UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 1928

September Term, 2013

BENNNIE LAVAR VEASEY

v.

STATE OF MARYLAND

Krauser, C.J.,
Woodward,
Kenney, James A., III
(Retired, Specially Assigned),

JJ.

Opinion by Kenney, J.

Filed: September 29, 2015

Appellant, Bennie Lavar Veasey, was convicted by a jury sitting in the Circuit Court for Baltimore County of two counts of human trafficking under Maryland Code (2002, 2012 Repl. Vol.), § 11-303(a)(1) of the Criminal Law Article ("CR § 11-303(a)(1)"), receiving the earnings of a prostitute under CR § 11-304, and allowing a conveyance under his control to be used for prostitution under CR § 11-306.[1] On appeal, he presents two questions for review, which we have reworded as follows:

> (1) Did the trial court err in asking a voir dire question regarding police witness bias in a form that included police among several other professions from which no witnesses other than police would testify at trial?
>
> (2) Did the trial court err in sentencing Veasey on two counts of human trafficking under CR § 11-303(a)(1)?

For the reasons below, we answer the first question in the negative, and the second in the affirmative.

[1] Veasey was convicted of the following offenses: Count 1, on and between April 16 and 17, 2013, knowingly taking Gabrielle Wimbley to [903] Dulaney Valley Road for prostitution, in violation of Maryland Code (2002, 2012 Repl. Vol.), § 11-303(a)(1)(i) of the Criminal Law Article ("CR § 11-303(a)(1)(i)"); Count 3, on and between April 16 and 17, 2013, knowingly placing Gabrielle Wimbley at [903] Dulaney Valley Road for prostitution, in violation of CR § 11-303(a)(1)(ii); Count 5, on and between April 16 and 17, 2013, receiving the earnings of Gabrielle Wimbley from prostitution with intent to profit therefrom, in violation of CR § 11-304; and Count 7, on and between April 16 and 17, 2013, allowing a conveyance under his control to be used for prostitution, in violation of CR § 11-306.

STATEMENT OF FACTS

On April 17, 2013, Baltimore County Detective Steve Hannon, working as an undercover detective, was navigating a website, Backpage, that advertised erotic services.[2] While browsing the website he came across two advertisements; one was for a woman referred to as "Tori" and the other referred to a woman as "Chyna." The photos in the advertisements appeared to have been taken by someone other than the subjects of the photographs, and each listing provided a different out-of-state telephone number. Based on the similarities in the descriptions between the two ads, the content, the details in the ads, and the proximity in time between the posting of the two ads, which indicated that the women were not "independent," Detective Hannon concluded that the same person was responsible for both ads. Believing that the ads were indicative of human trafficking, he called the number provided on one of the advertisements to investigate further. He left a message when no one answered. Detective Hannon received a call back a short time later from a woman identifying herself as "Tori." She asked if he wanted to see her and for how long, gave him prices, and told him that she was at a certain hotel in Towson. Based on how quickly she revealed her location, it was clear to him that the woman was not an experienced prostitute.

With surveillance in place, Detective Hannon arrived at the hotel. He called the number again and the same woman told him to come to room 320. When she let him into the room, he gave her $220, which she placed on the nightstand. She then removed her

[2] Detective Hannon was qualified as an expert in human trafficking during trial.

clothing and handed Detective Hannon a condom. He asked for fellatio and when she agreed, he signaled for the surveillance team to enter the room and place "Tori" under arrest. "Tori's" real name, it was later learned, was Gabrielle Wimbley. In plain view in the room were receipts in Veasey's name for rooms 320 and 321.

Detective Scott Manz and Detective Gary Ruby went to room 321 where they found Veasey and a woman named Shayron Tucker. The detectives found $1230 on Veasey, as well as a cell phone and a state ID card. The officers also found six condoms of the same brand that Wimbley had handed to Detective Hannon, along with eleven pre-paid Visa cards. Detective Hannon explained that pre-paid cards are frequently found in human trafficking investigations because they are untraceable. Afterwards, they took Veasey to room 320, where he acknowledged that it was his name on the room receipts and admitted to placing the ads on Backpage. A key fob found on Veasey was traced to a VW Passat in the hotel parking lot that was registered to a Bianca Poole of Ohio.

