IN THE COURT OF APPEALS OF MARYLAND

NO. 117

SEPTEMBER TERM, 1994

JEFFREY D. EBB

V.

STATE OF MARYLAND

Murphy, C. J.
Eldridge
Rodowsky
Chasanow
Karwacki
Bell
Raker

JJ.

DISSENTING OPINION BY Bell, J., in which Eldridge, J. joins.

FILED: February 14, 1996

This case requires resolution of a frequently occurring conflict between a trial court's duty to control trial, including the cross-examination of witnesses, and a jury's responsibility to judge the credibility of witnesses. The Court of Special Appeals, in an unreported opinion, resolved the conflict in favor of the State. Relying on the court's right to control the cross-examination of witnesses, the Court of Special Appeals held that the trial court did not abuse its discretion when, after conducting hearings outside the presence of the jury, it excluded evidence of the witnesses' pending charges and/or probationary status, based on its having found that the witnesses had no expectation of favorable treatment because of testifying. The majority affirms the judgment of the Court of Special Appeals. Because I am of the opinion that the province of the jury as the judge of witness credibility was impermissibly invaded, I respectfully dissent.

I.

Jeffrey Damon Ebb, the petitioner, was tried in the Circuit Court for Montgomery County for murder and related charges, in connection with an attempted robbery of a barbershop, which occurred on November 28, 1992. To prove the petitioner's criminal agency, the State called, in addition to the petitioner's alleged accomplice, Stephanie Stevenson, three witnesses: Todd Timmons, Lawrence Allen, and Jerome House-Bowman. Timmons and Allen placed the murder weapon in the petitioner's possession at about the time the murders were committed.

According to Timmons, he purchased a nine millimeter handgun from the petitioner around the end of November 1992.[1] When Timmons was arrested, inter alia, for possession of the handgun, it was discovered that it was the weapon used to kill two persons in the barbershop. Allen, in addition to testifying that the petitioner had a gun that looked like the murder weapon in his possession prior to the murders, testified that, on November 28, 1992, the petitioner asked him for money with which to get out of town. House-Bowman stated that, in December 1992, the petitioner admitted his involvement in the "barbershop murder" to him, explaining that he knew where the money was kept and that was why he attempted to rob the barbershop.

Timmons, Allen and House-Bowman all had charges pending against them and were incarcerated at the time they testified. Timmons was serving a two-year, six-month sentence for possession of a controlled dangerous substance with intent to distribute,[2] as to which there was a pending motion for reconsideration. He was also awaiting trial on a violation of probation charge, for which he was "backing up" a one year sentence. Along with serving a six-month sentence for possession of narcotics, Allen had pending

---

[1]Timmons originally testified that he purchased a nine millimeter handgun from the petitioner in either September or October 1992, being unsure of the exact month. Upon further questioning, he amended his testimony to reflect that he purchased the gun in November 1992.

[2]The record does not reflect what substance Timmons possessed with intent to distribute.

handgun violation and handgun theft charges. House-Bowman was awaiting trial on a violation of probation charge, the underlying charges being two robberies with a deadly weapon.

Prior to trial, the petitioner inquired "whether or not any statements or promises or inducements had been made to the State's witness." In response, the prosecutor informed the court:

> Judge, I can tell you that we have not made any written promises of immunity or anything like that to any witness. The only one that I am aware of is the individual, Jerry Bowman-House believes that at some point he was told that somebody would speak on his behalf at a probation hearing that he has.
>
> I have talked with him about that, and I have explained to him that his testimony in this case is only based on the fact that it is the truth and it is the right thing to do. I talked with him about it and made clear to him that there is no express promise that that is going to happen.
>
> * * *
>
> But he believes that somebody told him that. So I am sure if he is asked, that is what he is going to say.

Despite the State's position that it had made no promises, the petitioner, nevertheless, sought to cross-examine Timmons, Allen, and House-Bowman about their pending charges. To support his position, the petitioner contended that it was not what the State had promised, but rather the witnesses' motive to testify that was a proper subject of inquiry. The court agreed with the petitioner stating, "it is not what the State has promised here. Sometimes the act itself is sufficient. In others, even without any promises, it

is what is in the mind of the defendant." Consequently, the court ruled that "[f]irst of all, you have to lay some threshold foundation that he does expect something." Based on that ruling, the court held hearings outside the presence of the jury, thus allowing the petitioner the opportunity to "get [the] threshold foundation that would suggest that [the witness] expects any kind of lenience."

