COMMONWEALTH OF MASSACHUSETTS

APPEALS COURT

18-P-1448

COMMONWEALTH

vs.

NOAH R. MARTIN.

MEMORANDUM AND ORDER PURSUANT TO RULE 1:28

After a jury trial, the defendant was convicted of two counts of assault and battery on a disabled person, and two counts of assault and battery by means of a dangerous weapon. On appeal, he claims that his cross-examination of two witnesses was improperly restricted. We affirm.

In the course of the defendant's cross-examination of George Knowlton, an eyewitness to the defendant's crimes against the victim, the Commonwealth objected to two questions posed by the defendant. On another occasion, during the defendant's cross-examination of Linda Bleau, a supervisor at the group home who investigated the incident, the Commonwealth objected to a question posed by the defendant. On each occasion, the judge sustained the Commonwealth's objections, and sidebar discussions ensued. None of these discussions were audible in the official

recording, and they were not transcribed. Though neither the judge nor the prosecutor had any memory of the content of the sidebar discussions, in contrast, defense counsel submitted an affidavit which set out in detail the claimed offers of proof that she averred she made at sidebar. The judge effectively denied the request to reconstruct the record. To avoid any undue prejudice to the defendant, for the purposes of this appeal, we will assume that trial counsel's recollection of the events is accurate.

Criminal defendants have the constitutional right to cross-examine witnesses for bias and prejudice. See Commonwealth v. Chicas, 481 Mass. 316, 320 (2019); Mass. G. Evid. § 611(b)(2) (2019) ("reasonable cross-examination to show bias and prejudice is a matter of right which cannot be unreasonably restricted"). However, the right to cross-examine is not absolute, and it is subject to reasonable limitations. "Those limits are 'based on concerns about . . . harassment, prejudice, confusion of the issues, the witness's safety, or interrogation that is repetitive or only marginally relevant.'" Chicas, supra, quoting Commonwealth v. Johnson, 431 Mass. 535, 540 (2000). "Moreover, a judge has discretion to limit questions that involve collateral issues and questions where the connection to the evidence of bias is too speculative." Chicas, supra. We

review a judge's decisions to restrict cross-examination for an abuse of discretion. Id. at 319.

The first question, posed to Knowlton on cross-examination, was, "what caused [his] separation from Salem Hospital?" The Commonwealth objected, and at sidebar, defense counsel purportedly offered that Knowlton had been discharged from the hospital based on his "bad behavior towards patients."

The second objected-to question to Knowlton, which was interrupted, was, "did [the defendant] ever tell you prior to [the date of the incident] that [the victim] had accused you . . . ." After the objection was sustained, defense counsel offered that the defendant and Knowlton had discussed that the victim had accused Knowlton of sexually abusing the victim, and that Knowlton had responded, "here we go again."

Finally, during cross-examination of Bleau, defense counsel asked if Bleau had "ever heard of any complaints that [the victim] had raised while he had been in the group home?" After the objection was sustained to this question, defense counsel offered that she wanted to inquire if Bleau knew of Knowlton's "prior bad behavior" and whether Bleau knew if the defendant was similarly aware of it, to "confirm the foundation of Mr. Knowlton's bias."

The defendant posits that, given Knowlton's "prior bad behavior" with patients, and the defendant's claimed awareness

of that behavior, Knowlton was somehow hostile towards the defendant (given the defendant's knowledge) and as a result, Knowlton exaggerated the incident to get the defendant fired. This, however, is something far less than providing the necessary "plausible showing" of bias. See Commonwealth v. Taylor, 455 Mass. 372, 380 (2009). Claiming that Knowlton falsified his testimony because he himself had engaged in similar misconduct at a different time, and at a different facility, is simply "too tenuous" and speculative, if not illogical, to support a proper claim of bias. See Commonwealth v. Bui, 419 Mass. 392, 401 (1995). Similarly, the judge properly did not permit Knowlton to be questioned about his conversation with the defendant regarding an accusation of sexual abuse. The judge was well within his discretion to keep from the jury collateral matters of marginal relevance which posed the potential for confusion. See Johnson, 431 Mass. at 540. Furthermore, given that the question related to facts not in evidence, and the defendant's offer of proof was devoid of any proposed evidentiary source for the information at issue, the intended question could have been construed as improper impeachment by innuendo. See Commonwealth v. Knowles, 92 Mass. App. Ct. 617, 620-621 (2018); Commonwealth v. Peck, 86 Mass. App. Ct. 34, 39-40 (2014).

As to Bleau, the relevance of the challenged question becomes even more attenuated. As an initial matter, the offer of proof fails to suggest what Bleau would have testified that she knew of Knowlton's "prior bad behavior" and whether she knew the defendant was privy to the same. See Mass. G. Evid. § 103(a)(2) (2019). Even if we are to assume the existence of those two layers of knowledge, it does not provide a proper foundation for establishing Knowlton's bias as it suffers from the same infirmities as the proposed inquiry to Knowlton himself. Not permitting an inquiry of Bleau's knowledge of collateral matters too tenuous to rise to the level of a plausible showing of bias was not an abuse of discretion. See Taylor, 455 Mass. at 380.

Judgments affirmed.

By the Court (Meade, Hanlon & Kinder, JJ.[1]),

Joseph F. Stanton

Clerk

Entered: November 8, 2019.

[1] The panelists are listed in order of seniority.