Circuit Court for Baltimore City
Case No. 116089008

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 2352

September Term, 2017

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AARON BRYANT

v.

STATE OF MARYLAND

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Leahy,
Reed,
Friedman,

JJ.

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Opinion by Leahy, J.

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Filed: August 22, 2019

*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.

Raekwon Young was shot in the right eye while sitting on a rowhouse stoop. Appellant, Aaron Bryant, was tried three times in the Circuit Court for Baltimore City for crimes linked to this murder.

First, Bryant was tried in January 2017 for first-degree murder, using a firearm in the commission of a crime of violence, and possession of a regulated firearm after conviction for a disqualifying crime. The jury was hung on all charges, and the court declared a mistrial. Next, he was tried again in the underlying case in July 2017 on the same charges. At his second trial, the jury found Bryant guilty of the gun possession charge, but it could not reach a unanimous verdict on the other two charges. Over defense counsel's objection, the court accepted a partial verdict. Bryant was tried again in December 2017; this time, for first- and second-degree murder and the use of a firearm in a crime of violence. The jury acquitted Bryant of all charges.

Following his third trial, the court sentenced Bryan to five years' incarceration for his conviction for possession of a regulated firearm after conviction for a disqualifying crime. In his timely appeal from that conviction, Bryant presents two issues for our review:

1. "Whether the trial judge abused its discretion in [the second trial by] accepting a partial verdict that was tentative and not unanimous over defense counsel's objection."

2. "Whether the appellant's right to confrontation was violated [in the second trial] by the trial judge limiting cross-examination of a key witness regarding his motives for testifying and his familiarity with the appellant."

We hold that Bryant failed to preserve the first issue for our review. Even if he had preserved the issue, however, we discern no evidence of a lack of unanimity among the

jury on the gun possession charge, and conclude, therefore, that the trial court properly accepted the partial verdict. Additionally, we hold that the trial court's circumscription of defense counsel's cross-examination of Davis was well within the bounds of the court's discretion. Accordingly, we affirm the judgment of the circuit court.

## BACKGROUND

Bryant was first tried for crimes related to the shooting death of Young in the Court for Baltimore City from January 9 through 13, 2017. After the conclusion of trial, the jury's deliberations continued for, in the words of the State, "more hours than it took to present the testimony" of the case. On the morning of the third day of deliberations, the jury indicated that it was still deadlocked, leading the State to agree to a mistrial.

### A. Second Trial

The State tried Bryant a second time for the same three charges from July 19 to 21, 2017. Because the issues on appeal deal primarily with this second trial, we confine our recitation of the facts to those adduced from that trial and recite those facts in a summary fashion except for those that pertain to the discrete issues on appeal.

The State called five witnesses: Lonnie Chambers, a friend of the victim and witness to the murder; Joseph Mooney, a bystander who observed the murder from across the street; Joseph Davis, a former cellmate of Bryant's testifying pursuant to a plea deal; Dr. Theodore King, the medical examiner who performed the autopsy on the victim; and Jonathan Riker, a homicide detective with the Baltimore Police Department who responded to the scene.

On the day of the murder, August 20, 2015, Chambers drove to a house in the Remington neighborhood of Baltimore to pick up Young. While waiting for Young on the stoop outside the house, he "[c]alled a couple girls[.]" Young joined him a few minutes later, and the two sat on the stoop for about an hour while Young chatted with "people passing through the neighborhood." Eventually, two men walked by and spoke to Young "aggressive[ly]" about a dirt bike before walking away. A few minutes later, the men returned and asked who had weed in the neighborhood, which Chambers took as a way for the men to initiate a conversation. The two men again asked Young about a dirt bike, and at some point, Young stood up. Suddenly, one of the men shot Young in the eye. Chambers panicked and drove off to find Young's family. He explained that he was "so shook up" about the murder that he waited months before speaking with detectives. On March 3, 2016, Lonnie Chambers went to the Homicide Unit and described what he had observed. He identified Bryant as the shooter during a double-blind photographic array.

