Circuit Court for Prince George's County
Case No. 15-1553X

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 1745

September Term, 2017

JOSEPH M. POTEAT

v.

STATE OF MARYLAND

Berger,
Leahy,
Eyler, James R.,
(Senior Judge, Specially Assigned),

JJ.

Opinion by Leahy, J.

Filed: July 2, 2019

Appellant, Joseph Poteat, struck up a friendship with the victim, 32-year old Marquita Wimms, after meeting her at a tire store. He had known her for about a year when she died of a fatal gunshot wound to her head. Ms. Wimms normally drove Mr. Poteat, a marijuana dealer, to his drug transactions. It was during one of these trips that Ms. Wimms lost her life.

On December 16, 2015, Mr. Poteat was charged by information in the Circuit Court for Prince George's County with first-degree murder and use of a firearm in the commission of a crime of violence. In advance of trial, the parties submitted to the court proposed *voir dire* questions, which included, among others, a racial bias question and a "strong feelings" question. The circuit court failed to ask both questions, despite Mr. Poteat's requests and subsequent objections. The case proceeded to a four-day jury trial, and at the close of all the evidence, the court denied Mr. Poteat's renewed motion for a judgment of acquittal on all counts. During the closing arguments that followed, Mr. Poteat's counsel repeatedly stated that there was "zero" or "no DNA" from Mr. Poteat in any of the DNA samples from the crime scene. On rebuttal, the State countered Mr. Poteat's "mischaracterization" of the DNA evidence and argued that Mr. Poteat's DNA matched every single location tested.

The circuit court then instructed the jury, which included the State's propounded flight instruction, and jury deliberations commenced. The jury ultimately found Mr. Poteat guilty of first-degree murder and use of a firearm in the commission of a crime of violence. The court denied Mr. Poteat's motion for a new trial and sentenced him to life in prison for murder, plus 20 years for the handgun conviction.

Mr. Poteat presents four questions[1] for our review, which we have rephrased and reordered:

> I. Did the trial court err by not asking mandatory *voir dire* questions requested by defense counsel?
>
> II. Was the evidence legally sufficient to sustain Mr. Poteat's convictions?
>
> III. Did the trial court err by giving a flight/concealment instruction?
>
> IV. Did the trial court err by allowing the prosecutor to mischaracterize inconclusive DNA evidence as inculpatory during his rebuttal closing argument?

We hold that the trial court erred in failing to ask the mandatory *voir dire* questions upon Mr. Poteat's request. Because the State presented sufficient evidence to sustain Mr. Poteat's convictions, we shall reverse both convictions and remand the case to the circuit court for further proceedings consistent with this opinion. We briefly address only the third issue, for purposes of guidance on remand, as it will likely arise at a new trial.

[1] Mr. Poteat asked:

1. Did the trial court commit reversible error by not asking mandatory *voire dire* questions requested by the defense?
2. Did the trial court commit reversible error by allowing the prosecutor in his rebuttal closing argument to mischaracterize inconclusive DNA evidence as inculpatory?
3. Did the trial court commit reversible error by giving a flight/concealment instruction?
4. Was the evidence insufficient to convict appellant?

BACKGROUND

The following facts were adduced at Mr. Poteat's jury trial, which transpired over four days from June 5 through June 8, 2017. The State called 15 witnesses: Ms. Wimms's mother; Ms. Wimms's best friend; three residents of 1950 Rochelle Avenue; Nadine Keemer, Ms. Wimms's roommate at the time of the shooting; the crime scene technician; a responding firefighter and EMS supervisor; Dr. Carol Allan, the State's "expert in pathology and forensic pathology"; an expert in latent fingerprints; a firearms expert; a DNA expert; Lieutenant Jordan Swonger, the State's expert in cell-site communications, cellphones, and cellphone technology; and Detective David Gurry, the lead homicide detective in the case. The jury also heard from Mr. Poteat, who testified as the only witness in his defense.

A. The Car Crash

On Saturday, October 3, 2015, around 10:40 p.m., a Volkswagen Jetta crashed into a picket fence in a parking lot in front of 1952 Rochelle Avenue ("1952 Rochelle"), one of the apartment buildings at the Walker Mill Apartments complex in District Heights, Prince George's County. The car backed up, then careened down a hill, crashing through the patio glass doors of an apartment ("the Apartment") at 1950 Rochelle Avenue. When the car finally came to a stop, it was partially inside the Apartment and partially inside the front lobby of the building. A tenant named Sakinah Lee lived in the Apartment and was home with her daughter at the time of the crash.

Det. Gurry reviewed surveillance footage[2] from the apartment complex and interviewed other tenants. He estimated that about "two-and-a-half to three-and-a-half minutes" passed between the time the car initially hit the picket fence and the time the car broke through the fence and rolled down the hill. Because the surveillance video showed dirt leading up to the picket fence, Det. Gurry believed there had been "some kind of distress in the car."

Ms. Lee testified that she had heard the initial crash into the picket fence about "five to eight minutes" prior to observing "[car] lights coming toward [her]." Once the car came to a stop in the Apartment, she said, the car was "still revving[and] accelerating." As she was searching for a way to exit her apartment, she saw a man with dreadlocks climbing out of the car inside her apartment. She later identified the man in a photo array as Mr. Poteat.[3] When asked what portion of the car Mr. Poteat exited, she answered "[t]he front, I know that," although she was uncertain whether Mr. Poteat had been in the driver or passenger side of the car. Ms. Lee recognized Mr. Poteat from having seen him around the apartment complex several times before. According to Ms. Lee, Mr. Poteat, whom she could see clearly, was standing a foot away from her inside the apartment and was exclaiming, "Oh, my gosh. Where am I? What's going on? What

[2] The State played surveillance footage from the apartment complex at trial, showing camera angles from 1950 and 1952 Rochelle Avenue. The footage does not depict when the car broke through the picket fence.

[3] According to the audio recording of Ms. Lee's 911 call played at trial, Ms. Lee stated to the dispatcher that the driver was getting out of the car. She testified, however, that she was "not sure exactly who was driving and who was not driving."

happened?" Still looking for a way to exit, Ms. Lee went into a bedroom of her apartment while carrying her baby, opened the bedroom window, knocked out the screen, and prepared to hand her daughter to a neighbor who had been standing below. Before she could do that, however, Mr. Poteat ran past her and jumped out of the bedroom window. The two were together in her apartment for one to three minutes.

At this time, Mr. Poteat also encountered Chauntay Tynes, the mother of his son and lessee of 1948 Rochelle Avenue. According to the transcript of Ms. Tynes' 911 call, she exclaimed to Mr. Poteat: "What the [expletive] – what the [expletive] is you doing in there? Wh[at] are you doing over there? What the [expletive] is you doing over there?" Thereafter, between 11:01 p.m. on October 3, 2015 and 12:14 a.m. on October 4, 2015, Ms. Tynes called Mr. Poteat's phone more than 10 times, but all those calls went unanswered.

