Circuit Court for Baltimore City
Case No. 115029011-13

UNREPORTED

ON MOTION FOR RECONSIDERATION

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 203

September Term, 2017

DENNIS THOMAS PADGETT

v.

STATE OF MARYLAND

Nazarian,
Arthur,
Friedman,

JJ.

Opinion by Nazarian, J.

Filed: October 18, 2018

Dennis Thomas Padgett admitted to killing two people, and was convicted by a jury in the Circuit Court for Baltimore City of voluntary manslaughter, first-degree murder, possession of a regulated firearm, two counts of use of a firearm in the commission of a crime of violence, and two counts of wearing, carrying or transporting a handgun. He appeals several trial decisions relating to evidence and trial procedure, and we affirm, except that the sentence imposed on the conviction for wearing, carrying or transporting a handgun in case number 115029012 is vacated and the sentence for wearing, carrying, or transporting a handgun in case number 115029011 is merged with the sentence for use of a firearm in the commission of a crime of violence in that case.

I. BACKGROUND

On January 9, 2015, Tanya Matthews was at home when she heard people talking outside. She looked out her window and saw Robert Thomas, who was her boyfriend, Troy Preston, who was there to repair a radiator in her home, and Mr. Padgett, who was her neighbor. She went to the door to "see what was going on," but by the time she got there, Mr. Padgett was on his way into his house. She asked Mr. Thomas "what happened," and Mr. Preston replied, "we don't know, he got out the car and said something to us." Ms. Matthews shut her door and proceeded up the stairs when she heard gunshots. She returned to the door and saw only Mr. Padgett walking down the street with a "big gun" in his hand. She called 911.

When the police arrived, they found Mr. Preston's dead body on the ground. He had been shot four times: in his upper left eyelid, upper left chest, the center of his chest, and

his left palm. At the same time, Robert Hailey, a neighbor who lived up the street, testified that while he was sitting on his porch, he saw two men, one running through cars, his house, and other houses, and toward an alley (Mr. Thomas) and another walking in the middle of the street with an AR-15 assault rifle (Mr. Padgett). Mr. Hailey saw Mr. Padgett fire shots and heard additional shots after Mr. Padgett and Mr. Thomas disappeared toward Northern Parkway. Police later found Mr. Thomas's dead body on Northern Parkway. He had been shot ten times in the back of the head, once in his spinal cord, and once in his elbow. While an officer investigated the scene, Mr. Padgett approached and turned himself in. The officer ordered him to the ground and arrested him.

Detectives Bryan Kershaw and Aaron Cruz interrogated Mr. Padgett on the night of the murders. Mr. Padgett admitted to shooting Messrs. Thomas and Preston and explained, during the interrogation and again at trial, that a couple of years before, he had had an encounter with Mr. Thomas when Ms. Matthews parked in Mr. Padgett's shoveled parking spot. After the parking incident, Mr. Padgett said that he "polite[ly]" confronted Ms. Matthews at her home about the incident. Mr. Thomas came out of the house afterward and the two men "exchanged words."

On the day of the shootings, Mr. Padgett returned home from work with his children and saw Mr. Thomas and Mr. Preston parked near an alley. As Mr. Padgett approached his home, Messrs. Preston and Thomas exchanged words with Mr. Padgett and one of them "pulled up his shirt and [] showed [Mr. Padgett] what he had" (a gun). Mr. Padgett "got [his] sons in the house" first, but didn't stay in the house "because [he] was scared that they

was going to come in there, kick [his] door in" and "because both of them had guns on them." Instead, he grabbed his AR-15 and 9-millimeter, shot and killed Mr. Preston, then chased Mr. Thomas to Northern Parkway and shot and killed him too.

The jury convicted Mr. Padgett of the voluntary manslaughter of Mr. Preston, the murder of Mr. Thomas, two counts of the use of a firearm in the commission of a crime of violence, two counts of wearing, carrying or transporting a handgun, and one count of possession of a regulated firearm. We supply additional facts as necessary below.

