SUMMARY
April 4, 2024

2024COA33

No. 21CA2080, *People v. Reynolds-Wynn* — Constitutional Law — Sixth Amendment — Confrontation Clause; Evidence — Witnesses — Bias — Cross-Examination

A division of the court of appeals considers whether, under *Margerum v. People*, 2019 CO 100, 454 P.3d 236, a defendant has a right under the Confrontation Clause to cross-examine a prosecution witness who faces a criminal charge, in the same judicial district in which the defendant is being prosecuted, about the witness's pending charge. Applying the reasoning of *Margerum*, the division holds that it is constitutional error to prohibit the defense from cross-examining the witness about the charge because the fact that a witness is being prosecuted in the same judicial district is always relevant to show that the witness's testimony

might be influenced by a promise for, or hope or expectation of, immunity or leniency.

Because the trial court prohibited the defense from questioning a prosecution witness about his pending charge in the same judicial district in which he was asked to testify against the defendant, the division concludes that the trial court violated the defendant's rights under the Confrontation Clause. And because the People failed to show that the error was harmless, the division reverses the judgment of conviction and remands the case for a new trial.

COLORADO COURT OF APPEALS **2024COA33**

Court of Appeals No. 21CA2080
Adams County District Court No. 20CR4059
Honorable Priscilla J. Loew, Judge

The People of the State of Colorado,

Plaintiff-Appellee,

v.

Semaj Reynolds-Wynn,

Defendant-Appellant.

JUDGMENT REVERSED
AND CASE REMANDED WITH DIRECTIONS

Division VII
Opinion by JUDGE LIPINSKY
Tow and Grove, JJ., concur

Announced April 4, 2024

Philip J. Weiser, Attorney General, Austin R. Johnston, Assistant Attorney General, Denver, Colorado, for Plaintiff-Appellee

Megan A. Ring, Colorado State Public Defender, Jeffrey A. Wermer, Deputy State Public Defender, Denver, Colorado, for Defendant-Appellant

¶ 1 Questions of witness bias can arise when a prosecutor seeks the testimony of an individual who is facing criminal charges or is the subject of ongoing supervision within the criminal justice system. Because prosecutors possess "broad discretion in the performance of [their] duties," *People v. Dist. Ct.*, 632 P.2d 1022, 1024 (Colo. 1981), these types of witnesses may have an incentive to "curry favor" with a prosecutor who seeks their testimony in a case against a different defendant, *Margerum v. People*, 2019 CO 100, ¶ 12, 454 P.3d 236, 240, particularly if the same district attorney's office (DA's office) is the prosecutor in both matters. The incentive to curry favor may stem from the individual's fear of harsh prosecutorial decisions or from a hope of leniency. *See id.* at ¶ 11, 454 P.3d at 239. While this fear or hope may arise from an actual or implied threat or promise by the prosecutor, it can also arise from the mere perception of the prosecutor's power and from assumptions about prosecutorial decision-making. *See id.*

¶ 2 For a witness in such a situation, this power dynamic can raise questions regarding the witness's credibility: To what extent, if any, is the witness's testimony influenced by the desire to curry favor with the prosecutor? And relatedly, when, if ever, should the

defendant be permitted to cross-examine the witness about his or her involvement with the criminal justice system?

¶ 3 In *Margerum*, the Colorado Supreme Court provided guidance regarding the latter question in the context of a prosecution witness who is on probation. It held that, where the witness is on probation "in the same sovereign as the prosecution," the defense "must be permitted to question [the] witness about her probationary status." *Id.* at ¶ 12, 454 P.3d at 240. In this case, we consider whether the reasoning of *Margerum* extends to a situation where a prosecution witness faces a pending criminal charge in the same judicial district in which the witness testifies. Applying *Margerum*'s reasoning, we hold that a court errs by not permitting the defense to cross-examine the prosecution witness about the pending charge.

¶ 4 Semaj Reynolds-Wynn appeals the judgment of conviction entered on a jury verdict finding him guilty of attempted reckless manslaughter. The prosecution's case largely rested on the testimony of the alleged victim, Johnathon Pennock. At the time of trial, Pennock was facing a charge, for which he was also the subject of an active arrest warrant, in the same judicial district in which Reynolds-Wynn was being prosecuted. Because the trial

court refused to allow defense counsel to cross-examine Pennock on his pending charge and related issues, and the error is not harmless beyond a reasonable doubt, we reverse and remand for a new trial.

