UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 2420

September Term, 2014

MICHAEL DEJUAN CRAWFORD

v.

STATE OF MARYLAND

Woodward,
Friedman,
Zarnoch, Robert A.
(Retired, Specially Assigned),

JJ.

Opinion by Friedman, J.

Filed: April 18, 2016

Following a trial in the Circuit Court for Prince George's County, a jury convicted appellant, Michael Dejuan Crawford, of attempted second-degree murder, armed robbery, robbery, theft, carrying a handgun openly, and conspiracy to commit robbery.[1] The trial court sentenced him to a prison term of 20 years, after which he filed a timely notice of appeal.[2]

In his appeal, appellant presents the following questions for our consideration:

1. Did the trial judge err in refusing to require the jury to deliberate further to resolve inconsistent verdicts as to robbery, armed robbery, and second-degree assault?

2. Did the trial court err in permitting the State to elicit testimony about a gun, and in admitting the gun itself, where the gun was irrelevant to the case?

3. Did the trial court err in overruling defense counsel's objection to the prosecutor's redirect examination of Reginald Brown, a key State witness?

Finding no error, we shall affirm the judgments of the trial court.

[1] The jury acquitted appellant of first-degree and second-degree assault and the use of a handgun in the commission of a crime of violence. Prior to sentencing, the trial court reconsidered its denial of appellant's motion for judgment of acquittal on the charge of attempted second-degree murder, as the trial transcript confirmed that the victim had testified only that appellant pointed a gun at him, without firing or attempting to fire it. As such, the court found the evidence insufficient to sustain the conviction of attempted second-degree murder and belatedly granted appellant's motion as to that charge.

[2] The court imposed the 20-year sentence on the armed robbery charge, merging the robbery and theft charges therein for sentencing purposes. A three-year sentence on the handgun charge and a 15-year sentence on the conspiracy charge were imposed to run concurrently with the armed robbery sentence.

FACTS and LEGAL PROCEEDINGS

Reginald Brown, Jr. supplemented his income as a cable splicer by selling marijuana. Monthly, he sold small amounts of marijuana—fractions of an ounce priced between $50 and $100—to Tracell Green.

On November 20, 2013, Green called Brown to arrange a $350 buy for an ounce of marijuana, a much larger amount than Green normally purchased. The change "threw up a red flag" with Brown, but, needing the money, he agreed to the sale, and armed himself with a .40 caliber semi-automatic handgun.

Although Green was usually alone when he met Brown in the parking lot of the Parkview Gardens apartment complex where Brown lived, on this occasion, Green arrived with another man, later identified as appellant, in his car. Brown entered Green's burgundy PT Cruiser and sat in the back seat. When he handed the marijuana to Green, Green and appellant examined it, after which appellant pulled out a black semi-automatic handgun, pointed it at Brown's chest, and told Brown to "[g]ive everything up."

Shocked and scared, and with nothing to give the man, Brown took advantage of a distraction outside the car to exit the vehicle and run toward a treed area. Appellant exited the car and again pointed the gun at him; fearing for his life, Brown fired his own weapon at appellant. Hearing glass break, Brown assumed he had hit Green's vehicle.

Brown saw appellant re-enter the PT Cruiser, which sped off, out of the apartment complex. Brown threw the weapon he had fired into the nearby Anacostia River.[3]

[3] The police did not recover Brown's weapon.

A short time later, Prince George's County Police Officer Brendan Gill observed a red or maroon PT Cruiser stopped in traffic at a roadblock on Riverdale Road near its intersection with 64th Avenue, necessitated by a police investigation of a serious motor vehicle collision. The PT Cruiser appeared to have sustained numerous gunshot impacts, mostly to the passenger side, and substantial damage to its front bumper. From the location and direction of the PT Cruiser in relation to the stopped traffic, Gill surmised that the shooting likely had occurred in the 6100 to 6400 blocks of Riverdale Road.

