Circuit Court for Harford County
Case No. 12-K-17-001549

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 384

September Term, 2021

JOHNNIE DALLAS, III

v.

STATE OF MARYLAND

Berger,
Arthur,
Shaw,

JJ.

Opinion by Arthur, J.

Filed: February 2, 2022

At a jury trial in the Circuit Court for Harford County, Johnnie Dallas III was convicted of possession of cocaine and possession of cocaine with intent to distribute. The court sentenced Dallas to 20 years of imprisonment, with all but four years suspended, to be followed by three years of supervised probation.

In this appeal, Dallas seeks to raise two issues that his counsel did not raise at trial. Dallas contends that the circuit court violated his right to a public trial by conducting the first day of jury selection at a building other than the courthouse. He also contends that two of the questions asked during voir dire were improperly worded. For the reasons explained in this opinion, we conclude that the failure to raise those issues at trial precludes appellate review of those issues. Therefore, the judgments will be affirmed.

FACTUAL AND PROCEDURAL BACKGROUND

On the night of September 20, 2017, Detective Francis Davidson of the Havre de Grace Police Department was conducting surveillance on North Stokes Street in Havre de Grace. Detective Davidson saw a slow-moving vehicle approach two men, Johnnie Dallas and Duron Potts, who were walking toward North Stokes Street.

The vehicle stopped, and a brief conversation ensued between Dallas and the driver of the vehicle, Donald Lopez. The vehicle began to drive away, until Dallas yelled, "it's only ten dollars." After the vehicle stopped, Detective Davidson saw Lopez hand an unknown amount of cash to Dallas and saw Dallas hand over a small plastic bag to Lopez.

Moments later, police officers stopped Lopez's vehicle and recovered a small bag

of white powder from his pocket. Subsequent testing showed that the bag contained 0.275 grams of cocaine.

Separately, officers arrested Dallas and Potts while they were walking on North Stokes Street. Dallas possessed $253 in cash. Potts possessed $61 in cash, an electronic scale with green residue, a storage container with the odor and residue of marijuana, and a box of plastic sandwich bags.

By indictment in the Circuit Court for Harford County, the State charged Dallas with three counts: possession of a controlled dangerous substance (cocaine), possession of a controlled dangerous substance (cocaine) in sufficient quantity reasonably to indicate under all circumstances an intent to distribute or dispense the substance, and possession of controlled paraphernalia.

After a series of postponements, the circuit court scheduled a jury trial in Dallas's case to begin in June 2020. In the spring of 2020, however, the Maryland Judiciary suspended jury trials statewide as an emergency measure in response to the COVID-19 pandemic. After additional postponements resulting from the suspension of jury trials, the circuit court scheduled the trial in Dallas's case to begin on May 11, 2021.

On the afternoon of May 10, 2021, the court informed the attorneys that jury selection would take place at the Abingdon satellite location of the Mountain Christian Church, rather than the Harford County courthouse. On the following morning, defense counsel objected to the location selected by the court. The following exchange occurred:

> [DEFENSE COUNSEL:] As a general proposition, I object to the fact that we're doing voir dire in a church. I think there is inherently a conflict as far

> as the separation of church and state and this is the location where we are. For the record, I believe it is called Mountain Christian Church in Abingdon, Maryland and we were directed here yesterday afternoon as the site that the Harford County judiciary has chosen as the location to conduct voir dire. I believe it is inappropriate for us to be in a religious setting while conducting business of the Court. So, I would just like that to be clear for the record.
>
> THE COURT: What relief would your client request . . .? Are you asking for a postponement so that we can conduct voir dire back in a normal setting before the Court?
>
> [DEFENSE COUNSEL:] It doesn't even have to be a normal setting in the Court, it would just be in a civil nonreligious location.

After giving defense counsel the opportunity to confer with Dallas, the court asked the defense to clarify the request. The discussion continued:

> [DEFENSE COUNSEL:] Your Honor, we would be requesting a postponement in order to conduct voir dire and subsequent jury selection in normal course in the courthouse. I spoke to my client and he agrees with my objection that we're in a house of worship so to speak conducting this portion of the jury trial.
>
> THE COURT: Okay. Just so the record is clear, the building that we're in is not actually a church. It is in a strip mall, if you would. It is rented by Mountain Christian Church. Certainly the name Mountain Christian Church is on the particular store front, if you would.

