

Circuit Court for Baltimore City
Case No.: 823090004

UNREPORTED*
IN THE APPELLATE COURT
OF MARYLAND

No. 1450

September Term, 2023

DONYA KEONE LITTLE

v.

STATE OF MARYLAND

Wells, C.J.,
Beachley,
Albright,

JJ.

Opinion by Wells, C.J.

Filed: December 18, 2024

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

A jury in the Circuit Court for Baltimore City convicted appellant Donya Little of Count 1: wearing and carrying a loaded handgun on his person, Count 2: wearing and carrying a handgun on his person, Count 3: illegal possession of regulated firearm, and Count 4: illegal possession of ammunition. The court sentenced Little to five years of active incarceration.

Little timely appealed, raising two issues. The first concerns whether the court should have struck for cause a prospective juror, rather than require Little to use a preemptory strike. The second issue concerns how the docket entries seem to conflict with the announced sentence.¹

For the reasons discussed below, we affirm on the issue of the prospective juror but remand without affirmance or reversal on the docket entries question to allow the circuit court to clarify what sentences it imposed and reconcile the docket entries and the commitment record with the sentences.

FACTUAL BACKGROUND

The facts underlying the charges are immaterial to the issues Little raises on appeal. Instead, we focus on what occurred during jury selection and at the time of sentencing.

¹ In his brief, Little’s verbatim questions are:

1. Did the circuit court err in denying the defendant’s motion to strike juror #4718 for cause, thereby depriving defense counsel of the full exercise of his preemptory challenges?

2. Must the commitment record and docket entries be corrected to accurately reflect the sentence imposed by the circuit court?

During jury selection, Prospective Juror 4718 answered several questions affirmatively. The court spoke with the juror, Little, and counsel at the bench. The following transpired:

THE COURT: You first indicated that you or someone in your immediate family have either been the victim of a crime, charged or convicted of a crime, incarcerated, or currently has cases pending.

JUROR NUMBER 4718: Yes.

THE COURT: Tell us why you stood up for that one.

JUROR NUMBER 4718: So, my brother, he was in and out of the penal system most of his life from the age of 16, as a minor, all the way up until his death, which was two years ago.

THE COURT: Did you ever attend any of the court proceedings?

JUROR NUMBER 4718: I did.

THE COURT: You did. Here in Baltimore City?

JUROR NUMBER 4718: Yes.

THE COURT: Okay. And then you also indicated that you or someone in your family has experience, training, or is employed in the legal field or law enforcement.

JUROR NUMBER 4718: Yes.

THE COURT: Okay. Tell us about that.

JUROR NUMBER 4718: So that would be my sister, who served as a court commissioner. She served for the FBI, as well as the Department of Defense.

THE COURT: Okay. And then you indicated that you have strong feelings about possession of handguns.

JUROR NUMBER 4718: Yes.

THE COURT: Tell us about that.

JUROR NUMBER 4718: I think there are too many handguns on the streets. I think that there should be more done to remove handguns out of the hands, especially illegal handguns, and that's my opinion.

THE COURT: All right.

JUROR NUMBER 4718: I think more should be done.

THE COURT: Okay. Given your feelings, knowing that in this case the defendant is charged with possessing a handgun, do you believe that you can listen to the evidence in this case and [r]ender a fair and impartial verdict based only on the evidence presented in court and following my instructions on the law?

JUROR NUMBER 4718: I have never done that, but I believe so. I mean, you know, I don't know. I think so.

THE COURT: Okay. So, particularly given your feelings about guns and you think there needs to be more done, I guess the question is, when the evidence is presented to you as a juror, do you believe that you can fairly and impartially evaluate the evidence that's presented to you in deciding whether or not the State has proven this case, not really whether or not anybody should or shouldn't have guns or anything like that? Just whether or not the State has prove -- and I will give you the law as to what it takes to prove it. I guess my question to you is, will you be fair in looking at the evidence and deciding whether or not it shows what the law requires?

JUROR NUMBER 4718: I believe so, but given my day-to-day job -- my everyday job -- I work to support individuals who are justice-involved. So I'm constantly (unintelligible at 10:55:56) different reasons why people are incarcerated, and when they come out, how (unintelligible at 10:56:02) cycle, but given that, I believe I could look at the evidence, but you just need to know that that is part of my day-to-day work.

THE COURT: Understood. Thank you. You may return to your seat.

Citing Juror 4718's "wishy-washy" responses to the court's questions, Little's trial counsel moved to strike the prospective juror for cause. The prosecutor objected, arguing

that Juror 4718 essentially said she could fairly evaluate the evidence and render an impartial verdict. The court denied the defense attorney’s motion to strike the juror.

[DEFENSE COUNSEL]: Your Honor, I’m going to make a motion to strike for cause just because she –

THE COURT: Do you wish to be heard?

[THE STATE]: Your Honor –

THE COURT: Okay. Hang on. I’m going to let you elaborate first.

[DEFENSE COUNSEL]: Just because she was so wishy-washy. She kept saying, “I think so,” which makes me feel like – and then she put out the fact that she – I didn’t really understand the point completely, whether she actually helps people who have been incarcerated and whether that would be a factor that weighs in favor of one side or another, or (unintelligible at 10:56:55) neutral. It was a little confusing.

