Circuit Court for Baltimore City
Case No. 117045002

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 2617

September Term, 2018

JAMES ARTHUR CHAVIS

v.

STATE OF MARYLAND

Beachley,
Gould,
Adkins, Sally D.
(Senior Judge, Specially Assigned),

JJ.

Opinion by Gould, J.

Filed: June 23, 2020

One of the hallmarks of a fair trial is the defendant's right to conduct a complete investigation and discover relevant evidence, both good and bad for the defense. One investigatory tool is interviewing the State's witnesses. Appellant James Arthur Chavis—convicted in the Circuit Court for Baltimore City for voluntary manslaughter—contends that the State violated his constitutional rights by insisting on being present during his counsel's interview of a State witness. Mr. Chavis also contends that the court abused its discretion when it allowed the State to impeach his credibility with evidence of two prior convictions.

Because the record does not reveal any indication that the State's presence during the interview interfered with defense counsel's ability to obtain relevant information from the witness, we find that the State did not violate Mr. Chavis's constitutional right to either a fair trial or to the effective assistance of counsel. We also find that the trial court did not abuse its discretion in allowing the State to impeach Mr. Chavis with his prior convictions.

Accordingly, for the reasons explained below, we affirm the judgments of the circuit court.

FACTS AND LEGAL PROCEEDINGS

On January 22, 2017, Mr. Chavis engaged in heated conversations with Oscar Acevedo at a Royal Farms convenience store in southeast Baltimore City. Mr. Chavis briefly left the store, and then returned, had an altercation with, and ultimately fatally stabbed, Mr. Acevedo. Mr. Chavis was indicted by a grand jury on charges including first-degree murder and openly wearing and carrying a dangerous weapon with the intent to injure.

A few days prior to trial, Mr. Chavis moved to exclude the testimony of four of the State's witnesses, including an individual named Jason Bupp. Mr. Chavis contended that the State had disclosed that Mr. Bupp would be testifying in the State's case-in-chief only days before, and that this late disclosure violated Maryland Rule 4-263(d)(3).[1] According to Mr. Chavis, in its initial disclosures, the State merely listed Mr. Bupp, without an address or telephone number, as one of the 21 people with whom it had made contact but had not yet interviewed. Mr. Chavis contended that the State violated its discovery obligations under Rule 4-263(d)(3), and that the proper remedy was the exclusion of Mr. Bupp as a witness.

The court denied Mr. Chavis's motion. The court observed that the State had provided notice of Mr. Bupp's potential role as a witness in its initial and supplemental disclosures about one year earlier. The court further noted that in its disclosures, the State had requested that identifying information be "withheld pursuant to Rule 4-263(d)(3), Rule 16-1009(b), and Md. Code Ann., Crim. Proc. § 11-205."[2] As such, the court concluded that the State had complied with Rule 4-263(d)(3) and CP § 11-205.

[1] Maryland Rule 4-263(d)(3) provides: "As to each State's witness the State's Attorney intends to call to prove the State's case in chief or to rebut alibi testimony: (A) the name of the witness; (B) except as provided under Code, Criminal Procedure Article, § 11-205 or Rule 16-912 (b), the address and, if known to the State's Attorney, the telephone number of the witness; and (C) all written statements of the witness that relate to the offense charged[.]"

[2] Maryland Rule 16-912(b) provides: "This section does not apply to a petition filed pursuant to Code, Criminal Procedure Article, Title 10, Subtitle 3. Upon the filing of a motion to seal or otherwise limit inspection of a case record pursuant to section (a) of this Rule, the custodian shall deny inspection of the case record for a period not to exceed five

Also prior to trial, Mr. Chavis moved to preclude the admission of his two prior convictions—a 13-year-old conviction for robbery and a 14-year-old conviction for possession of narcotics with intent to distribute—that the State intended to use for impeachment purposes pursuant to Maryland Rule 5-609. The court denied this motion as well.

