Circuit Court for Prince George's County
Case No. CAL17-00767

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 1049

September Term, 2018

MICAA THOMAS

v.

JOURDAN GRANT

Fader, C.J.,
Beachley,
Kenney, James A., III
(Senior Judge, Specially Assigned),

JJ.

Opinion by Beachley, J.

Filed: November 15, 2019

On February 20, 2014, appellant Micaa Thomas, a passenger in her father's vehicle, was struck from behind by a vehicle driven by appellee Jourdan Grant. Following the accident, Micaa[1] began suffering from headaches, dizziness, increased sensitivity to light and noise, and would sometimes forget words. On January 11, 2017, Micaa filed a one-count complaint in the Circuit Court for Prince George's County, alleging negligence and seeking damages in excess of $75,000. A jury trial took place on June 26 and 27, 2018. Shortly before trial, Jourdan conceded liability but indicated that he would contest the nature and extent of Micaa's injuries. The jury ultimately awarded Micaa $2,100 for medical expenses and $1,000 for non-economic damages. Micaa timely appealed and presents ten issues for our review, which we have consolidated and rephrased as follows:

1. Whether the circuit court improperly excluded Micaa's mother's testimony regarding Micaa forgetting words.

2. Whether the circuit court improperly excluded Micaa's testimony regarding when she expected to receive college scholarships.

3. Whether the circuit court improperly admitted Jourdan's hearsay testimony regarding a statement Micaa's father made about the bumper of his vehicle.

4. Whether the circuit court erred in granting Jourdan's motion *in limine* to exclude a portion of the medical expert's testimony.

5. Whether the circuit court erred in preventing Micaa from explaining why she was able to succeed in certain golf tournaments following the accident.

6. Whether the circuit court erred in allowing Jourdan to testify regarding his participation in "March Madness."

[1] We shall use first names throughout this opinion for the sake of clarity. We mean no disrespect in doing so.

7. Whether the circuit court erred in preventing Micaa's counsel from reading jury instructions during closing argument.

8. Whether Micaa was deprived of a fair trial as a result of the trial court's bias.

Because we conclude that the trial court committed multiple errors as we discuss *infra*, we shall vacate the judgment and remand for a new trial.

FACTS AND PROCEEDINGS

When Micaa was ten years old, her parents introduced her to the sport of golf. Micaa began practicing every day and soon was competing in tournaments and receiving accolades, including being featured in newspapers in the Baltimore area and even Sports Illustrated. To further develop her skills and possibly use golf as a vehicle for college admissions and scholarships, Micaa trained with a local golf mentor named Joy Wolfe.

On February 20, 2014, while in her junior year of high school, Micaa was sitting as a passenger in her father Michael Thomas's vehicle, studying for a test, when she felt a force hit the back of the car which caused her "head to hit the head rest very hard." Jourdan had negligently struck their vehicle. Micaa immediately "began to have a slight headache," but otherwise appeared unharmed. Believing she was not injured, Micaa arrived at school and attempted to take her test. As soon as she sat down to read the test questions, she began to experience an unusually painful headache. After a few moments, Micaa went to the nurse's office, and her mother Cheryl Thomas transported her home from school. Unfortunately, Micaa began to feel even worse upon arriving home.

Over the next few days, Micaa's symptoms appeared to worsen, and in addition to her painful headaches, she showed signs of memory loss. As these symptoms persisted in

the following months, Cheryl was forced to withdraw Micaa from various golf tournaments. When Micaa did compete, however, her scores were not "what they would normally be[,]" and she would experience headaches after playing. Micaa did not receive a golf scholarship in her junior year, but ultimately received a scholarship in February of her senior year.

On January 11, 2017, Micaa filed a one-count negligence complaint against Jourdan. As stated above, Jourdan conceded liability and a trial on damages took place on June 26 and 27, 2018, after which the jury awarded Micaa $2,100 for past medical expenses and $1,000 for non-economic damages. Micaa timely appealed. We shall provide additional facts as necessary to resolve the questions presented.

DISCUSSION

Many of Micaa's arguments on appeal concern the admission and exclusion of evidence. Generally, we review a trial court's ruling on the admission of evidence pursuant to the abuse of discretion standard. *Brown v. Daniel Realty Co.*, 409 Md. 565, 583 (2009) (citing *Matthews v. Md.-Nat'l Capital Park & Planning Comm'n*, 368 Md. 71, 91 (2008)).

