Circuit Court for Cecil County
Case No. 07-K-15-000471

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 999

September Term, 2017

DERRICK CARROLL

v.

STATE OF MARYLAND

Woodward, C.J.,
Friedman,
Moylan, Charles E., Jr.
(Senior Judge, Specially Assigned),

JJ.

PER CURIAM

Filed: October 2, 2018

*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.

Following a jury trial, in the Circuit Court for Cecil County, Derrick Carroll, appellant, was convicted of robbery. Carroll's sole claim on appeal is that the trial court erred in restricting his cross-examination of the complaining witness. For the reasons that follow, we affirm.

At trial, the State presented evidence that Aaron Headspeth was robbed at gunpoint in his apartment by a man wearing a mask and an unidentified woman. The man and woman tied him up and stole his money, drugs, wallet, laptop, and car. The man also struck him in the head with a firearm. Headspeth stated that he could not identify the perpetrators and that he did not know Carroll.

Three days after the robbery, police located Headspeth's car at a motel in Delaware. The car was parked in front of a room occupied by Carroll and Kayla Nunley. Carroll informed the officers that he had borrowed the car with Headspeth's permission. The officers executed a search warrant for Carroll's hotel room and located Headspeth's laptop and identification cards, as well as a mask, handgun, and ammunition. Additionally, Carroll's DNA was found on two cigarette butts that were recovered from Headspeth's residence.

During cross-examination, defense counsel established that Headspeth was currently serving five years in prison for three felony drug convictions. Relevant to this appeal, the following exchange then occurred:

> [DEFENSE COUNSEL]: You do make money selling drugs?
>
> HEADSPETH: But most of the time I'm in prison for selling drugs, so, you know, if you, you know — on them I've been convicted of — and I did a lot of time, a lot of time. So, you know, I ain't never been out there that long.

[DEFENSE COUNSEL]: Well that's talking about doing a lot of time. You have filed for request for modification of sentence, meaning to have your sentence reduced in all those three cases that you were convicted here?

HEADSPETH: I don't know. I don't know.

[PROSECUTOR]: Objection, your Honor. I don't see how that's relevant as to credibility.

HEADSPETH: I don't even know.

THE COURT: Yeah.

[PROSECUTOR]: Hold on. Sentence modifications now?

[DEFENSE COUNSEL]: Well, I want to see whether he's been promised some —

THE COURT: Well, just ask him that question, you know.

[DEFENSE COUNSEL]: When's the first time you met with the prosecutor.

HEADSPETH: This morning.

[DEFENSE COUNSEL]: This morning?

HEADSPETH: Yes.

[DEFENSE COUNEL]: That's the first time?

HEADSPETH: That's the first time.

[DEFENSE COUNSEL]: Okay. Wow. You are aware, are you not, that you are — your attorney is requesting that your sentence be reduced?

[PROSECUTOR]: Objection. It is not relevant, your Honor.

THE COURT: I mean, if there's — you can't connect it to any type of promise or inducement. I mean attorney's —

[DEFENSE COUNSEL]: You hope to get your sentence reduced?

HEADSPETH: No, I do not.

[PROSECUTOR]: Objection, not relevant.

THE COURT: I'll sustain. I mean any good defense attorney is going to file pursuant to the rules, and it has nothing to do with any type of agreement.

HEADSPETH: From my understanding he filed it in October.

[PROSECUTOR]: Don't answer sir. You are not required to answer.

HEADSPETH: Oh.

[PROSECUTOR]: Thank you.

[DEFENSE COUNSEL]: It's your testimony that you are not looking for a deal to testify in this case?

[PROSECUTOR]: Your Honor —

HEADSPETH: No.

THE COURT: I'll sustain. It's not relevant. I mean, there is — you know, it has nothing to do with his testimony in this case as far as —

[DEFENSE COUNSEL]: Well, I respectfully object then.

THE COURT: Well, you haven't presented any evidence to suggest that it is.

[DEFENSE COUNSEL]: Okay.

THE COURT: So —

[DEFENSE COUNSEL]: Well let me ask you. Do you expect something —

HEADSPETH: No.

[DEFENSE COUNSEL]: — in return for testifying?

PROSECUTOR: I renew my objection.

HEADSPETH: No.