The trial judge referred Dallas's postponement request to the designee of the administrative judge of the circuit court. *See* Md. Rule 4-271(a)(1) (stating that, "[o]n motion of a party, . . . and for good cause shown, the county administrative judge or that judge's designee may grant a change of a circuit court trial date"). The administrative judge's designee spoke with the attorneys by telephone, using speakerphone. Defense counsel restated the objection and request for postponement:

> [DEFENSE COUNSEL:] Yesterday afternoon probably at 3:30 I received an email from [the trial judge's] chambers, myself and [the assistant State's attorney] received the email directing us to come to Mountain Christian Church this morning in order to select a jury. I would object on behalf of Mr. Dallas to conducting any portion of a trial in a church. As the Court may be aware, we're in a strip mall, but the building that we're in is obviously the Mountain Christian Church. I gather that this is a fully operational religious organization. There appear to be classrooms and there is a main meeting hall that I have not been inside, but on the outside of the doors it says Service in Progress. So, from what I gather there is an ongoing operation. I suppose that they have services over the weekend which is why it is available to the Court during the week.
>
> Now, I understand that there were probably a number of factors that went into the selection of an offsite location, but I think it is completely inappropriate for a judicial proceeding to be conducted in a religious building or a house of worship, which is clearly where we are.
>
> So, I would object to that and under the circumstances I'm forced to ask for a postponement until we can conduct voir dire in a courthouse[.]

The prosecutor opposed the request for a postponement. The prosecutor "recognize[d]" that the "concerns" expressed by defense counsel were "valid," but suggested that those concerns might be "cured" with "a voir dire question to the effect of would any of the jurors allow the physical location to effect their judgment in this case or something worded along those lines."

The administrative judge's designee declined to grant a postponement, stating:

> [ADMINISTRATIVE JUDGE'S DESIGNEE:] We're using the offsite locations primarily for the 20 strike jury trials, but the jury panel which would be the panel that would be used for either the 20 strike or any other trials that were scheduled as directed to report to the Mountain Christian Church, Abingdon satellite location. That location is in a business park. -- I don't think it matters the characterization that [defense counsel] used, but it is in a business park and it is a religious institution.

> However, this Court has toured the facility in anticipation of its use in the room which is used, the large room for the voir dire, and anything that would be construed as religious in nature has either been removed or covered. It is a generic room that is just being used because of the size that would accommodate the number of jurors that we need for social distancing purposes.
>
> . . . [B]ecause again all of the jurors had been directed to go to this facility, it was concluded that the best use of the time for the Court and the jurors was to leave them at that facility so that the general voir dire and individual to be conduct go ahead and a jury selected. The case would then return back to the Circuit Court for the actual trial itself.
>
> So, I believe that the combination of any religious markings or symbols having been removed or covered in the facility, I will leave it to [the trial judge] any determination as to whether a voir dire question is appropriate for only the jury selection portion because again the trial itself could be conducted at the Circuit Court.
>
> So, I don't believe that the Defendant's postponement request is warranted. I will deny that request and turn the matter back over to [the trial judge] to continue with the jury selection process.

Before the prospective jurors entered the room, the trial judge discussed proposed voir dire questions with the prosecutor and defense counsel. During the discussion, the prosecutor entered a nolle prosequi as to the paraphernalia charge, leaving possession of cocaine and possession of cocaine with intent to distribute as the remaining charges.

As the discussion continued, the parties agreed that the judge should ask a special voir dire question concerning the location of the voir dire proceedings.

> [PROSECUTOR:] When you make your introductory remarks to the jury, will you tell them that we're only here for jury selection and that kind of stuff?
>
> THE COURT: Yes, I will. Let me hear the voir dire question. Basically agreed by the parties, but let me hear it.

> [DEFENSE COUNSEL:] Does the nature of the building in which we're conducting voir dire have any impact on your ability to be a fair and impartial juror?
>
> [PROSECUTOR:] That sounds good.

When reviewing the list of proposed voir dire questions, the trial judge announced that he would add the following question: "does the nature of the building in which we're conducting the voir dire in any way effect [sic] your ability to be fair and impartial[?]" After a brief discussion of other matters, the court asked: "Is there anything that either counsel wanted to put on the record at all?" Both attorneys replied: "No, Your Honor."

The trial judge directed the clerk to bring the 90 prospective jurors into the room. In his introductory remarks, the trial judge told the prospective jurors that they were "not actually in a courthouse itself" because the off-site location would allow the participants "to socially distance" themselves "much better than [they] c[ould] in the courthouse." The judge explained that, after the initial phase of jury selection, all participants would return to the courthouse for the remainder of the trial.