> Application of [the abuse of discretion] standard [ ] depends on whether the trial judge's ruling under review was based on a discretionary weighing of relevance in relation to other factors or on a pure conclusion of law. When the trial judge's ruling involves a weighing, we apply the more deferential standard. On the other hand, when the trial judge's ruling involves a legal question, we review the trial court's ruling *de novo*.

Id. (quoting *Figgins v Cochrane*, 403 Md. 392, 419 (2008)). Relevant here, "[w]hether evidence is hearsay is an issue of law reviewed *de novo*." *Dulyx v. State*, 425 Md. 273, 285 (2012) (quoting *Parker v. State*, 408 Md. 428, 436 (2009)).

Regarding erroneous evidentiary rulings, Maryland Rule 5-103 states, in relevant part:

> (a) Error may not be predicated upon a ruling that admits or excludes evidence unless the party is prejudiced by the ruling[.]

In *Brown*, the Court of Appeals explained the appropriate analysis for determining whether error warrants reversal:

> Thus, even if "manifestly wrong," we will not disturb an evidentiary ruling by a trial court if the error was harmless. *Crane v. Dunn*, 382 Md. 83, 91-92, 854 A.2d 1180, 1185 (2004). The party maintaining that error occurred has the burden of showing that the error complained of "likely . . . affected the verdict below." *Id.* "It is not the possibility, but the probability, of prejudice which is the object of the appellate inquiry. Courts are reluctant to set aside verdicts for errors in the admission or exclusion of evidence unless they cause substantial injustice." *Flores v. Bell*, 398 Md. 27, 34, 919 A.2d 716, 720 (2007) (quoting *Crane*, 382 Md. at 91-92, 854 A.2d at 1185).

Brown, 409 Md. at 584. Against this backdrop, we turn to Micaa's appellate arguments.

I. Testimony Regarding Micaa's Trouble with "Word-Finding"

Micaa first argues that the circuit court improperly excluded testimony regarding her trouble with "word-finding," or, as Micaa described it, where "words [wouldn't] even come out of [her] mouth." In her brief, Micaa claims that two times during Cheryl's testimony, the trial court improperly sustained objections to questions concerning Micaa's difficulty with word-finding. During direct examination, Micaa's counsel asked Cheryl, "Did you notice any issues that [Micaa] had with remembering words?" Before Cheryl could elaborate, Jourdan's counsel objected, and the court sustained the objection. The following colloquy then ensued

> [MICAA'S COUNSEL]: Your Honor, I'm not sure what the objection was or what the grounds were

for -- and why it was sustained. So if I can ask what the grounds of the objection were.

THE COURT: How can she tell what -- how she had problems with words?

[MICAA'S COUNSEL]: Because if she saw -- if she had problems with word finding where she's sitting there and she's trying to remember the word and she can't come up with the word, that would be something that she would know.

THE COURT: Okay. Sustained. Thank you.

Later during Cheryl's direct examination, Micaa's counsel attempted to revisit this issue.

[MICAA'S COUNSEL]: Now I want to talk about just in general today. Do you still see any issues that Micaa has?

[CHERYL THOMAS]: Sometimes.

Jourdan's counsel again objected, and the following colloquy took place at a bench conference:

[MICAA'S COUNSEL]: Your Honor --

THE COURT: Yeah?

[MICAA'S COUNSEL]: -- I have an expert who's testified in his depo -- in his video deposition that she has these -- that she had these injuries. These injuries are continuing.

THE COURT: Okay.

[MICAA'S COUNSEL]: Okay. So there's no reason why -- I don't understand why she wouldn't be able to testify as to what she observes in terms of problems that she still has today.

THE COURT:	Okay. I sustained that objection.
[MICAA'S COUNSEL]:	Well, can I --
THE COURT:	Thank you.
[MICAA'S COUNSEL]:	-- can I ask the basis?
THE COURT:	It's not a proper question of this witness. Thank you.

Micaa argues that the circuit court erred in excluding Cheryl's testimony because it was not hearsay, and because the testimony was both relevant and not speculative. We agree with Micaa.

