Circuit Court for Baltimore City
Case No. 821084034

UNREPORTED*

IN THE APPELLATE COURT

OF MARYLAND**

No. 471

September Term, 2022

PEARNELL WILSON

v.

STATE OF MARYLAND

Nazarian,
Leahy,
Friedman,

JJ.

Opinion by Friedman, J.

Filed: April 6, 2023

*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.

**At the November 8, 2022 general election, the voters of Maryland ratified a constitutional amendment changing the name of the Court of Special Appeals of Maryland to the Appellate Court of Maryland. The name change took effect on December 14, 2022.

Following a jury trial in the Circuit Court for Baltimore City, appellant Pearnell Wilson was convicted of one count of second-degree assault. In this appeal, Wilson raises a single issue, asking us to exercise our discretion to conduct plain error review of an improperly worded "strong feelings" question. For the reasons that follow, we decline to do so.

DISCUSSION

Prior to jury selection, the trial court gave the parties a copy of the proposed voir dire. After reviewing it, defense counsel asked the trial court to change the wording of the strong feelings question:

Defense Counsel:	…I only have [one] issue – not issue. I just wanted to amend just one [thing] after having looked over it. I don't have any issue with –
The Court:	Okay. Which one? Which instruction is that, please?
Defense Counsel:	Number 8.
The Court:	Uh-huh.
Defense Counsel:	"Does any member of the jury panel have strong feelings regarding second degree assault and false imprisonment, bah-bah-bah. That's fine, but I'm wondering if we can interject in there that it is alleged domestic violence, sometimes domestic assault just –
The Court:	You want me to just say domestic violence instead of using the two charges because we mention the two charges in the opening paragraph?
Prosecutor:	Adding domestic violence and subtracting the two charges is sufficient.
The Court:	Is that okay with [defense counsel]?
Defense Counsel:	Yes. Yes.
The Court:	Okay. Great. Thank you.
Defense Counsel:	And yeah. Yeah. That's the only thing.

As a result of the requested change, during jury selection the trial court asked the panel: "Does any member of the jury panel have such strong feelings regarding domestic violence that it would be difficult for you to fairly and impartially weigh the facts at a trial where such crimes have been alleged? If your answer is yes, please stand."

Wilson now complains that the question was asked in an impermissible compound form. *See Pearson v. State*, 437 Md. 350, 360-62 (2014) (explaining that a compound "strong feelings" voir dire question improperly shifts the burden of determining potential bias from the trial court to the prospective juror). He acknowledges, however, that he did not object to the compound nature of the question and thus his complaint on appeal is not preserved. The issue is therefore only reviewable if we conclude that it was plain error.

We reserve our discretion to exercise plain error review for only those errors that "are compelling, extraordinary, exceptional[,] or fundamental to assure the defendant of a fair trial." *Newton v. State*, 455 Md. 341, 364 (2017) (quoting *Robinson v. State*, 410 Md. 91, 111 (2009)). Courts consider four factors in deciding whether to grant plain error review:

> (1) there must be an error or defect—some sort of deviation from a legal rule—that has not been intentionally relinquished or abandoned, i.e., affirmatively waived, by the appellant;
>
> (2) the legal error must be clear or obvious, rather than subject to reasonable dispute;
>
> (3) the error must have affected the appellant's substantial rights, which in the ordinary case means [they] must demonstrate that it affected the outcome of the [trial] court proceedings; and
>
> (4) the error must seriously affect the fairness, integrity[,] or public reputation of judicial proceedings.

Newton, 455 Md. at 364 (cleaned up). Here, Wilson specifically discussed the "strong feelings" question with the trial court and, after the trial court changed the wording, explicitly stated that the question was acceptable. In doing so, Wilson relinquished any other that objections he might have made. Because Wilson affirmatively waived the error about which he now complains, it is ineligible for plain error review. *State v. Rich*, 415 Md. 567, 580 (2010) (holding that a right that is intentionally relinquished or abandoned is considered waived and is not reviewable for plain error).

JUDGMENT OF THE CIRCUIT COURT FOR BALTIMORE CITY AFFIRMED. COSTS TO BE PAID BY APPELLANT.