Joseph Mooney testified that, on the day of the murder, he was walking down the sidewalk from his home to a store on the corner of Huntingdon Avenue and 27th Street to buy a pack of cigarettes. While waiting for traffic to pass, he observed several people standing in a circle across the street, at the southeast corner of Huntingdon and 27th. Someone in the crowd said, "yo, watch this[,]" and then "a second or two later, [Mooney] heard, pop." Mooney first thought it was a firecracker, but he saw a "man stagger backwards like he might have been pushed or something and then [the man] fell to his back in the dirt." The crowd scattered; some ran north on Huntingdon and others ran westward on 27th Street. Mooney started "hollering, man, tell someone in the store to call police."

He went over to the fallen man and saw "a []hole where his right eye was supposed to be." On cross-examination, Mooney testified that he did not see anyone with a gun.

Detective Riker testified that at 11:00 a.m. on August 20, 2015, a dispatcher called him to the 2700 block of Huntingdon Avenue in Baltimore City because an "adult male [had been] shot in the head." By the time he arrived, the victim had already been taken to the hospital. Unable to recover firearms evidence from the scene, Detective Riker canvassed the neighborhood for potential witnesses. Witnesses revealed that the suspects fled in "a black Acura, with a partial tag of 083" and that one of the suspects lived at 2636 Hampden Avenue. A colleague ran the Hampden address through a police database and learned the residence was associated with Aaron Bryant. The detectives searched MVA files and discovered that Bryant owned a black Acura with the license plate 3T0836. Police located Bryant the following day and interviewed him for about an hour without charging him.

About four months later, in December 2015, Detective Riker received a call from a federal prosecutor who relayed that Joseph Davis, a former cellmate of Bryant's who was in federal custody, claimed to have information about Young's murder. A year after the prosecutor's call, in September of 2016, Detective Riker met with Davis. Davis agreed to testify at trial.

The State began its direct examination of Davis by establishing that he was testifying pursuant to a plea deal. Davis then testified that he shared a cell with Bryant at Baltimore Central Booking and Intake Center from early to mid-September in 2015. He reported that during that time, Bryant and he "would trade stories in the cell." Bryant

shared a story about "a murder [that] him and his little home friend [had] done[.]" After the murder, which had something to do with a stolen dirt bike or moped, Bryant's girlfriend picked him and his friend up at Huntingdon. Bryant "stashed [the gun] in the woods[,]" and when he later went to retrieve it, it had been stolen. During the time they shared a cell, Davis testified that Bryant "used to show [him] his charge papers[.]"

After Davis was transferred from the cell he shared with Bryant, he wrote a letter to his arresting officer about the murder Bryant described, believing "if [he] knew anything" it might "help [him] out in [his] situation."

**B. Jury Notes and Verdict**

After the close of all evidence, Bryant moved for judgment of acquittal. The court denied the motion. The parties gave closing arguments and the court duly instructed the jury. The jury began deliberation the following morning, July 21, 2017, at 9:15 a.m. At 2:30 p.m., the jury sent a note to the court stating, "We are split between guilty, not guilty, not sure[.]" The court wrote back, with the parties' agreement, and instructed the jury to "[p]lease keep deliberating." The jury continued to deliberate.

At 4:10 p.m., the jury sent another note: "Can we have a verdict for one count or two counts without a verdict for the other(s)?" Counsel for the parties and the court discussed the potentiality of an inconsistent verdict. Again, with the parties' agreement, the court responded to the jury stating, "Without naming which counts, [h]ave you reached a unanimous verdict as to any of the counts?" On the note, the court wrote "[y]es or [n]o" on the note, so that the jury could circle one answer. The jury circled "[y]es."

The court and counsel agreed to send the jury another note: "Would further deliberations on Monday assist in reaching a unanimous verdict on the remaining count(s) or are you at an impasse?" The jury answered, "[n]o." The judge and counsel discussed the significance of the jury's single answer to the compound question, and decided to write back, again with the parties' agreement, "[a]re you at an impasse?" The jury wrote back, "[y]es, at an impasse."

