UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 1383

September Term, 2014

QUIANA WILKERSON

v.

STATE OF MARYLAND

Wright,
Friedman,
Thieme, Raymond G., Jr.
(Retired, Specially Assigned),

JJ.

Opinion by Wright, J.
Dissenting Opinion by Friedman, J.

Filed: June 17, 2015

On July 4, 2014, appellant, Quiana Wilkerson, was charged, by a statement of charges filed in the District Court for Baltimore City, with assault in the first and second degree and two dangerous weapon offenses for an incident that occurred early that morning. Later, a grand jury indicted Wilkerson on the charges of assault in the first and second degree, reckless endangerment, and carrying a dangerous weapon with intent to injure. On August 23, 2013, Wilkerson was arraigned in the Circuit Court for Baltimore City. After a three-day trial from June 11, 2014, to June 13, 2014, a jury convicted Wilkerson of first-degree assault, reckless endangerment, and carrying a dangerous weapon with intent to injure.

Wilkerson timely appealed and presents the following questions for our review:

> 1. Did the trial court err in preventing the defense from examining the State's key witness regarding her credibility and her testimony on the motive for the alleged crime?
>
> 2. Did the trial court err in refusing the defense's request to call as a witness a man whose testimony would have contradicted the State's evidence regarding the motive for the alleged crime?

We answer "no" to both questions and affirm the judgment of the circuit court.

Facts

On the evening of July 3, 2013, Markeeta Simms ("victim") was at a cookout at the Elmwood apartment of Nicole Lawson, who was the girlfriend of Simms' brother, Keith Burks. The Elmwood Apartments are located on Gwynn Oak Avenue in Baltimore. Wilkerson resided in the same apartment building, in an apartment above Lawson's.

On July 3, 2013, while Lawson and her guests were outside, Wilkerson came to the building with another woman. When Wilkerson first approached the apartment, Lawson

and Wilkerson had a conversation. After their conversation, Lawson and her guests went into her apartment. Burks later went outside and, when he returned, he told the victim to stay inside because Wilkerson had a knife.

When Lawson's guests wanted to leave, Burks went outside to see if the hallway to Lawson's apartment was clear. After Burks verified that it was, the victim left the apartment. While the victim was in the hallway, Wilkerson was "standing right there getting ready to go back up the steps." Wilkerson and the victim began arguing. Burks came out into the hallway to stop the fight, but "before [Burks] could stop anything, that's when [Wilkerson] was standing on this step right here and she reached over with the knife." Wilkerson used a "long steak knife, I believe that was with the ridges with a black handle[.]" As a result of the incident in the stairs, the victim sustained injuries to her hand, back, and eye.

Wilkerson testified in her defense. She testified that, after she returned home, she was "confronted" and received "threatening text message, asking [her] to step outside." Wilkerson stated that she went downstairs to retrieve her car, but realized that her mother had taken it, and started back up the steps when she saw the victim. Wilkerson alleged that she did not "have anything in [her] hand" at the time.

Wilkerson testified that the victim "was coming to me with a lock — well, a sock in her hand, I don't know what was in the sock." Wilkerson stated that the victim swung at her with the sock, but that she was able to "grab[] the sock out of [the victim's] hand and [she] threw it down the steps." Wilkerson claimed that she sustained a broken finger from the sock that the victim swung at her. Wilkerson alleged that Burks then came into the

hallway, "grabbed [her] by [her] neck and threw [her] to the floor, and punched [her] in the left side of [her] face." Wilkerson testified that, while she was being hit by Burks, her brother and mother came into the stairwell to "try[] to get Mr. Burks off of [her]." Wilkerson's mother, sister, and brother corroborated her account.

Both women claimed to be dating Darryl Davis at the time of the incident. The victim claimed that, not only was she dating Davis at the time of the incident, she was still dating him at the time of trial.[1] Wilkerson claimed that she was dating and living with Davis at the time of the incident, and that she was engaged to Davis at the time of trial.

At the conclusion of a three-day trial from June 11, 2014, to June 13, 2014, a jury convicted Wilkerson on the charges of first-degree assault, reckless endangerment, and carrying a dangerous weapon with intent to injure. On June 23, 2014, Wilkerson filed a motion for a new trial which the circuit court denied on July 3, 2014.[2] The circuit court sentenced Wilkerson on August 19, 2014, to 10 years' incarceration, with all suspended but 6 months, and 3 years of supervised probation for the assault conviction (with the reckless endangerment conviction merging); and 6 months of incarceration, with all suspended but time served, and 3 years of supervised probation for the dangerous weapon conviction to run concurrently. Wilkerson noted her appeal the same day.

Additional facts will be provided as they become relevant, below.

[1] Wilkerson attempted to question the "visibly pregnant" victim about her relationship with Davis and the paternity of her child. The victim claimed that she was pregnant with Davis's child, but Wilkerson disputed this citing Davis's incarceration.

