Circuit Court for Allegany County
Case No. C-01-CR-23-000068

UNREPORTED*

IN THE APPELLATE COURT

OF MARYLAND

No. 1012

September Term, 2023

MICHELLE RAE DECHALUS

v.

STATE OF MARYLAND

Tang,
Albright,
Kehoe, Stephen H.,

JJ.

Opinion by Albright, J.

Filed: January 28, 2025

* 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 Maryland Rule 1-104(a)(2)(B).

A jury in the Circuit Court for Allegany County found Michelle Rae DeChalus, Appellant, guilty of trespass on private property, disorderly conduct, resisting arrest, and obstructing and hindering a law enforcement officer in the performance of his duties. The court sentenced Ms. DeChalus to an aggregate term of incarceration of nine months, all suspended, with four years' supervised probation. She then noted this appeal, raising the following questions for our review:

1. Did the trial court err in refusing to propound a voir dire question regarding whether potential jurors would be biased in favor of the State because they feared reprisal by the police?

2. Did the trial court err in denying a motion to dismiss all potential jurors after the jurors had received a jury orientation manual that fundamentally misstated the law in relation to the jury's role?

3. Is the evidence insufficient to sustain the convictions?

We shall affirm the judgments.

BACKGROUND

Ms. DeChalus had been employed at Berry Plastics, a manufacturer of plastic moldings, in Cumberland, Maryland in Allegany County. At the time of the offenses, she had been on a leave of absence, which she believed had concluded, requiring her to report on December 8, 2022, for her 8:00 p.m. shift.[1] Accordingly, she took a bus from her

[1] At 4:47 p.m. December 8, 2022, Kelly McFadden, the Human Resources Director at Berry Plastic's Indiana corporate office, sent an email to Ms. DeChalus, informing her that an investigation failed to "substantiate [Ms. DeChalus's] allegations of harassment, discrimination, or retaliation." That email further requested that Ms. DeChalus call Ms. McFadden "to discuss any questions [Ms. DeChalus] [had] before" returning to work that night but acknowledging that Ms. DeChalus was "resting before [her] shift" and stating that she "[c]urrently" was scheduled to work that evening.

residence, a considerable distance away, and arrived at the plant at approximately 7:15 p.m. that evening.

Her employer, however, had a different understanding. Her supervisor, Lucas Poche, received a call at home the evening of December 8 from his "boss, the plant manager," who asked him to go the Cumberland plant to inform Ms. DeChalus that she was suspended from work and that she must leave the premises.[2] When Mr. Poche arrived at the plant, he "found the shift supervisor," Frank Funkhouser, so that he would have a witness, and together, they went to a hallway to wait for Ms. DeChalus to arrive.

Ms. DeChalus had already "made it into the building," apparently having entered through a different door. Mr. Poche approached her and informed her "that she was suspended and needed to go home and contact H.R." She replied that Mr. Poche "was not allowed to talk to her," and she requested that he "put it in writing," which he agreed to do. Mr. Poche asked Ms. DeChalus to wait while he walked the short distance to his office so that he could retrieve pen and paper. Ms. DeChalus, however, "took off pretty quick."

Ms. DeChalus went to her locker and "gathered her things." Mr. Poche and Mr. Funkhouser followed her and "reminded her again that she was suspended and needed to

[2] According to Mr. Poche, managers and supervisors at Berry Plastics "[have] the authority to suspend" an employee.

leave." Ms. DeChalus, however, did not leave. Instead, she went to a break room, where "she started packing her things up."[3]

Because Ms. DeChalus "still did not try to leave," Mr. Poche called 911 and asked for police to respond. While Mr. Poche and Mr. Funkhouser waited for Sheriff's deputies to arrive, Ms. DeChalus "grabbed her stuff and started heading towards the front hallway." Ms. DeChalus took out her cell phone and began recording the incident.

Deputy Andy Plummer and Sergeant Justin Gordon of the Allegany County Sheriff's Office responded to the call. When they arrived, Mr. Poche "went outside" and explained to them that there had been "some history" with Ms. DeChalus and that he "felt that she was setting up for a lawsuit against us at that point in time." Mr. Poche further informed the deputies that he had asked Ms. DeChalus to leave. They then went back inside the building. There, Mr. Poche informed Ms. DeChalus "one last time that she needed to leave the property, and at that time the Sheriff's Department took over."

Deputy Plummer and Sergeant Gordon then told Ms. DeChalus that she had to leave the property. Ms. DeChalus "wanted to explain something" to the officers, but they told her once again that she needed to leave the property. Ms. DeChalus then stated that she wanted written documentation of what had occurred and she continued to remain on the premises. She further stated that she would wait for the bus outside near a picnic table, but the officers explained that the picnic table was on company property and that

[3] According to Mr. Poche, Ms. DeChalus "started making a cup of tea." Ms. DeChalus disputed that assertion, claiming that she previously had made a cup of tea and merely was emptying the cup she already had made.

she could not wait there for the bus.[4] Ms. DeChalus protested that the picnic table was the only safe place nearby where she could wait for the bus, but the officers insisted that she leave the property and that if she did not do so, she would be arrested.

Ms. DeChalus replied, "that's a free ride downtown." Regarding her remark as "absolute[] non-compliance," Sergeant Gordon informed Ms. DeChalus that she was under arrest. A brief struggle ensued while they tried to handcuff her. During that struggle, Sergeant Gordon deployed pepper spray, causing Ms. DeChalus to "scream[]" in pain. The officers finally were able to apply handcuffs. While the arrest was taking place, a plant supervisor was "blocking the door" to the time clock to prevent plant employees from entering the area until the officers could gain control.[5]

A statement of charges was filed in the District Court of Maryland for Allegany County, charging Ms. DeChalus with: (1) trespass on private property; (2) disorderly conduct; (3) disturbing the peace/disorderly conduct;[6] (4) resisting arrest; (5) obstructing

[4] Ms. DeChalus also told the officers that she would wait on the premises while they wrote a police report because she needed a copy. Sergeant Gordon told her that the police report would not be written until a later time and that she needed to leave the premises.

