Circuit Court for Baltimore City
Case No.: 115218011

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 2077

September Term, 2016

ADAM MELVIN

v.

STATE OF MARYLAND

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

JJ.

Opinion by Reed, J.

Filed: February 7, 2020

Adam Melvin ("Appellant") was convicted and sentenced to thirty-years for second-degree murder, a consecutive twenty-year sentence for use of a firearm in the commission of a crime of violence, and a consecutive fifteen-year sentence for the illegal possession of a regulated firearm. After trial, but before sentencing, Appellant's counsel raised for the first time the issue of Appellant's competency and moved for a continuance to allow for a competency evaluation. The trial court denied the motion, finding that there was no evidence that Appellant was incompetent and his attempt to delay the hearing at the sentencing stage was inappropriate. Appellant also made several objections to the admission and exclusion of evidence during trial.

On appeal, Appellant presents the following questions for our review, which we have rephrased:[1]

[1] Appellant presents the following questions:

1. Did the trial court err when it denied defense counsel's request for a pre-sentencing competency evaluation, refused to postpone the sentencing hearing so such an evaluation could be completed, and failed to determine whether Mr. Melvin was competent to be sentenced?

2. Did the trial court err in its rulings regarding the admission of two 911 calls?

3. Did the trial court err when it refused to strike Ms. Dubose's testimony regarding a statement Mr. Melvin made to her, when the statement was not disclosed to the defense?

4. Did the trial court abuse its discretion when it prevented defense counsel from impeaching Ms. Dubose and Mr. Young with their prior inconsistent statements?

1. Did the trial court err when refusing to postpone the sentencing hearing for Appellant to undergo a pre-sentencing competency evaluation?

2. Did the trial court abuse its discretion with respect to the 9-1-1 calls?

3. Did the trial court abuse its discretion when it refused to strike testimony giving rise to a discovery violation?

4. Did the trial court abuse its discretion with respect to Appellant's attempt to impeach Ms. Dubose and Mr. Young with a prior statement?

For the following reasons, we answer in the negative and affirm the circuit court's judgment.

FACTUAL AND PROCEDURAL BACKGROUND

On July 11, 2015, Appellant, Joshua Young, Candace Jones, Mindy Dubose, and several others were hanging around 2642 Boone Street. Appellant and Ms. Dubose sat in Appellant's vehicle for some time listening to music. According to Ms. Jones, while Mr. Young was outside of the car, he was approached by Dontay Barnes who jokingly told Mr. Young that Ms. Jones and Appellant were sexually involved. Having learned of the comment, Appellant grew angry, went to his trunk, took out a gun, and placed it in his back pocket. At that time, Ms. Dubose's daughter was the only one in the vehicle. Appellant approached Mr. Young and asked what Mr. Barnes had said to him. Mr. Barnes had walked down the street, however, hearing Appellant's question, he returned and asked what was going on. Appellant pulled out his gun and fired at Mr. Barnes until he had fallen to the ground. Ms. Dubose reentered the truck to remove her daughter, but Appellant jumped back in the vehicle and drove off before the two could escape. Ms. Jones and Mr. Young remained at the scene. Mr. Young called the police and officers arrived approximately five

minutes later. Mr. Barnes was shot on the left side of his belly and in the back of his head. He died from his injuries.

Both Ms. Jones and Mr. Young were taken to the police station for statements. Ms. Jones' statement was videotaped, and she identified Appellant as the shooter. Whereas Mr. Young identified Appellant via a photo array as the person who killed Mr. Barnes. A few days later, Ms. Dubose gave a statement and identified Appellant's photograph as the shooter. Of relevance, Ms. Dubose testified at trial that Appellant stated, "[t]his bitch still smoking" when he drove away from the scene, however, she omitted this fact in her written statement to police. Appellant was found guilty of second-degree murder, use of a firearm in the commission of a crime of violence, and illegal possession of a regulated firearm.

