UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 1618

September Term, 2014

DAVID LAMONT GREGG

v.

STATE OF MARYLAND

Woodward,
Kehoe,
Arthur,

JJ.

Opinion by Woodward, J.

Filed: January 8, 2016

On January 1, 2013, David Lamont Gregg, appellant, was arrested following an altercation with his wife's ex-husband, David Woodfolk. After a jury trial was held in the Circuit Court for Harford County, appellant was convicted of first-degree assault and related weapons offenses. On September 9, 2014, appellant was sentenced to a total of forty-five years in prison.

On appeal, appellant presents two questions for our review:

> 1. Did the trial court err in unduly limiting defense counsel's cross-examination of a key state witness?
>
> 2. Did the trial court err in admitting prejudicial hearsay?

We conclude that the trial court did not err in limiting cross-examination, nor did it err in admitting the testimony at issue and, accordingly, affirm the judgments of the circuit court.

BACKGROUND

On January 1, 2013, Woodfolk, was scheduled to have visitation with his children. Woodfolk and his ex-wife, Crystal Gregg, had an agreement that appellant, the children's step-father, would bring the children to the sheriff's station. Woodfolk went to the sheriff's station on January 1 and waited for over two hours for appellant to drop the children off. After a series of texts and a phone call between Woodfolk and appellant, Woodfolk went home. Appellant told Woodfolk that he would bring the children to Woodfolk's home. Woodfolk called his uncle, Calvin Betts, and told him that appellant had threatened him over the phone. Betts came over to Woodfolk's house and waited for appellant on the front porch

with Woodfolk. Woodfolk was worried about appellant's "reputation for hurting people" and armed himself with a knife.

Eventually, appellant appeared with Woodfolk's two children and Aris McGowans, who was the eldest child of Woodfolk's ex-wife. Betts left the porch to get the children from appellant. When appellant saw Betts, he pulled out a gun. Betts "kept pleading" with appellant to let the children go. Appellant stated, "I want him," referring to Woodfolk. Betts tried to grab appellant, but was pushed out of the way as appellant continued to walk towards Woodfolk.

Woodfolk came down from the porch and put his children behind his back. Woodfolk backed up towards his house while he and appellant were arguing. Woodfolk watched as the children approached the door to the house. When Woodfolk turned around, appellant put his gun to Woodfolk's head. Woodfolk responded by pulling out his knife and swinging it at appellant. During the fight, Woodfolk struck appellant with the knife, and appellant hit Woodfolk on the head with his gun. Woodfolk heard a gunshot and fell to the ground as appellant ran off.

Believing that Woodfolk had been shot, Betts ran to the side of the house to call 911. When Betts returned, Woodfolk was pacing back and forth around the yard looking for him. Police soon arrived at the scene and spoke with Woodfolk and Betts about what had transpired.

During the ensuing investigation, a handgun was found inside of a backpack in appellant's car, along with appellant's driver's license. A gun holster found in appellant's bedroom matched the handgun that was recovered. Appellant was arrested when he returned to his home while a search warrant was being executed.

On June 11, 2014, appellant was convicted by a jury of first-degree assault; wearing, carrying, or transporting a handgun; wearing, carrying, or transporting a handgun in a vehicle; use of a firearm in the commission of a felony; and possession of a firearm by a person convicted of a disqualifying crime. On September 9, 2014, appellant was sentenced to twenty-five years without the possibility of parole for first-degree assault, eight years to be served consecutively for possession of a firearm by a person convicted of a disqualifying crime, and twelve years to be served consecutively for use of a firearm in the commission of a felony. The remaining convictions were merged for sentencing purposes. Appellant filed his notice of appeal the following day.

Additional facts will be set forth as necessary to our discussion of the questions presented in the instant appeal.

DISCUSSION

I. Limiting the Cross-Examination of Betts

"The scope of cross-examination is within the sound discretion of the trial court and ordinarily will not be disturbed unless there is an abuse of discretion." *Simpson v. State*, 121 Md. App. 263, 283 (1998). "On appellate review, we determine whether the trial judge

imposed limitations upon cross-examination that inhibited the ability of the defendant to receive a fair trial." *Pantazes v. State*, 376 Md. 661, 681-82 (2003).

