Circuit Court for Montgomery County
Case No. 136436C

UNREPORTED*

IN THE APPELLATE COURT

OF MARYLAND

No. 1084

September Term, 2023

KYLE MARTIN NOBLE

v.

STATE OF MARYLAND

Friedman,
Beachley,
Harrell, Glenn T., Jr.
(Senior Judge, Specially Assigned),

JJ.

Opinion by Beachley, J.

Filed: November 26, 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 June 9, 2023, a Montgomery County jury convicted Kyle Noble of second-degree murder and armed robbery related to the death of Efrain Arias. He was sentenced to 40 years' imprisonment for second-degree murder, with all but 35 years suspended. On the armed robbery count, he was sentenced to a consecutive 20 years' imprisonment, with all but 15 years suspended. Mr. Noble noted this timely appeal and presents the following two questions for our review:

> I. Whether the trial court erred in giving the aiding and abetting instruction when there was no evidence to support it.
>
> II. Whether this Court should exercise its discretion under the plain error doctrine and determine that the trial court erred by asking a critical bias [voir dire] question in a compound format.

For the reasons below, we shall affirm.

FACTUAL AND PROCEDURAL BACKGROUND

Mr. Noble and his girlfriend, Diana Garcia, checked into the Extended Stay Hotel on September 12, 2019. Also staying at the hotel were Mr. Noble's friend Julian Hunter, Mr. Hunter's girlfriend Danielle Kidwell, and several friends of Efrain Arias. On the evening of September 14, 2019, Ms. Garcia broke up with Mr. Noble and stayed the night at her great-grandmother's house. The next day, she spent the afternoon driving Mr. Arias around and returned with him to the hotel at approximately 6:00 p.m. Mr. Arias was later found stabbed to death near the hotel. Various witnesses recounted different versions of the events that occurred after Mr. Arias and Ms. Garcia arrived at the hotel, which we will discuss at some length *infra*.

The hotel receptionist, Nicole Zhang, testified that, on September 15, 2019, at around 6:00 p.m., two men approached her at the front desk and told her that there was a person outside the hotel who needed medical attention. Ms. Zhang went behind the hotel with the men, and called 911 as soon as she saw Mr. Arias lying on the ground. Ms. Zhang rolled Mr. Arias onto his back to check if he was breathing, and "immediately could tell, looking in his eyes, he was no longer alive." Emergency personnel arrived shortly thereafter.

Mr. Noble was arrested on September 17, 2019, and charged with murder and armed robbery. After a trial in September of 2022, a jury found Mr. Noble not guilty of first-degree murder, but could not reach a verdict on the second-degree murder or armed robbery charges. The court declared a mistrial, and a second jury trial on the second-degree murder and armed robbery charges was held in June of 2023.

During the first trial, the court asked the following voir dire question:

> The evidence in this case may include information about domestic violence between romantic partners. Does any member of the p[ro]spective jury panel feel that you cannot be fair and impartial in a case involving allegations of domestic violence?

Prior to the second trial, defense counsel submitted a list of proposed voir dire questions derived from the questions asked at the first trial. Defense counsel's proposed voir dire included the above domestic violence question. The court suggested changing the phrase "domestic violence" to "domestic abuse," and defense counsel agreed. Accordingly, the court asked the jury during voir dire in the second trial:

> The evidence in this case may include information about domestic abuse between romantic partners. Does any member of this prospective jury panel feel they could not be fair and impartial in a case involving allegations of domestic abuse?

Defense counsel raised no objection to this voir dire question.

Although there were no eyewitnesses to the actual stabbing, several individuals witnessed the events immediately before and after Mr. Arias was stabbed.

