Circuit Court for Calvert County
Case No. C-04-CR-18-000291

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 987

September Term, 2019

THEODORE EMANUEL LOGAN

v.

STATE OF MARYLAND

Beachley,
Gould,
Wilner, Alan M.
(Senior Judge, Specially Assigned),

JJ.

Opinion by Beachley, J.

Filed: November 20, 2020

*This is an unreported opinion, and it may not be cited in any paper, brief, motion, or other document filed in this Court or any other Maryland Court as either precedent within the rule of stare decisis or as persuasive authority. Md. Rule 1-104.

At the conclusion of his three-day trial, a jury in the Circuit Court for Calvert County found appellant, Theodore Logan, guilty of robbery, theft, and reckless endangerment. The court sentenced appellant to fifteen years' imprisonment, suspending all but eight years. Appellant timely appealed and presents the following two questions for our review:

1. Did the trial court err as a matter of law in evaluating [appellant's] *Batson*[1] challenge through its failure to conduct the last required step and consider whether the State's proffered reasons for its use of peremptory strikes on only African-American jurors were believable?

2. Did the trial court err in denying [appellant] the right to call a witness to impeach the testimony of the State's only witness who identified him as being involved in the robbery?

We perceive no error, and therefore affirm appellant's convictions.

FACTUAL AND PROCEDURAL BACKGROUND

On July 25, 2018, at approximately 2:00 p.m., a man and a woman wearing brightly colored construction worker jackets robbed the Discount Liquors store at 5005 Solomons Island Road in Huntingtown, Maryland. The robbers took approximately $150, and then left the store in a black sedan. Store surveillance partially captured the incident. Due to the focused nature of appellant's arguments, we shall dispense with an extensive factual recitation and instead shall provide additional facts in the Discussion section below.

[1] *Batson v. Kentucky*, 476 U.S. 79 (1986).

DISCUSSION

I. JURY SELECTION

Appellant's first argument on appeal is that the trial court erred "as a matter of law" during jury selection by failing to perform the third step of the *Batson* analysis regarding the State's striking of two jurors. The Court of Appeals has noted that

> *Batson* and its progeny instruct that the exercise of peremptory challenges on the basis of race, gender, or ethnicity violates the Equal Protection Clause of the Fourteenth Amendment. Excusing a juror on any of those bases violates both the defendant's right to a fair trial and the potential juror's "right not to be excluded on an impermissible discriminatory basis."

Ray-Simmons v. State, 446 Md. 429, 435 (2016) (footnote omitted) (quoting *Edmonds v. State*, 372 Md. 314, 329 (2002)). In *Batson*, the Supreme Court announced "a three-step process to assist the trial court in deciding a claim that a party to the case exercised a peremptory challenge to eliminate a prospective juror based on his or her race, gender, or ethnicity." *Id*.

The first step requires the party alleging a *Batson* violation to "make a prima facie showing—produce some evidence—that the opposing party's peremptory challenge to a prospective juror was exercised on one or more of the constitutionally prohibited bases." *Id*. at 436 (citing *Purkett v. Elem*, 514 U.S. 765, 767 (1995) (per curiam)). "A prima facie case is established if the opponent of the peremptory strike(s) can show 'that the totality of the relevant facts gives rise to an inference of discriminatory purpose.'" *Id*. (quoting *Johnson v. California*, 545 U.S. 162, 168 (2005)).

When the party challenging the use of the peremptory strike satisfies the first step by making a prima facie showing, the burden then shifts to the proponent of the strike to provide "an explanation for the strike that is neutral as to race, gender, and ethnicity." *Id.* (citing *Purkett*, 514 U.S. at 767). Notably, although this explanation "must be neutral," "it does not have to be persuasive or plausible. Any reason offered will be deemed race-neutral unless a discriminatory intent is inherent in the explanation." *Id.* (quoting *Edmonds*, 372 Md. at 330). A mere denial of any discriminatory motive, or an affirmation of good faith does not suffice. *Id.* (citing *Purkett*, 514 U.S. at 769).