Prior to the start of the trial in the instant case, the State moved to preclude evidence regarding Woodfolk's prior conviction for robbery. The parties agreed that the conviction was over fifteen years old and, thus, not admissible as impeachment evidence under Rule 5-609(b).[1] Accordingly, the trial court ruled:

> Unless [Woodfolk] were to sit there on the stand and say that I have never been in trouble. I'll grant the motion. That's subject to if he decides to spring the door open, it is sprung open. I would ask [that] you approach the bench if you feel i[t] has been sprung open.

At trial, Betts testified on cross-examination that he lived with Woodfolk and Woodfolk's mother when Woodfolk was a young child, and that he had helped raise Woodfolk. During that testimony, the following exchange occurred:

[DEFENSE COUNSEL]:	You once told me that you kind of mentored him?
[BETTS]:	Yes.
[DEFENSE COUNSEL]:	What did you mean by that?
[BETTS]:	**Well, his father was never in his life and he has always come to me with those things when he didn't know anything; decisions, playing baseball,**

[1] Maryland Rule 5-609(b) provides that evidence of a conviction is not admissible "if a period of more than 15 years has elapsed since the date of the conviction."

trying to make him an upstanding young man, trying to keep him on the straight and narrow.

[DEFENSE COUNSEL]: Was that a difficult task or not?

[BETTS]: No, not at all. He wasn't straying away, but I knew as an uncle and as his mentor I wasn't going to give him that chance to stray away.

[DEFENSE COUNSEL]: He didn't stray away at all?

[STATE]: Objection.

THE COURT: Come on up.

(WHEREUPON COUNSEL AND THE DEFENDANT APPROACHED THE BENCH AND THE FOLLOWING ENSUED.)

[STATE]: We're getting perilously close.

THE COURT: Where are you going?

[DEFENSE COUNSEL]: He said he doesn't stray away. Obviously he did stray. He went to prison for a while.

THE COURT: You are the one that set that up.

[DEFENSE COUNSEL]: Would I do that, Judge?

THE COURT: Never. I'll sustain the objection.

(WHEREUPON, COUNSEL AND THE DEFENDANT RETURNED TO THE TRIAL TABLES AND THE FOLLOWING ENSUED).

[DEFENSE COUNSEL]: No rocky roads?

[STATE]: Objection.

THE COURT: Sustained.

[DEFENSE COUNSEL]: Was there a time when you lived in North Carolina?

[STATE]: Objection. I'll let that go.

THE COURT: Come on up.

(WHEREUPON, COUNSEL AND THE DEFENDANT APPROACHED THE BENCH AND THE FOLLOWING ENSUED).

THE COURT: I don't know what happened in North Carolina.

[STATE]: The incident that led to the conviction happened in North Carolina.

THE COURT: I thought I sustained the objection.

[DEFENSE COUNSEL]: I was hoping to move into new material.

THE COURT: It sounds like you are plowing the same field, aren't you? Tell me what you are going for.

[DEFENSE COUNSEL]: No, I admit. [He] led the jury to believe this guy led a life with no real problems.

THE COURT: **You set that up though. You can't set it up and then complain about the answer.**

[DEFENSE COUNSEL]:	I just want the full answer. **The full answer is there were rocky roads, which he just denied.** There were rocky roads. He said no problems. **He said his nephew had no problems.**
THE COURT:	**You are the one that started all of that.**
[DEFENSE COUNSEL]:	I understand. But he wasn't truthful in his answer is why I'm having a problem now. **There were problems, there were rocky roads and he went to prison.** I mean, it wasn't no problem raising this kid. There were lots of problems raising this guy.
[STATE]:	**There is no way that he can answer that now because when you set up or asked the question to set up the answer that gets you what you want in violation of the motion.**
[DEFENSE COUNSEL]:	**But a truthful answer would have been there were rocky roads along the way. He said it was never a problem.**
THE COURT:	**No. You can't climb through the back window what you can't get in the front door.**
[DEFENSE COUNSEL]:	All right.
THE COURT:	I'm sustaining the State's objection.

[STATE]: Thank you.

(Emphasis added).