The trial judge proceeded to ask the general voir dire questions previously discussed with the attorneys. The clerk announced the badge numbers of each prospective juror who answered in the affirmative to any of those questions.

During this initial round of questions, the trial judge told the jurors: "The Defendant is charged with the following: Possession of CDS with intent to distribute, cocaine; second, possession of CDS, that being cocaine." The judge continued:

> THE COURT: You have heard the alleged offenses. Do any of you have strong feelings about any of the offenses charged in the case?

THE CLERK: No response.

Later, the trial judge asked the following question:

> THE COURT: Does the nature of the building in which we're conducting the voir dire this morning in any way effect [sic] your ability to be a fair and impartial juror?

THE CLERK: No response.

Both at the beginning and the end of the initial round of questions, the trial judge asked the attorneys whether they had "any reason to approach." In both instances, the attorneys stated that they had no reason to approach the bench.

After the initial round of questions, the judge permitted the attorneys to ask specific questions to each prospective juror who had given an affirmative response to any of the general questions. The transcript indicates that the second round of questions took place in a "side room," rather than in the room in which the 90 prospective jurors were present. At the end of that process, the trial judge directed 41 of the prospective jurors to report to the Harford County courthouse on the following morning for the remainder of the jury selection and the trial. On the next day, at the conclusion of jury selection, defense counsel agreed that the entire jury panel was "acceptable" to the defense.

In its case against Dallas, the State called Detective Davidson, who testified that, on the night of September 20, 2017, he saw Dallas give a small plastic bag to Lopez in exchange for cash. The State presented testimony from the officer who arrested Lopez minutes after the hand-to-hand exchange and recovered a plastic bag containing a white powdery substance. Without a defense objection, the State introduced a report in which a

forensic chemist determined that the bag contained 0.275 grams of cocaine. The defense stipulated that the chemist possessed adequate qualifications and followed the generally accepted testing procedures.

The jury found Dallas guilty of possession of cocaine and possession of cocaine in sufficient quantity to indicate an intent to distribute or dispense cocaine. The court sentenced Dallas to 20 years of imprisonment for possession of cocaine with intent to distribute and suspended all but four years of that sentence. The court also imposed three years of supervised probation upon Dallas's release.

Dallas filed a timely notice of appeal.

DISCUSSION

In this appeal, Dallas presents the following questions:

1. Did the trial court err in conducting a full day of voir dire in a private room in a church over Appellant's objection and request for postponement?

2. Did the trial court's improper voir dire questions concerning "strong feelings" about the crimes charged and the location of voir dire constitute plain error?

3. Was trial counsel ineffective in failing to object to the improper voir dire questions referenced above?

For the reasons discussed below, we conclude that the issues that Dallas seeks to raise in this appeal are not properly presented for appellate review. First, Dallas's trial counsel failed to preserve the contention that the court violated his right to a public trial by conducting voir dire at a location other than the courthouse. Next, the alleged errors in the phrasing of two voir dire questions do not meet the requirements for plain error

review despite his trial counsel's failure to object. Finally, this direct appeal is not the proper means to evaluate the contention that trial counsel was ineffective in failing to object to those two voir dire questions. Consequently, the judgments will be affirmed.

I. Right to a Public Trial

The Sixth Amendment to the United States Constitution guarantees that, "[i]n all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial[.]" Accordingly, "criminal trials are to be open to the public as a matter of course, and any closure of the courtroom for even part of the trial and only affecting some of the public must be done with great caution." *Robinson v. State*, 410 Md. 91, 102 (2009). The right to a public trial extends to the jury selection phase of trial, including the voir dire of prospective jurors. *Kelly v. State*, 195 Md. App. 403, 418 (2010) (citing *Presley v. Georgia*, 558 U.S. 209, 213 (2010) (per curiam)).

Nevertheless, "a criminal defendant's right to a public trial is not absolute." *Robinson v. State*, 410 Md. at 102. Closure of the courtroom "'may be warranted under some circumstances, in order to maintain order, to preserve the dignity of the court, and to meet the State's interests in safeguarding witnesses and protecting confidentiality.'" *Id.* at 103 (quoting *Walker v. State*, 125 Md. App. 48, 69 (1999)). The Supreme Court has held that a trial court may close a criminal trial from the public if four requirements are satisfied: "(1) 'the party seeking to close the hearing must advance an overriding interest that is likely to be prejudiced'; (2) 'the closure must be no broader than necessary to protect that interest'; (3) 'the trial court must consider reasonable alternatives to

closing the proceeding'; and (4) the trial court 'must make findings adequate to support the closure.'" *Markham v. State*, 189 Md. App. 140, 153 (2009) (quoting *Waller v. Georgia*, 467 U.S. 39, 48 (1984)).

