Circuit Court for Charles County
Case No. 08-K-15-000557

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 696

September Term, 2017

CAROLINE CONWAY

v.

STATE OF MARYLAND

Graeff,
Leahy,
Eyler, Deborah S.
(Senior Judge, Specially Assigned),

JJ.

Opinion by Graeff, J.

Filed: January 15, 2019

On September 20, 2017, a jury sitting in the Circuit Court for Charles County convicted appellant, Caroline Conway, of first degree murder of Robert Mange, first degree attempted murder of Krystal Mange, conspiracy, and related offenses.[1] The court imposed multiple sentences of life, one without the possibility of parole, plus additional time for the firearm and reckless endangerment convictions.

On appeal, appellant presents one question for this Court's review, which we have revised slightly, as follows:

> Did the circuit court abuse its discretion in failing to probe the bias of potential jurors regarding the defense of not criminally responsible?

For the reasons set forth below, we answer this question in the negative, and therefore, we shall affirm the judgments of the circuit court.

FACTUAL AND PROCEDURAL BACKGROUND

From 2010 to 2013, Mrs. Mange and Richard Conway, appellant's son, a police officer, were in a relationship together.[2] During that time, they lived in appellant's house. They had one child together ("G.C."), and Mrs. Mange had a second child in 2012 with another man. Mrs. Mange subsequently married Mr. Mange.

[1] Appellant was convicted of: (1) first degree murder; (2) two counts of conspiracy to commit first degree murder; (3) second degree murder; (4) attempted first degree murder (5) attempted second degree murder; (6) two counts of unlawful use of a firearm in the commission of a crime of violence; (7) first degree assault; and (8) four counts of reckless endangerment.

[2] The two were never married.

In December 2013, Mr. Conway and Mrs. Mange reached a temporary custody agreement with respect to the children born during their relationship, which provided that Mr. Conway would have primary physical custody of the children, and Mrs. Mange would have visitation Wednesday through Sunday, every other week. The drop off/pick up location was outside a McDonald's restaurant located in Waldorf.

In March 2015, Mr. Conway and appellant began taking G.C. to therapy with social worker Jennifer Helms. On April 11, 2015, appellant called Ms. Helms and reported that G.C. had advised her that he had been sexually molested by Mrs. Mange and her friend, Montana. Ms. Helms reported the suspected abuse to child protective services. The case was assigned to an investigator at the Virginia Department of Social Services who, after conducting multiple interviews, concluded that the allegations of abuse were unfounded.

On May 20, 2015, at approximately 5:40 p.m., Mr. and Mrs. Mange arrived at the McDonald's to pick up the children. Mrs. Mange testified at trial that appellant entered the vehicle, pointed a handgun at her, and ordered her to call Mr. Conway and change the pick up time to 7:30 p.m. After Mrs. Mange called Mr. Conway, Mr. Mange attempted to disarm appellant. Mrs. Mange opened the door of the vehicle, and as she was exiting, a shot was fired. Mrs. Mange hid behind a nearby car. She then returned to the front of the vehicle, believing that appellant had fled the scene. Mrs. Mange then heard two more gunshots and encountered appellant, who was pointing a gun at her. Appellant fired another two shots, one of which hit Mrs. Mange. Appellant then fled the scene. Mrs. Mange survived the incident, but Mr. Mange died from gunshot wounds he sustained.

In addition to Mrs. Mange's testimony, the State elicited testimony from multiple witnesses who saw an elderly woman shoot Mr. and Mrs. Mange. The State introduced into evidence the call history from a cell phone appellant used on the day of the incident, which showed that appellant was near the McDonald's at the time of the shooting, and firearm casings found at the scene of the crime belonged to Mr. Conway's service firearm.

Bob and Linda Gale, whose daughter played soccer with appellant's daughter, testified that appellant and Mr. Conway showed up unexpectedly at their home on May 20, 2015. Appellant said: "I did it. I shot them." Appellant had a gun, and Mr. Conway stated: "[t]hat was the gun."

The parties each presented expert testimony with respect to appellant's defense that she was not criminally responsible. Dr. Bethany Brand, appellant's expert, testified that appellant suffered "severe childhood abuse and neglect" that made her "vulnerable to developing a number of psychological problems, disorders." In her opinion, appellant was suffering from a "brief psychotic disorder" at the time of the shooting that prevented her from appreciating the "criminality of her conduct." Dr. Brand explained that there were several "triggers" that caused appellant to develop psychotic and disassociative symptoms prior to the shooting, including: (1) appellant's belief that Mr. and Mrs. Mange were sexually abusing G.C.; (2) G.C.'s statement that his abusers threatened to hurt him if he told anyone about the abuse; and (3) appellant's own history of being sexually abused.

Dr. Theresa Grant, the State's expert, testified that, in her opinion, appellant was criminally responsible for the shooting, and appellant was not suffering from a dissociative disorder or a psychotic episode during the shooting. Dr. Grant noted that appellant engaged

in several behaviors inconsistent with someone who was not criminally responsible, including: (1) fleeing the scene after the shooting; (2) talking with the victims in the car prior to the shooting; and (3) talking with friends after the shooting occurred.

