Circuit Court for Montgomery County
Case No. 135823C

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 872

September Term, 2020

ANDRE GADDIS

v.

STATE OF MARYLAND

Friedman,
Ripken,
Alpert, Paul E.
(Senior Judge, Specially Assigned),

JJ.

Opinion by Alpert, J.

Filed: September 14, 2021

Andre Gaddis, appellant, was convicted by a jury sitting in the Circuit Court for Montgomery County of various drug-related crimes after the vehicle in which he was sitting was searched by the police.[1] Appellant raises one question on appeal: Did the trial court abuse its discretion when it refused to ask prospective jurors during voir dire a defense requested "police-witness" question but instead asked the venire a combined, occupation and police-witness question? For the foregoing reasons, we shall affirm.

FACTS

Because the sole question raised on appeal does not require a detailed recitation of the facts, we shall include only a brief summary of the evidence elicited at trial to place the question raised in context. The State's testimonial evidence came from three Montgomery County Police Officers and a forensic scientist employed by the Montgomery County Police Department Crime Laboratory.

On the evening of May 2, 2019, a woman drove a Nissan sedan with appellant in the front passenger seat into the parking lot of a fast food restaurant and parked. A short time later a Ford parked a few spaces away, and the woman got out of the Nissan and entered the Ford. Less than a minute later, the woman exited the Ford. She then entered the front passenger seat and appellant got into the driver's seat of the Nissan. Based on the behavior of the woman and appellant, the police approached the parked Nissan on foot,

[1] Appellant was convicted of one count each of possession with intent to distribute the following four drugs: phencyclidine (PCP); tenocyclidine (TCP); heroin and fentanyl mix; and marijuana. Appellant was sentenced to two concurrent 18-month sentences for his PCP and TCP convictions; a consecutive 18-month sentence for the heroin and fentanyl mix conviction; and a concurrent six-month sentence for the marijuana conviction.

and, upon smelling the fresh odor of marijuana coming from the open driver's side window, the police executed a search of the car. The police recovered from the Nissan: a marijuana cigarette; a plastic baggie containing 3.84 grams of a mixture of heroin and fentanyl; 17.24 grams of marijuana; two vials containing 27.5 grams of a mixture of PCP and TCP; and a digital scale. Appellant was subsequently arrested.

Prior to trial, appellant submitted a written voir dire list to the court, specifically asking the court to give a "police-witness" question. That question stated: "17. Is there any member of the jury panel who would trust the word of a police officer more than that of another witness?" During voir dire, the trial court did not ask defense counsel's question but instead asked the following question:

> Is there any member of the jury panel who would be more likely or less likely to believe the testimony of a witness simply because of his or her occupation such as being a police officer?

The transcript reveals that there was no response to this question.

After the trial court finished questioning the voir dire panel, defense counsel excepted to the court not asking his proposed question #17 and the following colloquy occurred:

> [DEFENSE COUNSEL]: I have two questions, mainly one, but question number 17 . . . I do believe there are reported cases that deal with [the] very simple question of police officers, trusting them over another and I know you asked the question in general.
>
> * * *
>
> [DEFENSE COUNSEL]: And I believe there are reported cases that say because it is such an important issue that – I know Your Honor mentioned careers in general but I believe that in order to get to the prejudice in appropriate jurors, we need to ask that question explicitly.

* * *

> THE COURT: I did ask the question as follows from the State's voir dire which I believe covers it.
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> * * *
>
> [DEFENSE COUNSEL]: I do believe that because it's such an important issue it's one of the questions that I focus on. I know it's embedded and the Court has addressed compound questions or where it kind of gets built into the question but my main concern is specifically would they believe a police officer over others and I would tell the Court that I had have had that question asked and almost universally there are people that will respond yes.
>
> THE COURT: Okay.
>
> [DEFENSE COUNSEL]: And to me since no one responded to that question it indicates that we may not have gotten to the possible prejudice.
>
> THE COURT: My experience is that that's rarely answered as a question. I think it's covered by this – the Court has already asked and I think at this point to ask in essence what I think is in essence the same question is to put additional emphasis on it. It's not warranted but your record is made.

Defense counsel accepted the jury empaneled without further objection.