Dallas contends that the circuit court violated his right to a public trial "because an entire day of voir dire was conducted in a private room in a church off-site from the Circuit Court for Harford County." Dallas acknowledges that his trial took place shortly after the Maryland Judiciary ended a statewide suspension of jury trials in response to the COVID-19 pandemic. Dallas argues, "assuming, *arguendo* that the COVID-19 pandemic and the precautions put in place for health and safety were a valid reason in [this] case to conduct voir dire in a private room in a church," the record does not show "that the trial court made the appropriate findings" to support such a closure under *Waller v. Georgia*. Dallas concludes: "Whatever specific considerations supported conducting voir dire in a private room in a church, they do not appear to mirror the considerations recognized by the Supreme Court in [*Waller v. Georgia*]."

As the State correctly observes, Dallas's contention that the court violated his right to a public trial is unpreserved.

Except for certain jurisdictional issues, this Court "[o]rdinarily . . . will not decide any . . . issue unless it plainly appears by the record to have been raised in or decided by the trial court[.]" Md. Rule 8-131(a). This Court may, however, "decide such an issue if necessary or desirable to guide the trial court or to avoid the expense and delay of another appeal." *Id.* The purpose of this rule "is 'to ensure fairness for all parties in a case and to

promote the orderly administration of law[,]' . . . 'by requiring counsel to bring the position of their client to the attention of the [trial] court at trial so that the trial court can pass upon, and possibly correct any errors in the proceedings.'" *Robinson v. State*, 410 Md. at 103 (quoting *State v. Bell*, 334 Md. 178, 189 (1994)) (further quotation marks omitted). For the purpose of appellate review of a ruling or order that does not concern the admissibility of evidence, "it is sufficient that a party, at the time the ruling or order is made or sought, makes known to the court the action that the party desires the court to take or the objection to the action of the court." Md. Rule 4-323(c).

In *Robinson v. State*, 410 Md. at 110, the Court of Appeals held that "a claimed violation of the right to a public trial must be preserved for appellate review by a timely objection at trial[.]" In that case, the Court had granted certiorari to consider whether a trial court had violated a defendant's right to a public trial by ordering certain members of the defendant's family and spectators to leave the courtroom. *Id.* at 94-95. The defendant argued that, under the analysis set forth in *Waller v. Georgia*, 467 U.S. at 48, the trial court's action was unwarranted. *Robinson v. State*, 410 Md. at 100-01. The Court of Appeals did not decide the public-trial issue, however, because the defendant "did not object to the court's order and thereby failed to preserve the claim for appellate review." *Id.* at 95.

The Court explained that, although Md. Rule 8-131(a) grants an appellate court the discretion "to address the merits of an unpreserved issue, in the appropriate case[,]" this discretion "is to be rarely exercised and only when doing so furthers, rather than

undermines, the purposes of the rule." *Robinson v. State*, 410 Md. at 104 (citations omitted). The Court further explained that an appellate court "should exercise the discretion to review an unpreserved claim of error 'only when it is clear that it will not work an unfair prejudice to the parties or to the court.'" *Id.* (quoting *Jones v. State*, 379 Md. 704, 714 (2004)). "In addition," the Court noted, the appellate court should evaluate whether addressing the unpreserved issue "'will promote the orderly administration of justice,' by 'prevent[ing] the trial of cases in a piecemeal fashion, thereby saving time and expense and accelerating the termination of litigation.'" *Robinson v. State*, 410 Md. at 104-05 (quoting *Jones v. State*, 379 Md. at 715).

