Circuit Court for Baltimore City
Case No. 123030005

UNREPORTED

IN THE APPELLATE COURT

OF MARYLAND*

No. 1996

September Term, 2023

REGINALD ALLEN

v.

STATE OF MARYLAND

Shaw,
Kehoe, S.,
Eyler, James R.
(Senior Judge, Specially Assigned)

Opinion by Shaw, J.

Filed: March 14, 2025

* This is an unreported opinion. The 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).

Appellant Reginald Allen was charged with various offenses related to a shooting that occurred on June 26, 2022. Appellant was indicted by a grand jury in the Circuit Court for Baltimore City, and he later elected a jury trial. During *voir dire* discussions, Appellant's counsel requested the judge ask the prospective jury, "Would you believe the testimony of a witness called by the prosecution more than the testimony of a defense witness" and the judge declined to ask the question. Following the selection of the jury and a trial, Appellant was found guilty of first-degree assault, use of a firearm in the commission of a crime of violence, possession of a regulated firearm after being convicted of a disqualifying offense, reckless endangerment, unlawfully wearing or carrying a handgun, possession of ammunition, and discharging a firearm. He was sentenced to forty years imprisonment with all but fifteen years without parole suspended and three years' probation upon his release. Appellant timely appealed and he presents five questions:

1. Did the trial court abuse its discretion in refusing to ask a requested *voir dire* question aimed at identifying prospective jurors who would believe the testimony of a witness called by the prosecution over the testimony of a defense witness?

2. Is the sentence imposed for first-degree assault illegal?

3. Did the trial court err in imposing separate sentences for wearing or carrying a handgun and use of a firearm in the commission of a crime of violence?

4. Did the trial court err in imposing separate sentences for reckless endangerment and first-degree assault?

5. Did the trial court impermissibly consider at sentencing charges that had been either nol prossed or stetted?

For reasons discussed below, we reverse and remand this matter to the circuit court. The court's failure to ask the requested *voir dire* question was reversible error. We decline to address the remaining issues as they may be resolved upon remand.

BACKGROUND

Appellant Reginald Allen was involved in a shooting incident at the Inner Harbor in Baltimore on June 26, 2022. He was arrested and charged with several offenses related to the incident, including attempted first-degree murder, attempted second-degree murder, first-degree assault, second-degree assault, reckless endangerment, use of a firearm in the commission of a crime of violence, possession of a regulated firearm after being convicted of a disqualifying offense, possession of ammunition, unlawfully wearing or carrying a handgun, and discharging a firearm. Appellant elected to have a jury trial.

On September 19, 2023, prior to conducting jury selection, the court provided its *voir dire* questions to the parties and gave them the opportunity to request additional questions. Appellant's counsel requested that the jurors be asked, "Would you believe the testimony . . . of a witness called by the prosecution more than the testimony of the defense?" The court declined the request, stating:

> So I have eliminated those questions. My experience has been, when I ask them in either a criminal case or a civil case, where I say would you believe a witness called by – by Plaintiff's counsel more than Defense counsel, and vice versa, the jurors are more often confused by those questions, than actually yielding anything that is specific cause for disqualification.
>
> The only time that I've had people answer them yes, I've had people answer both of them yes, that they would believe the State's witnesses more and the defense witnesses more, because they just want to get out of jury duty. So, I don't find that those are helpful questions.

The court proceeded to *voir dire* the prospective jurors. At its conclusion, the court asked whether the parties had any exceptions to the questions asked. The following occurred:

> THE COURT: Defense, any exceptions?
>
> [APPELLANT'S COUNSEL]: Just subject to my (inaudible).
>
> THE COURT: That you wanted me to ask would a juror give more weight to the testimony of a State's witness over a defense witness or if the State had asked for the converse of that or the inverse of that, and the Court has determined that the question would not lead to specific cause for disqualification and is fairly covered by other questions that the Court has propounded to the jury panel.

