UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 1346

September Term, 2015

DEANDRE EASLEY

v.

STATE OF MARYLAND

Eyler, Deborah S.,
Wright,
Rodowsky, Lawrence F.
(Retired, Specially Assigned),

JJ.

Opinion by Eyler, Deborah S., J.

Filed: June 16, 2016

—UNREPORTED OPINION—

A jury in the Circuit Court for Baltimore City convicted Deandre Easley, the appellant, of attempted first-degree murder and related weapons offenses. The appellant raises two issues on appeal:

I. Did the trial court abuse its discretion by refusing to ask *voir dire* questions aimed at identifying disqualifying bias?

II. Must the commitment record in the case be corrected, where it does not reflect the sentence announced by the court?

For the following reasons, we answer the first question in the negative. As to the second question, we agree that the commitment record should be corrected to reflect the sentence announced in open court.

FACTS AND PROCEEDINGS

On July 4, 2013, Maron Matthews, Jr. ("Maron") attended a party at his grandmother's house in Baltimore. He estimates that there were approximately twenty people there. That afternoon, the appellant came to the party and asked Maron if his sister, Megan Matthews ("Megan"), was in attendance. Maron recognized the appellant because he had dated Megan. Maron did not approve of the relationship–calling them together "high drama"–especially after he heard that the appellant had been abusive toward Megan and had ripped out her hair in one incident. Maron told the appellant that Megan was not at the party, and the appellant left.

A short time later, Megan arrived at the party accompanied by the appellant. Maron asked Megan why the appellant was at the party. Not receiving a satisfactory answer, Maron confronted the appellant on the front porch and punched him until Megan intervened. Maron told the appellant to stop beating his sister, and the appellant left the party.

At around 7:00 or 7:30 p.m., Brenae Umeozulu, Maron's mother, arrived at the party. She heard about the fight from various family members. At around 9:00 p.m., Ms. Umeozulu spoke with Maron on the back porch, expressing her dissatisfaction with his decision to beat up the appellant at her mother's house.

As Ms. Umeozulu and Maron were speaking, they saw the appellant approaching the back gate. The appellant asked to speak with the person "that banged me," and demanded that Maron come talk to him "like a man." Ms. Umeozulu and Maron said they would come speak to him if he took his hand out of his pocket, which he did. Standing a few feet apart with a fence between them, the appellant told Ms. Umeozulu that Maron had beat him up, and he did not appreciate "how [Maron] put [his] hands on him" and disrespected him. Maron responded that he did not appreciate the appellant "put[ting] his hands on [his] sister." Ms. Umeozulu acknowledged that Maron had beat up the appellant, but she also accused the appellant of doing something wrong to Megan.

Suddenly, the appellant displayed a small, black semi-automatic handgun and pointed it at Maron. He pulled the trigger multiple times, but the gun did not fire. Ms. Umeozulu and Maron began running back to the house and screaming for someone to call the police. The appellant cursed and ran down the street in the opposite direction, toward a group of young men who appeared to have accompanied him. Ms. Umeozulu and Maron heard a couple of gun shots. No one was injured by the gunfire. Ms. Umeozulu's mother and one of her sisters called the police.[1]

From inside the house, Desiraye Williams, another of Ms. Umeozulu's sisters, witnessed the confrontation between Ms. Umeozulu, Maron, and the appellant. She corroborated their accounts and added that the appellant "started fumbling" with the gun after it misfired.

Baltimore City Police Department Officer Kyle Moschera arrived in response to the 9-1-1 calls. He spoke with Maron, Megan, Ms. Umeozulu, and Ms. Williams and searched the area where the encounter had occurred. Officer Moschera recovered a spent bullet as well as an unfired cartridge around the area where the appellant was standing when he attempted to fire the gun at Maron and Ms. Umeozulu. He did not recover a gun. He stated that there was no evidence of fireworks being set off in the area around the time of the incident.

[1] The 9-1-1 calls, as well as portions of the police dispatch radio conversation, were played for the jury.

James Wagster, a firearms examiner with the Baltimore crime laboratory, testified as an expert witness in firearms identification. He explained that the recovered bullet and unfired cartridge were .25 caliber and would have been used in a semi-automatic handgun. He pointed out a small dent on the unfired cartridge and opined that that indicated that the firing pin had struck the primer but not with enough force to fire the gun. Although Mr. Wagster conceded that he could not say when the bullet and cartridge had been left at the scene, he opined that their presence in the condition they were found was consistent with someone "rack[ing]" the gun after a misfire, like Ms. Williams described the appellant doing.

