Circuit Court for Dorchester County
Case No.: C-09-CR-21-000209

UNREPORTED

IN THE APPELLATE COURT

OF MARYLAND*

No. 590

September Term, 2023

DION DARNELL ENNALS

v.

STATE OF MARYLAND

Nazarian,
Reed,
Shaw,

JJ.

Opinion by Shaw, J.

Filed: July 18, 2024

*This is an unreported opinion. This opinion may not be cited as precedent within the rule of stare decisis. It may be cited for its persuasive value only if the citation conforms to Rule 1-104(a)(2)(B).

After a jury trial in the Circuit Court for Dorchester County, appellant, Dion Ennals, was found guilty of first-degree murder, second-degree murder, first-degree assault and second-degree assault. On appeal, appellant presents two questions for our review:

1. Did the circuit court err as a matter of law by asking compound "strong feelings" questions?

2. Did the circuit court err by not instructing on voluntary manslaughter based on hot-blooded response?

For the reasons set forth below, we answer the first question in the negative, and hold that the second question has not been preserved for our review. We, therefore, affirm.

BACKGROUND

On the evening of September 24, 2021, appellant arrived at the back door of the Cambridge Police Department covered in blood and told officers, "I killed her." He led police to a nearby parking lot, where they found appellant's then-girlfriend, Roshonda Willis, on the ground by a chain-link fence. Ms. Willis was pronounced dead after life-saving efforts were unsuccessful. Surveillance footage of the parking lot from earlier in the evening showed appellant exit a vehicle with Ms. Willis and kill her. Appellant was charged with first-degree murder, second-degree murder, first-degree assault and second-degree assault.

Prior to trial, appellant's counsel requested several *voir dire* questions regarding whether the jury had "strong feelings" about matters relating to the charges and anticipated evidence, including the following:

1. The State alleges that the [d]efendant committed the crime of murder. Do you have strong feelings about crimes of violence?

2. Do you have strong feelings about the amount of crime in our community?

Appellant also requested a voluntary manslaughter jury instruction based upon hot-blooded response to legally adequate provocation.

On January 30, 2023, the matter proceeded to a trial by jury. During *voir dire*, the court asked two strong feelings questions relevant to the matter before us. The court first asked:

> So the next question is going to sound strange and it's one I need to ask, but I don't want you to think that I don't know what I'm doing here. So we're concerned when people -- if a person would be making their decision based on the nature of the crime as opposed to the, the quality and the quantity of the evidence to support it. And so for instance, you know, a person may be less outraged or less upset or less bothered by, you know, a petty theft than they would crimes that are charged here.
>
> So the question is, and I want you to be thinking about this, so the State alleges that the Defendant committed the crimes of first degree murder, second degree murder, first degree assault, and second degree assault.
>
> So my question is do you have strong feelings about these crimes?
>
> Again, the State alleges the Defendant committed the crimes of first degree murder, second degree murder, first degree assault, second degree assault. Do you have strong feelings about the crimes charged?

In response, twenty potential jurors identified themselves. The court then asked a second question:

> Do any of you have such strong feelings about crime in our community or about the criminal justice system that would make it difficult for you to give either the Defendant or the State a fair trial?
>
> Again, do any of you have such strong feelings about crime in our community or about the criminal justice system that would make it difficult for you to give either the Defendant or the State a fair trial?

One potential juror responded affirmatively.

After the court completed questioning, defense counsel noted an objection to the crime in the community question:

> The only note I have, you did ask the strong feelings question that I requested. I would just note an objection. Your Honor phrased it as kind of a compound question, the strong feelings about the amount of crime that would make you give either the defense or the State a fair trial. I think that the latter part is something that Your Honor has to determine if they answer the question and would request it doesn't go to (indiscernible words), that it just be do you have strong feelings about the amount of crime in our community or if Your Honor also added criminal justice system, I'm fine with that. But I would note an objection to the latter part of how you phrased it; that was -- that would make you give the defense or the State an unfair trial.

