Circuit Court for Baltimore City
Case No. 114302019

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 2042

September Term, 2015

PRINCE JERMAINE ROGERS

v.

STATE OF MARYLAND

Woodward, C.J.,
Friedman,
*Krauser,

JJ.

Opinion by Krauser, J.
Dissenting Opinion by Woodward, C.J.

Filed: December 27, 2017

*Krauser, J., now retired, participated in the hearing of this case while an active member of this Court and as its Chief Judge; after being recalled pursuant to the Constitution, Article IV, Section 3A, he also participated in the decision and the preparation of this opinion.

**This is an unreported opinion, and it may not be cited in any paper, brief, motion, or other document filed in this Court or any other Maryland Court as either precedent within the rule of stare decisis or as persuasive authority. Md. Rule 1-104.

Prince Jermaine Rogers, appellant, was accused of shooting to death Andrew Joyce, a tow truck operator, when Joyce, who was responding to a towing request, resisted Rogers' efforts to rob him. Rogers was subsequently convicted by a jury, in the Circuit Court for Baltimore City, of first-degree murder and related charges.[1]

Rogers now seeks reversal of his convictions on any one of three grounds. The first is that the trial court erred "in failing, during *voir dire*, to respond to a request from a prospective juror to speak to the trial court and in failing to disclose to Rogers and his trial counsel that this prospective juror wanted to speak to the trial court." The State agrees with Rogers that the court did so err but suggests that the appropriate remedy is a limited remand, by this Court, for the purpose of conducting a hearing on the prospective juror's request. We disagree and shall reverse. Consequently, we need not reach the two other grounds upon which Rogers seeks reversal of his convictions, namely, that the trial court erred by precluding defense counsel from questioning a witness about his prior misconduct and then by refusing to determine if a State's witness violated the court's sequester order.

BACKGROUND

On June 22, 2015, Rogers' jury trial began. During voir dire, a prospective juror, "837," who was not ultimately seated on the jury, asked the courtroom's clerk, during the

[1] The jury convicted Rogers of first-degree murder, use of a handgun in the commission of a crime of violence, and of wearing, carrying, and transporting a handgun, but he was acquitted of attempted robbery with a deadly weapon.

lunch recess, if she could speak with the presiding judge. After that recess ended, the clerk approached the bench and informed the court of that request, outside of the presence of Rogers and his counsel. Then, without informing Rogers or his counsel of what had occurred, the judge denied the prospective juror's request, stating: "No. We are in the process of selecting, I ain't speaking to nobody. No, no. They had their chance." Although counsel was then called to the bench, they were not informed of the prospective juror's request. In fact, Rogers' trial counsel had no knowledge of either the request or the court's response to that request until it was brought to her attention, a year later, by Rogers' appellate counsel.[2]

The trial then commenced, and, at its conclusion, the jury convicted Rogers of first-degree murder, use of a handgun in the commission of a crime of violence, and of wearing, carrying, and transporting a handgun but acquitted him of attempted robbery with a deadly weapon.

I.

Rogers contends that his constitutional and statutory right to be present at every stage of trial was violated, as neither he nor his counsel was informed of the prospective

[2] Rogers' trial counsel states, in an affidavit, that she was not informed of the prospective juror's attempted communication with the trial court at any time during trial and only learned of it a year later, after being informed by Rogers' appellate counsel of what had occurred, on July 21, 2016. The State does not dispute this claim.

juror's request to speak with the court, during voir dire, nor present when that request was denied nor later advised of that denial. The State concedes error but contends that the appropriate remedy is not reversal but a limited remand for a hearing on that issue.