II. DISCUSSION

Mr. Padgett presents four issues on appeal that we have consolidated into three.[1] *First*, he contends that the circuit court abused its discretion when it: (1) "refused to allow

[1] In his brief, Mr. Padgett phrased his Questions Presented as follows:

> 1. Did the trial court abuse its discretions when it refused to allow the deliberating jury to listen in open court to 911 calls had been admitted into evidence, when it refused to address Juror 1's request to be excused from deliberations because of the death of his brother, and when it denied Mr. Padgett's motion for a new trial?
>
> 2. Did the trial court abuse its discretion when it refused to ask an occupational bias question designed to reveal whether venire members would favor or disfavor the testimony of a psychiatrist solely because of the psychiatrist's occupation?
>
> 3. Must one of Mr. Padgett's two convictions for wearing, carrying, or transporting a handgun be vacated where both convictions were based on possession of a single handgun?
>
> 4. After one of Mr. Padgett's wearing, carrying or transporting a handgun convictions are vacated, must the remaining sentence for wearing, carrying or transporting a handgun be merged into the corresponding sentence for use of a firearm?

the deliberating jury to listen in open court to [the] 911 calls that had been admitted into evidence"; (2) "refused to address Juror 1's request to be excused from deliberations because of the death of his brother"; and (3) denied his motion for a new trial. *Second*, he argues the trial court abused its discretion when it refused to ask the venire a question that, he says, was designed to reveal bias against a psychiatrist solely based on the psychiatrist's occupation. *Third*, he asks us to vacate one of his convictions for wearing, carrying or transporting a handgun and merge the remaining conviction into one of his sentences for use of a firearm in the commission of a crime of violence. We address each contention in turn.

A. The Trial Court Did Not Abuse Its Trial Management Discretion.

1. Good cause justified the decision to withhold State's Exhibit 12 from the jury.

First, Mr. Padgett contends that the trial court erred in not permitting the jury to review the 911 calls ("State's Exhibit 12") in open court. He relies on the Court of Appeals's analysis of Maryland Rule 4-326(b) and its holding in *Adams v. State*, 415 Md. 585, 589 (2010), that "where [] evidence has been admitted and the trial judge has not made a good cause determination as to its appropriateness to be taken into the jury room, the trial judge abuses his or her discretion when he or she thereafter denies the jury the right to review that evidence in the jury room." The State responds that the conduct of a criminal trial, including decisions to send evidence into the jury room, is committed to the sound discretion of the trial court.

Under Rule 4-326(b), "[e]xhibits admitted into evidence may go to the jury room absent some specific reason, *i.e.*, good cause, to exclude them." *Adams*, 415 Md. at 601. Whether "good cause" exists to withhold admitted evidence from the jury is a determination left to the trial court's discretion, and will only be overturned on appeal if the trial court abused that discretion. *Id.* at 589, 593.

In this case, the record reveals good cause to withhold State's Exhibit 12 from the jury. After the jury retired to deliberate, the court instructed counsel for both parties to review the exhibits. The State objected to sending State's Exhibit 12 to the jury because it contained extraneous material, including "police communications." After reviewing the exhibits, the court sent all the exhibits except State's Exhibit 12 to the jury. The jury later sent a note requesting to review State's Exhibit 12 and this colloquy followed:

> THE COURT: We have two jury notes. The first, they were received contemporaneously with the jurors' going upstairs. The first says, "Can we review the 911 calls?"
>
> ***
>
> All right, what's the problem with State's Exhibit 12 which has been admitted into evidence?
>
> [STATE]: Well, it's the entire -- that CD has things that were not played before the jury like police communications. We had only played the --
>
> THE COURT: Why was it admitted into evidence if it's got more than the 911 calls?
>
> [THE STATE]: We offered it in as a certified business record. It's the 911/KGA call. KGA, we only played that portion. That's why the State's only intent was to have it --
>
> ***
>
> THE COURT: And when were you going to tell me about the additional material?