Appellant argues that the trial court erred in unduly limiting defense counsel's cross-examination of Betts. Specifically, appellant contends that "[c]ontrary to the trial court's ruling, evidence that [] Woodfolk had not led an exemplary life and had experienced trouble in his past was admissible, especially in light of the fact that [] Betts painted [] Woodfolk as an individual who had never been in any trouble." Appellant also claims that the trial turned on whether the jury believed appellant or Woodfolk; therefore, "[e]vidence that [] Woodfolk, had, in fact, been in trouble would have lent credibility to [a]ppellant's testimony that [] Woodfolk was the initial aggressor."

The State counters that the trial court properly exercised its discretion, because allowing that testimony would have confused the issue about which Betts was testifying.[2]

[2] The State also argues that appellant's claim is not preserved for appellate review, because the claim he is raising now is not the same as the one he raised at trial. The State argues that appellant sought to impeach Betts with evidence of Woodfolk's prior conviction, but now appellant seeks the evidence to lend credibility to his claim that Woodfolk was the initial aggressor. The trial record does not support this assertion.

During the cross-examination, defense counsel attempted to question Betts about whether or not Woodfolk ever strayed away "from the straight and narrow." This question was in response to Betts's testimony that it was not a difficult task to keep Woodfolk from straying "from the straight and narrow." The State objected to this line of questioning, and the trial court sustained the objection. Defense counsel argued to the court that he wanted a "full answer" from Betts, because his answer to defense counsel's question "wasn't truthful." Before this Court, appellant argues, among other things, that evidence of Woodfolk's prior conviction was admissible as impeachment evidence. Specifically, appellant contends that such evidence should have been admitted "in light of the fact that Mr.

(continued...)

The State contends that Betts's testimony about Woodfolk staying on the "straight and narrow" was about Woodfolk as a young boy and thus was unrelated to Woodfolk going to prison as an adult. The State further argues that the parties agreed prior to the start of the trial that Woodfolk's prior robbery conviction was improper impeachment evidence because the conviction was over fifteen years old. The State asserts that Betts's testimony "never sprung open" the door to such evidence, but, rather, appellant attempted to have the evidence admitted through "artful cross-examination."

The Sixth Amendment of the United States Constitution provides that "[i]n all criminal prosecutions, the accused shall enjoy the right . . . to be confronted with the witnesses against him[.]" U.S. Const. amend. VI. Article 21 of the Maryland Declaration of Rights also guarantees the right to confront witnesses. "Encompassed in this right is a defendant's opportunity to test the State's case by cross-examining the State's witnesses on matters likely to affect their credibility, including bias, prejudice, or ulterior motive." *Clermont v. State*, 348 Md. 419, 458 (1998).

The Court of Appeals has commented on the purpose of cross-examination, explaining:

> "The real object of cross-examination is 'to elicit all the facts of any observation or transaction which has not been fully explained.' That a witness may be cross-examined on such matters and facts as are

[2](...continued)
Betts painted Mr. Woodfolk as an individual who had never been in any trouble." Appellant's claim, thus, is preserved for our review.

> likely to affect his credibility, test his memory or knowledge or the like, is a fundamental concept in our system of jurisprudence. And cross-examination to impeach, diminish, or impair the credit of a witness is not confined to matters brought out on direct examination; it may include collateral matters not embraced in the direct examination to test credibility and veracity, it being proper to allow any question which reasonably tends to explain, contradict, or discredit any testimony given by the witness in chief, or which tends to test his accuracy, memory, veracity, character or credibility. Of course, the right to cross-examine effectively necessarily includes the right to place the testimony of a witness in its proper setting to fairly enable the jury to judge its credibility."

Myer v. State, 403 Md. 463, 477 (2008) (quoting *State v. Cox*, 298 Md. 173, 183–84 (1983)).

"[A] defendant's constitutional right to cross-examine witnesses is not boundless. The Confrontation Clause does not prevent a trial judge from imposing limits on cross-examination." *Pantazes*, 376 Md. at 680. "Judges have wide latitude to establish reasonable limits on cross-examination based on concerns about, among other things, harassment, prejudice, confusion of the issues, the witness' safety, or interrogation that is repetitive or only marginally relevant." *Id.*

As the State properly points out in the instant case, Betts was testifying about Woodfolk as a child and his mentoring of Woodfolk during the latter's adolescence. The context of the relevant testimony shows that Betts meant that Woodfolk did not "stray away" from the "straight and narrow" as a child. In particular, Betts referred to mentoring Woodfolk in "decisions, playing baseball, trying to make him an upstanding young man, trying to keep him on the straight and narrow." The robbery conviction, on the other hand,

occurred when Woodfolk was an adult. Therefore, Betts's testimony did not open the door to impeachment evidence. Accordingly, the trial court properly precluded it.