Ms. Garcia's Testimony

The State's primary witness was Ms. Garcia. In 2018 and 2019, Ms. Garcia and Mr. Noble were in a volatile off-and-on romantic relationship. She was the only witness to describe the events of the days immediately prior to Mr. Arias's death on September 15, 2019. Ms. Garcia testified that Mr. Noble frequently used illegal drugs, did not have a steady income, and had unstable housing. Mr. Noble learned of an opportunity to rent a room on the first floor of the Extended Stay Hotel in Germantown for $100 per week; Mr. Noble and Ms. Garcia began staying there on September 12, 2019. Mr. Hunter and his girlfriend, Ms. Kidwell, were living on the third floor of the hotel at the time. On September 13, 2019, Mr. Noble told Ms. Garcia that Mr. Arias was a friend he had known "for a long time." Mr. Noble explained that Mr. Arias was going to help him by giving him cocaine to sell with the expectation that they would share the profits. Mr. Arias arrived at the hotel the evening of September 14, 2019, with "three other guys and . . . three girls." The group brought alcohol and cocaine, spending time with Mr. Noble in his hotel room drinking and using cocaine. Eventually, Mr. Arias's friends rented their own room at the hotel for the night. Mr. Noble complained to Ms. Garcia that Mr. Arias did not give him

any cocaine to sell. Ms. Garcia recounted that she and Mr. Noble got into an argument that resulted in her leaving the hotel and staying at her great-grandmother's house that night. Later that night, Ms. Garcia sent Mr. Noble a text informing him that she was breaking up with him.

Ms. Garcia spent the afternoon of September 15, 2019, driving Mr. Arias around in her car (a black Mercedes) to facilitate what she believed were various drug transactions. She testified that she saw "a large wad of money" in Mr. Arias's front pocket. While Ms. Garcia was with Mr. Arias, Mr. Noble was continuously calling and texting both of them. At around 4:00 p.m., Mr. Arias asked Ms. Garcia to contact Mr. Hunter and Ms. Kidwell about buying crack cocaine. After they expressed interest in buying cocaine, Ms. Garcia and Mr. Arias proceeded to the hotel. Mr. Arias was suspicious that Mr. Hunter and Ms. Kidwell lacked the funds to purchase the drugs and surmised that they intended to steal them; accordingly, Ms. Garcia went to their room to make sure they had money to purchase the drugs. After it became apparent that Mr. Hunter and Ms. Kidwell did not have money for the drugs, Ms. Garcia and Mr. Arias left the hotel. At some point that day, Mr. Arias told Ms. Garcia that he had a "beef with a lot of people." Later, Mr. Arias received a call from his friends who were staying at the hotel. The tone of the call was friendly, and afterward Mr. Arias bought a pizza to take back to the hotel for his friends. On their way back to the hotel with the pizza, Mr. Arias called Mr. Noble, who indicated he was at Walmart.

When Ms. Garcia and Mr. Arias arrived at the hotel, Ms. Garcia parked behind the

building. She testified that, as Mr. Arias walked toward the building with the pizza, she saw Mr. Noble walking toward the car looking "very angry." Mr. Noble was not wearing a shirt, only shorts and sneakers. At first, Mr. Arias "casually" approached Mr. Noble, until Mr. Noble "took a swing at" Mr. Arias and said "something like . . . you've been . . . with my b**** all day." At that point, Mr. Arias "dropped the pizza," "started screaming," and ran away from the building, past Ms. Garcia's car and through a line of bushes and trees at the bottom of a hill near the parking lot of the hotel. Mr. Noble chased Mr. Arias, while Ms. Garcia stayed near her car, "screaming [Mr. Noble's] name . . . to just come back." Ms. Garcia then walked toward the line of bushes and trees. She did not see Mr. Arias, but saw Mr. Noble walking up the hill to the hotel parking lot. She did not see anyone else in the area. Mr. Noble had blood "on both his hands, . . . on his stomach and on his face." He told Ms. Garcia to return to her car. When she did so, she saw Mr. Hunter standing next to the passenger's side of the car, near the trunk. She told Mr. Hunter that they should call the police. Mr. Hunter "just said no," and Mr. Noble threatened to kill her if she did so. Mr. Noble opened the trunk of the car, grabbed a towel that was in the trunk, and "went back down the hill." Mr. Hunter advised Ms. Garcia to "go home." At around the same time, a woman called out to her from a hotel window asking if she wanted her to call the police. Ms. Garcia "shook [her] head no" and told the woman she was going home. As Ms. Garcia closed the trunk, she "saw [a] knife sitting" on a floor mat in her trunk, and told Mr. Hunter about it. Mr. Hunter got in her car and directed her to drive to a nearby apartment complex, where he got out of the car, opened the trunk, wrapped "something"