To Gill, the driver of the PT Cruiser exuded a strong smell of unburnt marijuana, and the other occupant, whom Gill identified in court as appellant, appeared to have been shot in the back; appellant was treated by paramedics already on the scene. A visual inspection of the vehicle revealed a package of suspected marijuana on the floor behind the passenger seat.

Having heard Gill's radio call for an investigation regarding a shooting and a separate 911 call regarding a shooting in the same area, Officer James Carpenter responded first to Gill's location and then to 6309 Riverdale Road, in the Parkview Gardens apartment complex, about a block and a half from the scene of Gill's accident investigation. Although the apartment complex is large, the only way in and out of it is through a motorized security gate. Just inside the gate, which appeared to have been "rammed" by a vehicle, Carpenter located several spent shell casings in the grass. He also observed broken vehicle glass in a nearby parking space.

In addition, a firearm, with its magazine and unfired rounds of ammunition, was recovered from the middle of the road just outside the security gate. The magazine had

been ejected from the firearm, apparently when it was run over by vehicles entering or leaving the apartment complex. Later examination revealed that one cartridge was "stovepiped," meaning that it was stuck in the gun and holding the breach open, which would have temporarily rendered the gun unable to fire.[4]

Based on information provided by a witness, Carpenter was on the lookout for a purplish PT Cruiser. He determined that the vehicle involved in the shooting at the apartment complex was the same vehicle stopped by the traffic resulting from Gill's road closure.

By means not apparent from the trial transcripts, Reginald Brown was identified as appellant's shooter. Two days after the shooting, Brown, in turn, identified appellant as his robber from a photographic array. That same day, Brown was arrested and charged with attempted second-degree murder and other offenses in relation to his shooting of appellant. The State later *nolle prossed* the charges against Brown but, during trial, disputed a claim by the defense that it had entered into an agreement not to re-charge him in exchange for his testimony against appellant.

DISCUSSION

I.

Appellant first claims that the trial court erred when it declined to instruct the jury to deliberate further after it returned an inconsistent verdict of acquittal on the charge of

[4] At trial, the parties stipulated that the firearm, a Glock 22 .40 caliber handgun, was operable.

second-degree assault but conviction on the charges of robbery and armed robbery. In appellant's view, the court should not have accepted the verdict, as legally inconsistent, because second-degree assault is necessarily a lesser included offense of robbery and armed robbery.

After the jury announced its verdict in open court, defense counsel asked to approach the bench, where he argued that the verdict was inconsistent because robbery requires assaultive behavior, and there cannot be a robbery without a second-degree assault.[5] Counsel requested that the court instruct the jury to deliberate further to resolve the inconsistency.[6]

The court pointed out that it had, with both parties' agreement, instructed the jury on "just the battery version" of second-degree assault and that, given the evidence presented at trial, the jury could have found there was no battery but that there was an intent to frighten Brown with force sufficient to meet the elements of robbery and armed robbery. The result would have been different, the court explained, if it had instructed the jury on the intent to frighten form of assault and the jury then acquitted appellant of second-degree assault.

It was therefore the court's opinion that the verdict was "consistent and entirely appropriate," pursuant to the instructions given to the jury. The court denied appellant's

[5]When asked if she agreed that the verdict was inconsistent, the prosecutor answered that she found it "strange;" she did not object to further jury deliberation.

[6] Appellant properly raised an inconsistent verdict challenge before the trial court, as required to pursue the matter on appeal, and sought the proper remedy. *See McNeal v. State*, 426 Md. 455, 466 (2012). The State does not argue otherwise.

request for further deliberation, on the ground that the jurors had done what the court had asked them to do, and the scenario it had set forth provided "one possibility" that the verdict was "consistent given the instructions that they were given."