When confronted at a hearing outside the presence of the jury, House-Bowman stated that he had been told his testimony would not assist him in obtaining a favorable outcome in his pending probation matter. Nevertheless, he acknowledged that he still hoped that testifying would help him to receive leniency. In contrast, Timmons and Allen, when questioned outside the presence of the jury, confirmed that the prosecutor made no promise to them and also denied expecting anything in return for their testimony.

As to Timmons and Allen, the court ruled that, while their convictions affecting credibility could be inquired into, the petitioner could not cross-examine these witnesses concerning pending charges. A different conclusion was reached as to House-Bowman, however. Because he admitted expecting favorable consideration, the court permitted the petitioner to cross-examine him as to the pending violation of probation charge. During the cross-examinations of Timmons and Allen, the petitioner did, in fact, bring out their prior relevant criminal convictions.

Having been convicted of two counts of felony murder,

attempted second degree murder, attempted robbery with a deadly weapon, use of a handgun in the commission of a felony, use of a handgun in the commission of a crime of violence, and three counts of assault, for which he received a total sentence of life imprisonment without parole,[3] the petitioner noted an appeal to the Court of Special Appeals. Among the challenges he raised was the trial court's restriction of his cross-examination of Timmons and Allen. The Court of Special Appeals affirmed the judgments, holding that "[i]n the balanced handling of this issue, we see no abuse of discretion on the part of [the trial court]." This Court, at the petitioner's request, granted certiorari to consider the important issue involved.

II.

The petitioner contends that the trial court's preclusion of his cross-examination of Timmons and Allen about their pending charges in the presence of the jury was error. He argues that, because it is the jury's responsibility to assess whether a witness is being truthful, cross-examining the witnesses in the jury's presence as to pending charges is permissible, without regard to what the witnesses might say. The petitioner relies, therefore, on the credibility judging function of the jury and the right of confrontation guaranteed him by the Sixth and Fourteenth Amendments

---

[3]In addition to the life sentences, the court sentenced the petitioner to concurrent life sentences totaling 80 years imprisonment.

to the United States Constitution and Article 21 of the Maryland Declaration of Rights. The confrontation right includes the right to cross-examine witnesses on matters affecting bias, interest, or motive to falsify. Brown v. State, 74 Md. App. 414, 418, 538 A.2d 317, 319 (1988); see also Davis v. Alaska, 415 U.S. 308, 316, 94 S.Ct. 1105, 1110, 39 L.Ed.2d 347 (1974).

While recognizing a defendant's constitutional right of confrontation, and more particularly to cross-examine witnesses, the State characterizes the issue in this case in terms of the trial court's discretion to control the cross-examination of witnesses. In its view, the real question is whether, in this case, the line the court drew in limiting the petitioner's cross-examination was an abuse of discretion. The State thus relies on the fact that our cases recognize that the right to cross-examine is not limitless. Noting that this Court has held that trial courts have "discretion to determine whether particular evidence is relevant to the issue of bias or motive," Bruce v. State, 328 Md. 594, 624, 616 A.2d 392, 407 (1992), cert. denied, ___ U.S. ___, 113 S.Ct. 2936, 124 L.Ed.2d 686 (1993), and that the broad latitude given a defendant to cross-examine as to bias or prejudice must be balanced against the need to prevent cross-examination from straying into collateral matters, obscuring trial issues and confusing the fact finder, the majority, adopting the State's argument, contends that the trial court properly exercised its discretion in this case. It relies on Watkins v. State, 328 Md. 95,

613 A.2d 379 (1992), which acknowledges, if not explicitly then implicitly, the tension that may exist between the judge's trial control function and the jury's credibility judging function.[4] ___, Md. ___, ___, ___ A.2d ___, ___ (1996) [Slip op. at 8-12].