I. Background

¶ 5 A jury could have reasonably found the following facts.

¶ 6 Eddie Wilson called 911 in the late evening to report a shooting in his apartment in Adams County. Pennock had been shot in the head. When the police arrived, only Pennock and Wilson were in the apartment. According to Wilson, in addition to Pennock and himself, Natoya Cobb, Daniel Davis, and Shannon Philbrick had also been in Wilson's apartment that day. Wilson initially told police that he thought Pennock had shot himself.

¶ 7 Pennock was taken to a hospital, where he fell into a coma for two weeks. When he awoke, he told the police that Reynolds-Wynn had shot him. Pennock later relocated to Wyoming, where his father cared for him.

¶ 8 The police arrested and interrogated Reynolds-Wynn. During his interrogation, Reynolds-Wynn first told police that he had not been at Wilson's apartment on the day of the shooting. He later

said that he had been there but that he had left the apartment before Pennock was shot. Later still, he said that he saw Davis shoot Pennock. Reynolds-Wynn consistently maintained that he was not the shooter.

¶ 9 The DA's office for the Seventeenth Judicial District (the district), which encompasses Adams and Broomfield Counties, charged Reynolds-Wynn with attempted second degree murder and second degree assault.

¶ 10 Except for the first responders, Wilson and Pennock were the only witnesses at trial who had been in Wilson's apartment on the day of the shooting. Wilson testified that he did not see Reynolds-Wynn in his apartment that day and that he did not know who shot Pennock. Pennock testified that he and Reynolds-Wynn fell asleep on Wilson's couch after smoking methamphetamine together, and that Reynolds-Wynn shot him when they woke up.

¶ 11 At the conclusion of a five-day trial, the jury acquitted Reynolds-Wynn of attempted second degree murder and second degree assault but found him guilty of the lesser included offense of attempted reckless manslaughter. The trial court sentenced him to

six years in the custody of the Department of Corrections and two years of mandatory parole.

II. Analysis

¶ 12 Among other arguments, Reynolds-Wynn contends that the trial court reversibly erred by restricting his counsel's ability to cross-examine Pennock regarding Pennock's pending criminal case and related topics. We agree and therefore do not reach Reynolds-Wynn's remaining arguments.

A. Additional Facts

¶ 13 At the time of the shooting, Pennock had a pending criminal charge in the district for a misdemeanor offense of violating a protection order. Pennock had an active arrest warrant in connection with that case.

¶ 14 The prosecutor served Pennock with a subpoena to testify at Reynolds-Wynn's trial. The month before Reynolds-Wynn's trial, the prosecutor asked a court clerk in the Adams County District Court to add Pennock's pending case to the docket that week to "address the warrant," explaining that Pennock was a victim in one of the prosecutor's felony cases. The clerk responded that Pennock's case would be added to the court's docket that week.

The record, however, does not indicate whether the clerk did so. In any event, Pennock's arrest warrant remained active at the time of Reynolds-Wynn's trial.

¶ 15 In addition, the prosecutor filed a motion in the case against Reynolds-Wynn for issuance of an order pursuant to section 16-9-303, C.R.S. 2023, to protect Pennock from arrest when he returned to Colorado from Wyoming for the trial. Under that statute, a person entering into a Colorado county "in obedience to a summons" to testify as a material witness issued pursuant to section 16-9-302, C.R.S. 2023, "shall not be subject to arrest . . . in connection with matters which arose before his entrance into said county in response to the summons." § 16-9-303.

¶ 16 The trial court granted the motion and ordered that Pennock was "not to be arrested in conjunction with any previous warrants during his travel into the state to testify as he is a material and essential witness."

¶ 17 (Because Pennock was returning to Colorado from Wyoming, section 16-9-204(1), C.R.S. 2023, and not section 16-9-303, provides the relief that the prosecutor sought. While those two statutes provide similar protections for witnesses, section

16-9-204(1) applies to "a person com[ing] into this state in obedience to a summons," while section 16-9-303 applies to "a person enter[ing] into . . . any county in this state in obedience to a summons." Because Reynolds-Wynn does not challenge the statutory basis for the prosecutor's motion, however, we need not consider whether the court erred by granting it.)

¶ 18 Defense counsel later filed a motion requesting permission to "fully impeach" Pennock by cross-examining him on his pending case, his active arrest warrant, and the prosecutor's actions to ensure that Pennock would not be arrested before he testified for the prosecution in Reynolds-Wynn's case. Defense counsel argued that those subject areas related to Pennock's "motive and bias to testify for the prosecution."