Mr. Bupp did not make himself available to be interviewed by either the prosecutor or defense counsel before trial. On the third day of trial, Mr. Bupp unexpectedly appeared. The prosecutor interviewed him that morning, advised defense counsel of his presence, and provided defense counsel with the opportunity to interview him as well.

Defense counsel asked the prosecutor to let him interview Mr. Bupp in private.[3] The prosecutor declined, stating that she had the right to hear what Mr. Bupp had to say and challenged defense counsel to "cite a rule or a case that provides the right to a defense counsel to question a witness without the presence of the State's attorney." Defense counsel proceeded with the interview of Mr. Bupp in the prosecutor's presence.

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business days, including the day the motion is filed, in order to allow the court an opportunity to determine whether a temporary order should issue."

Maryland Annotated Code, Criminal Procedure ("CP") (2001, 2018 Repl. Vol.) § 11-205 provides: "On request of the State, a victim of or witness to a felony or delinquent act that would be a felony if committed by an adult, or a victim's representative, a judge, State's Attorney, District Court commissioner, intake officer, or law enforcement officer may withhold the address or telephone number of the victim, victim's representative, or witness before the trial or adjudicatory hearing in a juvenile delinquency proceeding, unless a judge determines that good cause has been shown for the release of the information."

[3] The record does not reflect whether Mr. Bupp was present when defense counsel made this request.

Defense counsel informed the court about the circumstances surrounding his interview of Mr. Bupp and asked the court to allow a second interview outside of the presence of the prosecutor. The prosecutor opposed the request. She argued that the defendant did not have "any right to interview a witness without the presence of the State." She further maintained that during defense counsel's interview, she had "avoided eye contact with both the witness and [defense counsel and] was only a standing ear so that [she] could hear anything that possibly may be an issue at trial." Defense counsel did not dispute the prosecutor's account of the interview. The court denied the motion.

Mr. Chavis was tried before a jury and found guilty of voluntary manslaughter. He was sentenced to ten years' imprisonment.

This timely appeal followed.

DISCUSSION

Mr. Chavis presents the following two questions for review:

1. Whether the State deprived appellant of his constitutional rights to a fair trial and to the effective assistance of counsel when the prosecutor insisted on being present during defense counsel's interview of a witness for the State; and

2. Whether the trial court erred as a matter of law in ruling that the age of appellant's 13- and 14-year-old prior convictions weighed in favor of their admissibility for impeachment purposes under Rule 5-609.

MR. BUPP'S INTERVIEW

Mr. Chavis makes a two-pronged argument regarding the prosecutor's refusal to absent herself from defense counsel's interview of Mr. Bupp. First, he argues that the State violated his constitutional rights by refusing to allow his counsel to privately interview Mr. Bupp. Second, he argues that this violation was compounded by the trial court's refusal to

allow a second interview outside of the State's presence. He contends that both errors were not harmless because, if his counsel had been given the opportunity to interview Mr. Bupp alone, he may have discovered facts that would have supported a perfect self-defense claim. For the reasons that follow, we reject these arguments.

Mr. Chavis's Constitutional Claims

A criminal defendant's right to the effective assistance of counsel is secured by the Sixth Amendment to the United States Constitution and Article 21 of the Maryland Declaration of Rights. Newton v. State, 455 Md. 341, 355, 362 (2017) (citations omitted). "[E]ffective representation means representation in which the attorney is unhindered in the lawful pursuit for knowledge which might benefit the client." Clark v. State, 306 Md. 483, 489 (1986). One means of acquiring such knowledge is by interviewing witnesses, including those anticipated to testify on behalf of the State. See Johnson v. State, 292 Md. 405, 461 n.3 (1982) (dissenting opinion) (citing Ex Parte Duffy, 607 S.W.2d 507 (Tex. Cr. App. 1980) ("failure to interview witnesses works a denial of effective assistance of counsel where the consequence is that only viable defense alternative to the accused is not advanced"); Bowers v. State, 320 Md. 416, 436 (1990) (quotation omitted) (citing cases evidencing ineffective assistance of counsel, including where counsel "failed to interview witnesses before trial, did no legal research, and failed to consult experts").