In response, the trial court, apparently understanding that the objection was to the crimes charged question, disagreed:

> THE COURT: Okay. So let's -- all right. So let's go back. So the question itself wasn't compound in that I told them why I was asking the question, because they think we're all nuts if we ask them questions if they have strong feelings about, you know, a homicide. So I'm careful not to ask the question, but I do tell them why I'm asking the question; because -- and I think in this case it gave them a good understanding that because some crimes are more -- we don't want somebody convicting somebody just because of the nature of the crime, which bothers me because I have jurors out in less time in serious crimes than I do in nonserious crimes. So but you can note the objection. I mean, I can't unring that bell now. And we had a lot of people stand up for that response.
>
> [DEFENSE COUNSEL]: I understand. I just wanted to note that objection, Your Honor. That's it.
>
> THE COURT: What about the crime in our community? Because that actually came from originally a defense request; the criminal justice system or crime in our community?
>
> [DEFENSE COUNSEL]: It might have originally
>
> THE COURT: It did.

> [DEFENSE COUNSEL]: The reason that I asked it, how I asked it in my voir dire was just, "Do you have strong feelings about the amount of crime in our community?"
>
> THE COURT: Oh, do you have strong feelings?
>
> [DEFENSE COUNSEL]: Yeah, just the first part of what you asked.
>
> THE COURT: Oh, oh, because of the compound?
>
> [DEFENSE COUNSEL]: That –
>
> THE COURT: I gotcha.
>
> [DEFENSE COUNSEL]: -- that, that was the only –
>
> THE COURT: Okay.
>
> [DEFENSE COUNSEL]: -- issue I had, the only objection I'd like to note.
>
> THE COURT: All right. We had a fair amount of people respond to that too.

The case proceeded to trial and the jury heard from Martina Rayne-Ross, the driver of the vehicle Ms. Willis and appellant were seen getting out of on surveillance footage. Ms. Rayne-Ross testified that she had agreed to give Ms. Willis and appellant a ride to Ms. Willis's car, which had run out of gas. While Ms. Willis was directing Ms. Rayne-Ross to the location of her vehicle, it began to get dark and Ms. Rayne-Ross commented that she thought they were lost. Appellant responded that Ms. Willis was taking them "in circles" because she was lying about the location of her car.[1] Appellant and Ms. Willis began to argue and eventually, appellant asked Ms. Rayne-Ross to pull over so he could get out of the car. Ms. Rayne-Ross pulled over and at that point:

[1] During appellant's interview with police, he expressed concern over whether Ms. Willis had "met somebody else."

> [Appellant] jumped up. He was in the backseat. He came up and grabbed her around her neck and he flipped forward into the -- in the Suburban it's enough space. You know, in the Suburban there's space in the front seat and when he flipped up into the front seat he came down in the floor and her head was still in his arm coming forward. And he took his other hand, hit the door, and took his foot and kicked off of my steering wheel and rolled him and her out of the car.

Concerned about her young granddaughter who was also in the car, Ms. Rayne-Ross drove to a nearby gas station and called 911.

Prior to the trial's conclusion, the judge and both counsel discussed the requested jury instructions. Appellant's counsel maintained that the evidence generated a manslaughter instruction because Ms. Rayne-Ross's testimony established that a "fight between the parties" demonstrated legally adequate provocation:

> [DEFENSE COUNSEL]: I think Your Honor currently has all the issues. The, the adequate -- I think the issue of the instruction, I think the defense certainly meets the first part. I think there -- but I do think there can be a dispute about the adequate provocation part.
>
> Ms. Rayne-Ross made slightly certain -- different statements originally on the recording that I played than she made in court and certainly agree that based on what was -- she said in court, I don't think the defense has met the burden of production for provocation, but I do think there's an argument for that on the body cam footage where she talks more -- the kind of fighting in the car that kind of gave more detail; someone grabbing at the wheel. She couldn't even see who because she, while she's focusing on driving she can't see out of that eye. Obviously Mr. Ennals has his own injuries on him and, and Ms. Rayne-Ross provided, you know, kind of one possible cause of that on the stand today, but not in the body cam footage that I played.
>
> And obviously, it's the jury's province as to what, if anything, of any witness to believe and the stand for burden of production is so low and a fight between the parties can be adequate provocation. I think there's pretty clear evidence of a hot blooded response.
>
> THE COURT: The issue is legally adequate provocation.

[DEFENSE COUNSEL]: Absolutely, absolutely. That is certainly the issue, but I think the statement Ms. Rayne-Ross made on the body cam footage allows the defense to meet the minimal standard of burden of production for that instruction.

