Circuit Court for Prince George's County
Case No. CT-15-1183X

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 1520

September Term, 2017

JUAN McLENDON

v.

STATE OF MARYLAND

Nazarian,
Friedman,
Raker, Irma S.
(Senior Judge, Specially Assigned),

JJ.

Opinion by Friedman, J.

Filed: December 27, 2019

As the result of a confrontation between two drivers crossing the Woodrow Wilson Bridge, appellant Juan McLendon was convicted by a jury of first- and second-degree assault, illegal possession of a regulated firearm, use of a firearm in a crime of violence, and wearing or carrying and transporting a handgun in a vehicle on a public road. He was sentenced to a total of 45 years imprisonment, with all but 18 years suspended. For the reasons that follow, we conclude that the trial court improperly limited the cross-examination of the primary witness against McLendon, reverse his conviction, and remand the case for a new trial.

BACKGROUND

The only witnesses to the events at issue here were the two drivers involved: Juan McLendon and Rondul Prather. Because McLendon did not testify at trial, the facts were established solely by Prather, who testified that around noon on June 12, 2015, he was driving from Virginia to Maryland. Prather was driving what he considered to be a "muscle car," a Dodge Magnum SRT8, and when he saw another car speeding in and out of traffic, he decided to catch up to it to "play on the road." But when Prather caught up to the other car, driven by McLendon, he saw that it was "just a basic model" Dodge Charger and lost interest in racing. Prather was then traveling about two car-lengths behind McLendon, and McLendon tapped his brakes several times causing them both to slow from 75 mph to 45 mph. Prather went around the Charger on the right, and when the cars were next to each other, Prather gestured to McLendon, putting his hands up as if to say "what are you doing?" McLendon waved him past, and Prather continued driving across the bridge. Once Prather was ahead, however, McLendon quickly came up behind him. To get McLendon

to back off, Prather "covered his brake" so his brake lights would come on. McLendon slowed and moved over into the next lane. As the cars were coming to the end of the bridge, however, Prather saw McLendon coming up on his right side and heard a "boom boom." When he looked out his window, Prather saw McLendon pointing a gun at him. Prather described that he hit his brakes just as McLendon pulled the trigger again, and then took off after McLendon. When Prather caught up, McLendon was jumping on and off exit ramps, and then finally exited at I-495.

On I-495, McLendon was traveling in the far-left lane, Prather was traveling in the far-right lane, and there was a tanker truck in the lane between them. Prather testified that he yelled for McLendon to "shoot him now" and McLendon shook his head "no." During his pursuit, Prather made three phone calls to the police and came up with a plan to keep McLendon from exiting so that the police could catch him. When Prather exited at St. Barnabas Road, McLendon followed behind him with the gun pointed out the sunroof.

After the cars had exited, Prather waved down a police officer who had been traveling in the other direction. When Prather saw McLendon's Charger coming up behind him, he pointed out McLendon as the driver who had been shooting at him on the road. The police officer turned on his lights and sirens and made a U-turn to stop McLendon. McLendon tried to make a sharp left turn but hit the curb and flipped his car.

The following day when Prather was washing his car, he found something that he thought looked like a bullet in the center cap of his rear tire. He drove to the police station so that it could be recovered.[1]

DISCUSSION

On appeal, McLendon asserts that the trial court imposed limitations on his cross-examination of Rondul Prather that violated his constitutional right to confront the primary witness against him.[2] We agree. The limitations imposed on McLendon's cross-examination of Prather prevented McLendon from effectively challenging Prather's credibility. Because McLendon was prohibited from presenting evidence the jury needed to equitably weigh the case against him, he was denied a fair trial and his conviction must be reversed.

During cross-examination, the defense sought to impeach Prather's credibility by questioning him about prior conduct that would show a tendency to be untruthful,

[1] Aside from Prather's testimony, the only other evidence presented by the prosecution was testimony from the police officers who responded to Prather's 911 calls and arrived on the scene after Prather and McLendon had exited I-495. Officer William Bankhead testified that he arrived in time to see McLendon's Dodge Charger pass by on St. Barnabas Road and get into an accident. He saw the car land against a telephone pole and McLendon climb out the sunroof. According to Officer Bankhead, as McLendon was being taken into custody he said that he was being tailgated by Prather, and that at the time of the crash he had been trying to make a U-turn while talking on his phone. In addition, Detective Tara Mattingly testified that she arrived at the scene after the accident and was notified that a firearm had been recovered in plain view from the vehicle. When she inspected the revolver, it had contained three casings and two live rounds. Detective Mattingly further noted that the Dodge Charger was registered to McLendon's father.

