Circuit Court for Baltimore City
Case Nos. 110053022, 110218039

UNREPORTED*

IN THE APPELLATE COURT

OF MARYLAND

No. 817

September Term, 2023

STATE OF MARYLAND

v.

MICHAEL WIGGINS

Leahy,
Beachley,
Wilner, Alan M.
(Senior Judge, Specially Assigned),

JJ.

Opinion by Beachley, J.

Filed: January 19, 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).

On November 17, 2011, a Baltimore City jury convicted Michael Wiggins ("appellee") of first-degree murder, first-degree assault, and two counts of carrying a weapon openly with intent to injure. Nine years later, appellee filed a petition for post-conviction relief, alleging ineffective assistance of counsel. After the Circuit Court for Baltimore City granted appellee's petition, we granted the State's application for leave to appeal.

As we shall explain, binding precedent requires that we reverse the decision of the post-conviction court.

FACTUAL AND PROCEDURAL BACKGROUND

The facts of this case were previously summarized by this Court in an unreported, direct-appeal opinion *Wiggins v. State*, No. 2158, Sept. Term 2011 (filed Feb. 22, 2013):

> On January 22, 2010, Isaac Tyson, Steron Seleston, Troy Fisher, Steven Myler, and Justin Nelson threw a birthday party for Darius Ray at . . . 6908 McClean Boulevard in Baltimore City. . . . [T]he party began around 11:30 p.m. . . . [A]s the party progressed Isaac and his friends noticed that there were people in the house that they did not know. Isaac explained that "at first it was one or two. Then it became more. And we started to take notice to it." Isaac and his friends discussed whether they should shut down the party at that time, but decided that if the uninvited partygoers were not causing trouble, they could stay.
>
> As the night went on, however, some of the girls at the party complained that the uninvited partygoers were touching them inappropriately and making inappropriate comments. At around 4:00 a.m. . . . Darius and Troy . . . asked everyone to leave. Some people left, but others refused to leave and a fight broke out between the invited guests and the uninvited partygoers. The fight lasted for about five minutes and then after the fight had subsided, Wiggins, who was one of the uninvited guests, returned to the house "swinging knives."

> When Wiggins returned, Justin and Darius were standing at the front door trying to keep people out of the house. The next thing Justin remembered was Wiggins swinging at him and he was swinging back. . . . Isaac testified that he moved Justin and Darius away from the entryway and locked the front door. . . . Darius [then] collapsed in the middle of the hallway. He was bleeding from his neck and chest. Isaac tried to stop the bleeding with towels and he called 911. Justin was also cut with a knife and sustained a minor injury to his right shoulder but he did not seek medical attention.
>
> . . . Darius ultimately died as a result of the stab wounds he sustained to the left side of his chest and shoulder.
>
> Isaac went down to the police station the next morning to speak with detectives and identified Wiggins in a photo array as "the person wielding both kitchen knives." Archilles Moore, another invited guest, also identified Wiggins in a photo array as the "person that I saw stab Darius." Justin also identified him in the photo array as the "individual that swung at me when me while [sic] Darius and I were standing in the doorway of the house. I also took a photograph of him sitting in the house on the sofa with my camera." Several other invited guests also identified Wiggins as the person that stabbed Darius.

Additionally, one of the uninvited guests, Nicky Woodward, testified as part of a plea agreement that he saw appellee stab "the chest of the man who was standing in the doorway."

Appellee's trial for the murder of Darius Ray and the assault of Justin Nelson commenced on September 9, 2011. The following five voir dire questions[1] are at issue in this appeal:

> If you hold any feelings or beliefs relating to race, sex, color, religion, national origin, or any other personal attributes of the Defendants or any possible witnesses which would or might affect your ability to render a fair

[1] At oral argument, appellee's counsel withdrew any challenge to the trial court's voir dire questions concerning state or federal jury service and membership in "a neighborhood watch type of program," as well as the "catchall" question inquiring about "any reason" a juror might not be able to render a fair and impartial verdict.

> and impartial verdict in this case based on the law and the evidence, please stand.
>
> If there is any matter, fact or thing, including any religious, psychological or moral beliefs that you hold which would affect your ability to give a fair and impartial verdict in this case, please stand.
>
> I understand that a lot of people have strong feelings but if you have such strong feelings about the fact that it is alleged in this case that a weapon was involved. Such strong feelings that it would make it impossible for you to render a fair and impartial verdict because of that fact, please stand.
>
> Again, I understand people have strong feelings but if you have such strong feelings about the violation of narcotic laws that you would be unable to render a fair and impartial verdict based on the facts and the evidence presented in this case during the trial, please stand.
>
> I told you very briefly what the allegations are. If you feel that the nature of the case would make it impossible for you to render a fair and impartial verdict in this case, please stand.