In *State v. Yancey*, the Court of Appeals recently reaffirmed a defendant's right to be present at "all critical stages of trial, including *voir dire proceedings*," *Yancey*, 442 Md. 616, 625 n.7 (2015) (emphasis added), noting that that right "is a common-law right preserved by Article 5 of the Maryland Declaration of Rights and protected, in some measure, by the Sixth and Fourteenth Amendments to the United States Constitution." *Id.* In implementing that right, Maryland Rule 4–231(b) provides that a "defendant is entitled to be physically present in person at a preliminary hearing and *every stage of the trial*, except (1) at a conference or argument on a question of law; (2) when a nolle prosequi or stet is entered pursuant to Rules 4–247 and 4–248." (Emphasis added). And, of particular relevance to the issue before us, the Court of Appeals declared, in *Yancey*, that the "right to be present encompasses a right to participate in bench conferences, including conferences concerning the impaneling of a jury and the possible disqualification of jurors." *Id.*

Thus, as Rogers asserts and the State concedes, the trial court erred in failing to ensure Rogers' presence for the prospective juror's request and its subsequent denial of that request.

II.

The next question is whether the error committed by the trial court can be found to have been to be harmless on the record before us. Although both the State and Rogers agree that no such finding can be made, the dissent, relying on *Noble v. State*, 293 Md. 549, 557 (1982), suggests otherwise.

In *Noble*, the Court of Appeals held that the violation of the defendant's right to be present during the voir dire questioning of a prospective juror at a bench conference, under the specific circumstances of that case, was harmless, circumstances which we believe to be distinctly different from and hardly reconcilable with what occurred in the instant case.

During the voir dire questioning of prospective jurors, which took place in open court with counsel and the defendant present, the court asked whether "any member of the jury panel . . . ha[d] been a victim of a crime of violence. Either they or members of their immediate family?" *Id.* at 570.

After a prospective juror, in response to the court's query, informed the court of the fact that he and his aunt had been victims of robberies but indicated that it would not prevent him from giving Noble a "fair and impartial trial," another prospective juror, a "Mr. Roy," asked to approach the bench "with defense attorney and the prosecutor." *Id.* at 570. Then, upon doing so, he informed the court, outside of the presence of Noble, that both his father and brother had been murdered and no arrests for those crimes had ever been made. The court, after expressing its belief that "that probably would make it pretty

difficult for [him] to sit on a jury of this kind," excused Mr. Roy from jury service, and the bench conference ended.

Following the conclusion of that brief bench conference, two other prospective jurors, who had also responded in the affirmative to the court's voir dire question, were asked, in open court and before the defendant, about the potential impact of either having been a victim of a crime or having a family member who was. Then, after excusing one of those two prospective jurors, as he was unable to say whether he would be able to give the defendant "a fair and impartial trial," the court asked counsel if they had "any other questions." Defense counsel and the prosecutor responded "no."

As the *Noble* Court noted, "[t]he only matter which took place out of the defendant's hearing was the statement of the prospective juror Mr. Roy that his father and brother were murdered and that no arrests have been made, and the trial judge's statement that Mr. Roy would be excused." *Id.* at 571. But the defendant, on appeal, contended that

> if he had been present at the bench conference, he "might" have asked the prospective juror Mr. Roy whether Mr. Roy had told any of the other prospective jurors that Roy's father and brother were victims of violent crimes. And if Mr. Roy's answer had been in the affirmative, the argument continues, the answer may have led to the discovery of bias on the part of some other juror.

Id. at 572.

The court dismissed this argument as "speculative," asserting that "it is extremely doubtful that he would have questioned Mr. Roy as suggested," as "three other prospective jurors stated in open court, in the defendant's hearing, that they or members of their

immediate families had been victims of violent crimes, and the defendant failed to question them as to what may have been told to other prospective jurors." *Id.* at 573. The court further pointed out that

> all of the other prospective jurors heard these three answer in the affirmative to the court's question concerning victims of violent crimes, and heard Mr. Roy ask to approach the bench in response to the question. It is hard to imagine how any of them might have been affected any more by having been told what Mr. Roy imparted to the trial court. Finally, Mr. Roy, instead of answering the court's question in front of all prospective jurors, as was done by the three others, took it upon himself to request to approach the bench. Mr. Roy's unwillingness to discuss the matter in front of the other prospective jurors negates the idea that he may have imparted the information to them.