Emergency medical technicians from the Prince George's County Fire Department and officers of the Prince George's County Police Department soon arrived at the scene, having received multiple other 911 calls reporting the car crash. The first responders discovered an unconscious Ms. Wimms in the driver's seat of the car, exhibiting very "shallow respirations." Several first responders worked for nearly 20 minutes to extract Ms. Wimms from the car and eventually removed her through the passenger side front door. Ms. Wimms bled as the responders extracted her from the car. The first responders transferred Ms. Wimms to an ambulance and, while on board, an EMT discovered a possible bullet wound in front of Ms. Wimms's right ear.

Ms. Wimms died as a result of the gunshot wound to her right temple. Dr. Allan, an assistant medical examiner for the Office of the Chief Medical Examiner of the State of Maryland, conducted Ms. Wimms's autopsy and certified the manner of her death as homicide. Dr. Allan testified at trial that Ms. Wimms's bullet "wound would have been immediately incapacitating and actually nonsurvivable even with medical attention[,]" although there "c[ould] be minutes of breathing[.]" Because of this, "[i]f her weight f[ell] forward and her foot had been on the accelerator, . . . it's not going to move off the accelerator, [] it's going to be still be on the accelerator. . . . any weight forward would cause the car to keep moving."

On October 15, 2015, Ms. Lee went to the Prince George's County Police Department to provide a written statement of the incident to Det. Gurry. At the police station, another detective administered a double-blind photographic array to Ms. Lee, who identified a photograph of Mr. Poteat as the individual who jumped out of the car inside her apartment. Based on Ms. Lee's identification, Det. Gurry obtained a warrant and arrested Mr. Poteat on October 20, 2015. At the time of Mr. Poteat's arrest, he had on his person a white Samsung cell phone ("Samsung"), which Det. Gurry seized and submitted to Lt. Swonger in the Prince George's County Cell Phone Unit for analysis.

On December 16, 2015, Mr. Poteat was charged by information in the circuit court with first-degree murder of and use of a firearm in the commission of a crime of violence.

B. The Forensic Evidence

The crime scene technician processed the Volkswagen, which was registered to Ms. Wimms, and recovered the following items of evidence from the car: (1) two

cellphones—an iPhone on the front passenger seat and a second iPhone in the center console; (2) a loaded 9 mm semi-automatic pistol on the floorboard of the right front passenger seat; and (3) a fired 9 mm cartridge case near the handgun on the floorboard of the front passenger seat. At the scene of the crime, the technician gave both cellphones to Det. Gurry, who later concluded that the phone found in the center console of the vehicle belonged to Ms. Wimms and the phone found in the front passenger seat belonged to Mr. Poteat.[4]

Lt. Swonger testified regarding data obtained from the cellphone carrier of Mr. Poteat's iPhone found in the passenger side of Ms. Wimms's car. The call-detail records for his cellphone showed that, from August 29, 2015 through October 3, 2015, ten calls were exchanged between Mr. Poteat's cellphone and Ms. Wimms's cell phone. On October 3, Mr. Poteat's cellphone made three outgoing calls to Ms. Wimms's cellphone between 4:34 p.m. and 5:35 p.m. Ms. Wimms's cellphone called Mr. Poteat's cellphone once at 5:40 p.m.

[4] Det. Gurry testified that he was unable to extract any data from the two iPhones because both were locked with passcodes. Det. Gurry explained that a locked cell phone can be used to make an emergency call. He used the iPhones to call 911 and then asked the 911 dispatcher to provide him with the phone numbers that had made the calls. Using those phone numbers, Det. Gurry obtained the subscriber information, which showed that one iPhone was subscribed to Mr. Poteat, and the second was subscribed to Ms. Wimms. Det. Gurry subpoenaed the call detail records from Mr. Poteat's cellular carrier, T-Mobile. The cell-site location information established Mr. Poteat's cellphone to be somewhere in the "general area" near 1950 Rochelle Avenue on October 3, 2015, around 10:28 p.m.

Lt. Swonger also testified about the data he extracted from the Samsung found on Mr. Poteat's person at the time of his arrest. He testified that the extraction report indicated that the Samsung had been activated on October 5, 2015, two days after the shooting. Internet search data revealed that three days after the shooting, on October 6, 2015, Mr. Poteat initiated six searches for information about a car driving into a building where the driver had been shot, and that Mr. Poteat accessed the Maryland Judiciary Case Search Database on 12 occasions following the shooting. On October 18, 2015, Mr. Poteat viewed six times an article titled "[S]uspect identified in District Heights homicide[,]"[5] and viewed seven times an article titled "[W]oman who died after crashing into Maryland apartment ID'ed." Beginning on October 5, 2015, over the course of 15 days, Mr. Poteat looked at Ms. Wimms's Facebook page 173 times.

Jenna Hong,[6] the State's DNA expert, evaluated 12 samples of evidence from the scene and compared them against known DNA profiles of Ms. Wimms and Mr. Poteat. She reported the results of her analysis in a Forensic Case Report, which the State introduced at trial. In elaborating on the findings in her report, she testified at trial that she could not conclude the presence of Mr. Poteat's DNA on any of the 12 DNA samples. Swabs from the rear left side of the slide of the handgun above the safety, the left side of

[5] Lt. Swonger clarified at trial that the internet search data generates the title of the article or website that the user visited by way of a search or internet link, but it does not generate the words that a user searched, or the "user inputs," to generate the article of website.

[6] Ms. Hong works for Bode Cellmark Forensics, a private company that contracted with the Prince George's County Police Department.

the grip and upper back-strap area of the gun, and Mr. Poteat's iPhone case, contained a mixture of DNA and included Ms. Wimms as the major contributor while excluding Mr. Poteat as a possible major contributor. She testified that these samples also tested positive for the presence of blood, which, being a liquid, would present higher quantities of DNA.[7] Ms. Hong could not draw any conclusions about "the minor alleles present in the[se] sample[s]."[8] The remaining nine DNA samples were all "touch samples," which meant that the samples contained "a very small quantity of DNA" and, because many different people will touch an object, often result in DNA mixtures that are difficult to interpret. Consequently, for six of those DNA samples, which consisted of swabs taken from various spots on the handgun and from the inside front passenger door handle of Ms. Wimms's car, Ms. Hong could neither include nor exclude Mr. Poteat and Ms.

[7] The Serology Report, which the State introduced into evidence, indicates whether an item of evidence tested positive, negative, or inconclusive for blood, but it does not indicate the source of the blood. As discussed, Ms. Wimms was extracted from her car through the front passenger door. The gun and Mr. Poteat's iPhone were on the passenger side of the car during that extraction.

