Circuit Court for Worcester County
Case No. C-23-CR-20-000113

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 994

September Term, 2021

ERIC VINCENT BISHOP, III

v.

STATE OF MARYLAND

Graeff,
Arthur,
Wright, Alexander, Jr.
(Senior Judge, Specially Assigned),

JJ.

Opinion by Arthur, J.

Filed: September 26, 2022

At a jury trial in the Circuit Court for Worcester County, appellant Eric Vincent Bishop, III, was convicted of attempted second-degree murder, first-degree assault, second-degree assault, and reckless endangerment. The court sentenced Bishop to 20 years of imprisonment, but suspended all but 10 years. In addition, the court imposed three years of probation.

In this appeal, Bishop presents two questions, which we quote:

> 1. Did the trial court err in refusing to propound defense counsel's requested *voir dire* on the specific question of racial bias particular to Bishop's race as African American?
>
> 2. Did the trial court err in denying Bishop's motion to suppress [the victim's] extrajudicial identification?

For the following reasons, we conclude that the court committed reversible error by declining to ask Bishop's requested voir dire question. In view of that conclusion, we must reverse the convictions. For guidance on remand, we address the second question and hold that the court did not err in denying the motion to suppress.

BACKGROUND

On April 5, 2020, Jerron Hinmon was stabbed during an altercation in Pocomoke City. In an interview after the victim had undergone surgery for his injuries, a law enforcement officer asked the victim who stabbed him. He answered, "Eric." The officer replied, "Eric Bishop?" The victim responded affirmatively.

After Bishop was charged with the stabbing, he moved to suppress the victim's identification of him as the assailant. He argued that the identification resulted from an

impermissibly suggestive identification procedure. The court denied the motion to suppress.

During jury selection, Bishop asked the court to pose a voir dire question concerning whether the jury could judge him fairly as an African American. The court declined to pose the question.

At trial, the court admitted the victim's statement that "Eric" meant "Eric Bishop." The jury convicted Bishop, and he took this timely appeal.

We shall include additional facts as relevant to our discussion.

DISCUSSION

I. VOIR DIRE QUESTION

"The Sixth Amendment of the United States Constitution and Article 21 of the Maryland Declaration of Rights both guarantee a criminal defendant the right to 'an impartial jury.'" *State v. Ablonczy*, 474 Md. 149, 156 (2021). Voir dire, the process used to honor that guarantee, allows trial courts to propound questions aimed at uncovering biases that would disqualify potential jurors. *Id.* at 157-58; *Washington v. State*, 425 Md. 306, 312 (2012); *Dingle v. State*, 361 Md. 1, 14 (2000); *Williams v. State*, 246 Md. App. 308, 347 (2020).

Maryland employs "limited voir dire." In Maryland, unlike most other jurisdictions in the United States, "the intelligent exercise of peremptory challenges"[1] is

[1] Peremptory challenges allow "a party to eliminate a prospective juror with personal traits or predilections that, although not challengeable for cause, will, in the opinion of the litigant, impel that individual to decide the case on a basis other than the

not a purpose of voir dire. *Washington v. State*, 425 Md. at 312. Thus, trial courts may decline to ask voir dire questions "'which are not directed at a specific ground for disqualification, which are merely 'fishing' for information to assist in the exercise of peremptory challenges, [or] which probe the prospective juror's knowledge of the law, ask a juror to make a specific commitment, or address sentencing considerations[.]'" *Id.* at 315 (quoting *Stewart v. State*, 399 Md. 146, 162 (2007)).

"The 'extent of the examination [of potential jurors] rests in the sound discretion of the court[.]'" *State v. Ablonczy*, 474 Md. at 157 (quoting *Langley v. State*, 281 Md. 337, 241 (1977)). Generally speaking, appellate courts "review[] for abuse of discretion a trial court's decision as to whether to ask a *voir dire* question." *Pearson v. State*, 437 Md. 350, 356 (2014); *accord Kazadi v. State*, 467 Md. 1, 24 (2020). A court, however, abuses its discretion if it declines a request to pose certain mandatory voir dire questions. *Collins v. State*, 452 Md. 614, 624-25 (2017); *see Kazadi v. State*, 467 Md. at 48.

Before the trial in this case, the parties submitted written requests concerning the voir dire questions that they wanted the court to ask the potential jurors. Bishop's proposed Question No. 14 read as follows: "Mr. Bishop is African-American. Is there any member of the jury panel who cannot judge her [sic] because of his race?"

The court did not ask that question during voir dire.