Detective David Blackburn downloaded the contents of Veasey's phone at the police station. Certain photos in the phone matched photos in the Backpage ads. Detective Blackburn also was able to develop a printed report of text message conversations found on the cell phone, a redacted version of which was admitted at trial. Detective Blackburn testified that he received the phone directly from Detective Hannon but acknowledged that he did not know to whom the phone was registered.[3]

[3] Wimbley testified that the phone belonged to Veasey.

Wimbley testified that she met Veasey at a bus stop in Columbus, Ohio, and she gave him her phone number. After exchanging text messages for a short while, Veasey asked her if she wanted to work for him "escorting." He picked her up several days later and took her to a hotel in Cleveland, Ohio. In Cleveland, Veasey had her observe another woman talk to potential "clients" on the phone so she could mimic the woman's tone and mannerisms. He also wrote down prices for Wimbley to charge, which he instructed her to call "donations," and originated the name "Tori." Wimbley began by answering the telephone, but later, she had intercourse for money with a number of "clients."

Wimbley, Veasey, and Shayron Tucker, drove to Baltimore in a vehicle Veasey claimed was his; Wimbley drove. At trial, Wimbley was able to identify Veasey's phone number, in addition to the phone number that she used during the time she worked for him, based on text message exchanges. She testified that the phrase, "me babe daddy," referred to Veasey; he had requested that she call him "Daddy," and she did sometimes. She explained that "clean up" meant that the "client" was about to leave and that Veasey could come back into the room. According to Wimbley, Veasey placed the ads, took the photos, posted them to Backpage, and took all of the money that she received from the "clients."

Veasey, testifying in his defense, claimed that when the police officers entered his room, they dumped the contents of Tucker's "purse," and that the prepaid cards, condoms, and all the money (although not nearly $1230) came from that "purse."[4] He stated he met

[4] When called by the State as a rebuttal witness, Detective Manz testified that he recovered the currency from Veasey, and that, to his knowledge, no currency was recovered from anyone else.

Wimbley through an online chatting service, and that he knew both Wimbley and Tucker were escorts. Wimbley had originally told him he would have to pay to have sex with her, but later he had sex with her for free. According to Veasey, Wimbley and Tucker asked him to go to Baltimore with them, promising to have sex with him. Wimbley drove Bianca Poole's car from Cleveland to Baltimore. He also denied owning the phone, taking the photographs, and posting the ads to Backpage.

STANDARD OF REVIEW

The standard of review of the trial court's voir dire question regarding police officer bias is abuse of discretion. *Alford v. State*, 202 Md. App. 582, 600-01 (2011). Appellant has the burden of overcoming the presumption that the form of the court's question did not adequately uncover potential bias among the jurors due to its phrasing. *See Hunt v. State*, 345 Md. 122, 146 (1997). We review Veasey's sentencing contention *de novo*. *See Bonilla v. State*, 443 Md. 1, 6 (2015).

DISCUSSION

Voir Dire

When reviewing the adequacy of a voir dire question, we look at the record as a whole to determine whether the trial court abused its discretion in asking or not asking a particular question. *See State v. Logan*, 394 Md. 378, 396 (2006). The purpose of voir dire in Maryland "is to ensure a fair and impartial jury by determining the existence of cause for disqualification." *Id.* To that end, we look to see whether the procedures employed and the questions asked provide "reasonable assurance" that any disqualifying bias would have been uncovered. *White v. State*, 374 Md. 232, 242 (2003).

Veasey contends, in essence, that the question, as posed by the trial court to the venire panel in reference to potential bias in favor of or against law enforcement officers and their testimony, was inadequate to provide that assurance. The voir dire questioning, in relevant part, was as follows:

> THE COURT: Another principle of law about which the jury will be instructed is what we call credibility of witnesses. In all jury trials, the judge decides issues of law. That's where the judge says sustained or overruled, but the jury decides issues of fact.
>
> In that regard, based on testimony and other admissible evidence, the jury decides which evidence they find persuasive. My instructions will include some factors that you may consider in judging witness credibility. Ultimately if selected as a juror in this case, it is for you to decide who you believe, who is right or wrong, who is truthful or untruthful, who is correct or mistaken.
>
> At the conclusion of the case and during deliberations, the jury will have the benefit of having seen and listened to all the witnesses, viewing any exhibits that are admitted, and discussing all the evidence with their fellow jurors.
>
> Mindful of that principle, are there any prospective jurors who would automatically give more or less weight to the testimony of any witness merely because of the witness' title, profession, education, occupation, or employment? Now that's a long question and it's kind of asked in a vacuum, so let me give you an example.
>
> We have two doctors and if anyone here is a physician, I'm not picking on you, two doctors similarly educated, you know, leaders in their field and they've just had lunch, and they're walking down the street. They're talking about whatever doctors talk about, whatever two doctors talk about.
>
> And right in front of them is a traffic accident. One of the doctors thought the light was green. The other doctor thought the light was red. If that's all you knew, how would you decide the case? Which one of the two doctors would you believe?
>
> Generally speaking, most people would say well, I got to hear all the evidence, and that's the point of this question. Stated another way, if you were selected as a juror in this case, would you be able to judge the credibility