[8] For all three items of evidence, Dr. Hong's Forensic Case Report states that "[d]ue to the possibility of allelic drop out, no conclusions c[ould] be made on the minor alleles present in [the] sample[s]." Dr. Hong did not use or define the term "alleles" in her testimony, but it was used in her report. The Court of Appeals has explained that term as follows:

> The vast majority of the base pair sequences of human DNA are identical for all people. There are, however, a few DNA segments or genes, called "polymorphic loci," which are highly variable among individuals. The alternative forms of these individual polymorphic gene fragments are called "alleles." It is these polymorphisms that have great significance for forensic DNA analysis because they provide the basis for DNA identification.

Young v. State, 388 Md. 99, 107 (2005) (internal citations omitted).

Wimms. But she testified that she was able to conclude that these samples, included "at least one male contributor" and that Mr. Poteat was not excluded from any of those samples.[9] Ms. Hong was unable to obtain a DNA profile with respect to the other three DNA samples of fingernail clippings from Ms. Wimms's hands and swabs from the handgun's cartridges.

Additionally, the State's expert in latent fingerprint examinations, Kathleen Holshue-McNamara, examined fingerprints from the scene and testified that fingerprints recovered from the exterior of the right front passenger door window matched those of Mr. Poteat. She testified that fingerprint impressions from the front and rear of Mr. Poteat's iPhone and from another location on the exterior of the right front passenger door window excluded Mr. Poteat, but concluded that other fingerprint impressions from the front of Mr. Poteat's iPhone, the magazine of the gun, and the front passenger's outside door handle had no value, meaning the impressions did not contain "ridge characteristics."

Kristina Cheung, the State's firearms expert who examined the firearms evidence from the scene, testified that the fired cartridge case had been fired from the handgun found in the car. She was unable to conclude, however, whether the bullet jacket and

[9] According to the Forensic Case Report, Ms. Hong did not conclude whether the DNA sample of the swab from the front left portion of the slide on the handgun included at least one male contributor.

fragments recovered during Ms. Wimms's autopsy were fired from that same handgun,[10] explaining that a firearms analysis could not determine who fired the handgun or when and where it was fired.

After the State rested its case, Mr. Poteat moved for a judgment of acquittal on all counts, arguing that the State had failed to present sufficient evidence connecting him to the shooting of Ms. Wimms. The court ruled that the State had made a *prima facie* case and denied Mr. Poteat's motion.

C. Mr. Poteat's Defense

Mr. Poteat testified in his defense. Recounting his version of events on October 3, he conceded to being with Ms. Wimms prior to and during the shooting and subsequent car crash, but denied being the perpetrator of the crime.

He met Ms. Wimms at a Panda Express on the evening of October 3. They took food back to Ms. Wimms's apartment where they ate, smoked marijuana, had sex twice, and watched a movie. Throughout the evening, he walked in and out of the Apartment by himself to sell marijuana. At one point, however, a friend of Ms. Wimms knocked on the Apartment door asking if he could buy marijuana from Mr. Poteat. Mr. Poteat sold the man 3.5 grams of marijuana, but the friend returned about an hour later to ask if he could purchase two more ounces of marijuana, which Mr. Poteat did not have. This prompted Ms. Wimms, Mr. Poteat and the man to leave Ms. Wimms's apartment to drive to get

[10] Ms. Cheung testified that the fragments and the lead core from the handgun "lacked marks of value for microscopic comparison"

more marijuana from Mr. Poteat's apartment at 1948 Rochelle Avenue, the apartment leased to Ms. Tynes.[11]

Mr. Poteat testified during direct examination that Ms. Wimms drove, the friend sat in the front passenger seat, and he sat in the back seat on the passenger's side. According to Mr. Poteat, while in the car, the friend "pulled out a gun on [Mr. Poteat and Ms. Wimms]," and took Mr. Poteat's phone, money, and car keys. Ms. Wimms, frightened and shaking, "just let the car coast[,]" prompting the friend to "g[e]t agitated and [] hit her. . . with the butt of the gun[.]" The friend then "told her to back the fucking car up," which Ms. Wimms did without looking, crashing into the picket fence in the apartment parking lot. She slammed on the brakes, causing the car to jerk. "[W]hen it jerked," the friend "shot her[,]" although Mr. Poteat did not initially realize it. After Ms. Wimms was shot, he testified, he lunged towards the man, who managed to climb out of the car and run away at the "top of the hill when the car backed up," leaving behind the items he had stolen. The car then rolled downhill, hitting the apartment building. Mr. Poteat claimed he tried to put the car in park, but the emergency brake was ineffective. According to Mr. Poteat, after the gun went off, it all "happened so fast," estimating that it was "some seconds" before the car began rolling down the hill. He lost consciousness and awoke in the car, hearing people screaming. At that time, Mr. Poteat began kicking the door of the car to try and get out.

[11] On rebuttal, the State recalled Det. Gurry, who testified that defense counsel had noticed its intent to call Ms. Tynes as an alibi witness, providing 1948 Rochelle Avenue as her address.

Once out of the car, he ran past Ms. Lee and jumped out of her window because his "main concern" at that moment was getting out of the apartment. He rushed past Ms. Lee because she was rather nonchalantly talking on the phone and smoking a cigarette, and "[s]he wasn't even trying to get out of the house." Mr. Poteat was also having trouble breathing from the smoke, and all of the neighbors at the scene were yelling that the car was going to explode. He further testified that once he jumped out of the window, a neighbor brought him into his apartment in the building next door.

On cross-examination, Mr. Poteat testified that up until the moment the car jerked, the friend, seated with his back leaning against the door, was pointing the gun at him. When the car jerked, Mr. Poteat testified, the friend "pointed [the gun] at [Ms. Wimms] and shot her." When the State asked Mr. Poteat exactly where "the muzzle of the gun [was] in relation to Ms. Wimms'[s] head at the time the gun was fired," Mr. Poteat answered "I don't remember. I was scared."

At the close of all the evidence, Mr. Poteat renewed his motion for judgment of acquittal on all counts, reiterating that the State failed to present evidence sufficient to show Mr. Poteat's "involvement in the shooting of [Ms.] Wimms." The court denied the motion.

D. Jury Verdict

After deliberating for less than two hours, the jury found Mr. Poteat guilty of both charges.

On June 19, 2017, Mr. Poteat moved for a new trial under Maryland Rule 4-331, arguing that (1) legally insufficient evidence supported his conviction; (2) the court failed

to ask mandatory *voir dire* questions; and (3) the prosecution misinterpreted the DNA report during closing argument and introduced inadmissible character evidence. The circuit court denied the motion at the October 6, 2017, sentencing hearing. The court sentenced Mr. Poteat to life in prison for the first-degree murder conviction, and 20 years in prison for the handgun conviction, the first five years mandatory and to be served consecutively to the murder sentence. Mr. Poteat noted his timely appeal to this Court on October 19, 2017.