[5] Sergeant Gordon stated that a shift change was in progress at the time.

[6] Section 10-201(c) of Maryland's Criminal Law Article ("CL") criminalizes several different modalities of disturbing the public peace and disorderly conduct. Md. Code Ann., Crim. Law § 10-201(c) (2024). Under CL § 10-201(c)(2), "[a] person may not willfully act in a disorderly manner that disturbs the public peace." Under CL § 10-201(c)(4), "[a] person who enters the land or premises of another, whether an owner or lessee, or a beach adjacent to residential riparian property, may not willfully . . . act in a disorderly manner." Ms. DeChalus was charged with having committed both of these crimes. She was acquitted of having committed the CL § 10-201(c)(2) crime and found guilty of having committed the CL § 10-201(c)(4) crime.

and hindering a law enforcement officer in the performance of his duties; and (6) assault in the second degree. Ms. DeChalus invoked her right to a jury trial, and the case was transferred to the Circuit Court for Allegany County.

A jury trial was held. On the morning of trial, the State entered nolle prosequi to count six, assault in the second degree.

Three witnesses testified for the prosecution: Mr. Poche, Deputy Plummer, and Sergeant Gordon. Ms. DeChalus testified on her own behalf. After a brief deliberation, the jury found Ms. DeChalus guilty of trespass on private property, disturbing the peace/disorderly conduct, resisting arrest, and obstructing and hindering a law enforcement officer in the performance of his duties, and it acquitted her of disorderly conduct. The court imposed sentences totaling nine months' incarceration, all suspended, and a term of probation. Ms. DeChalus then noted this timely appeal.

Additional facts are included where pertinent to the discussion of the issues.

DISCUSSION

I.

A. Parties' Contentions

Ms. DeChalus contends that the "trial court erred in refusing to propound a voir dire question regarding whether potential jurors would be biased in favor of the State because they feared reprisal by the police." According to Ms. DeChalus, her "requested question was specifically aimed at uncovering biases toward police officers that would lead jurors to decide in favor of the State, in a case in which two of the three State's witnesses were police officers." Instead, Ms. DeChalus maintains, the court asked a

watered-down version of the question, as suggested by the State, but that "limited rendition of the question did not fairly cover the specific bias at the heart of defense counsel's question – a belief that the police might mistreat any juror who decided the case in a manner contradictory to the officers' testimony." Moreover, according to Ms. DeChalus, the question as posed by the trial court "was improper because it put the onus on the jurors to evaluate their own potential bias," in violation of *Dingle v. State*, 361 Md. 1 (2001), which disapproved of compound questions because venirepersons' responses to such questions are indeterminate.

The State counters that the questions asked fairly covered the specific bias at issue. It points out that the trial court asked three questions, in substantially the form proposed by Ms. DeChalus, concerning prospective jurors' attitudes towards police brutality. The State asserts three reasons Ms. DeChalus's question regarding potential jurors' fear of reprisal by the police was not mandatory under the circumstances of this case. First, the proposed question, directed toward a "diffuse or non-particularized fear of reprisal by law enforcement," furnished "no *reasonable* likelihood of uncovering juror bias" and therefore "is not within the ambit of mandatory voir dire." Second, even if "the court were required to have inquired about the relationship between jury service in a small town and the jurors' future experience with 'law enforcement,' it was not required to use [Ms. DeChalus's] precise framing or phraseology." And third, "voir dire in its entirety fairly covered the possibility that a juror might base her verdict on something other than the evidence." The State further adds that the venire was questioned "extensive[ly]" about its attitudes towards law enforcement, which included "both group and

individualized questioning." In passing, the State observes that defense counsel did not raise a *Dingle* challenge to any of the compound questions in voir dire that were asked (and indeed, the State points out that defense counsel *himself* requested that the court ask a compound question), and it therefore urges that we not address this unpreserved claim.

B. Additional Facts Pertaining to the Claim

Among the proposed voir dire questions the defense submitted to the court prior to trial were questions directed towards uncovering the attitudes of prospective jurors about police brutality. We reproduce those questions here in full:

> The next question I am going to ask deals with the subject of police brutality. Historically and in the past few years in particular, there has been much public discussion on the issue of police brutality in the United States. Many people have strong opinions and beliefs on this topic. With that in mind, please listen to the following questions. Wait until I am done reading. If you answer "yes" to any of these questions, raise your hand. We will discuss them at the bench.
>
> (1) Do you have any strong opinions about the topic of police brutality?
>
> (2) Do you have any strong opinions, either positive or negative, regarding organizations such as Black Lives Matter or Defund the Police that claim to wish to combat police brutality?
>
> (3) Do you have any strong opinions, either positive or negative, regarding Back the Blue or Thin Blue Line or similar groups that generally oppose Black Lives Matter or Defund the Police?
>
> (4) Do you believe police brutality is a myth, occurring never or almost never?
>
> (5) Do you believe police brutality is commonplace, occurring regularly or all the time?
>
> (6) **Last, and most importantly, the Defendant in this case is charged with several crimes, including resisting arrest by a member of law enforcement. It is expected that one or more police officers are going to testify that the Defendant**

> **committed this offense. It is also expected that you will hear evidence to the contrary, that the Defendant did not commit this offense. With that in mind: Would you be afraid to find the Defendant Not Guilty, out of fear of reprisal or revenge by law enforcement?**
>
> If you answer "yes" to any of these questions, raise your hand. We will discuss them at the bench.

(Emphasis added.)