***

> THE COURT: How do you propose now, what's your suggestion as to how I allow Exhibit 12 to be displayed and played to the jury?
>
> [THE STATE]: One option is we could play it for them in the courtroom, the same way I thought we might be playing his statement because we didn't have any -- I didn't know we were going to have a clean laptop, because I didn't have a clean laptop. I only had our laptop. We could play it for them right here. Or we could attempt -- we could put the calls on a different CD.
>
> THE COURT: And when were you planning on going to do that?
>
> [THE STATE]: Well, I could do that as quickly as possible. If I could queue up the equipment, get it up and then play it right -- they'd come down and listen to it and then go back up and deliberate?
>
> THE COURT: No, that's not acceptable. All right, here's my suggestion unless you have a specific idea.
>
> [DEFENSE COUNSEL]: Well, Your Honor, we have a situation where the jury has already asked to listen to the 911 calls. . . . The State going to make a copy is going to cause unnecessary delay. I think the only option really that we have at this point is to play it in open court, and then after that the State make an appropriate copy.

The court offered the parties a third suggestion, which defense counsel declined, and the defense renewed its request that the jury be brought down to listen to the calls:

> THE COURT: I have a third suggestion that you all, using the State's laptop, educate [the clerk] as to exactly the locations, the start and stop locations of the 911 calls. You guys observe to make sure the start and stops are accurate. He plays it on the clean laptop for the jury, and then the disc is immediately taken and copied for use at least by Monday morning.
>
> [DEFENSE COUNSEL]: Well, Your Honor, we would object because then at that point he is in the jury room with them during the playing of the tape. . . . [T]he Defense finds that that is not appropriate for him to be in the jury room with the jurors

> when there's reviewing of evidence. If there is going to be reviewing of evidence and the jury of 12 cannot do so on their own, then it is the Defense request that they are brought down in open court and shown. It is not appropriate for a 13th person to be in there when they're reviewing evidence. We would object to that.

The court invited counsel for both parties to approach, announced its decision, and the defense objected in part:

> THE COURT: I will craft a note in response to this, you know that tells the jury that they have the option to come downstairs to hear the 911 calls in open court this afternoon and/or to wait for the disc that they can listen to on Monday morning.
>
> [DEFENSE COUNSEL]: Your Honor, I have no objection to offering them the option, but I do object the portion that says that they have to wait until Monday morning to review items that are in evidence that they have requested to review.

After further discussion, the court instructed the prosecutor to take Exhibit 12 and make the necessary redactions. After the prosecutor returned with a redacted version of State's Exhibit 12 approximately an hour later, both parties reviewed it and discovered that it contained an unrelated 911 call. The defense renewed its request for the jury to be brought down to listen to the original portion played at trial. The court proposed a note to the jury that read: "In response to your note/request for the 911 calls, you can hear the calls in open court now or listen to the calls on Monday morning on a disc." Defense counsel again objected and requested the court "not give them the option [to listen to the calls on Monday morning]; that the [c]ourt simply bring them down and allow them to hear it." Over defense counsel's objection, the court sent the note to the jury, and the jury opted to listen to the calls on Monday.

The trial court heard arguments from both sides before making its decision about State's Exhibit 12. In responding to the jury's note, the court explained that it decided to give the jury the option to listen to the State's Exhibit 12 on Monday "because they are in the process of listening to and reviewing gobs and gobs and gobs of other pieces of evidence and [it] did not want to dictate to them the sequence in which they are going to listen, read or address the evidence." The court carefully considered the defense's arguments and reached a reasonable conclusion about how to handle the recording. And even if we were to agree disagree with the court's decision, we wouldn't reverse it simply because we, sitting as trial judges, might have handled the situation differently. *See North v. North*, 102 Md. App. 1, 14 (1994) ("[A] ruling reviewed under an abuse of discretion standard will not be reversed simply because the appellate court would not have made the same ruling. The decision under consideration has to be well removed from any center mark imagined by the reviewing court and beyond the fringe of what that court deems minimally acceptable.").