At appellant's sentencing proceeding, the court further explained its conclusion that the verdict was not inconsistent:

> … I don't find that they're inconsistent in this regard. The parties agreed, and that's what the jury was instructed, that the assault was only of the battery variety. Specifically, the jury was instructed that assault is causing offensive physical contact with, or physical harm, to another person. In order to convict the Defendant of assault, the State must prove the Defendant caused offensive physical contact with, or physical harm to Reginald Brown and that the contact was a result of an intentional or reckless act of the Defendant and was not accidental.
>
> So, while we understand that there are other theories of assault, threat to place someone [sic], there's a threat to cause harm to someone, that's not what was put forward in the instructions with the consent, knowledge and consent, of all the parties. So, the jury could have, and certainly appears did, find that since he never shot at him and never caused any harm, Mr. Crawford was not guilty of assault, either the first or second degree. But, nonetheless, that he was guilty of robbery with a dangerous weapon, robbery, theft, carrying a handgun openly and conspiracy to commit robbery.
>
> In other words, yes, in theory, assault can be a lesser included offense of robbery, robbery with a dangerous weapon, but it's not—but battery is not. Battery requires some actual touching, physical harm to the victim, or offensive physical contact with the victim and not just a threat to do so. So the threat, what we commonly know is common law assault, would be a lesser included, and thus acquittal on that logically consistent. But a battery is not.
>
> So, under the unique circumstances of this case and the properly given legal instructions, the jury didn't reach a legally inconsistent verdict. They reached a legally and factually consistent verdict that, while Mr. Crawford used a gun, threatened with force and with that gun Mr. Brown in order to obtain the property, and he conspired to do so, he didn't commit a battery because he never caused physical harm to or offensive physical contact with Mr. Brown.

Maryland case law recognizes a crucial difference between jury verdicts that are legally inconsistent, which cannot stand, and verdicts that are factually inconsistent, which are permitted. *McNeal*, 426 Md. at 458. A factually inconsistent verdict is "merely illogical." *Price v. State*, 405 Md. 10, 35 (2008) (Harrell, J., concurring). A legally inconsistent verdict is one in which "the jury acts contrary to a trial judge's proper instruction regarding the law." *Id*.

More specifically, if a defendant is convicted of one charge, but acquitted of another charge that is an essential element of the first charge, the verdict is inconsistent as a matter of law. *McNeal,* 426 Md. at 458. The distinction between the two types of inconsistent verdicts rests "not on inconsistent factual findings but on inconsistent elements." *Travis v. State*, 218 Md. App. 410, 459 (2014). Whether a verdict is legally inconsistent is a question of law we review *de novo*, considering the elements of the offenses at issue in light of the jury instructions. *Teixeira v. State*, 213 Md. App. 664, 668 (2013).

Appellant relies on this Court's decision in *Wallace v. State*, 219 Md. App. 234 (2014), in which we agreed with the parties' assertion that second-degree assault is a lesser included offense of robbery, rendering the jury's acquittal on the assault charge and conviction on the robbery charge legally inconsistent. *Id*. at 252, 258. In our view, however, the particular facts of this matter distinguish it from *Wallace*.[7]

In *Wallace*, the defendant and another man approached the victim, Matthew Womack, and hit him from behind, then punched him in the face and knocked him to the

[7] The State asserts that we should overrule *Wallace* as "wrongly decided." We decline to do so.

ground. *Id*. at 240. Showing Womack what appeared to be a shotgun, they then demanded his money and possessions. *Id*.

At Wallace's trial, as here, the jury was instructed on only the battery form of assault, that is, that in order to convict him of second-degree assault, the State was required to prove that Wallace "caused offensive physical contact with and/or physical harm to Matthew Lawrence Womack; and … that the contact was the result of an intentional or reckless act of the defendant and was not accidental." *Id*. at 257 n.19. The crime of robbery was defined as the "taking and carrying away of property from someone else by force or threat of force, with the intent to deprive the victim of the property." *Id*. The jury convicted Wallace of robbery and related crimes but acquitted him of second-degree assault. *Id*. at 242.