In closing argument, defense counsel did not argue that appellant was not the shooter. Rather, he argued that appellant was not criminally responsible for the shootings, asserting that appellant suffered from a dissociative disorder that prevented her from understanding or appreciating the nature of her conduct.

As indicated, the jury found appellant guilty of the charges and criminally responsible. This appeal followed.

DISCUSSION

Appellant contends that the circuit court "erred and abused its discretion by failing to ascertain whether venire members were biased against [appellant] who pled not criminally responsible." She asserts that the question she proposed that the court ask the venire was "integral to a determination of potential juror bias."

The State responds in two ways. First, it contends that appellant's claim is not preserved for this Court's review, noting that, at the close of *voir dire*, defense counsel stated that he was '"satisfied' with the questions promulgated." Second, it argues that, even if the issue were preserved, the "requested question was not mandatory in this case, and in any event, it was fairly covered by a question actually asked."

I.

Proceedings Below

Prior to *voir dire*, appellant submitted the following proposed question:

> QUESTION 22: The law recognizes that a Defendant has a right to enter a plea of Not Criminally Responsible. Do you have any preconceived notions of mental disorders which would prevent you from rendering a verdict that the Defendant is Not Criminally Responsible, even if the Defendant from appreciating or prevented her from conforming her conduct to requirements of the law?[3]

During *voir dire*, the court explained to prospective jury members the charges against appellant. It then explained:

> [Appellant] has entered a plea of not guilty and a plea of not criminally responsible to the charges against her.
>
> You, the—if you are selected as a juror in this case, you will decide whether [appellant] is guilty or not guilty of the actual—of the charges and if you decide that she or find that she is guilty . . . whether she is criminally responsible or not criminally responsible for that action and for that crime, and for those crimes.
>
> We will be explaining to you the definitions of those terms if you are selected as a juror, but in short at this point I will simply indicate to you that that term, not criminally responsible, is a term that is used because—that . . . , as a result of a mental disorder she lacked substantial capacity to appreciate the criminality of the conduct or to conf[o]rm her conduct to the requirements of the law.

The court subsequently reiterated that jurors in the case would be required to determine whether appellant was not criminally responsible:

> [I]f you are selected as a juror in this case, you will be deciding, as I indicated to you when I was describing the case . . . , one, whether the defendant is guilty or not guilty or has been proven guilty . . . beyond a reasonable doubt of the conduct and the crimes charged and then if you do decide that, whether or not she is criminally responsible as, and I'll define what that is.

[3] This proposed question clearly is missing some words, but we quote what was presented to the circuit court.

When the court asked whether any jurors would have difficulty following that instruction, none of the prospective jurors responded.

The circuit court subsequently asked the following question:

> Is there any member of the jury that has any preconceived notions about mental disorders which would prevent you from deciding this case and the issue of whether the defendant is criminally responsible or not criminally responsible based on my instructions on the law that applies in this case on that issue?

None of the prospective jury members responded.

At the conclusion of *voir dire*, the court asked the defense whether it was "satisfied with the *voir dire*." Defense counsel responded: "Yes."

II.

Preservation

We begin by addressing the State's preservation argument. Maryland Rule 4-323(c) addresses objections during jury selection, including *voir dire*. *Marquardt v. State*, 164 Md. App. 95, 142, *cert. denied*, 390 Md. 91 (2005). The Rule provides, in pertinent part, as follows:

> [I]t 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. The grounds for the objection need not be stated unless these rules expressly provide otherwise or the court so directs.

Rule 4-323(c). "An appellant preserves the issue of omitted *voir dire* questions under Rule 4-323 by telling the trial court that he or she objects to his or her proposed questions not being asked." *Smith v. State*, 218 Md. App. 689, 700–01 (2014). "If a defendant does not object to the court's decision to not read a proposed question, he cannot 'complain about

the court's refusal to ask the exact question he requested."' *Brice v. State*, 225 Md. App. 666, 679 (2015) (quoting *Gilmer v. State*, 161 Md. App. 21, 33 (2005)), *cert. denied*, 447 Md. 298 (2016).

In *Brice*, 225 Md. App. at 677, the defendant requested two questions in his written proposed *voir dire*, but the court did not ask those questions. When the court asked if counsel wished to approach "for any reason," the prosecutor responded, "Yes," and informed the court about several of his proposed questions for the *voir dire* that had been omitted. *Id.* at 677. The court subsequently asked: '"Anything from the defense?"' Defense counsel responded: "No, Your Honor." *Id.*

On appeal, this Court held that Brice had waived his argument that the court abused its discretion in failing to ask his requested question. *Id.* at 679. We stated that, because defense counsel '"affirmatively advised the court that there was no objection,"' he explicitly waived his complaint on appeal. *Id.* (quoting *Booth v. State*, 327 Md. 142, 180 (1992)).