Defense counsel did not object to any of these voir dire questions. Appellee also did not challenge these questions in his direct appeal. It is unclear from the record how many prospective jurors responded to these questions, but at least eight impaneled jurors did not respond to any of the court's voir dire to the jury venire.

After a fifteen-day trial, appellee was convicted of first-degree murder, first-degree assault, and two counts of carrying a weapon openly with intent to injure. Appellee was sentenced to life imprisonment for first-degree murder. He received a concurrent ten-year sentence for first-degree assault and two concurrent three-year sentences for each of the weapons charges. On direct appeal, we affirmed the convictions in an unreported opinion. *Wiggins v. State*, No. 2158, Sept. Term 2011 (filed Feb. 22, 2013).

APPELLEE'S PETITION FOR POST-CONVICTION RELIEF

On May 29, 2020, appellee filed a petition for post-conviction relief alleging ineffective assistance of counsel. The court held a post-conviction hearing on February 9, 2023. Appellee's trial counsel, Nancy Rainer, was the only witness. Ms. Rainer was asked if she was familiar with *Dingle v. State*, 361 Md. 1 (2000), at the time of appellee's trial in 2011. Ms. Rainer recounted that appellee's "case was over 11 years ago" and that, although she "tried to keep up with everything[,]" she could not "say a yes or no, because [she did not] remember." She further noted that it was a "very tumultuous time . . . over voir dire questions. And what could be asked, what couldn't be asked, what the judges were going to ask."

On March 1, 2023, the post-conviction court granted appellee's petition. The post-conviction court found that the "trial court asked the *voir dire* questions in a way very similar to those" that were proscribed by *Dingle*. In its written opinion, the court applied the two-prong test from *Strickland v. Washington*, which provides that defense counsel renders ineffective assistance when (1) "counsel's performance was deficient" and (2) "the deficient performance prejudiced the defense." 466 U.S. 668, 687 (1984). The court found that trial counsel's failure to object to the voir dire questions was a "deficient act," and that appellee "was prejudiced because he was denied his constitutional right to a fair and impartial jury." Accordingly, the post-conviction court granted appellee's request for a

new trial.[2]

On June 26, 2023, we granted the State's application for leave to appeal the post-conviction judgment.

DISCUSSION

The State argues that the post-conviction court erred because appellee "did not establish deficiency as to most of his claims, or prejudice as to any of his claims." Appellee counters that the "post-conviction court correctly concluded that the compound questions . . . were improper" and that trial counsel's failure to object to them amounted to ineffective assistance of counsel. As to *Strickland*'s second prong, appellee contends that the "post-conviction court correctly concluded that [appellant] was prejudiced" by counsel's deficient representation.[3]

Review of a "post-conviction court's findings regarding ineffective assistance of counsel [i]s a mixed question of law and fact. The factual findings of the post-conviction court are reviewed for clear error. The legal conclusions, however, are reviewed *de novo*."

[2] The court denied post-conviction relief related to trial counsel's alleged failure to request a jury instruction.

[3] Because we conclude that counsel's failure to object to the compound "strong feelings" questions does not satisfy *Strickland*'s deficiency prong, the post-conviction court erred in determining that the cumulative effect of those questions violated appellee's right to effective assistance of counsel. *See Muhammed v. State*, 177 Md. App. 188, 325 ("There must first be error before there is any prejudicial effect of that error to be measured . . . . Eight times nothing is still nothing."). Indeed, appellee makes no substantive "cumulative effects" argument in his brief.

McGhee v. State, 482 Md. 48, 66 (2022) (quoting *Wallace v. State*, 475 Md. 639, 653 (2021)).

"The Sixth Amendment to the United States Constitution and Article 21 of the Maryland Declaration of Rights guarantee criminal defendants the right to 'effective assistance of counsel.'" *Id.* (quoting *Strickland*, 466 U.S. at 686). To demonstrate an ineffective assistance of counsel claim, defendants must meet a two-prong test established by the Supreme Court in *Strickland*:

> First, the defendant must show that counsel's performance was deficient. This requires showing that counsel made errors so serious that counsel was not functioning as the "counsel" guaranteed by the defendant by the Sixth Amendment. Second, the defendant must show that the deficient performance prejudiced the defense. This requires showing that counsel's errors were so serious as to deprive the defendant of a fair trial, a trial whose result is reliable.

466 U.S. at 687.

When evaluating whether trial counsel's performance was deficient, "a court must indulge a strong presumption that counsel's conduct falls within the wide range of professional assistance[.]" *State v. Davis*, 249 Md. App. 217, 222 (2021) (quoting *Strickland*, 466 U.S. at 689). Doing so "requires that every effort be made to eliminate the distorting effects of hindsight . . . and to evaluate the conduct from counsel's perspective at the time." *Id.* (quoting *Strickland*, 466 U.S. at 689).