In this State, in a jury trial, it is well settled that it is the function of the jury, rather than the trial judge, to judge the credibility of the witnesses, to weigh their testimony, and to resolve contested facts. Bohnert v. State, 312 Md. 266, 278-79, 539 A.2d 657, 663 (1988); Gore v. State, 309 Md. 203, 210, 214, 522 A.2d 1338, 1341, 1343 (1987); Wilson v. State, 261 Md. 551, 566, 276 A.2d 214, 221 (1971); Jacobs v. State, 238 Md. 648, 650, 210 A.2d 722, 723 (1965). See also Dykes v. State, 319 Md. 206, 224, 571 A.2d 1251, 1260 (1990). Moreover, this Court has long made clear that a jury's resolution of credibility is entitled to great

---

[4]The State also relies on Johnson v. State, 332 Md. 456, 467, 632 A.2d 152, 157 (1993). That reliance is tied to Watkins v. State, 328 Md. 95, 102-03, 613 A.2d 379, 382-83 (1992). It cites Johnson for the proposition that:

> [F]or purposes of cross-examination of a prosecution witness in order to show bias or motive, `[T]he crux of the inquiry insofar as its relevance is concerned, is the witness' state of mind. What is essential to the preservation of the right to cross-examine is that the interrogator be permitted to probe into whether the witness is acting under a hope or belief of leniency or reward,'

"or out of spite or vindictiveness. (Emphasis in original). Smallwood, 320 Md. at 309-10, 577 A.2d at 360, quoting with approval, Brown v. State, 74 Md. App. 414, 420-21, 538 A.2d 317, 320 (1988), quoting Fletcher v. State, 50 Md. App. 349, 359, 437 A.2d 901, 906 (1981)."

deference. See e.g., Dykes, 319 Md. at 222, 224, 571 A.2d at 1259-60; Bohnert, 312 Md. at 278-79, 539 A.2d at 663; Gore, 309 Md. at 210, 214, 522 A.2d at 1341, 1343; Branch v. State, 305 Md. 177, 184, 502 A.2d 496, 499 (1986); Dempsey v. State, 277 Md. 134, 150, 355 A.2d 455, 463 (1976).

Dykes is illustrative. There, the defendant offered a defense of perfect self-defense and imperfect self-defense. The trial court refused to instruct on either defense, finding the evidence presented by the defendant unpersuasive. This Court reversed. Although finding the defenses to be "difficult to accept," we held that the trial court had erred in making a preliminary determination on credibility. We explained:

> In short, the judge resolved conflicts in the evidence, choosing which parts of Dykes's statement and testimony to believe, weighed the evidence and made findings of fact. On this culling of the evidence, he found that the elements necessary to establish perfect self-defense had not been established and that the incidents of imperfect self-defense had not been met. This went far beyond his authority.
>
> * * *
>
> Of course, what evidence to believe, what weight to be given it, and what facts flow from that evidence are for the jury, not the judge, to determine. When the trial judge resolves conflicts in the evidence in the face of the "some" evidence requirement, and refuses to instruct because he believes that the evidence supporting the request is incredible or too weak or overwhelmed by other evidence, he improperly assumes the jury's role as fact-finder.

Dykes, 319 Md. at 222, 224, 571 A.2d at 1259-60 (citations omitted) (emphasis added).

The jury performs its credibility judging function more effectively when all relevant, salient facts concerning witnesses are placed before it. Accordingly, ensuring that the relevant, salient facts are before the jury is the function of cross-examination. See Cox v. State, 298 Md. 173, 183-84, 468 A.2d 319, 324 (1983) ("That a witness may be cross examined on such matters and facts as are likely to affect his credibility, test his memory or knowledge or the like, is a fundamental concept in our system of jurisprudence.") (quoting DeLilly v. State, 11 Md. App. 676, 681, 276 A.2d 417, 419 (1971)). Whether a witness is biased, has an interest in the outcome of the litigation, or has a motive to lie are matters that properly inform the decision as to credibility. See 3A J. Wigmore, Evidence § 940 (Chadbourn rev. 1970) (stating that whether a witness is biased is "always relevant as discrediting the witness and affecting the weight of his testimony." Hence, it is always subject to exploration at trial). Alford v. United States, 282 U.S. 687, 692, 51 S.Ct. 218, 219, 75 L.Ed. 624, 628 (1931) (stating that a defendant has a right to "place the witness in his proper setting and put the weight of his testimony and his credibility to a test, without which the jury cannot fairly appraise them.").