Upon the conclusion of voir dire, the following exchange occurred:

evidence presented." *King v. State Roads Comm'n of State Highway Admin.*, 284 Md. 368, 370 (1979).

> THE COURT: So that concludes the voir dire. Were there any questions that weren't asked that you want asked? Is there any objections [sic] to any of the questions that were asked? Any objections to the voir dire process?
>
> [DEFENSE COUNSEL]: I thought I asked a question just about—he's African American. Does any juror have a problem because he is African American?
>
> THE COURT: Okay. Any response?
>
> [PROSECUTOR]: No, Your Honor.
>
> THE COURT: Okay. The questions are certainly open-ended enough, I believe, if there's any other reason. So I believe that it's fairly covered by the other questions, so I decline to give that instruction.[2] And, quite frankly, I don't know that at this point you want me to, but—
>
> [DEFENSE COUNSEL]: I'm going to object to your ruling.
>
> THE COURT: Okay. And my reasoning isn't based—I'm not being presumptuous to say I know what's best for you, but I believe that it's fairly covered by the other instructions.[3]

In this appeal from his subsequent conviction, Bishop relies on *Hernandez v. State*, 357 Md. 204 (1999), for the proposition that the circuit court was required to ask the requested voir dire question on racial bias. The State correctly concedes that the circuit court erred in declining to ask that question.[4]

---

[2] The court had asked the potential jurors, "Do you have any bias or prejudice either for or against the Defendant, Mr. Bishop?"

[3] Bishop ultimately accepted the jury panel without objection. In doing so, however, he did not waive his objection to the court's failure to ask his proposed voir dire question. *State v. Ablonczy*, 474 Md. at 165; *Foster v. State*, 247 Md. App. 642, 651-52 (2020), *cert. denied*, 475 Md. 687 (2021).

[4] The State notes that Bishop's question was "inartfully worded and arguably did not directly ask about racial bias." However, as conceded by the State, Bishop's

Hernandez involved a Hispanic defendant who requested that the trial court ask the following question during voir dire: "Is there any member of the panel who would be prejudiced against a defendant because of any defendant's race, color, religion, sexual orientation, appearance, or sex?" *Hernandez v. State*, 357 Md. at 206-7. The court refused, concluding that its general voir dire question about bias or prejudice covered the specific biases that the defendant presented. *Id.* at 208-09. Following his conviction, Hernandez appealed. The Court of Appeals reversed the convictions, holding that, "[w]here a *voir dire* question has been properly requested and directed to bias against the accused's race, ethnicity, or cultural heritage, the trial court ordinarily will be required to propound such a question, regardless of the existence of special circumstances." *Id.* at 232.

There is no dispute in this case that Bishop requested a voir dire question about bias towards or against persons of his race. There is also no dispute that *Hernandez* required the circuit court to propound Bishop's requested voir dire question, but that the circuit court declined. Nor is there any dispute that, when the circuit court declined Bishop's request, he registered a timely objection in accordance with Md. Rule 4-323(c). Accordingly, we hold that the trial court abused its discretion in failing to ask, upon

proposed voir dire question, combined with his verbal request at the conclusion of voir dire, "put the trial court on notice regarding the kind of question Bishop was seeking." Where the proposed voir dire questions "'fully apprise[] [the trial court] of the essence of what the defendant [is] seeking,'" the court has a duty to formulate a proper question designed to uncover potential juror bias. *Hernandez v. State*, 357 Md. at 223-24 (quoting *Contee v. State*, 223 Md. 575, 580 (1960)).

request, the mandatory voir dire question on racial bias. We shall reverse Bishop's convictions and remand the case for a new trial.

II. ADMISSION OF VICTIM'S IDENTIFICATION

In light of our decision to reverse the judgments and remand for a new trial, we address the second question in order to provide guidance on remand. We hold that the court did not err in denying Bishop's motion to suppress the victim's identification.

A. The Suppression Hearing

As previously stated, the victim identified Bishop as the person who stabbed him. Before trial, Bishop moved to suppress the identification, claiming that it resulted from an impermissibly suggestive procedure.

The trial court conducted a suppression hearing. There, the State called Trooper Connor Willey of the Maryland State Police.

Trooper Willey testified that at around 10:00 p.m. on April 5, 2020, he arrived at the Shock Trauma Center at the University of Maryland Medical Center in Baltimore to interview the victim. Before Trooper Willey arrived, he knew that Bishop was a suspect.