The State disagreed:

[THE STATE]: Your Honor, I, I disagree. I think that the evidence is before -- one, defense has to generate this instruction by finding all four of these factors; that there's adequate provocation, that the killing must have been in the heat of passion, a sudden heat of passion, a causal connection between the provocation and the passion and the fatal act. I don't even think they have -- one, I certainly don't believe that they have established there's adequate provocation, nor will they be able to sustain legally adequate provocation. There's three things that it can be, one of which is completely out of context because there's no illegal arrest here made by Roshonda.

The other three are mutual combat. We don't have testimony or evidence of that. We have the exact opposite. Ms. [Rayne-]Ross says that Roshonda did not cause any -- did not strike, did not try to hurt Mr. Ennals. Did not turn around. Mr. Ennals is choking her from behind. Mr. Ennals flips over to the front seat to Roshonda. There's not a mutual combat. There's certainly not a substantial battery.

The only injury noted to Mr. Ennals is on 3C, which Detective Simmons testified was a scratch on the arm, which Ms. Rayne-Ross basically told the jury where that came from. She was pulling at him as he was chocking her.

THE COURT: Right.

[THE STATE]: I don't believe that there's anything that will be established shy of the Defendant testifying to something tomorrow for this legally adequate provocation, but I also don't think that what they've heard from the Defendant's interview with Detective Simmons would establish that this was a heat of passion. He doesn't say that he was angry and did this in a rage. He gives all of the indication of what happened in the car, leaves – doesn't himself testify to any choking. He says he grabbed her by the arms at one point. Says that he – "Okay, let's get out and talk" and then gets out and doesn't remember anything. I don't think that that testimony or that evidence right now has established that there was any heat of passion either.

So at this point I'd object completely to this instruction being given. I don't believe defense has met its burden to generate it.

The court agreed, asserting that:

> I tend to agree with the State. At this point I don't think that's generated. Certainly I don't have to make that decision right at this point, but out of fairness to the defense I want to tell you which way I'm leaning. I just don't think it's been generated as contemplated by law, but the case isn't over.

The following day, the court asked the parties if there were any "alterations, modifications, any discussion regarding what we talked about of the instructions last night[,]" and appellant's counsel made no additional argument regarding the hot-blooded response instruction. Ultimately, the court determined that:

> So with respect to the manslaughter instruction, of course, manslaughter is not charged; we, we had a discussion as part of the record. It's something where there has to be certain evidence generated and the court just does not think that that evidence has been fairly generated and that it would act to confuse the jury in this matter. So the court determines not to give the manslaughter instruction, but your objection is noted.

The court instructed the jury and counsel for appellant made no additional objections regarding the requested hot-blooded response instruction.

On February 1, 2023, the jury found appellant guilty of all crimes charged. He was sentenced to life in prison without the possibility of parole. This appeal timely followed. Additional facts will be provided as necessary.

STANDARD OF REVIEW

We review errors arising during *voir dire* under the abuse of discretion standard. *Wright v. State*, 411 Md. 503, 507 (2009). The Maryland Supreme Court has noted that it is a "universal rule that on appellate review, the exercise of discretion by trial judges with respect to the particular questions to ask and areas to cover in voir dire is entitled to considerable deference." *Washington v. State*, 425 Md. 306, 314 (2012). Accordingly, we

will not disturb the court's *voir dire* questioning unless it is "not reasonably sufficient to test the jury for bias, partiality, or prejudice." *Id.* To determine whether a court abused its discretion in declining to give a jury instruction, we consider the following factors:

> (1) whether the requested instruction was a correct statement of the law; (2) whether it was applicable under the facts of the case; and (3) whether it was fairly covered in the instructions actually given.

Id. "The threshold determination of whether the evidence is sufficient to generate the desired instruction is a question of law for the judge." *Bazzle v. State*, 426 Md. 541, 550 (2012) (quoting *Dishman v. State,* 352 Md. 279, 292-93 (1998)).

DISCUSSION

I. The court did not err in asking the *voir dire* questions.

Appellant asserts that "[t]he circuit court erred in asking two compound 'strong feelings' questions" during *voir dire*. Specifically, regarding the crimes charged question, he contends that the judge's explanation as to why the court was asking the question "went too far" and resulted in "the functional equivalent of a compound question." He argues that the question about the crime in the community "asked prospective jurors to determine for themselves whether any 'strong feelings' would make it difficult for them to serve as fair and impartial jurors[,]" and the question "constituted a textbook example of a 'compound question.'"

