

NOTICE: Summary decisions issued by the Appeals Court pursuant to M.A.C. Rule 23.0, as appearing in 97 Mass. App. Ct. 1017 (2020) (formerly known as rule 1:28, as amended by 73 Mass. App. Ct. 1001 [2009]), are primarily directed to the parties and, therefore, may not fully address the facts of the case or the panel's decisional rationale. Moreover, such decisions are not circulated to the entire court and, therefore, represent only the views of the panel that decided the case. A summary decision pursuant to rule 23.0 or rule 1:28 issued after February 25, 2008, may be cited for its persuasive value but, because of the limitations noted above, not as binding precedent. See Chace v. Curran, 71 Mass. App. Ct. 258, 260 n.4 (2008).

COMMONWEALTH OF MASSACHUSETTS

APPEALS COURT

20-P-279

COMMONWEALTH

vs.

ANDERSON MAYEM.

MEMORANDUM AND ORDER PURSUANT TO RULE 23.0

Following a jury trial, the defendant was convicted of assault and battery on a family member, pursuant to G. L. c. 265, § 13M (a). The victim was the defendant's former girlfriend, with whom he shares a child. The defendant appeals, arguing that the judge impermissibly limited his cross-examination of the victim, thereby preventing him from adequately exploring her bias against him. We affirm.

Background. On April 29, 2018, the defendant traveled to the victim's residence in Framingham to drop off his young son with the victim, pursuant to the custody agreement in force at the time. The victim had been at work, and when the victim arrived at her home she was met by the defendant, who had become enraged that the victim's new romantic partner was present in her home. The defendant, while still holding their young son,

"grabbed [the victim] by the neck and . . . pushed [the victim] against the table in the kitchen." He stated that "[that] [s]on of a bitch," referring to the victim's romantic partner, "isn't going to get close to my son."

The defendant was tried on charges of assault and battery on a household member, strangulation, and threatening to commit a crime. The Commonwealth primarily presented the testimony of the victim, who testified to what the defendant had done, and also that she had gone to the police station a couple of hours after the incident. A police officer testified that the victim had marks on her neck when she arrived, and photos of same were introduced.

Defense counsel cross-examined the victim on several potential sources of bias. He elicited testimony, among other things, that indicated that the victim and the defendant had been engaged in contentious litigation over the custody of their son, that the victim previously had taken the child to New York without permission, and that at one point, she had defied a court order to return. The victim also stated that she had brought the defendant to court due to late child support payments. After defense counsel's cross-examination had elicited these points, the judge eventually indicated that counsel should "[m]ove on" (to another topic). The details of that exchange are discussed in further detail below.

The trial judge granted the defendant's motion for required findings of not guilty on the strangulation and threatening charges. The jury returned a verdict of guilty on the assault and battery against a family member charge.

Discussion. On appeal, the defendant argues (1) that the judge prevented defense counsel from cross examining the victim regarding her knowledge of the defendant's "U-Visa" immigrant status, and (2) that the judge improperly limited defense counsel's cross-examination of the victim as to her bias against the defendant, stemming from their ongoing conflicts concerning custody and child support. "A trial judge has broad discretion to determine the proper scope of cross-examination," and we review decisions to limit the scope of cross-examination under an abuse of discretion standard of review. Commonwealth v. McGhee, 472 Mass. 405, 426 (2015). We perceive no error.

The defendant first argues that he was improperly precluded from probing the victim's knowledge of his "U-Visa" immigrant status. The defendant argues, on appeal, that he was seeking to support a theory that the victim "reported the alleged assault in an effort to get [the defendant] deported."

The defendant's argument fails, among other reasons, because it was not adequately made or preserved at trial. At trial, defense counsel attempted to ask only two questions regarding the victim's knowledge of a "U-Visa," and an objection

was sustained as to each question. The judge then called counsel to sidebar, at which defense counsel stated that he had "asked the Commonwealth if she [the victim] had applied for a U-Visa."<sup>1</sup> Counsel then argued that "[t]he fact that she's aware of what a U-Visa is goes to bias." The judge asked "[s]o, that's it? . . . that's all you're going to ask?" Defense counsel confirmed this, and also stated that he could instead ask one of the police witnesses whether the officer had "any knowledge of what a U-Visa is."