The jury was later sworn in, and trial began the following day.

Joel Schindler, the Security Director of Harbor East Management, was called as the State's first witness. He detailed the security operation covering Harbor East and portions of Fells Point, which included 901 South Bond Street, where the shooting occurred. Mr. Schindler explained to the jury that he obtained video surveillance of the shooting from the Management's security cameras. Mr. Schindler authenticated the footage, and the CCTV[1] videos were entered into evidence and viewed by the jury.

Monique Gaskin, Appellant's girlfriend at the time of the incident, testified next. She stated that she and Appellant went to the Inner Harbor together on the evening of the incident. At some point, she heard a young lady repeatedly asking a gentleman (the victim)

[1] Closed-circuit television, or CCTV, is a type of video surveillance system that transmits the signal to a limited number of receivers via a wire and is commonly used for security and crime management. *See Closed-Circuit*, MERRIAM WEBSTER.COM DICTIONARY, https://www.merriam-webster.com/dictionary/closed-circuit (last visited March 11, 2025).

to move away from her. She went to check on the woman at the top of the "Rock"[2] and asked her if she was okay. Ms. Gaskin then asked the gentleman to move, and at that point she noticed Appellant approaching. Appellant and the gentleman started exchanging words, but Ms. Gaskin could not recall what either party said. A few moments later, everyone began moving to the middle of the "Rock," while Ms. Gaskin remained at the top. She heard a "loud pop" and then jumped from the "Rock" to leave. As she headed to her vehicle, she noticed Appellant walking ahead of her. Once she reached her vehicle, she left. She testified that she and Appellant did not have any conversation about the incident before she left and that she did not know where Appellant went afterwards.

James Jones, the victim, was also called as a State witness. He testified that on June 26, 2022, he was "sitting at the Harbor. . . . waiting to meet my niece for the first time. My brother just had a baby about three or four days to then, and it – him and his, uh, current girlfriend were coming down there." While he was waiting, he was "just sitting, drinking, [and] socializing with randoms." At some point, he met a woman and they exchanged numbers and social media accounts. He testified that:

> There was a guy that was wearing a baseball, um, cap, and he was beginning to ask me to go somewhere. Then he started clutching his waistband, so I thought he was acting a little weird, uh, clutching his waistband, and I hadn't [sic] thing to him or even came at him aggressively. I never even really said anything to him. So I got up, and I said, um, nothing has to go that far. I'm going to go head [sic] and leave. I'm not like that, I'm not like that. And, he – I don't – just shot me, and that's really all I can say. He just shot me, and yeah, that's what happened.

[2] Throughout Ms. Gaskin's testimony, she refers to the meeting place at the Inner Harbor as the "Rock." While it is unclear from the record what specific area this refers to, it seems to symbolize a location where socializing typically takes place.

He identified the shooter as Appellant. Mr. Jones stated that after he was shot, he "wanted to defend [him]self, but then I, you know, say there was like 200 – a hundred plus people there, so it's like no point in trying to get into a shootout with that many people there." When asked what he meant by "defend himself," he stated, "my first thought, um, Ms. Denise Thomas, that was just there . . . she was supposed to grab her firearms, but she didn't . . . she left me her purse . . . and I grabbed her firearms from them."