> of each witness' testimony based on their testimony rather than merely relying on his or her title, profession, education, occupation, or employment?
>
> For example and normally by way of example, would you automatically give more or less weight to the testimony of a physician, a clergyman, a police officer, a firefighter, a psychiatrist, a social worker or any witness merely because of their title, profession, education, occupation, or employment? If so, please stand.

Following this question, one prospective juror stood. When subsequently questioned at the bench, the juror indicated that he would be more likely to credit a police officer. The defense did not ask to strike that juror for cause, but the juror was stricken by the State with a peremptory challenge.

The voir dire continued:

> THE COURT: Are any of you or any members of your immediate family or close personal friends affiliated in any way with any law enforcement agency? And let me be specific. By law enforcement agency, I mean any federal, state, county, city police department, sheriff's department, attorney general or state's attorneys office?
>
> I'd like you to stand if you or any member of your immediate family or close personal friends are affiliated in any way with any law enforcement agency.

Seventeen potential jurors stood after being asked this question. These jurors were subsequently questioned at the bench regarding their affirmative responses.

After voir dire, when the judge asked whether the defense was ready to proceed, there was the following exchange:

> DEFENSE: I prefer you had asked State's Question No. 10.[5] It's about a police officer's testimony. *I understand what you've done and you covered*

[5] State's Question Number 10 for the Requested Voir Dire read as follows:

(continued…)

> *that*. I just thought it was more effective if you relegated it solely to asking them if they would believe a police officer's testimony over someone else. (Emphasis added).
>
> THE COURT: Well, that's why I asked the question I [sic] way I do because it's not just police officers. It's any witness whether or not, you know, based on their nature of the question that I ask is that, would any of them give, automatically give more or less weight to the testimony of an individual merely because of his or her profession, education, occupation, or employment? So I think that fairly covers that question.

Veasey argues that, by failing to ask the "standard voir dire police bias question" and including several other occupational and professional examples in the occupational bias question, the trial court "obscured" the issue, and thus, prevented the uncovering of any bias in regard to police officers. In other words, the focus should have been solely on police officers. He points out the State's key witnesses were Detective Hannon, Detective Blackburn, and Detective Manz, whose testimony was contradictory to his position and testimony.

> You are instructed that a police officer's testimony should be considered by you just as any other evidence in this case, and in evaluating his credibility, you should use the same guidelines which you apply to the testimony of any other witnesses.
>
> In no event should you give any greater or lesser credence to the testimony of any witness merely because he is a police officer.
>
> Does any prospective juror feel that he/she cannot follow this instruction, and would give the testimony of a police officer greater weight than any other witness merely because he/she is a police officer?
>
> Does any prospective juror feel that he/she would automatically give the testimony of a police officer less weight, merely because he/she is a police officer?

The State responds that the issue is not preserved for appellate review because defense counsel merely stated that he "prefer[red]" that the court give the police bias question proposed by the State, and admitted that the instruction "covered that." And, if preserved, the State argues that the instruction given was at most "unnecessary" but not an abuse of discretion.

Assuming, without deciding, that the issue was sufficiently preserved for our review, we perceive no abuse of discretion.

In Maryland, no rules or statutes dictate how voir dire should be conducted; the trial judge has "broad discretion in the conduct of voir dire." *Wright v. State*, 411 Md. 503, 508 (2009) (quoting *Dingle v. State*, 361 Md. 1, 9 (2000)). In recent years, however, the Court of Appeals has addressed the appropriate scope of voir dire questions in a given case. *See, e.g.*, *Hayes v. State*, 217 Md. App. 159 (2014). For example, questions should focus on "issues particular to the defendant's case" in order to discover any bias a potential juror might have directly related to the crime, the witnesses, or the defendant, and, relevant to our inquiry, the "*placement of undue weight on police officer credibility*." *Washington v. State*, 425 Md. 306, 313, 315-16 (2012) (emphasis added).