[PROSECUTOR]: Your Honor, the State would object to striking this juror. It seems to me, based on the answers that she gave, she has the background where she’s familiar with and she has family who have been involved in the justice system on both sides. Then, also, she has taken – at this point, she’s also involved in her own study and research of those that are justice-involved, and she said that she supports those that are justice-involved. But most importantly, she said that she would – she did believe that she would be able to listen to all of the evidence and render a fair and impartial verdict.

THE COURT: All right. I’m satisfied that the juror indicated that she could listen, notwithstanding her feelings and also her work, that she could evaluate the evidence and follow my instructions on the law in evaluating the evidence. I think, at the end, she indicated that she just thought we should know that that’s her background. As you know, jurors come with whatever experiences they come with, but the Court has to make a finding that she could evaluate the evidence, notwithstanding her experience, and I believe she said she could. So, the motion is denied.

After a jury considered the evidence, it found Little guilty on all counts. After allocution from the prosecutor, defense counsel, Little’s witnesses, and Little himself, the court sentenced him as follows:

THE COURT: So, I’ve heard a lot and I heard enough, I think for the Court to consider otherwise; and with that, will consider the otherwise. However, as it relates to possession of a firearm, illegal possession of a regulated firearm by a prohibited person, [Count 3], this is the second time and there’s really just no excuse for that, and for that reason, the sentence of the Court will be the five years of incarceration. The sentence will begin on February the 27th.

As it relates to count one, the sentence of the Court will be the three-year suspended sentence. Count two merges into count one. As it relates to count four, the sentence of the Court will be a one-year suspended sentence, However, it will be consecutive. And the defendant will be placed on probation upon his release. I’ll initially set the probation at a five-year probation.

The docket entries prepared by the courtroom clerk on the day of sentencing read:

Defendant to pay court costs of \$165.00 by February 26, 2033. Count 1 to be served consecutive to count 3, count 4 to be served consecutive to count 1. Commitment, probation order, and post-trial rights filed.

Later, the clerk filed a “corrected commitment record” which read:

- Count 3: Illegal Possession of Regulated Firearm – 5-year sentence. Additional sentencing information: Count 1 to be served consecutive to count 3. 3 years fully suspended for count 1.

- Count 2: Handgun on person – Merges into count 1. Additional sentencing information: Count 4 to be served consecutive to count 1. 1-year fully suspended for count 4.

An addendum, attached to the corrected commitment record, reads:

- Count 3: Illegal Possession of Regulated Firearm – 5-year sentence
- Count 4: Illegal Possession of Ammunition – 1-year sentence consecutive to count 3.

After sentencing, Little filed a timely appeal. We will supply additional facts, if necessary, when discussing each issue.

DISCUSSION

I. The Court Properly Exercised Its Discretion in Declining to Strike For Cause Prospective Juror 4718.

Under the Sixth Amendment to the United States Constitution and Article 21 of the Maryland Declaration of Rights, a criminal defendant has the right to be tried by an impartial jury. The right to an impartial jury does not mean that prospective jurors “will be free of all preconceived notions relating to guilt or innocence,” but only that they “can lay aside [their] impressions or opinions and render a verdict based solely on the evidence presented in the case.” *Couser v. State*, 282 Md. 125, 138 (1978). Voir dire is the means “to ensure a fair and impartial jury by determining the existence of [specific] cause for disqualification[.]” *Pearson v. State*, 437 Md. 350, 356 (2014) (quoting *Washington v. State*, 425 Md. 306, 312 (2012)).

In a criminal case, if either the defense or the State believe a prospective juror will not be fair and impartial, they can move to strike that juror for cause. Md. Rule 4-312(e)(2). “[T]he proper focus [of voir dire] is on the venire person’s state of mind, specifically, whether there is some bias, prejudice, or preconception.” *Williams v. State*, 394 Md. 98, 108 (2006) “[N]o formula or precise technical test exists for determining whether a prospective juror is impartial.” *White v. State*, 374 Md. 232, 241 (2003). Because “[t]he trial court is in the best position to assess a juror’s state of mind, by taking into consideration the juror’s demeanor and credibility[.]” it is afforded wide discretion in

assessing whether to excuse a juror for cause. *Ware v. State*, 360 Md. 650, 666 (2000); *Morris v. State*, 153 Md. App. 480, 501 (2003). The decision as to whether to excuse a juror for cause is ordinarily left to the sound discretion of the trial judge and will not be disturbed on appeal except for an abuse of discretion. *Bowie v. State*, 324 Md. 1, 20 (1991).

In his opening brief, Little contends Juror 4718 was “noncommittal as to whether she could be fair and impartial due to her belief that ‘there are too many handguns in the streets’ and her ‘support [of] individuals who are justice-involved.’” In Little’s view, the circuit court abused its discretion in not excusing for cause Juror 4718 and requiring him to use a peremptory challenge to keep her off the jury. The State argues the opposite, asserting the court elicited from Juror 4718 sufficient information to conclude that she could remain in the jury pool because she said that she could decide the case impartially based on the evidence. We agree with the State.