On the morning of trial, during preliminary motions, defense counsel informed the court that he had "submitted an additional proposed voir dire on police brutality." The prosecutor replied that she was "not necessarily" opposed to the general "concept" of the questions (concerning Black Lives Matter, Defund the Police, Back the Blue, and the Thin Blue Line) but that she objected to their "specific verbiage." The court ordered a short recess so that the parties could mutually agree on a set of questions.

When the case was recalled, defense counsel notified the court that the parties had reached a "partial agreement" but that they disagreed about proposed question six. After hearing argument by the parties, the court agreed to adopt the State's proposed language as to that question: "would your feelings regarding law enforcement limit your ability to be fair and impartial in rendering your verdict"? Defense counsel noted his objection. The court ultimately asked the following questions to the venire:

> (1) Do you have any, do you have any strong opinions about the topic of police brutality?
>
> (2) Do you have any strong opinions, either positive or negative, regarding organizations such as Black Lives Matter or Defund the Police, that claim to wish to combat police brutality?
>
> (3) Do you have any strong opinions, either positive or negative, regarding Back the Blue or Thin Blue Line, or similar groups that similarly oppose Black Lives Matter or Defund the Police?

> **[(4)] And lastly, the Defendant in this case is charged with several crimes, including resisting arrest by a member of law enforcement. It is expected that one or more police officers are going to testify that the Defendant committed this offense.**
>
> **It is also expected that you will hear evidence to the contrary that the Defendant did not commit this offense. With that in mind, would your feelings regarding law enforcement limit your ability to be fair and impartial in rendering your verdict?**

(Emphasis added.)

After jury selection had been completed, defense counsel renewed his previous objections, including his objection regarding proposed question six.[7]

C. Analysis

The Sixth and Fourteenth Amendments to the United States Constitution and Article 21 of the Maryland Declaration of Rights protect a criminal defendant's right to a fair and impartial jury. *Jenkins v. State*, 375 Md. 284, 299 (2003). "'Voir dire is the primary mechanism through which'" that constitutional right "'is protected.'" *Mitchell v. State*, 488 Md. 1, 16 (2024) (quoting *Curtin v. State*, 393 Md. 593, 600 (2006)). The "sole purpose of voir dire in Maryland 'is to ensure a fair and impartial jury by determining the

[7] Defense counsel proposed six questions on the topic of police brutality. The trial court asked the first three largely verbatim. It did not ask the fourth or fifth, a decision that Ms. DeChalus does not challenge here. The trial court did not ask Ms. DeChalus's sixth proposed question, opting instead to ask a different version proposed by the State. That version became the fourth question the trial court asked. As to the compound nature of the questions the trial court asked, Ms. DeChalus did not object or mention *Dingle v. State*, 361 Md. 1 (2000), or its progeny.

existence of specific cause for disqualification.'"[8] *Mitchell*, 488 Md. at 16 (quoting *Pearson v. State*, 437 Md. 350, 356 (2014)) (cleaned up).

"The scope of voir dire and the form of questions propounded rest firmly within the discretion of the trial judge." *Washington v. State*, 425 Md. 306, 313 (2012) (citation omitted). We generally review a trial court's decision whether to propound a voir dire question for abuse of discretion. *Kazadi v. State*, 467 Md. 1, 24 (2020).

That discretion, however, is constrained. "On request, a trial court must ask a *voir dire* 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 v. State*, 412 Md. 635, 663 (2010)) (cleaned up). "The court . . . must adapt the questions to the particular circumstance or facts of the case, the ultimate goal . . . being to obtain jurors who will be 'impartial and unbiased.'" *Moore*, 412 Md. at 645 (quoting *Dingle*, 361 Md. at 9). But "even for . . . mandatory subjects of inquiry, generally, 'neither a specific form of question nor procedure is required.'" *Collins v. State*, 452 Md. 614, 624 (2017) (quoting *Bowie v. State*, 324 Md. 1, 13 (1991)).

Two areas of inquiry may reveal specific cause for disqualification of a venireperson: "(1) examination to determine whether the prospective juror meets the

[8] For the reader's benefit, we note that about a year and a half after this case was tried, the Supreme Court of Maryland approved a pilot program regarding voir dire. The purpose of this program is "to implement use of expanded voir dire [to allow parties to obtain information that could provide guidance for the use of peremptory strikes] in a representative sample of circuit courts around the State." 222nd Rules Order at 5, filed Sept. 13, 2024 (available at https://www.mdcourts.gov/sites/default/files/rules/order/ro222nd.pdf) (last visited Jan. 27, 2025). At the time that this Opinion issues, the pilot program is ongoing.

minimum statutory qualifications for jury service, and (2) examination to discover the juror's state of mind as to the matter in hand or any collateral matter reasonably liable to have undue influence over him." *Washington*, 425 Md. at 313 (citation omitted). Collateral matters generally include biases "'directly related to the crime, the witnesses, or the defendant.'" *Collins v. State*, 463 Md. 372, 377 (2019) (quoting *Pearson*, 437 Md. at 357).

"In reviewing the [trial] court's exercise of discretion during the voir dire, the standard is whether the questions posed and the procedures employed have created a reasonable assurance that prejudice would be discovered if present." *Washington*, 425 Md. at 313 (citation omitted). "On review of the voir dire, an appellate court looks at the record as a whole to determine whether the matter has been fairly covered." *Id.* at 313–14 (citations omitted).

We see no abuse of discretion in the trial court declining to ask potential jurors whether they might fear "reprisal or revenge by law enforcement" if they did not vote to convict (proposed question six). Unless there is a reasonable likelihood that a proposed voir dire question would reveal a basis for disqualification, it need not be asked. *See Curtin*, 393 Md. at 612. Questions that attempt to explore political views, or to assist in the exercise of peremptory challenges, are not mandatory, either. *See*, *e.g.*, *Pearson*, 437 Md. at 357 (declaring that "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.") (citation and quotation omitted)

(cleaned up); *Washington*, 425 Md. at 315 (same).[9] Here, there was no evidence (proffered or admitted) that police officers might exact revenge against jurors who voted to acquit. At minimum, the nexus between the disputed question and the bias of any potential juror in this case is greatly attenuated.