> Rather, "[a]lthough there may be any number of bases on which a prosecutor reasonably might believe that it is desirable to strike a juror who is not excusable for cause," the striking party "must give a clear and reasonably specific explanation of his legitimate reasons for exercising the challenge."

Id. at 436-37 (quoting *Miller-El v. Dretke*, 545 U.S. 231, 239 (2005)).

Once the proponent of the peremptory strike provides such an explanation, "the trial court proceeds to step three, at which the court must decide 'whether the opponent of the strike has proved purposeful racial discrimination.'" *Id.* at 437 (quoting *Purkett*, 514 U.S. at 767). "It is not until the third step that the persuasiveness of the justification becomes relevant—the step in which the trial court determines whether the opponent of the strike has carried his burden of proving purposeful discrimination." *Id.* (quoting *Johnson*, 545 U.S. at 171). In evaluating whether the opponent of the strike has carried the burden, "the trial court must evaluate not only whether the [striking party's] demeanor belies a discriminatory intent, but also whether the juror's demeanor can credibly be said to have

exhibited the basis for the strike attributed to the juror by the [striking party]." *Id*. (quoting *Snyder v. Louisiana*, 552 U.S. 472, 477 (2008)).

We accord the trial court great deference in rendering its decision regarding a *Batson* challenge. *Edmonds*, 372 Md. at 331 (citing *Harley v. State*, 341 Md. 395, 402 (1996)). This is so because "Whether a reason is race-neutral rests in large part on a credibility assessment of the attorney exercising the peremptory challenge." *Id*. (citing *Hernandez v. New York*, 500 U.S. 352, 364-65 (1991)). "The trial judge is in the best position to assess credibility and whether a challenger has met his burden. Accordingly, on appellate review, we 'will not reverse a trial judge's determination as to the sufficiency of the reasons offered unless it is clearly erroneous.'" *Id*. (quoting *Gilchrist v. State*, 340 Md. 606, 627 (1995)).

Against this backdrop, appellant makes a two-pronged argument. First, appellant argues that the trial court failed to perform the third step in the *Batson* analysis. Second, he argues that, had the trial court properly performed the third step, it would have found purposeful racial discrimination. We disagree. As we shall explain, the record reveals that the trial court determined that appellant failed to carry his burden in proving purposeful discrimination, and its finding in that regard was not clearly erroneous.

A. There is No Requirement for Explicit Findings in *Batson*'s Third Step

Edmonds presents an example where the trial court failed to perform the third step in the *Batson* analysis. *Id*. at 320. There, following an indictment for first-degree murder and related charges, the State served Edmonds with notice of an intent to seek the death penalty. *Id*. at 321. The case proceeded to a jury trial, and following voir dire, "forty-two

prospective jurors remained, six of whom were African American. Five of the six African-American venirepersons responded to voir dire questions." *Id.* The relevant *Batson* challenges concerned three of those five venirepersons: Ms. Ashe, Ms. Smith, and Ms. Nelson. *Id.* at 321-22. Ms. Ashe indicated that twenty years prior to Edmonds's trial, her sister had used an alias and been convicted of a drug violation. *Id.* at 321. Ms. Ashe maintained that she could nevertheless remain impartial. *Id.* Ms. Smith "believed" that her nephew had been convicted of attempted murder, but she thought that he had been treated fairly and expressed her ability to be impartial. *Id.* at 321-22. Finally, Ms. Nelson "indicated that she thought she recognized the defendant as someone she knew but then realized she had been mistaken." *Id.* at 322.

"When the prosecutor exercised his first two preliminary challenges against African-American women, juror number 56 and Nelson, the defense raised a *Batson* challenge." *Id.* The prosecutor defended his striking of Ms. Nelson "because she had misidentified the defendant." *Id.* In striking Ms. Nelson, the prosecutor informed the court that he also planned to strike "any prospective juror who has a relative who has a prior arrest or criminal record, whether he be white, black, red, yellow, any color[.]" *Id.* at 322 n.4.