Id.

Thus, the Court of Appeals had the necessary information to conclude, as it did, that the "record" in *Noble*, established, "beyond any reasonable doubt[,] that the defendant Noble was not harmed by his absence from the voir dire questioning of a prospective juror." *Id.*

But, here, in contrast to *Noble*, the trial court's response to the prospective juror's request ensured not only that Rogers would not know of that request or of its flat denial by that court, but, more importantly, it ensured that there would be no record of why the juror wished to speak to the court or the matter she presumably wished to bring to its attention. And no less troubling was the nature of the court's instruction to the courtroom clerk, upon learning of the prospective juror's request: "No. We are in the process of selecting, I ain't speaking to nobody. No, no. They had their chance." The court thereby appeared to be

directing the courtroom clerk not to bring to its attention any other requests of a similar nature.

Consequently, we are unable, based on the record before us, to determine, beyond a reasonable doubt, that Rogers was not prejudiced by what both sides agree was judicial error, and, therefore, the only issue before us is, as the State concedes, the appropriate remedy for that error.

III.

The State contends that a limited remand, to ascertain the contents of the prospective juror's request, and thus whether or not Rogers was prejudiced as a result of his absence, is an appropriate remedy. Rogers disagrees and requests reversal.

In support of such a remand, the State relies principally on *McDonough Power Equipment, Inc. v. Greenwood*, 464 U.S. 548 (1984), *Edmonds v. State*, 372 Md. 314 (2002), and Maryland Rule 8–604(d)(1). In *McDonough Power Equipment, Inc. v. Greenwood*, 464 U.S. 548 (1984), the Greenwoods brought a products liability action against McDonough for injuries their minor son had sustained while he was riding a lawnmower manufactured by McDonough. During voir dire, in that case, a prospective juror, who was eventually seated, failed to respond affirmatively to a question asking him and other prospective jurors about previous "injuries . . . that resulted in any disability or prolonged pain or suffering" to a family member, even though that juror's son had been

injured in the explosion of a fire truck. As a result of that failure, the United States Court of Appeals for the Tenth Circuit reversed the judgment that had been reached in favor of the defendant. *Id.* at 550-51.

The United States Supreme Court, however, disagreed with the Tenth Circuit and reversed that court. Invoking Rule 61 of the Federal Rules of Civil Procedure,[3] it declared that

> [t]o invalidate the result of a three-week trial because of a juror's mistaken, though honest response to a question, is to insist on something closer to perfection than our judicial system can be expected to give . . . to obtain a new trial in such a situation, a party must first demonstrate that a juror failed to answer honestly a material question on voir dire, and then further show that a correct response would have provided a valid basis for a challenge for cause.

Id. at 555-56. The Court concluded its opinion by stating "the District Court may hold a hearing to determine whether respondents are entitled to a new trial under the principles we state here." *Id.* at 556.

Admittedly, other state courts have applied *Greenwood*'s solution for error committed during voir dire in both criminal and civil cases, but Maryland's appellate courts

[3] At the time of the Supreme Court's decision, Rule 61 provided that "[n]o error . . . or defect in any ruling or order or in anything done or omitted by the court or by any of the parties is ground for granting a new trial or for setting aside a verdict . . . unless refusal to take such action appears to the court inconsistent with substantial justice. The court at every stage of the proceeding must disregard any error or defect in the proceeding which does not affect the substantial rights of the parties."

have declined to do so, at least in the context of a criminal case. In fact, the Court of Appeals, in *Williams v. State*, 394 Md. 98 (2006), rejected such a remedy.