Moreover, even where a line of inquiry is mandatory, a trial court is not required to pose a question precisely in the form requested by a party. *See*, *e.g.*, *Collins*, 452 Md. at 624 (stating that "even for . . . mandatory subjects of inquiry, generally, neither a specific form of question nor procedure is required.") (citation and quotation omitted).

[9] Even in jurisdictions that do not adhere to limited voir dire, courts have held that a trial court is not required to permit a party to use voir dire for the purpose of indoctrinating the jury into its theory of the case. For example, in *Sanchez v. State*, 165 S.W.3d 707 (Tex. Ct. Crim. App. 2005), the Court of Criminal Appeals (the highest court in that state in criminal cases) stated:

> There are three possible purposes for the voir dire examination of veniremen. The first purpose is to elicit information which would establish a basis for a challenge for cause because the venireman is legally disqualified from serving or is biased or prejudiced for or against one of the parties or some aspect of the relevant law. This function furthers the defendant's constitutional right to (and society's interest in) an "impartial" jury. The second purpose is said to facilitate the intelligent use of peremptory challenges which may be "exercised without a reason stated, without inquiry and without being subject to the court's control." This function may further both the defendant's and prosecution's statutory right to make peremptory challenges. **And the third purpose—albeit not necessarily a legally legitimate one—is to indoctrinate the jurors on the party's theory of the case and to establish rapport with the prospective jury members. This is of important practical interest to both the State and the defendant, but it has neither a constitutional nor a statutory basis. Voir dire for this purpose is entirely within the trial judge's discretion, and he may permit or prohibit it as he deems appropriate.**

Id. at 710–11 (emphasis added) (footnotes omitted).

Indeed, the trial court has a duty to ensure that questions posed during voir dire are phrased in a neutral manner. For example, in *Charles v. State*, 414 Md. 726 (2010), the Supreme Court held that a trial court had abused its discretion in propounding a voir dire question, at the State's request and over defense objection, which asked potential jurors:

> *if you are currently of the opinion or belief that you cannot convict a defendant without "scientific evidence,"* regardless of the other evidence in the case and regardless of the instructions that I will give you as to the law, please rise.

Id. at 730. The Court reasoned that this question "suggest[ed] to the panel that 'convict[ing]'" the defendants "was the only option" available, thereby poisoning the venire.[10] *Id.* at 739.

We next consider the context surrounding defense counsel's request for the court to propound proposed question six. That question was part of a set of six questions proposed by defense counsel to explore possible biases regarding police brutality. The trial court asked the first three of those questions in substantially the same form as requested. Thus, the venire was screened for biases relating to police brutality as well as advocacy groups on both sides of that issue (e.g., Black Lives Matter and Thin Blue Line). The fourth question, as propounded by the trial court—inquiring whether any venirepersons harbored "feelings regarding law enforcement" that might "limit [one's] ability to be fair and impartial in rendering" a verdict—in combination with the other

[10] The petitioners in that case had contended before us that "the trial court abused the *voir dire* process by 'indoctrinating potential jurors' in the State's theory of the case," *Drake v. State*, 186 Md. App. 570, 582 (2009), *rev'd sub nom. Charles v. State*, 414 Md. 726 (2010), a contention we rejected. *Id.*

questions, "fairly covered" the matter of venirepersons' biases toward police brutality.[11] *Washington*, 425 Md. at 314.

To the extent that Ms. DeChalus argues that the trial court's fourth question is an improper compound question,[12] we decline to take up this argument because it is unpreserved. Defense counsel did not challenge the compound nature of the trial court's fourth question at the time it was asked. Under these circumstances, we decline to consider this unpreserved claim. *See Robson v. State*, 257 Md. App. 421, 461 (2023) *cert. denied,* 483 Md. 520 (2023) (holding that a defendant's objection to a "forbidden compound question" in voir dire was unpreserved by his failure to raise it contemporaneously).

[11] The State further points out in its brief that the venire members were asked whether any of them were associated in any way with either of the law enforcement officers who testified in the case; whether there was "anything about the nature of the charges against the Defendant which would prevent [any of them] from being a fair and impartial juror in this case"; whether any of them (or anyone in their families) were "employed or otherwise involved in the field of law enforcement, and/or correctional services"; and whether any of them (or anyone in their families or any close friends) had ever been "associated with or in any way . . . involved with any local, state or national community group or organization to combat crime, or help victims of crimes[.]"

[12] For ease, we set out the trial court's fourth question (a substitute for Ms. DeChalus's proposed sixth question on police brutality) again:

> And lastly, the Defendant in this case is charged with several crimes, including resisting arrest by a member of law enforcement. It is expected that one or more police officers are going to testify that the Defendant committed this offense.
>
> It is also expected that you will hear evidence to the contrary that the Defendant did not commit this offense. With that in mind, would your feelings regarding law enforcement limit your ability to be fair and impartial in rendering your verdict?

II.

