Circuit Court for Washington County
Case No. C-21-CR-21-000142

UNREPORTED

IN THE APPELLATE COURT

OF MARYLAND*

No. 374

September Term, 2022

ADRIAN WASHINGTON

v.

STATE OF MARYLAND

Shaw,
Ripken,
Meredith, Timothy E.
(Senior Judge, Specially Assigned),

JJ.

Opinion by Shaw, J.

Filed: February 14, 2023

*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.

A jury, in the Circuit Court for Washington County, convicted Adrian Washington, appellant, of second-degree assault. The court sentenced Washington to a term of five years' imprisonment. In this appeal, Washington presents two questions for our review:

1. Did the trial court err in refusing to instruct the jury on self-defense?

2. Did the trial court err in precluding the defense from cross-examining the State's witnesses regarding a Prison Rape Elimination Act ("PREA") complaint initiated by Washington prior to the assault?

Finding no error, we affirm.

BACKGROUND

At all times relevant, Washington was an inmate at the Maryland Correctional Institution in Hagerstown. On September 5, 2020, Washington was involved in an altercation with Sergeant David Lockard, a corrections officer at the prison. At trial, Sergeant Lockard testified that, on the day in question, he was "running medication lines in the inner courtyard" of the prison when he observed Washington "playing around the entrance" to his cell block, which was located at the top of a short flight of stairs. According to Sergeant Lockard, Washington was "supposed to come up and get medication." Sergeant Lockard testified he approached Washington to discern whether "he had any reason to be out of his cell." Sergeant Lockard asked a nearby corrections officer, Chad Basore, if Washington had a reason to be out of his cell, and Officer Basore responded in the negative. Sergeant Lockard ordered Washington to "lock-in," which meant Washington should go back to his cell. After Washington refused, Sergeant Lockard "ordered him again, and he refused to lock-in." Sergeant Lockard "called for assistance,"

and when the assistance arrived, Sergeant Lockard "went to handcuff [Washington]." According to Sergeant Lockard, as he was going to handcuff Washington, Washington "shoved [him] off the steps." Sergeant Lockard fell to the ground, suffering a dislocated finger, a cut above his eye, and injuries to both knees.

Sergeant Lockard testified no inmate is authorized to be standing where Washington was standing unless the inmate was receiving medication or had another valid reason to be out of his cell. Sergeant Lockard testified he ordered Washington to "lock-in" because "he had no reason to be out." Sergeant Lockard stated it was common for an inmate to be ordered to lock-in and all inmates are advised regarding what to do when they are given such an order.

During Sergeant Lockard's testimony, the trial court accepted into evidence a video of the incident captured by surveillance cameras inside the prison. In the video, Sergeant Lockard can be seen approaching Washington, who was standing at the bottom of a short flight of stairs. Washington appears to have an animated conversation with Sergeant Lockard and Officer Basore, who was standing nearby. Sergeant Lockard reaches for his belt and removes his handcuffs, as Washington pulls away and backs up the stairs. Sergeant Lockard follows Washington up the stairs, handcuffs in hand, and he and Officer Basore stand next to Washington. Sergeant Lockard appears to attempt to place the handcuffs on Washington's wrist, and Washington again pulls away. Sergeant Lockard accesses his radio, and the three men stand at the top of the stairs. After approximately one minute, another corrections officer arrives on the scene. Sergeant Lockard attempts to

handcuff Washington again, and Washington pulls away. Sergeant Lockard moves in closer, seemingly to handcuff Washington, and Washington shoves Sergeant Lockard down the stairs.

Officer Chad Basore testified, when Sergeant Lockard ordered Washington to lock-in, he intervened in an effort to get Washington back to his cell. According to Officer Basore, Sergeant Lockard stated Washington was "goofing off in the Medline," and Washington responded Sergeant Lockard was lying. Officer Basore testified, at some point during the incident, Washington "pushed Sergeant Lockard down the steps."

Lieutenant James Taylor, a supervising officer working at the prison on the day of the incident, testified he was asked to report to the scene because another officer was having problems getting an inmate back to his cell. Lieutenant Taylor testified, when he arrived on the scene, Sergeant Lockard and Officer Basore told him Washington "was refusing to lock-in." Lieutenant Taylor informed Washington he could "either lock-in or we're going on H-1 lock up." Lieutenant Taylor explained, when an inmate disobeys a direct order, including an order to lock-in, the inmate is handcuffed and taken "to H-1 lockup cell."