On this record, we cannot say that the court abused its discretion in not removing Juror 4718 for cause based on her responses. Juror 4718 candidly gave the court pertinent information concerning her brother’s prior involvement with the criminal justice system, her sister’s work in the law enforcement field, and Juror 4718’s strong views about her perception of the prevalence of too many handguns in society. She also gave the court and the parties a window into the work she does with individuals who are “justice-involved,” which we take to mean individuals who have had contact with the criminal justice system. Juror 4718 should be commended for her frank disclosures. Her responses were designed to uncover potential biases out of worry that she might have prejudicially disfavored Little.

Her answers seemed to cut both ways. Juror 4718 displayed a keen awareness, arguably sympathy, for those, like her brother, and for those with whom she works, who have criminal records. She also made clear her belief that the proliferation of guns “on the streets” was not good, arguably, but not necessarily, evincing a pro-State bias.

Our review of the record shows Juror 4718, when asked if she could put her experiences and beliefs aside and render a verdict based on the evidence, initially said, “I have never done that, but I believe so. I mean, you know, I don’t know. I think so.” The court then asked Juror 4718, given her feelings and background, “**will you be fair in looking at the evidence and deciding whether or not it shows what the law requires?**” While also explaining that she worked with individuals in contact with the justice system, Juror 4718 said “**I believe so . . . I believe I can look at the evidence. . . .**” Although it would be ideal to get precise answers from prospective jurors on these kinds of questions, the reality is that the court and the parties will not always get them.

We conclude that Juror 4718 told the court she would be able to fairly evaluate the evidence and render a verdict. More importantly, nothing in the record shows Juror 4718 harbored a bias against Little so as to render her unable to continue serving as a member of the venire. The trial judge could properly conclude, based on all of the circumstances, and despite her less than unequivocal responses, that Juror 4718 could be a fair and impartial juror. Accordingly, the court did not abuse its discretion in not removing Juror 4718 for cause based on her responses.

II. The Circuit Court Should Have the Opportunity to Reconcile the Docket Entries and the Commitment Sheet With Its Sentence Before This Court Acts.

As his next claim of error, Little argues the sentence the circuit court announced does not square with the docket sheet or the commitment order. The State, on the other hand, urges us not to address this issue. The State contends that Little should have petitioned the circuit court to clarify the sentence. Again, we agree with the State.

As noted, it seems clear the court announced at sentencing that Little was to receive a five-year sentence on Court 3: illegal possession of a regulated firearm by a prohibited person:

[A]s it relates to possession of a firearm, illegal possession of a regulated firearm by a prohibited person, [Count 3], this is the second time and there's really just no excuse for that, and for that reason, the sentence of the Court will be the five years of incarceration. The sentence will begin on February the 27th.

As for the next three sentences, we agree with Little. The court imposed suspended time on each count, but it is not clear what sentences are concurrent or consecutive to which other sentence.

Based on our review of what the court said at sentencing, there seems to be no question that Count 2: wearing or carrying a handgun on one's person, merged into Count 1: wearing or carrying a loaded handgun on one's person. And on Count 1, the court imposed a three-year suspended sentence. Finally, on Count 4: illegally possessing ammunition, the court imposed a one-year suspended sentence, "consecutive." But

consecutive to which count? And what of Count 1; is it consecutive or concurrent to either Count 3 or Count 4?

The docket entries are no clearer. They read, in pertinent part:

Count 1 to be served **consecutive** to count 3, count 4 to be served **consecutive** to count 1. Commitment, probation order, and post-trial rights filed.

These entries, made by the clerk, seem to fill-in the gaps we mentioned, but, significantly, those clarifications were not announced by the sentencing judge on the record. If they were, they were not provided to this Court. The same discrepancies are found in the commitment record.

We realize the imposition of consecutive or concurrent suspended time can have implications in the calculation of Little's overall incarcerable time, as well as affect the calculation of good time credits to the Department of Corrections. *See* Md. Code Ann., Corr. Servs. § 3-704. The amount of suspended time could impact the calculation of back-up time for any potential violation of probation. *See generally* Md. Code Ann., Crim. Proc. § 6-233. We, therefore, conclude the circuit court should make clear which sentences are concurrent or consecutive to any other sentence. The docket entries and Little's commitment record should correctly reflect the sentences the court imposes.

**JUDGMENT OF THE CIRCUIT COURT
FOR BALTIMORE CITY AFFIRMED AS
TO THE JUROR ISSUE.**

**CASE REMANDED ON THE ISSUE OF
THE SENTENCES IMPOSED WITHOUT A
DECISION FROM THIS COURT SO THAT
THE CIRCUIT COURT MAY CLARIFY**

**WHICH SENTENCE IS CONSECUTIVE
OR CONCURRENT TO ANY OTHER
SENTENCE.**

**THE DOCKET ENTRIES AND
COMMITMENT RECORD SHOULD
COMPORT WITH THE SENTENCES
IMPOSED.**

APPELLANT TO PAY THE COSTS.