[2] Due to our resolution of this issue, we do not address McLendon's second claim, in which he challenges the trial court's denial of his motion for a bill of particulars.

specifically, that Prather had lied on his application to join the Prince George's County Police Department. Maryland Rule 5-608(b) dictates the procedure for impeaching a witness with the witness's own prior conduct not resulting in a conviction. First, the trial court must determine outside the hearing of the jury that there is a "reasonable factual basis" for asserting that the witness has engaged in prior conduct that did not result in conviction but that is nonetheless indicative of a character trait of untruthfulness. MD. RULE 5-608(b). Once that showing is made, the witness may be asked about the prior conduct in front of the jury, but extrinsic evidence is not admissible. *Id.*

Defense counsel knew and proffered to the trial court, outside the hearing of the jury, that while Prather was in police training, a background check revealed that he had been untruthful in answering questions on his application and that, as a result, Prince George's County had terminated his employment. Prather then challenged his termination. An administrative hearing was held and resulted in findings that Prather had answered several questions falsely to hide that he had been: charged with indecent exposure as a juvenile; charged with second-degree assault as an adult for a fight during which he broke someone's eye socket; detained by police due to a traffic altercation; and the respondent in a restraining order related to his girlfriend. Ultimately, Prather was allowed to voluntarily resign from the police instead of being terminated. Prather later applied for employment with several other law enforcement agencies and listed Prince George's County as a previous employer. When he didn't get the jobs, Prather brought a lawsuit against Prince George's County, arguing that his employment record should not reveal that he had resigned in lieu of discipline.

In light of defense counsel's proffer, the trial court found that Prather's prior conduct was probative of a character trait of untruthfulness, but also concluded that the kind of employment Prather had been applying for and what types of questions he had answered falsely were irrelevant details. The court therefore limited the defense to asking only the two general questions of whether Prather had ever lied on an employment application and if he was fired as a result. The trial court instructed the defense that it was "stuck with" whatever answer Prather gave and could not follow up with additional questions or go into specific details.

Resuming his cross-examination in front of the jury, defense counsel asked Prather "Now, sir, was there a time that you were terminated because of falsifying, because of answering a question falsely on an application?" Prather responded "No." In compliance with the trial court's prior rulings, defense counsel did not ask any follow-up questions. As noted above, McLendon now challenges the trial court's rulings limiting the cross examination.

The right of criminal defendants to confront the witnesses against them is guaranteed by both the Sixth Amendment to the United States Constitution and Article 21 of the Maryland Declaration of Rights. *Marshall v. State*, 346 Md. 186, 192 (1997) (citing *Delaware v. Van Arsdall*, 475 U.S. 673, 678 (1986)); *Brown v. State*, 74 Md. App. 414, 418-19 (1988). An indispensable part of that right is the ability to cross-examine a witness, not only about factual details of the case but also about matters that might affect the witness' credibility or the veracity of the testimony. *Marshall*, 346 Md. at 192-93; *Brown*, 74 Md. App. at 418-19. It is through cross-examination that a defendant can reveal a

witness' potential bias, interests, motives to give false testimony, or general character for untruthfulness. *Marshall*, 346 Md. at 192 (citing *Davis v. Alaska*, 415 U.S. 308, 316 (1974)); *Ashton v. State*, 185 Md. App. 607, 621 (2009); *Brown*, 74 Md. App. at 418-19.

To satisfy a defendant's right to confrontation, defense counsel must be "permitted to expose to the jury the facts from which jurors, as the sole triers of fact and of credibility, could appropriately draw inferences relating to the reliability of the witness." *Marshall*, 346 Md. at 193 (cleaned up). Due to its constitutional importance, trial courts must give defense counsel wide latitude in cross-examining prosecution witnesses. *Owens v. State*, 161 Md. App. 91, 110 (2005).