[2] Wilkerson does not challenge its denial on appeal.

Discussion

Wilkerson contends that the circuit court should have allowed her to cross-examine the victim about her relationship with Davis because it went to the victim's credibility and because the State "opened the door" through its "portrayal of Ms. Simms as the legitimate girlfriend and Ms. Wilkerson the jilted ex." Wilkerson avers that these same reasons should have allowed her to call Davis to testify, and that the "court erred in refusing to allow Ms. Wilkerson to call Darryl Davis to testify[.]" (Emphasis omitted). According to Wilkerson, these "errors were not harmless beyond a reasonable doubt" and reversal of the judgment is "mandated." (Emphasis omitted).

I. Examination of the Victim

Wilkerson contends that, had she been able to cross-examine the victim, she could have shown that the victim "was not testifying truthfully regarding her relationship with Mr. Davis [which] would undercut her credibility and cast doubt on the veracity of her story that Ms. Wilkerson assaulted and stabbed her." Wilkerson avers that she "was entitled to question Ms. Simms about whether she was lying when she said that Darryl was her boyfriend and had been at the time of the incident." Lastly, Wilkerson contends that the State opened the door to such testimony by introducing arguments about Wilkerson's motive as a "jilted" ex-girlfriend to attack the victim.

The State contends that the "trial court correctly limited and struck on relevancy grounds defense counsel's cross-examination concerning Simms's pregnancy, the paternity of the baby, and Davis's then incarceration." The State cites the circuit court's ruling "that the matters inquired into were collateral issues and had nothing to do with

whether Simms and Davis were in a relationship at the time of the assault, which was the proffered motive for Wilkerson's attack on Simms and the reason Wilkerson sought to impeach her credibility." The State avers that the court correctly limited Wilkerson's cross-examination of the victim to the victim's "relationship with Davis at the time of the assault" because Wilkerson wrongly "wanted to discuss the paternity of Simms' [sic] baby as if that, or the parameters of Simms's and Davis's personal relationship, had anything to do with the issues at trial."

At trial, the victim testified as follows:

[State]: Ms. Simms, who's your boyfriend?

[Victim]: Darryl.

[State]: And how long have you been dating Darryl?

[Victim]: Coming up November, it will be two years.

[State]: Do you know who Darryl's prior girlfriend was?

[Victim]: I know of her, I don't know her.

[State]: Okay. Have you — did you see her on the 4th of July, 2013?

[Victim]: Yes.

[State]: Is she in the courtroom today?

[Victim]: Yes.

[State]: Can you point to her, please? . . . Indicating the Defendant for the record.

* * *

[State]: Who stabbed you on July the 13th — I'm sorry, July the 4th, 2013?

[Victim]: The Defendant. Yes.

[State]: This woman right here?

[Victim]: Yes.

[State]: The Defendant?

Do you know why you were arguing?

[Victim]: From my understanding, over Darryl.

On cross-examination there was the following colloquy:

[Wilkerson's Counsel]: Okay. And you're indicating that Darryl Davis and you are in a relationship currently, correct?

[Victim]: Yes.

[Wilkerson's Counsel]: Where is Mr. Davis?

[State]: Objection.

THE COURT: Sustained.

BY [Wilkerson's Counsel]:

[Wilkerson's Counsel]: Is — I hate to notice, but you are expecting; is that correct?

[Victim]: Yes.

[Wilkerson's Counsel]: And is that his baby?

[Victim]: Yes.

[State]: Objection.

THE COURT: Sustained.

[Wilkerson's Counsel]: Okay. So — may we approach, Your Honor?

THE COURT: You may.

(Counsel approached the bench, and the following occurred:)

[Wilkerson's Counsel]: Your Honor, this man has been locked up since July 30th, 2013 —

THE COURT: So?

[Wilkerson's Counsel]: — that's more than nine months.

[State]: How inappropriate.

THE COURT: So?

[Wilkerson's Counsel]: So it's impossible for that to be his baby.

[State]: And how is —

THE COURT: So?

[State]: — that relevant.

THE COURT: Excuse me.

[State]: I'm sorry, Your Honor, I just — I'm appalled.

THE COURT: And do you want to tell me the relevancy of that issue?

[Wilkerson's Counsel]: Well, she's saying it's — he's the father of the baby —

THE COURT: Right.

[Wilkerson's Counsel]: — and it's just a physical impossibility, unless he got a conjugal visit.

THE COURT: Yeah, I understand that. Do you want to explain to me how that's relevant to this matter?

[Wilkerson's Counsel]: Well, she's lying under oath.

THE COURT: Do you want to explain to me how that's relevant to this case?

