UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 574

September Term, 2015

DERRICK HERNDON

v.

STATE OF MARYLAND

Meredith,
Leahy,
Moylan, Charles, E., Jr.,
(Senior Judge, Specially Assigned),

JJ.

Opinion by Leahy, J.

Filed: April 26, 2017

Derrick Herndon ("Appellant") was indicted in the Circuit Court for Prince George's County for attempted first-degree murder, attempted second-degree murder, first-degree assault, use of a firearm in a crime of violence, reckless endangerment, firearm possession with a felony conviction, and illegal possession of a firearm. Ndhili Jones, the victim, was the State's only trial witness linking Herndon to the crime. No other witnesses or physical evidence placed Herndon at the scene of the crime.

The defense's case was centered on challenging Jones's credibility. Jones entered into a plea agreement in an unrelated drug case for which Jones was awaiting sentencing. At trial, the court limited the scope of Herndon's cross-exam by disallowing questions related to the terms of the plea agreement, including the specific facts underlying the charges to which Jones pleaded guilty.

After a four-day trial, a jury found Herndon guilty on all counts. Herndon was sentenced to life imprisonment with all but 25 years suspended, and to five years of probation upon his release from prison. Herndon presents one question on appeal:

> 1. "Whether the trial court violated Mr. Herndon's right under the Confrontation Clause by refusing to allow defense counsel the opportunity to cross-examine the key prosecution witness regarding the specifics of his pending case and plea agreement that he had entered into with the State?"

We hold that the trial court did not abuse its discretion in limiting the scope of the cross-examination by excluding testimony on certain terms of the sealed plea agreement. We affirm.

BACKGROUND

Herndon was tried in a four-day jury trial from January 27-30, 2015. The shooting was preceded by a robbery that occurred approximately six months earlier. The State offered Jones—the victim of the shooting—as the only eye-witness to testify to the events of the robbery and shooting. The details of these events are derived from Jones's trial testimony.

The remaining witnesses were police officers who testified regarding the state of the crime scene after the shooting; a forensic firearms expert who testified that the shell casings were from the same firearm; and a cell phone expert who testified that Herndon's alleged phone number was used in the vicinity of the crime scene during the time of the shooting. Notably, none of these witnesses nor evidence recovered at the crime scene could corroborate Jones's testimony that Herndon shot Jones.

Jones testified that he had known Herndon for at least two-and-a-half years and considered him to be a friend. Despite this, Jones only knew Herndon as "Sal" and learned his legal name through the police's investigation in this case. The two men became acquainted through Jones's drug dealing activities. Jones was a middleman and would supply Herndon with marijuana.

A. The Robbery

On the day of the robbery—in June or July 2013—Herndon gave Jones $500.00 to buy a quarter of a pound of marijuana from a man named Rambo in Northeast Washington,

D.C. Herndon remained in the car while Jones went to a house to buy the marijuana from Rambo. Jones waited an unspecified amount of time before eventually leaving because Rambo never showed. As Jones was walking back to his car, through an alley, he was robbed of the $500.00 at gunpoint by an unknown male. After the robber ran off, Jones returned to the house, knocked on the door, but no one answered. Jones attempted to call Rambo but Rambo did not answer or return his call. Jones speculated that the robbery was a set up.

Jones then returned to the car and recounted these events to Herndon. Jones testified that Herndon "was mad," but Jones reassured Herndon he would "make it up." Jones, however, never repaid Herndon, claiming that he did not have cash to repay Herndon.

B. The Shooting

Approximately six months later, in the early evening of January 7, 2014, Herndon picked up Jones from his house in Hyattsville, Maryland. Jones sat in the back seat of the car behind the driver, Herndon. There were two other passengers—a woman sitting in the front-seat and an unidentified male in the back-seat.[1] Jones did not know either passenger. After Herndon dropped the woman off at an undisclosed location, he drove to the intersection of Sargent Road and Chillum Road, where he stopped the car and began arguing with Jones about "the money situation."

[1] At some point, this man moved to the front-passenger seat.