Cross-examination then is "the principal means by which the believability of a witness and the truth of his [or her] testimony

are tested." Davis v. Alaska, 415 U.S. 308, 316, 94 S. Ct. 1105, 1110, 39 L.Ed.2d 347, 353 (1974). Its goal is not only "to delve into the witness' story to test the witness' perceptions and memory, but ... to impeach, i.e., discredit the witness." Id. In addition to inquiring into a witness's prior convictions, "[a] more particular attack on the witness' credibility is effected by means of cross-examination directed toward revealing possible biases, prejudices, or ulterior motives of the witness as they may relate directly to issues or personalities in the case at hand." Id. at 316, 94 S.Ct. at 1110, 39 L.Ed.2d at 354. A criminal defendant thus states a violation of the Confrontation Clause by showing that he was prevented from pursuing otherwise appropriate cross-examination in an effort to show a prototypical form of bias on the part of the witness, and thereby "to expose to the jury the facts from which jurors ... could appropriately draw inferences relating to the reliability of the witness." Delaware v. Van Arsdall, 475 U.S. 673, 680, 106 S.Ct. 1431, 1436, 89 L.Ed.2d 674, 684 (1986) (quoting Davis, 415 U.S. at 318, 94 S.Ct. at 1111, 39 L.Ed.2d at 355).

When a defendant's confrontation rights are abridged, the jury, concomitantly, is denied the benefit of information on the basis of which to perform its credibility judging function. See Davis, 415 U.S. at 317, 94 S.Ct. at 1111, 39 L.Ed.2d at 354 (quoting Douglass v. Alabama, 380 U.S. 415, 419, 85 S.Ct. 1074, 1077, 13 L.Ed.2d 934, 937 (1965)) ("Jurors [are] entitled to have

the benefit of the defense theory before them so that they [can] make an informed judgment as to the weight to place on [the witnesses'] testimony which provide[s] `a crucial link in the proof ... of the petitioner's act.'").

To be sure, cross-examination for bias is not without restriction, as the majority recognizes. ___ Md. at ___, ___ A.2d at ___ [Slip op. at 8]. Indeed, this Court has considered as well settled the proposition that "`trial judges retain wide latitude insofar as the Confrontation Clause is concerned to impose reasonable limits on such cross-examination based on concerns about, among other things, harassment, prejudice, confusion of the issues, the witness' safety, or interrogation that is repetitive or only marginally relevant.'" Smallwood v. State, 320 Md. 300, 307, 577 A.2d 356, 359 (1990) (quoting Van Arsdall, 475 U.S. at 679, 106 S.Ct. at 1435, 89 L.Ed.2d at 683). This restriction is aimed at avoiding "collateral matters which will obscure the [trial] issue[s] and lead to the fact finder's confusion." Cox, 298 Md. at 178, 468 A.2d at 321. It does not apply, however, unless and until, the cross-examiner has reached the "`constitutionally required threshold level of inquiry.'" Smallwood, 320 Md. at 307, 577 A.2d at 359 (quoting Brown v. State, 74 Md. App. 414, 419, 538 A.2d 317, 319 (1988)).

The majority holds that cross-examination was properly restricted in this case. It reads Watkins v. State, 328 Md. 95, 613 A.2d 379 (1992), as standing for the proposition that "where the

subject of the proposed inquiry is of limited probative value and could brand the witness with prior bad acts not otherwise admissible as bearing on credibility, a trial court's decision not to permit cross-examination on the subject matter will not be deemed an abuse of discretion."[5] ___ Md.at ___, ___ A.2d at ___ [Slip op. at 12].

In Watkins, two of the State's witnesses were on probation. Both witnesses denied the defendant's contention that the indictment out of which the defendant's charges arose was drug related. The defendant sought to cross-examine those witnesses as to their probationary status, arguing that it gave them a second reason for denying drug involvement, the first being the understandable desire to avoid the risk of prosecution which such an admission would entail. Although the majority noted that the petitioner's argument had "some merit," 328 Md. at 102, 613 A.2d at 382, it held that the trial court did not abuse its discretion when it disallowed the inquiry. The majority added, however, that "had the trial judge exercised his discretion to allow the evidence, that would not have constituted error." Id. at 102-03, 613 A.2d at 382.

Even if one were to accept the majority's reading of Watkins,

---

[5]The issue this case presents, however, was never directly raised or argued in Watkins. In fact, there the majority held that "[d]efense counsel clearly accepted the prosecutor's statement that no `deal' had been made with the witness, and acquiesced in the court's ruling." 328 Md. at 100, 613 A.2d at 381.

which I do not, as my dissent in that case confirms, it does not alter what the result in this case should be. Timmons and Allen were serving sentences in addition to awaiting trial on other charges. In the case of Timmons, a motion for reconsideration of his sentence was also pending. Moreover, Timmons and Allen were important State's witnesses in a murder case, not, as in Watkins, essentially complaining witnesses against the party who assaulted them.