The Court in *Pearson v. State*, established that "where all of the State's witnesses are members of law enforcement agencies and/or where the basis for a conviction is reasonably likely to be the testimony of members of law enforcement agencies, on request, a trial court must ask during voir dire: 'Have any of you ever been a member of a law enforcement agency?'" 437 Md. 350, 367 (2014). The *Pearson* Court stated that "a prospective juror's experience as a member of a law enforcement agency has a

demonstrably strong correlation with a mental state that could give rise to specific cause for disqualification[]" in cases where witnesses are law enforcement personnel. *Id.* In this case, the Court explicitly asked whether "any of [the jurors] or any members of [their] immediate famil[ies] or close personal friends [were] affiliated in any way with any law enforcement agency . . . meaning federal, state, county, city police department sheriff's department, attorney general, or state's attorneys office."

Veasey, relying in part on *Dingle*, states that "questions should be phrased carefully so as to maximize the likelihood of uncovering any bias." We agree, but reliance on *Dingle* in this case is misplaced. In *Dingle*, the Court asked the following question:

> Have you or any family member or close personal friend ever been a victim of a crime, and if your answer to that part of the question is yes, would that fact interfere with your ability to be fair and impartial in this case in which the state alleges that the defendants have committed a crime?

Dingle, 361 Md. at 5-6. As phrased, the prospective jurors were asked to respond to two questions with a single answer. More importantly, however, the ultimate determination of whether any prospective juror who had been a crime victim could be fair and impartial was to be made by the juror rather than by the trial judge. Here, the judge's question simply included several professional and occupational examples in the question regarding testimonial bias. A person responding in the affirmative was then questioned at the bench and his or her ability to serve decided by the trial judge.

Simply put, we are not persuaded that the trial court's phrasing of the bias question regarding law enforcement officers was insufficient to uncover any potential bias that may have existed among the venire panel. In our view, the wording of the question, along with

the question regarding law enforcement affiliation, was sufficient to uncover any potential bias in regard to police testimony.

Sentencing

According to Veasey: "[t]he trial court erred in separately sentencing [him] on two counts of trafficking based on evidence that fit two modalities of the offense as to the same victim." More specifically, he contends that he was charged with human trafficking under CR § 11-303(a)(1) and that he was convicted under "subsection (i), (ii), and *(iv)*" of that section as a result of "taking" Wimbley to Towson to "engage in prostitution," and on the same dates and in the same places, "placing [Wimbley] at the . . . hotel to engage in prostitution, and receiving the proceeds of that prostitution." Based on those convictions, he was illegally sentenced to "two maximum consecutive sentences and one concurrent maximum sentence."

According to the State: "the human trafficking convictions under [CR] § 11-303(a) and the receiving earnings conviction under [CR] § 11-304 . . . are distinct crimes covered by distinct statutes with distinct penalty provisions[, and the] . . . separate sentences for 'taking' Wimbley to, and 'placing' her in a place of prostitution under [CR] § 11-303(a), [are supported by] the history, structure, and purpose of the statute . . . ," and therefore, are legal.

The record reflects that Veasey was convicted of four counts: two human trafficking counts, CR §§ 11-303(a)(1)(i) and 11-303(a)(1)(ii), and sentenced to two concurrent terms of 10 years; one count of receiving earnings of a prostitute, CR § 11-304(a), and sentenced to a consecutive term of ten years to the sentence imposed on the CR § 11-303(a)(1)(i)

conviction; and one count of allowing a conveyance under his control to be used for prostitution, CR § 11-306(a), and sentenced to a term of one-year concurrent to the sentence imposed on the CR § 11-303(a)(1)(i) conviction. All convictions stem from his relationship to Wimbley. He was not charged or convicted under 11-303(a)(1)(iv),[6] but he appears to argue that his conviction under CR § 11-304(a) is essentially for the same act as "receiv[ing] consideration to procure for or place in a house of prostitution or elsewhere another with the intent of causing the other to engage in prostitution or assignation[]" under CR § 11-303(a)(1)(iv), and that the conviction under CR § 11-304 should merge with CR § 11-303 for sentencing purposes.

We agree that the trial court erred by sentencing him on two counts of human trafficking as to Wimbley under CR § 11-303(a)(1). We do not agree that the trial court erred by sentencing him under both CR § 11-303 and CR § 11-304. We explain.