The State responds that appellant failed to object to, and affirmatively waived, his objection to the crimes charged question when he noted that his "only" objection was to the question regarding crime in the community. If preserved, the State contends that the court's comments were not a "part of the question[,]" and thus, that the question was not

compound. Finally, the State maintains that because the crime in the community question was not a mandatory question, any error would not require reversal.

In his reply brief, appellant does not dispute that he failed to object to the crimes charged question, but responds that because his contention was "decided by the trial court[,]" that it is properly preserved under Md. Rule 8-131(a). Further, as to the crime in the community question, appellant responds that the fact that the question was discretionary did not give the trial court "free rein to ask non-mandatory questions in any manner or form."

"*Voir dire* is 'the process by which prospective jurors are examined to determine whether cause for disqualification exists.'" *Brice v. State*, 225 Md. App. 666, 676 (2015) (quoting *Moore v. State*, 412 Md. 635, 644 (2010)) (internal quotation marks omitted). In Maryland, we "allow only 'limited voir dire' – meaning that the sole purpose of voir dire questioning is to determine whether prospective jurors should be struck for cause[.]" *Kidder v. State*, 475 Md. 113, 125 (2021) (quoting *Kazadi v. State*, 467 Md. 1, 46-47 (2020)). Accordingly, "a trial court need not ask a *voir dire* question that is 'not directed at a specific [cause] for disqualification [or is] merely 'fishing' for information to assist in the exercise of peremptory challenges[.]" *Pearson v. State*, 437 Md. 350, 357 (2014) (quoting *Washington*, 425 Md. at 315).

The Maryland Supreme Court has identified "two categories of specific cause for disqualification: (1) a statute disqualifies a prospective juror; or (2) a 'collateral matter [is] reasonably liable to have undue influence over' a prospective juror." *Pearson*, 437 Md. at 357 (quoting *Washington*, 425 Md. at 313). The second category "is comprised of 'biases

directly related to the crime, the witnesses, or the defendant[.]'" *Id*. These include "bias based on race, ethnicity, or cultural heritage; bias against defense witnesses; religious bias; an unwillingness to convict in capital cases; a juror's strong feelings toward the crime charged; and placement of undue weight on police officer credibility." *Wagner v. State*, 213 Md. App. 419, 450 (2013). An individual is struck for cause after an assessment is made "that the individual, for one reason or another, might not be able to discharge the juror's obligation to decide a case fairly and impartially for the duration of the trial." *Kidder*, 475 Md. at 124.

A trial court must ask a requested question "if and only if the *voir dire* question is 'reasonably likely to reveal [specific] cause for disqualification[.]'" *Pearson*, 437 Md. at 357 (quoting *Moore*, 412 Md. at 663). Otherwise, the trial court's decision regarding posing a *voir dire* question is "entitled to considerable deference." *Washington*, 425 Md. at 308 (noting that the "question was not mandatory, and, thus, it was within the discretion of the trial court whether to pose the question to the jury panel.").

Under certain circumstances, "to protect the free flow of information necessary to effect a proper challenge for cause[,]" the phrasing of a *voir dire* question in a compound manner is prohibited. *Robson v. State*, 257 Md. App. 421, 451 *cert. denied*, 483 Md. 520 (2023). However, "[a] compound question is not a self-contained sin unto itself." *Id*. at 454; *see also Collins v. State*, 452 Md. 614, 625 n.5 (2017) (noting that "a voir dire process that involves compound questions is not automatically invalid."). Instead, determining whether the trial court committed reversible error in asking a compound *voir dire* question

lies within the "protasis" and the "apodosis" of the question. *Robson*, 257 Md. App. at 450.

The protasis, or the "conditional clause" of the question, "addresses the 'potential existence of a specified condition.'" *Id*. (quoting *Dingle v. State*, 361 Md. 1, 27 (2000)). The apodosis, on the other hand, or the "conclusion clause[,]" addresses "'the potential effect of the specified condition,' if that condition exists." *Id*. (quoting *Dingle*, 361 Md. at 27). It is the protasis that "identifies the actual condition that might represent a challenge for cause[,]" and thus, that is "vital for the selection of a fair and impartial jury." *Robson*, 257 Md. App. at 453.

Therefore, the subject matter of the protasis "goes directly to a challenge for cause, the compound question would produce a prejudicial error." *Id*. at 456. *See also Collins v. State*, 463 Md. 372, 396 (2019) (noting that the trial court was required to ask a mandatory question in a "non-compound" form); *Pearson*, 437 Md. at 354. However, if the subject matter of the protasis "does not go to a challenge for cause, a compound question that obscures the answer will not amount to prejudicial error." *Id*.