Washington testified, on the day of the incident, he had gone to the area of the Medline to get some hot water when Sergeant Lockard approached him and accused him of "playing in the Medline." Washington testified he tried to explain the situation to Officer Basore and he asked for a supervisor to come on the scene so the supervisor could document the incident. Sergeant Lockard "kept get[ting] closer and closer" to Washington, who "continued to back up further and further." Washington stated he told Officer Basore

he did not "feel comfortable locking in without getting [the] issue documented." Washington testified, at one point, Sergeant Lockard stated: "Cuff up or I'll fuck you up." Washington testified Sergeant Lockard continued moving towards him, and he continued to back up, until he was eventually "pinned" against a wall. Washington testified he felt like he "was going to get beat up" and was "about to get hurt." Washington added, corrections officers were known to "close in . . . like a planned attack." Washington stated Sergeant Lockard eventually got his handcuffs out and proceeded to "hit" Washington with the cuffs:

> . . . I don't remember when he pulled cuffs out, but he did have his cuffs, and he hit me with the cuffs. So instead of like grabbing my wrist or grabbing my arm, he just hit me with the cuffs like it – it – They didn't lock. It wasn't an attempt like – I'm not a police officer. I can't really explain how this works, but I've seen where they can just click and the cuffs will go on. He just hit me with the cuffs.

Washington testified, after being "hit" with the handcuffs, he "figured that that was the beginning of what was to come next," so he pushed Sergeant Lockard. Washington testified he "just had to get away" from Sergeant Lockard. Washington added he "wasn't thinking about the steps" when he pushed Sergeant Lockard.

On cross-examination, Washington admitted he was familiar with a "lock in" order and what was expected of him when such an order was given. Washington also admitted, had Officer Basore been the one who told him to lock in, he would have complied. Washington stated he refused the order because it had come from Sergeant Lockard.

Self-Defense Instruction

At the close of the evidence, defense counsel asked the court to instruct the jury on self-defense. The instruction was derived from MPJI-Cr 5:07, which states, in pertinent part:

> You have heard evidence that the defendant acted in self-defense. Self-defense is a complete defense and you are required to find the defendant not guilty if all of the following four factors are present:
>
> (1) the defendant actually believed that he was in immediate danger of bodily harm;
>
> (2) the defendant's belief was reasonable;
>
> (3) the defendant was not the aggressor; and
>
> (4) the defendant used no more force than was reasonably necessary to defend himself in light of the threatened or actual harm.

Defense counsel argued a self-defense instruction was warranted because Washington's testimony had generated the issue. The State objected, and the court ultimately declined to give the instruction:

> Okay, well the Court will take note for the record that there is a significant size difference between the defendant and the correctional officers involved, both Officer Basore and Sergeant Lockard. But having the video and being able to see clearly the demeanor and actions of especially Sergeant Lockard, if the defendant truly did believe that he was in imminent danger, it was not a reasonable belief. I'm sorry, there's just not nearly enough evidence to support, at least the third prong, I'm not even talking about the others. But, the defendant admitted that . . . it was his duty to lock up when instructed to do so. He admitted that he was not going to do that at that time, that he wanted to basically stay there and try to get other officers involved to make a complaint. When that … happened then the order to cuff up was perfectly legal. It's not that an inmate has no right to self-defense, but it does have to be a reasonable one and the Court can't see how there is any fact in the record that the self-serving testimony of the defendant

> completely contradicted by a video of the event. So, I'm going to deny your request for self-defense.

PREA Complaint

At the beginning of trial, the State moved to preclude Washington from cross-examining any of the State's witnesses about a PREA complaint Washington had filed on August 24, 2020.[1] The complaint was filed approximately two weeks prior to the incident involving Sergeant Lockard and alleged another corrections officer had demanded oral sex from Washington. The State argued the complaint was irrelevant because none of the State's witnesses were subjects of the PREA investigation and the allegations contained in the complaint had no correlation to the facts in the instant case. The State further argued the complaint was prejudicial and would likely confuse or mislead the jurors.