Herndon then told Jones to get out of the car, which Jones did. At this point Jones noticed that Herndon was holding a handgun at his side. Jones attempted to walk and Herndon pointed the handgun at Jones and said, in Jones's words, "are you gonna make me shoot you?" Then Herndon assured Jones he was not going to shoot him and ordered Jones to get back in the car. Jones complied, realizing that they were in an open space which provided no opportunity for Jones to run and seek cover in the event Herndon shot at him. At this point, Herndon gave the handgun to the front-seat passenger "in case [Jones] might try to hit [Herndon] while he was driving." Herndon continued driving into D.C., made a U-turn, and drove back to Prince George's County. Meanwhile, the conversation between Herndon, the unidentified male passenger, and Jones alternated between silence, discussing how money had been "tight," and proposing a possible deal in which Jones would pay back Herndon with marijuana instead of cash.

Jones recognized the neighborhood and sensed "something [was] going to happen." Herndon was driving around 40 to 45 miles per hour—rather fast for that area. As Herndon turned left onto a street Jones knew to be a dead end, Jones jumped out of the driver's side of the back seat of the car. Jones heard "[a]bout four to five shots," one of which hit his right arm. He immediately picked himself up and began running. Herndon pursued Jones in his car until sirens were heard nearby.

When Jones reached his house, his wife took him to the hospital. At the hospital, Jones provided the police with a statement that Herndon shot him. Jones was released from

the hospital early on January 8, 2014. Later that day, Jones provided the police with a picture of Herndon from Herndon's Instagram account.

Despite his definitive statement to the police at the hospital and photo identification of Herndon, at trial Jones testified that he did not see who shot him. Nonetheless, Jones testified that the bullets came from "[t]he car [he] jumped out of." Jones also testified that he jumped out of the back seat on the driver's side, and that Herndon was driving and the unknown man was in the front passenger side seat, thereby implying that Herndon was the one to pull the trigger. Nonetheless, Jones could not state with complete certainty that it was Herndon who shot him.

C. Jones's Credibility and the Plea Agreement

Between July 2014 and some point before the start of trial, Jones entered into a plea agreement in which he pleaded guilty to the distribution of cocaine.[2] Jones was awaiting sentencing in that case at the time of Herndon's trial. This plea agreement had been placed under seal.

During opening arguments and direct-examination, the State proactively disclosed to the jury Jones's pending sentencing for a distribution of cocaine charge in order to mitigate the defense's impending attempt to impeach Jones. Jones testified that he was not receiving "any promises" or a similar benefit for his testimony. The State also asked Jones

[2] The plea agreement is not in the record.

whether he was receiving any promises from the State for testifying in the current case. Jones testified that he was not receiving any promises or quid pro quo for testifying in Herndon's trial. Neither the State's questions nor Jones's testimony disclosed or implied the existence of a plea agreement for the distribution of cocaine charge. The State also established on direct examination that Jones owed Herndon $500.00, which Herndon had given to Jones to buy marijuana.

The defense, in its opening statement, described Jones as an untrustworthy witness and cautioned the jury to be circumspect regarding his testimony. On cross-examination, the defense attempted to elicit more detail regarding Jones's distribution business and access to cash during June and July 2013. Specifically, the defense asked whether the underlying offenses occurred in 2013 and whether Jones was selling cocaine in July 2013. The State objected to these questions. After the trial court sustained the State's objections, the defense requested a bench conference.

During the bench conference the defense argued that Jones belied his inability to pay Herndon back. Herndon pressed that Jones's participation in alleged lucrative drug deals around the time of the robbery casted doubt on the truthfulness of his testimony that he did not have cash to repay Herndon. Therefore, the defense maintained it should be permitted to ask Jones about specific drug transactions to establish that Jones may have made profits with which he could have repaid Herndon. The State countered that Maryland Rule 5-608 prevented Herndon from impeaching Jones with extrinsic evidence of each

specific drug deal. The trial court, ruling from the bench, sustained the State's objection and explained that Herndon must limit his cross-examination questions to "generalities" (i.e., whether Jones was "making a living selling drugs" and why he did not have cash). The trial court ruled that Herndon could not ask Jones questions regarding specific instances of drug transactions.