As I stated in my Watkins dissent, the crux of the relevant inquiry as to bias, motivation, interest and the like, is the witness' state of mind. Id. at 118, 613 A.2d at 390 (Bell, J., dissenting); see also Smallwood, 320 Md. at 309, 577 A.2d at 360. Therefore, just as the Watkins "jurors would understand that any witness would be reluctant to admit to illegal drug involvement because of the danger of being prosecuted for such involvement," 328 Md. at 103, 613 A.2d at 382, the jurors in the instant case would understand that witnesses currently serving a sentence and saddled with pending charges would be willing to testify to clear a murder case without an explicit agreement for leniency, in hopes of later favorable treatment. The relevant inquiry, and the one sought to be made in this case, relates to what the jury clearly would understand, and so it is equivalent to the refusal to acknowledge drug involvement in Watkins. Without question, then, such evidence must be placed before the jury to allow it to make accurate credibility assessments as to the witnesses' testimony,

and consequently, the weight it should be accorded.[6]

Not surprisingly, I find myself in fundamental disagreement with the majority in this case, as I was with the Watkins majority, as to the probative value of evidence concerning the witnesses' pending charges and/or probationary status and the importance of placing that information before the trier of fact. In the instant case, the probative value of the petitioner's inquiries of the witnesses is considerably more substantial than its potential misuse to brand "the witnesses with prior bad acts not otherwise admissible as bearing on credibility ...." Watkins, 328 Md. at 103, 613 A.2d at 382. Furthermore, there is "no indication that defense counsel was harassing the witness by asking an unfounded question or seeking primarily to embarrass the witness." Smallwood, 320 Md. at 310, 577 A.2d at 360-61 (quoting Cox, 298 Md. at 184, 468 A.2d at 324). In addition, the subject of the inquiry here is a matter that goes to the "`very heart'" of the witnesses' bias. Id. There simply was no danger of the jury's attention being diverted, confounded or confused in this case.

Besides Watkins, the other cases the majority relies upon as support for its position are, State v. Grace, 643 So.2d 1306 (La. Ct. App. 1994) and Gutierrez v. State, 681 S.W.2d 698 (Tex. Ct. App. 1984). Gutierrez, however, does not suggest that the cases

---

[6]Because the state of mind of a witness is often a matter of inference, quite logically then, it need not be, and indeed may be unable to be established by direct proof. But that is precisely what the trial court erroneously required.

from Texas on which the petitioner relies are no longer good law; rather, it sought to distinguish them on the basis that, in those cases, the testifying witness was an indictee or suspect in the principal crime for which the defendant was on trial. This fact, the court suggested, gave rise to an obvious incentive for the witness to testify against the defendant to protect his own self-interest.[7] In short, while Gutierrez and Grace resolve the conflict between the trial role of the jury and judge in favor of the trial judge's discretion to limit cross-examination, they are not persuasive authority for resolution of the case at bar.

The petitioner does not claim that the State promised Timmons and Allen anything. For this reason, the petitioner has never challenged the accuracy of the State's representation that it made no promises. The petitioner's position, rather, is that whether or not Timmons and Allen subjectively expected to obtain some benefit for their testimony, the jury conceivably could have so found. The jury was not, therefore, obliged to accept the witnesses' disclaimer. Accordingly, cognizant that the jury, as the trier of fact, is charged with responsibility for resolving credibility issues, the petitioner sought to cross-examine the witnesses as to their bias, interest, motivation, or the like, all of which are

---

[7] A similar rationalization was offered in State v. Lindh, 468 N.W.2d 168, 178 (Wis. 1991), a case upon which the State relied. While such circumstances constitute a distinction, they do not form a sufficient basis for limiting the jury's trial role.

proper subjects of cross-examination. As discussed supra, the focus of the petitioner's inquiry was for the purpose of putting before the jury information on the basis of which it could infer that the witnesses' testimony lacked credibility and, thus, should be discounted.