A. Parties' Contentions

Ms. DeChalus contends that the trial court erred in denying her motion to dismiss the venire after the jurors received a jury orientation manual that "fundamentally misstated the law in relation to the jury's role." According to Ms. DeChalus, the manual's "fundamental misstatement" of the law "irremediably tainted" the venire for two reasons—first, because that misstatement, "on the very first page" of the manual, lowered the State's burden of persuasion; and second, because the taint caused by the misstatement was incurable, given that the manual was "the first explanation of their role the jurors received and read when they arrived at the courthouse for jury duty." Compounding all this, Ms. DeChalus asserts, the manual came with the apparent imprimatur of the court, which made it "impossible for the jury to disregard" its misstatement of the law. Although she acknowledges that the court retrieved the offending manuals from the jurors prior to their deliberations and that the court instructed the jury before and after the presentation of evidence about the State's burden of persuasion, the presumption of innocence, and the reasonable doubt standard, Ms. DeChalus insists that these measures "were insufficient to cure the taint of the improper instruction" in the manual. Finally, Ms. DeChalus asserts that "the State cannot prove beyond a reasonable doubt that the fundamental misstatement of law and omissions in the manual in no way contributed to the verdict," and therefore, the error in this case was not harmless.

The State counters that the manual's "general description did not and could not vitiate the correct, repeated, and specific instructions of the trial court in this case." According to the State, Ms. DeChalus "adopts a blinkered view" of the manual, focusing only on a single phrase while ignoring its express admonition that the State must prove the defendant's criminal agency "beyond a reasonable doubt[.]" Furthermore, according to the State, because the trial court propounded *Kazadi*-type questions[13] during voir dire, it properly instructed the jury, both before and after the presentation of evidence, about the State's burden of persuasion, the presumption of innocence, and the reasonable doubt standard. The trial court also directed that the manuals be taken from the jurors prior to deliberations. As a result, the State concludes that Ms. DeChalus cannot carry her burden to show that she suffered actual prejudice.

B. Additional Facts Pertaining to the Claim

Five days prior to trial, defense counsel filed a motion in limine requesting dismissal of potential jurors. Ms. DeChalus's counsel averred in that motion that, according to the circuit court's written jury selection plan for juror orientation, "the Jury Commissioner, or their agent," would hand deliver "to each prospective juror a document titled *Serving on a Maryland Trial Jury*, authored by the Maryland Judiciary Jury Use and Management Committee October, 2012." Counsel further averred that the "very first

[13] In *Kazadi v. State*, 467 Md. 1, 35–36 (2020), the Supreme Court of Maryland held that, upon a defendant's request, a trial court is required to ask during voir dire whether prospective jurors are unwilling or unable to comply with jury instructions on the presumption of innocence, the State's burden of proof, and the defendant's right not to testify.

line" of the first page of that document contains a "fundamental misstatement of law": that the "job of a trial juror" is to "listen[] to evidence in a courtroom" and to "decide[] the guilt or innocence of the defendant in a criminal case." As a remedy, the defense asked that "any prospective jurors who have been served with a copy of *Serving on a Maryland Trial Jury* be excused from service in this matter."

On the morning of trial, prior to voir dire, defense counsel renewed his motion to strike the entire panel because it had been "irrevocably tainted" by exposure to *Serving on a Maryland Trial Jury*. After hearing the State's response, the court denied the motion, declaring:

> Well, the Court is, just for the purposes of this argument, accepting the premise that all of the jurors did receive this jury panel, or jury booklet in this matter, *Serving on a Maryland Trial Jury*, which has been marked as Defendant's Exhibit Number Two in this matter . . . .
>
> Umm, I do note that this is a generalized description of what a juror's responsibilities are, what they can be expected to encounter during a trial process, and basically outlines the trial process in and of itself. While there may be an argument that the first sentence, that is being described or is in contention in this matter is an inadequate description of Maryland law, I don't think this rises to the level where (a) it cannot be cured . . . .
>
> . . . The question is, that the juror, that a trial juror listens to evidence in the courtroom and decides the guilt or innocence of the Defendant in a criminal case, and the liability of damages in a civil case. Sure, could you go into more in detailed descriptions of what it means to find someone guilty of an offense beyond a reasonable doubt and that they have no, the Defense has no burden of producing any evidence or demonstrating his or her innocence, all of that is covered, not only the voir dire process in this matter, but it is also covered during the final jury instructions in this case, which more than adequately detail the responsibilities of a juror in this matter.
>
> It is too far of a mental leap for me to think that jurors would be irrevocably, I can't recall the term used, tainted in this matter, by an inartful sentence at the beginning of a book which quite honestly, I don't even think we can demonstrate that the majority of the panel has read, but even though, even with that, even assuming and it was demonstrated that every juror who

> is present today had read that, umm, the Court is satisfied that the motion is not appropriate. I am denying the Motion in Limine.

During voir dire, the court asked the now-standard *Kazadi* questions.[14] No venirepersons answered any of the questions affirmatively. Later during voir dire, the court sua sponte questioned Juror One about "something in [their] hand." That "something" was the jurors' manual. The court confirmed that all the venire members received the pamphlet. The court then addressed the jurors:

> And seeing pretty much everyone, most people have a copy of that handout. So, just out of an abundance of caution, what I want to advise you is that is just a general orientation as to what to expect out of the jury process.

[14] The court asked the following questions:

> Under the law the accused person in a criminal case is presumed innocent unless proven guilty beyond a reasonable doubt. Does any member of the jury panel not accept this principle, or would any member of the jury panel have any difficulty in applying it if you were chosen as a juror in this case? (Pause)
>
> Does any [prospective] juror believe that the Defendant has a duty or responsibility to prove his or her innocence? (Pause)
>
> Does any [prospective] juror believe that the Defendant is or probably is guilty of a charge or charges in this case because charges have been filed? (Pause)
>
> Under the law the Prosecution must prove each element of the offenses beyond a reasonable doubt. If the jury has a reasonable doubt concerning the Defendant's guilt, it is then the duty of the jury to acquit the Defendant. Does any member of the jury panel have any difficulty accepting this principle, or would any of you have any difficulty in applying it if you are chosen as a juror in this case? (Pause)
>
> If you came to the conclusion that there was reasonable doubt as to the Defendant's guilt, and a majority of the jurors disagreed with you, would you change your vote merely because you would be in a minority? (Pause)
>
> Under the law the Defendant has an absolute right to remain silent and to refuse to testify. No adverse inference or inference of guilt may be drawn from this refusal to testify. Does any [prospective] juror believe that the Defendant has a duty or a responsibility to testify or that he or she must be guilty merely because they chose, refuse to testify? (Pause)