After the bench conference, the defense resumed questioning Jones on his ability to pay back Herndon, insinuating that Jones was involved in large cocaine transactions, and questioning his indictment and the related guilty plea to distributing cocaine. Jones flatly denied selling cocaine and testified that his guilty plea did not pertain to the time in question (June and July 2013). The State objected and the court sustained these objections. After a brief bench conference, the trial court permitted the defense to ask Jones if he was charged with selling contain in June and July 2013. When cross-examination resumed, Jones testified that he was charged with distributing cocaine in July of 2013 after the defense supplied Jones with a copy of his indictment.

The defense then shifted its questioning to the guilty plea and related plea agreement. Jones testified that he pleaded guilty to distribution of cocaine. The defense ventured to ask Jones whether he entered into a plea agreement, but the State objected immediately and requested a bench conference. The State argued that the plea agreement was under seal, had "no bearing on this case," and that Jones already testified that he was not receiving a benefit for testifying. The defense countered that counsel was permitted to

ask Jones whether he has received a benefit from entering into any plea agreement to testify for the State and maintained that the defense's inquiry is not limited solely to agreements relevant to the Herndon trial. Lastly, the defense asserted that the jury, not the court, decides whether Jones is receiving a benefit from the State. At the conclusion of this bench conference, the trial court ruled that the defense was limited to asking "[Jones] if he thinks he's getting a benefit in the other cases[.]" The trial court, again, reiterated that the defense was not permitted to ask Jones about his drug dealing business or specific instances of drug transactions.

The defense then asked Jones whether he had an agreement to testify for the State. Jones denied such an agreement. The State objected to the defense's attempts to prod further, and the trial court sustained the objection. The defense refocused the inquiry to Jones's income from his day job as an independent contractor and side business of drug dealing, in an attempt to impeach Jones concerning his inability to pay back Herndon.

After the conclusion of Jones's testimony and out of the presence of the jury, the defense requested an *in camera* review of the sealed plea agreement to confirm whether the agreement references Herndon's case. The defense contended the agreement may be relevant to demonstrate Jones's bias toward the State. The trial court broadly summarized the terms of the agreement to counsel: Jones agreed to testify as a State's witness in grand jury proceedings, trials, and other court proceedings as the State may require in exchange for the State recommending less than the maximum sentence and entering a *nolle prosequi*

in the other, unrelated case. After reviewing the agreement, the court denied the defense's motion to unseal the plea agreement, reasoning that the agreement—which contained "standard boilerplate" and no reference to Herndon's case—was not relevant. Although the court acknowledged that the agreement contained the standard requirement for Jones to testify in court proceedings, the court was unpersuaded that there was sufficient relevance and probative value on the issue of bias in this case given that Jones was the victim of the shooting and his trial testimony was consistent with his January 2014 testimony. In response to the defense's bias argument, the court asked: "Wouldn't you have already had an opportunity to ask him about that? The State asked him, are you getting any benefit for this case. He said no. Then you had an opportunity to ask him about that, about any benefit he was getting." (Emphasis added).

Finally, in closing argument, the defense continued to underscore Jones's lack of credibility:

> Do you actually think a guy like Ndhili Jones, and you can consider it when you're considering his credibility, a guy who has been convicted of theft in a conspiracy, a credit card conspiracy theft in Montgomery County. A guy who's been convicted a second time for theft in Montgomery County. **A guy who's been convicted of possession with the intent to distribute narcotics and is pending sentencing in this courthouse for selling narcotics on two different occasions**, do you think a guy like that cares about the oath?

(Emphasis added).

D. Jury Verdict and Appeal

On January 30, 2015, at the close of the trial, the jury found Herndon guilty of all charges. On March 27, 2015, Herndon was sentenced to a term of life imprisonment with all but 25 years suspended. Herndon filed a timely notice of appeal on April 6, 2015.

DISCUSSION

Herndon argues that the trial court violated his right to confrontation guaranteed by the Sixth Amendment to the United States Constitution and Article 21 of the Maryland Declaration of Rights by restricting the scope of his cross-examination of Jones. Herndon challenges the trial court's ruling which prohibited the defense from questioning Jones about 1) the specifics of the plea agreement, and 2) the facts underlying the distribution of cocaine charges to which he pleaded guilty in that agreement. Herndon maintains that the court's ruling unconstitutionally restricted his ability to elicit testimony from Jones which would have enabled the jury to accurately evaluate Jones's interest, motive, and credibility.