In support of his contention that the State violated his constitutional rights to a fair trial and effective assistance of counsel, Mr. Chavis urges us to "adopt the prevailing view in other jurisdictions and hold that the State violates a criminal defendant's constitutional rights by insisting on being present during defense counsel's interview of a witness, absent

a request by the witness for the prosecutor's presence." In support of his argument, Mr. Chavis cites to:

- Gregory v. United States, 369 F.2d 185, 187 (D.C. Cir. 1966) – the prosecutor advised witnesses to a robbery not to speak to defense counsel outside of his presence or without his authorization.

- State v. Simmons, 203 N.W.2d 887, 891-92 (Wis. 1973) – the prosecutor denied defense counsel access to a 17-year-old victim and the victim's mother prior to trial. The victim said she was ordered not to speak to anyone without her mother being present, and that the mother stated that the prosecutor "instructed her not to talk to anyone about the case except in [the prosecutor's] presence." Id.

- State v. Hofstetter, 878 P.2d 474, 477 (Wash. 1994) – the prosecutor misleadingly informed the witness that it would be a breach of his plea agreement if he was interviewed by defense counsel without the prosecutor present.

- State v. Mussehl, 408 N.W.2d 844, 845 (Minn. 1987) – the prosecutor discouraged the State's witnesses from speaking to a defense investigator by sending them a letter with a warning that defense attorneys are:

  > ethically obligated to do everything within [their] power to defend the person charged with the crime. In practice this means that he will be trying to get his client acquitted. You should bear in mind when you are making your decision as to whether or not you wish to talk with someone from the defense. If you wish to talk to the defendant's investigator or to his attorney I would request that you advise me and request that I be present . . .

- State v. Blazas, 74 A.3d 991, (N.J. Super 2013) – defense counsel alleged that a detective told an investigator for the defense that he was not permitted to contact a State's witness and also instructed the witness not to speak to the investigator. Defense counsel further alleged that the detective stated that any questions needed to go through the prosecutor. Id.

- Int'l Business Machines Corp. v. Edelstein, 526 F.2d 37, 41 (2d Cir. 1975) – the court told counsel "that if any one of you seeks to interview a witness in

> the absence of opposite counsel, that you do it with a stenographer present and so that it can be available to the Court, for the Court to see it . . ." Id. The Court of Appeals for the Second Circuit found that the restrictions "set by the trial judge exceeded his authority," and "grant[ed] the petition for relief from the District Court's rulings relating to the conduct of out-of-court interviews." Id. at 42, 44.

The above cases are examples of overt and intentional pre-trial conduct designed to affirmatively hamper a defendant's ability to acquire information from the State's witnesses.[4] No such conduct was alleged here. Mr. Chavis does not allege that at any time before Mr. Bupp unexpectedly appeared on the third day of trial, the State directed or asked Mr. Bupp not to speak with defense counsel without the presence of the prosecutor. At most, Mr. Chavis argues that the State withheld Mr. Bupp's contact information in discovery, depriving his counsel of a "meaningful opportunity to speak with [Mr.] Bupp before he arrived at the courthouse to testify." That argument is unpersuasive because, as discussed above, the trial court denied Mr. Chavis's motion on this issue on the first day of trial.