in a "light blue towel" that was in the trunk, and disposed of it in some garbage bins. Mr. Hunter then got back in the car and told Ms. Garcia to drive back to the hotel, where she parked on a side street.

When she parked on the side street, she saw Mr. Noble running toward the car. She did not see anyone else in the area. Mr. Hunter got out of the car and Mr. Noble got in. Mr. Noble again threatened to kill her and told her to drive him to a particular location, where she dropped him off. She noted that Mr. Noble still had blood on his face at that time. Ms. Garcia then returned to her great-grandmother's house, removed floor mats from the front passenger's side and trunk of her car, and wiped down the front passenger's seat with a detergent.

Testimony of Other Witnesses

Several of the other witnesses to the events immediately before and after the stabbing provided testimony consistent with Ms. Garcia's version of the incident. Most of the witnesses testified that they heard someone scream. Several witnesses saw Ms. Garcia's Mercedes, which was variously described as "blue," "black," or "gray." Some of the witnesses testified that they saw the victim being chased down a hill by a single person, identifying the victim and a shirtless white man (Mr. Noble is white). Multiple witnesses saw the victim on the ground and the white man going through the victim's pockets, after which the white man either left the area or went into the hotel

The testimony of three witnesses differed from Ms. Garcia's testimony in certain notable respects. Matthew Anderson testified that he witnessed the events immediately

before the stabbing as he was returning to the hotel after walking his dog. He first testified that he saw two "light-skinned" men "run down over the bank behind the hotel," with the "lighter-skinned" man without a shirt closely following the other. On cross examination, he admitted that it was "possible" that he saw more than two people running because "[t]here were bushes in between" him and the people he saw, and "they were moving quickly." He also testified that he only saw one man come back up the hill, "pulling on a shirt as he came up the hill," but he acknowledged telling a detective who interviewed him the day of the incident that he saw two people come back up the hill.

Mr. Anderson's wife, Kristen Anderson, was called as a defense witness. She testified that she saw two "dark-skinned" men running down the hill near the hotel. She did not remember anything specific about their appearance, but stated that neither of them could be described as "a white guy with no shirt on." Shortly thereafter, she saw both a car and a truck or SUV leave the parking lot.

Jonathan Garland testified in the first trial, but because he was unavailable to testify in the second trial, defense counsel read the transcript of his testimony from the first trial into evidence.[1] Mr. Garland was in the parking lot at the time of the incident with a friend (whose testimony was consistent with Ms. Garcia's) and heard "someone screaming loud."

[1] Mr. Garland's testimony was not always internally consistent. For clarity, we summarize the version of his testimony that, if believed by the jury, would best support the accomplice liability instruction given by the court. *See Correll v. State*, 215 Md. App. 483, 502 (2013) ("It is 'the jury's task to resolve any conflicts in the evidence and assess the credibility of witnesses.'" (quoting *Allen v. State*, 158 Md. App. 194, 251 (2004))); *Jarvis v. State*, 487 Md. 548, 564 (2024) ("[W]hether 'some evidence' [supporting a jury instruction] exists is viewed in the light most favorable to the requesting party[.]")