Eventually, the State also used peremptory strikes for three more venire members, including Ms. Ashe, and Ms. Smith. *Id.* at 323. Edmonds then argued that by striking five African American jurors, the State sought to intentionally remove African Americans from the jury. *Id.* The trial court responded that it "did not 'buy the State's position' that it was

going to strike jurors with relatives convicted of crimes but who stated they could be impartial." *Id.* The trial court then asked the State to justify its striking of Ms. Nelson, and the State responded, "She thought she knew the Defendant, good, bad or indifferent." *Id.* at 324. The trial court rejected the legitimacy of this reason, stating

> First of all, so the record is clear, she did not misidentify anybody. She came up here on her own and said that initially she thought that maybe she knew Mr. Edmonds but when she got up here she realized that she didn't know him, and she was perfectly candid about it. So you may not characterize that as a mis-identification because it was not a misidentification.

Id.

Regarding Ms. Ashe and Ms. Smith, the prosecutor explained that Ms. Ashe's sister was convicted of a drug charge, and that Ms. Smith's nephew was in jail. *Id.* at 324-25. The prosecutor also stated that Ms. Smith's "[d]emeanor told me she wasn't even sure if she could be unbiased." *Id.* at 325. The trial court disagreed with the prosecutor's characterization of Ms. Smith's demeanor. *Id.* Notably, "Defense counsel then asked the court to seat Smith, *but the court did not rule on that proposal*." *Id.* (emphasis added). "Shortly thereafter, defense counsel requested the court to reseat Nelson[.]" *Id.* The trial court rejected the prosecutor's reason for striking Ms. Nelson, and seated her on the jury. *Id.* at 326. Apparently, the trial court never resolved Edmonds's *Batson* challenges regarding the striking of Ms. Ashe and Ms. Smith.

On appeal, the Court of Appeals determined that the trial court "failed to satisfy the requirements of *Batson*." *Id.* 327. The Court explained that the first step—the prima facie showing of racially motivated strikes—was established *per se* when the State offered

explanations for its strikes. *Id*. at 332. The second step—that the State provide race-neutral explanations for striking the jurors—was also satisfied regarding Ms. Ashe and Ms. Smith. *Id*.

Turning to the third step, the Court stated,

> We have perused the record thoroughly and cannot conclude that the trial judge properly fulfilled his obligations under *Batson*. The trial court made a determination only as to juror Nelson. The judge never made a determination, as he was required to do under step three, with respect to jurors Ashe and Smith.

Id. at 337. In a footnote, the Court recognized that "Sometimes the record is adequate for a reviewing court to find that the trial judge implicitly ruled on the pretextuality of a proffered race-neutral reason. An implicit finding may be acceptable if it is apparent from the record that the court found the reason to be nondiscriminatory." *Id*. at 337 n.13. The footnote indicated, however, that the record there was inadequate for the Court to make such a determination. *Id*. Although the trial court "explicitly discredited the State's explanation for striking Nelson[,]" the record lacked any indication of the court's acceptance of the State's explanations for striking Ms. Ashe and Ms. Smith. *Id*. at 338. In fact, the Court noted the trial court's inconsistent statements regarding the State's explanations:

> At one point during jury selection the court stated: "I don't buy the State's position that they're going to strike people who some distant cousin had been the victim of crime, when they came up here and told me that they had no problem being fair. I don't buy it." Later, he appeared to find the prosecutor's explanation plausible: "It's not that you couldn't consider other family [and their criminal records]. I don't have any problem with that. I can understand under some circumstances where that would be perfectly legitimate."

Id. The Court of Appeals also declined to infer the trial court's determination based on the record, noting that "*Batson*'s final step is essentially a credibility assessment, and the parties are not before this Court to permit us to judge their credibility or to explore the validity of any arguments they may advance." *Id*. at 339.

Whereas *Edmonds* presents a clear example of a trial court failing to perform the third step in the *Batson* analysis, the record here shows that the trial court performed the third step by determining that the State provided race-neutral reasons for striking certain jurors, and that appellant therefore failed to establish purposeful discrimination.

