UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 899

September Term, 2015

RUDY ISMAEL MANCHAME-GUERRA

v.

STATE OF MARYLAND

Wright,
Reed,
Sharer, J. Frederick
(Senior Judge, Specially Assigned),

JJ.

Opinion by Sharer, J.

Filed: January 18, 2017

In the Circuit Court for Prince George's County, Rudy Ismael Manchame-Guerra ("Manchame") was convicted of second-degree murder and use of a handgun in the commission of a felony. He was sentenced to 25 years of incarceration for second-degree murder and a consecutive ten years for the handgun offense.

In his timely appeal, Manchame raises two questions for our consideration which, as recast, are:

1. Did the circuit court commit reversible error in denying his motion to suppress?

2. Did the circuit court commit reversible error in preventing the defense from impeaching a State's witness with pending, unadjudicated charges?

Finding neither error nor abuse of discretion, we shall affirm the judgments of the circuit court.

BACKGROUND

Manchame was charged with first-degree murder and use of a handgun, arising from the fatal shooting of Saul Felipe-Augustine on the afternoon of July 14, 2012. The shooting occurred outside an apartment in Langley Park, Maryland, where several people were dining and drinking beer at an informal restaurant operating in the apartment. Manchame and Felipe-Augustine, not previously known to each other except perhaps by patronizing the informal restaurant, got into an argument, and Felipe-Augustine exited the apartment behind his friend, Edi Felipe. Manchame followed them out and shot Felipe-Augustine in the head at close range when he turned around to confront Manchame. Felipe-Augustine died of the gunshot wound almost immediately.

Ultimately, Manchame was developed as a suspect. He was arrested on September 5, 2013, in Nassau County, New York and interviewed there by Prince George's County Police Detective Kenneth Doyle. As Manchame's first language is Spanish, and Doyle was not conversant in Spanish, Detective Marcos Rodriguez assisted. Rodriguez testified that he advised Manchame of his rights in Spanish prior to conducting the interview, and they completed an advice of rights form. Manchame told the officers that he understood the rights he was waiving, including the right to have an attorney present during the interview.[1] Rodriguez recorded the interview on a sound recorder, and it was transcribed and entered into evidence.

Manchame told Rodriguez that Felipe-Augustine pushed him, tried to hit him with a fire extinguisher, and then produced the gun, which "went off" while Manchame wrestled it away from him. At the conclusion of the interview, Manchame completed a written statement, in which Rodriguez transcribed Manchame's answers to the questions, and Manchame initialed each response.

Motion to Suppress

Prior to trial, defense counsel moved to suppress the statements Manchame made in the interview on the grounds of *Miranda* violations and voluntariness. Manchame testified at the suppression hearing that he was under the influence of marijuana and cocaine when he was arrested, and continued to feel the effects of the drugs until the late

[1]The advice of rights form included references to Manchame's having completed only the third grade.

afternoon, when the interview was taking place. He testified that he was handcuffed, and was not permitted to use the bathroom, have anything to eat or drink, or make any phone calls until the end of the interview, around 5:00 p.m. He also stated that, prior to the recorded interview, Rodriguez told him there was no time for him to get an attorney. Manchame further testified that, prior to the recorded interview, Rodriguez threatened to have his aunt deported if he did not "come to an agreement" regarding the shooting, an agreement which could include a shorter sentence. Rodriguez also testified at the hearing, stating that he did not discuss Manchame's aunt or other family with him prior to the recording, that Manchame did not appear to be under the influence of drugs during the interview, and that Manchame appeared to understand why he was being interviewed.

The circuit court denied the motion to suppress, stating:

> All right. The Court finds based on a preponderance of the evidence that on or about September the 5th, 2013, that the accused was placed in custody in Nassau County, New York. That he was subsequently interviewed by detectives from the Prince George's County police department where he executed State's Exhibit No. 1, for purposes of this motion's hearing, which is an Advice of Rights form.
>
> And while I do not have the benefit of being able to comprehend written or spoken Spanish, based on the evidence that was adduced in this case, the Court finds based on a preponderance of the evidence that he did make a free and voluntary waiver of his Miranda rights, notwithstanding his limited education.
>
> Further, based on a totality of the circumstances, the Court finds that the statement which was marked and admitted as State's Exhibit No. 2 was the product of a free and voluntary act on behalf of the Defendant.
>
> The Court is not persuaded that it was evident to the detective that the Defendant was under the influence of controlled substances at the time that he gave the statement.