CR § 11-303(a)(i)-(ii), states in relevant part:

> (a) (1) A person may not knowingly:
> (i) take or cause another to be taken to any place for prostitution;[7]
> (ii) place, cause to be placed, or harbor another in any place for prostitution[.]

The penalty for the violation of CR § 11-303(a) is provided in section (c)(1), which states in relevant part:

[6] CR § 11-303(a)(1)(iv) states "[a person may not knowingly:] receive consideration to procure for or place in a house of prostitution or elsewhere another with the intent of causing the other to engage in prostitution or assignation[.]" We need not, and we do not, express an opinion as to whether Veasey's actions would support a charge under CR § 11-303(a)(1)(iv).

[7] Prostitution is defined as "the performance of a sexual act, sexual contact, or vaginal intercourse for hire." CR § 11-301(c).

> (i) Except as provided in paragraph (2) of this subsection,[8] a person who violates *subsection (a) of this section* is guilty of the misdemeanor of human trafficking and on conviction is subject to imprisonment not exceeding 10 years or a fine not exceeding $5,000 or both. (Emphasis added).

Veasey, for his violation of CR § 11-303(a)(1)(i) and 11-303(a)(1)(ii), was sentenced to a term of ten-years for each, the CR § 11-303(a)(1)(ii) sentence to run concurrent with the CR § 11-303(a)(1)(i) sentence.

He was also convicted under CR § 11-304, titled "Receiving earnings of prostitute," which states in relevant part:

> (a) A person may not receive or acquire money or proceeds from the earnings of a person engaged in prostitution with the intent to:
> (1) promote a crime under this subtitle;
> (2) profit from a crime under this subtitle; or
> (3) conceal or disguise the nature, location, source, ownership, or control of money or proceeds of a crime under this subtitle.

The maximum penalty for a violation of CR §11-304 is imprisonment not to exceed ten years, a fine of no more than $10,000, or both. He received a ten-year sentence, consecutive to the sentence for the violation of CR § 11-303(a)(1)(i) for violating CR § 11-304 by receiving Wimbley's earnings from prostitution with the intent to profit.

Additionally, Veasey was convicted for allowing a conveyance under his control to be used for prostitution under CR §11-306(a)(4), which states in relevant part:

> (a) A person may not knowingly: . . .
> (4) allow or agree to allow a person into a building, structure, or conveyance for prostitution or assignation[.]

[8] CR § 11-303(c)(2) applies to persons who violate CR § 11-303(b), which covers violations of CR § 11-303(a) that involve a minor or the use of force, threat, coercion or fraud.

The maximum penalty for violating CR § 11-306 is one year of imprisonment or a fine not to exceed $500, or both. Veasey was sentenced to one year of imprisonment to be served concurrent to the sentence for violating CR § 11-303(a)(1)(i).

We examine first whether the sentences for the two convictions under CR § 11-303(a)(1) merge for the purpose of sentencing. The merger doctrine prohibits multiple punishments for the same offense. *Moore v. State*, 163 Md. App. 305, 314 (2005).

> Under Maryland common law principles, the normal standard for determining whether one offense merges into another is . . . called the required evidence test . . . [which] focuses upon the elements of each offense; if all of the elements of one offense are included in the other offense, so that only the latter offense contains a distinct element or distinct elements, the former merges into the latter.

McGrath v. State, 356 Md. 20, 23 (1999) (internal quotation marks omitted). *McGrath* elaborates and states, "if each offense requires proof of a fact which the other does not, or . . . if each offense contains an element which the other does not, there is no merger under the required evidence test even though both offenses are based upon the same act or acts." *Id.* at 23-24 (internal quotation marks omitted).

In the present case, it is apparent that each of the four offenses for which Veasey was convicted contain an element that the other does not. The CR § 11-303(a)(1) violations prohibit "*tak[ing] or caus[ing] another to be taken* to any place for prostitution; and *plac[ing], caus[ing] to be placed, or harbor[ing] another in any place for prostitution*." (Emphasis added). Similarly, CR § 11-304 prohibits *receiving money from a prostitute with the intent to profit from a crime under the prostitution subtitle*, and CR § 11-306 prohibits allowing a conveyance under which an individual has control over to be used for

prostitution. (Emphasis added). But a failure of the offenses to merge under the required evidence test does not necessarily end our analysis. As we said in *Marlin v. State*, 192 Md. App. 134, 167-68, (2010) (quoting *Monoker v. State*, 321 Md. 214, 222 (1990)):