In denying Mr. Chavis's motion, the trial court found that the State complied with its discovery obligations and lawfully withheld Mr. Bupp's contact information pursuant

[4] In another case cited by Mr. Chavis, State v. Murtagh, 169 P.3d 602, 605 (Alaska 2007), a statute restricted defense counsel's ability to interview the victim of a sexual offense. The statute in question provided that the defense attorney could not interview a victim without first "stat[ing] their identity and their association with the defendant, tell[ing] the victim that the victim need not talk with the representative, and tell[ing] the victim that the victim may have a prosecuting attorney present during the interview." Id. (footnotes omitted). The Supreme Court of Alaska found that the statutory provisions "unjustifiably interfere[d] with defense investigations" and "present[ed] a distinct risk of suppressing sources of evidence that otherwise would be available to defendants." Id. at 624. The Court therefore concluded that the provisions were "inconsistent with procedural due process." Id.

to Maryland Rule 4-263 and CP § 11-205. The trial court observed that: (i) on April 21, 2017, the State disclosed, in its initial disclosures, that it was withholding the addresses of its witnesses pursuant to Rule 4-263, Rule 16-1009(b), and CP § 11-205; (ii) on May 25, 2017, the State produced the Incident Reports, which identified Mr. Bupp (and others) as witnesses; and (iii) Mr. Chavis's motion in limine, filed just three days before the trial on June 11, 2018, was "the first request, inquiry, or objection to information and/or testimony regarding the four State's witnesses."

At any time during the 12 months leading up to trial, Mr. Chavis could have filed a motion under CP § 11-205 to show good cause for the information withheld by the State, including Mr. Bupp's contact information. But he didn't. If Mr. Bupp's testimony was that crucial to the defense, presumably defense counsel would have pursued the release of his contact information earlier, and in fact had over a year to do so. And, as noted above, Mr. Chavis did not appeal the trial court's denial of his motion in limine.

In any event, Mr. Chavis fails to point us to any State conduct during trial that interfered with his access to Mr. Bupp. When Mr. Bupp appeared at trial, the State did not instruct, advise, or suggest to Mr. Bupp that he not speak to defense counsel. To the contrary, the State facilitated and arranged for defense counsel's interview of Mr. Bupp. Although defense counsel clearly preferred to interview Mr. Bupp privately, as Mr. Chavis acknowledged when arguing his motion in the trial court, "it is up to the witness ultimately to decide who he wants to talk to and under what circumstances." There is no indication that defense counsel asked Mr. Bupp to speak with him without the prosecutor's presence or that Mr. Bupp expressed any preference.

Moreover, the record does not suggest any reluctance or hesitation by Mr. Bupp to speak openly and candidly with defense counsel, let alone a reluctance that could be attributed to the prosecutor's presence. Further, defense counsel did not argue or even suggest to the trial court that, due to the prosecutor's presence, he held back on the questions he put to Mr. Bupp during the interview. In sum, the prosecutor's presence during the interview notwithstanding, the record is devoid of any assertion or evidence that the prosecutor interfered, in any way, with defense counsel's access to information from Mr. Bupp.

Although we find no interference here, we would be remiss if we did not acknowledge that even subtle or passive conduct, including conduct not necessarily intended to cause interference, could potentially interfere with a defendant's ability to obtain useful information from a witness. Indeed, it is not difficult to imagine a realistic scenario in which the mere presence of the prosecutor could chill a witness's openness and candor in answering defense counsel's questions. Conduct that does not interfere with defense counsel's interview of a witness in one context could, in a different context, cause such interference. The inquiry must be driven by the factual circumstances of each case. Here, the circumstances and context reveal no basis to infer that any improper interference occurred in defense counsel's interview of Mr. Bupp.[5]

[5] Mr. Chavis argues on appeal that "[h]ad defense counsel had the opportunity to interview [Mr.] Bupp before he testified without interference from the prosecutor, defense counsel may have uncovered information of great importance to Mr. Chavis's defense." Specifically, Mr. Chavis contends that "[g]iven [Mr. Bupp's] vantage point, it is possible that he saw whether Acevedo reached for a weapon, as Mr. Chavis testified" and if so, Mr.