THE COURT: There's your answer.

[PROSECUTOR]: I would withdraw the objection.

THE COURT: Well, there's your answer.

Following this exchange, defense counsel did not ask any further questions of Headspeth regarding his pending motion for modification of sentence. On appeal, Carroll contends that, in limiting his cross-examination of Headspeth regarding his pending motion for modification of sentence, the trial court prevented him from establishing that Headspeth "[might] have been expecting, or hoping for, some benefit from testifying." We disagree.

"[A] cross-examiner must be given wide latitude in attempting to establish a witness' bias or motivation to testify falsely." *Martin v. State*, 3654 Md. 692, 698 (2001) (citation omitted). In *Leeks v. State*, 110 Md. App. 543 (1996), we articulated a test for determining the admissibility of questions aimed at eliciting witness bias during cross-examination. We explained that such questions "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." *Id.* Any proffer seeking to establish the factual foundation for a question regarding bias, must "be viewed from the perspective of the witness: i.e., the witness's expectation or hope of benefit in return for testimony favorable to the prosecution." *Manchame-Guerra v. State*, 457 Md. 300, 318 (2018).

As an initial matter, we note that Headspeth ultimately testified, without objection, that he was not expecting any benefit from the State in exchange for his testimony. And, after he provided this answer, defense counsel did not follow up with any further questions.

Nevertheless, Carroll contends that, because he was not able to cross-examine Headspeth regarding his pending motion for modification of sentence, his answer regarding the possible expectation of a benefit was "untethered to any context."

We find, however, that the trial court did not err in limiting Carroll's cross-examination of Headspeth regarding the motion for modification of sentence because Carroll failed to provide a sufficient factual foundation to demonstrate why those questions might demonstrate the possibility of bias. *Peterson v. State*, 444 Md. 105, 135-36 (2015) is instructive. In *Peterson*, the Court of Appeals addressed whether the trial court had erred in refusing to allow the defendant to cross-examine a witness about pending criminal charges. The Court noted that the pending charges, in and of themselves, were not impeachment evidence; rather, they were part of the factual predicate for asking the permitted question about bias or motive. *Id*. at 135. Therefore, the Court held that the mere existence of a pending charge was not a sufficient factual predicate for an inquiry into bias. Instead "[t]here must be some evidence—either direct (*e.g.,* an agreement with the prosecution to resolve charges in return for testimony) or circumstantial (*e.g.*, release of witness from custody, dismissal of charges, a decision to forgo charges, postponement of disposition of a violation of probation charge) that the witness has an expectation of benefitting from the testimony with respect to the pending charges." *Id*. at 135-36; *see also Manchame-Guerra*, 457 Md. at 318 ("*Peterson* clarifies that the threshold for [an inquiry into bias] is *not* met with the mere proffer of the words "pending charges," uttered in a vacuum and without precision as to the rationale for the proposed inquiry.").

As in *Peterson*, the mere fact that Headspeth's counsel had filed a motion for reconsideration of his sentence did not, *ipso facto*, establish that Headspeth was biased or had a motive to be untruthful. Therefore, although Carroll was not required to show any specific agreement with the State regarding the motion, it was still incumbent upon him to proffer some evidence demonstrating that Headspeth might have had some expectation or belief that the motion was more likely to be granted if he testified for the State.[1] However, despite the court stating on several occasions that Carroll needed to establish some link between Headspeth's pending motion and his trial testimony, Carroll failed to do so. Consequently, we find no error in the trial court's decision to limit Carroll's questioning on that subject. *Cf. Manchame-Guerra*, 457 Md. at 318 (finding a sufficient factual foundation to cross-examine the witness about pending charges where defense counsel proffered evidence that the charges were in the same county, the detective investigating the crime knew about the charges when he interviewed the witness, and the charges had been pending for a lengthy amount of time); *Calloway*, 414 Md. at 619-20 (finding a sufficient factual foundation to cross-examine the witness regarding pending charges where defense presented evidence that the witness had been released from jail and the charges had been *nolle prossed* prior to his testimony).

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

[1] For example, if Headspeth had claimed in his motion that his sentence should have been modified because he had agreed to testify in Carroll's case, Carroll could have established the necessary factual foundation by informing the trial court of that fact.