> [Wilkerson's Counsel]: Yes sir. When the State got up and did opening statement, the first thing that the State said — and I have to admit, I was not expecting this to be an issue in the case, but the first thing that the State said was that my client wants Darryl Davis to be her man, but he's not her man, he's Markeeta Simms' man, and that if my client, and I quote, "can't have him, then no one can." So I didn't want to put this at issue. I was hoping and thinking we weren't going to go to this love triangle, but now that we're here, because Ms. Simms has said that they're in a relationship and that the relationship between my client and Darryl Davis has ended, and the State said in opening statements that the whole fight was about jealousy.
>
> THE COURT: Do you have any evidence they were not in a relationship at the time —
>
> [Wilkerson's Counsel]: That they —
>
> THE COURT: — of this incident?
>
> [Wilkerson's Counsel]: — were not in a relation —
>
> THE COURT: Correct.
>
> [Wilkerson's Counsel]: Ms. Simms and Mr. Davis?
>
> THE COURT: Yes.
>
> [Wilkerson's Counsel]: I expect to have that, yes.
>
> THE COURT: Okay. Well, then —
>
> [Wilkerson's Counsel]: Yes, sir.
>
> THE COURT: — you can present it at that time perhaps, but I'm sustaining the objection for what it is now. Objection sustained.

First, Wilkerson argues that her "inquiry into Ms. Simms's relationship and pregnancy was relevant to Ms. Simms's truthfulness and was pursued not 'merely to excite prejudice against the witness, or to humiliate her or wound her feelings,' but 'to test her credibility,' the core purpose of cross-examination." Wilkerson cites the "credibility rule"

emanating from *Cox v. State*, 51 Md. App. 271, 276 (1982), *aff'd*, 298 Md. 173 (1983), as controlling: "[T]he test of relevancy is not whether the answer sought will elucidate any of the main issues, but *whether it will to a useful extent aid the court or jury in appraising the credibility of the witness and assessing the probative value of the direct testimony*." (Citation omitted) (emphasis added).

The circuit court sustained the State's objection to Wilkerson's line of questioning based on relevance.[3] "'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." Md. Rule 5-401. "[A]ll relevant evidence is admissible. Evidence that is not relevant is not admissible." Md. Rule 5-402. "Trial courts retain wide latitude in determining what evidence is material and relevant[.] Thus, [a] trial judge's determination on relevance will not be reversed absent an abuse of discretion." *Bryant v. State*, 163 Md. App. 451, 490-91 (2005), *aff'd*, 393 Md. 196 (2006) (alterations in original) (internal citations and quotation marks omitted); *see also Young v. State*, 370 Md. 686, 720 (2002) (citation omitted).

Wilkerson contends that questioning about the victim's relationship with Davis was "central" to the State's case, and that she should have been allowed to question the victim about the relationship. Wilkerson does not make a particularized argument about why the

[3] Both parties argue that the circuit court found the cross-examination of the victim about her pregnancy to be "collateral" to the issues at hand. Although the court did find the victim's pregnancy and the paternity of her child to be collateral matters, the court did that in the context of Davis's testimony, not the victim's. We reach their collateral arguments when we discuss Davis's testimony, *infra*.

evidence is "relevant" but cites the circuit court's ruling on objections to the State's closing arguments as telling:

> THE COURT: I kept out the testimony as far as the relationships because I held that it was not relevant and suddenly it's becoming *central* to the State's argument here . . . And if it's *central* to the case, then I should have allowed in the evidence that the Defense wanted to present in terms of this relationship here.

(Emphasis added).

But Wilkerson takes this statement out of context by omitting the following:

> [State]: But on this day, where was Darryl? You heard testimony that was not contradicted, that Darryl was downstairs with Markeeta Simms with Keith Burks, his friend, and Ms. Lawson who allowed him to stay in her home when he broke up with the Defendant.
>
> There's a motive here. She was angry.
>
> [Wilkerson's Counsel]: Objection. May we approach, Your Honor?
>
> THE COURT: Yes, come up.
>
> (Counsel approached the bench and the following occurred:)
>
> [Wilkerson's Counsel]: Your Honor, this is —
>
> THE COURT: Yes, I kept out the testimony as far as the relationships because I held that it was not relevant and suddenly it's becoming central to the State's argument here.
>
> [State]: The Defendant testified that she's the girlfriend, the victim testified that she's the girlfriend —
>
> THE COURT: They did.
>
> [State]: — that's in evidence.
>
> THE COURT: They did.
>
> [State]: So they both indicated that they were the girlfriend.

> THE COURT: They did, but we're going on quite a bit about this. And if it's central to the case, then I should have allowed in the evidence that the Defense wanted to present in terms of this relationship here. It's either relevant or it's not relevant.
>
> [State]: The Court made a ruling.
>
> THE COURT: I did, and I'm making another ruling now, and that's that you're to move on.