First, the proffered testimony was not hearsay. Maryland Rule 5-801 defines "hearsay" as "a statement, other than one made by the declarant while testifying at the trial or hearing, offered in evidence to prove the truth of the matter asserted." The Rule further defines a statement as "(1) an oral or written assertion or (2) nonverbal conduct of a person, if it is intended by the person as an assertion." In *Wallace-Bey v. State*, our Court explained that "testimony is not hearsay merely because the witness testifie[d] about words spoken by another person outside of court. . . . 'If the declaration is not a statement, or it is not offered for the truth of the matter asserted, it is not hearsay and it will not be excluded under the hearsay rule.'" 234 Md. App. 501, 536 (2017) (quoting *Stoddard v. State*, 389 Md. 681, 689 (2005)).

Here, counsel proffered that Cheryl would testify that she observed Micaa's "problems with word finding where [Micaa is] sitting there and she's trying to remember the word and she can't come up with the word[.]" In other words, Cheryl was not going to

testify regarding a statement; she was going to testify concerning her observations that Micaa struggled with finding words. Because Cheryl was not testifying to a statement Micaa made, the rule against hearsay should not have applied to preclude this testimony. *See Cumberland & Allegany Gas Co. v. Caler*, 157 Md. 596, 600 (1929) (holding that wife's observation of claimant's blindness was "intended as the result of her observation, and was not hearsay"); *Cordovi v. State*, 63 Md. App. 455, 467 (1985) (noting that, to the extent witness testified about another's "telephonic demeanor, this testimony would not be hearsay. It was [the witness's] observation that the jury was called upon to appraise and not the truth of anything that might have been communicated . . . ."). To the extent that Cheryl may have relayed words uttered by Micaa to support her testimony, those words or statements would not have been offered for their truth, and therefore would not be hearsay.

Furthermore, this testimony was clearly relevant to the case. Maryland Rule 5-401 provides: "'Relevant evidence' means evidence having any tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence." Here, Micaa's inability to remember words was related to the extent of her injury. During closing argument, Micaa's counsel specifically argued that Micaa's difficulty with word-finding played a role in her request for non-economic damages, telling the jury that non-economic damages concerned

> mental health, your pain, your suffering in the past that [Micaa] had up until this day. Those are the things that you have to consider. . . . The first thing you have to consider is the headaches, and the blurry vision, and the word finding issues, and the issue of short term memory, and the lack of sleep, and the photophobia, and the tiredness. All of those things, you need to think about all of those as you come to consider this.

Because evidence of Micaa's difficulty with word-finding fit the narrative of her claim for non-economic damages, the evidence was relevant and therefore admissible.[2]

II. Testimony Regarding College Scholarships

The second allegation of error is that the trial court improperly excluded evidence regarding when Micaa's friends received their college scholarships. Specifically, Micaa argues that the trial court improperly excluded her testimony on hearsay grounds, and asserts that the testimony was relevant to her claim for non-economic damages as evidence of the stress she suffered due to the accident. In our view, this evidence was not hearsay, and should have been admitted as relevant evidence supporting her theory of non-economic damages.

During Micaa's direct examination, the following colloquy occurred:

> [MICAA'S COUNSEL]: Did you have friends that were golfing and got scholarships?
>
> [MICAA]: Yes.
>
> [MICAA'S COUNSEL]: When did they start to hear -- when did your friends start to hear about their scholarships?

Jourdan's counsel objected, and the trial court sustained the objection. Micaa's counsel attempted to continue:

> [MICAA's COUNSEL]: When did you become -- when did those --

[2] Although we recognize that Micaa was able to testify about her difficulty with "word-finding" on the second day of trial, the court nevertheless erred by excluding Cheryl's observations of Micaa's difficulties on the first day of trial.

THE COURT: Next question.

[MICAA's COUNSEL]: When did those people that you -- when did those people that you knew get their scholarships?

