Circuit Court for Montgomery County
Case No. 138377C

UNREPORTED*

IN THE APPELLATE COURT

OF MARYLAND**

No. 609

September Term, 2022

RONALD DAVIS

v.

STATE OF MARYLAND

Wells, C.J.,
Friedman,
Zic,
JJ.

Opinion by Zic, J.

Filed: May 26, 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.

This case arises out of an incident between Ronald Davis, appellant, and Geneva McDaniel. After a jury trial, Mr. Davis was convicted of second-degree assault in connection with events that occurred on September 28, 2020. Mr. Davis presents three questions on appeal, which we have rephrased as follows:[1]

1. Whether the circuit court clearly erred when it denied Mr. Davis' *Batson* challenge.

2. Whether the circuit court abused its discretion when it declined to propound a requested voir dire question relating to potential juror bias.

3. Whether the circuit court abused its discretion when it precluded cross-examination of Ms. McDaniel and the State's expert witnesses as to Ms. McDaniel's diagnosis of psychosis-induced delusions prior to the incident.

[1] Mr. Davis phrases the questions as follows:

> 1. Where Mr. Davis showed that the prosecution used a peremptory strike to remove the only [B]lack person out of six people who did not respond to any voir dire questions, did the trial judge err by denying Mr. Davis'[] *Batson* challenge on the basis that Mr. Davis did not establish that the prosecution engaged in "a pattern" of using discriminatory strikes?
>
> 2. Where Mr. Davis is a male who has been accused of assault, did the trial judge err by refusing to propound a requested voir dire question relating to prospective jurors' possible bias towards believing accusations of assault if the alleged perpetrator is male?
>
> 3. Where defense counsel proffered that the complaining witness received a psychiatric diagnosis of psychosis induced delusions three months before alleging that she was assaulted, did the trial court err in precluding cross-examination on the complaining witness and the prosecution's expert as to the diagnosis?

For the reasons that follow, we answer the first two questions in the negative and conclude that the third issue was not properly preserved. We, therefore, affirm the judgment of the circuit court.

BACKGROUND

As of September 2020, Mr. Davis and Ms. McDaniel had been in a romantic relationship, on and off, for approximately three years. Mr. Davis and Ms. McDaniel have a daughter in common.

On September 26, 2020, Mr. Davis and Ms. McDaniel checked in to a hotel together and were scheduled to check out on September 28, 2020. Ms. McDaniel testified that on September 28, she felt "irritated" with Mr. Davis because he was "not paying for anything, not doing anything," and acting selfishly. She further testified that Mr. Davis smoked a cigarette in the hotel room, which she was nervous about because she had put a deposit down on the room. Ms. McDaniel identified Mr. Davis' smoking in the room as "the straw that broke the camel's back." Ms. McDaniel agreed, on cross-examination, that after Mr. Davis smoked the cigarette, Ms. McDaniel told him that she wanted to end their relationship.

Ms. McDaniel stated that after she told Mr. Davis that she wanted to end their relationship, he tried to backhand slap her. She testified that "the tip of his finger touched [her] cheek." The jury found Mr. Davis not guilty of the second-degree assault charge regarding this alleged backhand slap.

Ms. McDaniel also testified that after Mr. Davis slapped her, he strangled her.

She stated that she then "pushed him back" but that Mr. Davis "went for [her] neck again" and made a threatening comment. Ms. McDaniel testified that she then grabbed a candle and hit Mr. Davis on the head with it, and then left the hotel room. The jury found Mr. Davis not guilty of the first-degree assault charge regarding this strangulation, which required proof that Mr. Davis "intended to cause serious physical injury."[2] The jury convicted Mr. Davis of the second-degree assault charge regarding this strangulation, which required the lesser proof of "offensive physical contact" or "physical harm."

Ms. McDaniel stated that after she left the hotel room, she went down to the lobby in an elevator with Mr. Davis. On direct examination, Ms. McDaniel testified that Mr. Davis tried to "keep [her] from going downstairs and telling anybody what happened" by "grabbing" her and "saying please, please, I'm sorry, I'm sorry." However, during cross-examination of the detective who interviewed Ms. McDaniel on the day of the incident, both defense counsel and the State stipulated that Ms. McDaniel never told the detective that Mr. Davis begged, apologized, or asked her not to tell anyone what happened.

[2] At the time of the relevant conduct, on September 28, 2020, the statute defining first-degree assault did not define "strangling." Md. Code Ann., Crim. Law § 3-202 (2002, Repl. Vol. 2012). Two days after the relevant conduct, on October 1, 2020, a new Maryland law went into effect, which changed the definition of first-degree assault to include the act of "intentionally strangling," that is, "impeding the normal breathing or blood circulation of another person by applying pressure to the other person's throat or neck." 2020 Md. Laws, Ch. 119-20, *currently codified as* Crim. Law § 3-202(a), (b)(3). Under that new definition, if there was intentional strangling, the State would not have needed to establish that Mr. Davis "intended to cause serious physical injury." Mr. Davis, however, was properly indicted pursuant to the version of § 3-202 in effect prior to the October 1, 2020 change.