Washington argued the PREA complaint was relevant to credibility. Washington maintained he did not intend to introduce the facts surrounding the complaint; rather, he intended to question the State's witnesses about their knowledge of the complaint. Washington asserted, given the fact the PREA complaint had been filed only a short time prior to the incident in question, a witness's knowledge of the complaint could show he was biased against Washington.

The judge ruled the PREA complaint was inadmissible. The judge found the complaint's probative value was "speculative at best," and the complaint "could confuse the jury."

[1] A PREA complaint involves allegations of sexual abuse or sexual harassment of an inmate. https://dpscs.maryland.gov/prea/index.shtml (last visited January 11, 2023).

Washington was ultimately convicted of second-degree assault. This timely appeal followed.

DISCUSSION

I.

Parties' contentions

Washington first claims the trial court erred in refusing to instruct the jury on self-defense, and he was entitled to the instruction because the issue of self-defense had been generated by his testimony. Washington contends the court, rather than accepting his testimony on its face, erroneously concluded his testimony was insufficient to generate the issue of self-defense because the testimony was "self-serving" and "completely contradicted" by the video evidence. Relying on *Dykes v. State*, 319 Md. 206 (1990), Washington asserts the court, in reaching those conclusions, invaded the province of the jury by resolving conflicts in the evidence.

The State asserts the trial court properly denied Washington's request for a self-defense instruction. The State contends neither Washington's testimony nor any other evidence established Washington was not the aggressor, that his subjective belief of imminent danger was reasonable, or that he used no more force than necessary.[2] The State further contends, even if the court erred, any error was harmless because the evidence overwhelmingly showed Washington did not act in self-defense.

[2] Washington's testimony stating he pushed Sergeant Lockard to "get away" after Sergeant Lockard hit him with the handcuffs was sufficient to satisfy the prong of the instruction.

Analysis

Maryland Rule 4-325(c) states, in relevant part, a "court may, and at the request of any party shall, instruct the jury as to the applicable law and the extent to which the instructions are binding." Under the rule, "a circuit court must give a requested instruction when (1) the requested instruction is a correct statement of law; (2) the requested instruction is applicable to the facts of the case; and (3) the content of the requested instruction was not fairly covered elsewhere in the jury instructions actually given." *Rainey v. State*, 480 Md. 230, 255 (2022) (citations and quotations omitted).

"'The threshold determination of whether the evidence is sufficient to generate the desired instruction is a question of law for the judge.'" *Bazzle v. State*, 426 Md. 541, 550 (2012) (quoting *Dishman v. State*, 352 Md. 279, 292 (1998)). In reviewing the determination, we look at the evidence in a light most favorable to the requesting party and assess whether the requesting party "produced the 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." *Id.* (citations omitted); *see also Rainey*, 480 Md. at 255. "This threshold is low, in that the requesting party must only produce 'some evidence' to support the requested instruction." *Page v. State*, 222 Md. App. 648, 668 (2015). The "some evidence" test is not confined by a specific standard and "calls for no more than what it says – 'some,' as that word is understood in common, everyday usage." *Bazzle*, 426 Md. at 551. Moreover, the source and weight of the evidence

is immaterial; the evidence may come solely from the defendant and may even be overwhelmed by contrary evidence. *Dashiel v. State*, 214 Md. App. 684, 696 (2013).

As noted, the elements of self-defense, as set forth in the requested instruction, are: (1) the defendant actually believed he was in immediate danger of bodily harm; (2) the belief was reasonable; (3) the defendant was not the aggressor; and (4) the force used was reasonable under the circumstances. *Id.* at 695-96. For Washington to have been entitled to a self-defense instruction, he needed to produce "some evidence" as to each of those elements. Whether Washington met the standard is a question of law we review *de novo*. *Madrid v. State*, 474 Md. 273, 331 (2021).

