Circuit Court for Baltimore City
Case No.: 117081006

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 220

September Term, 2021

MARQUIS VAZQUEZ

v.

STATE OF MARYLAND

Beachley,
Shaw,
Kenney, James A.
(Senior Judge, Specially Assigned),

JJ.

Opinion by Shaw, J.

Filed: January 19, 2022

*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.

Appellant, Marquis Vazquez, was convicted by a jury sitting in the Circuit Court for Baltimore City of illegal possession of a regulated firearm after being convicted of a disqualifying crime, and wearing, carrying, and transporting a handgun on his person. Appellant was sentenced on the first offense to fifteen years' imprisonment, all but eight years suspended, the first five years without the possibility of parole, and a concurrent three years on the second offense, to be followed by five years' supervised probation. Appellant timely appealed and asks us to consider the following question:

> Did the trial court err in limiting defense counsel's cross-examination of Officer Mantone?

For the following reasons, we affirm.

BACKGROUND

On February 28, 2017, Officer Mark Gurbelski and Officer Jerald Mantone were working with members of the Southwest District Operations Unit of the Baltimore City Police Department, conducting surveillance for drug activity from an undisclosed covert location near the 3100 block of Baker Street. Both officers were called as witnesses during appellant's trial. Officer Mantone testified that he was familiar with the 3100 block of Baker Street, which was known for drug activity, and that he had made numerous arrests in the area. He confirmed that, on February 28, 2017, at around 7:00 p.m., he was conducting surveillance of this area from a covert location, along with Officer Gurbelski. According to him, Officer Gurbelski first directed his attention to appellant, as appellant was walking towards the south side of the street. Officer Gurbelski corroborated this

testimony, also saying that appellant was standing with a group of four to five males, near the middle of the block, on the north side of the street.[1]

At some point, Officer Gurbelski saw appellant retrieve an item that he "knew to be a handgun" from the wheel well of a vehicle parked on the north side of the block. Testifying that he saw the handle of the handgun and knew it was a handgun "right away," Officer Gurbelski stated that appellant placed the handgun into his front right side hoodie pocket and walked to the south side of the street. Appellant's demeanor was "hyper-vigilant" and "[h]e was looking up and down the street constantly from side to side. Checking his surroundings." Officer Mantone provided similar testimony saying he clearly saw the handgun, that it was a silver and black semiautomatic firearm, and the area was well lit. He stated that his vision was unobscured by any objects, and he could see appellant's face, which was about fifteen to twenty feet away from his covert location. He noted that no one else approached the truck during this time and "maybe 10 seconds" elapsed from the time he first saw appellant to the time appellant secreted the gun.

According to Officer Gurbelski, after walking to the south side of the street, appellant "hastily" approached a parked Xfinity commercial Ford F450 truck, withdrew the handgun from his front pocket, and placed it in the front wheel well of the passenger side of the truck. He then took a step back, retrieved the gun from this location and moved it to the rear wheel well. Appellant walked "at a normal speed" back across the street towards the group of unidentified males that remained on the north side of the street.

[1] Neither Officer Gurbelski nor Officer Mantone witnessed any illegal narcotics activity during the entirety of this incident.

Officer Gurbelski testified that, when appellant placed the gun in the rear wheel well, he was only about ten to fifteen feet from his covert location, and there was nothing obstructing his view of the scene. He stated, "I carry a gun every day. I have seen it and immediately knew it was a gun. It was so close and it was right in front of me." He identified the gun as a silver and black semi-automatic handgun.

Based on these observations, Officer Gurbelski's partner, Officer Mantone, radioed the arrest team, comprised of Officer Hovhannes Simonyan and Officer Gary Schaekel, and informed them of their observations. Within approximately four to five minutes, the team drove into the area in an unmarked police vehicle. At that point, appellant walked away from the group of males. Officer Simonyan exited the passenger side of the police vehicle and began speaking with appellant. Almost immediately, appellant began to run from the area. Officer Simonyan chased appellant, on foot, with Officer Schaekel following in his vehicle.