The State counters that the trial court's limitation on cross-examination was a proper exercise of the court's discretionary powers and the trial court afforded Herndon his constitutional right to confront Jones. The State maintains that there was no evidence that the plea agreement influenced the substance of Jones's testimony. The fact that Jones was the victim of an attempted murder, the State argues, speaks to Jones's interest in testifying in this case. The State refutes Herndon's argument that the plea agreement influenced the substance of Jones's testimony because Jones's testimony was consistent with the

statements he gave to the police "several months before he was charged in the case that led to the plea agreement." The State maintains that the circuit court properly limited the scope of the cross-examination by excluding testimony on certain terms of the plea agreement, concluding that the terms were of marginal probative value and would confuse the jury.

We review a trial court's decision to restrict cross-examination under the abuse of discretion standard. *Peterson v. State*, 444 Md. 105, 124 (2015). The trial court's role encompasses "controlling the course of examination of a witness" including "mak[ing] a variety of judgment calls . . . as to whether particular questions are repetitive, probative, harassing, confusing, or the like[.]" *Id.* In these judgment calls, "[t]he trial court may [] restrict cross-examination based on its understanding of the legal rules" and "may limit particular questions or areas of inquiry." *Id.* "Given that the trial court has its finger on the pulse of the trial while an appellate court does not, decisions of the first type should be reviewed for abuse of discretion. Decisions based on a legal determination should be reviewed under a less deferential standard." *Id.* "Finally, when an appellant alleges a violation of the Confrontation Clause, an appellate court must consider whether the cumulative result of those decisions, some of which are judgment calls and some of which are legal decisions, denied the appellant the opportunity to reach the 'threshold level of inquiry'" that the Confrontation Clause requires. *Id.*

The right of a defendant who is accused of a crime to confront the prosecution's witnesses is secured by the Confrontation Clause of the Sixth Amendment of the United

States Constitution, applicable to the State of Maryland through the Fourteenth Amendment, and Article 21 of the Maryland Declaration of Rights. *Davis v. Alaska*, 415 U.S. 308, 315 (1974) (citing *Douglas v. Alabama*, 380 U.S. 415, 418 (1974)); *Pantazes v. State*, 376 Md. 661, 680 (2003) (citing *Merzbacher v. State*, 346 Md. 391, 411–12 (1997)). This includes the right to cross-examine witnesses regarding their biases, interests, and motives to testify, thereby allowing the jury to accurately evaluate the witnesses' credibility. *Martinez v. State*, 416 Md. 418, 428 (2010). "[T]he exposure of a witness' motivation in testifying is a proper and important function of the constitutionally protected right of cross-examination." *Davis*, 415 U.S. at 316–17 (citing *Greene v. McElroy*, 360 U.S. 474, 496 (1959)). This Court has explained that the importance of cross-examination in testing the credibility of a witness is especially pronounced where—as in the case *sub judice*—the weight of the State's case rests exclusively upon the testimony of the witness cross-examined. *Brown v. State*, 74 Md. App. 414, 421 (1988) (citing *Lewis v. State*, 71 Md. App. 402, 412 (1987)). This right is encapsulated in Maryland Rule 5-616(a)(4) which provides that "[t]he credibility of a witness may be attacked through questions asked of the witness, including questions that are directed at . . . [p]roving that the witness is biased, prejudiced, interested in the outcome of the proceeding, or has a motive to testify falsely[.]"

