Circuit Court for Dorchester County
Case No. 09-CR-17-000003

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 1099

September Term, 2017

ELWOOD BRIGGS

v.

STATE OF MARYLAND

Wright,
Leahy,
Raker, Irma S.
(Senior Judge, Specially Assigned),

JJ.

Opinion by Raker, J.

Filed: August 3, 2018

Elwood Briggs, appellant, was convicted in the Circuit Court for Dorchester County of second-degree assault. He presents the following questions for our review:

> "A. Whether the trial court impermissibly restricted cross-examination of Mr. Rodriguez?
>
> B. Whether the trial court erred in forcing Mr. Rodriguez to testify despite his invocation of his Fifth Amendment right not to testify?
>
> C. Whether the trial court erred in admitting inadmissible evidence?
>
> D. Whether the cumulative effect of the errors warrant reversal of appellant's convictions?"

We shall hold that the trial court erred in restricting appellant's cross-examination of Devonte Rodriguez, a key witness in the case.[1] Because this error was not harmless, we shall reverse.

I.

The Grand Jury for Dorchester County indicted appellant with the offenses of second-degree assault and conspiracy to commit second-degree assault. The trial court acquitted appellant of the conspiracy charge and the jury convicted him of second-degree assault of Mr. Rodriguez. The trial court imposed a term of incarceration of sixteen years: eight years for second-degree assault, consecutive to an eight-year term of incarceration executed as a result of a probation violation in an earlier case.

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[1] Because we shall reverse on the grounds that the trial court restricted cross-examination of Mr. Rodriguez impermissibly, we will not address the other issues appellant raises in this appeal.

We set out the facts relevant to the cross-examination issue and omit those facts related to the other issues raised in this appeal. Prior to the incident, appellant and Mr. Rodriguez were in the Dorchester County Detention Center awaiting charges on unrelated cases. Mr. Rodriguez requested to move to a different cell. On August 30, 2016, Corporal Michael Warfield and Officer Davion Batson were on post during inmate visitation, when Corporal Warfield saw Mr. Rodriguez's cell mate and cousin, Geet Cornish, waving his arms. Corporal Warfield went into Mr. Rodriguez's cell and observed Mr. Rodriguez bleeding from his face and down his shirt. Corporal Warfield called Officer Batson to come in. Officer Batson saw that the cell was in disarray; there was blood on the wall, door, and toilet; and Mr. Rodriguez, his face swollen, was bleeding. Mr. Rodriguez and Mr. Cornish were the only people in that cell when Officer Batson arrived. Corporal Warfield and Officer Batson locked the pod down, radioed for assistance, and escorted Mr. Rodriguez for medical treatment.

Lieutenant Robert Fitzgerald responded to the incident and observed officers bringing Mr. Rodriguez out of the cell. Mr. Rodriguez's cell was covered in blood. Lt. Fitzgerald proceeded to the security office along with another officer to review the surveillance video. The video purportedly showed the following sequence of events: (1) Mr. Rodriguez and Mr. Cornish entered their cell; (2) Brendan Jackson, Jerry Murat, and appellant entered Mr. Rodriguez's cell;[2] (3) Mr. Cornish and Jackson left the cell; (4) Murat and appellant left the cell; (5) Mr. Cornish re-entered the cell; and (6) Mr. Rodriguez

[2] The transcript of Lt. Fitzgerald's testimony is unclear as to the sequence of Jackson, Murat, and appellant entering Mr. Rodriguez's cell.

came out of the cell. The video also purportedly showed that inmates Anthony Riggle and Juwan Jones were near the cell during this time.

Three to five minutes after the incident, Corporal Warfield walked by appellant's cell and observed appellant washing his hands. Corporal Warfield testified that he forgot to include this detail in his report, even after he had watched the surveillance video, but recalled this detail eight months later. Officer Batson explained that because physical marks on the hands are a good indicator that someone might have done something, the Detention Center officers checked all inmates' hands. Officer Batson examined the hands of those inmates from the lower tier, including appellant, and found nothing indicating any type of incident. Officer Batson did not observe any blood splatter on appellant. Lt. Fitzgerald testified that no one noticed any blood on appellant and that he checked appellant's hand and found nothing indicating any type of incident.