Appellant elected to testify and he stated that on the evening of June 26, 2022, he, his girlfriend, Ms. Gaskin, and his little sister, Raven Williams, attended a "pier party." While he and Ms. Gaskin were there, he heard Ms. Williams screaming "Get away from me." Ms. Gaskin immediately went to Ms. Williams to check on her and "ask[] her what's wrong." Appellant then observed Ms. Gaskin ask the gentleman standing near Ms. Williams to step away from her. He identified the man as Mr. Jones. Appellant stated that Mr. Jones began using vulgar language with Ms. Gaskin and this caused him to step in. Appellant stated that he told Mr. Jones, "Don't talk to her like that. . . . All you got to do is walk away. . . . Just move down some, my little sister don't [sic] want to talk to you." Appellant testified that Mr. Jones responded, "I ain't going nowhere. Imma [sic] get my point across. I ain't going for nothing. I'll kill everybody out here." Appellant then saw Mr. Jones with his bag open and a gun inside, and told him, "It ain't worth it, let's just walk away." Mr. Jones continued to threaten Appellant, stating, "I'll make sure nobody leave [sic]." At that point, Appellant testified that he pulled out his gun and shot Mr. Jones, because "he was going to pull out his gun and shot [sic] me and possibly my girlfriend or little sister." Immediately following the shooting, Appellant left the area.

At the close of all evidence, Appellant's counsel moved for judgment of acquittal on the grounds of "perfect self-defense." The State opposed, and the judge denied the motion. The judge then instructed the jury and counsel gave closing arguments. Following deliberations, Appellant was found not guilty on three counts: attempted murder in the first degree, attempted murder in the second degree, and attempted voluntary manslaughter. Appellant was found guilty of assault in the first degree, handgun used in the commission of a crime of violence, reckless endangerment, possession of a regulated firearm after being convicted of a disqualifying crime, possession of ammunition after being convicted of a disqualifying crime, wearing or carrying of a handgun on person, and discharging a firearm in Baltimore City.

On December 1, 2023, Appellant was sentenced to forty years' imprisonment with all but fifteen suspended without the possibility of parole, and three years' supervised probation upon release. Appellant noted this timely appeal.

STANDARD OF REVIEW

An appellate court reviews a trial court's decisions regarding *voir dire* questions under an abuse of discretion standard. *Lopez-Villa v. State*, 478 Md. 1, 10 (2022) (citing *Pearson v. State*, 437 Md. 350, 356 (2014)). When reviewing, an appellate court "looks at the record as a whole" to determine whether the "questions posed . . . have created a reasonable assurance that prejudice would be discovered." *Lewis v. State*, 262 Md. App. 251, 278 (2024) (quoting *Washington v. State*, 425 Md. 306, 313-14 (2012)). A trial court

abuses its discretion when it fails to ask a mandatory question during *voir dire*, upon a party's request. *Id.* (citing *Curtin v. State*, 393 Md. 593, 609 (2006)).

DISCUSSION

I. The circuit court erred in declining to ask, during *voir dire,* whether any prospective juror "would [] believe the testimony of a witness called by the prosecution more than the testimony of a defense witness."

Appellant argues that the judge erred in failing to ask his requested *voir dire* question. He contends that a judge is required to ask, when requested, a "Defense Witness" question, if at least one witness will be called by the defense. The State agrees with Appellant that the judge's failure to ask the "Defense Witness" question was error. The State argues, however, that as to the "non-assaultive" crimes, specifically the firearms charges, the error was harmless, and thus, Appellant's convictions on those charges should be sustained.

Voir dire is an "examination of a prospective juror by a judge . . . to decide whether the prospect is qualified and suitable to serve on a jury." *Voir dire*, BLACK'S LAW DICTIONARY (12th ed. 2024). Generally, the purpose of *voir dire* is to safeguard a defendant's right to a fair and impartial jury as outlined by the Sixth Amendment of the Constitution. *Moore v. State*, 421 Md. 635, 644 (2010). In Maryland, its specific purpose is to "ensure a fair and impartial jury by determining the existence of cause for disqualification[.]" *Washington*, 425 Md. at 312 (2012). The trial court should tailor *voir dire* questions with "the ultimate goal . . . being to obtain jurors who will be 'impartial and unbiased.'" *Moore*, 421 Md. at 645 (quoting *Dingle v. State*, 361 Md. 1, 9 (2000)). The content and scope of questions posed to the jury is case specific, in the absence of a statute. *See Thompson v. State*, 229 Md. App. 385, 403–04 (2016) (citing *Moore*, 421 Md. at 644).