¶ 19 The trial court denied the motion. It explained that it did not see how the prosecutor's request that the clerk place Pennock's misdemeanor case on the court docket created a "heighten[ed]" relationship between Pennock and the prosecutor and noted that the prosecutor's outreach to the clerk was a "common practice." In considering whether defense counsel had the right to cross-examine Pennock regarding the prosecutor's section 16-9-303 motion, the

trial court said that the statute "has no annotations or case law stating that there's an implication as to cross-examination or otherwise."

¶ 20 The trial court concluded that the prosecutor's actions did not prejudice Reynolds-Wynn and did not "deviate from the standard of practice." For these reasons, the trial court denied defense counsel's motion to cross-examine Pennock on "the active warrant or the accommodations of the district attorney as [the trial court didn't] see them as accommodations for his testimony."

¶ 21 The court did not place further restrictions on defense counsel's cross-examination of Pennock. It permitted the defense to question him on his conflicting statements to the police, his substance use, and the inconsistencies between his recollection of the events on the evening of the shooting and the other evidence presented at trial.

¶ 22 On appeal, Reynolds-Wynn argues that the trial court committed evidentiary error and violated his constitutional right to confront the prosecution's witness by restricting defense counsel's cross-examination into Pennock's possible bias. We agree.

B. Applicable Law

¶ 23 The United States and Colorado Constitutions guarantee criminal defendants the right to confront the witnesses against them. *See* U.S. Const. amend. VI; Colo. Const. art. II, § 16. "This right is primarily secured through cross-examination." *Margerum*, ¶ 10, 454 P.3d at 239. "Cross-examination allows a party to interrogate a witness's 'perceptions and memory' and is also 'the principal means by which the believability of a witness and the truth of his testimony are tested.'" *Id.* (quoting *Davis v. Alaska*, 415 U.S. 308, 316 (1974)).

¶ 24 "[I]t is constitutional error to limit excessively a defendant's cross-examination of a witness regarding the witness'[s] credibility, especially cross-examination concerning the witness'[s] bias, prejudice, or motive for testifying." *Merritt v. People*, 842 P.2d 162, 167 (Colo. 1992). "A defendant makes out a Confrontation Clause violation by showing that he or she 'was prohibited from engaging in otherwise appropriate cross-examination designed to show a prototypical form of bias on the part of the witness,'" and thereby to expose jurors to facts from which they could "appropriately draw inferences" related to the witness's reliability. *Kinney v. People*, 187

P.3d 548, 559 (Colo. 2008) (quoting *Delaware v. Van Arsdall*, 475 U.S. 673, 680 (1986)).

¶ 25 Even where the Confrontation Clause is implicated, however, trial courts retain wide latitude to impose "reasonable limits on cross-examination" under the rules of evidence "because of concerns about harassment, prejudice, repetition, or marginal relevance," among others. *Id.* "Generally, under our rules of evidence, all relevant evidence should be admitted unless its probative value is substantially outweighed by its prejudicial effect." *Id.* (citing CRE 401, 402, 403). Thus, the Confrontation Clause and rules of evidence operate in conjunction to maximize the truth-finding process. *See Merritt*, 842 P.2d at 166 (noting that the right to confront witnesses is satisfied when a defendant is given an opportunity for effective cross-examination, not "unlimited cross-examination," and "the court may limit witness examination if necessary to assist the truth-finding process").

¶ 26 In the context of cross-examination on a witness's pending criminal matters, these principles indicate that confronting a witness with "mere arrests or pending charges . . . , without more," is generally improper. *People v. King*, 179 Colo. 94, 98, 498 P.2d

1142, 1144 (1972). This is because "want of credibility may not logically be inferred from naked accusations of which the law presumes a person innocent until convicted." *Id.*

¶ 27 This general rule has an important exception. "Although evidence of pending charges cannot be admitted to challenge a witness's *general* credibility, this evidence is admissible to show a witness's motive, bias, prejudice, or interest in the outcome of a trial." *Kinney*, 187 P.3d at 559 (emphasis added); *see also King*, 179 Colo. at 98, 498 P.2d at 1144 ("This rule was never intended to prohibit testimony tending to show motive, bias, prejudice or interest of a witness in the outcome of the trial."). "[T]he partiality of a witness is *always* relevant." *Margerum*, ¶ 10, 454 P.3d at 239 (emphasis added).