We shall include additional facts as necessary throughout our discussion of the issues.

DISCUSSION

I.

Voir Dire

In advance of trial, the parties submitted to the court proposed *voir dire* questions in writing. Relevant to this appeal are Questions 3 and 9. In Question 3, Mr. Poteat requested that the court ask the venire: "[i]s there any reason that you believe that you cannot fairly consider and decide charges brought against an African American?" In Question 9, Mr. Poteat requested that the court ask the following: "[t]his case involves allegations of [] murder. Do you have any beliefs, values, attitudes, or concerns that would make it difficult for you to fairly assess the legal merits of this case, or that would otherwise make it difficult for you to serve as a juror on this case?"

At trial, the judge asked the jurors a series of questions during *voir dire.* The trial judge did not ask proposed Questions 3 and 9, but instead asked a more general question:

> Ladies and gentlemen of the panel, I've asked a number of questions a number of different ways; however, we can't get into everybody's head, and I would never even try because I don't want anybody getting into mine because you'd find there's nothing there. *Nonetheless, is there anyone amongst you who may know something about yourself that what you know about yourself may preclude you from sitting in this case and being fair, impartial, and basing your decision solely on the evidence presented in this case and nothing else?* If so, please stand.

(Emphasis added). The court then asked both the State and defense counsel if they were satisfied with *voir dire* and the following colloquy ensued:

> [DEFENSE COUNSEL]: Question three about Africa[n] Americans.
>
> THE COURT: State?
>
> [PROSECUTOR]: I just need to clarify. What he's asking is if somebody can't be fair and impartial because of the person's race?
>
> [DEFENSE COUNSEL]: Yes. African American.
>
> THE COURT: I asked the general question.
>
> [DEFENSE COUNSEL]: We want specifically African American.
>
> THE COURT: Okay. Next.
>
> ***
>
> [DEFENSE COUNSEL]: Number nine, this case involves allegations of murder. Do you have any personal beliefs or attitudes, number nine.
>
> THE COURT: Okay. Next.

The court declined to ask either question.

Mr. Poteat argues, and the State concedes, that the circuit court was required to ask the requested *voir dire* question on racial bias. Mr. Poteat also argues that the circuit court was required to ask Question 9, a mandatory "strong feelings" question. The State neither refutes nor addresses this argument with regard to the "strong feelings" question

"because the trial court's refusal to ask a racial bias question necessitates reversal regardless."

The abuse of discretion standard governs our appellate review of a trial court's conduct of *voir dire*. *Collins v. State*, 463 Md. 372, 391 (2019).

A. Racial Bias Question

The Court of Appeals's decision in *Hernandez v. State*, 357 Md. 204 (1999) turned on the issue of a requested *voir dire* question on racial bias. In that case, the Court overturned the conviction of an Hispanic male for child abuse and second-degree rape. *Id*. at 206. At trial, Hernandez requested a *voir dire* question that read: "[i]s there any member of the panel who would be prejudiced against a defendant because of any defendant's race, color, religion, sexual orientation, appearance, or sex?" *Id*. at 206-07. The trial judge refused to propound Hernandez's question, despite the State's admonition that the court ask it. *Id.* at 208. Instead, the court asked the more general question of "whether any of the prospective jurors have any bias or prejudice either for or against the defendant." *Id*. at 207 (internal quotations omitted). At a hearing for Hernandez's motion for a new trial, which was three months before the jury rendered a guilty verdict, "Hernandez was first expressly referred to as being of the 'Hispanic' race." *Id*. at 209.

On appeal to this Court, Hernandez presented, *inter alia*, the issue of whether "the trial court err[ed] by refusing to propound a requested question on *voir dire* relating to racial bias." *Id*. at 209. This Court affirmed in an unreported opinion, concluding that "it is not an abuse of discretion if the substance of the information sought by the defense is fairly covered by another question asked by the court." *Id*. at 209 (internal quotations

omitted). The Court of Appeals granted *certiorari* to address whether "a non-specific question regarding bias [is] sufficient *voir dire* in the trial of a Hispanic defendant when both the defense and the prosecution request that the court propound a specific question designed to elicit racial bias?" *Id*. at 209-10.

The Court of Appeals held that "a *voir dire* question as to bias against persons of the defendant's race should have been asked." *Id*. at 225. In doing so, the Court announced that "any defendant, of whatever race, is entitled to have the trial court propound a requested *voir dire* question specifically directed at uncovering racial bias." *Id.* at 225. The Court explained that such requests trigger a duty on the trial court to submit a *voir dire* question related to racial bias. *Id*. at 224-25. Notably, the Court rejected "the trial court's general question on bias" as insufficient to cover *racial* bias:

> Merely asking general questions, such as, "is there any reason, why you could not render a fair and impartial verdict," is not an adequate substitute for properly framed questions designed to highlight specific areas where potential jurors may have biases that could hinder their ability to fairly and impartially decide the case. Those *voir dire* questions, however, should be framed so as to identify potential jurors with biases which are cause for disqualification, rather than merely identifying potential jurors with attitudes or associations which might facilitate the exercise of peremptory challenges.

Id. at 226 (emphasis added) (citation omitted). The Court agreed with Hernandez that trial courts do not have the same duty to submit a *voir dire* question specifically

concerning the *accused's race*, "absent a specific request from the defendant[.]"[12] *Id*. at 227 (emphasis added). The Court explained:

> If Hernandez sought a *voir dire* question directed to prejudice against Hispanic persons, it was his obligation to identify himself as such and to request an inquiry on bias against Hispanics. Had he done so, he would have been entitled to having that question asked, without the need for special circumstances, in the same manner as if the request relate to race.

Id. at 231.

Returning to the underlying case, Question 3 referred to racial bias against African-Americans. *Id*. at 224. Mr. Poteat was "entitled to have the trial court propound a requested *voir dire* question specifically directed at uncovering racial bias." *Id.* at 225. The circuit court's general question asking whether anything precluded the jurors from being "impartial" and "fair" was insufficient to cover racial bias. *Id*. at 226. Accordingly, the circuit court's failure to ask this required question was an abuse of discretion.

B. "Strong Feelings" Question

We also hold that the circuit court's failure to ask the requested "strong feelings" question in proper form was an abuse of discretion.

We begin with the principle that, "[o]n request, a trial court must ask a *voir dire* question if and only if the *voir dire* question is reasonably likely to reveal specific cause for disqualification." *Pearson v. State*, 437 Md. 350, 357 (2014) (internal citation,

[12] The Court's holding was grounded in its recognition of the "dispute between anthropologists as to what 'race' means," and its desire to exclude trial courts from playing any role in resolving such dispute. *Hernandez*, 357 Md. at 22-231.

quotations, and brackets omitted). "*Voir dire* is critical to implementing a defendant's right to a fair and impartial jury." *Collins*, 463 Md. at 376 (citation omitted). In general,

> [t]here are two categories of specific cause for disqualification: (1) a statute disqualifies a prospective juror; or (2) a collateral matter is reasonably liable to have undue influence over a prospective juror. The latter category is comprised of biases [that are] directly related to the crime, the witnesses, or the defendant.