DISCUSSION

Motion to Suppress

Manchame argues that the circuit court committed reversible error in denying his motion to suppress without making specific findings of fact regarding each of his arguments, thus leaving many facts in dispute. We are not persuaded.

At the motion hearing, Manchame's counsel articulated several reasons why the written statement produced at the interview was involuntary, including that: he was told there was no time to get an attorney; he was 19 years old at the time and this was his first ever interview with police; he was under the influence of drugs; he was handcuffed and not permitted to eat, drink, or use the bathroom prior to, and during, the interview; he was not permitted to use the telephone; he was induced to give the statements by threat of deportation of his aunt; and he was promised a shorter sentence if he cooperated. Those issues, he posits, were "hotly contested" during the suppression hearing and the court erred in not addressing each with specificity.

The State initially responds that Manchame failed to preserve the issue, thus our analysis must be under the plain error doctrine. We disagree. The Maryland Rules provide for the review of a motion to suppress on the appeal of a conviction. *See* Rule 4-252(h)(2)(C) ("A pretrial ruling denying the motion to suppress is reviewable on a motion for a new trial or on appeal of a conviction."). Pursuant to Rule 4-252, any issue raised in a motion to suppress or at a motions hearing is reviewable. *See Joyner v. State*, 208 Md. App. 500, 519 (2012) (claim that record did not establish advice of rights was

not reviewable because it was only raised at appellate level). We shall not accept the State's invitation to conduct a plain error review.

In reviewing a motion to suppress, we accept the factual findings of the trial court unless they are clearly erroneous, but review the law *de novo* and apply it to the facts of the case viewed in the light most favorable to the prevailing party. *See Raynor v. State*, 440 Md. 71, 81 (2014), *cert. denied*, 135 S.Ct. 1509 (2015).

Manchame's counsel objected to the admission of his oral and written statements both on *Miranda* and voluntariness grounds. These concepts are paired together in the law:

> In a criminal cause, when the prosecution introduces an extrajudicial confession or admission given by the defendant to the authorities during a custodial interrogation, the basic rule is that the prosecution must, *prima facie*, upon proper challenge, establish by a preponderance of the evidence that the statement was obtained (1) in conformance with the dictates of *Miranda v. Arizona*, 384 U.S. 436 (1966) and (2) voluntarily.

Lodowski v. State, 307 Md. 233, 250 (1986) (parallel citations omitted). Voluntariness is determined by considering the totality of the circumstances. *See id.* at 254. The record must clearly demonstrate the trial court's determination as to compliance with *Miranda* and as to voluntariness. *See State v. Kidd*, 281 Md. 32, 37, *cert. denied*, 434 U.S. 1002 (1977). "Although the judge need not make formal findings of fact or write an opinion, his conclusion that the confession is voluntary must appear from the record with unmistakable clarity." *Sims v. Georgia*, 385 U.S. 538, 544 (1967).

It follows that the trial court must make sufficient findings regarding disputed facts to allow a reviewing court to examine the determinations. *See Lodowski*, 307 Md.

at 252-53. In *Lodowski*, the record was insufficient for appellate review of the determinations because the trial court made only one finding of fact – that Lodowski never requested an attorney – leaving disputes as to other facts about the interrogation relevant to the *Miranda* and voluntariness analyses. *See id.* at 252-53. The Court remanded "so that the record may show with unmistakable clarity the judge's determination as to voluntariness, including compliance with Miranda's dictates, of each of the statements proffered by the State and the factual findings on which the determination is based." *Id.* at 253 (quotations omitted).

Here, though, the record is clear that the court accepted the advice of rights form as an effective waiver of Manchame's *Miranda* rights. The court likewise made a clear determination that the answers given by Manchame were voluntarily. The court erased any dispute over the specific circumstances of the interview when it made the credibility determination that it was not evident to Rodriguez that Manchame might have been under the influence of drugs, and that the advice of rights was sufficient to make Manchame understand that he was waiving certain rights. While the court did not address each factual sub-argument Manchame's counsel made in support of the motion to suppress, it was not required to do so. We are satisfied that the court's oral rendering of its denial of the motion to suppress was sufficiently conclusory of each of the issues raised.