The day of the attack, Mr. Rodriguez told Lt. Fitzgerald and multiple officers that he did not know who assaulted him. Lt. Fitzgerald testified that Mr. Rodriguez was not cooperative when he was asked about what happened and whether he knew the perpetrator. Officer Ryan Howell testified that Mr. Rodriguez stated that he could not see the perpetrator and could not identify him at the time. Mr. Rodriguez did not make these statements under oath.

On September 14, 2016, investigator Gary Bromwell interviewed Mr. Rodriguez. During this interview, a cooperative Mr. Rodriguez implicated two persons as the perpetrators of his assault: appellant and Murat. Mr. Bromwell did not know of Mr. Rodriguez's prior statements, or that two days earlier he had been sentenced to a term of

incarceration of twenty years for an unrelated charge. This interview was not conducted under oath.

On September 15, 2016, Corporal Priscilla Rogers interviewed Mr. Rodriguez. Still cooperative, Mr. Rodriguez implicated three people—appellant, Murat, and Jackson—as the perpetrators. Mr. Rodriguez said he had never feared for his safety from anybody. This interview was recorded, but Corporal Rogers conceded that she failed to download a copy of the interview from the system. This interview was not conducted under oath.

Lisa Hunter, from the inmate telephone service provider for the Detention Center, testified regarding a jail call purportedly made by appellant on January 31, 2017 ("the jail call"), in which appellant told an unknown person that he had been in a fight over something "petty."

During the trial, out of the presence of the jury, Mr. Rodriguez indicated that he did not want to testify and invoked his Fifth Amendment right not to testify, stating as follows:

> "[THE STATE]: Mr. Rodriguez, good afternoon. We spoke earlier today. It was my understanding that you believe you have a Fifth Amendment right; is that right?
>
> [MR. RODRIGUEZ]: Yeah. I don't—like I said multiple times to you, I don't want nothing to do with this case. . . . And want none of that. . . . I got nothing to say about this case.
>
> [THE STATE]: I got you. But my question is do you believe that you have a Fifth Amendment right to invoke at this juncture or at this time? Is that your intention when I ask you questions on the stand to invoke a Fifth Amendment right?
>
> [MR. RODRIGUEZ]: Yeah. My lawyer told me that, he was saying something about if I feel I'm going to incorrupt—incriminate myself or something like that.

> But I have no testimony to give. Like I don't even—I told you multiple times, I have no testimony to give. So I didn't want to come here today. . . . But you're still forcing me to come. . . . You threatened me. Well, basically—yeah, you basically threatened me; talking about it's best that I give—it would be in my best interests for me to testify or when I do go for a modification, that the judge might turn and, say, look the other way. Like I ain't got nothing to say here like.
>
> [THE STATE]: I think—well, didn't I tell you that if you don't testify truthfully that it's not going to help at any sort of modification? Is that what I said?
>
> [MR. RODRIGUEZ]: No. You said it would be in my best interests to testify or at my, at my hearing—that the judge would look—he would turn his head the other way. That was what you said."

The State maintained that Mr. Rodriguez did not have a Fifth Amendment right to decline to testify. The State told the court that it had no intention to prosecute Mr. Rodriguez for any event related to the incident and asked the court to order Mr. Rodriguez to testify. Defense counsel disagreed, arguing as follows:

> "[DEFENSE COUNSEL]: Well, as I had indicated to Your Honor previously, I don't believe that just because the State indicates they don't intend to prosecute him now or he's not currently pending prosecution, that doesn't mean he doesn't have a Fifth Amendment right. This would be the first time when he's being asked to testify under oath and that may or may not be different from things he's done in the past, whether it's to the State's agents or anybody else.
>
> If that's the case, if his testimony would in fact inculpate him into any situation, then I think in that light then he would have a Fifth Amendment right against self-incrimination.
>
> THE COURT: All right. And to be clear, you don't represent Mr. Rodriguez. Just to be clear.
>
> [DEFENSE COUNSEL]: Not at all. No, not at all, Your Honor."

The trial court indicated that Mr. Rodriguez's testimony may incriminate him and inquired whether the State would give him immunity. The State refused, contending that it was "not trying to give Mr. Rodriguez ideas about if [the State] give him an immunity letter he can get up there and say whatever he wants." The trial court warned the State it "would look dimly upon anything being used [against Mr. Rodriguez] in the future" and, because "there's nothing that can incriminate [Mr. Rodriguez] at this point," ordered Mr. Rodriguez to testify. Defense counsel did not object to the ruling.