Id. at 376-77 (internal citations and quotations omitted). As material to this appeal, the "strong feelings" question is a type of *voir dire* question that is "reasonably likely to reveal bias that is directly related to the crime[.]" *Id*. at 377 (citation omitted).

Pearson is instructive. In that case, the petitioner requested prior to his jury trial for several drug-related crimes the following *voir dire* questions: (1) whether any prospective juror, or any friend or family of the prospective juror, had ever been the victim of a crime (the "victim" question); and (2) whether any prospective juror, or anyone the prospective juror knows, had ever been a member of a law enforcement agency (the "law enforcement agency" question). 437 Md. at 354-55. The trial court declined to ask any of these questions and instead asked, in relevant part:

> 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 jury returned a verdict of guilty on the drug-related charges, which Pearson appealed to this Court. *Id*. In a reported opinion, we affirmed Pearson's convictions and held that the circuit court's failure to ask the proposed *voir dire* questions was not an abuse of discretion. *Pearson v. State*, 210 Md. App. 707 (2013).

The Court of Appeals granted *certiorari* to consider, *inter alia*, the trial court's failure to ask the "victim" *voir dire* question. *Pearson*, 437 Md. at 356. The State argued that the "victim" question was unnecessary given the "strong feelings" question. *Id.* The Court concluded that a trial court need not ask the "victim" question during *voir dire*; but instead, found an abuse of discretion in the court's *phrasing* of the "strong feelings" question. *Id*. at 359, 363. The Court concluded that a trial court is not required to ask the "victim" *voir dire* question because, among other reasons, "[t]he 'strong feelings' *voir dire* question makes the 'victim' *voir dire* question unnecessary by revealing the specific cause for disqualification at which the 'victim' *voir dire* question is aimed." *Id*. at 360.

Correspondingly, the Court looked to the "strong feelings" question in Pearson's case and concluded that it "was phrased improperly." *Id*. at 361. The Court recognized that the trial court's phrasing of the *voir dire* question complied with the Court's holding in a previous decision, *State v. Shim*, 418 Md. 37 (2011): "When requested by a defendant, and regardless of the crime, the [trial] court should ask the general question, '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*.'" *Pearson*, 437 Md. at 361 (quoting *Shim*, 418 Md. at 54 (brackets in *Shim*)) (emphasis added). "In retrospect, however, it [wa]s apparent that the phrasing of the 'strong feelings' *voir dire* question in *Shim* clashed with existing precedent," holding that it was an abuse of discretion to ask such compound *voir dire* questions because they "'shift[] from the trial court to the prospective jurors' responsibility to decide prospective juror bias.'" *Id*. at 361-62 (quoting *Dingle v. State*, 361 Md. 1, 21 (2000)) (brackets omitted).

The Court, therefore, amended its previous holding in *Shim* "only in the context of the phrasing of the 'strong feelings' *voir dire* question" and held that,

> [O]n 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]?"

Id. at 363 (alteration in *Pearson*) (emphasis added). The Court noted that, "[w]here an overbroad proposed *voir dire* question encompasses a mandatory *voir dire* question, []a trial court should: (1) rephrase the overbroad proposed *voir dire* question to narrow its scope to that of the mandatory *voir dire* question; and (2) ask the rephrased *voir dire* question." *Id*. at 369 n.6.

Recently, the Court of Appeals in *Collins*, 463 Md. at 396, reaffirmed its holding in *Pearson*. In *Collins*, the petitioner stood jury trial on charges of first-degree burglary and theft. *Id*. at 378. During *voir dire*, the trial court asked the "strong feelings" question in compound form:

> 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 then asked a similarly-phrased question with regard to the theft offense. *Id*. Counsel for Collins objected, requesting that the trial court ask the properly-worded "strong feelings" question that he had requested. *Id*. The court refused. *Id*. The court proceeded with *voir dire*, gave preliminary jury instructions, and counsel for both parties gave opening statements. *Id*. at 382-83. At this point, the prosecutor raised issue with the court's compound "strong feelings" question and requested that the court ask the jury the properly-phrased question in lieu of declaring a mistrial. *Id*. at 383 Over

Collins's counsel's objections, the court agreed and gave the properly-phrased "strong feelings" question. *Id*. at 383-84. Ultimately, the jury found Collins guilty of both charges. *Id*. at 386.

On appeal to this Court, we affirmed Collins's convictions in *Collins v. State*, 238 Md. App. 545, 561 (2018). We held that the circuit court did not abuse its discretion in asking the compound "strong feelings" question because the totality of the trial court's *voir dire* uncovered everything that a "strong feelings" question could have uncovered. *Id*. at 554-57. We held, in the alternative, that the court cured any such abuse by later asking the properly-phrased question after *voir dire* ended. *Id*. at 557-58. Collins petitioned for a writ of *certiorari*, which the Court of Appeals granted.

Reversing this Court's decision, the Court of Appeals held that, "in this case, the circuit court abused its discretion by asking compound 'strong feelings' questions and refusing to ask properly-phrased 'strong feelings' questions during *voir dire*." *Collins*, 463 Md. at 396. In so holding, the Court explained that *Pearson* stood for the proposition that "the 'strong feelings' question is phrased properly if and only if it is in non-compound form."[13] *Id*. at 395 (citing *Pearson*, 437 Md. at 363). The *Collins* Court reiterated, "under *Pearson*, during *voir dire*, on request, a trial court must ask: 'Do any of

[13] The Court in *Collins* explained,

> We refer to such a question as a "compound 'strong feelings' question" because it essentially combines two questions: one regarding whether the prospective juror has strong feelings about the charges; and, if so, one regarding whether those strong feelings would make it difficult for the prospective juror to be fair and impartial.

463 Md. at 377 (citation omitted).

you have strong feelings about [the crime with which the defendant is charged]?'" *Id*. at 396. In light of this, the Court also disagreed with our determination that the other questions asked during *voir dire* fully uncovered that which the compound "strong feelings" question may have failed to uncover. *Id*. at 397-401. Specifically, the Court reasoned that the "victim" and "law enforcement agency" questions rendered the possibility that a prospective juror "would have strong feelings about a crime, yet would not respond to the 'victim' question or the 'law enforcement agency' question." *Id*. at 398. Moreover, the "something in the past," the "sympathy, pity, anger, or any other emotion," and the "catchall" questions, all "essentially constitute[d] compound questions because they shifted from the trial court to the prospective jurors' responsibility to decide prospective juror bias." *Id*. at 399 (internal quotations and brackets omitted).