With this framework in mind, we turn to the issue before us.

i. The court did not err in asking the crimes charged question.

As an initial matter, we disagree with the State that appellant's contention regarding the crimes charged question is not properly before us. The record reflects that appellant's contention on appeal – that the crimes charged question was a compound question – was decided by the court when, apparently misinterpreting the appellant's objection, the court determined that the crimes charged question "wasn't compound[.]"

Md. Rule 8-131(a) makes clear, an issue must either be "raised in *or* decided by the trial court" to be preserved for our review. *Id*. (emphasis added). The State's assertion that the issue is unpreserved assumes that an issue must both be raised in and decided by the trial court to be properly before us on appeal. This is contrary to the plain language of the Rule and to prior appellate decisions. *See Bradley v. Bradley*, 208 Md. App. 249, 258 (2012) (deciding issue that "appellant himself did not raise" but that "was nevertheless 'decided by the trial court.'") (quoting Md. Rule 8-131(a)); *Goff v. State*, 387 Md. 327, 339 (2005) (addressing issue that was "considered and decided by the trial court, even if not argued by the parties."). The issue is adequately preserved for our review.

As appellant acknowledges, the court's preliminary comments in the case at bar were not an additional question or part of the question itself, but an "explanation for why [the court] was asking the question[.]" *See Hensen v. State*, 133 Md. App. 156, 166 (2000) (noting that a *voir dire* question "was not a compound question as it did not contain two distinct questions.").

We do not agree that the court's preliminary comments "constituted a functional equivalent of a compound question." Appellant cites no support for his position that comments preceding and separate from a question on *voir dire* can create a "functional equivalent" of a compound question, and we are not aware of any. It is fundamental that "a compound question is, of course, a two-part question[.]" *Robson*, 257 Md. App. at 452. *See*, e.g., *Dingle*, 361 Md. at 5 (holding that, "Have you or any family member or close personal friend ever been a victim of a crime, and if your answer to that part of the question is yes, would that fact interfere with your ability to be fair and impartial in this case in

which the state alleges that the defendants have committed a crime?" was a forbidden compound question); *Pearson*, 437 Md. at 361 (holding that, "Does any member of the panel hold such strong feelings regarding violations of the narcotics laws that it would be difficult for you to fairly and impartially weigh the facts of this trial where narcotics violations have been alleged?" was a forbidden compound question.); *Robson*, 257 Md. App. at 458 (holding that, "Do any of you have such a close association with a law enforcement officer or organization that it would in any way impair your ability to be fair and impartial?" was a forbidden compound question).

Here, the question challenged – "do you have strong feelings about the crimes charged?" – has only one part. As the State correctly points out, it "lacks the apodosis" of a compound question. Unlike a compound question, a negative answer to the crimes charged question leaves no doubt about the information requested: it indicates that the juror does not have strong feelings about the crimes charged.

Based on the record, we are unpersuaded that the crimes charged question, including the comments immediately preceding, resulted in a forbidden compound question.

ii. The court did not err in asking the crime in the community question.

We also hold that the court did not commit reversible error by asking the crime in the community question. Appellant acknowledges that the court was not required to ask whether potential jurors had strong feelings about the crime in the community or the criminal justice system. He contends that the discretionary nature of the question "did not change the need for it to be asked in non-compound form once the circuit court exercised its discretion to ask it."

Appellant cites no support for the proposition that an improperly worded discretionary *voir dire* question constitutes reversible error. As we noted in *Robson*, "[i]f the subject matter of the protasis … does not go to a challenge for cause, a compound question that obscures the answer will not amount to prejudicial error." *Robson*, 257 Md. App. at 456. *See also Wright*, 411 Md. at 508 (noting that the trial court has broad discretion as to "both the form and the substance" of a question asked during *voir dire*).

In the present case, the protasis of the question – whether potential jurors have strong feelings about crime in the community or about the criminal justice system – did not involve a mandatory area of inquiry or "biases directly related to the crime, the witnesses, or the defendant[.]" *Pearson*, 437 Md. at 357 (internal quotation marks and citation omitted). Accordingly, the protasis did not go to a challenge for cause and, the question did not result in prejudicial error.