In the presence of the jury, the State examined Mr. Rodriguez. Mr. Rodriguez testified as follows:

> "[THE STATE]: Now, Mr. Rodriguez, you went to the hospital. Do you recall who caused you that injury?
>
> [MR. RODRIGUEZ]: No.
>
> [THE STATE]: Okay. Do you recall speaking with a gentleman—do you recall me speaking with you out at the Eastern Correctional Institution?
>
> [MR. RODRIGUEZ]: Yeah, and I told you that I don't want nothing to do with this case and I don't remember nothing about that day on this case. I told you and some other guy.
>
> [THE STATE]: Okay. But the other guy was with me?
>
> [MR. RODRIGUEZ]: Yeah.
>
> [THE STATE]: Do you remember speaking to him without me at one point?
>
> [MR. RODRIGUEZ]: Yeah, and I told him that I don't remember nothing that day and he still went on and made his own little assumptions.

> [THE STATE]: Okay. And do you remember speaking to the female detective that you talked to earlier today? Do you remember speaking with her previously?
>
> [MR. RODRIGUEZ]: She tried to—yeah, she tried to get me to press charges and like I told her and the other detective in there, I'm not pressing charges on nothing that I don't have no knowledge of. . . . I told them that, but you all picked the charges up.
>
> [THE STATE]: Okay. Do you know if, if you were assaulted by a person?
>
> [MR. RODRIGUEZ]: I don't recall.
>
> [THE STATE]: Okay. Do you know whether or not there was anybody—where you were when it happened?
>
> [MR. RODRIGUEZ]: Where I was at? . . . I guess I was on the tier.
>
> [THE STATE]: Okay. Do you recall any—who was your cell mate at the time; do you recall?
>
> [MR. RODRIGUEZ]: Man, that was like ten months ago.
>
> [THE STATE]: Do you know the name Geet Cornish?
>
> [MR. RODRIGUEZ]: That's my cousin.
>
> [THE STATE]: Okay. Was he your cell mate?
>
> [MR. RODRIGUEZ]: I think, I think. I'm not—I don't remember."

Defense counsel objected and the trial court overruled the objection. During cross-examination, Mr. Rodriguez said that on the day of the incident, he told multiple officers that he did not know who assaulted him. The trial court limited defense counsel's cross-examination regarding a conversation between Mr. Rodriguez and the State as follows:

> "[DEFENSE COUNSEL]: Okay. And you indicated that today you had a conversation with the State about this case; is that right?
>
> [MR. RODRIGUEZ]: Yes, ma'am, I did.
>
> [DEFENSE COUNSEL]: And what did the State tell you about—
>
> [THE STATE]: Objection.
>
> THE COURT: Sustained.
>
> [DEFENSE COUNSEL]: No further questions."

The State called Corporal Rogers and Mr. Bromwell to testify about Mr. Rodriguez's out-of-court statements, which were inconsistent with his present trial testimony and in which he had implicated appellant as one of the perpetrators. The State commented in its closing argument as follows:

> "Once [Mr. Rodriguez is] separated from [the other inmates], he then speaks to Detective Rogers or Corporal Rogers. Having never seen this video he happens to name the people on this video who were seen going into his cell. Coincidence? He's then interviewed later by Gary Bromwell and, again, is cooperative and says who happened—what happened and who assaulted him.
>
> ***
>
> Now, at one point—now, the defense wants you to believe that Mr.—that the State concocted this whole thing that these guys did it and they had nothing to do with it and whatever. Well, here's the issue. Priscilla Rogers says that he told her that three people were involved; Brendan Jackson, Jerry Murat and appellant. Yet when Jerry Bromwell gets involved he can't get the same story straight because he says it's not—Gary Bromwell can't get the same story because he's telling the truth. He's telling you what appellant—I mean, Mr. Rodriguez

> told him at that point, which is that it was appellant and Jerry Murat. So he's consistent on those two people."

Lt. Fitzgerald testified to the following facts regarding State's Exhibit 2, the video film from the Detention Center surveillance system: (1) the surveillance system was self-sustaining, not consistently monitored by officers, date and time stamped, and in working order at the time of the incident; (2) it was accurate because the videos accorded with the circumstances on other occasions; (3) nobody, including Lt. Fitzgerald, could alter the video; (4) he was familiar with this surveillance system and had reviewed footage multiple times before the incident; (5) he was the first to review the surveillance record, on the day of the incident; (6) some time before the trial he downloaded and reviewed the State's Exhibit 2 again, and found it to fairly and accurately represent what he viewed on the day of the incident; (7) he did not know the type of the recording device and could not attest to the reliability of the equipment; (8) he never compared the video footage with his real-time direct observations; and (9) he downloaded a video only once, for the instant case.[3]

Ms. Hunter testified regarding State's Exhibit 6, the jail call, that: (1) when making a telephone call, an inmate enters his/her pin number and states his/her name; (2) the call record cannot be altered in any way; (3) Ms. Hunter reviewed the jail call; and (4) Ms. Hunter ascertained that State's Exhibit 6 was an actual representation of the jail call.