The Trial Court's Refusal to Order a Subsequent Interview

Mr. Chavis also contends that the trial court erroneously refused defense counsel's request to re-interview Mr. Bupp privately. Mr. Chavis likened his request to a motion for a continuance because, as his counsel confirmed at trial, he was asking the court for a brief pause in the trial to permit the second interview. A trial court's denial of a motion for a continuance is reviewed for abuse of discretion. Prince v. State, 216 Md. App. 178, 203 (2014). We find no such abuse here.

At trial, defense counsel made a narrow argument to the trial court, contending only that he had a right to interview Mr. Bupp without the State's presence, not that the State's presence interfered with the interview.[6] And, when the trial court asked for the legal authority for this right, defense counsel was unable to provide any and instead argued that had the State produced Mr. Bupp's contact information during discovery, he would have been able to interview Mr. Bupp privately. As discussed above, the trial court had already found that the State had committed no discovery violation, and Mr. Chavis did not appeal that ruling. In light of the arguments Mr. Chavis made to the trial court, we find no abuse

Bupp's "testimony could have significantly bolstered Mr. Chavis's defense." Mr. Chavis explains that his trial counsel understandably refrained from asking questions at trial, following the "classic rule of trial practice" not to ask a question if the lawyer does not already know the answer. Mr. Chavis does not point to anything in the record to support such speculation. Having reviewed Mr. Bupp's testimony in its entirety, we see no indication that defense counsel conducted a less than thorough cross-examination of Mr. Bupp.

[6] On appeal, Mr. Chavis provides no legal authority that, absent a request by the witness, defense counsel has the right to interview a witness without the presence of the prosecutor.

of discretion in the court's denial of Mr. Chavis's motion for a continuance to re-interview Mr. Bupp.

ADMISSION OF PRIOR CONVICTIONS

Mr. Chavis was impeached with evidence of two prior convictions: a 13-year-old conviction for armed robbery and a 14-year-old conviction for possession of narcotics with intent to distribute. Mr. Chavis argues the court committed reversible error by admitting evidence of these two prior convictions.

Preservation of the Objection

The State contends that Mr. Chavis failed to preserve this objection because he did not argue to the circuit court that it had improperly weighed the second factor. We disagree.

Before Mr. Chavis took the witness stand, his defense counsel reminded him that the prior convictions could be used to impeach his testimony, stating:

> And if you do testify, the Court has already ruled that there are two convictions that could be used against you for impeachment purposes. Those convictions cannot be used to show that you're more likely to commit the crime than somebody else, but they can be used to show that, because you have those convictions, you might not be as believable as somebody who doesn't have those convictions. That is the only thing they can argue.

Then, during Mr. Chavis's direct testimony, defense counsel preemptively asked him about his prior convictions.

Under Brown v. State, 373 Md. 234, 237, 245-46 (2003), the Court found that a defendant who made the strategic decision to take the sting out of the prior conviction by preemptively testifying about it, waived his right to challenge the admission of the evidence

on appeal. Judge Wilner dissented and eight years later, his dissent persuaded a majority of the Court in Cure v. State, 421 Md. 300, 321 (2011), to change the law.[7]

Here, we have the limited setting contemplated by Judge Wilner: (1) the State made it clear that it intended to offer the convictions when Mr. Chavis would testify; (2) Mr. Chavis made a clear objection to the testimony through his motion in limine; (3) the court made a definitive ruling that the evidence would be admitted; and (4) Mr. Chavis testified on direct about the prior convictions. We therefore hold that Mr. Chavis did not waive this objection.

Standard of Review

As we stated in Brewer v. State, 220 Md. App. 89, 107 (2014) (cleaned up):

> Where the trial court's decision reflects an exercise of the discretion vested under Rule 5-609, it is well established that the balancing of the probative value of a prior conviction against its prejudicial effect is a matter left to the court's discretion. When the trial court exercises its discretion in these matters, we will give great deference to the court's opinion and appellate courts will not disturb that discretion unless it is clearly abused.