Around the same time, Officer Gurbelski went, at Officer Mantone's instruction, to the Xfinity truck and retrieved the handgun from the inside of the rear wheel well.[2] Officer Gurbelski confirmed that he did not see anyone else in the area of the wheel well from the time appellant placed the gun there until the time he retrieved it. The handgun, an operable Smith and Wesson Model 645 .45 caliber semiautomatic, was loaded with six rounds of .45 caliber ammunition, with an additional round in the chamber. Officer Gurbelski noted

[2] Portions of the radio communications between the officers were admitted and played for the jury during trial.

that the gun was cocked, the safety was off, it was ready to fire and he rendered it safe. The handgun and ammunition were admitted into evidence at trial.

After retrieving the handgun and securing it, Officer Gurbelski joined the rest of the team, several blocks from the original location, as they were chasing appellant. When he caught up to them, Officer Gurbelski saw appellant run across Morris and Franklintown Roads, near Hilton Parkway, with Officer Simonyan in pursuit. Appellant jumped over a guardrail, then entered the Gwynns Falls, a waist-deep river. Around this time, Officer Mantone activated his body worn camera. He explained that the camera footage includes video from the thirty seconds prior to activation. Two videos taken from that recording were admitted into evidence and played for the jury. Appellant was eventually detained by Officer Simonyan on the south bank of the Gwynns Falls. Officer Mantone took possession of the handgun Officer Gurbelski retrieved from the wheel well of the Xfinity truck. Officer Mantone later testified this was the same handgun he saw in appellant's hands on the night in question. The gun was submitted to evidence control, and Officer Mantone testified, generally, to the chain of custody of the handgun, from the time he received it to the time of trial.

Part of the chase was also recorded on Officer Gurbelski's body worn camera that he activated after he left the covert location. The video was admitted into evidence and

played for the jury.[3] Officer Gurbelski identified appellant as the person depicted in the video and the same person he saw in possession of the handgun earlier.

On cross-examination, Officer Mantone agreed that he and Officer Gurbelski were wearing body worn cameras when they first observed appellant from their covert location. He agreed that they did not turn on their cameras at that time and maintained that although not doing so would protect their covert location, it also could limit the amount of evidence that might be presented with respect to the case. He also confirmed that he used his department-issued cell phone that evening to contact the other officers because they were not responding to the radio calls over the recorded dispatch radio line.

Appellant testified on his own behalf at trial. He denied that he possessed a handgun on the night in question. He conceded that he was not allowed to possess a handgun and he admitted that he had a prior conviction for theft from Baltimore County.

We shall include additional detail in the following discussion.

DISCUSSION

Appellant argues the trial court erred by limiting his cross-examination of Officer Mantone as to why Officer Simonyan was not being called as a State's witness. Recognizing that defense counsel needed to establish a factual foundation for this proposed cross-examination, appellant argues that counsel "was prevented from doing so" because

[3] Officer Gurbelski testified that he did not activate that camera while he was secreted in his covert location earlier, as it emits a bright light during operation and would have revealed his vantage point. Officer Mantone later explained that the light could be turned off, but that the recording would be public information and might reveal the location of the police covert location, which still was being used for ongoing surveillance of this particular block.

he was not afforded the opportunity to establish said foundation. As for the merits, appellant suggests that "testimony as to Officer Mantone and Officer Simonyan's working relationship was probative of Officer Mantone's bias." Appellant continues: "Officer Mantone's awareness of, complicity in, and perhaps involvement with Officer Simonyan's misconduct would have been probative of the nature of the officers' relationship with each other and would therefore bear on the strength of Officer Mantone's bias toward Officer Simonyan." Appellant also argues on appeal that the limitation on cross-examination deprived him of the ability to make an effective missing witness argument to the jury and that the court's error was not harmless beyond a reasonable doubt.[4]

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[4] We note that defense counsel never attempted to argue whether an adverse inference should be drawn by Officer Simonyan's absence at trial, and a missing witness instruction was not requested. *See generally*, Maryland State Bar Ass'n, *Maryland Criminal Pattern Jury Instructions-Criminal* 3:29 (2d ed. 2020). We conclude that these "missing witness" contentions are not properly before us and decline to consider them further. *See* Md. Rule 8-131(a) ("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. . . ."); *accord King v. State*, 434 Md. 472, 479 (2013).