"The right to cross-examination, however, is not without limits." *Marshall v. State*, 346 Md. 186, 193 (1997) (citing *Delaware v. Van Arsdall*, 475 U.S. 673, 679 (1986); *Smallwood v. State*, 320 Md. 300, 307 (1990)). "Once the constitutional threshold is met,

trial courts may limit the scope of cross-examination 'when necessary for witness safety or to prevent harassment, prejudice, confusion of the issues, and inquiry that is repetitive or only marginally relevant.'" *Peterson*, 444 Md. at 122–23 (quoting *Martinez*, 416 Md. at 428) (other citation omitted). The Court of Appeals has "said on numerous occasions that trial courts retain wide latitude in determining what evidence is material and relevant, and to that end, may limit, in their discretion, the extent to which a witness may be cross-examined for the purpose of showing bias." *Merzbacher*, 346 Md. at 413. As the Supreme Court stated in *United States v. Scheffer*, a "defendant's right to present relevant evidence is not unlimited, but rather is subject to reasonable restrictions. A defendant's interest in presenting such evidence may thus 'bow to accommodate other legitimate interests in the criminal trial process.'" 523 U.S. 303, 308 (1998) (internal citations omitted) (quoting *Rock v. Arkansas*, 483 U.S. 44, 55 (1987)); *accord Pantazes*, 376 Md. at 680–81.

The limits a trial court places on cross-examination must not in themselves violate the Confrontation Clause:

> The Confrontation Clause of the Sixth Amendment is satisfied where defense counsel has been 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. The trial court's discretion to limit cross-examination is not boundless. It has no discretion to limit cross-examination to such an extent as to deprive the accused of a fair trial. In assessing whether the trial court has abused its discretion in the limitation of cross-examination of a State's witness, the test is whether the jury was already in possession of sufficient information to make a discriminating appraisal of the particular witness's possible motives for testifying falsely in favor of the government.

Marshall, 346 Md. at 193–94 (internal quotation marks and citations omitted). The Court of Appeals in *Calloway v. State* devised two factors that courts must consider when limiting cross-examination concerning bias. 414 Md. 616, 638 (2010). In a jury trial, "questions permitted by Rule 5-616(a) should be prohibited only if (1) there is no factual foundation for such an inquiry in the presence of the jury, or (2) the probative value of such an inquiry is substantially outweighed by the danger of undue prejudice or confusion." *Id.* (quoting *Leeks*, 110 Md. App. at 557–58) (emphasis omitted). "When a defendant seeks to cross-examine a State's witness to show bias or motive, 'the crux of the inquiry insofar as its relevance is concerned, is the witness's state of mind.'" *Martinez*, 416 Md. at 431 (quoting *Smallwood*, 320 Md. at 309). "[W]hen determining whether a particular item of circumstantial 'bias' evidence should be excluded on the ground that it is unfairly prejudicial and/or confusing, the trial court is entitled to consider whether the witness's self interest can be established by other items of evidence." *Id.* (quoting *Calloway*, 414 Md. at 638). The circuit court exercises its discretion properly "by balancing 'the probative value of an inquiry against the unfair prejudice that might inure to the witness. Otherwise, the inquiry can reduce itself to a discussion of collateral matters which will obscure the issue and lead to the fact finder's confusion.'" *Pantazes*, 376 Md. at 682 (quoting *State v. Cox*, 298 Md. 173, 178 (1983)) (other citation omitted).

In *Peterson*, the petitioner's trial centered on whether he pulled the trigger that killed one person and injured another during a drug transaction. 444 Md. at 113. The State presented four eyewitnesses who identified the petitioner as the shooter at trial and the jury convicted the petitioner of first-degree felony murder among other related crimes, *Id.* at 113, 120. After this Court affirmed the petitioner's convictions, he petitioned the Court of Appeals asserting, *inter alia*, that the trial court violated his constitutional right to confront the witnesses against him by limiting the defense's cross-examination of three eyewitnesses. *Id.* at 120–21. In *Peterson*, the State had charged the petitioner and one eyewitness for the murder and related crimes. That eyewitness entered into a plea agreement with the State in which he agreed to plead guilty to one charge and to testify against the petitioner, and in exchange, the State dropped the remaining charges against the eyewitness and recommended the sentencing court impose a sentence of 20 years' imprisonment with all but eight years suspended. *Id.* at 149.