The Court reasoned that "[n]one of these policy reasons" would justify reviewing the defendant's claimed violation of the right to a speedy trial where the defense failed to object to the order closing the courtroom. *Robinson v. State*, 410 Md. at 105. The Court reasoned, "had defense counsel brought to the attention of the [trial] court the lack of a full *Waller v. Georgia* analysis before exclusion of persons from the courtroom," the trial court "would have undertaken the on-the-record fact-finding and analysis required by that decision." *Id.* The Court observed: "this is not a case in which interest in the orderly administration of justice augurs in favor of reviewing the unpreserved issue, particularly given that the lack of objection leaves us with a less than fully developed record on the issue." *Id.* at 105-06. The Court said that it was "particularly loath" to address the unpreserved issue given "that the very analysis [the defendant] complain[ed] was not done by the trial court likely would have been done had he brought the matter to the

court's attention." *Id.* at 111. The Court reasoned that, under the circumstances, "[i]t would be unfair to the [trial] court and prejudicial to the State to review [the defendant's] unpreserved claim of error." *Id.* at 105.[1]

In the present case, the issue of whether conducting voir dire at an off-site location violated Dallas's right to a public trial was neither raised in nor decided by the trial court. Although Dallas's trial counsel made an objection, the grounds for that objection were unrelated to his right to a public trial. Specifically, trial counsel invoked "the separation of church and state" and objected to the court's decision to conduct voir dire "in a church." Counsel asserted that it was "inappropriate . . . to be in a religious setting while conducting business of the Court." Counsel suggested that the proceedings need not take place in "a normal setting in the Court," as long as the proceedings took place "in a civil nonreligious location." After conferring with Dallas, counsel restated the objection to being "in a house of worship so to speak conducting this portion of the jury trial." Moments later, when asking the administrative judge's designee to grant a postponement, defense counsel again objected "to conducting any portion of the trial in a church." Asserting that it was "completely inappropriate for a judicial proceeding to be conducted in a religious building or a house of worship," counsel asked for a postponement so that the parties could "conduct voir dire in a courthouse."

[1] *See also Kyler v State*, 218 Md. App. 196, 212-13 (2014) (declining to review contention that trial court violated defendant's right to a public trial where trial counsel made no objection to court's proposal to clear the courtroom during testimony of certain witnesses and to allow the public to listen to testimony in a separate room).

Under the circumstances, it would be unfair to the trial court and to the State for us to attempt to review a claimed violation of the right to a public trial. Trial counsel's objection to the "religious" nature of the location for jury selection is inadequate to preserve the contention that conducting jury selection at that location amounted to an impermissible closure of the courtroom. The objection was insufficient to alert the court or the State that the defense wanted the court to determine whether conducting the proceedings at that location amounted to a closure of the court and, if so, whether the closure was warranted under the four-factor analysis of *Waller v. Georgia*. Because trial counsel raised specific grounds for the objection, the trial judge and the administrative judge's designee considered only whether the setting was appropriate for the proceedings despite its religious nature.

In his brief, Dallas characterizes the location of the voir dire proceedings as "private," but many privately-owned premises remain entirely open and freely accessible to the public. As the State explains in its brief, because trial counsel failed to raise the public-trial issue, the record does not disclose the extent to which the proceedings may have been open or closed to the public.[2] If trial counsel had raised a public-trial

[2] The State writes:

> Was the off-site facility actually closed to the public? Was its location and availability known within the courthouse community, precisely as it would have been if voir dire had been conducted in a courtroom in the courthouse? Was there an accommodation available (or already in place) to satisfy this argument that was never made? The answers to these questions are not in the record, because the argument was never made.

objection, the circuit court and the State would have had the opportunity to address whether holding jury selection at that location amounted to a closure of the court and, if so, whether the closure would advance an overriding interest, whether the closure was no broader than necessary to protect that interest, and whether other reasonable alternatives existed. On appeal, Dallas faults the circuit court for failing to make "appropriate findings" under the four-factor test set forth in *Waller v. Georgia*. Yet "the very analysis [Dallas] complains was not done by the trial court likely would have been done had he brought the matter to the court's attention." *Robinson v. State*, 410 Md. at 111.

In sum, the circumstances here do not warrant review of the unpreserved contention that the circuit court violated Dallas's right to a public trial during the first day of jury selection.

II. Propriety of Voir Dire Questions

As a separate issue in the appeal, Dallas contends that the trial court asked two improper questions during voir dire. He cites a series of cases in which the Court of Appeals has disapproved the use of certain "compound" voir dire questions to assess potential biases of jurors.

In *Dingle v. State*, 361 Md. 1 (2000), the Court of Appeals held that a trial court erred in asking, over a defense objection, "a series of two part questions, the answers to which, the court instructed, need not be revealed unless a member of the venire panel answered both parts in the affirmative." *Id.* at 4. For instance, the trial court asked: "'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?'" *Id.* at 5. The Court of Appeals held that, by asking those questions in a two-part format, the trial court abdicated its responsibility to evaluate the fitness of prospective jurors. *Id.* at 8-9.