Wilkerson's original objection to the disputed line of questioning was not an attempt to impeach the victim about what happened the day of the incident but, instead, was an attempt to introduce evidence that was not relevant to the crime with which she was charged, *i.e.*, if she was pregnant by Davis at the time of the trial. Whether the victim was in a relationship with Davis at the time of trial would not make it more or less probable that the victim was in a relationship with Davis at the time of the incident or their relationship being the motive for the assault. Indeed, the circuit court at closing prevented the State from making the relationship between Davis and either the victim or Wilkerson more of a central part of the case by its ruling. We, therefore, find no abuse of discretion by the court.

Second, Wilkerson argues that the State "opened the door" to the issue of whether the victim was currently pregnant with Davis's child by "eliciting evidence about the relationship between Ms. Simms and Mr. Davis — not merely their relationship at the time of the incident, but also their current relationship."

Wilkerson's reliance on the "opening the door" doctrine is misplaced. "[T]he 'opening the door' doctrine applies when one party offers admissible evidence, and the opposing party seeks to counter that evidence with evidence that is admissible for no

purpose other than as a response to the admissible evidence introduced by the other side." *Jackson v. State*, 87 Md. App. 475, 487 (1991) (citation omitted). The circuit court deemed the evidence of the victim's pregnancy as irrelevant and, therefore, inadmissible. Md. Rule 5-402; *see, e.g., Simmons v. State*, 392 Md. 279, 300 (2006) (holding that a trial judge's prevention of an irrelevant line of questioning was correct). Indeed, no one "opened the door" in the context of the "opening the door" doctrine. Wilkerson's argument fails.[4]

II. Darryl Davis's Testimony

Wilkerson argues that the circuit court abused its discretion by "refus[ing] to permit the defense to call Darryl Davis to testify on any subject." Wilkerson contends that Davis's relationship with Wilkerson and the victim was "a main issue in the State's case." Wilkerson avers that the court wrongly "focused entirely on the paternity issue, failing to consider the defense's proffer that Davis could also testify as to the relationship of the parties at the time of the incident." Wilkerson challenges the denial of Davis's testimony

[4] Even if Wilkerson had correctly cited the "opening the door" doctrine, it would still not offer her relief.

> We must emphasize that the "opening the door" rule has its limitations. For example, it does not allow injecting collateral issues into a case or introducing extrinsic evidence on collateral issues. Such evidence is also subject to exclusion where a court finds that the probative value of the otherwise inadmissible responsive evidence "is substantially outweighed by the danger of unfair prejudice, confusion of the issues, or misleading the jury, or by considerations of undue delay, waste of time, or needless presentation of cumulative evidence." *See* Fed. R. Evid. 403; *see also* Lynn McLain, *Maryland Evidence* § 403.1, at 297 (1987).

Clark v. State, 332 Md. 77, 87 (1993). Wilkerson attempted to introduce "collateral issues" through examination of the present-day status of the relationship between Davis and the victim. This does not go to the matter at issue — the assault of July 4, 2013.

because Davis "was willing to testify and en route to the courtroom[.]" Wilkerson, again, argues that the State "opened the door" to Davis's testimony and, as a result, the court erred in preventing Davis's testimony.

The State responds that the "intended line of inquiry about Simms's pregnancy and the paternity of her baby were collateral issues to the case . . . . As the court had pointed out earlier to Wilkerson, this line of inquiry would have turned the proceedings into an episode of *Maury Povich*[5] and not provided the jury with any better understanding of the assault that took place on July 4, 2013." The State avers that the circuit court properly exercised its discretion in "refusing a recess to wait for Davis to arrive and testify" because Wilkerson failed to meet the conditions required to obtain a continuance.

At trial, Wilkerson's counsel requested to call Davis as a witness twice: first on June 12, 2014, and again on June 13, 2014. Wilkerson's first request went to the relationship between Davis and the victim and Davis and Wilkerson:

> [Wilkerson's Counsel]: . . . And there's one other thing that I wanted to address with the Court. Mr. Darryl Davis, I have secured him, which I did not think would be possible, to be here tomorrow morning with a late writ, 11:00 —
>
> THE COURT: Who?
>
> [Wilkerson's Counsel]: Darryl Davis.
>
> THE COURT: Is he even on the list?
>
> [Wilkerson's Counsel]: He's not —

[5] Veteran TV journalist Maury Povich tackles volatile issues with his guest and studio audience. Known widely for offering guests the chance to take DNA test to prove or disprove paternity, Povich's show also frequently utilizes lie detector tests. *See generally Maury*, http://www.mauryshow.com (last visited May 19, 2015).

[State]: No.

[Wilkerson's Counsel]: — on the list —

THE COURT: So now we're adding someone who's not even on this list?

[Wilkerson's Counsel]: And the reason is this, Your Honor. Just hear me out, Judge. Here's the thing, like I said before, [the State]— I looked at the State's, I talked to my client, I knew the flavor. Okay? I said to Ms. Wilkerson, I said, "Darryl Davis and this love triangle, that's not going to be part of this. [The State] is not going to bring that up." Sure enough, I was wrong, miscalculated.