On appeal, Wallace argued that the verdict was legally inconsistent because second-degree assault is a lesser included offense of robbery. The State countered that the verdict was not legally inconsistent because the evidence produced at trial supported a finding of two separate and distinct instances of assault. *Id*. at 250.

Noting that the touchstone for determining whether a verdict is legally inconsistent is whether the crime of which a defendant is acquitted and the crime of which he is convicted each contain elements that the other does not, the *Wallace* Court pointed out that the parties had agreed that second-degree assault is a lesser included offense of the robbery. *Id*. at 252. Therefore, the question before this Court was one "more of pleading than of law," that is, whether there were two separate and distinct criminal transactions, each capable of giving rise to separate, and possible factually inconsistent, verdicts. *Id*. at 253.

If, on the other hand, a single criminal act gave rise to both charges, the jury's verdict was legally inconsistent because an acquittal of second-degree assault negated a necessary element of the robbery. *Id*.

The *Wallace* Court stated that the pertinent question was not whether more than one assault conceivably had been *proved* by the evidence but whether more than one assault actually had been *charged*. *Id*. at 254. Finding that the State had not charged a specific assault based on an act separate from the assaultive act supporting the robbery, and finding no jury instruction to explain how the assault and robbery charges related to, and differed from, each other, the Court concluded that the ambiguities in the indictment and jury instructions must lead to a finding that the assault and robbery charges arose from the same criminal transaction and the acquittal on the former and conviction on the latter provided a legally inconsistent verdict. *Id*. at 257-58.

In the instant appeal, the facts and analysis differ from those set forth in *Wallace*. As in *Wallace*, the jury was instructed that "[r]obbery is the taking and carrying away of property from someone else by force or threat of force with the intent to deprive the victim of the property."[8] With the agreement of both parties, the court instructed the jury only on the battery variety of second-degree assault, that is, that to convict appellant of assault, the State must prove "that the defendant caused offensive physical contact with or physical

[8] The court additionally instructed the jury that armed robbery required all the elements of robbery, with the addition that the robbery be committed by using a dangerous weapon.

harm to Reginald Brown, Jr. and that the contact was the result of an intentional or reckless act of the defendant and not accidental."[9]

Unlike in *Wallace*, however, the evidence in this matter did not support a finding of a battery. Brown's undisputed testimony was that, while in Green's car, appellant demanded Brown's belongings while pointing a gun at him and that when Brown exited the car, appellant again pointed the gun at him. Brown made no assertion, however, that appellant fired or attempted to fire the gun at him or otherwise harmed him in any physical way.

Given that the jury was instructed only as to the battery form of assault, to convict appellant of that charge, it was required to find that he caused "offensive physical contact with or physical harm" to Brown, which had not been proven. On the other hand, to convict appellant of robbery, the jury had to find that appellant took Brown's property "by force or *threat of force*." Pursuant to the court's instruction on robbery, the jury reasonably could have found that appellant employed the *threat of force* in taking Brown's property, by pointing a gun at the victim, without employing *actual force* in battering Brown, a point conceded by appellant in his brief. As such, the jury commendably complied with the trial court's instructions in finding that appellant robbed Brown without assaulting him.

Viewing the elements of the offenses at issue in light of the legally correct and unchallenged jury instructions, *Teixeira*, 213 Md. App. at 668, we conclude that, pursuant

[9] The court added that first-degree assault required proof of all the elements of second-degree assault, along with proof that appellant employed a firearm to commit the assault or intended to cause serious physical injury in the commission of the assault.

to the unique facts of this matter, the jury's acquittal on the charge of second-degree assault and conviction on the charges of robbery and armed robbery are neither legally nor factually inconsistent. Therefore, the trial court did not err in declining to require the jury to deliberate further on those charges.

II.