In this case, the trial court's ruling prevented the jury from ever considering whether the witnesses were biased or otherwise interested in the case. The court did so by determining that the petitioner did not lay a proper foundation to entitle him to cross-examine the witnesses. This result, in turn, was reached in two ways. First, the court made a credibility determination, assessing whether witnesses testified truthfully when they denied expecting a reward or favorable treatment in connection with their pending charges for their testimony. Second, the court placed on the petitioner the impossible burden of proving by direct evidence from the witnesses themselves, the witnesses' state of mind. On both counts, the trial court erred. Certainly, there is no legal requirement that a witness' state of mind be proven by direct evidence. And, as discussed supra, credibility issues in a jury trial are matters reserved for resolution by the jury. Moreover, the trial court's right to limit cross-examination does not extend to the point of preventing cross-examination altogether in an area that is a traditional focus of cross-examination.

Resolving the conflict between the trial court and the jury in favor of permitting cross-examination so that the jury has an

opportunity to pass on the credibility of witnesses is consistent with the result reached by the courts that have considered this issue. See Van Arsdall, 475 U.S. at 679, 106 S.Ct. at 1435, 89 L.Ed.2d at 676; People v. Richmond, 406 N.E.2d 135, 136-37 (Ill. Ct. App. 1980); Williams v. Commonwealth, 569 S.W.2d 139, 144-45 (Ky. 1978); Spears v. Commonwealth, 558 S.W.2d 641, 642 (Ky. Ct. App. 1977); Commonwealth v. Hogan, 396 N.E.2d 978, 979 (Mass. 1979) ("where [criminal] charges are pending, there is possibility of bias in favor of the government, and normally it is for the jury, and not the judge, to determine the effect, if any, of those pending charges on the witness's testimony."); State v. Baker, 336 A.2d 762, 764 (N.J. Super. Ct. App. Div. 1975); People v. Leonard, 396 N.Y.S.2d 956, 957 (1977) (even though trial court found that there was no "deal," it was error to preclude defense from cross-examining State's witness about the same); State v. Spicer, 204 S.E.2d 641, 647 (N.C. 1974); State v. Roberson, 3 S.E.2d 277, 280 (N.C. 1939); Commonwealth v. Evans, 512 A.2d 626, 631-32 (Pa. 1986); Koehler v. State, 679 S.W.2d 6, 9-10 (Tex. Crim. App. 1984) (en banc); Parker v. State, 657 S.W.2d 137, 140-41 (Tex. Crim. App. 1983) (en banc); Spain v. State, 585 S.W.2d 705, 710 (Tex. Crim. App. 1979).

The State quite properly points out that the petitioner was able to attack the witness's credibility generally, with evidence of prior convictions affecting credibility. It argues, therefore, that the error was harmless. I do not agree. Evidence of a more

particular reason for challenging the credibility of a witness is more effective than a general attack on credibility. Indeed, a particularized attack on credibility permits a more effective argument to be made as to "why [the witness] might have been biased or otherwise lacked that degree of impartiality expected of a witness at trial." Davis, 415 U.S. at 318, 94 S. Ct. at 1111, 39 L.Ed.2d at 355 (emphasis in original). In order to find an error harmless, a reviewing court, "upon its own independent review of the record [must be able] to declare a belief, beyond a reasonable doubt, that the error in no way influenced the verdict...." Dorsey v. State, 276 Md. 638, 659, 350 A.2d 665, 678 (1976). Therefore, being precluded from pursuing the bias inquiry certainly could have influenced the verdict and, consequently, is not harmless beyond a reasonable doubt.

IV.

In sum, because this petitioner, like the petitioner in Watkins, was not permitted to cross-examine witnesses concerning their pending charges and/or probationary status, he has been denied his constitutionally required threshold level of inquiry. More importantly, until that threshold is satisfied, the trial court abuses its discretion by engaging in the kind of balancing process advanced by Watkins, and reaffirmed by the majority today.[8]

---

[8] I believe that the majority's reliance on Smallwood as support for the position it has adopted in this case is misplaced. See ___ Md. ___, ___, ___ A.2d ___, ___ (1996) [Slip op at 8, 13]. In this case, there is no harassment, prejudice, or

See ___ Md. at ___, ___ A.2d at ___ [Slip op. at 13]. Because the majority fails to grasp this fundamental concept, I must dissent.

Eldridge, J. joins in the views herein expressed.

---

confusion of the issues. Moreover, there is nothing "repetitive" or "marginally relevant" about the bias inquiry the petitioner attempted to make. Smallwood, 320 Md. at 307, 577 A.2d at 359 (quoting Van Arsdall, 475 U.S. at 679, 106 S. Ct. at 1435, 89 L.Ed.2d at 683).