THE COURT: So what is this witness —

[Wilkerson's Counsel]: Ms. —

THE COURT: — supposedly going to testify to?

[Wilkerson's Counsel]: He has been imprisoned since July 30th, 2013.

THE COURT: And what — okay. So —

[Wilkerson's Counsel]: And, further — Your Honor, hear me out —

THE COURT: Go ahead.

[Wilkerson's Counsel]: — not only has he been in prison since 2013, making it a physical human impossibility to impregnate a woman who is not even halfway ready to give birth —

THE COURT: That is so wrong.

[Wilkerson's Counsel]: Your Honor, hear me out. Number two, he will attest — he will say, testify, that he is in a relationship with my client. Here's the thing, take the pregnant — I know it gives a little bit of the ickies to talk about who impregnated who, I get it, but [the State] has made this case about jealousy. [The State] is saying, my client is some — she has unrequited love and she's jealous, and she's going to basically kill the woman who is inter — some interloper, as she would characterize, in her relationship. [The State] has made this about my client's jealousy because she cannot get a man. Okay? None of it — I do not relish any of this, but Mr. Davis is with my

client. They communicated on a daily basis, he plans to marry her. He has been in custody for almost a year. And this woman, who is visually pregnant, has come up on the stand and said, corroborating what [the State] said to the jury in her opening statement, "He's my man. He used to be with Quiana, but not anymore" — Ms. Wilkerson — "but not anymore and, yes, this is his baby." But that's wrong. So if the State says, Your Honor —

THE COURT: What does that have to do —

[Wilkerson's Counsel]: — if the State say — the State's theory and the motive, which is a jury instruction — it is an important thing for the State to be able to prove a motive; they don't have to prove it as an element, but it's an important thing to take into account — why is my client going to allegedly stab this woman with a giant steak knife? [The State] would have the jury believe that it's because she's jealous because Ms. Simms has run away with her man. This is a factual predicate for the State's case.

THE COURT: All right. First of all, there is such a thing in this day and age as artificial insemination. It is a physical possibility. Secondly, it is a physical possibility for someone to be with someone and be impregnated by somebody else, it doesn't have to do with who's whose man necessarily. Thirdly, I don't care who's with who today and who has what relationship today, this — we're talking about something that occurred in July of 2013. Is that what you're telling me?

[Wilkerson's Counsel]: Well, Your Honor, and I do appreciate the Court's comments, because there has been a lot of time that's elapsed since this incident, but also relevant is at the time of this incident, which was July 3rd, last year, my client and Mr. Davis were together. And I understand the Court's concerns about being in a relationship with someone else, you can step out and get pregnant by someone else. Okay, you're still in a relationship with the other person, it happens all the time. It could have happened to any politician. However, she didn't say that. She said, under oath — and the State's giving us an example of your wages —

THE COURT: I —

[Wilkerson's Counsel]: — she's saying under oath that it's his baby. And, Your Honor, I understand that —

THE COURT: It's a collateral issue to this. I'm not going to allow it. We're not going to get into bringing in *Maury Povich* and do a test and be up here with the, "You are the daddy," or, "You're not the daddy." We're not doing

it, I'm sorry . . . . The Court's position is that it is not relevant. I have ruled, that's it . . . .

The next day, Wilkerson renewed her motion to have Davis testify:

[Wilkerson's Counsel]: . . . Mr. Davis is expected to be at the Eastside lockup around 11:00 this morning, and I am asking — and I understand that we've already litigated this — I'm asking for the ability to call him as a witness, he was present during this encounter. I have had a colleague interview him, I haven't been able to speak to him myself.

THE COURT: Okay.

[Wilkerson's Counsel]: And I know some basic answers that he would provide regarding my client's involvement. He would impeach the State's witnesses not only on the pregnancy issue but also on the issue of agency.

THE COURT: Agency?

[Wilkerson's Counsel]: Like, who did it. Okay. So he would not — he would not espouse the view of Markeeta Sims [sic], that my client stabbed Markeeta Sims [sic], he would say otherwise. Now, not having interviewed himself [sic] and not being present for the interview that was conducted, I just have basically written brief responses that he provided, so I'm not in a position to elaborate because I really don't have that much information but I do know that Mr. Davis, if called to testify, would not say he was present for at least some of the encounter, and he would not say that my client stabbed Markeeta Sims [sic].

Further, I believe he would not espouse the view that — he would not say that he was in a relationship with Ms. Sims [sic] then, nor would he say that he's in a relationship with Ms. Sims [sic] now. And I don't want the Court to narrow the focus as to the pregnancy only because it's beyond that. And I understand the Court's reticence to make it into a — Now, I haven't been — I haven't seen *Maury Povich*, but my reference point would be *Jerry Springer* — and I understand the Court's, you know, I understand the Court's position on that. I think otherwise, I think the statements put this at issue, and I should have the opportunity to rebut a fact that they've asserted that is false, and I do have a witness — I expect to have the witness available at 11:00. He was writted over for 9:30 but he's late.