On October 25, 2016, immediately before sentencing, Appellant's counsel moved for a continuance, and advised the court that Appellant's competency was at issue. Counsel stated, "[Appellant] has a detailed, extensive mental health history and based on the pretrial sentencing report. Based on my meetings with [Appellant], based on the social worker's meeting with [Appellant], our challenge is, is [Appellant] actually competent at this point?" Counsel informed the court that Appellant's medical records indicated that he "was found incompetent between 2010 and 2011" and was treated at Spring Grove Hospital Center[2] during that period. Appellant also has a "history of being incompetent, coming back to

[2] Spring Grove Hospital Center is a psychiatric hospital located in the Baltimore, Maryland, suburb of Catonsville. Services include adult and adolescent acute psychiatric admissions, long term inpatient care, medical-psychiatric hospitalization, forensic evaluation services, inpatient psychiatric research, and assisted living services.

competency, and being incompetent again," as well as, "19 documented attempts at his own life" and "has spent at least three full years at Spring Grove on and off for different cases." Defense counsel further explained to the court that the presentencing investigation revealed Appellant had begun "hording medication" and was on a "hunger strike." Referring to Appellant's "current deterioration," counsel said, "Our opinion is that he is likely incompetent at this point again."

Nonetheless, the trial court denied the motion, reasoning that there was no evidence on the record that competency was at issue prior to or during trial, and neither party moved for an evaluation during the relevant time frame. Appellant was sentenced to thirty-years for second-degree murder, a consecutive twenty-year sentence for use of a firearm, and a consecutive fifteen-year sentence for illegal possession of a regulated firearm.[3] It is from this order that Appellant now appeals.

STANDARD OF REVIEW

With respect to the first issue in the present case, while criminal defendants are presumed to be competent to stand trial, the trial court has a duty to inquire into a defendant's competency if triggered: "(1) upon motion of the accused; (2) upon motion of the defense counsel; or (3) upon a *sua sponte* determination by the court that the defendant may not be competent to stand trial." *Wood v. State*, 436 Md. 276, 287 (2013); *see also* Md. Code Ann. § 3-104(a). "Where the evidence raises a bona fide doubt as to a defendant's competence to stand trial, the trial judge must *sua sponte* raise the issue and

[3] The first five years of both firearm sentences are to be served without parole.

make a competency determination based on evidence presented on the record." *Wood*, 436 at 290 (internal citation and marks omitted). Like in *General*, we will leave the question, whether the evidence before the court raised a "bona fide doubt as to a defendant's competence to stand trial," to the trial court's discretion, and we will not substitute the trial court's judgment unless "arbitrary or capricious." *See Wood*, 436 at 290; *General*, 278 F.3d at 396. [4]

With respect to the second issue, allegations regarding the admissibility of evidence at trial are also left to the sound discretion of the trial court. *See Carter v. State*, 366 Md. 574, 589 (2001). In other words, we will review a trial court's evidentiary rulings under an abuse of discretion standard. A trial court abuses its discretion when "'no reasonable person

[4] Maryland courts have yet to address whether a criminal defendant has a due process right to have his or her competency evaluated for the first time at a sentencing hearing. We look towards the Fourth Circuit of the United States Court of Appeals to inform our review of this case. "An allegation that the district court erred by failing to order a competency hearing is a procedural competency claim," whereas "[a]n allegation …that the defendant was convicted or sentenced while legally incompetent is a substantive competency claim." *United States v. General*, 278 F.3d 389, 396 (4th Cir. 2002). Federal courts recognize that:

> [a defendant's] right to a competency hearing is governed by the reasonable cause standard. 18 U.S.C.A. § 4244 ("[A]t any time prior to the sentencing of the defendant [the district court] shall order…a hearing…if it is of the opinion that there is reasonable cause to believe that the defendant may presently be suffering from a mental disease or defect….").
>
> *Id*. at 397. "Whether reasonable cause exists is a question left to the discretion of the district court," and when applying "the abuse of discretion standard, this Court may not substitute its judgment for that of the district court; rather, [it] must determine whether the court's exercise of discretion, considering the law and the facts, was arbitrary or capricious." *Id*. at 396.

would take the view adopted by the [trial] court,'" or "when the court acts 'without reference to any guiding rules or principles.'" *Donati v. State*, 215 Md. App. 686,708-09 (2014) (internal citations omitted). Accordingly, we will not undermine the trial court's judgment absent an abuse of discretion.