The State charged the appellant with attempted first-degree murder, attempted second-degree murder, first-degree assault, second-degree assault, reckless endangerment, use of a firearm in a crime of violence, wearing or carrying a handgun, discharge of a handgun in Baltimore City limits, possession of a regulated firearm by a prohibited person, and possession of a firearm by a person under 21 years of age. The jury convicted the appellant of attempted first-degree murder and all of the weapons offenses. At a subsequent sentencing hearing, the court imposed a life sentence, with all but 20 years suspended, for attempted murder, and concurrent sentences of five years, each, for use of a firearm in a crime of violence and possession of a firearm by a prohibited person, followed by five years of probation. No sentences were imposed for the remaining weapons offenses.

DISCUSSION

I.

Prior to *voir dire* of the jury *venire*, the following colloquy occurred:

[DEFENSE COUNSEL]: Yeah um, I, I see that you left off the question that I asked about do you believe that, that black men commit more crimes of violence –

THE COURT: Well, there should be and let me just check very quickly – actually I, I agree with that. We have a standard question about uh, about being affected by race or anything else. I'll stick that, including – okay, that's a good point and we will, we will include a question, it's more generically phrased. We will include that. You're absolutely correct.

[DEFENSE COUNSEL]: ***I'll go with, with, with your formulation.***

THE COURT: No, no, that's okay, but you are correct. That, that is a matter that should be in, in the questions. Okay, you can add that in. Now, was there anything else?

[DEFENSE COUNSEL]: Um, I asked the question about the weight to be given not only to police officers, but to scientific tests or scientific evidence. My question 15 in which I say, there may be testimony on scientific tests or processes from one or more members of the Baltimore City Police Department's Mobile Crime Unit or Firearms Examination Unit. Would any member of this jury panel accept the testimony of these police technicians at face value merely because he or she is a police technician rather than determining as with any other evidence in this case how much weight to give it[?]

THE COURT: Yeah.

[DEFENSE COUNSEL]: Give it – I think that's a separate question from the general question about police officers.

THE COURT: Yeah. I think, I think generally the question about police officers does cover that, but I would note that uh, that I will be giving an

expert opinion instruction which I specifically tell people that they give the expert testimony the weight that they believe it deserves. So they will be looking at qualifications and the believability and whatever cross-examination there will be.

[DEFENSE COUNSEL]: So, so for, for that reason, that, that is your reason that, that you exclude my questions –

THE COURT: Yeah.

[DEFENSE COUNSEL]: – 15 and 16.

THE COURT: That's correct.

[DEFENSE COUNSEL]: That your expert –

THE COURT: ***And I understand you're objecting to that; is that correct?***

[DEFENSE COUNSEL]: ***Yes.***

THE COURT: ***All right, well that's fine. I, I will note your objection. You can repeat it.***

[DEFENSE COUNSEL]: ***Okay.***

THE COURT: ***You don't have to repeat it at the bench, but certainly you are free to repeat it when I ask about any objections to the contents of voir dire.***

[DEFENSE COUNSEL]: Okay. All right.

THE COURT: That's fine, okay.

[DEFENSE COUNSEL]: Um, uh, uh, I also asked uh, uh, my question 19. There may be testimony from the complainants in this case. Would any member of the jury panel give more weight to the testimony of complainants merely because they claim to be victims of, of I should say the crimes alleged in this case –

THE COURT: Yeah.

[DEFENSE COUNSEL]: – is there any other witness in the case. That's a bias question.

THE COURT: Now, if you look at question 10.

[DEFENSE COUNSEL]: Question 10.

THE COURT: Question 10, the first question, more or less weight to the testimony of a police officer. Second, more or less weight to the testimony of a witness for the prosecution and the third, more or less test, weight to the testimony of a witness called by the defense. I believe that covers your issue.

[DEFENSE COUNSEL]: Well, I, I, I disagree. Uh to the second one uh that the um testimony of the, the alleged complainants are in a different category than just a witness for the, the prosecution and Your Honor may I, I simply state that uh, that uh our position is that, that, that this is a pretext and that what really happened, the assault that occurred was the assault against [the appellant].

THE COURT: Oh, I see your point.

[DEFENSE COUNSEL]: And that, and that uh all of those people are involved or, or most of them are involved in what happened to him. So there's a motive and a bias for giving a slanted view of what's going on.

THE COURT: Okay.

[DEFENSE COUNSEL]: And that all of the, with the exception of the police officers, uh, uh the only witnesses I see that the State is producing to, to support their version of what happened is the family, many of whom were involved in the assault that occurred.

THE COURT: Okay. I think I understand your point, but let me just say, when we phrase our questions, we, I tend to use the uh, I tend to use neutral language because one thing I do not want to do is flag a particular person as

someone who may or may not be untrustworthy. As an example, the alleged victim.