The Court of Appeals also held that the circuit court did not cure its abuse of discretion by later asking the properly-phrased "strong feelings" questions of selected jurors. *Id*. at 403. The Court rationalized that "[b]y the time that the trial was underway, it was impossible to recreate the circumstances that had existed during *voir dire*, and the circumstances were such that the selected jurors were less likely to disclose the existence of any strong feelings" about the crimes charged. *Id*.

Applying the teachings of *Pearson* and *Collins* to the instant case, we conclude that the trial court abused its discretion by failing to ask the mandatory "strong feelings" *voir dire* question. Proposed Question 9 was a "strong feelings" question that the court was required to ask in the non-compound form set forth in *Pearson*: "Do any of you have strong feelings about [the crime with which the defendant is charged]?" 210 Md. App. at

363; *Collins*, 463 Md. at 395 ("the 'strong feelings' question is phrased properly if and only if it is in non-compound form"). Although Poteat's proposed formulation of Question 9 did not comply with the form set out in *Pearson*, the question was, in essence, a "strong feelings" question aimed at "reveal[ing] bias that is directly related to the crime [charged]"—murder. *Collins*, 463 Md. at 377 (citation omitted). Accordingly, the trial court should have "(1) rephrase[d] the overbroad proposed *voir dire* question to narrow its scope to that of the mandatory ["strong feelings"] *voir dire* question; and (2) ask[ed] the rephrased *voir dire* question." *Pearson*, 437 Md. at 369 n.6; *see e.g.*, *Bowie v. State*, 324 Md. 1, 11-12 (1991) (holding that, even though the defendant's proposed *voir dire* question was improper, it erred by refusing to propound any questions "designed to elicit the essence of the information" sought by the defendant). As we concluded for the racial bias question, the circuit court's general question asking whether anything precluded the jurors from being "impartial" and "fair" was not an adequate substitute for the "strong feelings" question. *See Hernandez*, 357 Md. at 226.

In sum, we hold that the circuit court abused its discretion in failing to ask, upon request, two separate mandatory *voir dire* questions. We shall reverse Mr. Poteat's convictions and remand for a new trial.

II.

Sufficiency of the Evidence

In light of our decision to reverse for a new trial on the basis of the *voir dire* questions, we address next Mr. Poteat's sufficiency of the evidence argument for purposes of double jeopardy. *See Sewell v. State*, 239 Md. App. 571, 606 (2018)

("Unless the State presented sufficient evidence at trial[,] . . . 'there can be no new trial.'" (citation and brackets omitted)).

The applicable standard of review is well-established: "'whether, after viewing the evidence in the light most favorable to the prosecution, *any* rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt.'" *Smith v. State*, 415 Md. 174, 184 (2010) (quoting *Jackson v. Virginia*, 443 U.S. 307, 318-19 (1979)). This standard applies "regardless of whether the conviction rests upon direct evidence, a mixture of direct and circumstantial, *or circumstantial evidence alone*." *Id*. at 185 (citation omitted) (emphasis added). An appellate court may "not second-guess the jury's determination where there are competing rational inferences available. We give deference in that regard to the inferences that a fact-finder may draw." *Smith*, 415 Md. at 183 (internal quotations omitted).

Before this Court, Mr. Poteat contends that the State relied entirely on circumstantial evidence showing that Mr. Poteat was in the car with Ms. Wimms when it crashed into the Apartment. According to Mr. Poteat, this evidence was "insufficient to prove beyond a reasonable doubt that Mr. Poteat shot Ms. Wimms." Mr. Poteat underscores the insufficiency by arguing that the State failed to present any evidence that he "physically possessed or handled the gun" or that he "was the only other person in the car when it crashed into the building[.]"

The State responds that the strong circumstantial evidence reasonably supported an inference consistent with guilt. The choice of which inference to draw, the State

argues, rests with the jury and may not be second-guessed on appellate review. We agree with the State.

The jury convicted Mr. Poteat of first-degree murder and use of a firearm in the commission of the murder. Maryland's first-degree murder statute provides that "[a] murder is in the first degree if it is . . . a deliberate, premeditated, and willful killing." Maryland Code (2002, 2012 Repl. Vol.), Criminal Law Article ("CL"), § 2-201. The Court of Appeals has elaborated on the application of these three elements by stating that first degree murder requires:

> that the defendant possess the intent to kill (willful), that the defendant have conscious knowledge of the intent to kill (deliberate), and that there be time enough for the defendant to be deliberate, *i.e.*, time enough to have thought about the intent (premeditate).

Pinkney v. State, 151 Md. App. 311, 332 (2003) (citation omitted). With regard to the willfulness requirement, "we have stated that '[f]or a killing to be "willful" there must be a specific purpose and intent to kill[.]'" *Id.* (citation omitted). In examining willfulness, the defendant's intent to kill may be inferred from a variety of factors, such as the defendant's actions surrounding the death "when they so clearly involve actions that are likely to bring about death," motive, or "from the fact that the defendant's version of events was contradicted by other witnesses." *Id.* at 333-35 (citations omitted). Motive, however, is not required. *See Sewell v. State*, 239 Md. App. 571, 612-14 (2018) ("The State's failure to prove [] motive is not dispositive[,]" because "'[s]howing that a defendant had a motive to commit a crime simply helps to establish that he had the requisite *intent* to commit the crime'" (citation omitted)).

Proving that the defendant "acted deliberately and with premeditation is often treated as a single endeavor." *Pinkney*, 151 Md. App. at 335. Accordingly, "[i]f the killing results from a choice made as the result of thought, however short the struggle between the intention and the act, it is sufficient to characterize the crime as deliberate and premeditated murder." *Id*. (quoting *Wiley v. State*, 328 Md. 126, 133-34 (1992)).

In *Pinkney*, this Court upheld a first-degree murder conviction on the basis of the totality of the circumstantial evidence before the jury. *Id*. at 343. There, the jury convicted Pinkney of first-degree murder for the killing of his infant step-grandson. *Id*. at 313. It was adduced at Pinkney's jury trial that the victim had been in the care of Pinkney when the victim suddenly stopped breathing and was rushed to the hospital. *Id.* at 316-17. The victim later died and the autopsy revealed that the cause of death was "blunt force trauma as a result of four injuries to his head." *Id*. at 317. According to Pinkney's own testimony at trial, the victim had been crying constantly while in his care and that he had been changing the victim's diapers when he suddenly stopped breathing, prompting Pinkney to call 911 and begin giving CPR to the victim in an attempt to resuscitate him. *Id.* at 316-17. Although Pinkney had told police that he had accidentally hit the victim's head on a bed rail while shaking him in order to revive him, at trial, Pinkney denied hitting the victim's head but admitted that he was tired and sleep-deprived from the victim's constant crying and crankiness. *Id*. at 317-18, 321. The State presented medical testimony about the brutal extent of the victim's injuries and the violent force that would have been required to inflict the injuries sustained. *Id*. at 318-20. Significantly, the medical testimony ruled out other possible causes of the victim's

injuries and both of the State's medical experts opined that the blows would have rendered the victim immediately unconscious. *Id*. at 320.