2. The circuit court handled Juror 1's note appropriately.

Second, Mr. Padgett contends the court abused its discretion when it "refused to address Juror 1's request to be excused from deliberations because of the death of his brother." The State disagrees, and so do we.

A court's ruling on a motion to remove a juror is "a discretionary one which will not be disturbed absent an abuse of discretion." *State v. Cook*, 338 Md. 598, 611 (1995). We defer to a trial judge's decision to exclude a juror (or not) on grounds particular to the

individual juror because unlike us, "the trial judge has the opportunity to question the juror and observe his or her demeanor." *Cook*, 338 Md. at 615. And "[w]e will not substitute our judgment for that of the trial judge unless the decision is arbitrary and abusive or results in prejudice to the defendant." *Id.*

On December 12, 2016, Juror 1 asked to be excused "to take care of funeral arrangements" for his brother, who had just passed away. The court informed the parties about the note and provided "a panoply of options," including stipulating to a jury of fewer than 12 people or denying Juror 1's request. The State consented to a jury of fewer than 12 people, but instead of addressing the options provided, defense counsel moved for a mistrial:

> [DEFENSE COUNSEL]: Good morning, Your Honor. Before the [c]ourt informed us of Juror 1's issue, the Defense did have issues that were pertinent to jury deliberations that may or may not resolve the issue in terms of Juror 1. So I'd like to bring that to the [c]ourt's attention.
>
> ***
>
> Your Honor, at this time the defense would make a motion for a mistrial. And that motion would be based on the fact that over the weekend we learned as to the State's Exhibit 25.
>
> ***
>
> THE COURT: It is 9:40. The jurors have not received their notes, have not exchanged their cell phones, have not received any exhibits as of this point in time, including Exhibit 25. Given the Defendant is anxious and eager to address the motion for a mistrial even before we address Juror 1's circumstances, I am going to instruct the clerk of the [c]ourt, with assistance from Deputy Ragsdale, to proceed to retrieve the cell phones and to give them the jury instructions, the verdict sheet, and all of the exhibits except Exhibit 25.

Defense counsel didn't object to the trial judge's decision to give the jurors instructions, the verdict sheet, and all exhibits, including State's Exhibit 12, except Exhibit 25. Instead, counsel continued to argue the motion for mistrial and did not return to the Juror 1 issue until after the jury had been deliberating for approximately an hour:

> THE COURT: All right. Any response to the Court's intention to bring the jury down to listen to the 911 tapes out of Courtsmart?
>
> [DEFENSE COUNSEL]: Your Honor, we do believe that in terms of the issues of Juror 1, who indicated that he had a death in the family, and the death is of his brother, which is a close relative, we have concerns in terms of his ability to really concentrate on the issues. In this case, Mr. Padgett is facing life without the possibility of parole. The Defense would suggest, in light of these other underlying issues, that we would request be resolved first. If the [c]ourt would consider releasing the jury for today and asking them to come back tomorrow. That would give that juror additional opportunity to address his issues, as well as the [c]ourt and the parties to address the issues that are before us.
>
> THE COURT: So I take it that the possibility of agreeing to proceed with 11 jurors as of now is off the table?
>
> [DEFENSE COUNSEL]: No, Your Honor. Mr. Padgett wishes a jury of 12.
>
> THE COURT: Thank you. Madam Clerk, I'd like for you to -- what did I do with the note? Tell them that I'm experiencing technical problems. . . . Just read them the note and bring it back. In just a moment I'm going to go off the record. I'm going to sit here and look at the laptop.

The court went off the record for four minutes and when it returned, defense counsel offered further argument in support of a mistrial, which the court addressed. The court went off the record again and returned fifteen minutes later when it learned that that the jury had reached a verdict.