Appellant did not testify. The trial court granted defense counsel's motion for judgment of acquittal as to the conspiracy charge and the jury returned a guilty verdict on

[3] Defense counsel objected to the admissibility of the video surveillance on the grounds of lack of authentication.

the second-degree assault charge. The trial court sentenced appellant to a term of incarceration of sixteen years: eight years for second-degree assault, and eight years consecutive for violation of probation in an earlier case. This timely appeal followed.

II.

Appellant claims that the trial court erred in restricting the cross-examination of Mr. Rodriguez, contending that the right to cross-examine witnesses about their motive to testify is critical to a fair trial. In reply to the State's argument that appellant did not preserve the issue for our review because he did not proffer the questions' content and relevance, appellant argues that a proffer is not necessary to preserve an issue for appellate review. Appellant also argues that his cross-examination question did not elicit inadmissible hearsay because he sought to elicit a statement by a party-opponent. He contends that evidence of Mr. Rodriguez's bias, incentive, and motives was critical to this case, making them proper subjects for cross-examination. Appellant claims that the jury was not aware of Mr. Rodriguez's reluctance in testifying. Appellant further argues this error was reversible error because it was not harmless.

Appellant also argues that the trial court erred in rejecting Mr. Rodriguez's claim of his right to remain silent under the Fifth Amendment to the United States Constitution, and in admitting multiple instances of inadmissible evidence.

The State contends that, if preserved, the trial court controlled the scope of cross-examination properly. The State argues that to preserve the issue for appellate review, appellant needed to and failed to proffer the substance, relevance, and legal theory of

admissibility of the responses to his proposed cross-examination questions. Alternatively, if preserved, the State contends that the trial court did not abuse its discretion in limiting cross-examination, that defense counsel's cross-examination question would elicit inadmissible hearsay, and that Mr. Rodriguez was a reluctant witness and was not biased against appellant. Even if the trial court erred in restricting the cross-examination, the State argues, this error was harmless because the jury would have reached the same verdict based on other evidence.

Additionally, the State contends that the trial court was correct in rejecting Mr. Rodriguez's claim of his Fifth Amendment right not to testify, and that the trial court's evidentiary rulings were correct and, even if not, any error was harmless.

III.

We review the trial court's decision whether to restrict cross-examination of a key witness under an abuse of discretion standard. *Grandison v. State*, 341 Md. 175, 207 (1995). A trial court may make judgment calls and control the scope and mode of cross-examination based on its understanding of the legal rules. *Peterson v. State*, 444 Md. 105, 124 (2015). In reviewing the limitation on cross-examination, we look to see "whether, under the particular circumstances of the case, the limitation inhibited the ability of the defendant to receive a fair trial." *Martin v. State*, 364 Md. 692, 698 (2001).

We address first the State's preservation argument. Preservation may require a formal proffer of the contents and relevancy of the excluded evidence, because restriction of cross-examination amounts to exclusion of evidence and "preservation for appeal of an

objection to the exclusion *generally* requires a formal proffer of the contents and relevancy of the excluded evidence." *Grandison*, 341 Md. at 207 (emphasis added). The requirement of a formal proffer for issue preservation, however, is not absolute. *Jorgensen v. State*, 80 Md. App. 595, 600 (1989). As we noted in *Waldron v. State*, 62 Md. App. 686 (1985):

> "When no proffer is made, the questions must clearly generate the issue—what the examiner is trying to accomplish must be obvious. Thus, in the absence of a proffer, the clarity with which the issue is generated will determine whether the court's restriction of cross-examination constitutes an abuse of discretion."