Jourdan's counsel objected, and again the trial court sustained the objection. Micaa's counsel attempted to explain to the trial court that "It's not offered for the truth of the matter asserted . . . . it's offered to explain her feelings[.]" The trial court disagreed, and instructed Micaa's counsel to ask another question. Micaa's counsel attempted to ask Micaa when she expected to receive a scholarship or hear from colleges regarding scholarship offers, but Jourdan's counsel objected to these questions and the trial court sustained each objection. Inherent in the questioning is that Micaa would have testified to statements her friends had told her regarding when they received their scholarships, meaning that Micaa would have testified based on out-of-court statements. Micaa was concerned that her poor performance in golf tournaments after the accident would impact her ability to secure a scholarship.

Although Micaa would have testified to out-of-court statements, the testimony would not have been hearsay. As we explained in *Wallace-Bey*,

> An out-of-court declaration is not necessarily hearsay merely because it qualifies as an assertion (and thus as a "statement"). *See, e.g., Holland v. State*, 122 Md. App. 532, 544, 713 A.2d 364 (1998). "As [the hearsay] definition makes plain, whether an out-of-court statement is hearsay depends on the purpose for which it is offered at trial." *Dyson v. State*, 163 Md. App. 363, 373, 878 A.2d 711 (2005). Evidence of a statement is not hearsay unless it is "offered in evidence to prove the truth of the matter asserted." Md. Rule 5-801(c). This phrase is a convenient shorthand, which "[i]f amplified for clarity, . . . would read 'offered in evidence to prove [at trial] the same truth of the matter that was asserted by the declarant at the time he or she made the out-of-court statement.'" *Handy v. State*, 201 Md. App. 521, 539, 30

> A.3d 197 (2011) (emphasis removed) (quoting 6A Lynn McLain, *Maryland Evidence: State & Federal* § 801:1(C), at 14–15 (2d ed. 2001)).

234 Md. App. at 537. This Court has consistently held that statements offered to show their effect on another do not constitute hearsay because they are not offered to prove the same truth that was asserted by the declarant at the time he or she made the out-of-court statement. *See Foreman v. State*, 125 Md. App. 28, 36 (1999) ("The rule against hearsay does not exclude out of court declarations offered to show the effect that such declarations had on the person who heard them."); *see also Shunk v. Walker*, 87 Md. App. 389, 402 (1991) (holding that statements were admissible non-hearsay "not to prove the truth of . . . assertions that the child was no longer attending a particular school, but to explain appellee's state of mind and her motivation in seeking a modification of the custody order").

Here, Micaa's counsel explained that Micaa's testimony was not offered for the truth of the matter asserted, but instead was offered to "explain her feelings." Specifically, Micaa was not offering testimony to prove when her friends received scholarship offers. She merely sought to introduce that evidence to show its effect on herself as the hearer. During closing argument, Micaa's counsel told the jury that part of Micaa's claim for non-economic damages stemmed from the stress she felt following the accident:

> Yes, Micaa, eventually she fulfilled part of her dream and she got a scholarship. But she didn't find out about it until February instead of earlier in the year. And she knows she's pulling out of tournaments. And she knows she's not practicing as often. And she knows she's not doing as well. And she testified that all of those things made her fear that all of this work that she had put into this was going to go for nothing and she wasn't going to be able to pursue her dream. That's a huge, huge, huge part in this case, that unknowing that she had to live with every night. That every night when she

> would go to fall asleep, when she was fighting the headaches, that she also had to think about. Will this ever go away, will I ever get better, will the people find me, will I be okay.

Accordingly, the testimony regarding when Micaa's friends told her that they had received scholarships was admissible for a non-hearsay purpose: the effect those statements had upon Micaa as she was waiting to hear about college scholarships. Additionally, because that evidence concerned Micaa's theory of non-economic damages, the evidence was clearly relevant and therefore admissible.

Nor was the evidence speculative. Micaa's theory of non-economic damages included the stress she endured in wondering whether she was going to receive a college scholarship. Ms. Wolfe, a local golf mentor who helped Micaa and other students use golf as a means of pursuing a higher education, testified that students generally received golf scholarship offers in their junior year of high school. She further testified that of the seven junior golfers she was working with at the time, Micaa was the best female golfer, and "she was just as great a golfer as the young men were." The jury also heard evidence that Micaa was the number one player on her high school team the year they won the inaugural high school conference championship. Because the jury heard evidence that golfers generally received their scholarships during their junior year, and that Micaa was one of the more talented golfers among her peers, Micaa's testimony regarding when her friends received their golf scholarships was not speculative, and it was relevant to show the stressful effect on Micaa, who did not receive a scholarship until February of her senior year. In our view, Micaa laid the proper foundation for this testimony and the trial court erred in excluding it.