In *Williams*, the question was whether a defendant is entitled to a new trial as a result of the failure, during voir dire, by a prospective juror, who was later seated, to disclose that a member of the juror's family was employed as a secretary in the State's Attorney's Office involved in the case and that relationship was not discovered until after the trial had ended. The *Williams* Court held that "where there is a non-disclosure by a juror of information that a voir dire question seeks and the record does not reveal whether the non-disclosure was intentional or inadvertent, the defendant is entitled to a new trial." *Id.* at 114-15. Accordingly, *Williams* provides no support for the State's contention that this case should be remanded for a hearing but, quite the contrary, supports Rogers' request for reversal.

The State further suggests that an earlier decision of the Court of Appeals, *Edmonds v. State*, 372 Md. 314 (2002), bolsters its argument for remand. There, the Court of Appeals held that the proper remedy, for a trial court's failure to make a final determination with respect to the credibility of a prosecutor's race-neutral explanations for two peremptory strikes, which is the second step in review of a *Batson* challenge,[4] was a limited remand for a new *Batson* hearing:

[4] A "*Batson* challenge" refers to an objection to a peremptory challenge on the grounds that it was based on the potential juror's race, ethnicity, or sex. And, "[w]hen a criminal defendant raises a *Batson* claim, the trial judge must follow a three-step process. The burden is initially upon the defendant to make a prima facie showing of purposeful discrimination [step one]." Then, "[i]f the requisite showing has been made, the burden

> A trial court *Batson* error does not ipso facto entitle a party to a new trial. Under the circumstances presented in the instant case, remand to the trial court is the appropriate remedy. This Court has determined previously that unless it is impossible to reconstruct the circumstances surrounding the peremptory challenges, due perhaps to the passage of time or the unavailability of the trial judge, the proper remedy where the trial court does not satisfy Batson's requirements is a new *Batson* hearing in which the trial court must satisfy the three-step process mandated by that case and its progeny. A limited remand was the procedure followed in *Batson v. Kentucky*, 476 U.S. 79 (1986), *Mejia v. State*, 328 Md. 522 (1992), *State v. Gorman*, 324 Md. 124 (1991), and *Stanley v. State*, 313 Md. 50 (1988). Although a limited remand may not always be practical, in this case neither the passage of time nor any other factor appears to limit the ability of the trial judge to conduct the *Batson* analysis.

Edmonds v. State, 372 Md. 314, 339-40 (2002).

Here, however, unlike in *Edmonds*, it would be not an attorney of record, but a former prospective juror, whom, if she could be found, would then presumably be asked to recall, more than two years after the trial below had ended, the nature, circumstances, and substance of what she wished to communicate to the court. Accordingly, we do not believe that *Edmonds* supports the State's position, particularly in light of the Court of Appeals subsequent decision in *Williams*.

The State next turns to Maryland Rule 8–604(d)(1), in its quest for supporting authority. That rule states:

> If the Court concludes that the substantial merits of a case will not be determined by affirming, reversing or modifying the judgment, or that justice

shifts to the State to come forward with a neutral explanation for challenging [the] jurors" of a particular race, ethnicity, or sex (step two). *Whittlesey v. State*, 340 Md. 30, 46-47 (1995). "Finally, the trial court must determine whether the defendant has carried his burden of proving purposeful discrimination [step three]." *Id.*

> will be served by permitting further proceedings, the Court may remand the case to a lower court. In the order remanding a case, the appellate court shall state the purpose for the remand. The order of remand and the opinion upon which the order is based are conclusive as to the points decided. Upon remand, the lower court shall conduct any further proceedings necessary to determine the action in accordance with the opinion and order of the appellate court.