Id. at 698. In *Jorgensen v. State*, 80 Md. App. 595 (1989), the trial court curtailed defense counsel's cross-examination into the timing of the defendant's administrative complaint against a police officer and the issuance of the arrest warrant against the defendant. *Id.* at 599. Although defense counsel did not proffer the relevance of this inquiry, his opening statement presented a theory that the arrest warrant was issued after the defendant's complaint was filed, and he attempted to inquire about the complaint's timing while questioning another witness. *Id.* at 601–02. We held that no proffer was necessary because the opening statement and questions clearly presented the timing issue. *Id.* at 602.

In the case *sub judice*, Mr. Rodriguez testified outside the presence of the jury that the State had made threats to compel him to testify, and defense counsel attempted to ask Mr. Rodriguez about that conversation while cross-examining him in front of the jury. The court sustained an objection by the State and defense counsel ceased its cross-examination. Notably, defense counsel did not proffer the substance, relevance, or legal theory of

admissibility of the responses to its proposed cross-examination questions. The State contends appellant failed to preserve the related issue. We disagree.

Appellant clearly did not make a formal proffer. As noted in *Jorgensen*, an alternative test on issue preservation asks whether defense counsel clearly presented the purported cross-examination issue to the trial court. *Id.* at 601. Appellant asked Mr. Rodriguez explicitly about a conversation that occurred "today" between him and the State. The only other testimony referring to a conversation occurring "today" was at the beginning of the State's direct examination of Mr. Rodriguez out of the presence of jury. Following this question, appellant attempted to direct Mr. Rodriguez to testify to the jury about the content of this conversation, and the trial court curtailed this question. From the context, it was abundantly clear to the trial court that defense counsel attempted to elicit Mr. Rodriguez's allegation that the State had threatened him to coerce him to testify. In addition, a coercion or threat from the State to Mr. Rodriguez was relevant to the inquiry of witness bias, which should have been heard and evaluated by the fact finders. Because the purported issue was clear to the trial court and relevant to bias, no proffer was necessary to preserve the issue for our review.

We turn next to whether the trial court erred in restricting cross-examination of Mr. Rodriguez. The State contends that the pertinent cross-examination question would elicit inadmissible hearsay. We disagree. It did not matter whether the declarant's statement was true or not. Appellant did not intend to prove the truth of the matter asserted. Rather, he wanted to show that the statement was made and thus, to give context to Mr. Rodriguez's motive to testify. The question would not have elicited an inadmissible hearsay response.

Although we ordinarily review the admissibility of evidence on an abuse of discretion standard, whether evidence is hearsay is reviewed *de novo*. *Bernadyn v. State*, 390 Md. 1, 7–8 (2005). Hearsay is "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." Md. Rule 5-801(c). Under this definition, a witness's testimony is not hearsay merely because it elicits statements made by another person outside of court. *Wallace-Bey v. State*, 234 Md. App. 501, 536 (2017). It is black letter law that "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 (2005). When a hearsay objection is raised, the trial court should question "(1) whether the declaration at issue is a 'statement,' and (2) whether it is offered for the truth of the matter asserted." *Stoddard v. State*, 389 Md. 681, 688–89 (2005). If the declaration is not offered for the truth of the matter asserted, it is not inadmissible hearsay. *Id.* at 689.

In *Wallace-Bey v. State*, 234 Md. App. 501 (2017), the defendant raised a self-defense issue as a defense to murder charge, and testified that the deceased said "you need to learn to take the dick" just before he raped the defendant on the morning of the killing. *Id.* at 540. The trial court struck this testimony pursuant to the prosecutor's objection, apparently on hearsay grounds. *Id.* This Court ruled that this testimony was not hearsay because the defendant "was not offering that testimony to prove the 'truth' of whatever vile message [the deceased] was allegedly asserting," but to show her perception that the deceased would assault her again. *Id.*

In the instant case, appellant purported to elicit a declaration from the State to the victim in the case, a witness called by the State. Defense counsel offered this testimony to show that Mr. Rodriguez had perceived the State's declaration as a threat to him, which was relevant to establish that he was biased or that he expected some benefit in return for his testimony, not to prove that the declaration was a threat or the particular threat asserted by the State. We hold that the pertinent cross-examination was not hearsay because it was not offered for the truth of the State's declaration.[4]

The right of a criminal defendant to confront witnesses is guaranteed by the Sixth Amendment to the United States Constitution and Article 21 of the Maryland Declaration of Rights. *Hall v. State*, 233 Md. App. 118, 133 (2017); *Pantazes v. State*, 376 Md. 661, 680 (2003). The opportunity to cross-examine witnesses is central to that right. *Hall*, 233 Md. App. at 133. A defendant's right to cross-examine is not absolute and limitless—a trial court may impose reasonable limitations on cross-examination. *Martinez v. State*, 416 Md. 418, 428 (2010). It is well recognized, however, that the court must allow wide