[7] In his dissent in Brown, Judge Wilner wrote:

> I would adhere generally to the contemporaneous objection rule, because it is a useful rule. I would bend it in this situation, however, because, when rigidly applied, it fails to serve the ends of either fairness or the search for truth. Bending it in this limited setting advances the cause of justice and creates no problem, either for the courts or for the State. The limited setting is where (1) the State makes clear that it intends to offer the conviction if the defendant testifies, (2) the defendant makes a clear objection to the evidence, (3) the court makes a definitive ruling, intended to be final, that the evidence will be admitted, and (4) the defendant testifies and, to blunt the force of the conviction, reveals it on direct examination.

373 Md. at 260.

We review a court's discretionary ruling under the "strong presumption that judges properly perform their duties." Beales v. State, 329 Md. 263, 273 (1993). We also presume that the court knows the law and it is not obliged to spell out every step in its thought process. Kirsner v. Edelmann, 65 Md. App. 185, 196 n.9 (1985).

Admission of Prior Convictions Under Rule 5-609

Impeachment of a witness is governed by Maryland Rule 5-609, which provides in relevant part:

> (a) For the purpose of attacking the credibility of a witness, evidence that the witness has been convicted of a crime shall be admitted if elicited from the witness or established by public record during examination of the witness, but only if (1) the crime was an infamous crime or other crime relevant to the witness's credibility and (2) the court determines that the probative value of admitting this evidence outweighs the danger of unfair prejudice to the witness or the objecting party.
>
> (b) Evidence of a conviction is not admissible under this Rule if a period of more than 15 years has elapsed since the date of the conviction, except as to a conviction for perjury for which no time limit applies.

The Court of Appeals articulated the "analytical framework" for Rule 5-609 as follows:

> First, subsection (a) sets forth the "eligible universe" for what convictions may be used to impeach a witness's credibility. This universe consists of two categories: (1) "infamous crimes" and (2) "other crimes relevant to the witness's credibility." Infamous crimes include treason, common law felonies, and other offenses classified generally as *crimen falsi.* If a crime does not fall within one of the two categories, then it is inadmissible and the analysis ends. This threshold question of whether or not a crime bears upon credibility is a matter of law. If a crime falls within one of the two categories in the eligible universe, then the second step is for the proponent to establish that the conviction was not more than 15 years old, that it was not reversed on appeal, and that it was not the subject of a pardon or a pending appeal. Finally, in order to admit a prior conviction for impeachment purposes, the trial court must determine that the probative value of the prior conviction

> outweighs the danger of unfair prejudice to the witness or objecting party. This third step is clearly a matter of trial court discretion.

Cure v. State, 421 Md. 300, 324 (2011) (quotation omitted).

When weighing the probative value of the prior conviction against the danger of unfair prejudice to the witness as required under Rule 5-609(b), courts consider the following factors (the "Mahone factors"):

> (1) the impeachment value of the prior crime; (2) the point in time of the conviction and the defendant's subsequent history; (3) the similarity between the past crime and the charged crime; (4) the importance of the defendant's testimony; and (5) the centrality of the defendant's credibility.

Jackson v. State, 340 Md. 705, 717 (1995) (citing United States v. Mahone, 537 F.2d 922, 929 (7th Cir. 1976)).

As Mr. Chavis correctly points out, the age of the conviction comes into play in a Rule 5-609 analysis in two ways. First, Rule 5-609(b) imposes an eligibility requirement that the conviction not be more than 15 years old. Cure, 421 Md. at 324. Second, it is one of the Mahone factors that courts consider when weighing the probative value of the evidence against the danger of unfair prejudice. Jackson, 340 Md. at 717.

Here, the trial court correctly articulated the eligibility requirements in Rule 5-609 and concluded that the prior convictions were (i) within the 15-year period; and (ii) infamous and relevant to Mr. Chavis's credibility. The court then identified and applied the Mahone factors in weighing the probative value against the danger of unfair prejudice, stating:

> Here, all five [Mahone] factors weigh in favor of admissibility. First, the impeachment value of possession with the intent to distribute and robbery are high . . . . Second, the convictions fall within the statutorily defined

> limitations. Third, although the murder and use of a deadly weapon openly with the intent to injure charges provide some similarity, robbery and possession with the intent to distribute are wholly different charges. Finally, the Defendant's testimony is incredibly important considering his defense of self-defense.