Questions may be posed to the jury regarding any "collateral matter [that] is reasonably liable to have undue influence over a prospective juror." *Mitchell v. State*, 488 Md. 1, 16 (quoting *Pearson v. State*, 437 Md. 350, 356 (2014)).

Upon a party's request, the court must ask questions about "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). "[T]he failure of the court to allow questions that may show cause for disqualification is an abuse of discretion constituting reversible error." *Lopez-Villa*, 478 Md. at 10 (cleaned up). If, however, the proposed question is not "reasonably likely to reveal specific cause for disqualification," the court does not abuse its discretion in denying such a request. *Kazadi v. State*, 467 Md. 1, 44–45 (2020) (citing *Collins*, 436 Md. at 376–77).

In *Moore v. State*, the Supreme Court of Maryland addressed a court's refusal to ask a question during *voir dire* that had been requested by the defendant. 412 Md. 635 (2010). There, the defendant had been charged with attempted murder and several gun-related crimes. *Id.* at 641. Prior to jury selection, the defendant's counsel submitted a list of proposed questions for *voir dire*, including the following:

> 21. Would any prospective juror be more likely to believe a witness for the prosecution merely because he or she is a prosecution witness?
>
> 22. Would any prospective juror tend to view the testimony of a witness called by the defense with more skepticism than witnesses called by the State, merely because they were called by the defense?
>
> 23. Would any prospective juror be more or less likely to believe a police officer than a civilian witness, solely because he or she is a police officer?

The court agreed that question 23 was proper, but declined to ask question 21 or 22, stating:

> 21 and 22, I believe is also covered generically. We talk about it in 23 as to believe the testimony. I don't like to stress prosecution over are [sic] less likely to believe defense witness because that's again covered, I believe, in other instructions.

Id. A jury was later empaneled, and trial began. Following the close of the State's case, the defendant called witnesses to testify on his behalf. *Id.* at 642-43. He was subsequently found guilty of numerous charges by the jury, and he noted an appeal. This Court affirmed his convictions in an unreported opinion. *Id.* at 643.

The Maryland Supreme Court granted certiorari and reversed the convictions. The Court held that the trial court's rejection of a proposed question during *voir dire* asking whether potential jurors "would tend to view the testimony of witnesses called by the defense with more skepticism than that of witnesses called by the State, merely because they were called by the defense" was an abuse of discretion that constituted reversible error. *Id.* at 642. The Court explained that grounds for juror disqualification exist when a juror can presume that one witness is more credible than another simply because of that witness' status or affiliation with the government. *Id.* at 649–50 (citing *Langley v. State*, 281 Md. at 349) (analyzing the holding of *Langley*, that if a police officer is testifying, upon a defendant's request, inquiry into whether a venireperson would grant them a "presumption of credibility" is necessary to ensure impartiality). The Court held that "any question requested that is relevant to the facts or circumstances presented in a case which assists the trial judge in uncovering bias [] must be asked." The Court explained:

> It is, of course, the case, that consistent with case law, the questions proposed must relate to uncovering bias that could arise, given the facts of the case. Accordingly, as a prerequisite to asking the question, there must be a qualifying witness, one, who, because of occupation or category, may be

> favored, or disfavored, simply on the basis of that status or affiliation. Where, therefore, no police or other official witnesses will be called by the State, the occupational, or status, question need not be asked. On the other hand, if the case is one in which one or more police or official witnesses will be called to testify, the occupational witness question(s) must be asked, if requested. Similarly, if there are no defense witnesses, there will be no need for a Defense–Witness question. Where, however, there will be one or more defense witnesses, then it follows that the Defense–Witness question must be asked. Because the State always has the burden of proof and there usually will be State's witnesses, it seems clear, that in such cases, the State–Witness question always is also required. Of course, where there are defense and State witnesses, including police testimony, then the questions sanctioned in *Bowie* should be asked. The goal being to uncover any bias a venireperson might have towards a witness, an inquiry spanning category and status is necessary, where requested.