When Mr. Davis and Ms. McDaniel arrived in the lobby, Ms. McDaniel asked the person working at the front desk to call the police. Ms. McDaniel stated that she saw Mr. Davis go back into the elevator, come back down to the lobby with her phone in his hand, and run out of the hotel. The person who called the police, however, testified that he did not see a phone in Mr. Davis' hand, and he testified that Mr. Davis left the hotel walking, not running. The jury found Mr. Davis not guilty of the theft charge regarding Ms. McDaniel's phone.

On April 15, 2021, in the Circuit Court for Montgomery County, Mr. Davis was charged with first-degree assault, second-degree assault, and theft between $100 and $1,500. A jury trial took place April 11 through April 13, 2022. The jury found Mr. Davis not guilty of first-degree assault or theft but guilty of second-degree assault. On May 24, 2022, Mr. Davis was sentenced to ten years' incarceration with all but four years suspended, to be followed by three years of supervised probation. Mr. Davis noted this timely appeal.

DISCUSSION

I. THE CIRCUIT COURT DID NOT CLEARLY ERR WHEN IT DENIED MR. DAVIS' *BATSON*[3] CHALLENGE DURING JURY SELECTION.

During jury selection, defense counsel raised a *Batson* challenge to the State's use of a peremptory strike on prospective Juror 107:

> This juror didn't respond, like other jurors who didn't respond to the questions. The only different thing about this gentleman who was asked to be excused was his race. There [were] other jurors that didn't respond who the State seated.

The court responded, "[A] *Batson* challenge requires . . . a pattern established by discrimination or discriminatory strikes. When you say there's nothing different about him, I'm not sure what you mean by that." The court then identified various details about Juror 107: "He's 21. He's male. Has two year[s] [of] college. He lives in Silver Spring. He's a software developer." Defense counsel argued, "He's not different from other people who did not respond to any questions that the State seated. The only distinguishing factor about him is his race . . . ." The court further noted that Jurors 26, 34, 39, 51, 66, and 98 also did not respond to voir dire questions and asked, "[A]re you claiming that 107 has nothing different about him from those other six people?" Defense

[3] In *Batson v. Kentucky*, the United States Supreme Court found that the Equal Protection Clause "guarantees the defendant that the State will not exclude members of his race from the jury venire on account of race." 476 U.S. 79, 86 (1986). *Batson* protects "the defendant's right to a fair trial, . . . the venireperson's right not to be excluded on an impermissible discriminatory basis, and . . . public confidence in the judicial system." *Edmonds v. State*, 372 Md. 314, 329 (2002) (citations omitted).

Although the Maryland Declaration of Rights provides for similar protections, Mr. Davis has not advanced and we do not address any arguments predicated on those protections. Md. Const. Decl. of Rts. art. 21.

counsel responded, "That's correct."

The court denied this motion, stating the following:

> There's obvious differences just in the information on the page between he and the other individuals, so the striking of one person who happens to be African-American is not a pattern, so I'll deny the motion . . . to preclude the State from striking 107 based upon a *Batson* challenge.

Mr. Davis argues that the trial court applied the incorrect standard when evaluating his *Batson* challenge, which constitutes clear error. He contends that a party violates the Constitution by using a discriminatory strike against even one prospective juror; a pattern across multiple jurors is not required to establish discriminatory motive. Mr. Davis then argues that, under the proper standard, the trial court should have found that Mr. Davis established a prima facie case of discrimination, which satisfies the first step of the *Batson* analysis and shifts the burden to the State. He states that "the existence of differences between prospective jurors does not defeat a prima facie case of discrimination where there is a reasonable inference of discriminatory intent." He argues that the court, therefore, should not have considered the jurors' differences until later in the *Batson* analysis. He also highlights that he need not identify an "identical [W]hite juror for the side-by-side comparison to be suggestive of discriminatory intent." Accordingly, Mr. Davis requests this Court to reverse the trial court's *Batson* ruling and to remand for a new *Batson* hearing.

The State, on the other hand, argues that the trial court's *Batson* ruling was not clearly erroneous and, therefore, should not be disturbed. The State contends that Mr. Davis had the burden to produce some evidence that the State's peremptory challenge

was discriminatorily motivated, the court "was plainly aware" of this burden, and the court determined that Mr. Davis did not establish a prima facie case of discrimination. The State argues that, although the court used the word "pattern" when denying this motion, the court properly focused on "whether there [was] prima facie evidence of a discriminatory intent motivating the prosecutor's peremptory strike." When ruling that the totality of the facts did not support an inference of discrimination, the judge noted that there were "obvious differences" between Juror 107 and the other potential jurors who did not respond to voir dire questions. Finally, the "page"—jury list—to which the court refers when denying the motion is not in the record before this Court, and the State argues that such a "critical deficiency in the record" should not benefit Mr. Davis when Mr. Davis, as the appellant, "is responsible for producing that record."