At issue in this case is the State's striking of two prospective jurors: Juror 50 and Juror 51. Juror 50 responded affirmatively when asked whether any of her immediate family or close personal friends had ever been employed by the Division of Corrections, Department of Parole and Probation, or "any other office connected with the court system." Juror 50 told the court that "[a] close friend of the family" worked in the Calvert County courthouse as a clerk. Although Juror 50 stated that her family friend was a clerk, the record suggests that Juror 50 implied that she instead was referring to the bailiff. Juror 50 nevertheless indicated that she had not spoken to this person about the case, and that she could be fair and impartial.

Juror 51 responded affirmatively to the question asking whether any juror's immediate family or close personal friends had ever been the victim of a crime or been charged with an offense. Juror 51 explained that she "was in the system" because someone stole her vehicle, and that she had been accused of stealing property from her own home,

which required her to go to court with a Public Defender. One of the prosecutors then recognized Juror 51 from previously working on the stolen vehicle case. When the trial court asked Juror 51 whether she thought she was treated fairly by the police and court system, Juror 51 was ambivalent:

> THE COURT: All right. But overall do you think you were treated fairly in both cases by the state and -- or the police and the court system?
>
> [JUROR 51]: If you want to say so, yeah.
>
> THE COURT: Well, no, I want you to tell me.
>
> [JUROR 51]: Not really because I didn't -- she was on my -- she had something left on my property.

Juror 51 nevertheless indicated that she believed she could be fair by listening to both sides before reaching a verdict. The State unsuccessfully moved to strike Juror 51 *for cause*, arguing that she knew one of the two prosecutors in appellant's case, and that she felt she was not treated fairly in one of her previous cases. The trial court denied the State's motion because Juror 51 indicated she could be fair and impartial.

After the State exercised peremptory strikes for Juror 50 and Juror 51, appellant noted his *Batson* challenge. The following colloquy then occurred:

> [DEFENSE COUNSEL]: Your Honor, before we pick a box, Your Honor, I would -- we have concerns about the State may be unfairly targeting African American jurors for strikes, and that the ones that -- the two that were stri -- at least one of them was stricken there was absolutely no indication that they would be a problem for the State, and we want a representative jury for [appellant].

THE COURT:	All right, State, what's the rationale for strike -- I will note, though, for the record, Juror Number 51 you asked to strike for cause.
[DEFENSE COUNSEL]:	Okay, which was --
THE COURT:	Juror Number 51, you asked that that juror be stricken for cause, but I will ask the [S]tate, what's your reason for --
[DEFENSE COUNSEL]:	Actually did I --
THE COURT:	-- what is your reason for 50? We are going to talk about Juror Number 50.
[THE STATE]:	Your Honor, Number 50, the reason that she indicated that she knows court personnel, I believe she was indicating the bailiff, and I thought that that connection is too close, and I prefer that she not stay on the jury.
[DEFENSE COUNSEL]:	I'm sorry, that what?
[THE STATE]:	She was pointing to the bailiff when she said she knows --
THE COURT:	She indicated she had some connection, she did indicate some connection with people that worked here at the courthouse.
[DEFENSE COUNSEL]:	Uh-huh.
THE COURT:	Whether it was bailiff or a clerk of some nature, she was not definitive on what the relationship was. That's your reason for the striking?
[THE STATE]:	Right.
THE COURT:	All right. What's your reason for striking Juror Number 51, the juror that actually [Defense Counsel] asked to strike for cause?

[THE STATE]:	Your Honor, I think to be fair, I may have asked to strike for cause on that one.
[DEFENSE COUNSEL]:	Right. I did not ask.
[THE STATE]:	My recollection was that [the other prosecutor] knows her.
THE COURT:	Oh, because you know her. Okay.
[THE STATE]:	And she in my notes said that she was not treated fairly. I understand that perhaps some of the notes differ on that, but those two reasons were more than enough.
THE COURT:	And what's your basis then?
[THE STATE]:	The same, that she knows my co-counsel, and that my understanding was that she said that she was not treated fairly.
THE COURT:	All right.
[DEFENSE COUNSEL]:	My concern --
[THE STATE]:	And also she was accused of theft previously.
[DEFENSE COUNSEL]:	My concern is that the State has not articulated a reason such that it would -- the State would be articulating something that might be -- that those two jurors would be unfair to the State. And the only challenge that I'm raising is that those are the two African American jurors that have come forward, and the State has not really identified something about them that would make the striking them appropriate, which ends up having my client not having African Americans on the jury that could hear his perspective.
THE COURT:	I recognize that, but I believe, at least at this point, that *the State has provided a racially neutral reason for striking the jurors. Juror*

