

Circuit Court for Baltimore City
Case Nos. 115022019, 115022020

UNREPORTED
IN THE COURT OF SPECIAL APPEALS
OF MARYLAND

No. 1269

September Term, 2016

LYNN BALDWIN

v.

STATE OF MARYLAND

Nazarian,
Arthur,
Friedman,

JJ.

Opinion by Friedman, J.

Filed: September 15, 2017

*This is an unreported opinion, and it may not be cited in any paper, brief, motion, or other document filed in this Court or any other Maryland Court as either precedent within the rule of stare decisis or as persuasive authority. Md. Rule 1-104.

After a jury trial in the Circuit Court for Baltimore City, Appellant Lynn Baldwin was found guilty of two counts of sexual abuse of a minor. He was sentenced to incarceration for a term of twenty years for the first count and the second count was merged for sentencing purposes. This timely appeal followed.

QUESTION PRESENTED

The sole issue presented for our consideration is whether the trial court abused its discretion in restricting defense counsel’s cross-examination of the complaining witness. For the reasons set forth below, we shall affirm.

FACTUAL BACKGROUND

The facts of the case are sordid, potentially embarrassing to the victim, and not relevant to our disposition of Baldwin’s appeal. Therefore, our recitation will be brief.

J.O.,¹ a teenaged girl, alleged that she was sexually abused by Baldwin. She has also alleged, separately, that she was sexually abused on unrelated occasions by three other men while she had been living in her mother’s house. Baldwin’s theory of the case was that J.O. had fabricated the claims of abuse, which she initially reported to a Department of Social Services social worker, to cause the Department of Social Services to remove her from her mother’s home, where, Baldwin argued, she no longer wished to live. Baldwin sought to ask J.O. about both her allegations against the other men and her motives in making these allegations. The trial court ruled that this line of questioning was substantially more

¹ Because at all times relevant to this case J.O. was a minor, we shall refer to her only by her initials.

prejudicial than probative and therefore excluded it pursuant to Maryland Rule 5-403. Baldwin was convicted of sexual abuse of a minor and this timely appeal followed.

ANALYSIS

Baldwin asserts that the trial court erred in precluding him from asking J.O. about her other allegations of sexual abuse and her motives in making those allegations. Before we can get to that issue, however, we must address the State's contention that Baldwin has not preserved it for our review.

1. Preservation

As a preliminary matter, the State argues that Baldwin failed to preserve the claim he advances on appeal: that his proposed cross-examination of J.O. was relevant to her credibility. In fact, Baldwin's trial counsel specifically denied that she was challenging J.O.'s credibility:

- “Now, I know that [the State's Attorney] is going to argue to the Court that that is somehow attacking [J.O.'s] credibility but we're here to seek the truth.”
- “So I don't think it's fair to say that the defense is trying to say that the young lady is lying. That isn't necessarily what we're saying.”
- “I just feel that it's highly relevant ... not in any sort of defamatory way to her [but] just as a context for these charges.”

Defense counsel, it seems to us, was uncomfortable admitting that she was challenging the credibility of the young victim of repeated sexual assault. To hide that discomfort, she tried to have it both ways, by simultaneously challenging J.O.'s credibility, yet saying that she was not accusing J.O. of lying. In our experience, such efforts rarely succeed; they make a mess of the trial transcript, and worse, they risk waiving important appellate issues. Trial

counsel is encouraged to be polite yet direct. Here, however, we think that defense counsel did enough to make it clear (and the trial court understood her efforts) that defense counsel wanted to cross-examine J.O. to challenge her credibility. Defense counsel stated to the court “I just think that it’s relevant ... to show ... that [her allegations] may not be true,” and the trial court affirmed that the testimony, if allowed, would be to show “[t]hat this allegation is not true.” Therefore, we find the matter preserved.

2. *Merits*

As described, Baldwin sought to cross-examine J.O. regarding her allegations of sexual abuse against other men and about her alleged motive to fabricate those allegations. The State made three arguments against this line of questioning: (1) that factually, J.O. did not and could not have had the motive to fabricate as suggested by Baldwin; (2) that this line of questioning was prohibited by Maryland’s Rape Shield Law;² and (3) that the

² Maryland’s Rape Shield Law makes a victim’s reputation for chastity or abstinence generally inadmissible, except that evidence of a specific incidence of a “victim’s prior sexual conduct” may be admitted if the evidence satisfies a four-part test. CR § 3-319(a)-(b). To admit evidence of a specific incidence of a “victim’s prior sexual conduct” under the exception to the rape shield law, the trial court must find that:

- (1) the evidence is relevant;
- (2) the evidence is material to a fact in issue in the case;
- (3) the inflammatory or prejudicial nature of the evidence does not outweigh its probative value; and
- (4) the evidence:
 - (i) is of the victim’s past sexual conduct with the defendant;

evidence was substantially more prejudicial than probative and therefore should be excluded by Rule 5-403. The trial court ruled only on the third ground, finding that the testimony was more prejudicial than probative, stating:

I agree with you that I can see where it is relevant under the legal definition of relevance. My issue at this point is weighing ... the probative value of the relevance against any undue prejudice and I'm concerned that the fact that, as you said, if there were multiple men in and out and the environment was such that she was exposed or may have been sexualized earlier, I'm not sure of the relevance of that and I'm also concerned particularly when I hear that one of the accusations is, in fact, going to trial.