When this Court reviews a *Batson* challenge, we do not overturn a trial court's ruling on the issue of discriminatory intent unless the ruling is clearly erroneous. *Snyder v. Louisiana*, 552 U.S. 472, 477 (2008). "The trial judge's findings in evaluating a *Batson* challenge are essentially factual and accorded great deference on appeal." *Edmonds v. State*, 372 Md. 314, 331 (2002); *see also Berry v. State*, 155 Md. App. 144, 163-64 (2004) (upholding trial court's discrediting of counsel's "facially neutral explanation for the strike of the juror," reasoning that we "ought not and therefore do not second-guess the trial court's assessment of . . . credibility on that point"). If the trial court did not satisfy the requirements of *Batson*, "the proper remedy . . . is a new *Batson* hearing in which the trial court must satisfy the three-step process mandated by [*Batson*] and its progeny." *Mills v. State*, 239 Md. App. 258, 272 (2018) (citations omitted).

In *Batson v. Kentucky*, the United States Supreme Court held that the Equal Protection Clause "forbids the prosecutor to challenge potential jurors solely on account of their race." 476 U.S. at 89. "The underlying purpose of *Batson* and its progeny is to protect the defendant's right to a fair trial, to protect the venireperson's right not to be excluded on an impermissible discriminatory basis, and to preserve public confidence in the judicial system." *Edmonds*, 372 Md. at 329 (citations omitted).

In *Whittlesey v. State*, the Supreme Court of Maryland[4] explained the three-step process a court must follow when evaluating a *Batson* challenge. 340 Md. 30, 46-47 (1995). First, "[t]he burden is initially upon the defendant to make a prima facie showing of purposeful discrimination." *Id.* at 46 (citations omitted). To establish a prima facie case, the defendant must demonstrate that the "totality of the relevant facts gives rise to an inference of discriminatory purpose." *Ray-Simmons v. State*, 446 Md. 429, 436 (2016) (quoting *Johnson v. California*, 545 U.S. 162, 168 (2005); *Stanley v. State*, 313 Md. 50, 71 (1988) ("[T]he prima facie showing threshold is not an extremely high one—not an onerous burden to establish.").

Second, "[i]f the requisite showing has been made, the burden shifts to the State to come forward with a neutral explanation for challenging [B]lack jurors." *Whittlesey*, 340

[4] At the November 8, 2022 general election, the voters of Maryland ratified a constitutional amendment changing the name of the Court of Appeals of Maryland to the Supreme Court of Maryland. The name change took effect on December 14, 2022. *See also* Md. Rule 1-101.1(a) ("From and after December 14, 2022, any reference in these Rules or, in any proceedings before any court of the Maryland Judiciary, any reference in any statute, ordinance, or regulation applicable in Maryland to the Court of Appeals of Maryland shall be deemed to refer to the Supreme Court of Maryland . . . .").

Md. at 46-47 (citations and quotation marks omitted). This is a low bar, as "[a]ny reason offered will be deemed race-neutral unless a discriminatory intent is inherent in the explanation." *Edmonds*, 372 Md. at 330; *Hernandez v. New York*, 500 U.S. 352, 360 (1991) ("At this step of the inquiry, the issue is the facial validity of the . . . explanation.").

Third, if the State offers a race-neutral explanation, the defense "must demonstrate that the offered explanation merely is a pretext for a discriminatory intent or purpose." *Edmonds*, 372 Md. at 330; *Gilchrist v. State*, 340 Md. App. 606, 627 (1995) (explaining that the court may also conclude that the State's explanation is pretextual without such demonstration from the defense). The court must then "determine whether the defendant has carried his burden of proving purposeful discrimination." *Whittlesey*, 340 Md. at 47 (citations and quotation marks omitted).

Here, the trial court ruled that Mr. Davis did not establish a prima facie case of discrimination when it denied his motion under *Batson* without requiring the State to articulate a nondiscriminatory reason for striking Juror 107. Under *Batson*, "the striking of a single [B]lack juror for racial reasons violates the Equal Protection Clause." *Stanley v. State*, 313 Md. 50, 84 (1988). "A single invidiously discriminatory governmental act is not immunized by the absence of such discrimination in the making of other comparable decisions." *Batson*, 476 Md. at 95 (citations and quotation marks omitted). To demonstrate discriminatory intent, however, the defense must identify circumstances beyond the fact that one peremptory strike was used against a Black venireperson. *Id.* at 85.