But, in *Southern v. State*, 371 Md. 93, 104 (2002), the Court of Appeals stated "[t]here are certain times and types of cases where the limited remand is the proper disposition, but Rule 8–604(d) is neither an 'antidote' for the errors of the State or of counsel nor a method to correct errors committed during the trial itself." And, while acknowledging that "[t]here is a line of cases permitting the introduction of new evidence on remand," the Court observed that the cases "permitting new evidence on remand usually do so to correct some action taken by the trial court in a proceeding collateral to the trial itself which results in unfairness to a party." *Id.* at 107. But, here, the error was during voir dire, a "critical stage of trial." *Yancey*, 442 Md. at 625 n.7. Consequently, we do not agree that a limited remand under Rule 8–604(d)(1) is appropriate. Accordingly, we reverse Rogers' judgments of conviction.

JUDGMENTS OF THE CIRCUIT COURT FOR BALTIMORE CITY REVERSED. COSTS TO BE PAID BY APPELLEE.

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Dissenting Opinion by Woodward, C.J.

Filed: December 27, 2017

*Krauser, J., now retired, participated in the hearing of this case while an active member of this Court and as its Chief Judge; after being recalled pursuant to the Constitution, Article IV, Section 3A, he also participated in the decision and the preparation of this opinion.

I agree with the majority's determination that the trial court violated Maryland Rule 4-231 when it failed to "notify Rogers, or his counsel, of the prospective juror's request or the court's subsequent denial of that request." Slip op. at 3. I disagree, however, with the majority's conclusion, and the State's concession, that this error was not harmless. Although the record is not explicit, it is my view that the record, when read in context, affirmatively demonstrates that the trial court's error was harmless. Accordingly, I respectfully dissent.

BACKGROUND

The jury venire at Rogers' trial was comprised of ninety citizens of Baltimore City, which included juror number 837. After a brief introduction about the charges in Rogers' case, the trial judge instructed the jury venire, in part:

> THE COURT: Now I'm going to ask you some questions which have been created by counsel in order to obtain information that may be helpful to the lawyers in the selection of a jury in this case.
>
> * * *
>
> Now these questions have some scope. We have to say that. We have to have scope and I'll tell you the reason why. **These questions are -- pertain to you and your immediate family.** They do -- well, by immediate family I mean your spouse, your children, your grandchild, your brothers, your sisters, mother, father, grandmother and grandfather, close blood relatives.

(Emphasis added).

The trial court proceeded to ask the jury venire several questions, and those questions relevant in this appeal are listed below:

- Has **any member of this jury panel or any member of your immediate family ever been employed by a law enforcement**

> **organization**? Now when I use[ ] that I mean police department, sheriff's department, probation officer, Department of Correction, private security company, lawyer's office, IRS, NSA, any law enforcement agency.
>
> - Has **any member of this jury panel or any member of your immediate family ever been the victim of a crime, witness to a crime, accused of having committed a crime, convicted of a crime or had a bad experience with the criminal justice system**?
>
> - Has **any member of the panel** ever **attended law school or had legal training**?
>
> - Has **any member of this jury panel previously served on a jury**?

(Emphasis added). To all of these questions, juror number 837 did not answer in the affirmative.[5]

Later that day and after posing all of the voir dire questions, the trial court instructed the jury venire that it was time to go to lunch:

> THE COURT: Ladies and gentlemen of the jury, we're going to lunch. The reason is because it's at least 2:00 o'clock and it's going to take us at least an hour to select a jury. Now if you would rather sit here for this hour and we . . . do the rest of the selection, I'm willing to do that, but if you want to go to lunch, I'll let you go to lunch, but if you have to come back here one hour after you leave here. Anybody who doesn't come back, you don't want to suffer the penalty. There will be one. I'll send my sheriff out to find you, bring you back and put you on jury duty tomorrow. Well, I don't have that much authority, but that's what I want to do. But I do have the authority to send him out to find you and bring you back.
>
> Go to lunch. It's five minutes to 2:00. Come back at five minutes to 3:00. This is courtroom number 226 on the second floor. Thank you very much.

[5] To be sure, juror number 837 did not answer any of the voir dire questions in the affirmative.