Mr. Chavis seizes on the trial court's statement that "the convictions fall within the statutorily defined limitations" and argues that the trial court improperly conflated the eligibility requirement under Rule 5-609(b) with the second Mahone factor. In other words, as Mr. Chavis sees it, the trial court erred as a matter of law by finding that the second Mahone factor favors admissibility simply because the age of Mr. Chavis's convictions satisfy the eligibility requirement under Rule 5-609(b). Mr. Chavis contends that this finding "contravene[d] *Cure*, which made clear that an eight-year-old conviction is 'neutral' with respect to admissibility." We are not persuaded.

In Cure, the defendant was tried and convicted of various charges involving the possession and intent to distribute controlled dangerous substances. 421 Md. at 310. The defendant moved to exclude evidence of an arson conviction from eight years earlier, which the court denied. Id. at 306-07. The trial court's entire consideration of the second Mahone factor was reflected in the following colloquy:

> [DEFENSE COUNSEL]: Yes, Your Honor, and certainly we would object and my argument would be obviously that the prejudicial effect of an arson would like so inflame the jury that he couldn't get a fair trial.
>
> [COURT]: That may be prejudicial, but in a legal sense, it's not. Of course, albeit, did that happen within the last 15 years?
>
> [PROSECUTOR]: It did, Your Honor. I'll have the exact dates for you in a second.
>
> [COURT]: Do you agree it happened within the last 15 years?

> [DEFENSE COUNSEL]: Yes, Your Honor.
>
> [PROSECUTOR]: March of 2001, Your Honor.
>
> [COURT]: Mm-hmm and all evidence that's against the defendant is prejudicial. The question is, is it prejudicial in a legal sense and I don't believe it is.
>
> [DEFENSE COUNSEL]: Yes, Your Honor.

Id. at 307.

On appeal, the defendant argued that there was no probative value to the prior arson conviction, and thus the probative value of the evidence paled in comparison to the danger of unfair prejudice. Id. at 326. The Court of Appeals found that as an infamous crime, a prior conviction for arson is probative of a defendant's credibility, and thus found that that the first Mahone factor—the impeachment value of the prior crime—favored admissibility. Id. at 328-29. As to the second Mahone factor, the Court gave the eight-year-old conviction neutral weight because it was "roughly half way to Rule 5-609(b)'s fifteen-year outside limit." Id. at 330. Mr. Chavis contends that if the eight-year-old conviction was neutral in Cure, then, as a matter of law, the 13- and 14-year-old convictions at issue here weigh against admissibility.

Mr. Chavis's reliance on Cure is misplaced for at least three reasons. First, notwithstanding the Court's finding that the eight-year-old conviction was only neutral, the Court nonetheless concluded that because the other factors favored admissibility, it could not "say, as a matter of law, that the trial court abused its discretion in allowing use of" the prior conviction. Id. at 331. The same result would obtain here even if, as Mr. Chavis

contends, the trial court should have counted the second Mahone factor against admissibility.

Second, the trial court's statements regarding the age of the conviction were certainly no more revealing of its thinking, and probably less so, than the trial court's analysis here. Here, the court expressly acknowledged and applied the second Mahone factor; in Cure the trial court merely alluded to a balancing test. That the record in Cure reflected some consideration of this factor was, apparently, enough for the Court of Appeals.

Third, and most important, we do not read the Court's neutral finding of an eight-year-old conviction in Cure as *requiring* the same finding in all cases. Rather, the Court's neutral assessment strikes us as an application in *that case* of the general proposition that the probative value of a conviction diminishes over time. Id. at 329 (cleaned up) ("As a general rule, the further in the past the crime, the weaker its relevance to present credibility.")