THE COURT: Okay. No. Here's my question is that I'm not clear. *You're saying, he will not say X, and he will not say Y.* He – and I'm sorry – it's Mr.?

[Wilkerson's Counsel]: His name is Darryl Davis.

THE COURT: Darryl Davis?

[Wilkerson's Counsel]: Yes. Common spelling.

THE COURT: So, Mr. Darryl Davis has not been noted as an expert. So he is a pure rebuttal –

[Wilkerson's Counsel]: As a witness.

THE COURT: -- witness?

[Wilkerson's Counsel]: Correct.

THE COURT: *So, what I need to know is what are your proffering he will say, not what he will not say?*

[Wilkerson's Counsel]: He will say that my client didn't stab Ms. Sims [sic]. He will say that.

THE COURT: You said, he will testify that he was present for part of the encounter.

[Wilkerson's Counsel]: Yes. And the reason I'm being vague is because I don't have a lot of detail right now because I haven't been able to interview him myself personally, but a colleague did and the answers were sort of brief, and there was not elaboration. So, the question was, did Markeeta – did Quiana Wilkerson stab Ms. Sims [sic], no.

THE COURT: But he was present for part of the encounter.

[Wilkerson's Counsel]: And I don't want to represent to the Court that he was standing in a stairwell, or he was in the hallway, or he was on the stairs because I don't know.

THE COURT: And you don't know what part of the encounter he was present for?

[Wilkerson's Counsel]: Correct. So, I'm not going to stand up and say, this is exactly what he would say because I don't have those facts at my disposal. But he is a witness that was present, and the State's witnesses had said as much as well as my own witness, my client, that Darryl Davis was present. And so, he is – he is in a position to illuminate the facts to the jury, and more so to the point, impeach the State's witnesses based on material inconsistencies that I proffered.

THE COURT: All right. I know from the State the argument that it is he'd be testifying as to facts, and if he's testifying as to facts that cannot be impeachment, which I quite frankly do not understand, but I understand that's the argument that you are making.

[State]: So –

THE COURT: Aside from that argument –

[State]: -- there's been no notice given.

THE COURT: Right.

[State]: [Defense] has had over a year – or almost a year to interview. She knew that he was an integral part of this case, that she comes on the day that we're going to be ending this case, and asks to provide Darryl Davis's testimony as to facts that occurred during that incident. That he was present, that he witnessed the fact that the Defendant did not stab the victim, is a fact. It's not impeachment, it's a fact witness. It is not impeachment. It's just a different version of the events. Now, I mean, once [Defense] rests, I do have a rebuttal witness.

THE COURT: All right. We are – I have a jury back there, they've been here since 9:30. The Defense has no witnesses to put in at this point?

[Wilkerson's Counsel]: At this moment –

THE COURT: Right.

[Wilkerson's Counsel]: -- I don't, but Captain Johnson of the DOC who does writs, late writs, assured me that Mr. Davis would be here, and if he wasn't that I should call her, and that see when she would get him here.

So I have it on good authority that this man will be in Circuit Court, and he is on a list downstairs, but the Captain downstairs, or the Lieutenant

> downstairs told me that he was on the Eastside list, so I ran over to the Eastside and they told me he wasn't there yet, and I will say he wasn't on the list over there.
>
> So, I mean, there's, you know, there are these logistics that I've worked through, however, I do believe that the man will be across the street at 11:00 which is the time they expect the second group to come.
>
> * * *
>
> THE COURT: Well, we're proceeding now, I'm not going to keep this jury and restart this trial at 11:00. Do you have anyone to put on at this time?
>
> [Wilkerson's Counsel]: Not at this time, Your Honor.
>
> THE COURT: Okay. So noting your exception, I'm not going to allow you to call Mr. Davis, or Tameka Davis who's also not here.
>
> [Wilkerson's Counsel]: Yes, that's right.
>
> THE COURT: Because they're not here. Do you have any other evidence that you wish to present at this time?
>
> [Wilkerson's Counsel]: Not at this time . . . .

(Emphasis added).

Wilkerson intended to call Davis to "impeach the State's witnesses not only on the pregnancy issue but also on the issue of [the assault]." First, Wilkerson challenges the circuit court's "premature" exclusion of Davis's testimony "as pertaining to 'a collateral issue[.]'" Because the court found Davis's testimony to be irrelevant, we review its determination under an abuse of discretion standard. *See Bryant*, 163 Md. App. at 490-91. Like the exclusion of the victim's testimony about her present-day relationship with Davis, we find no abuse of discretion in preventing Davis's testimony about his present-day relationship with the victim. We also agree with the court that whether the victim was

pregnant with Davis's child is a collateral issue. *Cf. Hardison v. State*, 118 Md. App. 225, 239 (1997) (defining a "non-collateral fact" as one that is material to the issues in the case). "Evidence of collateral facts, or of [facts] which are incapable of affording any reasonable presumption or inference as to the principal fact or matter in dispute, should be excluded, for the reason that such evidence tends to divert the minds of the jury from the real point in issue, and may arouse their prejudices." *Wise v. State*, 132 Md. App. 127, 137 (2000) (alteration in original) (citation omitted).