When evaluating prejudice, the petitioner must demonstrate "either: (1) a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different; or (2) that the result of the proceeding was fundamentally unfair or

unreliable." *State v. Syed*, 463 Md. 60, 86 (2019) (quoting *Newton v. State*, 455 Md. 341, 355 (2017)). There are, however, "very narrow exception[s]" where prejudice may be presumed. *Ramirez v. State*, 464 Md. 532, 564 (2019). Prejudice is presumed "only if: (1) the petitioner was actually denied the assistance of counsel; (2) the petitioner was constructively denied assistance of counsel; or (3) the petitioner's counsel had an actual conflict of interest." *Id*. at 541.

Because a petitioner must prove both prongs of the *Strickland* test, "we need not approach the inquiry in any particular order, nor are we required in every instance to address both components of the *Strickland* test." *Oken v. State*, 343 Md. 256, 284 (1996). "If it is easier to dispose of an ineffectiveness claim on the ground of lack of sufficient prejudice, . . . that course should be followed." *Strickland*, 466 U.S. at 697.

Particularly relevant to this case, trial counsel's conduct must be evaluated within the context of the law as it existed at the time of trial. The "law on compound jury selection questions evolved over th[e] 14-year period" between the Supreme Court of Maryland's 2000 decision in *Dingle* and the Court's 2014 decision in *Pearson v. State*, 437 Md. 350 (2014). *Davis*, 249 Md. at 223. Understanding where appellee's 2011 trial fits "on this continuum is critical" to analyzing whether trial counsel's failure to object to the voir dire questions at issue was deficient. *Id.* at 223–24.

In *Dingle*, our Supreme Court examined a compound voir dire question that asked prospective jurors to evaluate if certain "experiences or associations" would impact their "ability to be fair and impartial." *Dingle*, 361 Md. at 3–4. The trial court instructed jurors

to identify themselves only if their answer was "yes to both parts of the question." *Id.* at 5. The *Dingle* Court noted that this process "allow[ed], if not require[d], the individual venire person to decide on his or her ability to be fair and impartial." *Id.* at 21. The Court held that this process was improper because it "shift[ed] from the trial judge to the venire [the] responsibility to decide juror bias[,]" thereby "distort[ing] and frustrat[ing]" the "purpose of voir dire." *Id.*

The following year, this Court held that a trial court abused its discretion when it refused to ask, at defense counsel's request, if jurors had "such strong feelings regarding the violations of the narcotics laws that it would be difficult for you to fairly and impartially weigh the facts" at trial. *Thomas v. State*, 139 Md. App. 188, 195, 208 (2001). Although we noted that the trial court should have asked the question because it was reasonably likely to reveal "strong feelings toward narcotics laws that may hinder a juror's ability to serve[,]" we also held that the compound nature of the question was improper under *Dingle*. *Id.* at 202, 205. On *certiorari*, the Supreme Court affirmed our Court's opinion that the question concerning narcotics laws should have been given because it was likely to reveal bias, but disagreed with our "guidance" on the phrasing of compound questions, stating:

> We do not share the intermediate appellate court's interpretation of *Dingle* as it relates to this case and, thus, we do not believe the guidance it offers is necessary. When the inquiry is into the state of mind or attitude of the venire with regard to a particular crime or category of crimes, it is appropriate to phrase the question as was done in this case.

State v. Thomas, 369 Md. 202, 204 n.1 (2002); *see also Sweet v. State*, 371 Md. 1 (2002) (relying on *Thomas* to hold that a trial court abused its discretion when the court declined

to ask the following question: "Do the charges stir up strong emotional feelings" that "would affect your ability to be fair and impartial[?]"); *State v. Shim*, 418 Md. 37 (2011) (citing *Thomas* and *Sweet* to hold that a trial court erred when it refused to ask: "Does any member of the jury panel have such strong feelings concerning the violent death of another human being that you would be unable to render a fair and impartial verdict[?]").

As we noted in *Davis*, the Supreme Court's decision in *Pearson v. State* in 2014 "abrogated th[e] portions of *Thomas*, *Sweet*, and *Shim* that permitted two-part 'strong feelings' voir dire questions." *Davis*, 249 Md. App. at 229. In *Pearson*, the Court acknowledged that in "*Shim* and its parent cases, the 'strong feelings' *voir dire* questions' phrasings were at odds with *Dingle.*" 437 Md. 350, 363 (2014). *Pearson* notably "marked a change in the law from allowing to disallowing compound questions that 'shift responsibility to decide a prospective juror's bias from the trial court' to the prospective jurors." *Davis*, 249 Md. App. at 230 (quoting *Pearson*, 437 Md. at 363).