In addition, any representations by Betts that Woodfolk stayed on the "straight and narrow" came about as the result of defense counsel's questions on cross-examination. The Court of Appeals has stated that "'[it] is improper under the guise of artful cross-examination, to tell the jury the substance of inadmissible evidence.'" *Sweetney v. State*, 423 Md. 610, 626 (2011) (quoting *United States v. Sanchez*, 176 F.3d 1214, 1222 (9th Cir. 1999)). After Betts testified that he tried to keep Woodfolk on the "straight and narrow," defense counsel followed up by asking him if that was a difficult task, to which Betts said "[n]o." Defense counsel then asked if Woodfolk had ever strayed away from the "straight and narrow," or if there were any "rocky roads," in an attempt to elicit testimony regarding Woodfolk's prior conviction. After the State's objections were sustained, defense counsel complained about what he felt was an untruthful answer by Betts, but the trial court correctly countered that defense counsel "set that up," and that "[y]ou can't climb through the back window what you can't get in the front door." The State added that there was no way Betts could answer the question because defense counsel had set the question up to get an answer that would violate the court's pre-trial ruling excluding Woodfolk's prior conviction. Thus defense counsel attempted to elicit through "artful cross-examination" evidence that already had been properly determined to be inadmissible. *See id.* Accordingly, the trial court did not abuse its discretion in limiting the cross-examination of Betts.

II. Hearsay

During the State's redirect examination of Betts, the following exchange occurred:

[STATE]:	What led you to feel that it was important to call the police to have the police there when the exchange went down?
[BETTS]:	The phone call I got again was telling me about the conversation between [appellant] and [Woodfolk] and [Woodfolk] said this cat said he is coming to my house.
[DEFENSE COUNSEL]:	Objection.
THE COURT:	**It is not being offered to prove the truth, it is being offered [to] show the motivation as to why he took certain action**. So, for that limited purpose and not to prove the truth of the assertion.
[BETTS]:	Okay. This cat said he is coming to my house and he is threatening me and, man, I'm just trying to see my kids. So, I was like, Well, I'll be right over there.
[DEFENSE COUNSEL]:	Objection, to all of this line, Your Honor.
THE COURT:	**Once again, it is not being offered to prove the truth of the assertion. So, the jury should not accept it as such. It is only**

to show what this man heard from his nephew to explain why he took the action that he took.

(Emphasis added).

Appellant argues that Betts's testimony about his phone conversation with Woodfolk was inadmissible hearsay. In particular, appellant asserts that it was hearsay within hearsay, and that both statements were inadmissible. Appellant contends that such hearsay prejudiced him, because the jury never should have heard that appellant made threats to Woodfolk on the phone.

The State responds that Betts's testimony was not offered to prove the truth of the matter asserted, and, thus, it is not hearsay. The State points out that the trial court agreed that Betts's testimony was not hearsay and specifically instructed the jury that they could consider the testimony only for the limited purpose of why Betts took the action that he did.

"'Hearsay' is a statement, other than one made by the declarant while testifying at the trial or hearing, offered in evidence *to prove the truth of the matter asserted*." Md. Rule 5-801(c) (emphasis added). Hearsay is inadmissible, unless it falls under a specific exception. *See* Md. Rule 5-802.

Appellant is correct that Betts's testimony involves a statement within another statement, specifically, Woodfolk's statement to Betts about appellant's statement to Woodfolk. As pointed out by both the State and the trial court, however, such testimony does not fall under the definition of hearsay, because it was not offered "to prove the truth of the

matter asserted." Md. Rule 5-801(c). The testimony was offered to show why Betts was motivated to take the action that he did, not to prove that Woodfolk's statement to him was true. Furthermore, the trial court explicitly instructed the jury on exactly how it was to consider Betts's testimony. The court stated that Betts's testimony "is not being offered to prove the truth[,]" and "the jury should not accept it as such." Therefore, the court did not err in admitting Betts's testimony.

JUDGMENTS OF THE CIRCUIT COURT FOR HARFORD COUNTY AFFIRMED; APPELLANT TO PAY COSTS.