We turn to the agency issue first. The circuit court pointed out that Davis would be testifying as to facts and, if he was testifying to facts, that would not be impeachment. *See* Md. Rule 5-608; *Bradley v. State*, 333 Md. 593, 605 (1994) ("Impeachment may be thought of a shield; it protects a party from unfavorable testimony by neutralizing that testimony.") (citation omitted). This alone would be enough to reject his testimony in as improper rebuttal.

There was also some confusion as to whether Davis was even going to be "writted over" from his place of incarceration. He was not present when prisoners were brought over in the morning of June 13, 2014, to an alternate location -- the Eastside Courthouse, which is across the street from where the trial was being held at the Clarence Mitchell Courthouse. There was only an expectation that Davis would be in the second group which was expected to arrive later that morning.

Wilkerson argues that, by refusing to wait for Davis to arrive and testify concerning his own eyewitness account of the assault, the circuit court abused its discretion in this case. Wilkerson contends that "the bureaucratic holdup by the correctional officers

responsible for transporting Mr. Davis does not provide grounds for Mr. Davis's exclusion." A review of the record belies these assertions.

As the State correctly argues, "the decision to grant a continuance affects the convenience of the court, the jury, the prosecution, other witnesses, and possibly other cases scheduled for trial." The circuit court "is vested with a significant amount of discretion whether to grant the necessary continuance to allow a missing witness to be located, subpoenaed, or apprehended[.]" *Green v. State*, 127 Md. App. 758, 768 (1999) (quoting *Wilson v. State*, 345 Md. 437, 451 (1997) (alterations accepted)). A continuance to secure a pressing witness is appropriate where (1) there is a "reasonable expectation" of securing the witness "within some reasonable time," (2) "the evidence was competent and material, and . . . the case could not be fairly tried without it," and (3) "diligent and proper efforts" were made to secure the witness. *Wright v. State*, 70 Md. App. 616, 623 (1987) (quoting *Jackson v. State*, 288 Md. 191, 194 (1980)). To establish that the court abused its discretion in denying a continuance to obtain a witness, "the party who requested the continuance must demonstrate" that all three of these conditions were met. *Cottman v. State*, 165 Md. App. 679, 688-89 (2005) (citation omitted), *vacated on other grounds*, 395 Md. 729 (2006).

Wilkerson failed to meet the required conditions. The record fails to reflect that Wilkerson made diligent efforts to secure the attendance of the incarcerated fact witness prior to the trial. The colloquy between the circuit court and the defense made it clear that Davis was a fact witness who was going to testify as to his account of the assault on

July 4, 2013. Arrangements were not made until the middle of the trial when attempts were made to execute writs to assure Davis's appearance.

Wilkerson failed to offer any explanation as to why she did not provide notice of Davis's testimony prior to trial as required by Md. Rule 4-263(e)(1).[6] In addition, although allowed ample time to explain, Wilkerson was not clear as to the details of Davis's testimony. Wilkerson could not particularize the expected testimony but would only say that Davis would testify that he was present for part of the encounter. As to the reasonable expectation that Davis would appear and be present that morning, Wilkerson could not, with certainty, assure the court that Davis would be brought over from his incarceration on what was apparently a belated writ. The court ruled that it was proceeding and not keeping the jury and restarting the trial at 11:00 a.m. The court asked Wilkerson if she had anyone to put on at this time and she answered in the negative. Wilkerson's failure to meet all three conditions for a continuance dooms her argument as there was no abuse of discretion by the circuit court.[7]

[6] Md. Rule 4-263(e)(1) states:

> *Defense witness*. The name and, except when the witness declines permission, the address of each defense witness other than the defendant, together with all written statements of each such witness that relate to the subject matter of the testimony of that witness. Disclosure of the identity and statements of a person who will be called for the sole purpose of impeaching a State's witness is not required until after the State's witness has testified at trial.

[7] An abuse of discretion occurs when no reasonable person would have behaved in the same fashion. This Court has noted:

(continued…)

As to the relationship issue, Wilkerson was evasive to the extent of not directly answering that question when asked directly by the circuit court: "what are you proffering he will say?"[8] By not addressing the court's concern as to the parameters of Davis's testimony, Wilkerson did not at that point make the sort of proffer of anticipated testimony that is required. *See Sutton v. State*, 139 Md. App. 412, 452 (2001) ("Where evidence is excluded, a proffer of substance and relevance must be made in order to preserve the issue for appeal.") (Citation omitted). The circuit court did not abuse its discretion by moving on with the trial in light of the insufficient proffer.