Given the jury's impasse, the court and Bryant's counsel discussed the possibility of a partial verdict and a mistrial:

> [DEFENSE COUNSEL]: . . . [I]f we take a partial verdict, are we then declaring a mistrial or are we accepting the partial verdict because I'm of the position I do not want a partial verdict. I'd be requesting a mistrial now as—
>
> THE COURT: Well, what difference does it make? If I take the partial verdict, you can move for mistrial then.
>
> [DEFENSE COUNSEL]: Okay. That's what I'm just making sure.
>
> THE COURT: **I'm not saying I'm going to grant it**, but I don't know why you don't take a partial verdict. **If they're at an impasse as to one of the counts or two of the counts, you take the count that they're not at an impasse at.** If it turns out to be an inconsistent verdict, you move for a mistrial and then we'd go from there.
>
> [DEFENSE COUNSEL]: **Okay.**
>
> THE COURT: But I don't know why we would do it preemptively. We'd just go over—it would—
>
> [DEFENSE COUNSEL]: I just wanted to protect my client that—
>
> THE COURT: Well, I understand why your position is. I'm just saying **I don't understand what the downside is to taking a partial verdict.**
>
> [DEFENSE COUNSEL]: **There isn't.**
>
> THE COURT: Okay. So we are going to take a partial verdict. All right.

(Emphasis added).

The court brought back the jury, which reported that it had reached a unanimous guilty verdict as to count three, possession of a firearm after conviction for a disqualifying crime. The clerk of the court asked defense counsel if he would like the jury polled, and he declined. The jury was duly hearkened. The clerk asked counsel if they would like the jury polled; both the State and defense counsel said, "No, thank you."

Defense counsel then moved for a mistrial on the grounds that the verdict was inconsistent:

> [DEFENSE COUNSEL]: So, Your Honor, at this time, it's going to be the Defense requests for a mistrial. I believe it to be a legally inconsistent verdict. Somehow they found him guilty of possession of a firearm. The facts that were alleged was there was only one firearm [] and the shooter had that firearm and shot [] Young in the eye. Therefore, I believe it to be a[n] inconsistent verdict and I'm requesting a mistrial at this point.

The court explained why the verdicts were not legally inconsistent, causing defense counsel to question to the court's willingness to accept the partial verdict:

> [DEFENSE COUNSEL]: I made the request of asking for a mistrial before we g[o]t a partial verdict because it's up to the Defense whether or not to accept a partial verdict and I was assured by the [c]ourt that the mistrial would be granted afterward[].
>
> THE COURT: I didn't assure you of that. I said you can ask for the mistrial afterwards. I didn't say I was going to grant it afterward[]. . . .
>
> * * *
>
> I wouldn't have granted it because . . . I'm going to get the partial verdict. What difference would it have made if you said, "[n]o, I insist you make a ruling, Judge?" I would've said no, bring out the jury.
>
> It doesn't make any difference. All I was saying it didn't make any difference whether you made the motion for a mistrial [before] it or after it. I was going to deny it before—

The court denied defense counsel's motion and scheduled a retrial on the remaining counts. At defense counsel's request, the court agreed to delay sentencing until after the conclusion of the third trial.

### C. Third Trial and Sentencing

Bryant was tried a third time on December 12, 13, and 14, 2017; this time for first- and second-degree murder and the use of a handgun in a crime of violence. He was acquitted of all charges.

The day after trial concluded, December 15, 2017, the court sentenced Bryant to five years' incarceration. Bryant noted his timely appeal to this Court on January 8, 2018.

## DISCUSSION

### I.

### Partial Verdict

Bryant argues that the court "pressur[ed] the jurors," prematurely forcing the jury's "tentative and not unanimous" decision, in violation of his federal Sixth Amendment right, and his right under the Maryland Declaration of Rights, to a unanimous conviction. He likens the circumstances of his verdict to the circumstances in *Caldwell v. State*, in which we held the trial court's acceptance of a partial verdict erroneous when "the emergency closure of the courthouse, compounded by one juror's inability to return for deliberations, disrupted and derailed the deliberations midstream[.]" 164 Md. App. 612, 643 (2005).

The State, first, argues that Bryant's contention is unpreserved for appeal because he withdrew his initial objections to the partial verdict and mistrial, and he did not later

request to poll the jury or "object to the jury's hearkening or [to] the finality of the verdict." "Bryant never argued, as he does here, that the jury's verdict lacked unanimity[;]" instead, the State contends Bryant objected to the verdict only on the basis of inconsistency. If preserved, the State points out that, unlike in *Caldwell*, Bryant expressly consented to the trial court receiving the jury's verdict. Moreover, *Caldwell* "involved unusual circumstances" because jury deliberations were interrupted by Hurricane Isabel and a juror was unable to attend extended deliberation. The State argues that the jury's deliberation in the instant case was not circumscribed the way it was in *Caldwell*.