Next, appellant argues that the trial court abused its discretion in permitting the State to elicit testimony about, and to admit into evidence, the gun the police recovered from the road just outside the gate to Brown's apartment complex. Because the State offered nothing but the proximity of the weapon to the crime scene to establish a reasonable probability that he used the gun in the crimes against Brown, appellant concludes, any evidence relating to the gun was irrelevant and therefore inadmissible. We disagree.

As we explained in *Grymes v. State*:

> A trial judge's decision to admit or exclude evidence will not be set aside absent an abuse of discretion. Evidence is admissible if it is relevant to the issues in the case and tend[s] either to establish or disprove them. The determination of whether evidence is relevant, *vel non,* is committed to the sound discretion of the trial court.

202 Md. App. 70, 103-04 (2011) (internal quotations and citations omitted) (alteration in original). The determination of whether evidence is relevant is a matter of law, to be reviewed by an appellate court *de novo*. *DeLeon v. State*, 407 Md. 16, 20 (2008).

Although appellant argues that any evidence relating to the gun was irrelevant because nothing other than its proximity to the crime scene established a reasonable probability that it was used in the crimes perpetrated against Brown, in our view, the State

established circumstantially that appellant had likely used and discarded the gun. As such, evidence relating to the gun was indeed relevant.

Brown testified that on two occasions on the night in question, appellant pointed a black semi-automatic handgun at him in an attempt to take his property. After Brown fired his own gun at Green's car, he saw appellant re-enter the car, which sped away from the Parkview Gardens apartment complex where Brown lived.

The police crime scene investigator testified that, a short time after the 911 call regarding a shooting at the Parkview Gardens apartment complex, he recovered a gun, later identified as a black semi-automatic Glock 22 .40 caliber handgun, in "the roadway area of 64th Avenue just prior to pulling into the … security gate to enter into the apartment complex," the only way into and out of the complex, and, therefore, the path appellant and Green would have taken when fleeing the scene.[10] And, when Green's PT Cruiser was searched after it was stopped at the road closure minutes later, and less than two blocks from the apartment complex, no gun was found, creating a reasonable inference that appellant or Green had discarded the gun somewhere between the apartment complex and the road closure.

Although Brown did not testify that the gun the State entered into evidence was indeed the gun appellant used to rob him, we have stated that "'physical evidence need not be positively connected with the accused or the crime to be admissible; it is admissible

[10] The probability that Green's car fled the complex through the security gate was increased by evidence that, to the responding police officer, the gate appeared to have been "rammed" by a car, and Green's car exhibited significant front bumper damage when observed only moments later at the police roadblock.

where there is a reasonable probability of its connection with the accused or the crime, the lack of positive identification affects only the weight of the evidence.'" *Aiken v. State*, 101 Md. App. 557, 573 (1994) (quoting *Brooks v. State,* 24 Md. App. 334, 344 (1975)). The evidence was sufficient to create a "reasonable probability" that the gun was connected to appellant. The pertinent issue with regard to the gun was the weight to be given it by the jury, not its admissibility. *Id*.

Moreover, defense counsel objected to the admission of the gun evidence on the ground of relevance only on one occasion—during the crime scene investigator's lengthy testimony about his recovery of the gun—without asking for a continuing objection. The police officer who responded to the 911 call also testified about the gun and its recovery, with no objection by the defense. And, when the State sought to introduce a series of photographs of the gun, along with its magazine and cartridges, through that officer, defense counsel specifically stated he had no objection to their admission, thus forfeiting the right to raise the issue of the admissibility of the photos of the gun on appeal. *Yates v. State*, 202 Md. App. 700, 722 (2011).

Therefore, the unobjected-to questions, the responses thereto, and the photographic evidence placed before the jury the same or substantially similar information about the gun as did the admission of the gun and unfired cartridge themselves, to which appellant objected. As such, even if it was error for the trial court to admit the gun evidence, we would find any such error to be harmless. *Id*. at 709 ("This Court and the Court of Appeals have found the erroneous admission of evidence to be harmless if evidence to the same effect was introduced, without objection, at another time during the trial.").

III.