> What is inside that document is intended only to give you an understanding of how this process works. At the end and at the beginning of this case I instructed you on what the law is in this matter. For example, the law is presumption of innocence, the law of beyond a reasonable doubt, the law of the burdens. I am going to do that again at the end of the case.
>
> So, you should not confuse what I instruct you as being, as superior. So what I say the law is, is what applies in this case. It is not what you have[,] that document that you have is merely just to give you a rough roadmap of what your duties and responsibilities are.
>
> So to that end, I am actually going to have the Jury Foreman after this collect those, and should not be used as part of their deliberations.

After jury selection had concluded, defense counsel renewed his objection to the court's denial of the motion to strike the venire. The trial court thereafter gave preliminary instructions on the presumption of innocence and reasonable doubt, substantially similar to Maryland Criminal Pattern Jury Instruction ("MPJI-Cr") 2:02.[15]

[15] The court gave the following preliminary instruction:

> Now, I have previously described to you what the presumption of innocence is and what reasonable doubt is. The Defendant is presumed to be innocent of the charges. This presumption remains throughout every stage of the trial and is not overcome unless you are convinced beyond a reasonable doubt that the Defendant is guilty.
>
> The State has the burden of proving the guilt of the Defendant beyond a reasonable doubt. This means that the State has the burden of proving beyond a reasonable doubt each and every element of the crimes charged.
>
> The elements of the crime are the component parts of the crime, which I will instruct you about later. The burden remains on the State throughout the trial. The Defendant is not required to prove his or her innocence; however, the State is not required to prove guilt beyond all possible doubt, or to a mathematical certainty. Nor is the State required to negate every conceivable circumstance of innocence.
>
> A reasonable doubt is a doubt founded upon reason. Proof beyond a reasonable doubt requires such proof as would convince you of the truth of a fact to the extent that you would be willing to act upon such belief without reservation in an important matter of your own business or personal affairs. If you are not satisfied of the Defendant's guilt to that extent for each and

(continued)

After the close of all the evidence, the trial court instructed the jury, beginning with the admonition that "[t]he instructions I give you about the law are binding upon you, in other words, you must apply the law as I explain it in arriving at your verdict." The court then instructed the jury about, among other things, the presumption of innocence and reasonable doubt.[16]

C. Analysis

In furtherance of the accused's constitutional right to a fair and impartial jury, Maryland Rule 4-312(a)(3) permits challenges to an array and provides as follows:

> (3) *Challenge to the Array.* A party may challenge the array on the ground that its members were not selected or summoned according to law, or on any other ground that would disqualify the array as a whole. A challenge to the array shall be made and determined before any individual member of the array is examined, except that the trial judge for good cause may permit the challenge to be made after the jury is sworn but before any evidence is received.

> every element[] of the crimes charged, then reasonable doubt exists and the Defendant must be found not guilty of the crime.

[16] The trial court's instruction omitted a portion of MPJI-Cr 2:02, which was adopted in the aftermath of *Carroll v. State*, 428 Md. 679, 693 (2012) (urging "the Maryland State Bar Association Committee on Maryland Pattern Instructions to consider amending MPJI-Cr 2:02 to include explicit language instructing that the State has the burden to prove beyond a reasonable doubt each element of each charged offense.") (footnote omitted). The omitted part of the pattern instruction MPJI-Cr 2:02 states:

> This [i.e., that "{t}he State has the burden of proving the guilt of the Defendant beyond a reasonable doubt"] means that the State has the burden of proving, beyond a reasonable doubt, each and every element of the crime [or crimes] charged. The elements of a crime are the component parts of the crime about which I will instruct you shortly.

In contrast to the instruction given at the close of evidence, the preliminary instruction given by the trial court followed the pattern instruction fully. Defense counsel did not object to the instruction given after the close of all the evidence.

We review a trial court's denial of a motion to dismiss a venire for abuse of discretion. *Jones v. State*, 4 Md. App. 616, 623 (1968). *Accord Jones v. State*, 343 Md. 584, 602–05 (1996) (recognizing that a trial court has discretion to fashion an appropriate remedy for a *Batson* violation, which may require seating an improperly stricken juror or, under some circumstances, dismissal of the entire venire). "[T]he burden is upon the moving party to show facts which will give rise to the actual prejudice." *Jones*, 4 Md. App. at 623. *Accord Kidder v. State*, 475 Md. 113, 136 (2021) (noting that a "party claiming denial of the right to an impartial jury bears the burden of proving that the jury selected was not impartial").

A trial court abuses its discretion where its "decision is 'well removed from any center mark imagined by the reviewing court and beyond the fringe of what that court deems minimally acceptable.'" *Freeman v. State*, 487 Md. 420, 429 (2024) (quoting *Devincentz v. State*, 460 Md. 518, 550 (2018)). Thus, "an abuse of discretion occurs when no reasonable person would take the view adopted by the circuit court." *Woodlin v. State*, 484 Md. 253, 277 (2023) (quotation marks and citation omitted).

We begin with the orientation manual itself. Neither party disputes that its opening sentence is, as the trial court aptly stated, "inartful"; indeed, during the pendency of this appeal, *Serving on a Maryland Trial Jury* was withdrawn from the Maryland Judiciary website and is being updated.[17] But we also do not ignore the context in which that

[17] The link that previously pointed to *Serving on a Maryland Trial Jury* was changed effective May 2024 and now states: "The **Trial Jury Service Manual** is in the (continued)

"inartful" statement appears. Further down the first page of the manual, it correctly states the prosecution's burden of persuasion—that the "State must prove 'beyond a reasonable doubt' that the defendant committed the alleged crime(s)." Four pages later, the manual further (and correctly) explains that "[y]ou and the other jury members reach a decision by discussing the evidence presented during the trial, and only that evidence, in the light of the judge's instructions."