**A. Applicable Law**

Whether a jury unanimously consented to a verdict is a mixed question of law (whether the defendant's constitutional rights were violated) and fact (whether the jury unanimously consented to the verdict), which "we review *de novo*, considering the totality of the circumstances." *Caldwell*, 164 Md. App. at 643.

A criminal defendant's right to a unanimous jury verdict is guaranteed by federal and State law. *State v. Simms*, 240 Md. App. 606, 619 (2019). "In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury[.]"[1] U.S. CONST. amend. VI. Maryland's Declaration of Rights provides that "in all criminal prosecutions, every man [or woman] hath a right . . . to a speedy trial by an

[1] The Sixth Amendment's right to an impartial jury was made applicable to the states through the Fourteenth Amendment of the U.S. Constitution. *See Atty. Grievance Comm'n of Md. v. Gansler*, 377 Md. 656, 674-75 (2003) (citing *Duncan v. Louisiana*, 391 U.S. 145, 158 n.30 (1968) (noting that the Sixth Amendment "require[es] a unanimous verdict before guilt can be found").

impartial jury, without whose unanimous consent he ought not be found guilty." MD. DECL. OF RIGHTS, art. 21.

Maryland Rule 4-327 concerns the jury's delivery of the verdict. It states that "[t]he verdict of a jury shall be unanimous and shall be returned in open court." Md. Rule 4-327(a). When a defendant is tried for two or more counts, "the jury may return a verdict with respect to a count as to which it has agreed, and any count as to which the jury cannot agree may be tried again." Md. Rule 4-327(d); *see also Caldwell*, 164 Md. App. at 631 ("Subsection (d) of Rule 4-327 allows for a partial verdict[.]"). A party may request, or the court can on its own initiative, poll the jury "after it has returned a verdict and before it is discharged." Md. Rule 4-327(e). If the jurors do not agree unanimously on the verdict, the court can direct the jury to deliberate further, or it can discharge the jury "if satisfied that a unanimous verdict cannot be reached." *Id.*

For a verdict to be final, "the jury must intentionally render a unanimous verdict." *Caldwell*, 164 Md. App. at 631. Unanimity encompasses two types of completeness: numerical, *i.e.* the agreement of all 12 jurors, and "also completeness of assent, *i.e.* each juror making his or her decision freely and voluntarily[.]" *Id.* at 635. A verdict that is not unanimous, or that is conditional, "is defective and will not stand." *Id*. But when "the meaning of the verdict is so unmistakable, mere inartificiality in its form will not be sufficient to defeat justice by nullification of a verdict which plainly declares the intent of the jury[.]" *Mayne v. State*, 45 Md. App. 483, 487 (1980) (citation omitted).

When the jury can agree to only some counts, Rule 4-327 "points the way for a trial judge to [seek] a reasonable alternative to the declaration of a mistrial." *State v. Fennell*,

431 Md. 500, 523 (2013). One such "reasonable alternative is an inquiry into the jury's status and intention to render a verdict" on those counts on which it agrees. *Id.* The decision to conduct a partial verdict inquiry falls within the sound discretion of the trial court. *Id.* The judge's inquiry "must neither pressure the jury to reconsider what it had actually decided nor force the jury to turn a tentative decision into a final one." *Id.* at 523-24 (citation omitted). Otherwise, the court risks "transforming a provisional decision into a final verdict." *Id.* at 524 (citation omitted). When the totality of circumstances indicate that the verdict is tentative and not final, "the court must not accept the verdict." *Caldwell*, 164 Md. App. at 643. Any doubt as to the finality of the verdict "must be resolved in favor of the defendant's constitutional right to a verdict by unanimous consent." *Id.* When there is no doubt, however, that "jurors, while deliberating on their own timetable, carved out and finally decided certain counts[,]" the court may accept the partial verdict. *Id.* at 644.