In addition, we note that no specific allegations, much less evidence of, Officer Simonyan's alleged "misconduct" were presented in the trial court or in the appellate briefs in this case. Nor was there any specific allegations or evidence that Officer Mantone was complicit in or aware of that alleged misconduct. Indeed, the only instance we could find, in this record, was defense counsel's assertion that Officer Simonyan had "professional issues", and appellate counsel's representation that Simonyan was subject to an internal affairs investigation of some sort.

That being said, this Court is aware that Officer Simonyan was present during an incident in January 2017, captured on a viral video from a body worn camera, where it was alleged that narcotics were mishandled by another Baltimore City police officer in an entirely unrelated case. We are not aware, however, of the results of any investigation with respect to Officer Simonyan. *See* Edward Ericson Jr., *BPD Pledges Investigation In Response to Bodycam Video Allegedly Showing Police Planting Evidence*, Balt. Sun (July

(continued)

The State responds that appellant's arguments are not properly preserved for our review because defense counsel did not make a formal proffer of either the contents or the relevancy of the proposed cross-examination of Officer Mantone. The State argues that appellant failed to establish a factual foundation for the cross-examination as there was no evidence that Officer Mantone was biased based on the alleged integrity issues of Officer Simonyan. The State also disputes appellant's claim that he was not afforded the opportunity to make a foundation and asserts that the trial court permitted counsel to present his position during the bench conference. As for the merits, the State asserts that there was nothing in this record establishing that "Officer Simonyan's alleged integrity issues could have somehow revealed a bias in Officer Mantone or attacked his credibility as a witness" and that appellant's arguments amount to "hypothetical conjecture based on a record completely devoid of factual support for his position." The State also asserts that any error was harmless given the cumulative evidence that appellant was seen by two officers placing the handgun in the wheel well of the Xfinity truck.

Appellant replies that his argument is preserved for appellate review because, citing *Devincentz v. State*, 460 Md. 518, 535 (2018), "a proffer is not an absolute requirement for

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19, 2017), http://www.baltimoresun.com/citypaper/bcpnews-baltimore-police-video-allegedly-plant-evidence-20170719-story.html; Kevin Rector, Tim Prudente, & Jessica Anderson, *Prosecutors Say a Third Body-camera Video Shows 'Questionable Activity' by Police*, Drop Dozens More Cases, Capitol Gazette (Aug. 21, 2017), https://www.capitalgazette.com/bs-md-ci-third-video-investigation-20170821-story.html; Dominique Mosbergen, *Baltimore Prosecutor Throws Out 34 Cases After Officer Caught Allegedly Planting Drugs*, Huff Post (July 30, 2017), https://www.huffpost.com/entry/baltimore-cases-dismissed-police-bodycam-drugs_n_597de1eee4b02a4ebb75f560.

preservation." Appellant asserts that the context was clear by his preliminary questions of Officer Mantone and that the court erred because it "was only concerned with the basis of Officer Mantone's knowledge" of the alleged misconduct by Officer Simonyan. Appellant maintains that the court limited his ability to present a factual foundation for the proposed impeachment, and "[w]hether or not there was a bias to be drawn from Officer Mantone's role in Officer Simonyan's misconduct, and the nature and strength of that bias, was a matter for the jury to decide." Appellant concludes that the error was not harmless because had he been able to impeach Officer Mantone along these lines, the cross-examination "may have tainted the jury's impression of Officer Mantone, called into question any corroborating testimony, and perhaps compromised the entire investigation in the jury's mind."