The Court reasoned: "Because [the trial judge] did not require an answer to be given to the question as to the existence of the status or experience unless accompanied by a statement of partiality, the trial judge was precluded from discharging his responsibility, *i.e.* exercising discretion, and, at the same time, the petitioner was denied the opportunity to discover and challenge venire persons who might be biased." *Dingle v. State*, 361 Md. at 17. In the Court's view, "a voir dire inquiry in which a venire person is required to respond only if his or her answer is in the affirmative to both parts of a question directed at discovering the venire persons' experiences and associations and their effect on that venire person's qualification to serve as a juror, and producing information only about those who respond," improperly "allows, if not requires, the individual venire person to decide his or her ability to be fair and impartial." *Id.* at 21.

The Court of Appeals revisited the holding of *Dingle* in *Pearson v. State*, 437 Md. 350 (2014). In that case, in a trial for "various drug-related crimes" (*id.* at 354), the court asked the following voir dire question: "'Does any member of the panel hold such strong feelings regarding violations of the narcotics laws that it would be difficult for you to fairly and impartially weigh the facts of this trial where narcotics violations have been

alleged?'" *Id.* at 355. The Court acknowledged that the trial court's question was "phrased exactly as th[e] Court [had] mandated" in a prior opinion on the subject. *Id.* at 361 (citing *State v. Shim*, 418 Md. 37, 54 (2011)). The Court nevertheless concluded that this question "was phrased improperly." *Pearson v. State*, 437 Md. at 361. The Court reasoned that this question, like the "compound questions" in *Dingle*, inappropriately "'shift[ed] from the trial [court] to the [prospective jurors] responsibility to decide [prospective] juror bias.'" *Id.* at 362 (quoting *Dingle v. State*, 361 Md. at 21).

The Court held that, "on request, a trial court must ask during *voir dire*: 'Do any of you have strong feelings about [the crime with which the defendant is charged]?'" *Pearson v. State*, 437 Md. at 363 (brackets in original). The Court explained that a prospective juror is not "automatically disqualified simply because the prospective juror responds affirmatively to the 'strong feelings' *voir dire* question." *Id.* at 364. Rather, an affirmative response to the question triggers an additional inquiry: "After the prospective juror is individually questioned by the attorneys or on request by the trial court, the trial court determines whether or not that prospective juror's strong feelings about the crime with which the defendant is charged constitute specific cause for disqualification." *Id.*

The Court of Appeals reaffirmed the *Pearson* holding in *Collins v. State*, 463 Md. 372 (2019). In that case, the defendant was charged with first-degree burglary and theft of property with a value of less than $1,000. *Id.* at 378. The trial court asked: "'Does anyone on this panel have any strong feelings about the offense of burglary to the point where you could not render a fair and impartial verdict based on the evidence?'" *Id.* The

trial court also asked: "'Does any member of this panel have strong feelings about the offense of theft to the extent that it would make you unable to be fair and impartial and base your decision only on the evidence in this case[?]'" *Id.* The trial court overruled a defense objection, in which the defense requested that the court ask the following questions: "'Does any member of this jury panel have strong feelings about the offense of burglary?'"; and "'[D]oes any member of this panel have strong feelings about the offense of theft?'" *Id.* at 382-83.

The Court of Appeals held that the trial court "abused its discretion by asking compound 'strong feelings' questions and refusing to ask properly-phrased 'strong feelings' questions during *voir dire*." *Collins v. State*, 463 Md. at 396. The Court reiterated that "it is improper for a trial court to ask the 'strong feelings' question in compound form, such as: 'Does any member of the jury panel have such strong feelings about [the charges in this case] that it would be difficult for you to fairly and impartially weigh the facts?'" *Id.* The Court explained that "[c]ompound 'strong feelings' questions are improper," because, "where a trial court asks a compound 'strong feelings' question, 'each prospective juror decides whether his or her strong feelings (if any) about the crime with which the defendant is charged would make it difficult for the prospective juror to fairly and impartially weigh the facts.'" *Id.* at 397 (quoting *Pearson v. State*, 437 Md. at 362).

Relying on *Dingle*, *Pearson*, and *Collins*, Dallas contends that certain voir dire questions at his trial were improper. As mentioned previously, during the first stage of

voir dire, the trial judge informed prospective jurors that Dallas had been charged with "[p]ossession of CDS with intent to distribute, cocaine" and "possession of CDS, that being cocaine." The judge then asked: "Do any of you have strong feelings about any of the offenses charged in the case?" Moments later, the court asked the following question, which had been suggested by both attorneys: "Does the nature of the building in which we're conducting the voir dire this morning in any way effect [sic] your ability to be a fair and impartial juror?" None of the prospective jurors gave an affirmative response to either of these questions.