In *Stanley v. State*, the Supreme Court of Maryland articulated how a defendant satisfies the first step of the *Batson* analysis. 313 Md. at 71-72. First, the defendant must be "a member of a cognizable racial group" and must show that the "State has used peremptory challenges to remove members of that racial group from the venire." *Id.* at 71. In this case, Mr. Davis and the stricken juror are Black men. Next, "the defendant is entitled to rely on the fact, as to which there can be no dispute, that peremptory challenges constitute a jury selection practice that permits those to discriminate who are of a mind to discriminate." *Id.* at 71-72 (citation and quotation marks omitted). Finally, "the defendant must show that these facts and any other relevant circumstances raise a rebuttable presumption that the prosecutor used that practice to exclude the [potential jurors] from the [] jury on account of their race." *Id.* at 72 (citation and quotation marks omitted).

The United States Supreme Court held that "more likely than not" is too high a standard "by which to measure the sufficiency of a prima facie case," but the defendant must produce "evidence sufficient to permit the trial judge to draw an inference that discrimination has occurred." *Johnson*, 545 U.S. at 168, 170. Though a defendant must provide sufficient grounds for the court to infer discrimination, he is not required to demonstrate that, for example, the stricken Black juror and the non-stricken White jurors were identical in every way except for their race. *Flowers v. Mississippi*, 139 S. Ct. 2228, 2249 (2019) ("[A] defendant is not required to identify an *identical* [W]hite juror for the side-by-side comparison [of jurors] to be suggestive of discriminatory intent.").

At the first step of the *Batson* analysis, the trial judge must determine whether,

given the totality of the relevant facts, he could reasonably infer that the peremptory strike was discriminatory. *Ray-Simmons*, 446 Md. at 436. In this case, when Mr. Davis' trial counsel raised a *Batson* challenge to the State's use of a peremptory strike on prospective Juror 107, she stated that Juror 107, like several other potential jurors, did not respond to any of the voir dire questions. Defense counsel argued that Juror 107's only distinguishing characteristic was his race. The trial judge called on defense counsel to explain this argument, noting that Juror 107's demographic information and personal history included various distinguishing features. Defense counsel still asserted, without further explanation, that Juror 107 had "nothing different about him" besides his race. Relying on the totality of the facts before him, the trial judge determined that the peremptory challenge did not give rise to an inference of discrimination. Because the court determined that Mr. Davis did not establish a prima facie case of intentional discrimination, the burden did not shift to the State such that the State was required to provide a nondiscriminatory explanation for the peremptory strike.[5]

Also, the record before this Court does not contain the jury list to which the trial judge referred when reviewing this *Batson* challenge. Mr. Davis assures this Court that he does not ask us "to assume that the jury list shows no demographic differences

[5] The State did not offer, nor was it asked to offer, a race-neutral explanation for the challenged peremptory strike. "Once a prosecutor has offered a race-neutral explanation for the peremptory challenges and the trial court has ruled on the ultimate question of intentional discrimination, the preliminary issue of whether the defendant had made a prima facie showing becomes moot." *Hernandez*, 500 U.S. at 359. This was not the case here.

between Juror 107 and the other prospective jurors who were not struck." The trial judge relied, however, on the jury list when reviewing the totality of the relevant facts, and neither that document nor a record of what that document contains as to the non-stricken jurors is before us on appeal. For these reasons, we cannot find that the court's determination was clearly erroneous.

II. THE CIRCUIT COURT DID NOT ABUSE ITS DISCRETION WHEN IT DECLINED TO ASK A QUESTION REQUESTED BY MR. DAVIS DURING VOIR DIRE[6] BECAUSE OTHER PROPOUNDED QUESTIONS ADDRESSED THE SAME POTENTIAL JUROR BIAS.

During jury selection, defense counsel submitted the following voir dire question for the court to issue to the jury pool: "Is there anyone who's more likely to believe an accusation of assault if the alleged perpetrator is a man?" At the beginning of jury selection, the court explained to the potential jurors that the case involved allegations that Mr. Davis "committed a first-degree assault by strangling Geneva McDaniel." The court then began questioning the potential jurors. After propounding several questions—filling about six pages of transcript—the court explained and asked the following:

> [E]very individual who appears in court needs to be treated equally and fairly, and *we need to make sure that jurors are not going to judge or be prejudiced against the defendant because of the defendant's* race, color, national origin, immigration status, appearance, or *gender*.[7]
>
> So is there any member of the jury panel that would be

[6] "Voir dire" is the questioning of prospective jurors. *Pearson v. State*, 437 Md. 350, 356 (2014).

[7] We note that, in context, the trial judge was referencing Mr. Davis' male sex. As such, we shall use the term "sex" rather than "gender" in our discussion of voir dire because we recognize the critical distinctions and overlap between these terms. *See infra* at 18, 18 n.10.

> unable to follow that jury instruction?

There was no response to this question, indicating that the potential jurors believed they could follow that instruction.

The court did not, however, ask defense counsel's question as requested. At the end of the court's voir dire, defense counsel asked to put exceptions on the record, highlighting, in part, that she had requested the above-noted question. She stated, "I think that Your Honor asked a different form of that question, but this was worded in this particular way specifically." The court explained its choice as follows:

> I think it was covered in my questions because I asked whether or not they would either be more likely or less likely to believe a witness if they were called by the State, if they were a person accusing someone of a crime, or if they were accused of a crime, or based upon gender.