The record directly refutes Mr. Padgett's claim that the trial court refused to address Juror 1's note; in fact, he concedes in his brief that his counsel "declined the court's request to address the note." And he cites no authority to support his contention the court's "failure to address Juror 1's request to be discharged, when defense requested it do so, was an abuse of discretion that requires reversal." To the contrary, the court asked counsel to address the note, and counsel responded by pressing the motion for mistrial. We acknowledge that Juror 1's brother's death created concerns that the court needed to address. But unlike in *Harris v. State*, the court didn't neglect to notify the parties of Juror 1's note. 428 Md. 700 (2012). Instead, the defense pressed for a broader victory, and in the meantime, the jury reached a verdict and effectively resolved the issue. We see no abuse of discretion in the court's handling of these fast-moving circumstances.

3. The circuit court did not err in in denying Mr. Padgett a new trial.

Third, Mr. Padgett argues that the trial court erred in not granting his motion for a new trial. We review a decision to grant or deny a new trial for abuse of discretion, and will not disturb that decision "unless the judge exercises it in an arbitrary or capricious manner or when he or she acts beyond the letter or reason of the law." *Brewer v. State*, 220 Md. App. 89, 111 (2014) (cleaned up).

State's Exhibit 25 was a video disc of Mr. Padgett's interrogation with the police videotaped from two cameras, one overhead and the other at eye level. The State introduced Exhibit 25, which was admitted without objection, during one of the officers' testimony, and played large portions of the overhead angle of the interrogation to the jury. When the

jury retired to deliberate on Friday afternoon, the jury was sent back with their notes and admitted exhibits.

Over the weekend, defense counsel discovered that State's Exhibit 25 contained both camera views. The following Monday, defense counsel moved for a mistrial because "prejudicial error occurred when the State's unadmitted evidence, CD 25 . . . with the two views, two versions, was submitted to the jury." The jury returned a verdict before the court could rule on the motion. After the verdict, defense counsel moved for a new trial because, among other things, "the jury had access to material that had not been admitted into evidence, specifically the view of the interrogation from the camera at eye-level."

a. The circuit court did not commit clear error in finding defense counsel knew that State's Exhibit 25 contained two different camera angles.

Mr. Padgett argues that in finding that "defense counsel 'knew' that State's Exhibit 25 contained both views," the court committed clear error. He points to three exchanges during the motion hearing. *First*, while arguing for a mistrial, defense counsel told the court that she wasn't aware that the exhibit contained two views of the interrogation until she asked the State about it over the weekend. The court then asked the prosecutor whether the second view on Exhibit 25 was "disclosed on the record at the time that it was offered into evidence," to which the prosecutor responded "it was not." *Second*, in response to the State's argument that the second, eye-level view was admissible, the court responded that "[i]t may be admissible, but it was not admitted." And *third*, while explaining the next steps

after the motions hearing, the court stated that it "did not admit into evidence the second view."

"A finding of a trial court is not clearly erroneous if there is competent or material evidence in the record to support the court's conclusion." *Lemley v. Lemley*, 109 Md. App. 620, 628 (1996). Moreover, [u]nder the clearly erroneous standard, this Court does not sit as a second trial court, reviewing all the facts to determine whether an appellant has proven his case." *Id.* (cleaned up). Our task is limited to deciding whether the circuit court's factual findings were supported by "substantial evidence" in the record. And, in doing so, we must view all the evidence "in a light most favorable to the prevailing party." *General Motors Corp. v. Schmitz*, 362 Md. 229, 233–34 (2001).

In denying the motion, the trial court decided that any objections to the second view had been waived:

> Defense counsel—having previously received, in discovery, a copy of the disk played at the hearing—were aware of the alternate angle. Nevertheless, defense counsel failed to raise any question or issue of alternate angles, and offered no argument premised on or relating to the second camera angle at any time during or subsequent to the October 5 hearing.
>
> ***
>
> [Mr. Padgett] received a copy of this proposed exhibit in advance of its presentation to the jury and knew or should have known that the disk contained both [camera views].
>
> ***
>
> During Det. Kershaw's testimony, the State moved State's Exhibit 25 into evidence; it was received without objection from the defense. . . . During cross-examination, defense counsel did not question [Det.] Kershaw regarding a second camera angle, nor did defense counsel counter the State's election to publish only the single elevated view through a