We hold Washington failed to produce "some evidence" as to each element of self-defense. First, although there was some evidence Washington subjectively believed he was in immediate danger of bodily harm, there was no evidence his belief was reasonable.[3] It was undisputed Washington had repeatedly been given a lawful order by Sergeant Lockard to lock in and all inmates, Washington included, understood the order to mean for them to go back to their cell. It was also undisputed inmates who refuse a lock-in order are handcuffed and taken to a holding cell. Therefore, a reasonable person in Washington's position would have understood, by repeatedly refusing a lock-in order, he would almost certainly be handcuffed. A reasonable person would also have understood the corrections officers would have "closed in" to handcuff him and one or more of the officers, in trying

[3] Washington contends the issue of reasonableness was a question of fact for the jury. He is wrong. As discussed, the question of whether there was sufficient evidence to generate a self-defense instruction was a question of law for the trial court.

to handcuff him, would "hit" him with the cuffs.[4] Finally, a reasonable person would have understood one or more of the officers may be aggressive or use threatening language in response to a repeated failure to comply with a lawful order to lock in.

For many of the same reasons, there also was no evidence Washington was not the aggressor. Although Washington claimed Sergeant Lockard, not he, was the one who was acting aggressively during the incident, the fact remains Sergeant Lockard's aggressiveness was a direct response to Washington's initial aggressive behavior in refusing to lock in or be handcuffed. That is, any aggression on the part of Sergeant Lockard was provoked by Washington, who had no right or legal justification for refusing Sergeant Lockard's lawful order to lock in. *See Haile v. State*, 431 Md. 448, 471-72 (2013) (rejecting defendant's claim he acted in self-defense when he struck a police dog, where the defendant ran from the police during a lawful arrest and then refused to stop after being given a lawful order and warned the police dog would be released).

To be sure, it does appear from the record, the court, in refusing to give the self-defense instruction, may have justified its decision based on findings of fact, namely, Washington's testimony was "self-serving" and "completely contradicted" by the other evidence. In so doing, the court may have improperly resolved conflicts in the evidence

[4] Citing *Gunther v. State*, 228 Md. App. 404 (1962), Washington claims his testimony regarding the correctional officers were known to "close in . . . like a planned attack" constituted "some evidence" his belief was reasonable. We disagree and find *Gunther* inapposite. *Gunther* involved a more specific self-defense instruction which was not at issue in the instant case. *Id.* at 408-10. Moreover, *Gunther* is factually distinguishable, as it did not involve an inmate who repeatedly refused to comply with a lawful order despite being warned he would be handcuffed if he continued to refuse. *Id.*

rather than simply accepting Washington's testimony at face value and determining whether the evidence was, by itself, sufficient to generate the instruction. *See Dykes, supra*, 319 Md. at 221-24 (holding the trial court erred in refusing to instruct the jury on self-defense, where the court denied the request because it believed the evidence was weak and overwhelmed by other evidence). Nevertheless, we cannot say the court erred because, based on our independent review of the record, we are convinced there was no evidence to support the instruction. *Cf. id.* (explaining, based on the facts of the case, there was "some evidence" to support the instruction).

Assuming, *arguendo*, the trial court did err in refusing to give the self-defense instruction, any error was harmless. *See Dashiel, supra*, 214 Md App. at 699 (applying a harmless error analysis to the court's refusal to instruct the jury on self-defense). An instructional error is harmless if it is "unimportant in relation to everything else the jury considered on the issue in question, as revealed by the record." *State v. Elzey*, 472 Md. 84, 107 (2021) (citations and quotations omitted).

Here, the video evidence corroborated Sergeant Lockard's and Officer Basore's testimony and refuted, quite convincingly, Washington's version of events. The video showed both officers appeared relaxed during the entire encounter and neither officer made any threatening gestures. Washington, on the other hand, seemed agitated and hostile. At several points Sergeant Lockard can be seen calmly attempting to put handcuffs on Washington, and each time Washington can be seen resisting and trying to get away. Despite Washington's hostile behavior, neither Sergeant Lockard nor Officer Basore

appear to do anything other than stand next to Washington. After Lieutenant Taylor arrived on the scene, Sergeant Lockard can be seen brandishing his handcuffs in one hand and reaching for Washington's arm with his other hand. Washington violently shoves Sergeant Lockard down the stairs and onto the floor. Nothing in the video shows, or even suggests, Sergeant Lockard "hit" Washington with the handcuffs or otherwise did anything justifying Washington's actions.