At that point, defense counsel responded, "Understood."

We initially note that this issue is preserved for appellate review. Md. Rule 4-323(c) (requiring parties to object or make known to the court the action the party desires the court to take at the time of the court's ruling or order); *Lopez-Villa v. State*, 478 Md. 1, 11-13 (2022) (finding issue not preserved when counsel submitted questions before voir dire and did not object or re-request the questions after voir dire). Because trial strategy evolves throughout the trial, a party's submission of voir dire questions before the court decides which questions to ask does not indicate to the court that, after voir dire has concluded, the party still desires the court to ask those questions. *Lopez-Villa*, 478 Md. at 12-13; *see also Foster*, 247 Md. App. 642, 647-48 (2020) ("[I]f 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."). Here, though, defense counsel made known to the court the action she desired the court to take—asking her requested question using the particular language she proposed—both before and after voir dire. We find that this reasserted request after voir dire was sufficient to preserve the issue. Additionally, we do not interpret her response to the court's explanation as a waiver of the issue when she stated, "Understood."

Turning to the merits, Mr. Davis argues that the trial court abused its discretion by declining to propound his requested question during voir dire. He explains that voir dire protects a defendant's right to an impartial jury, and parties participating in a jury trial have the right to have questions propounded to the jury that are directed to a specific cause for disqualification. One such cause for disqualification, Mr. Davis asserts, is bias directly related to the crime or defendant. Mr. Davis argues that the court's questions did not address the same concern as the question proposed by defense counsel. Therefore, the specific cause for disqualification about which he was concerned was not revealed. Accordingly, Mr. Davis requests reversal.

The State, however, argues that, because the court asked questions that reasonably addressed Mr. Davis' concerns and the requested question was not mandatory, the trial court did not abuse its discretion by declining to ask it verbatim. The State asserts that "[d]efense counsel did not identify any metaphorical daylight between what the court had asked and what [Mr. Davis] had requested, other than noting the difference in specific 'wording.'"

This Court affords trial courts "considerable deference" regarding "the particular

questions to ask and areas to cover in voir dire." *Washington v. State*, 425 Md. 306, 314 (2012). We review the court's "rulings on the record of the voir dire process as a whole for an abuse of discretion." *Id.*

Defendants have a constitutional right to "an impartial jury." U.S. Const. amend. VI; Md. Const. Decl. of Rts. art. 21; *see State v. Ablonczy*, 474 Md. 149, 156 (2021) (discussing the right to an impartial jury provided for in the United States Constitution and Maryland Declaration of Rights). "Voir dire is critical to assure" this right "will be honored." *Washington*, 425 Md. at 312 (quoting *Stewart v. State*, 399 Md. 146, 158 (2007)) (citations omitted). The goal of voir dire is to "obtain jurors who will be impartial and unbiased." *Moore v. State*, 412 Md. 635, 645 (2010) (citation and quotation marks omitted). Maryland employs "limited voir dire," which aims to "ensure a fair and impartial jury by determining the existence of specific cause for disqualification."[8] *Pearson*, 437 Md. at 356-57 (citations and formatting omitted); *Williams v. State*, 246 Md. App. 308, 340-41 (2020) (discussing purpose Maryland voir dire).

It is the trial judge's duty to "eliminate from the venire panel prospective jurors who will be unable to perform their duty fairly and impartially and to uncover bias and prejudice." *Washington*, 425 Md. at 313; *Dingle v. State*, 361 Md. 1, 10 (2000). In furtherance of this duty, the court must tailor all voir dire questions to the particular facts

[8] In other jurisdictions, voir dire also allows "fishing for information" that assists in the "intelligent exercise of peremptory challenges." *Pearson*, 437 Md. at 357.

of the case and biases that could arise in the context of the case. *Moore*, 412 Md. at 654. The Supreme Court of Maryland explained the court's role in voir dire as follows:

> [T]he trial court has broad discretion[9] in the conduct of voir dire, most especially with regard to the scope and the form of the questions propounded, and that it need not make any particular inquiry of the prospective jurors unless that inquiry is directed toward revealing cause for disqualification.

Dingle, 361 Md. at 13-14 (citations omitted).

The Supreme Court of Maryland has established that certain areas of inquiry are "mandatory," such as bias related to race, ethnicity, or cultural heritage. *See Curtin*, 393 Md. at 609 n.8; *Pearson*, 437 Md. at 356-57 (citations and quotation marks omitted). It is undisputed that Mr. Davis' requested question at issue here does not fall into a mandatory area of inquiry.