> presentation of its own. In fact, defense counsel failed entirely to raise any question or issue of a second camera view at all between the October 5 suppression hearing and the close of evidence at [Mr. Padgett's] trial.
>
> ***
>
> [Mr. Padgett] has waived this allegation of error. Defense counsel knew that State's Exhibit 25 contained both views of [Mr. Padgett's] statement to police at the time it was admitted into evidence but failed to object to its admission into evidence, thereby waiving any objection to its admission. . . . The entire contents of the disk being in evidence, no error occurred when State's Exhibit 25 was given to the jury.
>
> ***
>
> Even had defense counsel not known of the disk's additional contents until after it had been moved into evidence, the defense's subsequent, knowing failure to object to the 'tainted' exhibit being delivered to the jury room would likewise operate to waive this allegation. . . . Because this alleged error resulted only from [Mr. Padgett's] own inaction, the [c]ourt concludes that it is not in the interests of justice to grant him a new trial on these grounds.
>
> ***
>
> Even were State's Exhibit 25 not properly in evidence and even had [Mr. Padgett] not waived any objection to its submission to the jury, its availability during deliberation did not prejudice the defense.
>
> ***
>
> The crux of [Mr. Padgett's] objection to the second angle is that it provided an 'up close and personal view' of [Mr. Padgett] in a manner the clip displayed in court did not provide. But jurors had already gotten 'up close and personal' with [Mr. Padgett] when he *testified in open court*. To say under the circumstances that the alternate video angle provided new and prejudicial information to jurors is to strain credulity.

There are some conflicts between the court's statements on record and its subsequent explanation for denying Mr. Padgett's motion for a new trial. But a closer look

reveals there was substantial evidence to support the circuit court's factual finding. In addition to defense counsel's failure to object to the admission of State's Exhibit 25, counsel for both parties stipulated to the jury that State's Exhibit 25 "is a fair and accurate recording" and that "[p]ortions of the recording have been redacted by agreement of the parties." Moreover, State's Exhibit 25 was admitted into evidence, and whether defense counsel knew or didn't know that there were two different angles isn't relevant because Md. Rule 4-326(b) permits sworn jurors to "take . . . exhibits that have been admitted in evidence" when they retire for deliberation. Md. Rule 4-326(b). Based on the record as a whole, we see no clear error in the circuit court's findings.

b. The circuit court did not abuse its discretion in denying Mr. Padgett's motion for a new trial.

Mr. Padgett argues that "[i]n light of the erroneous factual findings," the circuit court abused its discretion in denying his motion for a new trial. But since we have found no error in the trial court's findings, we see no error in the decision to deny the motion. Mr. Padgett relies solely on *Merritt v. State*, which involved documents that "had been marked for identification only and had not been admitted into evidence" that had been sent to the jury room during deliberations. 367 Md. 17, 22 (2001). The Court of Appeals found prejudicial error based on the prejudicial nature of the evidence mistakenly sent back to the jury—in that case, an affidavit in which the detective stated that she had made arrests that led to 100 convictions, concluded that Mr. Merritt was responsible for the murder, and disclosed statements that had been redacted from the evidence admitted at trial.

This alternative angle raises no such concerns. Mr. Padgett's jury received neither unadmitted evidence nor highly prejudicial evidence. The jury "received only a new video perspective on a statement they had already heard and seen in open court," and in the context of a shooting that Mr. Padgett admitted. We disagree that the second, eye-level view of the interrogation had any effect, let alone a highly prejudicial effect, on the jury's judgment of his credibility.