Id. at 654 (emphasis in original).

Recently, in *Mitchell v. State*, the Supreme Court of Maryland, again considered whether a trial court's failure to ask a proposed *voir dire* question was an abuse of discretion. 488 Md. 1 (2024). The defendant was charged with sexual abuse of a minor by a family member and the victim was nine years old. The State's case relied primarily on the child witness. Defendant's counsel requested that the trial court ask, "Do you have any concerns about a child testifying? Does anyone not believe that a child is capable of lying about a serious crime like this?" *Id.* at 9. The court responded that it would ask the first question but declined to ask the second. *Id.* The court asked the jury, "In this case, you will hear testimony from a child. Do you have any concerns about a child testifying? And I believe the child in this case who may testify is nine years old. Do you have any concerns about a child testifying?" *Id.* at 10. The defendant was later convicted and appealed to this Court. *Id.* at 11. We affirmed the decision of the trial court holding that questions

concerning the credibility of a child-witness were not cause for disqualification of a prospective juror, and thus it was not a mandatory voir dire inquiry. *Id.* at 11–12.

The Supreme Court granted certiorari, and in considering whether the child witness question was required, acknowledged that the issue, just as in *Moore*, was whether "it [was] appropriate for a juror to give credence to a witness simply because of that witnesses' occupation, or status, or category, or affiliation." *Id.* at 20 (quoting *Moore*, 412 Md. at 652). The Court reiterated its holding from *Moore*, that a "circuit court is *required* to ask questions designed to uncover prejudgment of credibility," in whatever broad form that may encompass. *Id.* at 21 (abrogating the holding in *Stewart v. State*, 399 Md. 146 (2007) that questions concerning credibility of child witnesses did not support disqualification of jurors). The Court further stated that:

> A court must ask prospective jurors a question designed to uncover bias concerning a certain type of witness when the court reasonably determines that such bias could affect the fairness of the trial. A court reasonably reaches that conclusion if two circumstances are met. First, there must be a qualifying witness, one, who, because of occupation or category, may be favored or disfavored, simply on that basis. Second, where the bias relates to a witness's status – such as the status of being a child – the witness's testimony must be important to the case.

Id. at 22 (internal citations omitted).

In the case at bar, Appellant's counsel requested several *voir dire* questions, including Question Number 19, which stated, "Would you believe the testimony of a witness called by the prosecution more than the testimony of a defense witness?" We hold, in accordance with *Moore* and, more recently *Mitchell*, that the court's failure to pose a

question to the prospective jurors that was "designed to uncover prejudgment of credibility" was an abuse of discretion and constituted reversible error. Appellant's defense centered entirely on his testimony, and any jury bias directed toward his status as a defense witness was a proper ground for disqualification. *See Mitchell*, 488 Md. at 22.

The State argues that the court's failure to pose the *voir dire* question was harmless error as related to Appellant's firearms charges. We do not agree. When a "reviewing court, upon its own independent review of the record, is [un] able to declare a belief, beyond a reasonable doubt, that the error in no way influenced the verdict, such error cannot be deemed 'harmless' and a reversal is mandated." *Moore*, 412 Md. at 666 (quoting *McDonough Power Equip. v. Greenwood,* 464 U.S. 548, 553 (1984)). Such is the case here. We are unable to determine from the record that the error in no way influenced the verdict as to the non-assaultive charges. We, therefore, reverse and remand this case to the circuit court.

JUDGMENT OF THE CIRCUIT COURT FOR BALTIMORE CITY REVERSED AND VACATED; CASE REMANDED FOR PROCEEDINGS NOT INCONSISTENT WITH THIS OPINION. COSTS TO BE PAID BY BALTIMORE CITY.