Our Supreme Court has also more broadly identified two "areas of inquiry that may reveal cause for a juror's disqualification": "(1) examination to determine whether the prospective juror meets the minimum statutory qualifications for jury service, and (2) examination to discover the juror's state of mind as to the matter in hand or any collateral matter reasonably liable to have undue influence over him." *Washington*, 425 Md. at 313. "The latter category is comprised of 'biases directly related to the crime, the witnesses, or the defendant.'" *Pearson*, 437 Md. at 357 (quoting Washington, 425 Md. at 313). It is undisputed that Mr. Davis' requested question aimed to reveal cause for the jurors' disqualification by uncovering a bias related to the crime and defendant. The

[9] Along with broad discretion, the trial judge has great responsibility as the decision-maker throughout the voir dire process. *Dingle*, 361 Md. at 14-15.

issue is rather whether the court's questioning fairly covered the requested area of inquiry.

When a requested question is directed to a specific cause for disqualification, "failure to allow such questions is an abuse of discretion constituting reversible error." *Langley v. State*, 281 Md. 337, 342 (1977) (citation and quotation marks omitted). Importantly, however, "the form of questions propounded rest[s] firmly within the discretion of the trial judge." *Washington*, 425 Md. at 313; *see Dingle*, 361 Md. at 13 (stating that the court has broad discretion "with regard to the scope and the form of the questions propounded") (citations omitted). When this Court reviews a trial court's "exercise of discretion during the voir dire," we ask "whether the questions posed and the procedures employed have created a reasonable assurance that prejudice would be discovered if present." *Washington*, 425 Md. at 313 (citation omitted). "On review of the voir dire, an appellate court looks at the record as a whole to determine whether the matter has been fairly covered." *Id.* at 313-14 (citations omitted).

Here, defense counsel requested a question about prospective jurors' biases against Mr. Davis on the basis of sex[10] in the context of assault accusations: "Is there anyone who's more likely to believe an accusation of assault if the alleged perpetrator is a man?" The trial judge decided that his questions had reasonably covered this area of inquiry and, thus, declined to propound defense counsel's specific question. The judge reasoned that he had explained to the venire that the case involved allegations that Mr.

[10] *See supra* at 13 n.8 (explaining that the trial judge used the term "gender" but we use the term "sex" instead in this discussion).

Davis, a man, "committed a first-degree assault by strangling Geneva McDaniel," and later asked whether "any member of the jury panel would be unable to follow [the] jury instruction" that requires jurors to remain impartial toward the defendant regardless of sex, among other characteristics.

Both the court's questioning and Mr. Davis' requested question addressed the concern of potential juror bias on the basis of Mr. Davis' sex in the context of assault allegations. We afford significant deference to trial judges' exercise of discretion "with respect to the particular questions to ask." *Washington*, 425 Md. at 314. Because, in light of the record as a whole, the court's questioning fairly covered the requested area of inquiry and trial courts have broad discretion over the form of voir dire questions, the court did not abuse its discretion.

III. THE ISSUE OF REGULATION OF CROSS-EXAMINATION WITH RESPECT TO MS. MCDANIEL'S DIAGNOSIS FROM JUNE 2020 WAS NOT PRESERVED FOR APPELLATE REVIEW.

During a pre-trial hearing for a motion *in limine*, the State moved to exclude medical records from Ms. McDaniel's treatment at a "mental health behavioral treatment center" from earlier in 2020. The records indicated that Ms. McDaniel was diagnosed with "unspecified psychosis" on June 16, 2020 based on an episode she experienced in March 2020. Defense counsel sought to introduce these records on cross-examination of the State's expert witness, Dr. Jessica Volz,[11] if she "went into [Ms. McDaniel's]

[11] Dr. Volz, a Doctor of Nurse Practice, reviewed Ms. McDaniel's photos, emergency room records, and forensic examination records related to this incident to form an opinion as to whether strangulation occurred. At trial, she was qualified as an expert witness in "strangulation."

psychological history."[12] Defense counsel also asserted that she anticipated Ms. McDaniel would testify about having anxiety following the alleged assault and argued that Ms. McDaniel's prior diagnosis—and therefore the medical records—would be, therefore, relevant to "her ability to accurately . . . determine and experience life, as it is, in fact, around her." Defense counsel proffered that Ms. McDaniel did not take any medication or receive any treatment between her diagnosis on June 16, 2020 and this incident on September 28, 2020, which further weighed in favor of allowing the defense to question Ms. McDaniel to determine if she was experiencing delusions on September 28, 2020. The defense did not qualify any expert witnesses at trial.

During counsels' arguments, the court reasoned aloud as follows:

> Well it could be relevant. Are you calling a doctor to come in and explain to the jury what psychosis means, what to expect, what affect it has on a person, how it could affect, I mean the reason—if a person is suffering psychosis at the time of an event, that could clearly bear on issues like the ability to recall, the ability to perceive, the ability to recount, the ability to communicate. All those things would be highly relevant, it's just as if it would be relevant if someone was on PCP at the moment that an event occurred. The fact that they took it a month before, probably has very little to do with what would happen if they weren't taking it at the time. So, to just simply say that someone is diagnosed with [an] unspecified diagnosis three months before, without having a doctor here to explain what that means and to explain how that could, or that they were even suffering at the time, and how that could possibly impact a witness's testimony on the stand, I'm not sure how that would be relevant.