DISCUSSION

I. Competency at Sentencing

A. Parties' Contentions

Appellant contends that the trial court denied him due process of law when it refused his request to postpone his sentencing hearing for a competency evaluation. He points out that Maryland courts have yet to address whether a criminal defendant has a due process right to have his or her competency evaluated for the first time at a sentencing hearing. Appellant cites several cases from other jurisdictions where courts have ruled that sentencing an incompetent defendant raises due process issues. *See United States v. Gonzalez*-Ramirez, 561 F.3d 22, 28 (1st Cir. 2009) ("A defendant's due process right to a fair trial includes the right not to be tried convicted or sentenced while incompetent."); *United States v.* Garrett, 903 F.2d 1105, 1115–16 (7th Cir. 1990) (stating that "the need for competency also extends beyond trial to the sentencing phase of proceeding" and recognizing that the failure to grant a hearing when there is "reasonable cause to believe that a defendant is mentally incompetent is a violation of due process"). Appellant asks this Court to follow suit and acknowledge a due process right to a competency evaluation any time before final judgment. Furthermore, while § 3-104(a) does not explicitly refer to

sentencing proceedings, Appellant contends that § 3-104(c) contemplates the possibility that competency concerns may arise during sentencing, requiring the court to act. As such, Appellant requests this Court to vacate and remand for a competency determination and a new sentencing hearing.

The State argues that the trial court properly exercised its discretion in denying Appellant's motion for continuance for a competency evaluation because the issue was not timely preserved. The State further argues that even if the issue was preserved, § 3-104 does not apply to a competency hearing request made for the first time after trial but before final judgment. The trial court properly considered the timing of the request; notwithstanding, the State contends that the record does not support that a competency evaluation was needed. For the following reasons, we agree with the State that the issue was not preserved. Therefore, we decline to review whether Appellant had a right to a competency evaluation for the first time at sentencing.

B. Analysis

The Due Process Clause of the Fourteenth Amendment prohibits the prosecution of defendants that are deemed incompetent to stand trial. *See Sibug v. State*, 445 Md. 265, 304 (2015) (citing *Gregg v. State*, 377 Md. 515, 526 (2003)). Maryland's statutory code § 3-101(f) defines incompetent to stand trial as the inability: (1) to understand the nature or object of the proceeding; or (2) to assist in one's defense. Conversely, a defendant that is competent is said to have the present ability to consult with his or her lawyer to a "reasonable degree of rational understanding" and a "rational as well as factual

understanding of the proceedings against him." *Thanos v. State*, 330 Md. 77, 85 (1993) (internal citation omitted). To safeguard this due process right, the legislature has mandated actions to be taken by the trial court when competency is at issue in §3–104(a) of the criminal procedure code. *See Roberts v. State*, 361 Md. 346, 363 (2000). The statute states:

> If, before or during a trial, the defendant in a criminal case or a violation of probation proceeding appears to the court to be incompetent to stand trial or the defendant alleges incompetence to stand trial, the court shall determine, on evidence presented on the record, whether the defendant is incompetent to stand trial.

Md. Code Ann. § 3-104(a). Given the language of the statute, this Court will now review whether Appellant preserved his claim that he was entitled to a postponement to undergo competency evaluation.

"Ordinarily, the appellate court will not decide any other issue unless it plainly appears by the record to have been raised in or decided by the trial court." *Jones v. State*, 379 Md. 704, 712 (1994). However, Appellant need not raise the issue of competency if there is sufficient evidence on the record to allow the court to exercise its *sua sponte* duty to take action. *See Sibug v. State*, 445 Md. 265, 315–17 (2015); *Wood v. State*, 436 Md. 276, 290–91 (2013) (citing *Gregg v. State*, 377 Md. 515, 528 (2003)). If the evidence on record established a *sua sponte* duty, then the issue is preserved for our review. *See Sibug*, 445 Md. at 315–17. Whether or not this duty arose in this instant case depends on the sufficiency of evidence before the court at the time. *See Wood v. State*, 436 Md. at 290–92 (holding that the evidence did not raise a bona fide doubt as to defendant's competency to stand trial, which would have required the trial court to make a *sua sponte* determination

based on evidence presented on the record). The language of § 3-104 specifies that the question of the defendant's competency must be made before or during trial. *See Wood v. State*, 436 Md. at 276, 286–87.