**B. Preservation**

We first address the State's contention that Bryant failed to preserve his argument for appeal. This Court will "[o]rdinarily . . . not decide any [] issue unless it plainly appears by the record to have been raised in or decided by the trial court[.]" Md. Rule 8-131(a). Issues related to trial court rulings or orders are sufficiently preserved for appellate review if a party, "at the time the ruling or order is made[,]" either lodges an objection to the court's action or informs the court of his or her desired course of action. Md. Rule 4-323(c). When a party "acquiesces in a court's ruling, there is no basis for appeal from that ruling." *Simms*, 240 Md. App. at 617. Indeed, "the doctrine of acquiescence—or waiver—is that a voluntary act of a party which is inconsistent with the assignment of errors on

appeal normally precludes that party from obtaining appellate review." *Id.* at 617-18 (citation and brackets omitted).

We think this Court's recent decision in *Simms*, 240 Md. App. 606, sheds light on the issue. In short, Simms was tried for attempted first-degree murder and other counts related to the shooting of his children's mother at a bus stop. *Id.* at 611-13. At trial, the jury sent the court two notes stating its inability to come to consensus on any charge. *Id.* at 613, 616. The court indicated that it would not declare a mistrial and would not accept a partial verdict. *Id.* at 618. In each instance, the court returned a note, with agreement of counsel, instructing the jury to keep deliberating. *Id.* at 615, 617. Shortly thereafter, the jury informed the court that it had reached a verdict. *Id.* at 617. The jury acquitted Simms of the murder charges, but convicted him of assault and various other charges. *Id.* at 611.

Simms appealed, arguing that the court erred by not considering a partial verdict. *Id.* at 613. The State countered that Simms "waived this issue." *Id.* at 617. We agreed with the State. *Id.* at 619. We noted that just after the jury submitted the first note the court stated: "I'm not taking a partial verdict." *Id.* at 618. Although defense counsel had suggested "talk[ing] about taking a partial verdict," counsel and the court moved on "without significant discussion" on the matter and agreed to instruct the jury to continue deliberating. *Id.* The parties and the court never again discussed the possibility of a partial verdict. *Id.* at 618-19. We concluded "that defense counsel acquiesced to the court's decision" to give a modified *Allen* instruction. *Id.* at 619.

We are persuaded that Bryant's contention is likewise unpreserved. Defense counsel stated initially, "I do not want a partial verdict." Then, like in *Simms*, the colloquy

among counsel and the court headed in a different direction. Specifically, the court below stated, "I don't understand what the downside is to taking a partial verdict[,]" to which defense counsel responded, "[t]here isn't." Then, after the jury returned the partial verdict, defense counsel objected based on legal inconsistency: "the Defense requests a mistrial[;] I believe it to be a legally inconsistent verdict." Thus, after first objecting to a partial verdict, defense counsel acquiesced to a partial verdict and later challenged the verdict as inconsistent after the jury returned. As the State points out, Bryant *never* argued, as he does on appeal, that the jury's verdict lacked unanimity. Indeed, the record does not indicate that Bryant ever raised the unanimity issue for the court's consideration. *See Conyers v. State*, 354 Md. 132, 201 (1999) (stating that preservation rules "have the salutary purpose of allowing all issues to be resolved in the first instance by the trial court").

If defense counsel were concerned about unanimity and prematurity, surely he would have requested a poll, as counsel did in *Caldwell.* 164 Md. App. at 628. Here, the court offered a poll, and defense counsel declined. The hearkening, also un-objected-to, thus marked the rendition of the verdict. *See Smith v. State*, 299 Md. 158, 166 (1984) (explaining that a defendant is entitled to a poll "as a matter of right," but if the poll is not requested, a hearkening is instead necessary "for the proper rendition of a verdict" (citation omitted)). We conclude, therefore, that defense counsel acquiesced to the court's decision to accept a partial verdict and failed to preserve any challenge to the conviction on the ground that it was tentative and not unanimous.