[12] Defense counsel described the records as self-authenticating and explained that she obtained them from the treatment center via subpoena after having provided notice to Ms. McDaniel that the records would be subpoenaed.

Defense counsel then suggested that she would present a hypothetical to Dr. Volz regarding an individual who presented with a mental-health history including delusions, and that she would ask Ms. McDaniel about her diagnosis on cross-examination. The jury could then make inferences to evaluate Ms. McDaniel's mental state on September 28, 2020, and its impact on her perception of reality and ability to recall events. The court responded, "I think it's proper to ask her that question about the day of the event. On the day of the event, were you experiencing this, that, or the other?"

When ruling on this motion, the court stated the following:

> I don't think that this whole anxiety report is even relevant to what we're doing, and secondly, this . . . appears to be a triage assessment by someone who is not a doctor that occurred in June regarding an event that occurred in March. And now you're asking to fast-forward to say that based upon this, that she can be questioned about a psychiatric condition that existed in September when there's no expert here to even describe what that means, and there's no evidence that she's waived her privileges with regard to these findings. I understand that you have obtained the records, because under the rules, you're permitted to obtain the records. And if there was that these records would be admissible without a custodian, if there weren't some other problem. But the main problem that I see is that . . . there's no evidence that she's waived her privilege with regard to psychiatric diagnosis and/or statements made to her through a treatment provider. So, unless that changes, I'll . . . *first of all find that the anxiety issue is not really relevant, and that these records are not permitted because they are privileged and not waived.*

The court excluded the records but allowed defense counsel to ask Ms. McDaniel "questions about her mental state at the time, if it bears on her ability to perceive, communication . . . . Like drinking, or using drugs, or having memory loss, I think those things are relevant."

At trial, the State called two expert witnesses and Ms. McDaniel, among other witnesses. Sandra Carlin was qualified for "forensic nursing" and Jessica Volz for "strangulation." Ms. Carlin, a Registered Nurse, conducted Ms. McDaniel's forensic examination following this incident on September 28, 2020. Dr. Volz, a Doctor of Nurse Practice, reviewed Ms. McDaniel's photos, emergency room records, and forensic examination records related to this incident to form an opinion as to whether strangulation occurred. Defense counsel asked Ms. Carlin only about the mental-health history that Ms. McDaniel shared during her forensic examination, which did not include a psychosis diagnosis. The State objected during this questioning to ensure that defense counsel did not venture into the material that had been redacted from admitted medical records. When cross-examining Dr. Volz, defense counsel asked if she was familiar with a page of medical records that identified a "diagnosis." When Dr. Volz responded that she was not, defense counsel asked, "Having seen that, would it alter the basis of your opinion?" The State objected, and the court sustained that objection. Defense counsel then moved on with her questioning.

Defense counsel also cross-examined Ms. McDaniel, and the State objected to questions related to Ms. McDaniel's discussion about her mental-health history with Ms. Carlin during her forensic examination. In response to this objection, the court clarified that defense counsel's questioning should be limited to Ms. McDaniel's mental state on the day of the incident. Defense counsel did not object to this ruling and went on to question Ms. McDaniel according to the ruling. Ms. McDaniel testified that, on the day of the incident, she was not experiencing symptoms of psychosis, paranoia,

hallucinations, or side effects of opioids.

Mr. Davis argues that the trial court abused its discretion when it precluded cross-examination on Ms. McDaniel's "diagnosis of psychosis induced delusions and paranoia." Mr. Davis first expounds on the purpose and importance of cross-examination. He then argues that "[d]efense counsel adequately proffered that [Ms. McDaniel's] psychosis induced delusions would impact her credibility" such that cross-examination on her diagnosis should have been permitted as relevant. Mr. Davis next argues that privileged medical records are not completely barred from use at trial because a defendant's constitutional rights may outweigh the witness's right to assert privilege.

Finally, Mr. Davis requests this Court to reverse the judgment of the circuit court because the error was not harmless: "[T]he jury did not know that Ms. McDaniel was experiencing psychosis induced delusions just three months before alleging that Mr. Davis strangled her." Also, the jury "did not hear cross-examination of the prosecution's expert witness as to the effect that such delusions would have had on Ms. McDaniel's ability to perceive and recount the events" from September 28, 2020. The State's case "depended entirely upon the credibility of the complaining witness, as no other witness saw what happened between Ms. McDaniel and Mr. Davis in the hotel room on the day in question." As such, Mr. Davis argues that the jury "may have discredited Ms. McDaniel's claims and acquitted Mr. Davis of second-degree assault" if the court had allowed Mr. Davis to cross-examine Ms. McDaniel and Dr. Volz as to Ms. McDaniel's untreated psychosis induced delusions.

The State, on the other hand, argues that the trial court "reasonably regulated [Mr.