He saw "a whole crowd of people running" away from the bottom of a hill. He described the crowd as consisting of "between three to six people," both men and women, one of whom was a shirtless white man. According to him, "[e]verybody else was black." He did not see the white man holding a weapon. "And as they went up the hill, one dude came back down the hill. It was a white dude." The white man "ran back down and checked [the victim's] pockets." He then saw the white man run back up the hill to the group of people in the parking lot before going into the hotel.[2] However, Mr. Garland was not certain about what the white man did in the parking lot because "there was so much going on right there in that little area. They had, like, a little mess of people, and I don't know what he did or what he was doing." He then saw the white man go into the hotel and everyone else in the group get into "[t]wo or three cars" and drive away. Mr. Garland and his friend then notified the hotel receptionist about what they saw. When Mr. Garland was interviewed by police the day of the incident, he confirmed that he only saw three people at the bottom of the hill—the "victim, the woman, and a black guy." When Mr. Garland was confronted with this discrepancy at trial, he speculated that he might have seen the woman and a black man run up the hill to a group of people in the parking lot.

Forensic Evidence

The State presented forensic evidence as well. When Ms. Garcia's car was searched, suspected blood was found on two parts of the trunk and on the inside front passenger door

[2] Mr. Garland's recollection was vague when he was asked if Mr. Noble "stopped at a car."

handle. A swab of the front passenger door handle later tested negative for blood and was not DNA tested. The swabs of the blood stains on the trunk only contained Mr. Noble's DNA, and were not consistent with Mr. Arias's DNA. A swab of the inside of Mr. Arias's pants pocket showed a "mixed DNA profile of three contributors," two of whom were Mr. Arias and Mr. Noble. There was insufficient DNA from the third contributor to compare to known samples. The medical examiner, Dr. Stephanie Dean, testified that Mr. Arias sustained "four stab wounds and three cutting wounds." She testified that the wound on Mr. Arias's left leg appeared to be caused by a blade with two sharp edges, whereas a wound on the right side of his neck was caused by a blade "with a blunted end and a sharp end." She stated that it is possible that both wounds were caused by one blade, but she could not rule out the possibility that more than one blade was used in the stabbing.

Jury Instructions

Near the end of the State's case-in-chief, the court and counsel engaged in a discussion about jury instructions. The State requested that the court read an accomplice liability instruction to the jury. Defense counsel objected to the instruction, asserting that the State's case was based on the premise that Mr. Noble acted alone. The court disagreed, finding that the instruction was appropriate based on testimony elicited during cross-examination of the forensic witnesses concerning unknown DNA and differences in Mr. Arias's wounds, and testimony from witnesses giving "different descriptions" of people at or near the crime scene. According to the court, this evidence raised the possibility that the crime was committed by more than one person. The court also noted that Mr. Garland's

testimony from the first trial, which defense counsel planned to offer in the defense case, would also generate the accomplice liability instruction.

At the close of all evidence, the court read the following jury instruction:

> Defendant may be guilty of armed robbery, robbery, second-degree murder, felony murder, and/or theft as an accomplice even though the defendant did not personally commit the acts that constituted that crime.
>
> In order to convict the defendant of these crimes as an accomplice, the State must prove that the armed robbery, robbery, second-degree murder, felony murder, and/or theft occurred.
>
> And that the defendant with the intent to make the crimes happen knowingly aided, counseled, commanded, or encouraged the commission of the crime, or communicated to a participant in the crime that he was ready, willing, and able to lend support, if needed.
>
> A person need not be physically present at the time and place of the commission of the crime in order to act as an accomplice. The mere presence of the defendant at the time and place of the commission of the crime is not enough to prove that the defendant is an accomplice.
>
> If presence at the scene of the crime is proven, that fact may be considered along with all surrounding circumstances. Determining whether defendant intended to aid a participant and communicate that willingness to participate.

The jury found Mr. Noble guilty of second-degree murder and armed robbery, for which he received a 50-year executed sentence. This timely appeal followed.

