to tell me everything that happened real quickly." Although "he didn't want anything really to be done[,]" she told him, "there's more paperwork involved. This is a serious issue." When the officer asked Mr. Woodward to write down what happened, he refused, stating that he was late for work. Officer Miller also went to Mr. Hope's house to investigate the assault allegation, but appellant was not there.

DISCUSSION

Appellant contends that the trial court improperly restricted her counsel's cross-examination of Mr. Woodward about his motives to prosecute the assault charge against her. Appellant's challenge stems from the following cross-examination of Mr. Woodward:

[DEFENSE COUNSEL]: Okay. And so, in fact, you – when you left the house, you were not at all concerned that, in fact, you could be liable for assault charges?

[MR. WOODWARD]: No, because I never assaulted anybody.

[DEFENSE COUNSEL]: Okay. Well, weren't you concerned about the fact that charges might be taken out against you because you are on probation?

THE COURT: Wait a minute.

[PROSECUTOR]: Objection, Your Honor.

THE COURT: I instruct the jury not to – whether he was on probation or not at the time is not relevant, or in the Court's mind admissible in this assault case. So take it out of your mind. Okay. Next question.

BY [DEFENSE COUNSEL]: Now, it's your testimony here today that you were arguing about child support, correct?

[MR. WOODWARD]: Correct.

[DEFENSE COUNSEL]: Okay. And, in fact, there is a case where you are the Defendant in a child support matter in Harford County, correct?

[MR. WOODWARD]: Not to my knowledge. I haven't received those papers.

[DEFENSE COUNSEL]: Okay. So you're not aware that there is a child support action in Baltimore County that's been brought against you involving Ms. Woodward –

[MR. WOODWARD]: I haven't received those papers, ma'am.

> [DEFENSE COUNSEL]: – and your children. And, in fact, you told the police when they responded that – strike that. You never received a summons on November 13th of 2012?
>
> [MR. WOODWARD]: Ma'am –
>
> [PROSECUTOR]: Your Honor, I would object to –
>
> [MR. WOODWARD]: Ma'am, ma'am, ma'am –
>
> THE COURT: I object and I strike. Take that out of your mind as well.

(Emphasis added).

In appellant's view, the trial court erred in excluding both the probation and the child support lines of inquiry inasmuch as those rulings precluded her from advancing her theories that Mr. Woodward falsely accused appellant of assault because (1) he was at "risk of having his probation revoked" based on his own assault of appellant, which was witnessed by Mr. Hope; and (2) he wanted to obtain a conviction as a "tactical advantage in the child support proceedings."

The State argues that appellant "failed to preserve these claims because she did not make a proper proffer of the relevance of these questions." Additionally, according to the State, even with the limitation upon cross-examination, appellant was not denied her Sixth Amendment rights because "the jury was aware that someone alleged that the victim

assaulted [a]ppellant, that the parties were going through a divorce, and that they had a dispute over child support."

Under Maryland Rule 5-616(a)(4), "[t]he credibility of a witness may be attacked through questions asked of the witness, including questions that are directed at . . . [p]roving that the witness is biased, prejudiced, interested in the outcome of the proceeding, or has a motive to testify falsely[.]" In *Pantazes v. State*, 376 Md. 661, 681-82 (2003), the Court of Appeals summarized the standard under which we review a trial court's restriction of impeachment cross-examination:

> The scope of cross-examination lies within the sound discretion of the trial court. This discretion is exercised by balancing "the probative value of an inquiry against the unfair prejudice that might inure to the witness. Otherwise, the inquiry can reduce itself to a discussion of collateral matters which will obscure the issue and lead to the fact finder's confusion." An undue restriction of the fundamental right of cross-examination may violate a defendant's right to confrontation. Whether there has been an abuse of discretion depends on the particular circumstances of each individual case. On appellate review, we determine whether the trial judge imposed limitations upon cross-examination that inhibited the ability of the defendant to receive a fair trial.

(Citations omitted.)