When Trooper Willey arrived, the victim was still in surgery. While the victim was recovering from surgery, Trooper Willey observed that he was "awake, alert, and responsive." The victim "was able to state his name," he "knew where he was," and he was able to speak in an ordinary, conversational fashion. Trooper Willey was unaware if

the hospital had given the victim any medicine or if he had taken any illicit substances earlier that day.[5]

Trooper Willey asked the victim: "Who was it? Who were you fighting with?" The victim answered, "Eric." Trooper Willey responded, "Eric Bishop?" The victim answered affirmatively.

On cross-examination, Trooper Willey testified that he did not induce or threaten the victim to answer his questions. The victim did not "hesitate or show any doubt" when he said that Bishop had stabbed him. "Based on [their] conversation," it appeared to Trooper Willey that the victim had known Bishop "for a long period of time," "[i]n the neighborhood of years." For example, the victim told the trooper of "other interactions he had with Mr. Bishop," such as interactions involving child care.

After the testimony had come to an end, Bishop argued that the trooper had used an impermissibly suggestive identification procedure when he asked the victim whether "Eric" meant "Eric Bishop." Bishop complained that Trooper Willey's "mind was tainted," because he knew that Bishop was a suspect.

The State countered that Trooper Willey was simply clarifying what the victim had said. According to the State, the victim could have responded that "Eric" was not "Eric Bishop" or could have identified another "Eric" as the assailant.

[5] At trial, the victim revealed that he had been administered fentanyl and anesthesia. That evidence, however, was not before the court at the suppression hearing. Hence, it does not bear on the issue before us. *Trott v. State*, 473 Md. 245, 253-54 (2021) (review of denial of motion to suppress is limited to record at suppression hearing).

B. The Suppression Ruling

The court agreed that it was suggestive for Trooper Willey to offer Bishop's last name to the victim, but the court rejected Bishop's argument that it was impermissibly suggestive for Trooper Willey to have done so.

The court found that the victim knew Bishop "from matters that were unrelated to the incident at hand." The court agreed with the State that the victim could have said that he did not know "Eric's" last name or could have said that he did not know Eric Bishop. In the court's words, the victim was free to identify "Colonel Mustard" as the assailant. Consequently, the court denied the motion to suppress.

C. Standard of Review

Our review of a circuit court's denial of a motion to suppress evidence is limited to the record developed at the suppression hearing. *Trott v. State*, 473 Md. 245, 253-54 (2021). We view the factual record "in the light most favorable to the prevailing party," here, the State. *Greene v. State*, 469 Md. 156, 165 (2020). "We accept the suppression court's factual findings unless they are clearly erroneous, but we review the court's legal conclusions *de novo*." *Id.*

D. The Identification's Admissibility

Bishop argues that the trial court erred in denying his motion to suppress the victim's extrajudicial identification because, he says, it was based on unnecessarily suggestive police conduct. He relies on the framework established by the United States Supreme Court in cases such as *Stovall v. Denno*, 388 U.S. 293 (1967); *Simmons v.*

United States, 390 U.S. 377 (1968); *Neil v. Biggers*, 409 U.S. 188 (1972); and *Manson v. Brathwaite*, 432 U.S. 98 (1977). The Maryland Court of Appeals has referred to this framework as "constitutionally-based identification law." *Greene v. State*, 469 Md. 156, 172 (2020).

Constitutionally-based identification law establishes that, in some circumstances, "the Due Process Clause requires suppression of an eyewitness identification tainted by police arrangement." *See Perry v. New Hampshire*, 565 U.S. 228, 238 (2012). These "due process concerns arise," however, "only when law enforcement officers use an identification procedure that is both suggestive and unnecessary." *Id.* at 238-39 (citing *Manson v. Brathwaite*, 432 U.S. at 107). Moreover, "[e]ven when the police use such a procedure," the "suppression of the resulting identification is not the inevitable consequence." *Id.* at 239 (citing *Manson v. Brathwaite*, 432 U.S. at 112-13; *Neil v. Biggers*, 409 U.S. at 198-99). Instead, courts must conduct a case-by-case assessment to determine "whether improper police conduct created a 'substantial likelihood of misidentification.'" *Id.* at 239 (quoting *Neil v. Biggers*, 409 U.S. at 201). A court must exclude the identification only if it results from police conduct that is impermissibly suggestive and if the prosecution fails to show that, in the totality of the circumstances, the identification is nonetheless reliable. *See, e.g.*, *Manson v. Brathwaite*, 432 U.S. at 113-14; *see also Smiley v. State*, 442 Md. 168, 180 (2015).