As for whether Ms. DeChalus has carried her burden to show that the empaneled jury was "irremediably tainted" by exposure to the manual, we note that her defense counsel raised a timely motion to strike the venire, but he did not ask for any voir dire questions directed towards uncovering evidence of the bias purportedly resulting from exposure to the manual. The only evidence of bias uncovered during voir dire was that the jurors had, in fact, been given copies of the offending orientation manual and that they presumably had read it. On this record, we conclude that Ms. DeChalus has failed to sustain her burden of proving actual prejudice,[18] *Kidder*, 475 Md. at 136; *Jones*, 4 Md.

process of being updated and will be available soon. Thank you for your understanding." Trial Jury Service, May 2024 (available at https://www.mdcourts.gov/sites/default/files/import/juryservice/pdfs/trialjuryservice.pdf (last visited Jan. 27, 2025).

[18] We do not presume prejudice merely because the orientation manuals were distributed to the jury.

App. at 623, and accordingly, we conclude that the trial court did not abuse its discretion in denying her motion to dismiss the entire venire.[19]

Moreover, any potential prejudice that may have resulted from the "inartful" statement in the orientation manual was cured by other actions the court took in this case. The court asked the venire the full set of *Kazadi*-type questions, to which none of the venirepersons responded. Furthermore, both prior to and following the presentation of evidence, the trial court instructed the jurors that the defendant is presumed innocent and that the State bears the burden to prove her guilt beyond a reasonable doubt, which it further defined in accordance with the pattern jury instruction. (In the latter case, the court further told the jurors that its instructions were "binding.") Although the court gave both sets of instructions after it already had denied Ms. DeChalus's motion to strike the venire, we presume that the court knew ahead of time when and how it would instruct the

[19] Although the trial court denied the motion to dismiss the entire venire prior to voir dire, the court retained the authority to grant the motion (without implicating double jeopardy) until the jury was empaneled and sworn, after the conclusion of voir dire. *Harris v. State*, 406 Md. 115, 131 (2008). Because we presume that the trial court understood that it retained unfettered authority to dismiss the venire until that time, *see*, *e.g.*, *State v. Thomas*, 488 Md. 456, 484–85 n.16, 485–86 n.17 (observing that "courts are presumed to understand and properly apply the law"), we may properly consider what occurred during voir dire in reviewing the trial court's exercise of discretion.

We further note that we have not even addressed the drastic nature of the remedy defense counsel requested. Striking the entire venire could have disrupted the entire criminal docket in the circuit court of a small county such as Allegany. It could have resulted in the postponement of other trials and perhaps even led to motions for mistrials in any other criminal trials already in progress in that court. Under all the circumstances, we cannot say that the trial court's denial of the motion to strike the venire was unreasonable or that its ruling was "well removed from any center mark imagined by the reviewing court and beyond the fringe of what" we deem "minimally acceptable." *Woodlin*, 484 Md. at 277.

jury and properly could account for that eventuality when making the ruling at issue. *See*, *e.g.*, *State v. Thomas*, 488 Md. 456, 484–85 n.16, 485–86 n.17 (observing that "courts are presumed to understand and properly apply the law"). And finally, the trial court ordered the foreperson to collect all copies of the orientation manual from the jurors, thereby ensuring that none of them were taken into the jury room during deliberations. We conclude that Ms. DeChalus was not denied her right to a fair and impartial jury because the venire had been provided copies of *Serving on a Maryland Trial Jury*.

III.

A. Parties' Contentions

Ms. DeChalus contends that the evidence is insufficient to sustain her convictions. Initially, she acknowledges that the only ground defense counsel raised below was that the evidence was insufficient to prove disorderly conduct because "the evidence showed that Ms. DeChalus did not start making loud noises until after she had been pepper sprayed by . . . Sergeant Gordon." Relying upon *Testerman v. State*, 170 Md. App. 324 (2006), *cert. granted*, 397 Md. 396, *cert. dismissed*, 399 Md. 340 (2007), she insists, however, that because "there was no conceivable trial strategy that would explain counsel's decision to move for judgment of acquittal as to all charges while failing to make a particularized sufficiency argument [as to] all but one of them[,]" we may review the sufficiency of the evidence as to all charges in this case, including trespass, resisting arrest, and obstructing and hindering.

The State counters that Ms. DeChalus's motion for judgment of acquittal "preserved *only* her challenge to the legal sufficiency of the evidence predicating her

conviction for disturbing the peace—and only on the specific ground" raised below. According to the State, her reliance upon *Testerman* is misplaced because that case involved a purely legal question, whereas here, Ms. DeChalus's unpreserved claims implicate "the resolution of contested facts[.]" The State further contends that, even were we to ignore preservation, the evidence was sufficient to sustain the convictions.

B. Analysis

1. Preservation

After the close of the State's case-in-chief, defense counsel moved for judgment of acquittal:

> [DEFENSE COUNSEL]: Motion for judgment of acquittal on all counts. I don't think the State has met its burden, but in particular, I would argue, I believe it is counts two and three, the disorderly conduct, disorderly conduct – loud noise.
>
> [PROSECUTOR]: Disturbing the peace.
>
> [DEFENSE COUNSEL]: Disturbing the peace is only, there was only testimony, I believe, of the employers at, the employer at Berry, that she only got loud after she had the (inaudible word) with law enforcement was maced and she was being taken into custody. She was not actually being disruptive prior to that. That seemed like that was, I don't think the State has met its burden on these counts.