In light of the evidence presented, we are convinced no reasonable juror could have found Washington acted in self-defense. Therefore, the trial court's refusal to instruct the jury on self-defense, if error, was harmless.

II.

Parties' contentions

Washington next claims the trial court erred in precluding him from cross-examining the State's witnesses about the PREA complaint he filed several weeks prior to the assault. Washington argues the witnesses' knowledge of the PREA complaint was relevant to their credibility and whether they had a motive to testify falsely. Washington contends the timing of the complaint and the fact the complaint was lodged against "one of the officers' 'brothers'" could have established a source of animosity the witnesses may have had towards him. Citing both the Confrontation Clause and Maryland Rule 5-616, Washington contends the court's decision "effectively shut down the defense's ability to present evidence on which to argue to the jury that the officers were not being honest."

The State contends the court did not err because the PREA complaint was minimally probative and unduly prejudicial. The State contends further, even if the court erred, any error was harmless because the credibility of the witnesses was a non-factor given the video evidence clearly supported the witnesses' testimony.

"A criminal defendant's right to cross-examine a prosecution witness is guaranteed by the Confrontation Clause of the Sixth Amendment, made applicable to the States through the Fourteenth Amendment, and Article 21 of the Maryland Declaration of Rights." *Holmes v. State*, 236 Md. App. 636, 671 (2018). Also rooted in the Confrontation Clause is a defendant's right to face his accusers, which includes "the right to attack that accuser's credibility in court by means of cross-examination[.]" *Churchfield v. State*, 137 Md. App. 668, 682-83 (2001) (citations and quotations omitted). "To comply with the Confrontation Clause, a trial court must allow a defendant a 'threshold level of inquiry' that exposes 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 witnesses." *Peterson v. State*, 444 Md. 105, 122 (2015) (citations and quotations omitted). "An undue restriction of the fundamental right of cross-examination may violate a defendant's right to confrontation." *Pantazes v. State*, 376 Md. 661, 681 (2003).

A defendant's constitutional right to confront a witness is reflected in Maryland Rule 5-616, which "permits witnesses to be impeached by proof that 'a witness is biased, prejudiced, interested in the outcome of the proceeding, or has a motive to testify falsely.'" *Montague v. State*, 244 Md. App. 24, 64 (2019) (citing Md. Rule 5-616(a)(4)). In a jury

trial, "questions permitted by Rule 5-616(a)(4) should be prohibited only if (1) there is no factual foundation for such an inquiry in the presence of the jury, or (2) the probative value of such an inquiry is substantially outweighed by the danger of undue prejudice or confusion." *Calloway v. State*, 414 Md. 616, 638 (2010) (citations omitted).

"Nevertheless, a defendant's constitutional right to cross-examine witnesses is not boundless," and "[t]he Confrontation Clause does not prevent a trial judge from imposing limits on cross-examination." *Pantazes*, 376 Md. at 680. "'[T]rial courts retain wide latitude in determining what evidence is material and relevant, and to that end, may limit, in their discretion, the extent to which a witness may be cross-examined for the purpose of showing bias.'" *Parker v. State*, 185 Md. App. 399, 426 (2009) (quoting *Merzbacher v. State*, 346 Md. 391, 413 (1997)). "Moreover, trial judges are entitled to impose reasonable limits on cross-examination based on concerns about, among other things, harassment, prejudice, confusion of the issues or interrogation that is only marginally relevant." *Id.* (citations and quotations omitted); *See also* Md. Rule 5-611(a) ("The court shall exercise reasonable control over the mode and order of interrogating witnesses and presenting evidence so as to (1) make the interrogation and presentation effective for the ascertainment of the truth, (2) avoid needless consumption of time, and (3) protect witnesses from harassment or undue embarrassment."). "Given that the trial court has its finger on the pulse of the trial while an appellate court does not, [such decisions] should be reviewed for abuse of discretion." *Manchame-Guerra v. State*, 457 Md. 300, 311 (2018) (citations omitted). Ultimately, "when an appellant alleges a violation of the Confrontation Clause,

an appellate court must consider whether the cumulative result of those decisions . . . denied the appellant the opportunity to reach the 'threshold level of inquiry' required by the Confrontation Clause." *Id.*

We hold the court did not err in precluding Washington from cross-examining the State's witnesses about the PREA complaint. First, we agree with the court's assessment, the probative value of the PREA complaint was speculative at best. The complaint had nothing to do with the facts of the instant case, and the corrections officer named in the complaint was not involved in the incident between Washington and Sergeant Lockard, nor was he named as a witness. Without a more concrete connection between the testifying officers and the circumstances surrounding the PREA complaint and/or their relationship to the officer involved, we fail to see how the testifying officers' mere awareness of the complaint would have resulted in bias.