"The Sixth Amendment to the United States Constitution, made applicable to the States through the Fourteenth Amendment . . . provides, in pertinent part, that, '[i]n all criminal prosecutions, the accused shall enjoy the right . . . to be confronted with the witnesses against him.'" *Langley v. State*, 421 Md. 560, 567 (2011) (quoting U.S. CONST. amend. VI). "'The right of confrontation includes the opportunity to cross-examine witnesses about matters relating to their biases, interests, or motives to testify falsely.'" *Peterson v. State*, 444 Md. 105, 122 (2015) (quoting *Martinez v. State*, 416 Md. 418, 428 (2010)); *accord* Md. Rule 5-616(a)(4). "To comply with the Confrontation Clause, a trial court must allow a defendant a 'threshold level of inquiry' that 'expose[s] to the jury the facts from which jurors, as the sole triers of fact and credibility, could appropriately draw inferences relating to the reliability of the witnesses.'" *Peterson*, 444 Md. at 122 (quoting

Martinez, 416 Md. at 428, in turn quoting *Davis v. Alaska*, 415 U.S. 308, 318 (1974)); *accord Manchame-Guerra v. State*, 457 Md. 300, 309-10 (2018).

A criminal defendant's constitutional right to cross-examination, however, is not boundless. *Pantazes v. State*, 376 Md. 661, 680 (2003). "[T]rial courts may limit the scope of cross-examination 'when necessary for witness safety or to prevent harassment, prejudice, confusion of the issues, and inquiry that is repetitive or only marginally relevant.'" *Peterson*, 444 Md. at 122-23 (quoting *Martinez*, 416 Md. at 428); *see also* Md. Rule 5-611 (recognizing that the trial court is to "exercise reasonable control over the mode and order of interrogating witnesses and presenting evidence so as to (1) make the interrogation and presentation effective for the ascertainment of the truth, (2) avoid needless consumption of time, and (3) protect witnesses from harassment or undue embarrassment"). "Therefore, although the defendant has 'wide latitude ... the questioning must not be allowed to stray into collateral matters which would obscure the trial issues and lead to the factfinder's confusion.'" *Peterson*, 444 Md. at 123 (quoting *Smallwood v. State*, 320 Md. 300, 307-08 (1990)).

We review the court's determination "as to whether particular questions are repetitive, probative, harassing, confusing, or the like" for an abuse of discretion. *Manchame-Guerra*, 457 Md. at 311. As the Court of Appeals has explained, we will not disturb the exercise of that discretion in the absence of clear abuse:

> [O]ur sole function on appellate review is to determine whether the trial judge-imposed limitations upon cross examination that inhibited the ability of the defendant to receive a fair trial. . . . Consistent with that discretion, we note, however, that the trial judge, and not this Court, is in the best position

> to determine whether the introduction of certain impeachment evidence would enmesh the trial in confusing or collateral issues.

Merzbacher v. State, 346 Md. 391, 413-14 (1997). "'Abuse of discretion' . . . has been said to occur 'where no reasonable person would take the view adopted by the [trial] court,' or when the court acts 'without reference to any guiding rules or principles.'" *Nash v. State*, 439 Md. 53, 67 (2014) (quoting *North v. North*, 102 Md. App. 1, 13 (1994)), *cert. denied*, 574 U.S. 911 (2014).

Here, during Officer Mantone's direct examination, as video from his body worn camera was being played for the jury, the officer was asked how he knew that Officer Simonyan was standing across the Gwynns Falls creek. Officer Mantone testifed that "I've worked with him for a while. I know his stature. I knew that was him." He described Officer Simonyan as "shorter, skinny, a full head of hair" and that "I know Officer Simonyan very well." He had worked with him for a year on patrol by the time of trial.

Thereafter, during cross-examination, Officer Mantone testified that he had been in the Southwest District for approximately three years by the time of trial and that he was "very familiar" with Officer Simonyan and that he had worked with him before. Defense counsel then asked him, "Do you know why he is no longer being called for trials?" The State objected and the following ensued:

> [PROSECUTOR]: Your Honor, first of all, I am going to object and ask that the question be struck and that the jury be informed that the question be struck. There is no probative value to this question.
>
> Second, there is no way that the officer answers and the answer isn't hearsay. Why would he know why another officer isn't coming into court? I don't understand what purpose it serves why the State didn't call a witness.