What do we do if we open up these accusations [that] she made against the others is then in a position of perhaps exploring whether those were legitimate or valid accusations or not. Certainly unfortunately a child could be the subject of abuse by a number of people at different times. I do appreciate the argument, but I find that the prejudicial effect outweighs whatever probative value there would be in this. So I'm going to deny ... the defense motion.

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- (ii) is of a specific instance of sexual activity showing the source or origin of semen, pregnancy, disease, or trauma;
 - (iii) supports a claim that the victim has an ulterior motive to accuse the defendant of the crime; or
 - (iv) is offered for impeachment after the prosecutor has put the victim's prior sexual conduct in issue.

CR § 3-319(b). The State's argument would require us to determine whether prior instances of sexual abuse may qualify as "prior sexual conduct." We decline that invitation, however, because as we will show, the trial court decided to exclude the evidence on a different basis and we shall affirm on that basis. Thus, we need not reach the difficult question the State presents.

The next day, when asked by defense counsel to reconsider the issue, the trial court stated, “I’m not going to allow it. I’m somewhat troubled by that ruling. I see a great deal of relevance to it.” Nonetheless, the trial court reaffirmed its ruling.

Baldwin contends that the trial court abused its discretion in finding that the probative value of J.O.’s other allegations of assault was outweighed by its prejudicial effect and precluded this aspect of his cross examination of J.O. He asserts that the right of confrontation guaranteed by the Sixth Amendment to the United States Constitution and Article 21 of the Maryland Declaration of Rights,³ as well as Rule 5-616(a),⁴ entitled him

³ Article 21 of the Maryland Declaration of Rights states that “in all criminal prosecutions, every man hath a right ... to be confronted with the witnesses against him ... [and] to examine the witnesses for and against him on oath[.]” Md. Decl. of Rts. art. 21. Baldwin has made no argument that Article 21 sweeps more broadly than does the Sixth Amendment; therefore, we shall review this as a matter of federal law only.

⁴ Maryland Rule 5-616(a) provides:

- (a) **Impeachment by inquiry of the witness.** The credibility of a witness may be attacked through questions asked of the witness, including questions that are directed at:
- (1) Proving under Rule 5-613 that the witness has made statements that are inconsistent with the witness’s present testimony;
 - (2) Proving that the facts are not as testified to by the witness;
 - (3) Proving that an opinion expressed by the witness is not held by the witness or is otherwise not worthy of belief;

to cross-examine J.O. According to Baldwin, the trial court’s failure to permit cross examination on this issue prevented him from receiving a fair trial.

“The ability to cross-examine witnesses ... is not unrestricted.” *Martinez v. State*, 416 Md. 418, 428 (2010) (citation omitted). “A trial court may impose reasonable limits on cross-examination when necessary ... to prevent harassment, prejudice, confusion of the issues, and inquiry that is repetitive or only marginally relevant.” *Id.* (citation omitted). One of the tools that the trial court can use to guard against prejudice and confusion of the issues is Rule 5-403. Under that Rule:

Although relevant, evidence may be excluded if its probative value is substantially outweighed by the danger of unfair prejudice, confusion of the issues, or misleading the jury, or by considerations of undue delay, waste of time, or needless presentation of cumulative evidence.

Md. Rule 5-403. Determining whether “evidence is inadmissible because its probative value is outweighed by the danger of unfair prejudice ... requires review of the trial judge’s discretionary weighing and is thus tested for abuse of that discretion.” *State v. Simms*, 420

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- (4) Proving that the witness is biased, prejudiced, interested in the outcome of the proceeding, or has a motive to testify falsely;
 - (5) Proving lack of personal knowledge or weaknesses in the capacity of the witness to perceive, remember, or communicate; or
 - (6) Proving the character of the witness for untruthfulness by (i) establishing prior bad acts as permitted under Rule 5-608(b) or (ii) establishing prior convictions as permitted under Rule 5-609.

Md. 705, 725 (2011). Discretion is exercised 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 [that] will obscure the issue and lead to the fact finder’s confusion.” *Pantazes v. State*, 376 Md. 661, 681 (2003) (citation omitted). To constitute an abuse of discretion, “[t]he decision under consideration has to be well removed from any center mark imagined by the reviewing court and beyond the fringe of what that court deems minimally acceptable.” *King v. State*, 407 Md. 682, 697 (2009) (citation omitted). Thus, we will review the trial court’s decision to restrict cross-examination for an abuse of discretion.

We see, as the trial judge did, the potential probative value of the proposed testimony. Nevertheless, we also understand the countervailing concerns. Limiting the testimony to a few questions would have risked confusing the jury about the other assaults. But allowing too many questions risked creating three collateral mini-trials. And, in at least one of those mini-trials, the rights of another defendant would need to have been protected, creating an additional layer of complexity. Moreover, the trial court correctly observed that a jury might inappropriately blame J.O. for the sexualized environment in which she was raised. While another trial judge might have weighed this differently, this decision was in no way “well removed from any center mark imagined by the reviewing court [or] beyond the fringe of what the court deems minimally acceptable.” *See King*, 407 Md. at 697 (citation omitted). Thus, we affirm.

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