Although Appellant did not request a competency evaluation prior to or during trial, we must consider what evidence, if any, was before the court to give rise to a *sua sponte* competency determination, thus preserving the issue for our review. The record is clear that the issue of competency was first brought before the court after trial, before sentencing. Counsel informed the court that "[Appellant] has a detailed, extensive mental history and based on the Pretrial Sentencing Report, based on my meetings with [Appellant], based on the social worker's meeting with [Appellant], our challenge is, is [Appellant] actually competent at this point?" Counsel indicated that Appellant "was found incompetent between 2010 and 2011" and had been treated at Spring Grove during that period. He further explained, "[Appellant] does have a history of being incompetent, coming back to competency, and being incompetent again," and informed the court that [Appellant] "has 19 documented attempts at his own life" and "has spent at least three full years at Spring Grove on and off for different cases." Counsel noted that the Presentence Investigation revealed that Appellant had begun "hoarding medication" and was engaged in a "hunger strike." Despite counsel's disclosure of Appellant's "current deterioration" and opinion that Appellant was "likely incompetent at this point again," no evidence was presented within the relevant time frame to trigger the court's *sua sponte* duty to evaluate Appellant's competence. Accordingly, absent evidence establishing the courts' duty to act and

Appellant raising the issue at trial, the issue of competence at sentencing is not preserved for our review. Thus, we decline to address whether the trial court abused its discretion when denying Appellant's request for a continuance to undergo a competency evaluation.

II. Admission of 9-1-1 Calls

A. Parties' Contentions

Appellant contends that the trial court committed reversible error when it denied his request to (1) play for the jury a 9-1-1 call made the night of the shooting and (2) redact a portion of another 9-1-1 call made by Quisha Wright, Mr. Young's sister. The State argues that the trial court properly exercised its discretion when (1) excluding the 9-1-1 call for its potential to confuse the jury and (2) declining to redact Ms. Wright's 9-1-1 call after it had already been played for the jury. We agree with the State.

1. Admission of the 9-1-1 call

The omitted 9-1-1 call was made by a woman who reported to have seen two men running away from the shooting. Appellant argues because the call was a first-hand report of the scene, it met a hearsay exception under Md. Rule 5-803 because the woman described the event as she was perceiving it, with no time to engage in "reflective thought." Furthermore, because the call was on the same CD already entered into evidence by the State, he should have been permitted to play the call for the jury. Appellant continues that the woman's 9-1-1 call reporting two men running from the scene was relevant and therefore, admissible. Appellant concludes that this Court cannot find, beyond a reasonable doubt, that the trial court's error did not influence the verdict.

The State contends that the trial court properly excluded the woman's 9-1-1 call because the court found that admitting the call would create juror confusion. The State explains that is unclear whether the caller had personal knowledge of the event and how long after the event the call was made. Furthermore, Appellant did not argue that the call was a present sense impression at trial, rather an excited utterance, thus, the State contends that Appellant cannot now argue Md. Rule 5-803 on appeal.

2. Redacting Ms. Wright's 9-1-1 statement

Regarding the 9-1-1 call made by Mr. Young's sister, Quisha Wright, Appellant contends that because Ms. Wright's testimony about who shot Mr. Barnes was inconsistent, the court erred when it denied Appellant's request to redact that portion of her 9-1-1 call. Appellant asserts that Ms. Wright's call to the police constituted hearsay without an exception and was therefore inadmissible. Appellant argues that the State relied on Ms. Wright's identification of Appellant as the shooter, thus, the court's error was not harmless.

The State argues that Appellant cannot claim that the call should have been redacted because Ms. Wright can be heard saying she knew who shot Mr. Barnes. Furthermore, the trial court acted properly when it declined to redact the 9-1-1 call because Appellant played the recording in its entirety before the State, and without any objection. The State contends that Ms. Wright's statements on the recording cannot constitute hearsay because they were statements made by Ms. Wright herself. The State argues that at most, Appellant's argument goes to whether Ms. Wright had personal knowledge as to the shooter, but Appellant does not make a lack of personal knowledge argument.