On appeal, Pinkney challenged his conviction, arguing that the evidence was legally insufficient to sustain first-degree murder. *Id*. at 324-25. Pinkney argued specifically that the evidence failed to establish that he inflicted the fatal injuries upon the victim or that he inflicted the injuries with willfulness, premeditation and deliberation. *Id*. This Court's analysis was guided by the principle that "circumstantial evidence alone can provide a sufficient basis upon which a trier of fact can rest its determination of guilt, even for first degree murder[.]" *Id*. at 329. Accordingly, this Court concluded that there was sufficient circumstantial evidence "from which the jury could have concluded beyond a reasonable doubt that [Pinkney] was the individual who inflicted the fatal blows to [the victim's] head" based on the evidence that the victim had been in the care of Pinkney at the time of the accident and that the victim later died due to blunt force injuries to the head.[14] *Id*. at 330-31.

This Court also concluded that there was sufficient circumstantial evidence supporting the intent requirements for first-degree murder. *Id*. at 343. In looking to the

[14] In holding that there was sufficient evidence from which the jury could have concluded beyond a reasonable doubt that Pinkney was the perpetrator, this Court applied the Court of Appeals's reasoning in *Deese v. State*, 367 Md. 293 (2001), observing "[t]he similarity between the facts in *Deese* and those in the present case[.]" *Pinkney*, 151 Md. App. at 330-31. In *Deese*, the Court of Appeals affirmed a second-degree murder conviction based on circumstantial evidence showing that the victim was under the appellant's exclusive supervision on the day of the accident and that the victim "was found dead a few hours after that period" due to blunt force injuries to the head. 367 Md. at 308.

willfulness requirement, this Court concluded that the intent to kill could be inferred from: (1) Pinkney's actions; specifically, that whatever was used to deliver the fatal blows had a likelihood of bringing about death given "the fragile nature of the victim, a six-month-old baby;" (2) Pinkney's testimony that his actions could have been motivated by a desire to quiet the victim; and (3) "the fact that [Pinkney's] story contradicted the other [medical] evidence." *Id*. at 333-35. This Court also concluded that premeditation and deliberation could be inferred from the evidence showing "the nature and number of the deadly blows to [the victim's] head, in the context of all other evidence[.]" *Id*. at 340. Specifically, the medical testimony established that the victim suffered four fatal blows to his head and excluded other possible causes for the fatal injuries, "emphasizing that such injuries were not likely to be the result of an accidental knock on the head during attempts to resuscitate or even the alleged mishandling of [the victim] by his father[.]" *Id*. at 339-40. "The jury was not required to accept [Pinkney's] version of events, especially given that much of the evidence presented by the State demonstrated how his story was inconsistent with the medical evidence." *Id*. at 339.

Returning to the case at bar, the totality of the circumstantial evidence presented at Mr. Poteat's trial was sufficient to a support a rational inference, beyond a reasonable doubt, that Mr. Poteat shot Ms. Wimms and did so willfully, deliberately and with premeditation. *Deese v. State*, 367 Md. 293, 308 (2001). First, there was evidence that Ms. Wimms' shooter intended to kill her because she died of a bullet wound to her head. *See State v. Raines*, 326 Md. 582, 590-93 (1992) (holding that sufficient evidence supported trial court's finding that defendant intended to kill the victim by aiming and

firing the pistol at the victim's head where the physical evidence revealed that the shot struck the victim in the head). This was reflected in Dr. Allan's autopsy, which concluded that Ms. Wimms' death was a homicide based on the nonsurvivable bullet wound to her right temple. There was also evidence at trial that, minutes before the car rolled down the hill, Ms. Wimms's car had crashed into a picket fence. Any reasonable jury could have inferred from this evidence that a struggle had ensued in the car and her perpetrator, therefore, acted with premeditation and deliberation.

The second reasonable inference the evidence allows is that Ms. Poteat fired the fatal shot. The evidence demonstrated, and Mr. Poteat admitted, that he was in the car with Ms. Wimms when she was shot in her head. There was also other sufficient evidence, viewed in the light most favorable to the State, from which any reasonable jury could infer that a third person could not have been in the car and Mr. Poteat, therefore, was the *only* passenger in the car with Ms. Wimms at the time of the shooting: (1) Dr. Allan testified that the bullet wound would have immediately incapacitated Ms. Wimms and, had her foot been on the accelerator, any weight forward would have caused the car to continue accelerating; (2) Det. Gurry estimated, based on the surveillance footage and interviews of other tenants, that about "two-and-a-half to three-and-a-half minutes" passed between the time the car initially hit the picket fence and the time the car went through the fence and down the hill; (3) Ms. Lee testified that once the car finally came to a stop inside the Apartment, the car engine was still revving and accelerating; (4) Ms. Lee also testified to observing only Mr. Poteat exit the car and even specified that she saw him exit the front portion of the car; (5) a handgun was found in the front passenger seat

of the car; (6) Mr. Poteat's cell phone was found on the front passenger seat of the car; and (7) fingerprints recovered from the exterior of the right front passenger door window matched those of Mr. Poteat. We note that Mr. Poteat testified himself that, after the gun went off, it was only "some seconds" before the car began rolling down the hill, further supporting a rational inference that any third person would have had insufficient time to fend off Mr. Poteat's alleged attack and escape before the car began rolling down the hill.

Although Mr. Poteat testified that there was a third person in the car, Ms. Wimms's friend, who had shot Ms. Wimms, the jury, as the fact finder, was entitled to discredit Mr. Poteat's version of events, and instead, draw an inference of guilt based on the other evidence offered at trial. *Tichnell v. State*, 287 Md. 695, 719 (1980) (explaining that a jury is not obligated to believe the defendant's version of events, but may draw its own conclusions based on other evidence presented); *Nicholson v. State*, 239 Md. App. 228, 243 (2018) ("In its assessment of the credibility of witnesses, [a fact-finder is] entitled to accept—or reject—*all*, *part*, or *none* of the testimony of any witnesses, whether that testimony was or was not contradicted or corroborated by any other evidence.") (citation omitted) (emphasis in original). Significantly, the jury heard testimony from Ms. Keemer that contradicted parts of Mr. Poteat's story. Contrary to Mr. Poteat's testimony that the third person in the car was a friend of Ms. Wimms from her apartment complex, Ms. Keemer testified that Ms. Wimms did not know anyone who lived in their apartment complex because they had only recently moved in. She also testified to hearing people leave her and Ms. Wimms's apartment only once on the

evening of October 3, contradicting Mr. Poteat's testimony that he walked in and out of Ms. Wimms's apartment multiple times.