> Even though two offenses do not merge under the required evidence test, there are nevertheless times when the offenses will not be punished separately. Two crimes created by legislative enactment may not be punished separately if the legislature intended the offenses to be punished by one sentence. It is when we are uncertain whether the legislature intended one or more than one sentence that we make use of an aid to statutory interpretation known as the "rule of lenity." Under that rule, if we are unsure of the legislative intent in punishing offenses as a single merged crime or as distinct offenses, we, in effect, give the defendant the benefit of the doubt . . . .

Our goal is always to ascertain and implement the statute's legislative purpose. *Osglesby v. State*, 441 Md. 673, 681 (2015). In considering whether the rule of lenity applies, we first look at the plain language of the statute to determine whether the statute has "two or more reasonable alternative interpretations . . . ." *Wyatt v. State*, 169 Md. App. 394, 400 (2006). Only when the statute is ambiguous do we look beyond the statutory language to determine legislative intent though other sources. *Id.*

In our view, each act prohibited by CR § 11-303(a)(1)(i)-(iv), standing alone, could constitute the crime of human trafficking. But, whether the legislature intended separate sentences for each of the different acts committed in regard to the same person being trafficked, any one of which would constitute the crime of human trafficking under CR § 11-303, is not clear. CR § 11-303(c)(1) provides penalties for violating subsection (a) by any one of several prohibited acts, but nothing in the plain language of the statute indicates each act as to the same person (in this case, Wimbley) being taken or placed is to result in a separate sentence.

Prior to the revision of the prostitution related laws in 2001, the individual acts now associated with human trafficking[9] under CR § 11-303 fell under separate Maryland Code (1957, Repl. Vol. 1987), Article 27 ("Article 27") statutes and provided for separate sentences.[10] What is now referred to as human trafficking, CR § 11-303, was revised as part of the 2001 revision of Article 27. *See* H.B. 611, 2001 Leg., 415th Sess. (2001). The purpose of the 2001 revision was, in part, to remove duplicative provisions and to clarify certain terms. Department of Legislative Services, Fiscal Note, H.B. 611, 2001 Leg., 415th Sess. (2001). As a result, several prohibitions under the subheading "Bawdyhouses and Houses of Ill Fame; Prostitution, Etc." were consolidated under the new subheading "Prostitution and Related Crimes" as Article 27 § 428:[11]

> (a) A person may not knowingly: (1) take or cause to be taken another person to any place for prostitution; (2) place, cause to be placed, or harbor another person in any place for prostitution; (3) persuade or encourage by threat or promise another person to be taken to or placed in any place for prostitution; (4) unlawfully take or detain another person with the intent to use force, threat, or persuasion to compel the other person to marry the person or a third person or perform a sexual act, sexual contact, or vaginal intercourse; or (5) receive consideration to procure for or place in a house of prostitution or elsewhere another person with the intent of causing the other person to engage in prostitution or assignation. (b) A parent, guardian, or person who has permanent or temporary care or custody or responsibility for supervision

[9] Prior to 2007, acts now constituting the misdemeanor of human trafficking were referred to as "pandering" in the criminal laws addressing prostitution. *See* H.B. 542, 2007 Leg., 423d Sess. (2007).

[10] A person who took, placed, harbored, inveighed, enticed, persuaded encouraged, or placed, either by threat or promise, another for the purpose of prostitution was subject to a twelve year prison sentence and $5000 fine (or both), while a person who received money for procuring a prostitute or placing a prostitute in a house of prostitution was subject to a ten year prison sentence. Md. Code (1996) § 426, 428 of Article 27.

[11] "Article 27, § 428 [includes] six [different but related] prohibitions based on [the then] current provisions in Article 27, §§ 426, 427, 428, 429, 431, and 432." Judiciary Committee, Bill Analysis, H.B. 611, 2001 Leg., 415th Sess. (2001).

> of another person may not consent to the taking or detention of the other person for prostitution. (c) A person who violated this section is guilty of the misdemeanor of pandering and on conviction is subject to imprisonment in the penitentiary not exceeding 10 years or a fine not exceeding $5,000 or both. (d) A person who violates this section may be charged, tried, and sentenced in any county in or through which the person transported or attempted to transport the other person.
>
> H.B. 611, 2001 Leg., 415th Sess. (2001); S.B. 488, 2001 Leg., 415th Sess. (2001).