DISCUSSION

I. Accomplice Liability Jury Instruction

Mr. Noble first argues that the court erred in instructing the jury on accomplice liability. He asserts that there was "no evidence" presented at trial "of any joint effort between Noble and anyone to rob and kill Arias." The State responds that the record as a

whole contains evidence that multiple people were involved in the murder, sufficient to raise the inference that Mr. Noble was assisting others in the crime.

We review a court's decision to give a jury instruction for abuse of discretion. *Rainey v. State*, 480 Md. 230, 255 (2022). When a party requests a jury instruction, the trial court must give that instruction if "(1) the requested instruction is a correct statement of the law; (2) the requested instruction is applicable under the facts of the case; and (3) the content of the requested instruction was not fairly covered elsewhere in the jury instruction actually given." *Id.* (quoting *Ware v. State*, 348 Md. 19, 58 (1997)); *see also* Md. Rule 4-325(c). The issue presented here is limited to the second requirement—that the "instruction is applicable under the facts of the case."

"A requested jury instruction is applicable if the evidence is sufficient to permit a jury to find its factual predicate." *Rainey*, 480 Md. at 255 (quoting *Bazzle v. State*, 426 Md. 541, 550 (2012)). Determining whether the evidence is sufficient is a question of law, and requires only the production of "some evidence" to support the instruction. *Id.* (quoting *Dykes v. State*, 319 Md. 206, 216-17 (1990)). The "some evidence" requirement is a "'fairly low hurdle'" that "need not even rise to the level of a preponderance." *Jarvis v. State*, 487 Md. 548, 564 (2024) (quoting *Arthur v. State*, 420 Md. 512, 526 (2011); *State v. Martin*, 329 Md. 351, 359 (1973)). Furthermore, "whether 'some evidence' exists is viewed in the light most favorable to the requesting party[.]" *Id.* (citing *Rainey*, 480 Md. at 268). "[B]oth the source of that evidence and its weight compared to other evidence presented at trial are immaterial[.]" *Id.* (citing *State v. Martin*, 329 Md. 351, 359 (1993)).

A person may be found guilty of a crime as an accomplice where the person does not "actually commit the crime in question," "'but in some way participates in the commission of the [crime] by aiding, commanding, counseling, or encouraging'" the principal in the first degree. *Sweeney v. State*, 242 Md. App. 160, 174 (2019) (quoting *Pope v. State*, 284 Md. 309, 331 (1979)). "One may . . . encourage a crime by merely standing by for the purpose of giving aid to the perpetrator if necessary . . . Guilt or innocence . . . is not determined by the quantum of [the] advice or encouragement." *Jones v. State*, 173 Md. App. 430, 446 (2007) (alterations in original) (quoting *Pope*, 284 Md. at 332). However, "the mere presence of a person at the scene of the crime is not, of itself, sufficient to establish that the person was either a principal or an accessory to the crime. Nor is flight, alone, controlling." *In re Appeal No. 504*, 24 Md. App. 715, 724 (1975). "But presence at the immediate and exact spot where a crime is in the process of being committed is a very important factor[,]" and a person's flight may also be considered. *Id.* "[T]he trier of fact is entitled to take into consideration all the attendant circumstances surrounding the presence of [the defendant] at the crime scene in determining whether [the defendant] is an accomplice." *Williams v. State*, 19 Md. App. 582, 594 (1974); *cf. Jones v. State*, 132 Md. App. 657, 660-64 (2000) (holding that evidence that two individuals exited an alley together, one fired multiple shots at the victim, and both ran away together was sufficient to support conspiracy conviction).

Mr. Noble argues that the present case is similar to *Sweeney v. State*, 242 Md. App. 160 (2019). Sweeney was found guilty of second-degree theft and burglary after breaking

into a garden shed and taking, among other things, a 450-pound riding lawn mower. *Id.* at 167. There was no evidence presented of another person being involved in the burglary, but the trial judge received a note from the jury after deliberations had begun asking, "if two people engage in the crime of burglary but only [one] enters the shed are both guilty of the crime[?]" *Id.* at 170 (alterations in original). The trial judge instructed the jury on accomplice liability, over defense counsel's objection. *Id.* at 171. This Court concluded that the trial judge erred in giving the supplemental jury instruction because it was not generated by the evidence and because defense counsel was not given an "opportunity to respond to a new alternative theory of liability." *Id.* at 172-73.