[4] Even assuming the pertinent cross-examination was hearsay, it falls within the exception as statements by a party-opponent, provided by Md. Rule 5-803, as follows:

> "The following are not excluded by the hearsay rule, even though the declarant is available as a witness:
>
> (a) Statement by Party-Opponent. A statement that is offered against a party and is:
>
> (1) The party's own statement, in either an individual or representative capacity;"

The State is the opponent of defendants in criminal cases. *State v. Payne*, 440 Md. 680, 710 (2014). In fact, the caption and named opposing party in a criminal case is the "State of Maryland." In the instant case, appellant questioned a witness seeking to elicit a statement made by the State.

latitude to the cross-examiner in a criminal case to elicit the witness's bias, motive to testify, or prejudice. *Id*. As the United States Supreme Court has noted, "partiality of a witness is subject to exploration at trial, and is *always* relevant as discrediting the witness and affecting the weight of his testimony." *Davis v. Alaska*, 415 U.S. 308, 316 (1974) (emphasis added).

As this Court held in *Hall v. State*, 233 Md. App. 118 (2017), "[t]he defendant's opportunity to cross-examine a witness when the State's case rests on credibility is crucial to a fair trial, particularly when the witness may have a motive to testify falsely." *Id.* at 134. It is a basic premise of a fair trial that "[c]ross-examination is the principal means by which the believability of a witness and the truth of his testimony are tested." *Davis*, 415 U.S. at 316. *See Calloway v. State*, 414 Md. 616, 637 (2010) (holding that the trial court committed reversible error in limiting defense counsel's cross-examination of the State's key witness regarding his expectation of leniency from the State); *Martinez*, 416 Md. at 431–32 (2010) (holding that the trial court violated the defendant's constitutional right to confront a witness when it prohibited the defendant from cross-examining the witness as to potential bias).

Ordinarily, the scope of cross-examination is within the trial court's discretion. When, as is often the case, the defendant wishes to show that a prosecution witness is unbelievable, it is error not to allow cross-examination on matters that would reasonably tend to show bias, interest, or motive to testify falsely. *Leeks v. State*, 110 Md. App. 543, 557 (1996). When a witness is key to the State's case, any restriction of cross-examination

as to the witness's bias or motive to testify may be prejudicial. *People v. Foley*, 441 N.E.2d 655, 660 (Ill. App. Ct. 1982).

In *Calloway v. State*, 414 Md. 616 (2010), the witness volunteered to testify about several inculpatory statements of the defendant. *Id.* at 619. Before the defendant's trial, the witness's pretrial release bond was reduced from $10,000 to personal bond, pending charges against the witness were *nolle prossed*, and no violation of probation charge was filed against the witness, notwithstanding unequivocal evidence that he had violated probation in another case. *Id.* at 619, 630. The trial court prohibited the defense from cross-examining the witness as to whether the witness volunteered to testify for the State with the hope or expectation that he would receive some benefit in those pending charges against him. *Id.* at 631. The Court of Appeals held that there was a solid factual foundation for an inquiry into the witness's self-interest and that the trial court committed reversible error in preventing the jury from hearing whether the witness had a hope of more lenient treatment. *Id.* at 639. The Court stressed that because the issue is whether the witness had a hope of benefit from testifying against the defendant, it is of no consequence that the State had not offered to make any deal or bargain with the witness regarding his charges and his testimony in the defendant's case. *Id.* at 637.

In *Martinez v. State*, 416 Md. 418 (2010), the trial court prohibited the defendant from cross-examining the victim about his potential bias in connection with the State's dismissal of unrelated charges filed against him and his incarceration status pursuant to a writ of body attachment issued to secure his presence at trial. *Id.* at 420. The Court of Appeals held that the trial court erred in precluding the defendant from attempting to

impeach the victim on matters that could demonstrate the victim's bias. *Id.* The Court held that when a defendant seeks to cross-examine a State's witness to show bias or motive, the crux of the inquiry is the witness's state of mind. *Id.* at 431.