Impeachment

At trial, Manchame's counsel attempted to impeach Felipe, the only witness who observed the shooting. Counsel sought to ask Felipe about pending charges – first degree

burglary and theft over $1,000 – and whether he imagined any benefit in that case as a result of his testimony in the instant case. On the basis that the charges facing Felipe were merely pending, but not yet adjudicated, the court sustained the State's objection, stating: "There is no factual basis in the record at this time that the conduct alleged by this witness has actually occurred."

Manchame argues that the trial court failed to exercise the discretion required by Rule 5-608(b), erroneously applying a blanket rule prohibiting cross-examination based on charges that had not resulted in a conviction. Manchame alternatively contends that, if the trial court did use discretion but found an insufficient proffer of information, the finding of motive to testify falsely based on pending charges was a determination for the jury under Rule 5-616(a)(4), which allows impeachment using questions aimed at proving the witness has a motive to testify falsely.

Rule 5-608(b) provides:

> **Impeachment by examination regarding witness's own prior conduct not resulting in convictions.** The court may permit any witness to be examined regarding the witness's own prior conduct that did not result in a conviction but that the court finds probative of a character trait of untruthfulness. Upon objection, however, the court may permit the inquiry only if the questioner, outside the hearing of the jury, establishes a reasonable factual basis for asserting that the conduct of the witness occurred. The conduct may not be proved by extrinsic evidence.

The rule being permissive, we review the court's ruling for an abuse of discretion.[2]

[2]Manchame argues that we should apply a stricter standard of review than abuse of discretion, citing *State v. Cox*, 298 Md. 173 (1983). "[T]he allowance or disallowance of questions on cross-examination is normally left to the sound discretion of the trial judge."

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"The most salient legal characteristic of Rule 5-608(b) is that the permissibility of the use of prior bad conduct is a decision entrusted to the *wide discretion* of the trial judge." *Molter v. State*, 201 Md. App. 155, 173 (2011) (emphasis added). "The use of this impeachment device is by no means automatic." *Id.* A trial court must weigh the probative value of the impeachment against its potential prejudicial effect on the character of the witness. *See id.* at 173-74 (concluding that probative value of inquiry was diminished because defendant did not dispute witness's telling of facts). "Where . . . the inquiry has probative value and may tend to impeach the witness'[s] credibility, but its relationship to the issue on trial is less direct and does not present so substantial a risk of a miscarriage of justice, the trial judge may permit the inquiry; however, *he does not abuse his discretion if he does not*." *Ogburn v. State*, 71 Md. App. 496, 510 (1987) (emphasis added). "And we emphasize that when impeachment is the aim, the relevant inquiry is not whether the witness has been accused of misconduct by some other person, but whether the witness actually committed the prior bad act." *State v. Cox*, 298 Md. 173, 181 (1983).

Id. at 183. "But where the limitations imposed by the court upon cross-examination are such as plainly inhibit the ability of the accused to obtain a fair trial, the general rule is manifestly inapplicable." *Id.* (citation omitted). Even under a stricter standard applied to the court's decision, Manchame has failed to demonstrate the factual basis for the line of inquiry. Further, the court's prohibition of this line of inquiry did not inhibit the fairness of the trial, as Manchame was free to impeach Felipe's credibility in other ways, such as by challenging the accuracy of his memory over the roughly 18 months between the shooting and the interview.

After the court's ruling disallowing the line of questioning, counsel entered into the record five documents relating to the then-pending charges against Felipe, the statement of charges, statement of probable cause, indictment, arrest warrant, and issuance of a $20,000 bail bond. The court observed that the documents merely proved that Felipe was accused of a burglary and lesser included offenses: "I'm assuming that there is no question that he has been charged . . . with the things you described." However, the court was not satisfied that the alleged conduct had occurred, and concluded: "There is no factual basis in the record at this time that the alleged conduct by this witness has actually occurred."