Even if the PREA complaint was somehow probative of the testifying officers' credibility or alleged bias, we cannot say the court abused its discretion in refusing Washington's request to cross-examine the witnesses about the complaint. To constitute an abuse of discretion, "the trial court's decision must be well removed from any center mark imagined by the reviewing court and beyond the fringe of what that court deems minimally acceptable." *State v. Matthews*, 479 Md. 278, 305 (2022) (citations and quotations omitted). The court found introducing the PREA complaint would likely confuse the jury. Under the circumstances, the finding was by no means an abuse of discretion. The corrections officer named in the PREA complaint had no connection to the

instant case, aside from the fact he was a corrections officer, and none of the officers involved in the incident between Washington and Sergeant Lockard were identified as being connected to the alleged incident giving rise to the PREA complaint. Informing the jurors about the complaint, in which Washington alleged a corrections officer demanded oral sex from him, would have almost certainly confused the jury, as the alleged incident had nothing to do with the instant case or the officers involved. Moreover, informing the jury about the allegation, which was serious and inflammatory, could have caused the jury to be unnecessarily prejudiced against the testifying officers. For those reasons, the court properly excluded the PREA complaint. *See Martinez v. State*, 416 Md. 418, 428 (2010) ("[The trial court] must allow a defendant wide latitude to cross-examine a witness as to bias or prejudices *so long as the questioning does not obscure the trial issues and lead to the factfinder's confusion.*") (citations and quotations omitted) (emphasis added).

Washington cites to *Maslin v. State*, 124 Md. App. 535 (1999), claiming the circumstances are "significantly analogous" to those presented here. We disagree. In *Maslin*, the defendant, on trial for sexual abuse, was precluded from cross-examining the victim about a pending $1.6 million civil lawsuit the victim had filed against the defendant. *Id.* at 538-39. The lawsuit stemmed from an incident which occurred years after the incidents of sexual abuse in which the defendant hugged and attempted to kiss the victim. *Id.* at 538. We ultimately held, evidence of the civil lawsuit should have been admitted as relevant in establishing a potential source of bias on the part of the victim toward the defendant. *Id.* at 541. We noted, if the defendant were convicted of the criminal charges,

the victim would be able to show a history of sexual abuse at the hands of the defendant, thereby increasing the victim's chances of prevailing in the civil action. *Id.* at 542. We concluded the civil lawsuit was therefore probative of the victim's potential for bias because the civil lawsuit and the criminal charges were "closely related" and because the victim had a significant financial stake in the outcome of the criminal case. *Id.* at 541-42.

Here, by contrast, the PREA complaint and Washington's criminal case were not at all related, and there was no reason for the jury to infer the testifying officers were biased as a result of the complaint. Unlike the defendant and victim in *Maslin*, the officer named in the PREA complaint and the testifying officers had no real connection aside from the fact they were all corrections officers. Thus, any possible inference of bias drawn from the PREA complaint was tenuous at best.

We also disagree with Washington's insinuation that the trial court's decision regarding the PREA complaint somehow deprived him of his ability to cross-examine the State's witnesses for bias. There is nothing in the record to indicate the court precluded Washington from examining the State's witnesses as to other potential biases. Thus, Washington had the opportunity to reach the "threshold level of inquiry" required by the Confrontation Clause.

Finally, even if the trial court erred in preventing Washington from cross-examining the State's witnesses about the PREA complaint, any error was harmless. *See Elzey*, *supra* 472 Md. at 107. As discussed, the video evidence confirmed the State's witnesses' version of events and completely refuted Washington's. No reasonable juror could have watched

the video and concluded the State's witnesses had testified falsely regarding the circumstances of the assault.

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