We further do not agree with appellant's position that the Court in *Pearson* "reinforced the general principle that when a court asks a particular voir dire question," it must avoid doing so "in compound form[.]" As the State properly points out, appellant's assertion "confuses two separate issues that are addressed separately in *Pearson*." Those two holdings were first, that on request, the court must ask potential jurors about having strong feelings about the offenses charged. *Pearson,* 437 Md. at 363 (reaffirming this Court's holding in *State v. Shim*, 418 Md. 37 (2011) "that, on request, a trial court must ask during voir dire whether any prospective juror has 'strong feelings' about the crime with which the defendant is charged."). Second, the Court held that the trial court is not required to ask potential jurors about whether they have ever been a victim of a crime. *Id*. at 359

(noting that "a trial court need not ask during voir dire whether any prospective juror has ever been the victim of a crime.").

Neither holding in *Pearson* supports or even considers appellant's assertion that asking a discretionary *voir dire* question in a compound form amounts to reversible error. Although we agree that generally, the trial court should avoid asking compound *voir dire* questions in order "to protect the free flow of information necessary to effect a proper challenge for cause[,]" under these facts we cannot say that the court committed reversible error in asking the discretionary question in a compound manner. *Robson*, 257 Md. App. at 451.

In his reply brief, appellant maintains that holding that improperly worded discretionary questions asked during *voir dire* do not require reversal "assumes that 'yes' answers to non-mandatory questions cannot lead to grounds to challenge prospective jurors for cause[.]" What appellant fails to acknowledge is that it is not our role to assess whether each *voir dire* question requested by the parties can or cannot possibly lead to grounds for a challenge for cause. That determination falls within the discretion of the trial court. Instead, our inquiry focuses on whether the question requested is directed at a specific cause for disqualification. *Pearson*, 437 Md. at 356-57. Because the crime in the community question was not directed at a specific cause for disqualification, the court did not commit reversible error by phrasing it in a compound manner.

II. Appellant waived his assertion regarding the hot-blooded response instruction.

A party may "request[] a jury instruction on hot-blooded response to legally adequate provocation" as a means to mitigate a charge of murder to voluntary manslaughter. *Wilson v. State*, 195 Md. App. 647, 680 (2010), *reversed on other grounds*, 422 Md. 533 (2011). The so-called "Rule of Provocation" requires:

> (1) There must have been adequate provocation;
>
> (2) The killing must have been in the heat of passion;
>
> (3) It must have been a sudden heat of passion—that is, the killing must have followed the provocation before there had been a reasonable opportunity for the passion to cool;
>
> (4) There must have been a causal connection between the provocation, the passion, and the fatal act.

Id. at 680-81. "[T]he burden of production is on the defendant to generate a prima facie case with respect to each and every one of the four elements of the defense" and "[s]hould any one of the four [elements] be lacking, mitigation based on the Rule of Provocation will not be an issue for the jury to consider." *Id*. at 681.

We have emphasized that "[t]o constitute a mitigating factor sufficient to negate the element of malice, and thereby reduce murder to manslaughter, the provocation must be 'adequate.'" *Dennis v. State*, 105 Md. App. 687, 695 (1995). In other words, it "must be 'calculated to inflame the passion of a reasonable man and tend to cause him to act for the moment from passion rather than reason.'" *Girouard v. State*, 321 Md. 532, 539 (1991) (quoting *Carter v. State*, 66 Md. App. 567, 572 (1986)). Additionally, "the provocation must be one the law is prepared to recognize as minimally sufficient, in proper

circumstances, to overcome the restraint normally expected from reasonable persons." *Dennis*, 105 Md. App. at 695.

The Maryland Jury Pattern on hot-blooded response to legally adequate provocation states:

> Killing in hot blooded response to legally adequate provocation is a mitigating circumstance. In order for this mitigating circumstance to exist in this case, the following five factors must be present:
>
> (1) the defendant reacted to something in a hot blooded rage, that is, the defendant actually became enraged;
>
> (2) the rage was caused by something the law recognizes as legally adequate provocation, that is, something that would cause a reasonable person to become enraged enough to kill. In this case, the only act that you can find to be adequate provocation is [a battery by the victim upon the defendant] [a fight between the victim and the defendant] [an unlawful warrantless arrest of the defendant by the victim, which the defendant knew or reasonably believed was unlawful];
>
> (3) the defendant was still enraged when (pronoun) killed the victim, that is, the defendant's rage had not cooled by the time of the killing;
>
> (4) there was not enough time between the provocation and the killing for a reasonable person's rage to cool; and
>
> (5) the victim was the person who provoked the rage.