Finally, appellant contends that the trial court erred when it overruled his objection to questions posed by the prosecutor upon re-direct examination of Reginald Brown, which, in his view, impermissibly suggested the existence of facts she could not prove and implied, on the basis of her personal knowledge, that Brown had been untruthful or was mistaken in responding to defense counsel's questioning on cross-examination.

Upon cross-examination, defense counsel enumerated the several crimes with which Brown had been charged in relation to his shooting of appellant. When counsel asked Brown if his case had been set for trial on July 14, 2014, about one month prior to the start of appellant's trial, the prosecutor objected on the ground of relevance.

At a bench conference, the circuit court inquired what had happened after the setting of Brown's trial date, to which defense counsel responded, "The State had entered the matter nolle prosequi with the idea that if he testified in this case, they wouldn't bring back charges." The prosecutor replied:

> That is not accurate at all. He's saying there was some kind of expectation or understanding … The State nolle-prossed its case. There's no deal, there's no understanding, there's no anything. But as to everyone being a victim and a defendant, we couldn't go forward in that matter. But there was no discussion. That's why his attorney is here. No discussion whatsoever. But he's testifying as to the true victim here."

The court overruled the State's objection, ruling that Brown's trial and the *nolle prosse* of his charges were relevant and that the defense could inquire as to "any agreements. The following cross-examination ensued:

BY [DEFENSE COUNSEL]:

Q. Your trial was scheduled for July 14th of this year?

A. I believe so, yeah.

Q. And at that time, the State agreed to nolle prossed [sic] your case and drop your charges?

A. Correct.

Q. And for you to testify here today?

A. Yeah, correct.

Q. And the understanding is that if you testified, that they wouldn't bring your charges back; is that correct?

A. Yeah, correct.

Upon re-direct examination, the prosecutor asked Brown:

Q. I want to be clear on something. I'm the prosecutor who had your case as well; is that right?

A. Correct.

[DEFENSE COUNSEL]: Objection, Your Honor.

THE COURT: Overruled.

BY [PROSECUTOR]:

Q. Did I make any agreements with you or signed [sic] any agreements with you with respect to any prosecution relating to this?

A. No.

Q. Okay. And that's what you were asked on cross-examination. And when I say "agreement," that's what I'm referring to, okay?

A. Okay, yeah. I didn't understand it. Okay.

Initially, we agree with the State that appellant has not preserved this issue for our review. As the record indicates, defense counsel objected only to the relatively innocuous question of whether the prosecutor in appellant's case was the same prosecutor assigned to Brown's case. He made no objection to the questions that he now claims were improper, that is, whether there was any agreement between Brown and the State not to re-charge Brown if he testified against appellant.

Maryland Rule 4-323(a) provides that "[a]n objection to the admission of evidence shall be made at the time the evidence is offered or as soon thereafter as the grounds for objection become apparent. Otherwise, the objection is waived." The preservation requirements for this type of objection are "very strict," and the Court of Appeals has explained that "if the objectionable nature of the question is clear, the objection must be immediately forthcoming before the answer is given;" counsel cannot wait to see if the answer is favorable before deciding whether to object. *Williams v. State*, 99 Md. App. 711, 717 (1994) (citing *Bruce v. State*, 328 Md. 594, 628 (1992))

The "strict rule" that an objection made at an inappropriate time will waive the objection "will give way when 'the question is unobjectionable, but the answer includes inadmissible testimony which was unforeseeable from the question.'" *Bruce*, 328 Md. at 627 (quoting 5 L. McLain, *Maryland Evidence* § 103.3, at 18). In that circumstance,

pursuant to Rule 4-323(a), objecting counsel should move to strike the witness's response immediately after the grounds for objection have become apparent. *Id*. at 628.

Here, defense counsel should have been able to anticipate the answers called for by the prosecutor's questions and thus should have been able to perceive the grounds for an objection as soon as the questions were posed. The questions themselves were clear, and appellant cannot fairly claim that defense counsel was unable to anticipate the gist of Brown's answer from the nature of the prosecutor's questions.