As recited in the majority opinion, slip op. at 2, upon returning from the lunch recess, the clerk informed the trial judge that juror number 837 wished to speak with the court. The trial judge refused and did not advise counsel of such request. Jury selection then commenced, with both sides using their preemptory challenges to select the jury. Once the jury was seated, the following colloquy occurred at the bench:

> THE COURT: Who was it that wanted to speak to me and I said I wasn't going to talk to them?
>
> THE CLERK: 837.
>
> THE COURT: Where is he seated?
>
> THE CLERK: I think she's in the back.
>
> THE COURT: So he's not on the jury panel?
>
> THE CLERK: No.
>
> THE COURT: Good. Thank you. Well, it would appear that we're not going to be able to use your services in this trial and because of the lateness of the hour you have completed your jury service for the day. I want to thank you for the fact that you came ready, willing and able to serve.

Not only was juror number 837 not selected, but neither party used a preemptory challenge against juror number 837, because the jury was selected before juror number 837 could be considered for seating.

ANALYSIS

Rogers, correctly, does not argue that he was prejudiced by any bias juror number 837 could have possessed, because juror number 837 was not seated on Rogers' jury. *See Noble v. State*, 293 Md. 549, 571 (1982) ("[W]hen the prejudice or possible prejudice of a

juror or prospective juror is against the defendant, and that juror is excused at a proceeding from which the defendant is absent, the defendant would not ordinarily be harmed."). Instead, Rogers argues that the prejudice he suffered from the trial judge's error stems from (1) the "possibility that [j]uror [number] 837 observed one or more prospective jurors, who eventually were seated, engage in misconduct, e.g., search on a smartphone for information about the crime with which [Rogers] was charged[;]" and (2) the "possibility that [j]uror [number] 837 heard a prospective juror express information that might lead to his or her disqualification, e.g., that he or she knew the victim or heard that [Rogers] had killed the victim, or that he or she harbored anti-Muslim feelings, or that he or she believed that because [Rogers] had been charged he must have been guilty, or that he or she really would credit the testimony of police officers over the testimony of other witnesses." Moreover, Rogers contends that "[i]t is mere speculation that [j]uror [number] 837 wished to communicate something about his or her own qualifications to serve as opposed to the qualifications of some other juror who was seated."

The State has conceded, on the record before this Court, that it cannot prove that the trial court's error was harmless. I decline to accept the State's concession and undertake my own review of the record. *See, e.g.*, *Coley v. State*, 215 Md. App. 570, 572 n.2 (2013) ("An appellate court is not bound by a party's erroneous concession of error on a legal issue.").

In *Noble*, the Court of Appeals wrote that "[p]rejudice will not be conclusively presumed[,]" and then examined Noble's "theory as to how his absence from [a] bench

conference was prejudicial[,]" particularly when the juror in question was not seated. 293 Md. at 568, 571-72. Noble's theory was that,

> if he had been present at the bench conference, he "might" have asked the prospective juror Mr. Roy whether Mr. Roy had told any of the other prospective jurors that Roy's father and brother were victims of violent crimes. And if Mr. Roy's answer had been in the affirmative, the argument continues, the answer may have led to the discovery of bias on the part of some other juror.

Id. at 855-56.

In determining that Noble's absence from the bench conference was harmless, the Court reasoned:

> **The record in this case, however, undermines the defendant's speculative argument.** The defendant testified at the post conviction hearing that he "knew nothing about the [jury] impaneling process." Thus, it is extremely doubtful that he would have questioned Mr. Roy as suggested. This is confirmed by the fact that three other prospective jurors stated in open court, in the defendant's hearing, that they or members of their immediate families had been victims of violent crimes, and the defendant failed to question them as to what may have been told to other prospective jurors. Moreover, all of the other prospective jurors heard these three answer in the affirmative to the court's question concerning victims of violent crimes, and heard Mr. Roy ask to approach the bench in response to the question. It is hard to imagine how any of them might have been affected any more by having been told what Mr. Roy imparted to the trial court. Finally, Mr. Roy, instead of answering the court's question in front of all prospective jurors, as was done by the three others, took it upon himself to request to approach the bench. Mr. Roy's unwillingness to discuss the matter in front of the other prospective jurors negates the idea that he may have imparted the information to them.