¶ 28 Thus, courts should permit defense counsel to cross-examine a prosecution witness regarding the witness's motive for testifying when the testimony "might be influenced by a promise of, or hope or expectation of, immunity or leniency with respect to . . . pending charges against [the witness], as a consideration for testifying against the defendant." *King*, 179 Colo. at 98, 498 P.2d at 1144-45. A defendant can demonstrate a Confrontation Clause violation on

appeal by "merely show[ing]" that there is a "*possibility* . . . the witness's testimony was being influenced by . . . [a] mere hope . . . of . . . leniency with the pending charge in exchange for favorable testimony against the defendant" and that the trial court "severely limit[ed]" cross-examination regarding this potential source of bias. *Kinney*, 187 P.3d at 559-60 (emphasis added).

¶ 29 Consistent with these principles, the supreme court held in *Margerum* that "a witness's probationary status is *always* relevant when the witness is on probation with the State and testifies for the prosecution." *Margerum*, ¶ 8, 454 P.3d at 239 (emphasis added). Accordingly, the supreme court also held that "the defense must be permitted to question a prosecution's witness about her probationary status when the witness is on probation in the same sovereign as the prosecution." *Id.* at ¶ 12, 454 P.3d at 240. These holdings rested on the court's determination that there is always a nexus between a prosecution witness's probationary status and her "potentially biased motive for testifying." *Id.* at ¶¶ 11-12, 454 P.3d at 239-40.

¶ 30 The court pointed to three reasons to support its holding. First, such a witness is in a vulnerable position, and "the threat of

probation revocation — whether real or merely perceived — creates an incentive for a witness to try to curry favor with the prosecution who can seek the revocation of that witness's probation." *Id.* at ¶ 12, 454 P.3d at 240. Second, the desire to potentially curry favor with the prosecutor "creates at least a perception that the witness has a motive to provide favorable testimony for the prosecution." *Id.* And third, this chain of inferences is relevant information for the jury when making a credibility determination, and a "witness's credibility is always relevant." *Id.*

C. Standard of Review

¶ 31 "Appellate review of a possible Confrontation Clause violation is de novo." *Bernal v. People*, 44 P.3d 184, 198 (Colo. 2002). However, if a trial court's limitation on cross-examination did not infringe on the defendant's constitutional rights, we review the limitation — as we review other evidentiary rulings — for an abuse of discretion. *See Merritt*, 842 P.2d at 166; *Nicholls v. People*, 2017 CO 71, ¶ 17, 396 P.3d 675, 679. A court abuses its discretion when its ruling is manifestly arbitrary, unreasonable, or unfair, which necessarily occurs when it misapplies the law. *See People v. Voth*, 2013 CO 61, ¶ 15, 312 P.3d 144, 148.

D. The Court Committed Constitutional Error by Limiting Defense Counsel's Cross-Examination of Pennock

¶ 32 Reynolds-Wynn has stated a Confrontation Clause violation because the trial court prohibited his counsel from engaging in cross-examination designed to show Pennock's vulnerable position with the DA's office — a prototypical form of bias.

¶ 33 *King* and *Kinney* make clear that the trial court should have allowed Reynolds-Wynn's counsel to cross-examine Pennock regarding his pending charge in the district if and when his testimony against Reynolds-Wynn might have been influenced by a hope of leniency with respect to that charge. *See King*, 179 Colo. at 98, 498 P.2d at 1144-45; *Kinney*, 187 P.3d at 559. Under the blanket rule of *Margerum*, there is no question of "if" when the prosecution witness is on probation in the same sovereign in which he is testifying — the "'might have been influenced' nexus requirement is always satisfied" under such circumstances. *Margerum*, ¶ 12, 454 P.3d at 240.

¶ 34 The three reasons underlying the holding of *Margerum* apply here. First, a prosecution witness who faces a pending charge in the same judicial district in which the prosecutor asks him to testify

is at least as vulnerable as a witness on probation. This is so because prosecutors have "broad discretion in the performance of [their] duties," including whether to consent to a deferred prosecution, whether and what type of plea deal to offer, the severity of the sentence to recommend, or even whether to dismiss the charge. *Dist. Ct.*, 632 P.2d at 1024; *see also People v. Darlington*, 105 P.3d 230, 232 (Colo. 2005). Thus, the threat of unfavorable (or hope of favorable) prosecutorial action in the witness's pending case — whether real or merely perceived — "creates an incentive for a witness to try to curry favor with the prosecution." *Margerum*, ¶ 12, 454 P.3d at 240. The witness is particularly vulnerable when the "same sovereign" is not merely the State of Colorado, as in *Margerum*, but is the same DA's office.