Constitutionally-based identification law typically involves investigative techniques such as photo arrays, line-ups, and show-ups. Bishop acknowledges that

Trooper Willey did not employ any of these "ordinarily recognizable identification 'procedure[s].'" In fact, Bishop points to no decision in which the principles of constitutionally-based identification law have been applied outside the context of photo arrays, line-ups, and show-ups.

It is unsurprising that those principles have not been held to apply in a situation like the one in this case, where a victim tells a police officer that he has been stabbed by someone he knows. When courts decide whether an investigative technique was impermissibly suggestive and whether the resulting identification was reliable nonetheless, they are concerned with the witness's "encounter with *a total stranger* under circumstances of emergency or emotional distress." *Manson v. Brathwaite*, 432 U.S. at 112 (emphasis added); *accord Greene v. State*, 469 Md. at 170. In those cases, "[t]he witness'[s] recollection of *a stranger* can be distorted easily by the circumstances or by later actions of the police." *Manson v. Brathwaite*, 432 U.S. at 112 (emphasis added); *accord Greene v. State*, 469 Md. at 170.

Here, by contrast, Hinman did not identify a "stranger." He identified someone whom he knew well. Consequently, Hinman's identification of Bishop was not a paradigmatic eyewitness identification, of the sort which constitutional identification law is concerned with. It was, instead, what both this Court and the Court of Appeals have called a "confirmatory identification": an identification made by someone who is "so familiar with the suspect that the identification carries 'little or no risk of misidentification.'" *Greene v. State*, 469 Md. at 173 (citing *People v. Rodriguez*, 593

N.E.2d 268, 272 (N.Y. 1992); *State v. Greene*, 240 Md. App. 119, 131 (2019), *aff'd*, 469 Md. 156 (2020).

As the New York Court of Appeals has explained: "When a crime has been committed by *a family member, former friend or long-time acquaintance* of a witness there is little or no risk that comments by the police, however, suggestive, will lead the witness to identify the wrong person." *People v. Rodriguez*, 593 N.E.2d at 277 (quoting *People v. Collins*, 456 N.E.2d 1188, 1191 (N.Y. 1983)) (emphasis added in *People v. Rodriguez*). In other words, "[i]n cases . . . *in which the protagonists are known to each other*, 'suggestiveness' is not a concern[.]" *Id.* (quoting *People v. Gissendanner*, 399 N.E.2d 924, 930 (N.Y. 1983)) (emphasis added in *People v. Rodriguez*).

In summary, the concern of constitutionally-based identification law is that the authorities may manipulate the recollection of a witness who does not know the suspect and who may have had only a fleeting encounter with the suspect in highly stressful circumstances. That concern is not implicated in this case, where the victim and the suspect had known each other for quite some time. Suggestive or not, therefore, Trooper Willey's question – whether "Eric" meant "Eric Bishop" – "did not implicate constitutionally-based identification law." *Greene v. State*, 469 Md. at 172. It follows that the circuit court did not err in denying the motion to suppress the victim's affirmative response to the question.

In any event, even if this case did implicate constitutionally-based identification law – which it does not – we would find no error. As the circuit court correctly

perceived, the trooper's question ("Eric Bishop?") was not impermissibly suggestive, because the victim was at liberty to respond that he did not know Eric's last name or that he did not know Eric Bishop. The victim was also at liberty to respond by identifying some other Eric as the person who stabbed him. Moreover, the identification here is sufficiently reliable, because the identifying witness was "so familiar with the suspect that the identification carries 'little or no risk of misidentification.'" *Greene v. State,* 469 Md. at 173 (analyzing *People v. Rodriguez,* 593 N.E.2d at 272). The admissibility of the evidence does not rise and fall on whether Trooper Willey responded to the victim's identification of "Eric" by asking "Eric Bishop?" as opposed, for example, to "Eric Who?"

CONCLUSION

We hold that the circuit court abused its discretion in failing to ask, upon request, a mandatory voir dire question concerning racial bias or prejudice. We shall reverse Bishop's convictions and remand for a new trial. At the new trial, the court may introduce the victim's affirmative response to Trooper Willey's question about whether the assailant was "Eric Bishop."

JUDGMENTS OF THE CIRCUIT COURT FOR WORCESTER COUNTY REVERSED; CASE REMANDED TO THAT COURT FOR FURTHER PROCEEDINGS CONSISTENT WITH THIS OPINION. COSTS TO BE EVENLY DIVIDED BETWEEN THE PARTIES.