MPJI-Cr 4:17.4(c) Voluntary Manslaughter (Hot Blooded Response to Legally Adequate Provocation). Further, the Supreme Court of Maryland has noted that the hot-blooded response defense:

> may be raised in cases involving mutual affray, assault and battery, discovering one's spouse in the act of sexual intercourse with another, resisting an illegal arrest, witnessing, or being aware of, an act causing injury to a relative or a third party, and anything the natural tendency of which is to produce passion in ordinary men and women.

Christian v. State, 405 Md. 306, 323 (2008).

Appellant asserts that the court erred in declining to instruct the jury on voluntary manslaughter based upon hot-blooded response because the evidence demonstrates that he was reacting "to what he perceived to be an impending and/or immediate false arrest[.]" The State responds that appellant's assertion is not preserved for our review because at trial, he failed to argue that the instruction was based upon a fear that an illegal arrest was impending or immediate.

Based on our review of the record, appellant failed to preserve this issue. We note that the requested jury instruction appellant submitted to the court specifically removed the provision regarding an unlawful warrantless arrest from MPJI-Cr 4:17.4(c):

> Killing in hot blooded response to legally adequate provocation is a mitigating circumstance. In order for this mitigating circumstance to exist in this case, the following five factors must be present:
>
> (1) the defendant reacted to something in a hot blooded rage, that is, the defendant actually became enraged;
>
> (2) the rage was caused by something the law recognizes as legally adequate provocation, that is, something that would cause a reasonable person to become enraged enough to kill or inflict serious bodily harm. **The only act that you can find to be adequate provocation under the evidence in this case is [a battery by the victim upon the defendant] [a fight between the victim and the defendant];**
>
> (3) the defendant was still enraged when [he] [she] killed the victim, that is, the defendant's rage had not cooled by the time of the killing;
>
> (4) there was not enough time between the provocation and the killing for a reasonable person's rage to cool; and
>
> (5) the victim was the person who provoked the rage.

(Emphasis added).

At trial, appellant requested the hot-blooded response instruction solely on the grounds that there was "a fight between the parties[.]" Even after the trial court indicated that it was "leaning" towards finding that legally adequate provocation had "not been generated as contemplated by law," appellant made no mention of provocation due to an illegal arrest anywhere within the record before us. Because appellant's contentions are raised for the first time on appeal, we decline to consider them. *Faith v. Keefer*, 127 Md. App. 706, 737 (1999) ("As these contentions have been raised for the first time on appeal, they are not preserved for appellate review, and we decline to consider them.") We note that in contrast to the crimes charged question, discussed *supra*, which was plainly considered and decided by the trial court, here appellant points to no support for the position that the issue was considered or decided by the court.

Finally, the record reflects that the issue has also been waived. At trial, the State specifically stated that there was "no illegal arrest here made by [Ms. Willis.]" Appellant did not refute or object to the State's assertion. As stated, appellant plainly waived the issue for our review. *Nalls v. State*, 437 Md. 674, 691 (2014) (noting that "if a party fails to raise a particular issue in the trial court, or fails to make a contemporaneous objection, the general rule is that he or she waives that issue on appeal.").[2]

[2] Assuming, *arguendo*, that the issue was properly preserved for our review, we are unpersuaded that the facts demonstrate legally adequate provocation based upon an immediate or impending unlawful arrest. The record reflects no support for a reasonable belief that appellant was going to be illegally arrested. In appellant's interview with police, he explained that he had been concerned that Ms. Rayne-Ross would call police, noting that "[o]nce you say to [Ms. Rayne-Ross], you will automatically [sic] – '[Ms. Rayne-Ross], call the police.' And [Ms. Rayne-Ross] would have called that mother[****]ing (continued)

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police and I would have been arrested." However, Ms. Rayne-Ross's testimony indicated the opposite: that moments before appellant pulled Ms. Willis out of the vehicle, that Ms. Rayne-Ross agreed to pull over to allow him get out of the car:

> [Ms. Rayne-Ross:] I pulled down the road and when I pulled down the road he made a statement, "I'm getting' ready to get out of here." And I said, "Well, good. You go ahead and get out because I can't deal with this."

Thus, to the extent that appellant believed that a false arrest was immediate or impending, we disagree that it was reasonable based upon these facts. *Girouard*, 321 Md. at 539.