And, Your Honor, I will say for the record that there is a disclosure issue with regards to this officer, and I anticipate that that is the information that is attempted to be elicited from this officer. I don't understand how the officer would have any personal knowledge of that, and I don't understand what purpose is served. The witness is not being called. So his credibility is not an issue.

THE COURT: Was he a witness in any internal affairs investigation hearing or any sort of investigation regarding his fellow officer?

[PROSECUTOR]: To my knowledge? No.

THE COURT: Okay. Was he present at any hearing? Does he have firsthand knowledge?

[PROSECUTOR]: I am going to say from my recollection he wasn't there that day, but I don't --

THE COURT: Okay.

[PROSECUTOR]: I may have asked him about this six months ago.

THE COURT: [*Defense Counsel*]?

[DEFENSE COUNSEL]: The State in this case made the disclosure, and then they specifically said we are not calling him because of those issues. So they are specifically not calling the witness because they have professional issues. That is their prerogative. Absolutely. I think --

THE COURT: He could be asked what if any personal knowledge does he have with regard to any issues as to his fellow officer's integrity. If he has any?

[DEFENSE COUNSEL]: But if he --

[PROSECUTOR]: Well, my concern is that this is basically getting into the credibility of a non-witness, and it serves no real purpose.

THE COURT: You can't impeach a witness through another witness.

[DEFENSE COUNSEL]: Well --

[PROSECUTOR]: You can't impeach someone who is not here.

THE COURT: The objection is sustained. Gentlemen, step back. I am going to instruct the jury. Thank you.

Yes? Sorry. Do you need me?

(Asides with the Judge and Clerk.)

(Whereupon, Counsel and the Defendant returned to the trial table, and the following occurred in open court.)

THE COURT: Gentlemen, thank you for the argument.

The jury shall disregard the prior question.

Please, move on.

(emphasis added).

Thereafter, cross-examination resumed, as follows:

[DEFENSE COUNSEL]: Do you have any personal knowledge, personal as an eyewitness, of any integrity issues that Officer Simonyan has?

[PROSECUTOR]: Objection. Move to strike.

THE COURT: Sustained. Motion granted. The parties [sic] shall disregard the question.

[DEFENSE COUNSEL]: Okay. Moving on.

THE COURT: Thank you.[5]

"Where evidence is excluded, a proffer of substance and relevance must be made in order to preserve the issue for appeal." *Pickett v. State*, 222 Md. App. 322, 345 (2015)

[5] In addition, during appellant's subsequent cross-examination, appellant, himself, questioned why Officer Simonyan was not present in court. Defense counsel did not offer any response to the State's objection or to its motion to strike. The State's objection was sustained, and the court instructed the jury to "disregard the non-elicited testimony and response of this witness with regard to a mentioned police officer and his or her presence here today… You shall disregard that."

(citation omitted); *see also* Md. Rule 5-103(a)(2) (providing the standards for when a proffer is required). The proffer need not be extremely specific, but it must, at a minimum, be sufficient to show that cross-examination will elicit information "nominally relevant" to the issues at trial. *Grandison v. State*, 341 Md. 175, 208 (1995); *see also Peterson*, 444 Md. at 125 ("While counsel need not - and may not be able to - detail the evidence expected to be elicited on cross-examination, when challenged, counsel must be able to describe the relevance of, and factual foundation for, a line of questioning"). "A simple assertion that cross-examination will reveal bias is not sufficient to establish a need for that cross-examination; it is necessary to demonstrate a relevant relationship between the expected testimony on cross-examination and the nature of the issue before the court." *Grandison*, 341 Md. at 208.