The statute does not define "pandering" apart from listing certain acts that qualify as pandering under the revised text.[12] The language in the prior provisions varied:

> 426. Any person who takes, places, harbors, inveighs, entices, persuades, encourages, either by threats or promise, or by any device or scheme takes or places, or causes to be taken or placed, any other person to any place against his or her will, for the purpose of prostitution or illegal sexual intercourse, or takes or detains any other person unlawfully against his or her will, with the intent to compel him or her by force, threats, persuasions, menace or duress, to marry him or her, or to marry any other person, or to be defiled, or any person who, being parent, guardian or having legal charge of another person, consents to his or her taking or detention by any person for the purpose of prostitution or illegal sexual intercourse, is guilty of pandering, and upon conviction shall be punished by imprisonment for a term not more than 12 years, and fined not more than $5,000, in the discretion of the court.
>
> 427. Any person who shall place any person in the charge or custody of anyone for immoral purposes, or in a house of prostitution with the intent that he or she shall live a life of prostitution, or any person who shall compel any person to reside with him or her or with any other person for immoral purposes, or for the purpose of prostitution, or compel him or her to live a life of prostitution, is guilty of pandering, and upon conviction shall be punished by a fine of not less than $1,000 and imprisoned not more than ten years.

[12] Black's Law Dictionary 1135 (7th ed. 1999), defines pandering as "[t]he act or offense of recruiting a prostitute, finding a place of business for a prostitute, or soliciting customers for a prostitute."

> 428. Any person who shall receive any money or other valuable thing for or on account of procuring for or placing in a house of prostitution or elsewhere, any person for the purpose of causing him or her to engage in prostitution, lewdness, or assignation with any person or persons, shall be guilty of a felony, and upon conviction thereof shall be imprisoned for not more than ten years.
>
> 429. Any person who, by force, fraud, intimidation or threats, places or leaves, or procures any other person or persons to place or leave his or her spouse in a house of prostitution or to lead a life of prostitution, shall be guilty of a felony, and upon conviction thereof shall be imprisoned for not more than ten years.
>
> * * * *
>
> 431. Any person or persons who attempt to detain another person in a disorderly house or house of prostitution because of any debt or debts he or she has contracted or is said to have contracted while living in the house, shall be guilty of a felony, and on conviction thereof shall be imprisoned for not more than 12 years.
>
> 432. Any person who shall knowingly transport or cause to be transported or aid or assist in obtaining transportation for, by any means of conveyance, through or across this State, any person for the purpose of prostitution, or with the intent and purpose to induce, entice or compel the person to become a prostitute, shall be deemed guilty of a felony, and upon conviction thereof shall be imprisoned for not more than ten years; any person who may commit the crime in this section mentioned may be prosecuted, indicted, tried and convicted in any county or city in or through which he shall so transport or attempt to transport the other person.

H.B. 611, 2001 Leg., 415th Sess. (2001); S.B. 488, 2001 Leg., 415th Sess. (2001).

In 2007, the crime of "pandering" was renamed by the General Assembly as "human trafficking." S.B. 606, 2007 Leg., 423d Sess. (2007). The purpose was to address the growing phenomenon of human trafficking, and to join the other states that had already

enacted state laws prohibiting human trafficking.[13] Although the legislature increased the penalty for human trafficking offenses related to minors, it did not otherwise modify sentencing under CR § 11-303. *See* S.B. 606, 2007 Leg., 423d Sess. (2007). Any statement relating to sentencing for violating CR § 11-303 is also absent from subsequent revisions in 2009 and 2010.[14] In sum, the legislative history does not shed much light on whether a person is to be sentenced for each act or modality (taking and placing Wimbley) by which he or she violates CR § 11-303.