Even if the issue was preserved, we are unable to conclude that the circuit court erred or abused its discretion because Bryant's claim fails on the merits. On this point we

distinguish the instant case from *Caldwell*. 164 Md. App. 612. Contrary to Bryant's position on appeal, a review of the record reveals no outside pressures—hurricanes, vacations, or otherwise—or pressure from the court for the jurors to reach a premature resolution. *Cf. Caldwell*, 164 Md. App. at 643 ("The emergency closure of the courthouse [on Friday], compounded by one juror's inability to return for deliberations the following Monday, disrupted and derailed the deliberations midstream, bringing them to an abrupt conclusion."). In this case, the jury's deliberations were not interrupted; rather, the jury inquired with the court what to do if jurors were in agreement on one count but at an impasse on other counts. The court then took proper steps to ensure both that unanimity existed on one count and the jury was at an impasse on the others. With the parties' agreement, the court asked, "[w]ithout naming which counts, [h]ave you reached a unanimous verdict as to any of the counts?" The jury responded, "[y]es." Again with defense counsel's agreement, the court inquired as to whether further deliberation the following Monday would help. The jury wrote back, "[n]o." And finally, the court—with defense counsel's agreement—asked the jury if it was at an impasse, to which the jury responded, "[y]es, at an impasse." After deciding to take a partial verdict, the court brought the jury back and the clerk asked, "have your reached a verdict?" To which the jurors replied, "[y]es." The clerk then hearkened the jury, and all jurors responded "I do." Accordingly, we see no indication that the court's inquiries "transform[ed] a provisional decision into a final verdict." *Fennell*, 431 Md. at 524. Rather, quite the opposite; the intent of the jury could not be more clear[.]" *Mayne*, 45 Md. App. at 487.

## II.

## Cross-Examination

According to Bryant, the trial court abused its discretion by prohibiting the scope of defense counsel's cross-examination of Davis on three topics: (1) Davis's reasons for implicating Bryant—*i.e.*, that he was married and had a family to which he desired to return; (2) Davis's character for veracity by asking him for what charges was he incarcerated; and (3) Davis's knowledge of Bryant's personal history, including his lead paint poisoning and settlement.

The State responds that the trial court sustained all three objections properly because defense counsel's "questions delved into collateral matters and lacked probative value." The State characterizes the "dispositive issue" as "whether the court's cross-examination limitations inhibited the ability of the defendant to receive a fair trial." Further, the "marginally relevant" nature of the questions meant that "even if the trial court erred, the error was harmless."

A defendant's right to cross-examine witnesses is grounded in the confrontation clause of the Sixth Amendment of the U.S. Constitution and Article 21 of the Maryland Declaration of Rights. *Smallwood*, 320 Md. at 306. Hence a criminal defendant must be "allowed to cross examine in order to determine the reasons for acts or statements referred to on direct examination." *Id.* at 308 (citation and quotation marks omitted).

Maryland Rule 5-616 sets out the grounds upon which counsel may impeach a witness. *Cagle v. State*, 235 Md. App. 593, 609 (2018). The rule states, in relevant part, that counsel may ask:

> questions that are directed at[] [p]roving . . . that the witness has made statements that are inconsistent with the witness's present testimony; . . . [p]roving that an opinion expressed by the witness is not held by the witness or is otherwise not worthy of belief; [p]roving that the witness is biased, prejudiced, interested in the outcome of the proceeding, or has a motive to testify falsely; [and] proving the character of the witness for untruthfulness by . . . establishing prior convictions[.]"

Md. Rule 5-616(a).

The cross-examination of a witness is "within the sound discretion of the trial court." *Pantazes v. State*, 376 Md. 661, 681 (2003). Absent clear abuse, we will not disturb the exercise of the trial court's broad discretion. *Cagle*, 235 Md. at 609. Although the trial court's discretion is broad, it is "not unlimited, and a cross-examiner must be given wide latitude in attempting to establish a witness's bias or motivation to testify falsely." *Martin v. State*, 364 Md. 692, 698 (2001) (internal citation omitted). Consequently, when ruling on cross-examination, trial courts must weigh a defendant's "wide latitude to cross examine a witness as to bias or prejudices," against a potential descent into "collateral matters which would obscure the trial issues and lead to the factfinder's confusion." *Smallwood*, 320 Md. at 307-08 (internal citations omitted). A defendant may, however, cross-examine on certain collateral matters "to impeach, diminish, or impair the credit of a witness[.]" *State v. Cox*, 298 Md. 173, 184 (1983). "When determining whether a particular item of circumstantial 'bias' evidence should be excluded on the ground that it is unfairly prejudicial and/or confusing, the trial court is entitled to consider whether the witness's self[-]interest can be established by other items of evidence." *Calloway v. State*, 414 Md. 616, 638 (2010). Not all errors so impede the defendant's right to receive a fair trial. Ultimately, "[t]he 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." *Martin*, 364 Md. at 698.