Imposing a rigid sliding scale to measure the probative value against the danger of unfair prejudice would be inconsistent with the discretionary nature of a trial court's decision under Rule 5-609. As the Court cautioned in Jackson, the Mahone factors "should not be considered mechanically or exclusively," but rather, "may be a useful aid to trial courts in performing the balancing exercise mandated by the Rule." 340 Md. at 717. We see no indication that the Court in Cure intended to abandon its position in Jackson by establishing a rigid test.

Another reason to refrain from reading too much into the Court's "neutral weight" finding is that a sliding scale would be unworkable. The age of a prior conviction is just one of multiple factors that could affect its probative value in a given case. The same goes for the danger of unfair prejudice: a 14-year-old conviction for, say, perjury, could present a severe risk of prejudice in one case, but little risk in another case. Moreover, the rate at which the danger of unfair prejudice increases over time is not necessarily the same as the rate at which the relevance of the prior conviction decreases over time. The balancing analysis required by Rule 5-609(a)(2), therefore, cannot be reduced to a mathematical formula.

Calloway v. State, 141 Md. App. 114 (2001), is also relevant here. Both Mr. Chavis and the State claim Calloway supports their respective positions. There, we affirmed the trial court's decision allowing the prosecution to impeach the defendant with a 12-year-old conviction. The State points to our statement that the prior conviction fell "within the fifteen year period and despite the remoteness is still probative because it directly relates to credibility." Id. at 122. Mr. Chavis, on the other hand, notes that in this Court's analysis of the Mahone factors, we concluded that the age of the conviction factor "slightly" favored the defendant. Id. at 123. Although both positions have some merit, on balance, we conclude that Calloway favors the State in this case.

In Calloway, the trial court stated:

> I'm weighing the balancing test the Appellate Court asked us to undergo. I have undergone it. I believe it's an appropriate rule as to his credibility outweighs the prejudice. It's obviously [sic] the prejudice is not outweighed by the probative value. Accordingly the motion is denied.

Id. at 122.

Even though the trial court did not specifically discuss the age of conviction in its analysis, we nevertheless affirmed because "consistent with the requirements under Maryland Rule 5-609, the trial court made findings on the nature of the prior conviction and the timing of events, and applied the proper balancing test." Id. Further, notwithstanding our conclusion that the age of conviction factor "slightly" favored the defendant, we also found that three of the remaining factors weighed in favor of admissibility, and one factor was neutral. Id. at 123. Thus, we found that the "[a]pplication of the [five] factors bolster[ed] the trial court's finding." Id.

Here, therefore, even if we were to find as a matter of law that the trial court incorrectly counted the age of conviction factor against Mr. Chavis, we would still be left with the trial court's findings—which Mr. Chavis does not challenge—that the other four Mahone factors favor admissibility. Consistent with our analysis in Calloway, the trial court's unchallenged assessment of the four remaining factors provides ample support for its ruling.

Thus, we find that the trial court did not abuse its discretion in finding that the probative value of Mr. Chavis's prior convictions outweighed the risk of unfair prejudice. As the Court in Jackson stated, "[a]lthough trial judges are not obliged to detail every step of their logic . . . we urge trial judges when discharging this duty to place the specific circumstances and factors critical to the decision on the record." 340 Md. at 717 (internal citations omitted). The trial court did so here. Among other findings, the court found the impeachment value of the prior convictions to be "high" and that the charges in this case

are "wholly different" from the charges underlying the prior convictions. And although Mr. Chavis is challenging the trial court's analysis of the second Mahone factor, we are satisfied from our review of the record that the trial court considered each of the Mahone factors and otherwise understood and applied the correct legal principles.

JUDGMENTS OF THE CIRCUIT COURT FOR BALTIMORE CITY AFFIRMED; COSTS TO BE PAID BY APPELLANT.