Id. at 856 (emphasis added). I gather from *Noble* the following: If the record undermines the defendant's theory of prejudice by demonstrating "beyond a reasonable doubt that the

denial of the right could not have prejudiced the defendant, the error will not result in a reversal of his conviction." *Noble*, 293 Md. at 568-69 (emphasis added).

In the case *sub judice*, the record first undermines Rogers' theory that juror number 837 possibly observed misconduct of another prospective juror and was attempting to report such conduct. The trial court did not provide any instruction at the beginning of voir dire about how the members of the jury venire were to conduct themselves during the jury selection process, or what type of conduct was considered inappropriate.[6] Moreover, the trial court did not give any instruction before the lunch recess about their conduct over the recess or about actions that would have been considered misconduct, such as the example Rogers gave of "search[ing] on a smartphone for information about the crime with which [Rogers] was charged." Accordingly, the record indicates that juror number 837 would not have been prompted to report misconduct, because the jury venire was not instructed on that subject. *See, e.g.*, *Alston v. State*, 414 Md. 92, 108 (2010) ("As this Court has often recognized, our legal system necessarily proceeds upon the assumption that jurors will follow the trial judge's instructions." (internal quotation marks omitted)).

The record also undermines Rogers' theory that juror number 837 possibly overheard another prospective juror make a statement that "might lead to his or her disqualification" and was attempting to report such statement. The trial court did not instruct the jury venire on bias or the grounds for disqualification of a juror, and instead simply explained that the voir dire questions were asked to aid counsel in selecting a jury.

[6] The lack of such instruction stands in sharp contrast to the usual instructions about juror conduct given by the trial court *after* the selection of the jury. *See* MPJI-CR 1:00.

Based on the trial court's instructions to the jury venire, juror number 837 would not know or know to report statements that could have disqualified a fellow juror. *See id.*

Even without such instructions by the trial court, there is the *possibility* that a juror could have had certain prior experiences that would prompt that juror to recognize misconduct or bias on the part of a fellow juror. The record reflects, however, that these prior experiences did not apply to juror number 837. Based on the failure of juror number 837 to respond in the affirmative to the voir dire questions listed above, we know that neither juror number 837, nor any member of his or her immediate family, had ever been employed in law enforcement or had any prior experiences with the criminal justice system. Juror number 837 also had no legal education or training and had never before served on a jury.

Finally, Rogers' assertion that "[i]t is mere speculation that [j]uror [number] 837" wanted to communicate something about his own qualifications as opposed to those of another juror is contradicted by the record and common experience. As previously indicated, the record shows that the trial court explicitly instructed the jury venire that all questions pertained to each juror and his or her immediate family. Moreover, it is a common experience among trial judges and lawyers that, after the voir dire is completed and before the jury is selected, prospective jurors who wish to speak with the court do so to communicate information about themselves, or their immediate families, that they failed to provide in response to the voir dire questions.

Like the theory of prejudice in *Noble*, Rogers' theory of prejudice is speculative and based on multiple assumptions that are wholly unsupported by the record. It is simply far

too remote to assume misconduct or a statement evidencing bias by a prospective juror that was observed or heard by juror number 837, and then to suggest that juror number 837 was attempting to report to the trial court how that juror partook in misconduct or said something during the proceedings or lunch recess that would have disqualified him or her. *See Noble*, 293 Md. at 572-73. Therefore, my review of the record "demonstrates beyond a *reasonable* doubt that the denial of the right could not have prejudiced the defendant," and therefore, the error was harmless. *See id.* at 568-69 (emphasis added).