Number 50 is because she has some contact with the court personnel. Juror Number 51, because Juror Number 51 did say she was accused of a theft charge, and the case was settled, but she was emphatic that she was not guilty --

[DEFENSE COUNSEL]: Uh-huh.

THE COURT: -- and wasn't completely satisfied, at least she kind of insinuated that she wasn't treated fairly. *So I find those to be racially neutral reasons for striking the two jurors, but, State, you are on notice relative to this, the* Batson *challenge has been made. But I do find that those reasons are racially neutral at this time*.

[DEFENSE COUNSEL]: Well, I will just -- I will just say, Your Honor, with regards to 51, I understand that the State is on less thin ice, but as regards to 50, I don't think the State is striking anyone who knows someone who works in the court system, and so therefore, it's remarkable that the State is pulling that reason as a rationale.

[THE STATE]: Your Honor, to be fair, I think I had moved for cause to strike the other person we spoke about at the end who knew somebody in the courtroom, she specifically said that she works or that she knows someone in the courtroom, and that my understanding, and I have consulted with co-counsel as well about this strike before we did that, the two of us have talked about it, and that was her understanding too.

THE COURT: You have made your record.

[DEFENSE COUNSEL]: Yes.

THE COURT: *I found them to be racially neutral strikes*. All right.

(Emphasis added).

Appellant argues that the trial court erred by failing to conduct the third step in *Batson* because, after finding the State's reasons to be race neutral, "the trial court simply moved on and denied [appellant's] *Batson* challenge without proceeding to evaluate whether those race neutral explanations were actually persuasive." We disagree. The third step in *Batson* requires the trial court to "decide 'whether the opponent of the strike has proved purposeful racial discrimination.'" *Ray-Simmons*, 446 Md. at 437 (quoting *Purkett*, 514 U.S. at 767)). By finding that the strikes were racially neutral, the trial court accepted the State's proffered reasons and implicitly rejected appellant's argument that the strikes were racially discriminatory. The court's language here implicitly conveyed its view that the prosecutor's reasons for striking the jurors were not only race-neutral, but credible.

In his brief, appellant argues that the trial court "accepted the State's reasons at face value and made no meaningful inquiry into whether those facially neutral reasons were actually persuasive." Appellant claims that in rejecting his *Batson* challenges, the court

> did not discuss or engage with factors set out by the Court of Appeals in *Edmonds* such as "the disparate impact of the prima facie discriminatory strikes on any one race," "the racial make up of the jury," or "the consistent application of any stated policy for the peremptory challenges."

(Quoting *Edmonds*, 372 Md. at 330).

Appellant is mistaken. *Edmonds* does not require a trial court to make explicit factual findings regarding the disparate impact of the strikes on any one race, the racial make-up of the jury, or the consistency of the State's stated policy in using strikes. 372 Md. at 330. Rather, *Edmonds* provides that the court "*may consider*" these factors, among others, in determining whether the opponent has proved purposeful discrimination:

> Among the factors *the court may consider* to determine whether the proponent intended to discriminate are: the disparate impact of the prima facie discriminatory strikes on any one race; the racial make up of the jury; the persuasiveness of the explanations for the strikes; the demeanor of the attorney exercising the challenge; and the consistent application of any stated policy for peremptory challenges.