> The sole piece of evidence to which the State points to support the accomplice instruction is the size of the stolen tractor—the State theorizes that one person could not have lifted a 450-pound tractor into the bed of a pickup truck by himself, so someone else must have been involved. But that possible inference cannot generate an accomplice instruction by itself. Nor can the State count its closing argument musings that "he could have been with someone else" and "there could have been people helping him," or defense counsel's comment, also in closing, that it's "frankly absurd" to think that "Mr. [Sweeney] loaded a 450-pound tractor into a truck"—closing arguments are arguments, not evidence. The State even acknowledged in its closing that its suggestions that Mr. Sweeney may have had assistance committing these crimes were mere speculation. As low as the bar for generating jury instructions is, the trial record in this case didn't support the accomplice liability instruction the court gave during deliberations.

Id. at 176 (alteration in original). Furthermore, because the supplemental instruction was given after closing arguments and the court did not allow additional arguments, "the timing of the instruction left Mr. Sweeney no opportunity to defend against the new theory." *Id.* at 177.

In our view, *Sweeney* is distinguishable. In *Sweeney*, the record was devoid of any evidence that someone other than Mr. Sweeney was present during the burglary. Here, there was evidence produced at trial sufficient to support the accomplice liability instruction. The State's forensic evidence raised the possibility that more than one person was involved in the stabbing. Specifically, the medical examiner testified that the wounds on Mr. Arias's leg and neck appeared to be caused by different weapons, and there was evidence of an unknown third person's DNA on the inside of Mr. Arias's pocket. Additionally, Mr. Anderson testified that it was "possible" that he saw more than two people running down the hill. Mrs. Anderson saw two "dark-skinned" men running toward the bottom of the hill and, although her recollection of the men was vague, she denied that either of the men could be described as "a white guy with no shirt on."

In addition, Mr. Garland's testimony provided a substantial basis for an accomplice liability instruction. Mr. Garland saw a "crowd" of people running up the hill, and into the parking lot. One of those individuals he described as a shirtless white man, inferentially Mr. Noble. As the crowd was running up the hill, Mr. Garland saw the white man go back down the hill and check the victim's pockets. The group of people stayed in the parking lot until sometime shortly after the white man ran back up the hill and rejoined the group. It was only after the white man rejoined the group that the group dispersed and left the area.

From this evidence, the jury could conclude that Mr. Noble did not "actually commit the crime[s] in question," but that he participated in the "commission of the [crimes] by

aiding, commanding, counseling, or encouraging" the principal in the first degree. *See Sweeney*, 242 Md. App. at 174. Viewing the evidence in a light most favorable to the State, a rational jury could conclude that Mr. Arias was stabbed by one or more individuals in the group that included Mr. Noble. Although Mr. Noble's mere presence within this group of people and subsequent flight are insufficient, by themselves, to support a conviction based on accomplice liability, these facts can be "very important factor[s]," and may be considered in the totality of the circumstances. *See Appeal No. 504*, 24 Md. App. at 724. According to Mr. Garland's testimony, Mr. Noble fled the scene of the crime with the group of people that included the attacker(s). That same group then waited in the parking lot while Mr. Noble went back down the hill and searched Mr. Arias's pockets. After Mr. Noble returned to the group of people, he proceeded to Ms. Garcia's car, and the group did not disperse until Mr. Noble rejoined them. These facts, if credited by the jury, support an inference that Mr. Noble aided, commanded, counseled, or encouraged the actual perpetrator(s) of the crimes within the group. Thus, the fairly low threshold of "some evidence" necessary to give the accomplice liability instruction was satisfied. We therefore hold that the trial court did not err in giving that instruction to the jury.[3]