JUDGMENT OF THE CIRCUIT COURT FOR BALTIMORE CITY AFFIRMED. COSTS TO BE PAID BY APPELLANT.

(…continued)

> The Court of Appeals has defined the abuse of discretion standard as a reasonable decision based on the weighing of various alternatives. There is an abuse of discretion where no reasonable person would take the view adopted by the [trial] court. Thus, where a trial court's ruling is reasonable, even if we believe it might have gone the other way, we will not disturb it on appeal.

Fontaine v. State, 134 Md. App. 275, 288 (2000) (alteration in original) (internal citations and quotation marks omitted). The Court of Appeals has similarly defined the exercise of discretion as "a reasoned decision based on the weighing of various alternatives[;]" discretion is abused "where no reasonable person would take the view adopted by the trial court[.]" *Metheny v. State*, 359 Md. 576, 604 (2000) (alteration accepted) (emphasis, citation, and internal quotation marks omitted).

[8] As an aside, does it really matter if Davis and Simms were in a relationship or was the real issue whether Wilkerson thought that Davis was seeing Simms?

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 1383

September Term, 2014

QUIANA WILKERSON

v.

STATE OF MARYLAND

Wright,
Friedman,
Thieme, Raymond G., Jr.
(Retired, Specially Assigned),

JJ.

Dissenting Opinion by Friedman, J.

Filed: June 17, 2015

It is undisputed that there was a fight between Simms and Wilkerson. But each testified that the other was the aggressor. To make Simms's version more likely in the eyes of the jury, the State advanced a narrative that Wilkerson was a jilted ex-girlfriend of Davis who attacked Simms out of jealousy. Wilkerson's counsel in cross-examining Simms and examining Davis had two objectives: (1) to attack Simms's credibility; and (2) to establish a counter-narrative to the effect that Simms was jealous of Wilkerson's relationship with Davis and, as a result, was herself the aggressor. In my view, both objectives were legitimate, appropriate, and relevant and it was error to prevent her from presenting them to the jury.

As to counsel's first objective, a "witness's credibility is always relevant." *Reese v. State*, 54 Md. App. 281, 286 (1983). While the trial judge has the duty to protect a witness from harassing and irrelevant lines of questions on cross-examination, the cross-examiner is nevertheless allowed to impeach or discredit the witness. *Id.* This Court has stated:

> The "discretion" then, between the defendant's right to discredit testimony and the trial judge's duty to protect a witness is solely one of relevance of the questions to the witness's credibility. The relevancy test at this juncture does not regard the elucidation of one of the main issues at trial, it is whether the answer elicited will be a useful aid to the court or jury in appraising the credibility (not necessarily the veracity) of the witness and in assessing the probative value of [her] direct testimony.

Id. at 287. Thus, when the cross-examiner's questions are directed towards the credibility of the witness, the test for relevancy is not whether the substance of the specific questions goes toward one of the ultimate factual issues. Rather, the test for relevance is whether the answer to the question will likely be useful to the jury in assessing the witness's credibility.

Here, the questions that Wilkerson's counsel sought to ask Simms and Davis would have been useful to jury in assessing Simms's credibility. Simms claimed she had been in a romantic relationship with Davis at the time of the incident, that she was currently in a relationship with Davis, and that she was pregnant with Davis's child. Counsel for Wilkerson sought to ask questions about their relationship, then and now, and regarding the paternity of Simms's child, to illustrate that Simms had lied under oath about these issues. Thus, while the paternity of Simms's child obviously had no bearing on the ultimate issue of whether Wilkerson was the aggressor, Simms's possible dishonesty on the witness stand could certainly have bearing on the level of credibility the jury assigned to Simms's version of the story.

As to counsel's second objective, Wilkerson's counsel should have been permitted to ask questions aimed at establishing her counter-narrative: that Simms was the aggressor because she was actually jealous of Wilkerson's relationship with Davis. The questions regarding the Simms-Davis relationship and the paternity of Simms's child were intended to show that Simms has a skewed perception of her current relationship with Davis would help to establish that she had a skewed perception of her relationship at the time of the altercation. Establishing this counter-narrative was central to Wilkerson's defense and was not a collateral matter. *Anderson v. State*, 220 Md. App. 509, 521 (2014) (stating that a witness "may be cross-examined on any matter relevant to the issues"). Davis could have

directly testified to his relationship with Simms at the time of the altercation.[1] This was essential to Wilkerson's defense and could directly impact the jury's determination of who was the aggressor. *Id.* at 523 (noting that evidence is not collateral if is relevant and material to the substantive issues in the case). Whether characterized as an abuse of discretion or as a denial of her constitutional right to a fair trial, Wilkerson should have been afforded a fuller opportunity to establish her defense.

For these reasons, I respectfully dissent.

[1] That, through no fault of Wilkerson, Davis was transported to the wrong courthouse, resulting in a short delay, should not have precluded her from calling him as a witness.