Bryant challenges three instances of the trial court's curtailment of his cross-examination of Davis.

### A. Motivation to Return Home

The court circumscribed the following line of questions:

> [DEFENSE COUNSEL]: For those seven years were you mainly in the community? Meaning were you not in jail?
>
> [DAVIS]: Yes sir.
>
> [DEFENSE COUNSEL]: And during those seven years. Did you get married?
>
> [DAVIS]: Yes, sir.
>
> [DEFENSE COUNSEL]: Do you have any children?
>
> [THE STATE]: Objection.
>
> THE COURT: Sustained.
>
> [DEFENSE COUNSEL]: Your Honor, if we may approach?
>
> THE COURT: Yeah.
>
> BENCH CONFERENCE
>
> (Whereupon. Counsel and Defendant approached the bench at 12:03 p.m. and the following ensued.)
>
> THE COURT: Who cares?
>
> [DEFENSE COUNSEL]: Because I'm getting to the fact of why he's willing to lie to get home because he has a wife. He has kids. He has all these things waiting for him. I mean it's certainly relevant.
>
> * * *

> THE COURT: What are you going to ask?
>
> [DEFENSE COUNSEL]: Is it true that when you come home, you'll have a wife and kids waiting for you? I think the reason he needs to get home so bad is certainly relevant to why he would say something.
>
> THE COURT: Anybody wants to get home. What difference does it make whether you got a wife there. He's got a wife and a kid. You don't have to [get] into that. Let's go. Come on.

Our opinion in *Hall v. State*, 233 Md. App. 118 (2017), helps explain why the trial court acted within its discretion. In *Hall*, Clark and Ray claimed that they were robbed at gunpoint by several assailants, and in a struggle for an assailant's gun, one assailant was shot and killed. *Id.* at 122. The alleged assailants were apprehended and charged with numerous offenses related to the robbery. *Id.* at 121. They, however, provided another story to police: the incident was instead a drug deal gone bad. *Id.* At trial, the court prevented the defense from cross-examining Clark about his prior manslaughter conviction. *Id.* at 132.

The defendants were convicted and appealed to this Court. *Id.* at 121. We reversed, explaining that the defense's impeachment strategy: it "sought to argue that besides the obvious reason of not wanting the police to know that Mr. Clark was a drug dealer, Mr. Clark and Ms. Ray fabricated a story because Mr. Clark's prior manslaughter conviction prohibited him from possessing a gun." *Id.* at 135. To show the couple's "motivation to testify falsely," the defense needed to cross-examine on the topic of the conviction. *Id.* Physical evidence from the scene also supported the defense's theory: "a substantial amount of drugs and drug paraphernalia were found in the apartment," as well as a gun,

which Clark claimed he took from an assailant. *Id.* In short, we concluded, "there was a solid factual foundation for the defense's inquiry into Ms. Ray's and Mr. Clark's bias, and the inquiry was not outweighed by the danger of confusion to the jury or unfair prejudice to the State." *Id.* (citation omitted). *See also Wagner v. State*, 213 Md. App. 419, 469 (2013) (rejecting the appellant's claim that the court's circumscription of a witness's cross-examination on the terms of her plea agreement was reversible error, because the witness's motive to lie was "extensively explored" and her "eligibility for parole was a collateral issue that could have" confused the jury).

In this case, by contrast, we do not see "a solid factual foundation for the defense's inquiry" into Bryant's home life. *See Hall*, 233 Md. App. at 135. Moreover, "the trial court [wa]s entitled to consider whether the witness's self[-]interest c[ould] be established" another way. *Calloway*, 414 Md. at 638. Davis testified during direct examination, and during cross, that he was testifying pursuant to a plea deal. Thus, his self-interest was duly established. We are unpersuaded that the trial court's "limitation inhibited the ability of [Bryant] to receive a fair trial." *Martin*, 364 Md. at 698. Discerning no abuse in the trial court's exercise of discretion in sustaining the objection, we affirm its ruling.