Neither defense counsel's questions nor his sidebar statements preserved the argument now being made. There was no offer of proof as to what counsel believed he would elicit, and no articulation of the argument now advanced -- that is, that the victim was motivated by a desire to have the defendant deported. "Where the materiality of the evidence is unclear, the record must disclose the cross-examiner's reason for seeking an answer to the excluded question . . . and how the answer will be beneficial to the party asking it." Commonwealth v. Caine, 366 Mass. 366, 370 n.4 (1974). Indeed, here the record indicates that the defendant asked the question for a different purpose than is now being argued -- that is, to inquire about the victim's U-Visa status, rather than the defendant's U-Visa

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<sup>1</sup> The prosecutor responded that the victim indicated to her that she had not applied for a U-Visa.

status.<sup>2</sup> At the least, given the above record we cannot say that the trial judge abused his discretion in sustaining the objections. See Caine, supra at 370 ("In failing to demonstrate on the record the particular relevance of the line of questioning sought to be pursued, the defendant is unable to carry his burden of showing abuse of discretion").

The defendant next argues that the victim had reason to fabricate her testimony due to the ongoing custody battle and other proceedings in Probate Court, and that he was not allowed to adequately explore these topics on cross-examination. The record indicates, however, that the defendant cross-examined the victim in some depth on these topics. For example, defense counsel established that the victim had family and a new boyfriend who lived in New York, that at one point the victim had taken the child to New York without permission, and that the victim had been ordered by a court to return to Massachusetts because the defendant had visitation rights. It was only after the cross-examination had proceeded along those lines for some time, that the trial judge eventually stopped the defendant from inquiring about additional instances of conflict over custody

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<sup>2</sup> Indeed, it is quite possible that defense counsel in fact was inquiring about the victim's U-Visa status, as a U-Visa is a visa issued to a person who is cooperating with a criminal prosecution. See Commonwealth v. Sealy, 467 Mass. 617, 623 n.8 (2014).

matters -- for example, the judge halted inquiry about a March 2019 text message between the victim and the defendant, which the judge noted had occurred almost "a year after the alleged incident." Even then, the judge did not make a ruling that all further inquiry would be barred, but merely indicated that defense counsel should "[m]ove on."

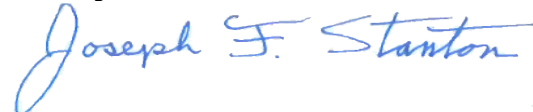
A defendant has a right to cross-examine a prosecution witness to show bias. Commonwealth v. Taylor, 455 Mass. 372, 380 (2009). Thus, "[a] judge may not restrict cross-examination of a material witness by foreclosing inquiry into a subject that could show bias or prejudice on the part of the witness." Commonwealth v. Aguiar, 400 Mass. 508, 513 (1987). However, a judge retains the discretion to limit such inquiry as long as she does not foreclose it -- particularly where further questioning on the subject would be "redundant," or "where there has been such 'extensive inquiry' that the bias issue 'has been sufficiently aired.'" Commonwealth v. Avalos, 454 Mass. 1, 7 (2009), quoting Commonwealth v. LaVelle, 414 Mass. 146, 154 (1993). Here we cannot say that the judge erred in limiting additional inquiry into custody and related topics, where the defendant had already made many important points regarding the disputes between the defendant and the victim over custody issues. This is particularly the case where the additional questions that defense counsel was prevented from asking related

to events that occurred after the incident in question, and thus had a more attenuated relevance to the conduct at issue.

Avalos, supra at 7-8.

Judgment affirmed.

By the Court (Meade,  
Englander & Grant, JJ.<sup>3</sup>),



Clerk

Entered: June 10, 2021.

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<sup>3</sup> The panelists are listed in order of seniority.