B. Mr. Padgett's Witness Occupation Voir Dire Question Was Not Mandatory.

Next, Mr. Padgett contends that the trial court abused its discretion by refusing to ask his proposed voir dire question regarding potential bias in favor of, or against, psychiatrists, psychologists, and other mental health professionals and their roles in the judiciary process. The State responds first that Mr. Padgett's argument is not preserved because "the only question that [Mr.] Padgett 'plainly' raised and the trial court actually decided was whether the proposed voir dire was appropriate because it supposedly elicited potential biases against a PTSD defense built on psychiatric testimony . . ." and that he "never once argued that the question was a mandatory inquiry into 'occupational bias[.]'" In his reply brief, Mr. Padgett argued that "[a]lthough defense counsel did not use the phrase 'occupational bias,' it was abundantly clear from her explanation that question fourteen was in fact designed to reveal any occupational bias the venire might harbor for or against psychiatrists."

We agree with Mr. Padgett that his argument is preserved because during voir dire, defense counsel argued, in so many words, that the question was designed to identify bias on the part of potential jurors against mental health professionals:

> Question 14 speaks to that there may be testimony in the case from psychiatrists, psychologists or other mental health professionals. Does any member of the panel have any strong feeling about the validity of testimony from psychiatrists, psychologists or other mental health professionals. Again, that brings us to *any biases, preconceived notions or prejudice that a potential juror may have against those type[s] of professionals and their roles in the judiciary process*.

On the merits, the State maintains that the trial court did not abuse its discretion in declining to ask his proposed voir dire question to the jury panel because "the question was not mandatory merely because it sought to uncover occupational bias." The State claims that *Bowie v. State*, 324 Md. 1, 11 (1991), *Langley v. State*, 281 Md. 337, 328–49 (1997), and *Moore v. State*, 412 Md. 635, 653–55 (2010), read together, stand for the principle that Mr. Padgett's proposed question would have been mandatory "only if [] a witness was called to testify in an official capacity—that is, as some form of government-affiliated agent . . . whose position might reasonably be thought to unduly influence a juror's assessment of credibility before the witness even testifies." Thus, the State argues, because "the psychiatrists who testified were not presented to the jury as any form of government-affiliated official[s]," Mr. Padgett's proposed question was not mandatory, and the trial judge did not abuse her discretion in declining to ask it during voir dire.

We review a trial judge's voir dire decisions for abuse of discretion. *See Pearson v. State*, 437 Md. 350 (2014). A trial judge has broad discretion in conducting jury selection,

especially with regard to the scope and form of the questions propounded. And the court need not make any particular inquiry of the prospective jurors unless that inquiry "is directed toward revealing cause for disqualification." *Dingle v. State*, 361 Md. 1, 13–14 (2000).

Mr. Padgett contends, citing *Thomas v. State*, 454 Md. 495 (2017), that the trial court was required to ask the venire question that was designed to uncover occupation-based bias against psychiatrists. But *Thomas* involved "whether a trial judge may pose a broad occupational bias voir dire question when the parties requested that the trial judge inquire as to whether the venireperson would give undue weight to the testimony of a police-witness, based on the police witness's occupation as a police officer." 454 Md. at 497. He asks us to apply that principle to reach mental health workers as well, pointing to language in *Thomas* that doesn't expressly limit it to law enforcement:

> In *Moore*, we expanded our holding in *Langley* . . . .
>
> ***
>
> We also determined that "*Bowie* is simply an explication and application of the standard acknowledged and even enforced in *Langley*. In that regard, [*Bowie*] articulated expressly that the issue suggested by the police witness question is broader than those witnesses and, therefore, has relevance beyond cases involving police officers. *Id.* at 650–51, 989 A.2d at 1158. We concluded that "[a]t the heart of the issues presented in *Langley*, *Bowie*, and the case at bar is whether it is appropriate for a juror to give 'credence' to a witness simply because of that witness's 'occupation,' or 'status,' or 'category,' or 'affiliation.'" *Id.* at 652, 989 A.2d at 1159 (quoting *Langley*, 281 Md. at 349, 378 A.2d at 1338, 1344). Thus, *Moore* stands broadly for the proposition that if a potential juror is likely to give more credibility to a specific witness based on that witness's occupation, status, category, or affiliation, then, upon

> request, the trial judge must ask a voir dire questions that seeks to uncover that bias. *See id.*
>
> ***
>
> Accordingly, our decision in *Moore* also stands for the proposition that the occupational bias question is only mandatory if the trial judge determines that a specific witness who is testifying in the case could, due to his or her occupation, status, or affiliation, be favored or disfavored exclusively on the basis of his or her occupation, status, or affiliation. The inquiry must, therefore, be tailored to the witnesses who are testifying in the case and their specific occupation, status, or affiliation.