Similarly, here, not only did appellant fail to object to the court's *voir dire* question regarding the defense of not criminally responsible, she affirmatively waived the issue when defense counsel indicated that he was "satisfied" with the *voir dire* as propounded. Under these circumstances, the contention is not preserved for this Court's review.

III.

Voir Dire

Even if the issue had been preserved, we would conclude that it lacks merit. "The right to an impartial jury is guaranteed by the Sixth Amendment of the United States

Constitution, as made applicable to the states through the Fourteenth Amendment, and Article 21 of the Maryland Declaration of Rights." *Frazier v. State*, 197 Md. App. 264, 276, *cert. denied*, 419 Md. 647 (2011). The '"overarching purpose of voir dire in a criminal case is to ensure a fair and impartial jury."' *Thomas v. State*, 454 Md. 495, 507–08 (2017) (quoting *Dingle v. State*, 361 Md. 1, 9 (2000)). In Maryland, courts employ a '"limited *voir dire*[,]"' the "sole purpose [of which] 'is to ensure a fair and impartial jury by determining the existence of [specific] cause for disqualification[.]'" *Benton v. State*, 224 Md. App. 612, 623 (2015) (quoting *Pearson v. State*, 437 Md. 350, 356 (2014)).

'"The scope of voir dire and the form of questions propounded rest firmly within the discretion of the trial judge."' *Khan v. State*, 213 Md. App. 554, 578 (2013) (quoting *Stewart v. State*, 399 Md. 146, 159 (2007)). "We review the trial judge's rulings on the record of the voir dire process as a whole for an abuse of discretion, that is, questioning that is not reasonably sufficient to test the jury for bias, partiality, or prejudice." *Washington v. State*, 425 Md. 306, 314 (2012). Generally, a circuit court abuses its discretion when its ruling is '"well removed from any center mark imagined by the reviewing court and beyond the fringe of what that court deems minimally acceptable."' *Devincentz v. State*, 460 Md. 518, 550 (2018) (quoting *North v. North*, 102 Md. App. 1, 14 (1994)).

As the Court of Appeals has explained:

> It is the responsibility of the trial judge to conduct an adequate voir dire 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. *Logan*, 394 Md. at 396, 906 A.2d at 385; *White*, 374 Md. at 240, 821 A.2d at 463. To that end, the trial judge should focus questions upon "issues

> particular to the defendant's case so that biases directly related to the crime, the witnesses, or the defendant may be uncovered." *Thomas*, 369 Md. at 207–08, 798 A.2d at 569. In reviewing the court's exercise of discretion during the voir dire, the standard is whether the questions posed and the procedures employed have created a reasonable assurance that prejudice would be discovered if present. *White*, 374 Md. at 242, 821 A.2d at 464. 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. *Logan*, 394 Md. at 396, 906 A.2d at 385; *White*, 374 Md. at 243, 821 A.2d at 465.

Washington, 425 Md. at 313–14. The court need not give a specific requested question if the issue is "fairly covered" by questions that are actually asked. *Burch v. State*, 346 Md. 253, 293, *cert. denied*, 522 U.S. 1001 (1997).

Here, appellant baldly asserts that the Sixth Amendment right to an impartial jury "gives defendant's invoking the Not Criminally Responsible defense a *per se* right to question prospective jurors about their willingness to accept the defense." Not only is this contention made without any citation to authority, it is a contention that the Court of Appeals has specifically rejected. In *State v. Logan*, 394 Md. 378, 396–97 (2006), the Court of Appeals, noting that the court must ask questions focused on "biases directly related to the crime, the witnesses, or the defendant," held that defenses, including a defense of not criminally responsible, "do not fall within the category of mandatory inquiry on *voir dire*."

Nevertheless, the circuit court here did ask the jury about the appellant's defense that she was not criminally responsible. During *voir dire*, the court asked the following question:

> Is there any member of the jury that has any preconceived notions about mental disorders which would prevent you from deciding this case and the issue of whether the Defendant is criminally responsible or not criminally

> responsible based on my instructions on the law that applies in this case on that issue?

We agree with the State that this question "fairly covered" the substance of the question proposed by appellant.[4] Under these circumstances, we cannot conclude that the circuit court abused its discretion in deciding not to ask the specific question requested by appellant.

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

[4] In her brief, appellant lists other questions that she contends the circuit court should have asked to elicit bias, including whether potential jurors: (1) had "any experience, training, or education in the mental health field: specifically, psychiatry or psychology"'; (2) felt that "anyone who is physically able to commit a crime must be responsible for that crime"; (3) had formed "views about the validity of psychiatry or psychology"; and (4) had any "reservations or feelings that would prevent [them] from fairly considering the evidence of insanity in this case." Because appellant never requested the circuit court to ask any of these questions, this contention is not properly before this Court, and we will not address it. *See* Maryland Rule 8-131(a) ("Ordinarily, the appellate court will not decide any other issue unless it plainly appears by the record to have been raised in or decided by the trial court[.]").