At Peterson's trial, the eyewitness's sentencing was pending. *Id.* The trial court permitted the defense to cross-examine the eyewitness "at length about his plea agreement and the charges he faced prior to entering into that agreement" including "the specific charges and whether he understood that he faced 'a lot more time' if convicted of the charges to be dismissed under the plea agreement[.]" *Id.* at 149–50. The trial court, however, prohibited the defense from cross-examining the eyewitness about the maximum penalty—life imprisonment—for the first-degree murder, one of the charges the State

agreed to dismiss. *Id.* The Court of Appeals determined "the key question is whether the jury was made aware of the witness's potential motive to testify in a particular way[.]" *Id.* at 152. Accordingly, the Court held that "the extensive cross-examination of [the eyewitness] concerning his motives and potential bias *more than met* the 'threshold level of inquiry' required by the Confrontation Clause[,]" reasoning that "the jury heard enough to make a 'discriminating appraisal' of [the eyewitness's] credibility in light of the plea agreement." *Id.* at 153–54 (emphasis added).

In *Martinez*, the defendant was charged with involuntary manslaughter of one victim and attempted murder of another among other related crimes. 416 Md. at 421. The surviving victim, Mejicanos, was one of the State's key witnesses. *Id.* Six days before Mejicanos testified at a pre-trial motions hearing in Martinez's case, the State entered *nolle prosequi* for charges pending against Mejicanos in an unrelated case. *Id.* at 423. When Mejicanos failed to attend the first day of trial, the court issued a writ of body attachment and he was incarcerated on the second and third days of trial to ensure his presence at trial. *Id.* at 422. At trial, the court prohibited the defense from cross-examining Mejicanos regarding "his potential bias in connection with the State's dismissal of unrelated charges filed against him and his incarceration status pursuant to a writ of body attachment to secure his presence at trial." *Id.* at 420. After the jury convicted Martinez of involuntary manslaughter and first-degree assault of the deceased victim and attempted second-degree murder and first-degree assault of Mejicanos, he filed an appeal to this Court asserting the

trial court violated his right to confrontation. *Id.* at 426–27. This Court affirmed Martinez's conviction, holding that the trial court "did not abuse its discretion in ruling that the probative value of the proposed inquiries was outweighed by other concerns expressed in Maryland Rule 5-403." *Id.* at 427. Martinez then petitioned the Court of Appeals. *Id.* In reversing Martinez's convictions, the Court held that the trial court's restriction of the cross-examination of Mejicanos violated Martinez's right of confrontation because it "prevented the jury from considering the possibility that Mejicanos had a motive to testify as he did[.]" *Id.* at 432.

In *Calloway*, the witness, a former cellmate of the petitioner, volunteered to testify for the State against the petitioner. 414 Md. at 619. At the time, the cellmate was awaiting trial on second-degree assault and reckless endangerment charges, incarcerated because he was unable to post cash bail, and facing a violation of probation. *Id.* After the petitioner made inculpatory statements to his cellmate, the cellmate called the Montgomery County State's Attorney's Office, offering to testify about those statements. *Id.* Between the date the cellmate called the State and the date he testified in the petitioner's case, "the State (1) requested that [the cellmate] be released on a 'personal bond,' (2) 'nolle prossed' the assault and reckless endangerment charges, and (3) filed a motion *in limine*," requesting that the court prohibit Calloway from cross-examining the cellmate as to whether he volunteered to testify and expected a benefit in return. *Id.* The trial court granted the State's motion and the petitioner was subsequently convicted of second-degree assault. *Id.*

After this Court affirmed his conviction, the petitioner filed certiorari in the Court of Appeals. *Id.* at 620. The Court of Appeals reversed, adopting the two-factor analysis set out above, that in a jury trial, the court should only prohibit questions permitted by Rule 5-616(a)(5) if: "(1) there is no factual foundation for such an inquiry in the presence of the jury, or (2) the probative value of such an inquiry is **substantially** outweighed by the danger of undue prejudice or confusion." *Calloway*, 414 Md. at 638 (quoting *Leeks*, 110 Md. App. at 557–58) (emphasis supplied in *Calloway*). The Court held that "there was a solid factual foundation for an inquiry into [the cellmate's] self interest, and the circumstantial evidence of [the cellmate's] self interest was not outweighed-*substantially* or otherwise-by the danger of confusion and/or *unfair* prejudice to the State." *Id.* at 639 (emphasis in original). In assessing bias and motive, the Court reasoned that the key inquiry, to be decided by the jury, was whether the witness "had a hope that he would benefit from volunteering to testify against Petitioner[.]" *Id.* at 637.