Trial judges retain discretion to control the scope of cross-examination and impose reasonable limits where necessary, but a trial court does not have discretion "to limit cross-examination to such an extent as to deprive the accused of a fair trial." *Marshall*, 346 Md. at 193-94 (citing *State v. Cox*, 298 Md. 173, 183 (1983)). Before cross-examination can be properly limited, a defendant must first be allowed to attain "the constitutionally required threshold level of inquiry." *Marshall*, 346 Md. at 193 (quoting *Brown*, 74 Md. App. at 419). This means that the defense must be given "an opportunity to present the factfinder with enough information to make a discriminating appraisal of the reliability, possible biases, motivations, and credibility of the prosecution's witness." *Owens*, 161 Md. App. at 110 (citing *Van Arsdall*, 475 U.S. at 679-80). "The fundamental importance of cross-examination to test the credibility of a witness is especially keen where the weight of the State's case rests exclusively upon the testimony of the witness cross-examined." *Brown*, 74 Md. App. at 421. To determine whether the trial court has abused its discretion, we

examine the individual circumstances of the case to determine "whether the jury was already in possession of sufficient information to make a discriminating appraisal" of the witness and testimony. *Marshall*, 346 Md. at 194.

By not allowing more probing or specific questions, the defense's inquiry about Prather's employment application appeared to be hypothetical and unfounded. *Marshall*, 346 Md. at 197 n.7 (quoting *Davis*, 415 U.S. at 318) ("On the basis of the limited cross-examination that was permitted, the jury might well have thought that defense counsel was engaged in a speculative and baseless line of attack on the credibility of an apparently blameless witness."). Moreover, for the jury to make a rational evaluation of Prather's testimony and credibility, what he lied about and to whom he lied was relevant. There is a notable difference between a hypothetical witness who lied about his age when applying to work in a retail store as opposed to a witness who lied about his arrest record when applying to become a police officer (and then later filed a lawsuit to keep it all a secret). It is "a hollow gesture" for a defendant to be permitted to ask whether a witness is biased without being allowed to make any record as to why the witness might be biased. *See Marshall*, 346 Md. at 197. Prather's prior conduct in lying to the police in his job application suggests a personal interest in being involved in law enforcement matters, and a history of interacting with the Prince George's County Police Department. It should have been up to the jury to decide how to interpret and weigh that information in evaluating whether Prather was a reliable witness. We therefore conclude that the trial court abused its discretion by denying McLendon his right to an effective cross-examination.

Because we have concluded that the trial court erred, we next consider whether that error is reversible. Due to the fundamental importance of the right "to cross-examine a witness on matters and facts that are likely to affect his or her credibility," we apply a harmless error analysis when reviewing its violation. *Dionas v. State*, 436 Md. 97, 107 (2013). Under the harmless error test, once a criminal appellant has established error, we must be able to conclude "beyond a reasonable doubt, that the error in no way influenced the verdict." *Dionas*, 436 Md. at 108 (quoting *Dorsey v. State*, 276 Md. 638, 659 (1976)). An error can only be considered harmless if "there is no reasonable possibility that the evidence complained of—whether erroneously admitted or excluded—may have contributed to the rendition of the guilty verdict." *Dionas*, 436 Md. at 108 (quoting *Dorsey*, 276 Md. at 659). If the error cannot be deemed harmless, the conviction must be reversed.

Here, we cannot say that the trial court's error was harmless. "[W]here credibility is an issue and, thus, the jury's assessment of who is telling the truth is critical, an error affecting the jury's ability to assess a witness' credibility is not harmless error." *Dionas*, 436 Md. at 110; *see also Howard v. State*, 324 Md. 505, 517 (1991) ("In a case that largely turned on whom the jury was going to believe, the improperly admitted evidence of the defendant's prior conviction may have been the weight which caused the jurors to accept one version rather than the other."); *Cox*, 298 Md. at 185 ("Despite some corroborating physical evidence, the prosecution's case against Cox was based on the testimony of the victim. If she were shown to be unworthy of belief, the jury might well have been unable to conclude that Cox was guilty beyond a reasonable doubt.").

Prather's testimony was the only substantive evidence against McLendon. The trial court's ruling effectively denied McLendon the opportunity to challenge the credibility of the sole witness incriminating him. In doing so, the jury was deprived of information necessary to make an informed appraisal of Prather's credibility. *Marshall*, 346 Md. at 199. The case against McLendon turned entirely on whether the jury believed Prather's testimony. The issue of Prather's credibility was therefore crucial to the jury's determination of McLendon's guilt. *Brown*, 74 Md. App. at 422. The trial court's ruling denied the jury the opportunity to make a fair assessment of whether Prather should be considered a reliable witness. Accordingly, we reverse McLendon's conviction and remand the case for a new trial.

JUDGMENT OF THE CIRCUIT COURT FOR PRINCE GEORGE'S COUNTY REVERSED. CASE REMANDED FOR A NEW TRIAL. COSTS TO BE PAID BY PRINCE GEORGE'S COUNTY.