There is little dispute that defense counsel did not make a proffer of substance or relevance sufficient to preserve this issue. Instead, appellant contends that he was deprived of an opportunity to do so, and that defense counsel's questions and argument clearly generated the issue. As to the latter point, it is an accurate statement of law that, even in the absence of a formal proffer, "an issue can still be preserved for appeal if the questions eliciting the testimony clearly generate the issue[.]" *Grandison*, 341 Md. at 207 n.19; *see also Devincentz v. State*, 460 Md. 518, 535 (2018) ("But a proffer is not an absolute requirement for preservation"); *Jorgensen v. State*, 80 Md. App. 595, 600 (1989) (observing that a proffer "is not absolutely required"). As this Court noted in *Waldron v. State*:

> Ordinarily, the thrust of the inquiry will be revealed by the question, however, although not required, it may be supplied by proffer. When no proffer is made, the questions must clearly generate the issue - what the examiner is trying to accomplish must be obvious. Thus, in the absence of a proffer, the clarity with which the issue is generated will determine whether the court's restriction of cross-examination constitutes an abuse of discretion.

62 Md. App. 686, 698 (1985).

Appellant directs our attention to *Jorgensen, supra*. There, we held that the trial court erred when it prevented defense counsel from cross-examining a sheriff's deputy about whether his motivation for swearing out an arrest warrant against the defendant stemmed from the deputy's knowledge that the defendant had contacted the deputy's supervisor and made plans to visit the Sheriff's office to file a complaint against the deputy. 80 Md. App. at 601-02. We found that, "[a]lthough defense counsel did not proffer any evidence to show the relevance of the inquiry, we hold that no such proffer was necessary. The questions to which objections were sustained, clearly generated the issue - - what the examiner was trying to accomplish was obvious." *Id.* at 601.

We are unable to conclude that the questions of Officer Mantone, or even the arguments of defense counsel, clearly generated the issue and obviated the need for a formal proffer in this case. All that is apparent in this record and from the questions themselves is that Officer Simonyan was not called by the State to testify without any suggestion as to the reason. Further, even accepting the unsupported assertions of "misconduct" and "professional issues" that may or may not have been associated with Officer Simonyan, there was no proffer that would have supported any inference that

Officer Mantone knew about those issues, was associated with them, or was complicit in them, despite appellant's speculation to the contrary on appeal.

We also are not persuaded by appellant's assertion that the trial court deprived defense counsel of an opportunity to make a proffer. Indeed, the court expressly asked defense counsel to present argument during the bench conference when it asked "[Defense Counsel]?" There is no evidence in this record that the trial court restricted defense counsel's argument or ability to make a proffer. In sum, we conclude that this issue was not properly preserved for appellate review.

Moreover, even if preserved, we agree with the State that, based on this record, the issue is meritless and harmless in any event. We recognize that "a cross-examiner must be given wide latitude in attempting to establish a witness' bias or motivation to testify falsely." *Martin v. State*, 364 Md. 692, 698 (2001) (citation omitted). In *Leeks v. State*, 110 Md. App. 543 (1996), this Court articulated a test for determining the admissibility of questions aimed at eliciting witness bias during cross-examination. We explained that such questions "should be prohibited only if (1) there is no factual foundation for such an inquiry in the presence of the jury, or (2) the probative value of such an inquiry is substantially outweighed by the danger of undue prejudice or confusion." *Id.* at 557-58. Any proffer seeking to establish the factual foundation for a question regarding bias, must "be viewed from the perspective of the witness: *i.e.*, the witness's expectation or hope of benefit in return for testimony favorable to the prosecution." *Manchame-Guerra*, 457 Md. at 318. And, as the Supreme Court has explained:

> Bias is a term used in the "common law of evidence" to describe the relationship between a party and a witness which might lead the witness to slant, unconsciously or otherwise, his testimony in favor of or against a party. Bias may be induced by a witness' like, dislike, or fear of a party, or by the witness' self-interest. Proof of bias is almost always relevant because the jury, as finder of fact and weigher of credibility, has historically been entitled to assess all evidence which might bear on the accuracy and truth of a witness' testimony. The "common law of evidence" allowed the showing of bias by extrinsic evidence, while requiring the cross-examiner to "take the answer of the witness" with respect to less favored forms of impeachment.