¶ 35 Second, the witness's desire to potentially curry favor with the prosecutor under these circumstances "creates at least a perception that the witness has a motive to provide favorable testimony for the prosecution." *Id.* And third, because "the witness's credibility is always relevant," defense counsel "should be afforded wide latitude during cross-examination to discover any potential source of bias

and, more importantly, to provide the jury with all relevant information needed to make a credibility determination." *Id.*

¶ 36 Following *Margerum*, we hold that the defense must be permitted to question a prosecution witness about his pending criminal charge in the same judicial district in which the witness is testifying against the defendant. The pendency of such a charge against the witness is always relevant to show that the witness's testimony "*might be influenced* by a promise for, or hope or expectation of, immunity or leniency." *Kinney*, 187 P.3d at 560 (quoting *King*, 179 Colo. at 98, 498 P.2d at 1144-45).

¶ 37 Having determined that Pennock's pending charge was relevant to show his potential bias, it follows that the arrest warrant on that charge, and the prosecutor's efforts to ensure Pennock would not be arrested when he appeared to testify, were also relevant — at least to the extent they impacted Pennock's perception of his vulnerable situation.

¶ 38 Our opinion should not be read to suggest that the court erred by finding that the prosecutor's actions were "common practice" or that there was no "heightened" relationship between the prosecutor and Pennock. Regardless of the prosecutor's reasons for taking

actions that could have benefited Pennock, the relevant inquiry is how Pennock *perceived* those actions and whether they gave him a hope — reasonable or not — of leniency. *See id.* Because the trial court barred defense counsel from cross-examining Pennock on his perception of the prosecutor's actions, the jury never learned whether they gave him an incentive to curry favor with the prosecutor. Cross-examination on these topics would have provided the jury with information from which it could have drawn reasonable inferences regarding the extent to which Pennock may have been biased in favor of the prosecution, if at all.

¶ 39 Thus, if the arrest warrant and the prosecutor's actions were relevant to show the contours of Pennock's potential bias, they were presumptively admissible. *See* CRE 402 ("All relevant evidence is admissible, except as otherwise provided by the Constitution of the United States, by the Constitution of the State of Colorado, by these rules, or by other rules prescribed by the Supreme Court, or by the statutes of the State of Colorado.").

¶ 40 We reject the People's contention that these topics were nonetheless inadmissible under CRE 403 due to the danger of unfair prejudice, confusing the issues, or misleading the jury. *See*

CRE 403 ("Although relevant, evidence may be excluded if its probative value is substantially outweighed by the danger of unfair prejudice, confusion of the issues, or misleading the jury, or by considerations of undue delay, waste of time, or needless presentation of cumulative evidence."). The trial court did not conduct a CRE 403 analysis. Neither did the trial court articulate any concerns that the requested cross-examination would create the risk that Pennock would face harassment, the prosecution would be unfairly prejudiced, the issues would be confused, or Pennock's safety would be compromised, or that the cross-examination would concern issues of only marginal relevance. *See Van Arsdall*, 475 U.S. at 679; *Kinney*, 187 P.3d at 559. Under the circumstances, the trial court should have allowed the defense to cross-examine Pennock on the matters germane to his potential bias and motive for testifying for the prosecution. *See Merritt*, 842 P.2d at 167. (We express no opinion as to whether the trial court could have barred cross-examination on these subject areas after conducting a CRE 403 analysis.)

¶ 41 Accordingly, the trial court violated Reynolds-Wynn's rights under the Federal and Colorado Confrontation Clauses by

prohibiting defense counsel from engaging in "otherwise appropriate cross-examination designed to show a prototypical form of bias" on the part of Pennock. *Kinney*, 187 P.3d at 559 (quoting *Van Arsdall*, 475 U.S. at 680).