II. **Compound Voir Dire Question**

Mr. Noble urges us to conduct plain error review of the domestic abuse voir dire

[3] We note that in closing argument, Mr. Noble's counsel argued that the evidence "suggests that multiple weapons could have been used, possibly by multiple assailants." Counsel further argued that "several people had motive and opportunity to assault [Mr. Arias]. The presence of multiple weapons and multiple assailants would be consistent with the forensic evidence."

question. He argues that, because the question improperly asked jurors to self-assess whether they could be fair and impartial, he was denied the right to a fair and impartial jury. The State responds that, because the question was included at Mr. Noble's request, review by this Court is unavailable. We agree with the State.

The record does not contain copies of the parties' requested voir dire questions; however, it is clear from the transcript of a hearing that took place the day before trial that defense counsel requested the question Mr. Noble now asks us to review.

> THE COURT: And voir dire . . . I'll email what I have. It's pretty much the same as last time. Based upon your voir dires were pretty much the same as last time.
>
> [DEFENSE COUNSEL]: I think we actually had somebody match up the transcript and sort of send it back and . . . They were exactly your words and we still took the transcript and had somebody turn it into the questions.

The question asked in Mr. Noble's first trial was:

> The evidence in this case may include information about domestic violence between romantic partners. Does any member of the p[ro]spective jury panel feel that you cannot be fair and impartial in a case involving allegations of domestic violence?

This question served as the basis for defense counsel's related voir dire at the second trial. In the second trial, the court asked:

> The evidence in this case may include information about domestic abuse between romantic partners. Does any member of this prospective jury panel feel they could not be fair and impartial in a case involving allegations of domestic abuse?

It is apparent that the only substantive change the court made to the question requested by defense counsel was the insertion of the phrase "domestic abuse" for "domestic violence," a change that defense counsel stated "makes sense."

"Plain error review is 'reserved for those errors that are compelling, extraordinary, exceptional or fundamental to assure the defendant of a fair trial.'" *Newton v. State*, 455 Md. 341, 364 (2017) (quoting *Robinson v. State*, 410 Md. 91, 111 (2009)). This Court has discretion to find plain error only where four conditions are met:

> (1) "there must be an error or defect—some sort of 'deviation from a legal rule'—that has not been intentionally relinquished or abandoned, *i.e.*, affirmatively waived, by the appellant"; (2) "the legal error must be clear or obvious, rather than subject to reasonable dispute"; (3) "the error must have affected the appellant's substantial rights, which in the ordinary case means he must demonstrate that it 'affected the outcome of the district court proceedings'"; and (4) the error must "seriously affect[] the fairness, integrity or public reputation of judicial proceedings."

Id. (quoting *State v. Rich*, 415 Md. 567, 578 (2010)).

Here, the first condition for plain error review has not been satisfied because Mr. Noble "affirmatively waived" any error. The voir dire question Mr. Noble requested was nearly verbatim to the question actually asked by the court, creating "an actual express and affirmative waiver of any possible objection." *See Robson v. State*, 257 Md. App. 421, 461 (2023) (holding that defendant waived objection to compound voir dire questions by requesting those questions). Because one of the conditions for plain error review has not been met, this Court "may not review the unpreserved error." *See Winston v. State*, 235 Md. App. 540, 568 (2018). Moreover, we decline plain error review because we are not convinced that the alleged error was "so material to the rights of the accused as to amount

to the kind of prejudice [that] precluded an impartial trial." *Newton v. State*, 455 Md. 341, 364 (2017) (quoting *Diggs v. State*, 409 Md. 260, 286 (2009)).

JUDGMENTS OF THE CIRCUIT COURT FOR MONTGOMERY COUNTY AFFIRMED. COSTS TO BE PAID BY APPELLANT.