It appears that the consolidation of the various forms of pandering, now human trafficking, into a single statute was intended to fashion a wide legislative net over the broad spectrum of individual functions that might be involved in a human trafficking enterprise under which a participant could be charged for his or her respective, but perhaps limited, role in the enterprise. Therefore, we see nothing in the statute or legislative scheme that indicates a legislative intent to punish a person performing more than one such function (in this case, taking and placing Wimbley) for each function he or she may have performed

[13] "Human and sex trafficking has been described as a growing underground industry fueled largely by the extreme economic hardship that families face in many parts of the world." Senator Forehand, et al., Fiscal & Policy Note, S.B. 606, 2007 Leg., 423d Sess. (2007). "According to the National Conference of State Legislatures, the following 12 states had enactments relating to human trafficking in 2006: California, Colorado, Connecticut, Florida, Hawaii, Idaho, Iowa, Maine, Michigan, Mississippi, North Carolina, and Virginia." *Id.*

[14] A 2009 amendment changed the language of CR § 11-303(a)(1)(iii), and the 2010 amendments removed a subsection relating to "unlawfully tak[ing] or detain[ing] another with the intent to use force, threat, or persuasion to compel the other to marry the person or a third person or perform a sexual act, sexual contact or vaginal intercourse," added provisions relating to sexual extortion and violating the laws against human trafficking by confiscating or otherwise withholding documentation to impede a person's ability to travel. H.B. 542, 2009 Leg., 426th Sess. (2009); H.B. 283, 2010 Leg., 427th Sess. (2010).

in that regard. We are persuaded that the rule of lenity requires that we construe the statute in favor of Veasey and merge the convictions under CR § 11-303(a)(1)(ii) and (ii) for sentencing. *See Oglesby*, 441 Md. at 681.

We, however, reach a different conclusion as to whether, for the purposes of sentencing, CR § 11-303 and CR § 11-304 should merge. As stated earlier, the two offenses do not merge under the required evidence standard. *See Moore v. State*, 163 Md. App. 305, 314 (2005). The fact that they are two separate statutory provisions with express penalty provisions further supports separate sentences. Moreover, we are not persuaded that the "consideration" provision of CR § 11-303(a)(1)(iv) creates any ambiguity sufficient to invoke the rule of lenity and the merger of CR §§ 11-303(a)(1) and 11-304 for sentencing.

After the 2001 code revision, despite the consolidation of provisions related to pandering, receiving the earnings of a prostitute remained in a separate subsection.[15] To date, the receiving earnings of a prostitute offense has never been consolidated into the crime of pandering or human trafficking. *See generally* CR § 11-303; Article 27 § 428. In addition, the revised version of the crime for receiving the earnings of a prostitute explicitly states that the intent to violate another provision of the prostitution subtitle (subtitle 11), which includes human trafficking, is an express element of the crime:

> (a) A person may not receive or acquire money or proceeds from the earnings of a person engaged in prostitution with the intent to:

[15] The revised version of Article 27 § 429 was based on the prior § 430, which related to receiving the earnings of a prostitute. The maximum penalties for the revised provision included ten years imprisonment, a $10,000 fine, or both. *See* Judiciary Committee, Bill Analysis, H.B. 611, 2001 Leg., 415th Sess. (2001).

> (1) promote *a crime under this subtitle*;
> (2) profit from *a crime under this subtitle*; or
> (3) Conceal or disguise the nature, location, source, ownership, or control of money or proceeds of *a crime under this subtitle*.
>
> (b) A person who violates this section is guilty of a misdemeanor and on conviction is subject to imprisonment in the penitentiary not exceeding 10 years of a fine not exceeding $10,000 or both.

CR § 11-304 (Emphasis added). The previous version of the statute, however, did not require the intent to violate any other section of the Prostitution and Related Crimes subtitle:

> Any person or persons who knowingly receive any money or other valuable thing "without lawful, actual bona fide consideration" from the earnings of any person engaged in prostitution shall be guilty of a felony, and upon conviction thereof shall be imprisoned for not more than ten years.

See H.B. 611, 2001 Leg., 415th Sess. (2001).

Based on the statutory language and the legislative history, we are persuaded that the legislature intended that receiving the earnings of a prostitute remain a separate and independent crime from human trafficking for sentencing purposes. There is neither ambiguity nor conflict between the statutes sufficient to invoke the rule of lenity.

CONCLUSION

We hold that the circuit court did not abuse its discretion by including examples of occupations and professions other than police officers to provide context to the venire when asking the occupational bias question. Additionally, we hold that the two convictions under

CR §11-303(a)(1) merge for sentencing purposes, but that a separate sentence for violating CR § 11-304 was proper.

SENTENCE ON CONVICTION FOR VIOLATING CR § 11-303(a)(l)(ii) VACATED. JUDGMENTS OTHERWISE AFFIRMED. COSTS TO BE PAID 2/3 BY APPELLANT AND 1/3 BY BALTIMORE COUNTY.