Moreover, even if we could say that counsel could not have anticipated the answers from the questions, so as to waive the need for prompt objection, he would have been required to move immediately to strike the objectionable answer. *Williams,* 99 Md. App. at 717. Defense counsel's failure to offer a timely objection (or request a continuing objection at the start of the line of questioning) and to move to strike the allegedly objectionable answer to the prosecutor's questions leaves nothing preserved for appellate review.

Even if appellant had preserved the issue for appeal, he would not prevail. Appellant contends that the prosecutor's line of questioning provided the jury with information that was not in evidence and comprised improper prosecutorial vouching. The State disagrees, arguing that the State's re-direct examination was proper as an explanation or amplification of Brown's testimony on cross-examination, which did not require the jury to weigh the prosecutor's word against Brown's. We agree with the State.

In general, the scope of examination of witnesses is left largely to the wide discretion of the trial court, and we will not disturb that court's determination in the absence

of a clear abuse of discretion. *Daniel v. State*, 132 Md. App. 576, 583 (2000). To be sure, a criminal defendant has the right to cross-examine a witness, particularly the State's star witness, about matters that affect the witness's bias, prejudice, interest in the outcome of the trial, or motive to testify falsely. *Parker v. State*, 185 Md. App. 399, 425 (2009). *See also* Md. Rule 5-616(a). As such, appellant was entitled to question Brown about any agreement between him and the State in exchange for his testimony against appellant.

If such questioning is undertaken by the defense, however, the State "is generally entitled to have [its] witness explain or amplify testimony that he has given on cross-examination and to explain any apparent inconsistencies." *Daniel*, 132 Md. App. at 583. *See also* Md. Rule 5-616(c); *Fullbright v. State*, 168 Md. App. 168, 184 (2006) (a witness whose credibility has been attacked may be rehabilitated by permitting the witness to deny or explain the impeaching facts). When "'the inquiry is directed toward developing facts made relevant during cross-examination or explaining away discrediting facts,'" the trial court's discretion is "particularly wide." *Daniel*, 132 Md. App. at 583 (quoting *Bailey v. State*, 16 Md. App. 83, 110-11 (1972)).

When defense counsel began questioning Brown about his own trial in relation to his shooting of appellant, the prosecutor proffered to the court that there had been no agreement between the State and Brown that the State would not re-initiate the charges it had *nolle prossed* against Brown if he testified against appellant. The court, ruling that any agreements between the State and Brown would be relevant, permitted defense counsel to question Brown on that issue.

After Brown testified on cross-examination that it was his understanding that if he testified against appellant, the State would not re-charge him with crimes in relation to his shooting of appellant, the State was entitled to question him upon re-direct examination in an effort to explain to the jury that, notwithstanding Brown's *understanding*, the State had made no actual agreements with him regarding the future of the charges against him. The prosecutor asked the questions in a neutral manner, without leading the witness, and Brown explained that he had not understood defense counsel's implication. It was then up to the jury to weigh the credibility of the witness's conflicting testimony. *Joyner-Pitts v. State*, 101 Md. App. 429, 445 (1994).

We find no impropriety in the prosecutor's rehabilitation of her witness, which explained "discrediting facts," and we perceive no prejudice to appellant from the State's clarification of Brown's testimony."[11]

JUDGMENTS OF THE CIRCUIT COURT FOR PRINCE GEORGE'S COUNTY AFFIRMED; COSTS TO BE PAID BY APPELLANT.

[11] Defense counsel made no effort to re-cross examine Brown on the existence and terms of an agreement between him and the State, and there is nothing in the record to suggest that such an agreement existed. Had there actually been such an agreement, the prosecutor's questioning would have been improper as an attempt to elicit testimony she knew she could not prove. *See Elmer v. State*, 353 Md. 1, 14-15 (1999).