III. Michael's "Statement" Concerning the Car Bumper

Micaa next challenges the trial court's decision to admit Jourdan's testimony regarding a statement Michael supposedly made following the accident. At trial, Michael testified during direct examination that the accident caused cracks to his vehicle's rear bumper. After the close of Micaa's case, Jourdan took the stand in his defense and testified that, following the accident, Michael told him "The crack was from before the accident." Micaa's counsel objected on hearsay grounds, but the trial court ruled that the testimony was admissible.

In his brief, Jourdan insists that his testimony was admissible under Rule 5-613 to impeach Michael's testimony. We disagree. Rule 5-613 provides:

> (a) A party examining a witness about a prior written or oral statement made by the witness need not show it to the witness or disclose its contents at that time, provided that before the end of the examination (1) the statement, if written, is disclosed to the witness and the parties, or if the statement is oral, the contents of the statement and the circumstances under which it was made, including the persons to whom it was made, are disclosed to the witness and (2) the witness is given an opportunity to explain or deny it.
>
> (b) Unless the interests of justice otherwise require, extrinsic evidence of a prior inconsistent statement by a witness is not admissible under this Rule (1) until the requirements of section (a) have been met and the witness has failed to admit having made the statement and (2) unless the statement concerns a non-collateral matter.

"Rule 5-613 permits impeachment of a witness'[s] credibility by evidence that the witness made a prior statement that is inconsistent with his or her in-court testimony, but only if a sufficient foundation first has been established." *Thomas v. State*, 213 Md. App. 388, 405 (2013), *cert. denied*, 437 Md. 640 (2014). In *Brooks v. State*, the Court of Appeals derived a checklist for the foundation required to admit such impeachment evidence. 439 Md. 698,

716-718 (2014). The first requirement is that: "*1. The content of the statement and the circumstances under which it was made, including the person(s) to whom it was made, must be disclosed to the witness who is being impeached before the end of that witness's examination. Rule 5-613(a)(1), (b)(1).*" *Id*. at 717. Here, Jourdan's counsel did not disclose to Michael during cross-examination that Michael had made the alleged statement to Jourdan; instead, he introduced it during Jourdan's direct-examination. Because Jourdan failed to establish a sufficient foundation before introducing Michael's statement, the statement was inadmissible impeachment evidence under Rule 5-613. Accordingly, the trial court erred in admitting this statement.[3]

IV. Evidence Explaining Why Micaa Succeeded in Certain Golf Tournaments

We next address whether the trial court erred in excluding Micaa's testimony wherein she would have explained why she was able to succeed in certain golf tournaments following the accident. To provide context for the testimony at issue, we note that Micaa's golf mentor, Ms. Wolfe, testified on cross-examination that in the summer of 2014, Micaa placed first at the Bill Dickey Invitational Championship, and that she "won the championship in the age 16 group" at the "Champion Veritas International AAU Junior Olympics Game Tournament in Los Angeles."

Later in the trial, Micaa testified that, following the accident, she had to withdraw from numerous tournaments, and that, when she did attempt to compete in tournaments,

[3] This testimony is also inadmissible as substantive evidence under Rule 5-802.1 because Michael was never subject to cross-examination concerning the supposed statement, and the statement was not given under oath or subject to penalty of perjury.

she did not generally play as well as she normally would.

During her direct-examination, Micaa's counsel attempted to ask Micaa why she nevertheless succeeded in certain tournaments following the accident:

[MICAA'S COUNSEL]: Were there times where you actually did play well?

[MICAA]: Yes.

[MICAA'S COUNSEL]: I think one of the things that was mentioned by Defense Counsel was some tournament that you were in in July that you won?

[MICAA]: Yes.

[MICAA'S COUNSEL]: Can you tell the ladies and gentlemen of the jury about that tournament and why it is that you think you were able to win in that particular situation?

[DEFENSE COUNSEL]: Objection.

THE COURT: Sustained.