In the instant case, the State contends that Mr. Rodriguez offered no testimony harmful to appellant. We disagree. Mr. Rodriguez was the victim in the case and a key witness for the State. The State knew that Mr. Rodriguez was a reluctant witness and then offered his prior out-of-court statements into evidence to impeach him, and then used those out-of-court statements as substantive evidence of appellant's guilt. Before testifying, and out of the presence of the jury, Mr. Rodriguez exercised his Fifth Amendment right to decline to testify and stated that before the trial he had told the State of his intention not to testify. He alleged that the State had threatened him to coerce his testimony, explaining that the State had told him that "it would be in [his] best interests for [him] to testify or when [he does] go for a modification, that the judge might turn and, say, look the other way." During the State's direct examination of Mr. Rodriguez and before the jury, the State asked about Mr. Rodriguez's out-of-court statements to Corporal Rogers and Mr. Bromwell. Mr. Rodriguez denied that he had implicated appellant in these statements. The State then called Corporal Rogers and Mr. Bromwell to testify that Mr. Rodriguez's out-of-court statements had implicated appellant. In its closing argument, the State highlighted that Mr. Rodriguez's two out-of-court statements were candid and consistent with each other, not to discredit Mr. Rodriguez but as evidence that appellant had committed the crime. The State called Mr. Rodriguez to testify in order to bring in his out-of-court statements which implicated appellant as a perpetrator.

Appellant presented a theory that the incident was not an assault but a mutual fight, in which case the jury could have found that Mr. Rodriguez's testimony was harmful and thus prejudicial to appellant. There were conflicts between Mr. Rodriguez's trial testimony and his out-of-court statements as to whether he could identify the perpetrators. The jury should have heard all the evidence to weigh the reliability of Mr. Rodriguez's testimony, including any bias and his motive to testify. The trial court should have allowed appellant wide latitude to cross-examine Mr. Rodriguez's bias or prejudices, and abused its discretion by restricting the cross-examination.

The State further argues that in the instant case Mr. Rodriguez was not biased because the State did not offer any benefit to him. Appellant sought to show that Mr. Rodriguez, a principal witness for the State, testified against appellant in exchange for leniency in his pending sentence modification in an unrelated case. It does not matter whether the State offered a specific quid pro quo, such as *nolle prosse* of charges or release from custody, to Mr. Rodriguez. "While these facts in themselves do not necessarily prove that the witness was unworthy of belief, [appellant] had a right to have the jury informed of these matters and to permit the jury to determine whether the witness testified in the reasonable expectation that he would receive leniency in return for testimony against [appellant] and that his testimony, by reason thereof, was unworthy of belief." *Marshall v. State*, 346 Md. 186, 198 (1997). The key inquiry is whether Mr. Rodriguez had a hope of a benefit, not whether such hope of benefit might come from the State or a judge. *Martinez*, 416 Md. at 431. Assuming that the State informed Mr. Rodriguez that a judge instead of the State would decide his sentencing modification, he might expect,

nevertheless, that the State's statement may prompt lenient treatment from the judge. The trial court abused its discretion in preventing the jury from hearing this relevant evidence.

The trial court's error to restrict cross-examination of Mr. Rodriguez was not harmless. An error cannot be harmless "unless a reviewing court, upon its own independent review of the record, is able to declare a belief, beyond a reasonable doubt, that the error in no way influenced the verdict." *Newton v. State*, 455 Md. 341, 353 (2017). This Court held that restriction of the cross-examination of a chief prosecution witness was not a harmless error. *Brown v. State*, 74 Md. App. 414, 422 (1988) (holding that the State's sole eyewitness to the criminal agencies of the defendant "was essential to the successful prosecution of" the defendant). In the present case, some circumstantial evidence, including the surveillance video, Mr. Rodriguez's injury, and appellant's handwashing after the incident, supported the State's theory of assault, but could not unequivocally rule out appellant's defense theory of a mutual fight. Lack of physical marks on appellant's hand weighed against the State's theory of assault. Mr. Rodriguez's out-of-court statements were important to implicate appellant as a perpetrator. In addition, his out-of-court statements were inconsistent with his trial testimony. We cannot say beyond a reasonable doubt that the restriction on the cross-examination did not affect the verdict. *Dorsey v. State*, 276 Md. 638, 659 (1976). We hold that the impermissible restriction on cross-examination was not harmless error beyond a reasonable doubt.

JUDGMENTS OF THE CIRCUIT COURT FOR DORCHESTER COUNTY REVERSED. CASE REMANDED TO THAT COURT FOR A NEW TRIAL. COSTS TO BE PAID BY DORCHESTER COUNTY.