B. Analysis

1. The trial court did not err when it refused to play a 9-1-1 call

At trial, the unidentified woman's 9-1-1 call was on a CD with two other calls played in court. Those two calls were referenced during witness testimony and admitted through business certification. The unidentified woman's call was not referenced during the witness' testimony and the court did not admit the recording into evidence; however, the call was transcribed for purposes of this appeal and reads in relevant part:

> DISPATCHER: Okay. And what's going on there?
>
> UNIDENTIFIED SPEAKER: We heard gun shots. We were in our backyard. We heard about three gun shots and then we saw two young guys run from Boone Street, down the alley of 27th Street. 500 block of 27th Street. These guys ran down the alley from Boone Street in the 500 block of 27th Street. And then they made a left hand turn on the Mathews Street. Where they went from there, I don't know. [**911 Call Transcript**]

The court did not rule on whether the call fell within the excited utterance exception to the rule against hearsay, rather the court found that admitting that call would confuse the jury stating:

> The [c]ourt finds the jury would be confused because the testimony of one of the witnesses. There were three shootings in that area. Those people could have been running from any shooting at the same time.
>
> ***
>
> There are two calls, and there are only two calls that were referenced during testimony after the admission through the business certification. Those are the two calls that the jury's focused on. To now suggest that the jury is going to be able to consider all these different pieces of information, which have not at all been referenced in this courtroom is absolutely inappropriate.

Md. Rule 5-403 permits a court to exclude relevant evidence if its probative value is substantially outweighed by a confusion of the issues. Thus, because the court reasonably believed the third 911 call would confuse the jury, its decision to exclude the call was rightful.

2. The trial court did not error when it allowed Ms. Wright's statement

At trial, Appellant played Ms. Wright's call in its entirety, with no objection. Appellant now claims that part of Ms. Wright's testimony was hearsay and should have been redacted. Md. Rule 5-801(c) defines hearsay as "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." Although the statement contained in the 9-1-1 call was made outside of the present trial, Ms. Wright's 9-1-1 call was played in its entirety by Appellant before the State attempted to play the recording. Thus, Appellant waived his objection to the introduction of the 9-1-1 statement. *See Yates v. State*, 429 Md. 112, 124 (2012) ("We agree with the Court of Special Appeals that the admission of the hearsay evidence did not ultimately affect the jury's verdict given the cumulative nature of the similar statements offered at trial."). Additionally, Appellant was free to question Ms. Wright about the call and attempt to impeach her credibility on cross-examination. *See Nash v. State*, 439 Md. 53, 87 (2014). Accordingly, the trial court did not abuse its discretion with respect to the 9-1-1 calls, thus we will not undermine the trial court's judgment.

III. Failure to Disclose Mr. Dubose's Statement

A. Parties' Contentions

Appellant's counsel contends that the State committed a discovery violation by failing to disclose Appellant's statement to Ms. Dubose while he drove away from the scene. Ms. Dubose testified that Appellant had stated, "[t]his bitch is still smoking." Appellant relies on Md. Rule 4-263(d)(1), which requires the State's Attorney to provide defense counsel "[a]ll written and all oral statements of the defendant…that relate to the offense charged." He contends his conviction should be reversed due to the State's failure to disclose the statement, however, he does not cite any authority to support such a remedy.

The State contends that Appellant's counsel does not claim to have been surprised by the statement, rather they were not made aware of the statement. Even if the statement was not disclosed to Appellant's counsel, the State argues that such error was harmless given that Ms. Dubose explicitly identified Appellant as the shooter in other parts of her testimony. We agree with the trial court's determination that there was no discovery violation.

B. Analysis

Maryland's discovery rule 4-263(d)(1) provides:

> (d) **Disclosure by the State's Attorney**. Without the necessity of a request, the State's Attorney shall provide to the defense:
>
> (1) *Statements*. All written and all oral statements of the defendant and of any co-defendant that relate to the offense charged and all material and information, including documents and recordings, that relate to the acquisition of such statements;

In conjunction, the Supreme Court held in *Brady v. Maryland*, 373 U.S. 83 (1963) that "the suppression by the prosecution of evidence favorable to an accused upon request violates due process where the evidence is material either to guilt or to punishment, irrespective of the good faith or bad faith of the prosecution." *Id.* at 87. The Maryland Court of Appeals later recognized "limits to the prosecutor's automatic duty of disclosure," in *Yearby v. State*, 414 Md. 708 (2010), stating that, "There are three components of a true Brady violation: The evidence at issue must be favorable to the accused, either because it is exculpatory, or because it is impeaching; that evidence must have been suppressed by the State, either willfully or inadvertently; and prejudice must have ensued." Id. at 716–17.