In our 2021 opinion in *Davis*, we concluded: "Thus, as of May 10, 2002—the date the [Supreme Court of Maryland] issued its decision in *Thomas*—the state of the law appeared to be that *Dingle* did *not* apply to a 'strong feelings' compound question." 249 Md. App. at 226 (emphasis in original). After reviewing intervening caselaw—particularly *Wimbish v. State*, 201 Md. App. 239 (2011)—the *Davis* Court reiterated: "As of September 29, 2011—the date of our decision in *Wimbish*—it appeared that footnote 1 of the [Supreme Court's] opinion in *Thomas* reflected the state of the law on that issue." 249 Md. App. at 228–29.

Davis is particularly instructive because it involved an ineffective assistance of counsel claim arising from an unobjected-to compound voir dire question during a 2007 trial. 249 Md. App. at 219. There, the trial court asked: "Do the nature of the charges [of attempted murder and kidnapping] themselves, just alone, stir up such strong emotional feelings in you that you cannot be a fair and impartial juror in this case?" *Id.* Following a post-conviction hearing, the court granted relief when it concluded that the "question was improper under *Dingle*[.]" *Id.* at 220.

After examining the evolution of cases from *Dingle* to *Pearson*, and after "[p]inpointing Mr. Davis's trial [within] this continuum," the *Davis* Court recognized that the "state of the law . . . as it existed" in 2007 meant that the "failure to object to the two-part 'strong feelings' voir dire question was not a deficiency." *Id.* at 223, 230. Because compound strong feelings questions were not found definitively to be improper until *Pearson* in 2014, a holding that "applied 'prospectively,'" this Court reversed the post-conviction court's judgment. *Id.* at 230–31 (quoting *Pearson*, 437 Md. at 370).

Davis makes clear that, prior to the issuance of *Pearson* in 2014, courts and counsel could reasonably conclude that compound "strong feelings" questions were not improper. Applying this principle, we see no *Strickland* deficiency related to trial counsel's failure to object to the five voir dire "strong feelings" questions appellee challenges in this appeal:

> If you hold any **feelings or beliefs** relating to race, sex, color, religion, national origin, or any other personal attributes of the Defendants or any possible witnesses which would or might affect your ability to render a fair and impartial verdict in this case based on the law and the evidence, please stand.

> If there is any matter, fact or thing, including any religious psychological or moral **beliefs** that you hold which would affect your ability to give a fair and impartial verdict in this case, please stand.
>
> I understand that a lot of people have **strong feelings** but if you have such **strong feelings** about the fact that it is alleged in this case that a weapon was involved. Such strong feelings that it would make it impossible for you to render a fair and impartial verdict because of that fact, please stand.
>
> Again, I understand people have strong feelings but if you have such **strong feelings** about the violation of narcotic laws that you would be unable to render a fair and impartial verdict based on the facts and the evidence presented in this case during the trial, please stand.
>
> I told you very briefly what the allegations are. If you **feel** that the nature of the case would make it impossible for you to render a fair and impartial verdict in this case, please stand.

(Emphasis added). Consistent with *Davis*—a case that involved a 2007 trial—defense counsel's failure to object to these questions at appellee's trial in 2011 did not constitute a deficient act under *Strickland* because compound strong feelings questions were not definitively proscribed until the Supreme Court issued its prospective opinion in *Pearson* in 2014. Indeed, *Davis* explicitly noted that "[a]s of September 29, 2011—the date of our decision in *Wimbush*—" compound strong feelings questions were permissible. 249 Md. App. at 228. Because the voir dire in this case occurred on September 9, 2011, *Davis* is dispositive, and the post-conviction court erred in determining that appellee's trial counsel

was deficient in failing to object to these compound strong feelings questions.[4, 5]

JUDGMENT OF THE CIRCUIT COURT FOR BALTIMORE CITY REVERSED. APPELLEE TO PAY COSTS.

[4] Appellee relies on *Collins v. State*, 463 Md. 372 (2019) to support his claim that trial counsel was deficient at his 2011 trial. There, the Supreme Court clarified that *Thomas*, *Sweet*, and *Shim* did not endorse the use of compound questions because the phrasing of the questions was not at issue in those cases. *Id.* at 392–93. We see nothing in *Collins* that would undermine our decision in *Davis*, and we therefore decline appellee's invitation at oral argument to overrule *Davis*.

[5] Because appellee clearly did not satisfy the deficiency prong of *Strickland*, we need not address its prejudice prong. Nevertheless, in light of the overwhelming evidence that appellee was the criminal agent, which included testimony from multiple eyewitnesses, it is unlikely that appellee could establish prejudice under *Strickland*. *See Ramirez v. State*, 464 Md. 532, 580 (2019) ("The strength of the State's case against Ramirez leads to the conclusion that there is no substantial or significant possibility that the outcome of the trial would have been different had [the biased juror] not served on the jury."). We further note that *Ramirez* would not support a presumption of prejudice in this case.