DISCUSSION

Citing *Thomas v. State*, 454 Md. 495 (2017), appellant argues that the trial court abused its discretion in not asking his proposed voir dire question about whether any member of the jury would trust the word of a police officer more than that of another witness, and instead asked a combined, occupational and police witness question. The State responds that *Thomas* is easily distinguishable, and argues that the question the court did

ask was sufficient to elicit any police witness bias, and therefore, the court did not err in not asking appellant's specific question. We agree with the State.[2]

"The overarching purpose of voir dire in a criminal case is to ensure a fair and impartial jury." *Dingle v. State*, 361 Md. 1, 9 (2000) (citations omitted). Parties have a right to have their voir dire questions asked when "directed to a specific cause for disqualification, and failure to allow such questions is an abuse of discretion constituting reversible error." *Moore v. State*, 412 Md. 635, 646 (2010) (quotation marks and citations omitted). However, a court need not ask a requested voir dire question if the matter is fairly covered by other questions actually asked. *Curtin v. State*, 393 Md. 593, 613 n.10 (2006) (citation omitted). In examining a challenged question, we look to "the record as a whole to determine whether the matter has been fairly covered." *Washington v. State*, 425 Md. 306, 313-14 (2012) (citations omitted).

To determine whether cause for disqualification exists, voir dire "questions should focus on issues particular to the defendant's case so that biases directly related to the crime, the witnesses, or the defendant may be uncovered." *Dingle*, 361 Md. at 10 (citation and footnote omitted). The voir dire process is not "foolproof" and perfection is not required

[2] As an initial matter, we observe that appellant did not waive his objection to the trial court's refusal to propound the question he asked when he accepted the jury ultimately empaneled. *See State v. Ablonczy*, 474 Md. 149 (2021) (accepting the jury as empaneled without qualification at the conclusion of jury selection does not waive a prior objection to a trial court's denial of a request to propound a proposed voir dire question); *Foster v. State*, 247 Md. App. 642, 647-51 (2020) (where appellant objected to the trial court's refusal to ask proposed voir dire questions but accepted the jury as empaneled, appellant did not waive his voir dire claim on appeal through his unqualified acceptance of the empaneled jury).

in its execution. *Wright v. State*, 411 Md. 503, 514 (2009). A court acts within its discretion if "the questions posed and the procedures employed have created a reasonable assurance that prejudice would be discovered if present." *Stewart v. State*, 399 Md. 146, 159 (2007) (citation omitted). The Court of Appeals has held that a voir dire question aimed at determining whether someone would give more credit to a police witness is "directed to a specific cause for disqualification" and is required to be asked by a trial court, if requested. *Langley v. State*, 281 Md. 337, 342-49 (1977).

In *Thomas*, *supra*, the Court of Appeals was asked to determine: "[W]hether a broader occupational bias question posed during voir dire was appropriate in determining whether potential jurors would give undue weight to a police officer's testimony, based on his or her position as a police officer, when a more specific police-witness question was requested by Appellant's counsel[?]" *Thomas*, 454 Md. at 498. In that case, Ukeenan Thomas was charged with various crimes related to a robbery. Prior to trial, both parties requested the trial judge to ask the venire a police-witness question because two police officers and a detective were anticipated to testify. Defense counsel phrased the question in his written voir dire as follows: "Do any of you believe that a law enforcement officer's testimony is entitled to greater weight than any other witness just because he is a law enforcement officer?" *Id*. at 500. Instead of asking the proposed question, the trial court asked a broader question:

> Another principle of law about which the jury will be instructed is what we call credibility of witnesses. In all jury trials, whether it's civil or criminal, the judge decides issues of law, but the jury decides issues of fact. In that regard, based on testimony and other admissible evidence, the jury decides what evidence they find persuasive. My instructions will include some