In *Johnson v. State*, 228 Md. App. 391 (2016), this Court held that the State's failure to disclose impeachment information relating to a witness did not amount to a *Brady* violation. On appeal, Johnson argued that the State's failure to disclose that its principal witness "was a State's witness against at least two other murder defendants whose cases (unrelated to appellant's) were pending at the time of his testimony… deprived Appellant of his Sixth Amendment right to confront the witness and his right to a fair trial." *Id*. at 434. However, we explained in *Johnson,* as we again explain in the instant case that *Brady* evidence is considered material only when "the favorable evidence could reasonably be taken to put the whole case in such a different light as to undermine the confidence in the verdict." *Id*. at 437. In *Johnson,* defense counsel "took the opportunity to cross-examine [the State's principal witness] regarding any potential bias or improper motive." *Id.* This fact was weighed against Johnson's "contention that Appellant was prejudiced by the

State's inadvertent omission." *Id.* For this reason, we opined that the mere fact that the State's principal witness was a witness in a separate homicide trial, absent more detail, did not reach the level of undermining the confidence in the verdict. *See Johnson*, 228 Md. App. at 437.

Similarly, in the instant case, the record reflects uncertainty as to whether Ms. Dubose's account that Appellant stated, "[t]his bitch is still smoking" was disclosed to defense counsel. Nonetheless, counsel took the opportunity to cross-examine Ms. Dubose on her statement and its inconsistency with her trial testimony. Appellant's opportunity to cross-examine Ms. Dubose weighs against his contention that he was prejudiced by the State's failure to disclose the statement. Accordingly, the mere fact that the defense counsel was unaware that Appellant said in passing, "[t]his bitch is still smoking," does not amount to undermine the confidence in the verdict.

Furthermore, Ms. Dubose's testimony contained other accusations that were more incriminating, including, "[Appellant] shot him… After [Appellant] shot him, [Appellant] just walked and got back into his car." Additionally, Ms. Dubose testified that she picked Appellant out of the photo array "[b]ecause that's the person that shot [Mr. Barnes]" and that she was a "hundred percent" sure that Appellant was the shooter. For this reason, we agree with the trial court's determination that neither Maryland Rule 4-263(d)(1) or the principles prescribed in *Brady* were violated to warrant a reversal of Appellant's conviction.

IV. Testimony of Ms. Dubose and Mr. Young

A. Parties' Contentions

Appellant contends that the trial court erred when it prevented counsel from impeaching two of the State's witnesses with their prior inconsistent statements. Appellant argues that the trial court should have allowed defense counsel to impeachment Ms. Dubose and Mr. Young's trial testimony and place their credibility into question.

1. Ms. Dubose's omission

Appellant contends Ms. Dubose's testimony that Appellant said, "[t]his bitch is still smoking," was inconsistent by omission with her recorded statement to police. Thus, Appellant maintains that the trial court abused its discretion when sustaining the State's objection and prohibiting Appellant from further cross-examining Ms. Dubose on her prior inconsistent statement. The State argues that Ms. Dubose's statement was not inconsistent because she did not change her testimony. The State contends that Ms. Dubose was merely providing additionally detail, not testifying inconsistently.

2. Mr. Young's inconsistent statement

Appellant argues that the trial court impermissibly limited the cross-examination of Mr. Young. On cross-examination, Appellant attempted to elicit the fact that Mr. Young told responding officers that he did not know who shot Mr. Barnes. The State objected to the question and the trial court sustained. Appellant contends that Mr. Young's statement to the responding officers was inconsistent with his trial testimony that he witnessed

Appellant shoot Mr. Barnes; therefore, the trial court abused its discretion when it prohibited him from questioning Mr. Young about the statement.

The State argues that "the essential context" of the inconsistent statements, were admitted without objection multiple times. Moreover, any error committed by limiting counsel's questioning on the matter was harmless. We agree with the State that the court did not abuse its discretion when it limited counsel's questioning of Ms. Dubose and Mr. Young with their prior inconsistent statements.