Id. (emphasis added). In fact, *Edmonds* even rejects the notion that the trial court must make specific findings in step three. In a footnote, the *Edmonds* Court stated, "Our holding should not be read as requiring specific words to satisfy *Batson*. The trial court does need, however, to make an ultimate finding of whether petitioner has established purposeful discrimination and then to make a final ruling on the *Batson* motion." *Id*. at 339 n.14 (citation omitted). We reject appellant's argument that the trial court erred in its *Batson* analysis by failing to make specific findings regarding the non-exhaustive factors mentioned in *Edmonds*. We note that in rejecting appellant's claim of purposeful discrimination, the trial court warned the State that it was "on notice relative to this, the *Batson* challenge has been made." We construe this admonishment to indicate the court's heightened sensitivity to the State striking African American jurors, and its awareness of the ultimate racial composition pursuant to *Edmonds*. *Id*. at 330. This bolsters our conclusion that the court was aware of its responsibility regarding *Batson*'s third step. In our view, the court accepted the State's proffered reasons as race-neutral and implicitly found the prosecutor credible. That determination was tantamount to a finding of "no purposeful discrimination."

B. The Court's finding of No Purposeful Racial Discrimination is Not Clearly Erroneous

Finally on this point, appellant argues that, had the trial court conducted the third step of the *Batson* analysis, it would have found purposeful racial discrimination. Because, as explained above, the trial court did conduct the third step, we construe this argument to mean that the trial court was clearly erroneous when it found no purposeful racial discrimination. *Edmonds*, 372 Md. at 331. At the outset, we note that appellant essentially questions the consistency with which the State struck jurors who answered the same questions as Jurors 51 and 50. *Edmonds* makes clear that "Excluding a juror on the basis of a uniform policy is inherently discriminatory and impermissible if the reason proffered is a surrogate for race." *Id*. at 336. As we shall show, there are clear differences between Jurors 51 and 50, and the non-stricken jurors appellant references.

The State offered a racially neutral reason for striking Juror 51. That juror indicated that she had been accused of a crime, had been the victim of a crime, knew one of appellant's prosecutors from a prior case, and did not think the State and the police had treated her fairly.

In arguing that the State inconsistently struck jurors who claimed they had been treated unfairly by the State or the police, appellant notes that the State did not use a peremptory strike on Juror 93. Juror 93 indicated that he "lost control" of his vehicle in 2016, which resulted in a "plethora" of charges including traffic violations, "being a drunk in public," and leaving the scene of an accident. When asked whether he thought the police and the State treated him fairly, Juror 93 replied, "So, no. I think the State's Attorney came

in and did the right thing, you know." Appellant places emphasis on the words, "So, no." In our view, the words "So, no[,]" taken in context, were equivocal and were notably followed by an unequivocal response that the State did "the right thing."

Even assuming Juror 93 believed he was treated unfairly, we are unpersuaded that this demonstrates purposeful discrimination. Whereas Juror 93 indicated that the State's Attorney "came in and did the right thing," Juror 51 never provided a similar endorsement of the State's Attorney's Office. Instead, Juror 51 stated that she was "not really" treated fairly by the judicial system. Moreover, one of the prosecutors in appellant's trial was involved in the stolen vehicle case. Accordingly, the trial judge, who was in the best position to gauge the demeanor of the jurors and the attorneys, was not clearly erroneous in finding the State's reasons for striking Juror 51 racially neutral.

The trial court similarly did not err in finding that the State provided a racially neutral reason for striking Juror 50. Although Juror 50 never convincingly identified which member of court personnel she knew, the trial court found that Juror 50 indicated that "she had some connection, she did indicate some connection with people that worked here at the courthouse." In arguing that the State inconsistently struck jurors who knew corrections officers or court personnel, appellant notes that the State did not strike Jurors 154 and 131. Juror 131 indicated that her sister was previously employed at the Calvert County Circuit Courthouse, and Juror 154's husband worked at the United States Supreme Court in a law enforcement capacity.

The record reveals, however, that the State never had the chance to strike either of these jurors because they never reached the point in the jury selection process to be accepted or excused. Additionally, neither juror actually indicated that someone they knew currently worked in the courthouse. Although Juror 50 apparently gestured at the bailiff and at least made clear that a close family friend currently worked in the Calvert County Circuit Courthouse, Jurors 131 and 154 did not indicate a relationship with current court staff. The prosecutors consistently applied their policy of striking jurors with close connections to court staff, an acceptable policy which is neither inherently discriminatory nor racially motivated. *Edmonds*, 372 Md. at 330. Accordingly, the trial court did not err in rejecting appellant's claims of purposeful discrimination as to both Juror 50 and Juror 51.