E. The Error Was Not Harmless Beyond a Reasonable Doubt

¶ 42 "Because the error in this case is a preserved one of constitutional dimension, we review for constitutional harmless error. To deem a constitutional error harmless, the error must be found harmless beyond a reasonable doubt." *Margerum*, ¶ 14, 454 P.3d at 240. "An error is not harmless beyond a reasonable doubt if 'there is a reasonable possibility that the [error] might have contributed to the conviction.'" *Id.* (quoting *Hagos v. People*, 2012 CO 63, ¶ 11, 288 P.3d 116, 119). Additionally, because the Confrontation Clauses focus on the impact of the error on "individual witnesses," a Confrontation Clause claim differs from those "constitutional claims that require a showing of prejudice with respect to the trial as a whole." *Krutsinger v. People*, 219 P.3d 1054, 1060 (Colo. 2009) (quoting *Van Arsdall*, 475 U.S. at 680). Thus, we must determine whether the trial court's limitation on defense counsel's ability to cross-examine Pennock, in and of itself,

deprived Reynolds-Wynn of "any meaningful opportunity to present a complete defense." *Id.* at 1061. We conclude that it did and that the People have not met their burden of demonstrating that the trial court's limitation on Reynolds-Wynn's cross-examination of Pennock did not contribute to Reynolds-Wynn's conviction. *See Merritt*, 842 P.2d at 169.

¶ 43 Pennock's credibility was critical to the prosecution's case because his prior statements to the police and his testimony were the only evidence linking Reynolds-Wynn to the shooting.

- The only other testifying eyewitness — Wilson — professed not to know who shot Pennock.
- The jury heard evidence that Wilson, Davis, Cobb, and Philbrick were also in the apartment on the day of the shooting.
- Reynolds-Wynn consistently denied that he was the shooter, and although his account changed, he eventually told the police that Davis shot Pennock.
- The People did not present any physical evidence, such as ballistics, fingerprints, gunshot residue, or DNA evidence, linking Reynolds-Wynn to the shooting.

See id. (listing factors that appellate courts should examine when determining harmlessness, including "the importance of the witness'[s] testimony to the prosecution's case, whether the testimony was cumulative, the presence or absence of corroborating or contradictory evidence on the material points of the witness'[s] testimony, . . . and the overall strength of the prosecution's case"). The prosecutor acknowledged during closing argument that Pennock's credibility was the crux of the prosecution's case: "We put a credible man on the stand who identified his shooter who thankfully survived. Is this case proven without him? No. With him, absolutely."

¶ 44 Moreover, by prohibiting all inquiry into Pennock's pending criminal case, his active warrant, and the prosecutor's actions in connection with Pennock's case, the trial court kept the jury from hearing evidence with a direct bearing on Pennock's potential bias in favor of the prosecution and his motive for testifying against Reynolds-Wynn. *See id.* (listing harmlessness factors including "the extent of the cross-examination otherwise permitted").

¶ 45 We are not persuaded by the People's argument that inquiry into Pennock's pending case "could have had only negligible

additional impact" on his credibility, in light of other facts elicited at trial. As Reynolds-Wynn points out, and the People acknowledge, Pennock's testimony included several facts from which a jury could draw negative credibility inferences:

- Pennock drank on the afternoon and smoked methamphetamine on the evening of his shooting;
- he had prior felony convictions, including one for criminal impersonation;
- he had difficulty remembering details of the shooting; and
- defense counsel exposed inconsistencies between Pennock's statements to the police, his trial testimony, and the physical evidence.

¶ 46 While these facts indeed pertain to Pennock's credibility, they concern the reliability of his perception and memory of the events and his character for truthfulness. None of the facts sheds light on his motive for testifying for the prosecution or his possible bias. Accordingly, Reynolds-Wynn was unable to present a complete defense. *See Krutsinger*, 219 P.3d at 1061.

¶ 47 We conclude that, had Reynolds-Wynn's counsel been allowed to cross-examine Pennock on his bias or motive, "[a] reasonable jury might have received a significantly different impression" of Pennock's credibility. *Van Arsdall*, 475 U.S. at 680. Such cross-examination could have convinced the jury that Pennock was not a credible witness and, therefore, there was a reasonable doubt whether Reynolds-Wynn shot Pennock. Because the constitutional error might have contributed to Reynolds-Wynn's conviction, we reverse and remand for a new trial. *See Merritt*, 842 P.2d at 165.

¶ 48 Because we reverse Reynolds-Wynn's conviction, we need not address his remaining contentions, which "either will not or may not occur on retrial." *People v. Prescott*, 205 P.3d 416, 423 (Colo. App. 2008).

III. Disposition

¶ 49 The judgment of conviction is reversed, and the case is remanded for a new trial.

JUDGE TOW and JUDGE GROVE concur.