B. Analysis

Maryland Rule 5-616(a)(1) provides, "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." Turning to Maryland Rule 5-613:

> A party examining a witness about a prior written or oral statement made by the witness need not show it to the witness or disclose its contents at that time, provided that before the end of the examination (1) the statement, if written, is disclosed to the witness and the parties, or if the statement is oral, the contents of the statement and the circumstances under which it was made, including the persons to whom it was made, are disclosed to the witness and (2) the witness is given an opportunity to explain or deny it.

Md. Rule 5-613(a). In *Hardison v. State*, 118 Md. App. 225 (1997), this Court considered whether a statement the State's witness made to police was inconsistent from his subsequent trial testimony by an omission. We explained that the following foundation must be laid for extrinsic evidence of a witness's prior inconsistent oral statement to be admissible for impeachment:

> 1) the contents of the statement and the circumstances under which it was made, including the person to whom it was made, must have been disclosed to the witness during his trial testimony; 2) the witness must have been given the opportunity to explain or deny the statement; 3) the witness must have failed to admit having made the statement; and 4) the statement must concern a non-collateral matter.

Id. at 237. We further added that before the requirements of Rule 5-613 are factored in, counsel must first establish that the witness's prior statement is inconsistent with his or her trial testimony. *See id*. at 237–38.

Concurrently, "a trial court has broad discretion in determining the scope of a cross-examination, and [an appellate court] will not disturb the exercise of that discretion in the absence of clear abuse." *Fields v. State*, 168 Md. App. 22, 40 (2006)*; see Carter v. State*, 366 Md. at 589 (providing that this court will only reverse a trial court's evidentiary ruling if there is a clear abuse of discretion). However, such discretion is not infinite. *See id*. The court is required to give the examiner leeway in her attempt to demonstrate the witness's bias or incentive to testify falsely. *See id*. "The appropriate test to determine abuse of discretion in limiting cross-examination is whether under the particular circumstances of the case, the limitation inhibited the ability of the defendant to receive a fair trial." *Id*. In other words, if the limitation did not prevent Appellant from receiving a fair trial, then the trial court did not abuse its discretion when sustaining the State's objection to counsel's attempted impeachment.

1. The court did not err by sustaining the State's objection to the improper impeachment of Ms. Dubose

At trial, defense counsel asked Ms. Dubose several questions about whether she disclosed the statement, "[t]his bitch is still smoking," to police officers during her interview. Counsel's questioning and the State's objections went as follows:

> [DEFENSE COUNSEL]: And you said today that [Appellant] said, "This bitch is still smoking," right?
>
> [THE WITNESS]: Yes.
>
> [DEFENSE COUNSEL]: You would agree that you never told the police that statement on the recorded interview, wouldn't you?
>
> [THE WITNESS]: No, I did. I recall the police saying that—lying a few times. This wasn't the first time I said that.
>
> [DEFENSE COUNSEL]: And you definitely told the police on that recorded interview, "This bitch still smoking"?
>
> [THE WITNESS]: I remember when they asked me, "What—was you all talking about anything in the car," and I specifically remember saying the line.
>
> ***
>
> [DEFENSE COUNSEL]: Earlier you testified that you were aware that you gave a recorded statement?
>
> [THE WITNESS]: Yes.
>
> [DEFENSE COUNSEL]: And you knew that it was being audio and visually recorded?
>
> [THE WITNESS]: Yes.
>
> [DEFENSE COUNSEL]: And you said that a part of that audio and visual recording that you definitely made that statement that [Appellant] told you, "This bitch still smoking"?

[THE WITNESS]: Yes.

[DEFENSE COUNSEL]: Okay. If I give you your transcript and you read it over, would you be able to point that out? Before you do it, if I told you that it appears nowhere in the transcript, neither where it's written nor on the audio/visual, would that surprise you?

[THE WITNESS]: Yes.

[DEFENSE COUNSEL]: It would surprise you? Do you believe that it was intentionally taken out of the audio or visual recording?

[THE WITNESS]: No.

[DEFENSE COUNSEL]: Okay. So if you had been made that statement when it was being audio and visually recorded, we would have it, wouldn't we?