II. IMPEACHMENT WITNESS

Appellant's second and final argument on appeal is that the trial court erred by precluding him from calling his work supervisor, Ike Baldwin, to impeach the testimony of Keocesha McNeil, a witness for the State. For context, at appellant's trial, McNeil testified that she purchased cocaine from appellant two to three times a week. On July 25, 2018, appellant called McNeil seeking approximately $100 she owed him from previous cocaine purchases. McNeil testified that because she did not have the money, appellant picked her up in a vehicle with the intention to commit a robbery. Appellant and McNeil

then proceeded to rob the Discount Liquors store.[2]

Relevant to this appeal, McNeil testified that, before finding a store to rob, appellant retrieved yellow and orange construction sweaters from his van to wear during the robbery. She also indicated that appellant was a construction worker. Appellant's trial counsel sought to impeach McNeil by calling Baldwin to testify that the yellow and orange construction sweaters used in the robbery were not the same type of construction vests provided at appellant's place of work. The trial court found that Baldwin's proffered testimony was not impeachment testimony. We perceive no error in that determination.

The trial court correctly found that Baldwin's proposed testimony did not constitute impeachment evidence. "Impeachment evidence is '[e]vidence used to undermine a witness's credibility.'" *Johnson v. State*, 228 Md. App. 391, 436-37 (2016) (quoting BLACK'S LAW DICTIONARY 676 (10th ed. 2014)). "Evidence that is admitted to impeach a witness comes in only to detract from the witness's credibility and not as substantive proof of the facts being litigated." Lynn McLain, *Maryland Evidence, State and Federal* § 607:1 (3d ed. 2019). Indeed, Rule 4-263(d)(6)(D) contemplates what is impeachment evidence as it requires the State to disclose to the defense "an oral statement of the witness, not otherwise memorialized, that is *materially inconsistent* with another statement made by the witness or with a statement made by another witness[.]" (Emphasis added).

[2] In a separate proceeding, McNeil pleaded guilty to robbing the Discount Liquors store.

Baldwin's proffered testimony did not qualify as impeachment evidence because McNeil never testified that appellant used the very construction jackets he acquired from his job for the robbery. Rather, McNeil generally testified that appellant used construction vests during the robbery, and that he was a construction worker:

[STATE'S ATTORNEY]: And when you got there, what happened next?

[MCNEIL]: He got the -- he got the construction stuff out of his van.

[STATE'S ATTORNEY]: Okay. When you say construction stuff, what kind of construction stuff?

[MCNEIL]: Yellow and orange.

[STATE'S ATTORNEY]: Yellow and orange what?

[MCNEIL]: Shirt, like a sweater.

[STATE'S ATTORNEY]: Okay. And do you know where -- do you know what kind of work the defendant does?

[MCNEIL]: Yeah, he a construction worker.

[STATE'S ATTORNEY]: Construction. So he got the yellow and orange shirts or sweaters out of the, out of where?

[MCNEIL]: Van.

[STATE'S ATTORNEY]: Out of the van?

[MCNEIL]: Yes.

We see nothing in McNeil's testimony that suggested that appellant secured the construction jackets from his employer to wear during the robbery. Accordingly,

Baldwin's proffered testimony would not have undermined McNeil's credibility, and was therefore not impeachment evidence.[3]

JUDGMENTS OF THE CIRCUIT COURT FOR CALVERT COUNTY AFFIRMED. COSTS TO BE PAID BY APPELLANT.

[3] The transcript reveals that the court was inclined to allow Baldwin to testify as a non-impeachment witness, but appellant failed to disclose Baldwin as a substantive witness as required by Rule 4-263. Appellant does not assert that he should have been allowed to call Baldwin for a non-impeachment purpose.