[MICAA'S COUNSEL]: Tell the ladies and gentlemen of the jury why you won.

[DEFENSE COUNSEL]: (Inaudible 10:19:09).

THE COURT: Sustained.

[MICAA'S COUNSEL]: Can you tell the ladies and gentlemen of the jury why you were able to play as well as you did in that tournament?

[DEFENSE COUNSEL]: Objection.

THE COURT: Sustained.

Micaa's counsel then requested permission to approach the bench, and the following ensued at the bench conference.

[MICAA'S COUNSEL]: How is she not entitled to describe the differences in her symptoms?

THE COURT: Say it again.

[MICAA'S COUNSEL]: How is she not -- why is she not able to testify about how things were different in that particular tournament?

THE COURT: That was not the question. The question that you asked is not a proper question.

[MICAA'S COUNSEL]: The question that I asked was, how were you able to perform as well as you did in that tournament.

THE COURT: That was not the question.

[MICAA'S COUNSEL]: I'll ask that question.

THE COURT: There was an objection. That was not the question. I don't know whether there was an objection or not, but that was not the question that you asked.

[DEFENSE COUNSEL]: Well, the objection to that is that --

THE COURT: Yes, that one is objectionable as well. You can ask a different question.

[MICAA'S COUNSEL]: Why is it that she's not entitled to testify to (inaudible 10:20:14), what's the ruling?

THE COURT: What makes that a proper question? That's the question.

[MICAA'S COUNSEL]: It's a proper question, because she can explain the differences in how she was feeling at that time and how that made her (inaudible 10:20:23).

THE COURT: That was not the question.

[MICAA'S COUNSEL]: I'm not trying to lead her, Your Honor. If you want me to lead her, I can lead her.

THE COURT: No, but you can't lead. But that was not a proper question.

[MICAA'S COUNSEL]: It's a proper question, because it elicits a response, it's a proper response. And the proper response would be that she would talk about the differences on that particular day, on that particular set of days, that allowed her to play better with the differences in her symptoms.

THE COURT: Okay, sustained. So move on. I'm sustaining the objection.

During cross-examination, Micaa acknowledged that, after the accident, she participated in multiple tournaments spanning from 2014 through 2018, which included at least one first place finish and several second and third place finishes. On re-direct, Micaa's counsel again sought to provide context for Micaa's strong golf performances.

[MICAA'S COUNSEL]: The tournaments that you played in 2014 that [defense counsel] was talking about, where were the tees?

[MICAA]: The tees were -- like the red tees, so they're like ladies [sic] tees. Which means they're shorter.

[MICAA'S COUNSEL]: What's the significance of that . . . ?

[MICAA]: That's like -- one -- like at least 300 yards longer than what you would be playing from the ladies [sic] tees.

[MICAA'S COUNSEL]: So let's do it this way. In college, what tees do you play from?

[MICAA]: In college they play from 5,800 yards.

[MICAA'S COUNSEL]: Okay. Are those tees that you're playing in college, are they further back, or closer, or the same distance as the red tees?

THE COURT: Counsel, redirect as to --

[MICAA'S COUNSEL]: This has to do with tournaments she was in.

THE COURT: No.

[MICAA'S COUNSEL]: Yes it does, Your Honor. Your Honor, if we can approach, I can explain.

At a bench conference, the following ensued:

THE COURT: That's not redirect.

[MICAA'S COUNSEL]: Your Honor, [defense counsel] asked her questions about how well she did in tournaments.

THE COURT: Yes.

[MICAA'S COUNSEL]: In tournaments, okay?

THE COURT: Right.

[MICAA'S COUNSEL]: It's significant that there's tournaments that she did well in, she was hitting from the red tees, the ladies' tees.

THE COURT: Okay.

[MICAA'S COUNSEL]: As opposed to the college distances.

THE COURT: Okay.

[MICAA'S COUNSEL]: Okay.

THE COURT: That's not redirect.

[MICAA'S COUNSEL]: It is. He -- how is [it] not redirect if he talked about those actual scores? And she's entitled to explain to the jury that she played from closer tees than she normally would play at and that's why she did better.

THE COURT: And she's played college golf since then.