In the cross-examination here at issue, defense counsel, without any notice to the court or the State of her intent to do so, asked Mr. Woodward if an assault charge stemming from his altercation with appellant could affect his probation. The court precluded defense

counsel from referring to Mr. Woodward's probation, which was a reasonable ruling because, the excluded matter had no apparent relevance yet it had great potential for use as impermissible "bad character" impeachment based on the witness's unrelated and unspecified crimes. *See generally* Md. Rule 5-404(b) ("Evidence of other crimes, wrongs, or acts . . . is not admissible to prove the character of a person in order to show action in conformity therewith. Such evidence, however, may be admissible for other purposes, such as proof of motive . . . ."); *State v. Westpoint*, 404 Md. 455, 488 (2008) (other crimes evidence "may be admissible when it has 'special relevance,' i.e., when the evidence is 'substantially relevant to some contested issue and is not offered simply to prove criminal character'") (citation omitted); *Smallwood v. State*, 320 Md. 300, 307 (1990) (Because "[t]he right to cross-examine is not without limits," a trial court has "'wide latitude . . . to impose reasonable limits . . . based on concerns about . . . prejudice [and] confusion of the issues'") (citation omitted); *Behrel v. State*, 151 Md. App. 64, 125 (2003) (trial court "must carefully balance the necessity for, and probative value of, the other crimes evidence against any undue prejudice likely to result from its admission").

The trial court then allowed defense counsel to ask Mr. Woodward whether he was aware of pending child support proceedings involving appellant, and to elicit that he had not received any such "papers." The court precluded only defense counsel's subsequent inquiry as to whether he had received a summons. We do not read this ruling as precluding

appellant from advancing her theory that appellant concocted the assault charge as a "tactical advantage" in their child support dispute, given the timing of the court's interjection. Nor can we say the court abused its discretion in excluding evidence of such a summons, given that Mr. Woodward admitted to being involved in a child support dispute with appellant, that defense counsel effectively advised the jury through his previous questions that there was a pending child support proceeding, that Mr. Woodward denied having received any child support "papers," and that further inquiry about receipt of a "summons" could potentially confuse or distract the jury from this criminal assault case.[1] *See generally Martinez v. State*, 416 Md. 418, 428 (2010) (constitutional right of confrontation is satisfied "when defense counsel has been 'permitted to expose to the jury the facts from which jurors, as the sole triers of fact and credibility, could appropriately draw inferences relating to the reliability of the witness'") (citation omitted).

[1] The court later expressed concern about confusion of the issues, during defense counsel's cross-examination of Reginald Hope. Mr. Hope testified that he prevented Mr. Woodward from re-entering the house because he did not want him "to come inside of our household, making a whole bunch of commotion, and sitting over there fussing and fighting with these kids." The trial court interjected:

> THE COURT: Wait a minute. Disregard that. Disregard – this is an assault case. Whether an assault took place beyond a reasonable doubt. It's not a child support case. It's not a case about good manners or talking or not talking. It's a case about assault. Did it happen or not beyond a reasonable doubt.

In neither instance did defense counsel explain his reasons for the excluded inquiries. Nor did counsel request a bench conference or ask the court to explain its rulings. In sum, defense counsel did not proffer clear and convincing evidence of the relevant facts – that Mr. Woodward was on probation or that he was served with a child support summons – much less present the trial judge with an argument demonstrating how those facts supported appellant's theory that Mr. Woodward had a reason to falsely accuse appellant of assault. Instead, defense counsel simply continued with cross-examination of Mr. Woodward.

We are not persuaded by appellant's *post hoc* contention that defense counsel's "questions were clearly generated to address motive or bias," so that "counsel was not required to make a specific proffer[.]" "A trial judge's refusal to allow a line of questioning on cross-examination amounts to exclusion of evidence; preservation for appeal of an objection to the exclusion generally requires a formal proffer of the contents and relevancy of the excluded evidence." *Grandison v. State*, 341 Md. 175, 207 (1995). Thus, once an objection to evidence has been sustained, the proponent of that evidence must proffer what the evidence would have been and why it should be admitted. *In re Adoption/Guardianship Nos. CAA92-10852 and CAA92-10853*, 103 Md. App. 1, 33 (1994). A trial judge is not required to divine counsel's unarticulated defenses, to search for alternative theories of admissibility, or to second guess trial strategy. When, as in this case, "evidence is inadmissible on its face . . . , the proponent must . . . explain to the court how the evidence

is admissible and why it should be received." *Id*. *See generally* L. McClain, 5 *Maryland Evidence*, § 103:20 ("When evidence is excluded that on its face is inadmissible but that properly could be admitted under some theory, there is no error, unless the proponent of the evidence has explained to the trial judge how the evidence is admissible and offered it for that purpose."). *See also Mack v. State*, 300 Md. 583, 603 (1984) (challenge to ruling excluding evidence is not preserved unless there is "a formal proffer of what the contents and relevance of the excluded [evidence] would have been").

Advancing theories of admissibility for the first time in an appellate brief, long after the trial court might have been persuaded to change its rulings, is simply too late. In the absence of timely proffers, the trial court did not err or abuse its discretion in excluding evidence that Mr. Woodward was on probation or had received a child support summons.

JUDGMENT AFFIRMED. COSTS TO BE PAID BY APPELLANT.