UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 2298

September Term, 2015

CARLOS MAURICE PEARMON

v.

STATE OF MARYLAND

Eyler, Deborah S.,
Wright,
Alpert, Paul E.
(Retired, Specially Assigned),

JJ.

Opinion by Wright, J.

Filed: August 17, 2016

This case arises out of a jury's guilty finding in the Circuit Court for Anne Arundel County, convicting the appellant, Carlos Pearmon, of second-degree assault and reckless endangerment. The circuit court imposed a sentence on the second-degree assault conviction of ten years, and on the reckless endangerment conviction, a concurrent sentence of five years, suspending all but four days for both. The circuit court also imposed a sentence of five years' probation. Pearmon timely appealed, presenting the following question for our review:

> Did the circuit court commit reversible error in preventing the defense from impeaching one of the State's witnesses with his outstanding probation?

FACTS

The incident from which this case arises occurred on the morning of September 10, 2014. The State's witnesses, Jordan Dominguez and Michael George, were old friends who together operated a small landscaping business. Other customers referred them to Pearmon, who then signed an agreement with them. This agreement, admitted into evidence, stated that they would mow Pearmon's lawn every two weeks at a cost of $60.00 per visit.

A dispute over how much money was owed ensued a few months later. On September 10, 2014, Dominguez and George were driving by Pearmon's house, and when they saw that he was standing outside, decided to pull into the driveway to discuss Pearmon's outstanding payments. Tensions began to rise between Dominguez and Pearmon as they discussed the bill, and Dominguez walked back to the car to exit the property with George. As they were backing up to leave, Pearmon pulled out a

pocketknife, reached into the window, and began to stab the knife around the car. When he saw the knife approaching, George jumped away toward the driver's seat where Dominguez was sitting. Dominguez testified that while Pearmon was thrusting the knife into the car, he struck the passenger seat where George had been sitting. There is a dispute over whether a hole found in the passenger seat was old or was created by Pearmon's stabbing. Dominguez and George were both able to identify Pearmon in a photo array as the man who stabbed in the car with the knife.

Pearmon testified at trial completely denying the entire event, alleging instead that he did not know Dominguez or George, and that one day they just pulled into his driveway demanding money from an agreement. Pearmon contends that he has never heard of this agreement, and he never entered into a business relationship with the two individuals.

Dominguez has a criminal history that includes an armed robbery conviction and first-degree burglary conviction in 2009. At the time of the trial, George was incarcerated for outstanding traffic offenses and on probation. At trial, the State filed a motion *in limine* to preclude the defense from impeaching George with the fact of his outstanding probation. The circuit court granted the State's motion finding that George's probation was irrelevant and was not an impeachable characteristic.

For the following reasons, we affirm the circuit court's decision.

DISCUSSION

The circuit court's decision to prevent defense counsel from impeaching one of the State's witness by asking questions about his current probation status was not an abuse of

discretion, as pending criminal charges generally are not admissible to impeach the credibility of a witness, and defense counsel failed to proffer circumstantial evidence of any ulterior motive for the witness to testify.[1]

The Confrontation Clause of the Sixth Amendment, which is applied to the states through the Fourteenth Amendment, requires that "in all criminal prosecutions, the accused shall enjoy the right . . . to be confronted with the witnesses against him." U.S. Const. amend. VI §1. To comply with this clause, a trial court must "allow a defendant a threshold level of inquiry that exposes to the jury the facts from which jurors, as the sole triers of fact and credibility, could appropriately draw inferences relating to the reliability of the witnesses." *Peterson v. State*, 444 Md. 105, 122 (2015) (internal citations and quotations omitted). Despite this, a defendant's right to cross-examination is not absolute. *Tharp v. State*, 129 Md. App. 319, 343 (1999) (citation omitted). A trial court may impose reasonable limitations on a witness's testimony "when necessary for witness safety or to prevent harassment, prejudice, confusion of the issues, and inquiry that is repetitive or only marginally relevant." *Martinez v. State*, 416 Md. 418, 428 (2010) (citation omitted).

Limiting the scope of witness testimony is left to the discretion of the trial judge and will only be overturned if there is a clear abuse of discretion. *Oken v. State*, 327 Md.

[1] Md. Rule 4-347(a) provides that a revocation of probation proceedings may be initiated by the State's Attorney or the Division of Parole and Probation by filing a petition for revocation or by order of the court issuing a summons or warrant for revocation. We assume that the point Pearmon was attempting to make was the State's Attorney, at some future point in time, interceding in George's probation status.

628, 669 (1992) (citation omitted). The issue to be addressed is "whether the trial judge imposed limitations upon cross-examination that inhibited the ability of the defendant to receive a fair trial." *Pantazes v. State*, 376 Md. 661, 681-82 (2003) (citations omitted).

Generally, Maryland courts recognize that pending criminal charges are not admissible to impeach the credibility of a witness. *Ebb v. State*, 341 Md. 578, 588 (1996), overruled on other grounds by *Calloway v. State*, 414 Md. 616 (2010). Despite this, where the State has a witness testifying in a criminal matter, the witness's pending charges are admissible where those charges "are offered to show bias, prejudice or motive of the witness testifying." *Id*. In order for defense counsel to "suggest[ ] that a witness is biased or has a motive to testify falsely, there must be a factual foundation for the question." *Peterson*, 444 Md. at 135 (citation omitted). "[T]he existence of pending charges alone is not a sufficient predicate for such a question." *Id*. (citation omitted).

In *Calloway,* the Court held that defense counsel successfully provided the Court with circumstantial evidence to suggest an ulterior motive to testify where the witness, a "jailhouse snitch," was released from his correctional facility when his charges were *nolle prossed* before he gave testimony. *Calloway*, 414 Md. at 637; *see also Dionas v. State*, 436 Md. 97 (2013) (holding that because the witness's VOP hearing was postponed for him to "complete cooperation" in appellant's case, there was a sufficient factual foundation to support the requested cross-examination). Additionally, if the circuit court should find that there is a factual foundation to support an inference of bias or motive in a witness, a trial judge may limit questioning if "the probative value of such an injury is

substantially outweighed by the danger of undue prejudice or confusion." *Calloway*, 414 Md. at 638 (citation omitted).

Here, the defense counsel failed to proffer any evidence that would provide a sufficient factual foundation to support defense counsel's request to impeach the witness based on his being on probation. There was no reason to believe that there was an ulterior motive for George's testimony other than he was the victim of a crime. In fact, the State was so unconcerned about George's status, as one who was charged with a crime, that he was allowed to testify in prison clothing. Because there was nothing presented that George had an ulterior motive to testify, we affirm the decision of the circuit court.

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