United States v. Abel, 469 U.S. 45, 52 (1984).

Considering this two-pronged analysis, the first prong is similar to that already set forth in this opinion concerning the failure of a formal proffer. There was no factual foundation, in this record, that Officer Mantone, the witness on the stand during trial, engaged in any misconduct. Moreover, there was no evidence that Officer Mantone was aware of non-testifying Officer Simonyan's alleged misconduct or had participated in it in any way, and it is not clear to us how Office Simonyan's "professional issues" had any bearing on Office Mantone's credibility. Although we recognize that "[t]he issue of bias is often generated by circumstantial evidence," *see Calloway v. State*, 414 Md. 616, 638 (2010) (quoting *Leeks, supra*, 110 Md. App. at 557-58), there was no evidence, direct or otherwise, that suggested that Officer Mantone was biased in favor of or against the State because of his working relationship with Officer Simonyan.

We also conclude that the probative value of any such inquiry was substantially outweighed by the danger of undue prejudice or confusion of the issues before this jury under these circumstances. Although there are no facts of Officer Simonyan's misconduct in the actual record, appellant's "myriad permutations" of the possible questions that could

have been asked, as presented in his brief in this Court, which include various hypotheticals about a "cover up culture" in the Baltimore City Police Department, tend to support our decision that the trial court properly exercised its considerable discretion in this instance. And, while we acknowledge that "[q]uestions alone can impeach," *see Calloway*, 414 Md. at 638 (quoting *Elmer v. State*, 353 Md. 1, 15 (1999)), we are not so sure that rubric gives defense counsel carte blanche to ask questions unsupported by an adequate factual foundation or that tend to confuse the issues. *See Peterson*, 444 Md. at 122-23. In any event, we are not persuaded that the trial court abused its discretion in this case.

We also conclude that any error in limiting the cross-examination of Officer Mantone was harmless beyond a reasonable doubt. *See Dionas v. State*, 436 Md. 97, 108 (2013) ("An error is harmless when a reviewing court is 'satisfied that there is no reasonable possibility that the evidence complained of - whether erroneously admitted or excluded - may have contributed to the rendition of the guilty verdict'") (quoting *Dorsey v. State*, 276 Md. 638, 659 (1976)); *see also Taylor v. State*, 473 Md. 205, 236 (2021) ("The question is whether the error could have influenced the verdict, not whether there is evidence to support the verdict"). With respect to claims that cross-examination has been erroneously restricted, the Supreme Court has explained the standard as follows:

> [T]he correct inquiry is whether, assuming that the damaging potential of the cross-examination were fully realized, a reviewing court might nonetheless say that the error was harmless beyond a reasonable doubt. Whether such an error is harmless in a particular case depends upon a host of factors, all readily accessible to reviewing courts. These factors include the importance of the witness'[s] testimony in the prosecution's case, whether the testimony was cumulative, the presence or absence of evidence corroborating or contradicting the testimony of the witness on material points, the extent of

> cross-examination otherwise permitted, and, of course, the overall strength of the prosecution's case.

Delaware v. Van Arsdall, 475 U.S. 673, 684 (1986).

Here, Officer Mantone testified that he saw appellant take a handgun out of his hoodie pocket and place it on the rear wheel well of the Xfinity commercial truck. This was cumulative to the more detailed testimony offered in the case by Officer Gurbelski. It was also Officer Gurbelski who recovered the handgun. We concur with the State's assessment that "even if a hypothetical line of questioning would have revealed a certain bias in either Officer Simonyan or Officer Mantone, it would not have changed the fact that Officer Gurbelski's testimony provided the necessary evidentiary support for the convictions." In short, we are satisfied beyond a reasonable doubt that the exclusion of the cross-examination of Officer Mantone as to why Officer Simonyan was not called as witness did not contribute to the guilty verdict in this case

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