Davis'] cross-examination by precluding" the medical records. The State explains that the trial court excluded the medical records as irrelevant but permitted defense counsel to ask Ms. McDaniel questions about symptoms she may have been experiencing on September 28, 2020. The State further explains that the State's expert witness was accepted as an expert in "strangulation," and she may not have been qualified to testify as to an individual's diagnosis of "non-specified psychosis." Finally, the State argues that, even if the court had found the medical records relevant, it also indicated that evidence of Ms. McDaniel's diagnosis from months prior to the incident threatened to confuse the issues or cause the jurors to be misled; this, too, was a proper basis to exclude the evidence.[13]

"Ordinarily[,] appellate courts will not address claims of error which have not been raised and decided in the trial court." *State v. Hutchinson*, 287 Md. 198, 202 (1980). Failure to contemporaneously object before the trial court results in an unpreserved issue that is not customarily reviewable by appellate courts. *Id.*; *Savoy v. State*, 420 Md. 232, 243 (2011) (noting the "general rule requiring preservation of claims by contemporaneous objection"). Here, this issue was not properly preserved for appellate review. During the hearing for a motion *in limine* on April 11, 2022, the court excluded Ms. McDaniel's medical records and stated that questions related to Ms. McDaniel's mental state on the day of the incident were appropriate. It is to this ruling

[13] Despite the State's arguments, we note that Mr. Davis' appellate papers do not put at issue the exclusion of the medical records but rather argue only that the circuit court improperly regulated cross-examination with respect to Ms. McDaniel's diagnosis.

that Mr. Davis cites in his appellate papers. The court did not articulate a ruling at that time that precluded cross-examination as to Ms. McDaniel's diagnosis.

Even if we look beyond the citations in Mr. Davis' appellate papers, we find that at trial, it is unclear whether defense counsel attempted to ask either Dr. Volz or Nurse Carlin about Ms. McDaniel's diagnosis from June 2020. During cross-examination of Ms. McDaniel, the court prevented defense counsel from asking about Ms. McDaniel's mental-health history pursuant to the earlier ruling. As noted above, when, during trial, the court made this ruling about defense counsel's line of questioning, defense counsel did not object. "[W]hen a motion *in limine* to exclude evidence is denied, the issue of the admissibility of the evidence that was the subject of the motion is not preserved for appellate review unless a contemporaneous objection is made at the time the evidence is later introduced at trial." *Klauenberg v. State*, 355 Md. 528, 539 (1999) (citations omitted); *see Wise v. State*, 243 Md. App. 257, 275-76 (2019) (finding objection during a hearing on motion in limine did not obviate need for timely objection when evidence was elicited at trial), *aff'd*, 471 Md. 431 (2020). We conclude that this issue regarding cross-examination is not preserved, even when we look beyond the citations in the appellate papers, because defense counsel did not object during trial when she attempted to elicit testimony about Ms. McDaniel's June 2020 diagnosis.

Maryland Rule 8-131(a) provides that this Court has the discretion to address an unpreserved issue. According to the Supreme Court of Maryland, though, this is

> a discretion that appellate courts should rarely exercise, as considerations of both fairness and judicial efficiency ordinarily require that all challenges that a party desires to

> make to a trial court's ruling, action, or conduct be presented in the first instance to the trial court so that (1) a proper record can be made with respect to the challenge, and (2) the other parties and the trial judge are given an opportunity to consider and respond to the challenge.

Chaney v. State, 397 Md. 460, 468 (2007). We are careful to address an unpreserved issue "only when doing so furthers, rather than undermines, the purposes of the rule." *Robinson v. State*, 410 Md. 91, 104 (2009). Rule 8-131 aims to ensure fairness to all parties and to promote the "orderly administration of the law." *Boulden v. State*, 414 Md. 284, 297 (2010) (citing *Robinson*, 410 Md. at 103).

Accordingly, we will note only that even if we were to address this unpreserved issue, no expert witness qualified at trial could properly be questioned about or testify about Ms. McDaniel's diagnosis from June 2020. Without an appropriately qualified expert witness to draw a connection between Ms. McDaniel's diagnosis and the matters before the jury in this case, the evidence would not "hav[e] any tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable"—it would not be relevant. Md. R. 5-401. The circuit court, therefore, could not have abused its discretion in precluding such questioning or testimony.

CONCLUSION

The circuit court did not clearly err when it denied Mr. Davis' *Batson* challenge during jury selection, and it did not abuse its discretion when it declined to propound, verbatim, defense counsel's requested voir dire question. Additionally, the issue of preclusion of certain testimony during cross-examination of the expert witnesses and Ms.

McDaniel was not properly preserved for appellate review. Accordingly, we affirm the judgment of the Circuit Court for Montgomery County.

JUDGMENT OF THE CIRCUIT COURT FOR MONTGOMERY COUNTY AFFIRMED. COSTS TO BE PAID BY APPELLANT.