Dallas takes issue with the wording of these two questions. Dallas asserts that "the strong feelings question about 'any of the offenses charges in the case'" failed to differentiate between prospective jurors who might have strong feelings about simple possession of a controlled dangerous substance, the "more serious" charge of possession of a controlled dangerous substance with intent to distribute, or both charges. Dallas argues that this question "made it impossible for the trial court to distinguish prospective jurors who did not have the potentially strong feelings for one of the charges but not the other." Dallas further argues that the question about the "nature of the building" was improper because it "called upon prospective jurors themselves to determine their ability to be fair and impartial." Dallas argues that the question "made it impossible for the trial court to distinguish [between] prospective jurors who did not have potentially disqualifying feelings about [conducting] voir dire in a church from prospective jurors who did have strong feelings but subjectively thought they could be fair and impartial."

Dallas concedes that his trial counsel made no objection to either of these voir dire questions. Consequently, the issue is unpreserved. Generally, "[t]o preserve any claim involving a trial court's decision about whether to propound a voir dire question, a defendant must object to the court's ruling." *Foster v. State*, 247 Md. App. 642, 647 (2020), *cert. denied*, 475 Md. 687 (2021). "In addition, if the claim involves the court's decision to ask a voir dire question over a defense objection, the defendant must renew the objection upon the completion of jury selection." *Id.* at 647-48.

Although the issue is unpreserved, Dallas asks this Court to "exercise its discretion" to address the unpreserved issue under "plain error review." Dallas fails to elaborate on his suggestion that the alleged error in the wording of these voir dire questions amounts to "plain error."

The "exercise of discretion to engage in plain error review is 'rare.'" *Yates v. State*, 429 Md. 112, 131 (2012) (quoting *Savoy v. State*, 420 Md. 232, 243 (2011)). "Plain error review is 'reserved for 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)). The Court of Appeals has identified four conditions that ordinarily must be met before this Court may reverse a judgment for plain error:

> 1. There must be a legal error that has not been intentionally relinquished or abandoned by the appellant.
>
> 2. The error must be clear or obvious, and not subject to reasonable dispute.

> 3. The error must have affected the appellant's substantial rights, which in the ordinary case means that it affected the outcome of the proceedings.
>
> 4. If the previous three parts are satisfied, the appellate court has discretion to remedy the error, but it should exercise that discretion only if the error affects the fairness, integrity or reputation of judicial proceedings.

Winston v. State, 235 Md App. 540, 567 (2018) (citing *Newton v. State*, 455 Md. at 364); *accord Beckwitt v. State*, ___ Md. ___, ___, 2022 WL 260176, at *30 (Jan. 28, 2022).

"Because each one of the four conditions is, in itself, a necessary condition for plain error review, the appellate court may not review the unpreserved error if any one of the four has not been met." *Winston v. State*, 235 Md. App. at 568. In his appellate brief, Dallas does not attempt to explain why any of these conditions are satisfied.

The alleged error in the question about the "nature of the building" fails to satisfy even the first condition for plain-error review. Dallas's trial counsel specifically asked the trial court to ask the question in a compound form: "Does the nature of the building in which we're conducting voir dire have any impact on your ability to be a fair and impartial juror?" The trial court proceeded to ask the question using wording nearly identical to the wording suggested by defense counsel. Here, "there is more than the simple lack of an objection" to the voir dire question. *Booth v. State*, 327 Md. 142, 180 (1992). By requesting that the court ask the allegedly improper voir dire question, Dallas's trial counsel affirmatively waived any objection to the decision to ask that voir dire question. This affirmative waiver precludes any potential determination of plain error. *See State v. Rich*, 415 Md. 567, 580-81 (2010); *Olson v. State*, 208 Md. App. 309, 365 (2012).

Although defense counsel did not affirmatively request the voir dire question asking whether prospective jurors had strong feelings about "any of the offenses charged," the alleged error in that question does not satisfy the second requirement for plain-error review. The alleged error is by no means "clear or obvious, and not subject to reasonable dispute." *Winston v. State*, 235 Md. App. at 567.