> factors that you may consider in judging witness credibility. Ultimately, if selected as a juror in this case, it will be for you to decide who you believe. That is to say, who is right or wrong, who is truthful or untruthful or who is correct or mistaken. At the conclusion of the case and during deliberations, the jury will have had the benefit of listening to and observing each witness, viewing all the other evidence presented and discussing the evidence with your fellow jurors. Mindful of that principle, are there any prospective jurors who would automatically give more or less weight to the testimony of any witness merely because of the witness' title, profession, education, occupation or employment? Now, that's a long question and it's asked in a vacuum. To start with, we want jurors who don't know anything about this case. But let me see if I can give you an example of what I'm talking about. If anyone here is a physician, I'm not picking on you. We have two physicians. And I pick physicians because they're similarly trained. They went to grade school. High school. College. Medical school. So, they're very—they have similar characteristics. They're having lunch one day. They walk out of lunch. They're walking down the street. They're chit-chatting, chit-chatting about whatever doctors chit-chat about and there's an accident that happens in front of them. One of the physicians saw it and thought the light was green and the other physician thought the light was red. And if that's all you had, and you were asked to make a decision, how would you decide? Well, most people would say, well, I gotta hear all the facts from everybody. And that's kind of the point of this question. So, stated another way, if you were selected as a juror in this case, would you be able to judge the credibility of each witness' testimony based on their testimony, rather than merely relying on his or her title, profession, education, occupation, or employment? For example, would any of you automatically give more or less weight to the testimony of a physician, a clergyman, a firefighter, a police officer, psychiatrist, social worker, electrician or any other witness merely because of their title, profession, education, occupation or employment? If so, please stand.

Id. at 500-01 (emphasis added). None of the venire responded to the court's question. Defense counsel excepted to the question, but the trial court replied that it believed its question "fairly covered" the issue of police-witness bias. *Id*. at 502 (quotation marks omitted).

Thomas was ultimately convicted of several crimes related to the robbery. On appeal, Thomas argued that the trial court's lengthy, convoluted inquiry, consisting of 450

words, obfuscated the police-witness question and evaded the spirit of the required inquiry of *Langley*, which held that, if requested, a trial court must ask a voir dire question aimed at determining if a juror is predisposed to give greater or lesser weight to a police officer's testimony than that of another witness due to his/her occupation as a police officer. *Id*. at 506. The State argued that because "police officer" was contained in the question portion of the trial court's question, the question was sufficient to elicit possible bias. *Id*. at 507.

In its discussion, the Court stated that, although relevant to its inquiry, "the length of the trial judge's question, by itself, is not dispositive of whether the judge abused his or her discretion." *Id*. at 508. Rather, the Court focused on the substance of the trial court's question and whether the question was properly "focused on the issues particular to" Thomas's case and "reasonably calculated, in both form and substance, to elicit the potential biases the venirepersons may hold regarding police officer testimony." *Id*. at 509 (quotation marks and citations omitted). The Court stated that because the only witnesses testifying in this case for which the occupational bias question was relevant were two police officers and one detective, the trial court "was required to tailor the occupational bias question specifically to the witnesses' occupation as police officers, which [the trial judge] failed to do when he included six other occupations in his inquiry that were not relevant to the case at bar." *Id*. at 513. The Court concluded:

> We hold that when a party requests that an occupational bias question be asked during voir dire, including the police-witness question, the trial judge is required to initially determine whether any witnesses testifying in the case—based on their occupation, status, or affiliation—may be favored or disfavored on the basis of that witness's occupation, status or affiliation, and then propound a voir dire question that is tailored to those specific occupations, statuses, or affiliations.

Id. (citation omitted).

Here, appellant argues that his case is akin to *Thomas*. He acknowledges that the voir dire question propounded in his case was shorter than that posed in *Thomas*. Nonetheless, he argues that the questions in his case and *Thomas* suffered from the same infirmities because the prospective jurors were asked whether they were "more or less likely to believe someone based on their occupation and then provided" a police officer as an example. Appellant argues that the question asked in each case was insufficient to adequately elicit juror bias regarding a police officer's testimony. We disagree.

The case before us is distinguishable from *Thomas*. Here, the question posed, just 36 words long, was pithy in comparison to the question asked in *Thomas*. Most importantly, it zeroed in on the only occupation that was relevant in this case—police officers—unlike the question asked in *Thomas*, which listed six additional, irrelevant occupations. Therefore, and unlike the situation in *Thomas*, the question posed here was adequate to elicit bias any juror might have held regarding the testimony of a police officer. Under the applicable law and the circumstances presented, we see no meaningful difference between the question appellant proposed, which did not mention the word occupation, and the question ultimately propounded by the trial court. Accordingly, we are persuaded that the trial court did not abuse its discretion in declining to give appellant's propounded police-witness question because the question the trial court did ask created a reasonable assurance of eliciting juror prejudice toward giving greater or lesser weight to the testimony of a police officer, due to his/her position, than to another witness.

JUDGMENTS OF THE CIRCUIT COURT FOR MONTGOMERY COUNTY AFFIRMED.

COSTS TO BE PAID BY APPELLANT.