Finally, the State presented evidence of Mr. Poteat's consciousness of guilt. *See Johnson v. State*, 156 Md. App. 694, 715 (2004). By his own admission, Mr. Poteat did not remain at the scene after the car crash or report the alleged robbery to the police in the days or weeks after the shooting. Rather, the data extracted from Mr. Poteat's Samsung cell phone showed that he was compulsively searching for information about the crime and Ms. Wimms's death in the weeks after the shooting and visited her Facebook page 173 times.

Considering the evidence in the light most favorable to the State, it was reasonable for the jury to infer from the totality of the evidence that Mr. Poteat was the shooter and that he delivered the fatal shot to Ms. Wimms with willfulness, premeditation, and deliberation. We defer to the inferences the jury may draw, regardless of "whether there are competing rational inferences available" from the testimony of other witnesses. *Smith*, 415 Md. at 183 (citation omitted). Therefore, we hold that the evidence was legally sufficient to support Mr. Poteat's conviction for first-degree murder and use of a handgun in the commission of a crime of violence.

III.

Flight Instruction

Because the issue of flight instructions will likely arise at Mr. Poteat's new trial, we will briefly address it below.

At trial, the State and defense counsel disagreed over the flight instruction. The State argued that a flight instruction had been generated "based on the evidence that . . . [Mr. Poteat] jumped out of the window of 1950 Rochelle Avenue and fled from the area" and "that after he went past Chauntay Tynes, he fled the area and she called him 25 times." Mr. Poteat responded by arguing that there was "absolutely no evidence of flight" because the evidence clearly demonstrated that "[h]e simply got out of the [apartment] building like everyone else did" due to safety reasons. Over defense counsel's objection, the court propounded a slightly modified version of Maryland Criminal Pattern Jury Instruction 3:24:

> A person's flight or concealment immediately after the commission of a crime or after being accused of committing a crime is not enough by itself to establish guilt, but it is a fact that may be considered by you as evidence of guilt.
>
> Flight or concealment under these circumstances may be motivated by a variety of factors, some of which are fully consistent with innocence. You must first decide whether there is evidence of flight or concealment. If you decide there's evidence of flight or concealment, you then must decide whether the flight or concealment shows a consciousness of guilt.

Before this Court, Mr. Poteat contends that the evidence did not generate support for the first two inferences necessary to establish a flight instruction because "at most, the evidence showed only mere departure." Moreover, he argues, "[l]eaving the immediate area did not suggest consciousness of guilt; it suggested common sense" given the chaotic and dangerous circumstances of the crash. In response, the State avers that "all that was needed for a flight instruction was 'some evidence' that Mr. Poteat left the scene to avoid apprehension." In support of this, the State argues that Mr. Poteat's conduct at the scene of the crime and in the days following—searching the internet for information

about the case and failing to report the robbery—were sufficient to generate a flight instruction. The State points out that Poteat, by his own admission, was in the car when Ms. Wimms was shot in the head, causing the car to careen down the hill and crash. "Although the normal reaction of an innocent person in this situation would be to stay at or near the scene and speak with police and other first responders, Poteat admittedly did not do so . . . instead Poteat spend a few minutes inside the apartment while Lee spoke with a 911 operator and then ran past her and jumped out a window[.]"

The Court of Appeals has interpreted Rule 4-325(c), which governs the giving of jury instructions, to require the trial court to give a requested jury instruction when:

> (1) the requested instruction is a correct statement of the law; (2) the requested instruction is applicable under the facts of the case; and (3) the content of the requested instruction was not fairly covered elsewhere in the jury instruction actually given.

Thompson, 393 Md. at 302-03 (citation omitted). "A requested jury instruction is applicable if the evidence is sufficient to permit a jury to find its factual predicate." *Bazzle v. State*, 426 Md. 541, 550 (2012).

Generally, this Court "review[s] a circuit court's decision whether to give a jury instruction under the abuse of discretion standard." *Thompson v. State*, 393 Md. 291, 311 (2006) (brackets omitted). More specifically, viewing the evidence in the light most favorable to the party requesting the instruction, we assess whether that party "produced that minimum threshold of evidence necessary to establish a *prima facie* case that would allow a jury to rationally conclude that the evidence supports the application of the legal theory desired." *Bazzle*, 426 Md. at 550; *see also Page v. State*, 222 Md. App. 648, 668-

69 (2015) (citation omitted). "This threshold is low, in that the requesting party must only produce '*some evidence*' to support the requested instruction." *Page*, 222 Md. App. at 668 (citation omitted) (emphasis added). "[I]t is of no matter that the [requested instruction] is overwhelmed by evidence to the contrary." *Dykes v. State*, 319 Md. 206, 217 (1990).

A flight instruction is appropriate if the evidence "is sufficient to furnish reasonable support for all four of the necessary inferences:"

> [1] that the behavior of the defendant suggests flight; [2] that the flight suggests a consciousness of guilt; [3] that the consciousness of guilt is related to the crime charged or a closely related crime; and [4] that the consciousness of guilt of the crime charged suggests actual guilt of the crime charged or a closely related crime.

Thompson, 393 Md. at 312.

Returning to the case before us, the State adduced "some evidence" to suggest Mr. Poteat's flight and consciousness of guilt. *Thompson*, 393 Md. at 312. Mr. Poteat was with Ms. Wimms in her car at the time of the shooting and the subsequent crash into 1950 Rochelle Avenue. Knowing Ms. Wimms was still in the car, Mr. Poteat climbed out, rushed past Ms. Lee and jumped out of her bedroom window, leaving the scene without speaking to or alerting anyone on the scene that Ms. Wimms was still in the car. Mr. Poteat even admitted on cross-examination that he never once reported the alleged robbery and shooting to the police following the incident. The recording of Ms. Tynes' 911 call also established that Mr. Poteat passed Ms. Tynes as he was leaving the scene of the crime. She asked Mr. Poteat what he was doing there and proceeded to call his cell phone numerous times thereafter, supporting an inference that fled past Ms. Tynes

without giving her a response. Although Mr. Poteat testified that he did not "run" past Ms. Tynes, "it is of no matter that the [requested instruction] is overwhelmed by evidence to the contrary." *Dykes*, 319 Md. at 217. The evidence of his behavior was not, as he suggests, a "mere departure" from the scene of the crime. In our view, the State produced "some evidence" to support flight and consciousness of guilt. *Page*, 222 Md. App. at 668. The trial court did not abuse its discretion by propounding a flight instruction.

In sum, for the aforementioned reasons, we shall vacate both convictions and remand the case to the circuit court for further proceedings consistent with this opinion.

JUDGMENTS OF THE CIRCUIT COURT FOR PRINCE GEORGE'S COUNTY VACATED. REMANDED FOR PROCEEDINGS CONSISTENT WITH THIS OPINION. COSTS TO BE PAID BY PRINCE GEORGE'S COUNTY.