**B. Arrest History**

Bryant alleges the trial court "improperly restricted the scope of questions about Davis's arrest history" when it sustained the State's objection to defense counsel asking David to "tell the ladies and gentlemen of the jury since you've already pled guilty what happened the day that you got arrested?"

The test for admissibility, in the context of impeachment by proving prior convictions under Rule 5-616(a), "is whether the question asked is directed at eliciting from a prosecution witness the fact that he may be under pressure to testify favorably for the State, as when he is under formal accusation, and/or awaiting trial." *Brown v. State*, 74 Md. App. 414, 419-20 (1988) (citation omitted). To clarify, a witness's entire criminal record is not relevant by virtue of testifying against the defendant; "[o]nly where there is some present possibility of coercion should such cross-examination be allowed." *Id.* (citation omitted). Indeed, the purpose of the right to cross-examine on this subject is to provide the defense opportunity to "probe into whether the witness is acting under a hope or belief of leniency or reward." *Id.* at 421 (citation omitted).

The questions with which Bryant takes issue—concerning the events of the day of Davis's arrest—do not "probe into whether the witness is acting under a hope or belief of leniency or reward," *id.*, and Bryant has not argued that questioning on this collateral matter would "impeach, diminish, or impair the credit of a witness[.]" *Cox*, 298 Md. at 184. In this case, the Davis explained the details of his cooperation agreement during direct examination. In fact, as the State points out, Davis identified all fourteen gun and drug distribution charges that were pending against him, as well as his guilty plea and the maximum sentences that he could receive. Moreover, trial court permitted Bryant to question Davis on the issue on leniency:

> [DEFENSE COUNSEL]: And you haven't been sentenced because the federal government is waiting for your cooperation in this case; is that correct?
>
> [DAVIS]: Yes, sir.

[DEFENSE COUNSEL]: So they don't sentence you until you do what you're supposed to do?

[DAVIS]: Yes, sir.

Under the circumstances of this case, we are unconvinced that the "limitation inhibited the ability of [Bryant] to receive a fair trial." *See Martin*, 364 Md. at 698. Accordingly, we discern no abuse of discretion in the trial court's sustaining the State's objection.

### C. Familiarity with Bryant

Bryant argues that the court wrongfully sustained the State's objection to the following line of questioning about Davis's jailhouse conversations with Bryant:

[DEFENSE COUNSEL]: So Mr. Bryant talked a lot about his life; is that correct?

[DAVIS]: Yes, sir.

[DEFENSE COUNSEL]: He told you about his lead paint poisoning?

[THE STATE]: Objection.

THE COURT: Sustained.

[DEFENSE COUNSEL]: Did [] Bryant ever tell you about a settlement he received?

[THE STATE]: Objection.

THE COURT: [] Counsel, come on up.

BENCH CONFERENCE

(Whereupon, Counsel and the Defendant approached the bench . . . and the following ensued:)

> [DEFENSE COUNSEL]: He's saying how he knows this—my client so well. I'm asking basic things about my client to see whether or not he knows it.
>
> THE COURT: Come on, [Defense Counsel].
>
> (Whereupon, Counsel and [D]efendant returned to trial tables . . . and the following ensued in open court, as follows:)
>
> THE COURT: Sustained.

Bryant argues that those conversations were relevant for probing the depth of the relationship between Bryant and Davis and that he had the right to elicit the entire conversation that the State had brought out during its direct examination. We disagree with Bryant's take.

During direct examination, the State elicited testimony that Bryant and Davis had shared a cell for a few weeks and that they spent significant time together in that cell. That testimony did not constitute part of a "conversation," whereby the "relevant remainder or whole of" that direct examination included the entire universe of topics that the cellmates discussed. *Smallwood*, 320 Md. at 307. The trial judge had broad discretion to establish "reasonable limits on [] cross-examination based on concerns about . . . confusion of the issues[,]" *id.*, and we see no abuse of discretion by the court in circumscribing testimony about Bryant's lead paint injuries and settlement, which were neither brought up during direct examination nor at issue in the case.

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