[MICAA'S COUNSEL]: Well, I understand that. But [defense counsel is] talking about the reason he brings out how well she did in 2014,

	Your Honor, is to suggest that she really wasn't that injured.
THE COURT:	Okay.
[MICAA'S COUNSEL]:	And part of the reason she did as well as she did, Your Honor, is because she was playing from shorter tees as opposed to college tees.
THE COURT:	Let's move on. Sustained. Let's move on. No.

Initially, we note that "[m]anaging the scope of cross-examination is a matter that falls within the sound discretion of the trial court." *Simmons v. State*, 392 Md. 279, 296 (2006). "As a general rule, redirect examination must be confined to matters brought out on cross-examination. However, it is within the court's discretion to allow the introduction of something new or forgotten if the purposes of justice seem to demand it, and [appellate courts] will not interfere unless there is a clear abuse of such discretion." *Thurman v. State*, 211 Md. App. 455, 470 (2013) (quoting *Fisher Body Div. v. Alston*, 252 Md. 51, 56 (1969)).

Here, however, Micaa's counsel simply sought to have Micaa explain some of the circumstances discussed during cross-examination: her success in certain golf tournaments following the accident. Micaa's counsel tailored his question to matters brought out during cross-examination. Furthermore, this testimony was relevant. Because the only issue for the jury to resolve was the extent of Micaa's injuries, evidence that she succeeded in golf tournaments bore directly on the extent of her injuries. Micaa should have been permitted to explain why she succeeded in those golf tournaments, and the jury should have been given the opportunity to weigh the persuasiveness of her testimony. The trial court

therefore abused its discretion in disallowing this testimony.[4]

V. Prejudicial Error

As stated above, "even if 'manifestly wrong,' we will not disturb an evidentiary ruling by a trial court if the error was harmless." *Brown*, 409 Md. at 584 (citing *Crane*, 382 Md. at 91-92). In determining whether the error complained of "likely . . . affected the verdict below[,]" appellate courts focus on probability, rather than the possibility, of prejudice. *Id*. Here, the trial court committed four distinct errors. First, the court improperly excluded Cheryl's testimony regarding Micaa's difficulty with "word-finding." Second, the court improperly excluded Micaa's testimony regarding her concerns about receiving college scholarship offers. Third, the trial court erred in admitting Jourdan's hearsay testimony regarding a statement Michael supposedly made concerning the crack in the car's bumper. Finally, the court erred by preventing Micaa from explaining why she was able to succeed in certain golf tournaments following the accident. The aggregate of these errors requires us to vacate and remand.

In *Crane*, the parties, Dunn and Crane, were involved in a single-vehicle car accident. 382 Md. at 88. Dunn was driving, and Crane was her passenger. *Id*. Following the accident, Crane sued Dunn for damages resulting from Dunn's alleged negligence in

[4] We note that Jourdan's counsel never lodged an objection to this line of re-direct. Instead, the court, *sua sponte*, interrupted Micaa's counsel's questions, apparently because Micaa "played college golf since [the accident]." The parties did not dispute that Micaa competed in college following the accident. The purpose of this re-direct was to explain how Micaa succeeded in specific tournaments following the accident, not whether she ultimately competed in college.

operating the vehicle. *Id*. at 89. Before trial, Dunn moved, *in limine*, to exclude evidence that she had previously pleaded guilty to negligent driving as a result of that accident. *Id*. at 89. The trial judge granted Dunn's motion. *Id*. at 90.

The Court of Appeals held that the court committed prejudicial error in excluding Dunn's guilty plea from Crane's civil trial. *Id*. at 101. After establishing that the evidence was admissible, *id*. at 99, the Court explained why the error was prejudicial, *id*. at 101. First, the Court noted that Crane and Dunn were the only witnesses to the accident, and that Dunn's admission of fault "was a matter for consideration by the jury." *Id*. Although Dunn's admission in traffic court was not conclusive evidence of negligence, the Court recognized that Dunn could have explained the circumstances of her plea, and the jury would decide what weight, if any, to give to that explanation. *Id*. The Court went on to state, "Crane had a right to show the jury that, previously, Dunn had taken responsibility for the accident, and Dunn had every right to explain or rebut that assertion." *Id*. Because the Court concluded that it could not "say that the exclusion of [Dunn's] admission did not affect the outcome of the trial[,]" it reversed and remanded for a new trial. *Id*. at 101-02.