[PROSECUTOR]: Objection.

[THE WITNESS]: Yes.

THE COURT: Sustained. Stricken. Please continue.

[DEFENSE COUNSEL]: Yes, sir.

[DEFENSE COUNSEL]: Can you look it over and see that statement, "This bitch still smoking"?

[PROSECUTOR]: Objection.

THE COURT: Sustained.

[DEFENSE COUNSEL]: Sustained?

THE COURT: Yes.

For Appellant to have properly admitted Ms. Dubose's prior inconsistent statement for impeachment purposes, Appellant must have first established that the prior statement

was inconsistent with her trial testimony. *See Hardison*, 118 Md. 237–38. Once establishing the inconsistency, Appellant must have satisfied the foundational requirements set forth in *Hardison*. However, Appellant failed to meet the threshold requirements for a proper impeachment.

As the record reflects, defense counsel never confronted Ms. Dubose with the fact that her statement at trial was inconsistent with her recorded statement to police. Counsel asked, "And you said that a part of that audio and visual recording that you definitely made that statement that [Appellant] told you, 'this bitch still smoking'?" However, counsel never confronted Ms. Dubose with the fact that she did not make the statement to the police during the recorded interview. Defense counsel asked a host of questions tending to undermine her trial testimony but failed to lay a proper foundation to impeach Ms. Dubose with her prior statement. Therefore, the trial court did not err in exercising its discretion to sustain the State's objection to the improper impeachment.

2. The court's decision to sustain the State's objection to impeachment of Mr. Young was harmless

Mr. Young admitted on both direct and cross-examination that he told the 911 operator and responding officers that he did not know who shot Mr. Barnes, and Mr. Young acknowledged that his statement was inconsistent with what he knew to be true. The direct-examination went as follows:

> [PROSECUTOR]: Okay. When you were asked who did it, how come you said I don't know?

[WITNESS]: I don't know, sir. It was just a lot of stuff in my mind, sir. Like when they was asking, I thought they was asking me too many questions at one time.

On cross-examination, Mr. Young admitted the following:

[DEFENSE COUNSEL]: Did you tell the 9-1-1 operator that you did not know who shot your father?

[THE WITNESS]: Yes, I did.

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[DEFENSE COUNSEL]: When you got to the—when the police arrived on the scene, you told those police on the scene, again, that you didn't know who shot your step father, correct?

[PROSECUTOR]: Objection.

THE COURT: Sustained.

[DEFENSE COUNSEL]: Finally, when you get to the police station and you're being recording, you told the detectives that [Appellant] shot your stepfather, correct?

[THE WITNESS]: Yes, I did, because I identify his picture. I—

[DEFENSE COUNSEL]: So you had—you had two versions about what you saw?

[PROSECUTOR]: Objection.

THE COURT: As to characterization?

[PROSECUTOR]: Yes.

THE COURT: Sustained.

[DEFENSE COUNSEL]: On one occasion you don't know who shot your stepfather; on the next occasion you do know who shot your stepfather, correct?

[PROSECUTOR]: Objection.

THE WITNESS: Yes, sir.

THE COURT: Well, answer the question yes or no.

THE WITNESS: I said yes, sir.

Defense counsel attempted to draw out each of Mr. Young's inconsistent statements, starting with his 9-1-1 call and then his statement to the responding officers. Once Mr. Young admitted that his prior statements were inconsistent with his trial testimony, the impeachment was complete. However, Appellant argues that because the questions went toward two separate instances in which Mr. Young stated he did not know the shooter's identity, he was permitted to confront Mr. Young on both instances. In view of the evidence before this Court, we find that the essential contents, that Mr. Young stated he did not know the identity of the shooter, were admitted without objection multiple times to the benefit of Appellant. Appellant's attempt to put Mr. Young's credibility into question was not prohibited by the court. While we agree that the examiner must be given the latitude to freely establish a witness's partiality and/or motive to testify falsely, the trial court's limitation did not inhibit Appellant's ability to receive a fair trial. Having received a fair trial, the trial court did not abuse its discretion when sustaining the State's objection to Appellant's attempted impeachment.

Accordingly, we affirm the judgment of the trial court.

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