454 Md. at 511–13.

The principle doesn't generalize that simply, though. Indeed, *Thomas* presents the inverse of this case. There, the indisputably mandatory question of whether jurors would give undue weight to the testimony of police officers was clouded by the way the court framed the question, lumping police officers, who were testifying, together with a string of various other professionals, who were not.[2] For that reason, the voir dire question in *Thomas* failed to ferret out bias, for or against police officers, among potential jurors and constituted reversible error. Moreover, the voir dire question in *Thomas* was not solely aimed at revealing occupation-based bias. Police officers are officers of the State, *i.e.*, the team of people bringing about and the pursuing the prosecution. Psychiatrists and mental health professionals don't present the same intrinsic possibility of bias. We don't, therefore, have before us the closer question of whether a psychiatrist testifying in some government-

[2] Jurors in *Thomas* were asked if they would "automatically give more or less weight to the testimony of a physician, a clergyman, a firefighter, a police officer, psychiatrist, social worker, electrician . . . because of their . . . occupation or employment." 454 Md. at 501.

official capacity should be treated the same as law enforcement officers. The State called a private psychiatrist to counter Mr. Padgett's, but he did not bear any official or official-sounding imprimatur. Under these circumstances, a question concerning occupation-based bias against psychiatrists was not mandatory on voir dire, *see Washington v. State*, 425 Md. 306, 324 (2012) (explaining that *Moore*, 412 Md. at 655 "held that the witness occupation question is mandatory during voir dire of the jury panel only in the situation where police officers or other official witnesses are expected to testify during trial"), and we see no abuse of discretion in its decision not to introduce speculation about the motives of non-official psychiatrists into the voir dire process.

C. One of Mr. Padgett's Convictions For Wearing, Carrying, Or Transporting A Handgun Must Be Vacated And Mr. Padgett's Remaining Sentence For Wearing, Carrying Or Transporting A Handgun Must Be Merged With His Sentence For Use Of A Firearm In The Commission Of A Crime Of Violence.

Finally, Mr. Padgett contends that one of his convictions for wearing, carrying, or transporting a handgun on his person should be vacated, and that if it's vacated, his separate sentences for his convictions of wearing, carrying, or transporting a handgun and use of a firearm in the commission of a crime of violence should be merged. The State agrees, and so do we. *See Webb v. State*, 311 Md. 610, 615–18 (1988) (vacating one of defendant's two convictions for wearing, carrying or transporting a handgun where the convictions were based on possession of a single handgun over a three-hour period); *Hunt v. State*, 312 Md. 494, 510 (1988) (holding, under the rule of lenity, defendant's sentence for wearing,

carrying, or transporting a handgun merged with his sentence for use of the same firearm in commission of a crime of violence).

SENTENCE FOR WEARING, CARRYING, OR TRANSPORTING A HANDGUN IN NO. 115029012 (COUNT 3 OF THAT INDICTMENT) VACATED. SENTENCE FOR WEARING, CARRYING, OR TRANSPORTING A HANDGUN IN NO. 115029011 (COUNT 3 OF THAT INDICTMENT) MERGED WITH THE SENTENCE FOR USE OF A FIREARM IN THE COMMISSION OF A CRIME OF VIOLENCE IN NO. 115029012. JUDGMENTS OF THE CIRCUIT COURT FOR BALTIMORE CITY OTHERWISE AFFIRMED. APPELLANT TO PAY COSTS.

The correction notice(s) for this opinion(s) can be found here:

https://mdcourts.gov/sites/default/files/import/appellate/correctionnotices/cosa/unreported/0203s17cn.pdf