After hearing argument by the prosecutor, the court denied the motion. Ms. DeChalus then testified on her own behalf. After the close of all the evidence, defense counsel renewed his motion for judgment of acquittal on the same ground raised previously regarding the "loud noise," asserting that Ms. DeChalus "didn't start making

noises until after she had been maced." The court again denied the motion for judgment of acquittal.

A criminal defendant may challenge the sufficiency of the evidence against her by moving for judgment of acquittal after the close of the State's case-in-chief and, if she presents a defense, after the close of all the evidence. Md. Code (2001, 2018 Repl. Vol.), Criminal Procedure Article, § 6-104. "Appellate review of the sufficiency of the evidence in a criminal case tried by a jury is predicated on the refusal of the trial court to grant a motion for judgment of acquittal." *Starr v. State*, 405 Md. 293, 302 (2008) (citation and quotation omitted) (cleaned up). Maryland Rule 4-324 implements the statute and provides in relevant part that a defendant "shall state with particularity all reasons why the motion should be granted." Failure to comply with the particularity requirement results in the failure to preserve a claim of evidentiary insufficiency; any ground not raised in the circuit court is not preserved for appellate review.[20] *See*, *e.g.*, *Starr*, 405 Md. at 302 (stating that a criminal defendant who moves for judgment of acquittal "is not entitled to appellate review of reasons stated for the first time on appeal"); *State v. Lyles*, 308 Md. 129, 135–36 (1986) (stating that the particularity requirement of Rule 4-324(a) is "mandatory" and that defense counsel's failure to comply with that requirement resulted in non-preservation of the issue of evidentiary sufficiency).

[20] The rule stated here applies only in jury trials. A defendant convicted following a bench trial may raise a sufficiency claim on appeal even if she did not move for judgment of acquittal below. *See Ennis v. State*, 306 Md. 579, 596 (1986), and *Rivera v. State*, 248 Md. App. 170, 179–81 (2020), for a more detailed explanation of the difference in treatment of sufficiency claims in bench trials as compared with jury trials.

In this case, defense counsel contended in the circuit court that the evidence is insufficient to prove disturbing the peace/disorderly conduct because Ms. DeChalus "got loud" only after she had been maced and taken into custody but "was not actually being disruptive prior to that." Defense counsel's renewed motion did not raise any additional grounds, nor did he ever assert any grounds why the evidence is insufficient to prove any of the other charged offenses. The only claim preserved for appeal is the claim that the evidence of disturbing the peace/disorderly conduct is insufficient because Ms. DeChalus "did not start making loud noises until after she had been pepper sprayed by . . . Sergeant Gordon." However, it will simplify our analysis to consider more generally whether the evidence is sufficient to prove disturbing the peace/disorderly conduct.[21]

2. Merits of the Claim

The test we apply in determining whether evidence is sufficient to sustain a conviction is "whether, after viewing the evidence in the light most favorable to the prosecution, *any* rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt." *Jackson v. Virginia*, 443 U.S. 307, 319 (1979) (emphasis in original). "Because the fact-finder possesses the unique opportunity to view the evidence and to observe first-hand the demeanor and to assess the credibility of witnesses during

[21] We have discretion to address an unpreserved insufficiency claim. *Haile v. State*, 431 Md. 448, 465 (2013) (invoking Maryland Rule 8-131(a) to address an unpreserved claim of evidentiary insufficiency). We exercise that discretion here, but only with respect to the conviction for disturbing the peace/disorderly conduct, because the unpreserved claim we address is inextricably intertwined with the preserved claim.

their live testimony, we do not re-weigh the credibility of witnesses or attempt to resolve any conflicts in the evidence." *Smith v. State*, 415 Md. 174, 185 (2010).

The statute under which Ms. DeChalus was convicted provides:

> (c)(4) A person who enters the land or premises of another, whether an owner or lessee, or a beach adjacent to residential riparian property, may not willfully:
>
> (i) disturb the peace of persons on the land, premises, or beach by making an unreasonably loud noise; or
>
> (ii) act in a disorderly manner.

Md. Code (2002, 2021 Repl. Vol.), Criminal Law Article, § 10-201(c)(4). There are two ways a defendant may violate Subsection (c)(4). One way is by "willfully disturb[ing] the peace of persons on the . . . premises . . . by making an unreasonably loud noise[.]" The other way a person violates the statute is by "willfully act[ing] in a disorderly manner." (It is uncontested that the other element of the offense is satisfied in this case.)

During cross-examination, Mr. Poche, the molding manager at the Berry Plastics plant, acknowledged that Ms. DeChalus did not "yell and scream and act crazy until after she got maced[.]" Joint Exhibit 1 (video evidence of the events at issue) corroborates Mr. Poche's concession. We hesitate to say that the evidence is sufficient to sustain a conviction under the "loud noise" modality of this offense because there is a legitimate argument that Ms. DeChalus's act of making a loud noise was an involuntary act, which presumably would fail to satisfy the mens rea of the offense.

But Mr. Poche was questioned during re-direct examination and testified as follows:

[PROSECUTOR]:	You indicated on a question asked by [defense counsel] that the Defendant didn't get loud until she was being pepper sprayed, right? Is that accurate?
[MR. POCHE]:	Yes, that is accurate.
[PROSECUTOR]:	But was she disrupting any operations prior to that?
[MR. POCHE]:	Yes, by going through the plant, she was directing attention from the production, that was there, and it was causing a scene by the other workers at Berry . . . .

The jury was entitled to credit this testimony. *Smith*, 415 Md. at 185. Therefore, the evidence is sufficient to sustain the conviction for disturbing the peace/disorderly conduct. We decline to address the remaining unpreserved claims of evidentiary insufficiency.

JUDGMENTS OF THE CIRCUIT COURT FOR ALLEGANY COUNTY AFFIRMED. COSTS ASSESSED TO APPELLANT.