Circuit Court for Baltimore City
Case No. 121215002

UNREPORTED

IN THE APPELLATE COURT

OF MARYLAND

No. 1060

September Term, 2022

JONATHAN LEE BOWMAN

v.

STATE OF MARYLAND

Wells, C.J.,
Shaw,
Zarnoch, Robert A.
(Senior Judge, Specially Assigned),

JJ.

PER CURIAM

Filed: February 27, 2023

*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 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.

Following a jury trial in the Circuit Court for Baltimore City, Jonathan Lee Bowman, appellant, was convicted of second-degree murder; use of a firearm in the commission of a crime of violence; and wearing, carrying, or transporting a firearm. He raises three issues on appeal: (1) whether the court abused its discretion in refusing to ask the prospective jurors required voir dire questions related to State and Defense witnesses; (2) whether the court erred in permitting a substitute medical examiner to testify in place of the medical examiner who performed the autopsy; and (3) whether the court plainly erred in twice giving impermissible *Allen* instructions. For the reasons that follow, we shall reverse appellant's convictions and remand the case for a new trial.

Prior to trial, defense counsel for appellant filed proposed voir dire questions. Proposed questions 13(a) through 13(c) read as follows:

> (a) Would any member of the jury panel be inclined to give either more or less weight to the testimony of a witness who is a police officer merely because that individual is a police officer?
>
> (b) Would any member of the jury panel be inclined to give either more or less weight to the testimony of a witness for the prosecution merely because that individual is a prosecution witness?
>
> (c) Would any member of the jury panel be inclined to give either more or less weight to the testimony of a witness called by the defense merely because that individual is a defense witness?

At the outset of jury selection, defense counsel noted that several of appellant's requested questions had been omitted from the court's proposed voir dire. With respect to question thirteen, the court had indicated it would ask part (a). However, counsel renewed the request for the court to ask parts (b) and (c), noting that the State intended to call multiple civilian witnesses. The court refused to ask either question, stating that it would

not ask part (b) because it could be covered by other questions and would not ask part (c) because "the expectation that that could put in the minds of the jurors are that the defense is gonna have a case." Counsel objected to the court's refusal to ask those questions prior to the start of voir dire, and again after the court had questioned both jury panels.

On appeal, appellant contends that the court abused its discretion in refusing to propound his requested voir dire questions. The State concedes that appellant is entitled to a new trial based on the circuit court's refusal to ask question 12(b). We agree.

In *Moore v. State*, 412 Md. 635 (2010), the trial court declined to ask the following requested questions during voir dire:

> 21. Would any prospective juror be more likely to believe a witness for the prosecution merely because he or she is a prosecution witness?
>
> 22. Would any prospective juror tend to view the testimony of a witness called by the defense with more skepticism than witnesses called by the State, merely because they were called by the defense?

Moore, 412 Md. at 642.

In reversing and remanding the case for further proceedings, the *Moore* Court held:

> In this case, . . . defense counsel properly submitted his request for *voir dire*, which included a State-Witness question, a Defense-Witness question and a police officer question. Although allowing the latter question, the trial court refused to ask the other two. That refusal . . . was error. This is so because the State called both official (police) and non-official (non-police witnesses), the defendant called witnesses to testify for him, and despite the State's argument to the contrary, none of the other *voir dire* questions covered the substance of either the non-official State-Witness question nor the Defense-Witness question. First, . . . all "three questions" are necessary [*Bowie v. State*, 324 Md. 1, 11 (1991)]. Moreover, general questions that delve into a venireperson's personal acquaintances or beliefs, familial and personal relationship with, or to, crime, criminals and certain professions, while pertinent and necessary to uncover certain kinds of bias, simply do not suffice to uncover status or affiliation bias; they do not address, never mind resolve,

> the question of whether a venireperson would favor a particular witness or category of witness prejudicially.

Id. at 665-66 (footnote omitted).

Here, as in *Moore*, appellant properly requested a State-Witness question. And that request was refused despite the State calling several non-police witnesses whose credibility was central to its case. Moreover, none of the voir dire questions that were ultimately asked by the trial court covered the substance of a non-official State-Witness question. Consequently, reversal is required. [1]

JUDGMENTS OF THE CIRCUIT COURT FOR BALTIMORE CITY REVERSED. CASE REMANDED FOR A NEW TRIAL. COSTS TO BE PAID BY THE MAYOR AND CITY COUNCIL OF BALTIMORE.

[1] Because we reverse the judgment based on appellant's first claim we decline to address his second and third claims on appeal. *See Pearson v. State*, 437 Md. 359, 364 n.5 (2014) (noting that "where an appellate court reverses a trial court's judgment on one ground, the appellate court does not address other grounds on which the trial court's judgment could be reversed, as such grounds are moot.").