Manchame asserts that the court's ruling was the application of a blanket rule against charges that do not result in a conviction. We think that he places too much emphasis on the word "any" in the court's comment that "[t]he court is not going to allow any impeachment that doesn't – that hasn't resulted in a conviction." The record reflects that the court considered the evidence Manchame presented and ruled accordingly.

Manchame's counsel made no further argument as to how that evidence tended to show that Felipe actually committed the burglary – referring only to the charging documents. Thus, in our view, the court was within its discretion to prohibit the question where no admission or finding of fact had occurred within 18 months of the indictment, and where the preclusion did not tend to inhibit Manchame's right to a fair trial.[3]

[3]At oral argument, Manchame argued that the facts in the statement of probable cause should have been sufficient as a factual predicate to support his impeachment

Continued . . .

Manchame also argues that he should have been able to impeach Felipe with the charges pursuant to Rule 5-616, which provides in relevant part that a witness may be impeached through questions directed at "[p]roving that the witness is biased, prejudiced, interested in the outcome of the proceeding, or has a motive to testify falsely," suggesting that Felipe had an expectation of favor.

"[P]ending charges are not . . . impeachment evidence," and "the existence of pending charges alone is not a sufficient predicate for [a question about bias or motive]." *Peterson v. State*, 444 Md. 105, 135 (2015) (citation omitted). There must also be either direct or circumstantial evidence showing that the witness has an expectation of a benefit related to those pending charges arising from his testimony. *See id.* at 135-36 (listing examples from Maryland case law of such evidence, including actual agreement, decision to forgo charges, or dismissal of charges). "[Q]uestions permitted by Rule 5-616(a)(4) 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." *Calloway v. State*, 414 Md. 616, 638 (2010) (quoting *Leeks v. State*, 110 Md. App. 543, 557-58 (1996) (emphasis omitted)).

attempt. Because this argument was neither made at trial, nor included in his appellate brief, we need not consider it. *See* Rules 8-131(a) ("[o]rdinarily, the appellate court will not decide any . . . issue [other than jurisdiction] unless it plainly appears by the record to have been raised in or decided by the trial court") and 8-523(f) ("[t]he Court may decline to hear oral argument on any matter not presented in the briefs").

In *Calloway*, the witness contacted police from the jail where he was being held with the defendant and offered to testify about inculpatory statements the defendant made to him. *See* 414 Md. at 619. In the interim between his offer to testify and the trial, the State dropped several charges pending against the witness, including an assault charge and violation of probation. *See id.* The trial court granted the State's motion *in limine* to prevent the defense from this same line of inquiry on the grounds that the court found the witness to be credible in his insistence that he wanted to testify because it was the right thing to do, and this Court affirmed the decision. *See id.* The Court of Appeals reversed, holding that there was a solid factual foundation that the witness might have expected a benefit, and that it was for the factfinder to weigh his potential self-interest against his credibility. *See id.* at 639.

There exists a distinction. In *Calloway*, there was a "solid factual foundation" of circumstantial evidence that the witness might have expected a benefit for testifying, given that he had, in fact, received a benefit, while in the matter before us, Manchame asks us to draw inferences from two facts that do not necessarily lead to a conclusion that Felipe expected a deal: (1) the charges existed at the time of Felipe's interview with police, and (2) the police were aware of the charges.

Here the facts proffered were insufficient to show that Felipe might have expected a benefit in exchange for testifying. Although the detectives investigating the case were aware of the pending charges, the State first learned of the nature of the charges at trial when Manchame sought to impeach Felipe. The State was under the impression that

there was a possibility that a charge for a misdemeanor trespassing existed, but did not know there were actually charges and that they were for burglary and theft. The State further proffered that Felipe was not offered a deal, nor was there ever a discussion with him about a deal. A showing that the detectives were aware of the charges does not establish that Felipe knew that the State was aware of the charges, or that he expected a benefit for testifying in an unrelated case. Manchame's Rule 5-616 argument fails for the same reason his Rule 5-608 argument fails: he did not provide a sufficient factual basis to permit the impeachment inquiry. The trial court did not abuse its discretion in precluding the impeachment questions.

JUDGMENT OF THE CIRCUIT COURT FOR PRINCE GEORGE'S COUNTY AFFIRMED; COSTS ASSESSED TO APPELLANT.