Although the single error in *Crane* is more substantial than any of the individual errors the trial court committed here, the cumulative effect of the trial court's evidentiary errors constitutes sufficient prejudice to require vacation of the judgment. *See Ferry v. Cicero*, 12 Md. App. 502, 509 (1971) (recognizing in dicta that numerous errors "could easily have amounted to prejudice in their cumulative effect"). "In the case of two or more findings of error, the cumulative prejudicial impact of the errors may be harmful even if each error, assessed in a vacuum, would have been deemed harmless." *Muhammad v. State*,

177 Md. App. 188, 325 (2007), *cert. denied*, 403 Md. 614 (2008). Here, in addition to improperly excluding relevant substantive evidence, the court improperly admitted unreliable impeachment evidence.

We summarize the court's evidentiary errors and their effect on Micaa's case. First, as the first witness called to testify, Cheryl should have been permitted to testify that she observed Micaa's difficulty with word-finding.

Second, by excluding evidence regarding when Micaa expected to receive college scholarships, the trial court improperly undermined Micaa's theory of non-economic damages, i.e., that she experienced fear and stress in wondering whether she would fully recover in time to receive college scholarships.

Third, the trial court erred in admitting Jourdan's testimony that Michael stated that the car's bumper was cracked prior to the accident. Not only was the statement inadmissible, but it served two important functions: it undermined the severity of the crash itself, and consequently the extent of Micaa's injuries; and it improperly impeached Michael's credibility, portraying Micaa's own father as dishonest.

Fourth, the trial court erred in excluding evidence that explained why Micaa was able to succeed in various tournaments. By revealing that Micaa had performed well in golf tournaments following the accident, Jourdan was able to suggest that Micaa's injuries were not as severe as she claimed them to be. Micaa should have been permitted to rebut that assertion by explaining how she felt during those tournaments, or whether any other circumstances contributed to her successes. Like in *Crane*, the jury should have been given

the chance to decide what weight, if any, to give to Micaa's explanation. 382 Md. at 101-02.

We recognize the potential cumulative effect of these errors, and like in *Crane*, we cannot say that the trial court's errors "did not affect the outcome of the trial." *Id*. at 102. Accordingly, we must vacate the judgment and remand for a new trial.[5] [6]

JUDGMENT OF THE CIRCUIT COURT FOR PRINCE GEORGE'S COUNTY VACATED. CASE REMANDED FOR A NEW TRIAL BEFORE A DIFFERENT JUDGE AS DETERMINED BY THE ADMINISTRATIVE JUDGE OF THE CIRCUIT COURT FOR

[5] For guidance on remand, we note that the trial court did not err in granting Jourdan's motion *in limine*. Although an expert is permitted to respond to a proper hypothetical question, *Rochkind v. Stevenson*, 454 Md. 277, 286 (2017), the form of the question here intimated that Micaa's symptoms were permanent. Because Micaa had conceded that she was not claiming a permanent injury, the trial court did not abuse its discretion in granting the motion, thereby preventing Micaa from implying a permanent injury.

Additionally, we note that, though not strictly relevant, the trial court did not err in allowing Jourdan to testify regarding his participation in the NCAA college basketball tournament as basic background information to introduce him to the jury.

We need not decide whether the trial court erred in preventing Micaa's counsel from reading jury instructions during closing argument because Micaa's counsel was permitted to argue all substantive aspects of non-economic damages. Nevertheless, in the circumstances of this particular case, we fail to see the harm in allowing counsel to accurately read the non-economic damages jury instruction during closing argument.

[6] Although we need not decide whether the trial court exhibited bias that prevented Micaa from receiving a fair trial, we note that, in addition to the evidentiary errors mentioned above, the trial court's questioning of Micaa regarding her golf ranking prior to trial, as well as the court's *sua sponte* questioning of Ms. Wolfe, in the presence of the jury were troubling. In light of the multiple evidentiary errors and Micaa's expressed concern of judicial bias, we shall order the Administrative Judge of the Circuit Court for Prince George's County to assign re-trial of this case to a different judge.

PRINCE GEORGE'S COUNTY. COSTS TO BE PAID BY APPELLEE.