It is true that the question included two inquiries: one asking whether prospective jurors had strong feelings about possession of cocaine and a second asking whether they had strong feelings about possession of cocaine with intent to distribute. Arguably, it would have been better to ask two separate "strong feelings" questions for the two offenses. The question asked here, however, is not the type of "compound" question that the Court of Appeals deemed improper in *Dingle*, *Pearson*, and *Collins*. As worded, the question still required the prospective jurors to respond if they had strong feelings about either possession of cocaine, or possession of cocaine with intent to distribute, or both offenses. The question did not call upon jurors to decide whether those strong feelings might impair their ability to decide the case fairly and impartially. If anyone had answered the question in the affirmative, the parties and the court undoubtedly would have followed up with additional questions to assess the nature of those "strong feelings" and its potential effect on the person's fitness to serve as a juror.

Maryland appellate courts have yet to address whether a trial court must ask separate "strong feelings" questions for each offense charged. Thus, "the 'error' of which appellant complains was not 'plain' at the time of trial in this case." *Jefferson v.*

State, 191 Md. App. 233, 247 (2010) (declining to exercise discretion to notice plain error concerning manner of conducting voir dire, where Maryland appellate courts had not yet addressed issue at time of trial). Moreover, the alleged error cannot even be said to be clear at the time of this opinion. Accordingly, this alleged error "is not so compelling or extraordinary that it requires review absent an objection at trial." *Jefferson v. State*, 194 Md. App. 190, 201 (2010).

As a fallback position, Dallas seeks reversal on the ground that his trial counsel provided "ineffective assistance of counsel in failing to object to the compound voir dire questions and expressing satisfaction with the court's voir dire overall."

To establish ineffective assistance of counsel, a defendant must show: (1) that trial counsel's performance fell below an objective standard of reasonableness and was not pursued as a form of trial strategy; and (2) that there is a reasonable probability that, but for the deficient performance, the result of the proceeding would have been different. *See, e.g.*, *Newton v. State*, 455 Md. 341, 355 (2017) (discussing *Strickland v. Washington*, 466 U.S. 668 (1984)). As Dallas acknowledges, claims of ineffective assistance of counsel ordinarily must be raised in a post-conviction proceeding rather than in a direct appeal. The rationale for this rule is as follows:

> In essence, it is because the trial record does not ordinarily illuminate the basis for the challenged acts or omissions of counsel, that a claim of ineffective assistance is more appropriately made in a post conviction proceeding[.] Moreover, under the settled rules of appellate procedure, a claim of ineffective assistance of counsel not presented to the trial court generally is not an issue which will be reviewed initially on direct appeal, although competency of counsel may be raised for the first time at a[ ] post conviction proceeding. Upon such a collateral attack, there is presented an

> opportunity for taking testimony, receiving evidence, and making factual findings concerning the allegations of counsel's incompetence. By having counsel testify and describe his or her reasons for acting or failing to act in the manner complained of, the post conviction court is better able to determine intelligently whether the attorney's actions met the applicable standard of competence.

Crippen v. State, 207 Md. App. 236, 250-51 (2012) (quoting *Tetso v. State*, 205 Md. App. 334, 378 (2012)).

This Court may consider claims of ineffective assistance of counsel on direct appeal "only when 'the critical facts are not in dispute and the record is sufficiently developed to permit a fair evaluation of the claim.'" *Mosley v. State*, 378 Md. 548, 566 (2003) (quoting *In re Parris W.*, 363 Md. 717, 726 (2001)). Dallas asserts this case is one of the rare situations in which this Court should decide the issue of ineffective assistance based on the trial record alone. According to Dallas, it is "entirely plausible" that his trial counsel failed to object to the voir dire questions because his counsel was "unaware" of the requirements of *Dingle*, *Collins*, and *Pearson*.

We disagree with Dallas's assertion that unawareness of the applicable law is "the only reason" why an attorney might decide to raise no objections to the voir dire questions that he challenges in this appeal. "'Where, as here, the record sheds no light on why counsel acted as [she] did, direct review by this Court would primarily involve the perilous process of second-guessing[.]'" *Addison v. State*, 191 Md. App. 159, 175 (2010) (quoting *Johnson v. State*, 292 Md. 405, 435 (1982)). Because the potential validity of the ineffective assistance of counsel claim cannot be fairly determined from the current record, it would be improper to attempt to decide the issue in this direct appeal. *See*

Tetso v. State, 205 Md. App. at 380.

JUDGMENTS OF THE CIRCUIT COURT FOR HARFORD COUNTY AFFIRMED. COSTS TO BE PAID BY APPELLANT.