Applying these principles to the case *sub judice*, we hold first that the trial court afforded Herndon his right to confront the prosecution's witness. Much like in *Peterson*, the State and defense "'expose[d] 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*, 444 Md. at 122 (quoting *Martinez*, 416 Md. at 428). In its opening statements and direct-examination of Jones, the State proactively disclosed Jones's distribution of cocaine plea and that Jones was awaiting sentencing to the jury. In contrast

to the witness in *Peterson* who otherwise would have been the petitioner's codefendant but not for the plea agreement, the circuit court here found in its *in camera* review that Jones was not receiving a quid pro quo from the State in exchange for testifying and Jones testified that he did not believe he was either. *See Peterson*, 444 Md. at 149. The State also asked Jones whether he was receiving any promises from the State for testifying in the current case. Jones testified that he was not receiving any promises or quid pro quo for testifying in Herndon's trial.

Further, as the trial court pointed out in a bench conference, the defense failed to follow up on Jones's testimony regarding an expectation of benefit on cross-examination:

> Wouldn't you have already had an opportunity to ask him about [bias]? The State asked him, are you getting any benefit for this case. He said no. Then you had an opportunity to ask him about that, about any benefit he was getting.

Instead, the defense focused its cross-examination of Jones on details of specific drug transactions and whether Jones was profiting from these transactions in June and July 2013.

Next, we address whether the circuit court properly exercised its discretion in prohibiting cross-examination of Jones. Applying the two factors articulated in *Calloway*, we conclude that there was an insufficient factual basis for bias, motive, or interest. This case does not present the indicia of bias, motive, or interest to the same extent as the cases discussed *supra* on which Herndon relies. In this case, Jones's motivation to testify was pellucid—as the victim of an attempted murder. We remain unconvinced that the existence

of a plea agreement in an unrelated case to which Jones was awaiting sentencing provided motivation to testify falsely. Jones identified Herndon in a statement to the police on January 8, 2014, months before he was indicted with distribution of cocaine and other drug-related charges. According to the State, Jones was not indicted for the drug charges from which the plea agreement arose until July 2014. Although Jones's trial testimony occurred after he entered into the plea agreement, his testimony at trial was consistent with his out-of-court identification of Herndon on January 8, 2014—the day after his release from the hospital. Given Jones's first identification of Herndon occurred before both Jones's indictment and the plea agreement, as the circuit court emphasized, we have no reasonable basis to conclude the trial court abused its discretion in finding that the plea agreement was unrelated to the instant case and not a likely source of motivation for Jones to testify falsely.

Furthermore, if, as Appellant suggests, the plea agreement was serving to elicit untruthful testimony, it would be more likely that Jones's testimony would change from equivocal pre-trial to unequivocal at trial. In this case, however, we have the converse. Jones acknowledged at trial that he could not testify with certainty that Herndon was, in fact, the shooter. Jones's retreat from a definite assertion of Herndon's guilt lends itself to the credibility of his testimony.

Lastly, we turn to Herndon's sub-argument that the trial court's restriction on the cross-examination of Jones prohibited Herndon from refuting the State's theory that Herndon was motivated by the outstanding drug debt. The fact the Jones never repaid

Herndon is not in dispute. The jury was informed of Jones's drug debt and thus Herndon's alleged motive for the shooting. The defense challenges the trial court's decision disallowing testimony on how much money Jones made in specific drug transactions that were underlying his guilty plea to the cocaine distribution charge in the plea agreement. Jones's testimony regarding his ability to pay was not a central issue at trial. Whether or not Jones had access to cash would not have changed Herndon's alleged motive. In this case, the trial court properly exercised its role in reasonably limiting cross-examination for the reasons articulated in Maryland Rule 5-403 by balancing the probative value of the cross-examination against the potential for unfair prejudice and confusion of the issues. *See Cox*, *supra*, 298 Md. at 178. We, therefore, hold that the trial court did not abuse discretion in limiting the scope of the cross-examination of Jones.

JUDGMENT AFFIRMED. COSTS TO BE PAID BY APPELLANT.