[DEFENSE COUNSEL]: I understand.

THE COURT: Uh, so that way, for that reason, I tend to use neutral language. In this case, witness for the prosecution would, I mean if the victim testifies, that will include the victim as the, as one of the witnesses. So that's generally the reason I do it this way. So I think your, your, I understand your point and you know, we'll see how the case unfolds, but at this point, I'll keep the language that I have right now.

[DEFENSE COUNSEL]: I understand that both of the alleged victims will testify and while I understand your position in not wanting to flag them, ***I still would respectfully object –***

THE COURT: ***Okay. That's fine. I understand.***

(Emphasis added.)

After *voir dire* was concluded, the following occurred at the bench:

THE COURT: All right, any objection[?]

[DEFENSE COUNSEL]: Continuing argument, continuing argument about that question.

THE COURT: That's correct.

[DEFENSE COUNSEL]: I think the race question specifically says does a black person have a greater propensity to commit crime that uh, your question is so politically correct that it doesn't get to the –

THE COURT: Well, political correctness is not necessarily an insult, but, but let me just, the, the, what I am always concerned about with these questions is the possibility of you do what is called a trigger question. In other words, it starts people thinking, oh yeah, he's a black person. Therefore, he must be or must not be guilty. That's one reason why I try to phrase these

> neutrally so I don't have people to start thinking along those lines because I've triggered them to think along those lines. That's the reason I do this.
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> [DEFENSE COUNSEL]: I understand.
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> THE COURT: In fairness to everybody, I try to do that.
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> [DEFENSE COUNSEL]: No, I appreciate that.
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> THE COURT: Your issue is a legitimate issue. I certainly am concerned about it and when we have people up here at the desk, I'm certainly going to, that'll be something I keep in mind.
>
> Now, is there anything else that you wish to –
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> [DEFENSE COUNSEL]: ***No, that was all.***

(Emphasis added.)

The appellant contends the court abused its discretion by refusing to pose the three *voir dire* questions discussed in the colloquy quoted above. He argues that these questions were tailored to ferret out possible biases of the potential jury members, and the court's refusal to ask them deprived him of the ability to properly assess the *venire*.

The State responds first that the appellant failed to preserve for review, and, indeed, affirmatively waived, any contentions as to his second and third questions because defense counsel "objected only to the failure to ask his proposed question related to racial bias." Moreover, the State argues, the record does not contain the text of the appellant's proposed *voir dire* questions, and therefore we do not have an adequate record to decide this issue. Second, and alternatively, the State contends that, if the questions are preserved for review

and not waived, the court did not abuse its discretion by refusing to pose them because the court asked *voir dire* questions that adequately addressed the appellant's concerns.

We disagree with the State as to preservation. Although following *voir dire*, when the court asked if there were any objections, the appellant only mentioned the proposed question about race, we are persuaded that all three questions were properly preserved. Prior to *voir dire*, the court made it clear that the appellant's objections to the refusal to propound the proposed questions were noted, and the court informed defense counsel, "You don't have to repeat it [the objection] at the bench, but certainly you are free to repeat it when I ask about any objections to the contents of *voir dire*." The better practice, of course, is to expressly raise all objections when asked by the court, but the court made it clear in this case that the appellant's objections were noted and rejected. *See also* Md. Rule 8-131(a) ("Ordinarily, the appellate court will not decide any other issue [except for jurisdiction] unless it plainly appears by the record to have been raised in ***or decided by*** the trial court[.]" (Emphasis added)).

Furthermore, we are not persuaded that there is an insufficient record from which to review this issue. Certainly, "a trial court's actions and decisions are generally presumed to be correct and . . . it is the appellant's burden to produce a record sufficient to show otherwise." *Denicolis v. State*, 378 Md. 646, 657 (2003) (citing *Mora v. State*, 355 Md. 639, 650 (1999)). Although the record in this case does not contain a written document with the text of the appellant's proposed *voir dire* questions, the transcript clearly

delineates the wording of the proposed questions that the court declined to ask. Accordingly, the appellant has produced a sufficient record from which we may decide this issue on its merits. *See Rollins v. Capital Plaza Assocs., L.P.*, 181 Md. App. 188, 202 (2008) (noting that deciding a case on the merits "'is always a preferred alternative'" (quoting *Joseph v. Bozzuto Mgmt. Co.*, 173 Md. App. 305, 348 (2007))).

The Court of Appeals has remarked: "'*Voir dire*, the process by which prospective jurors are examined to determine whether cause for disqualification exists, is the mechanism whereby the right to a fair and impartial jury . . . is given substance.'" *Moore v. State*, 412 Md. 635, 644 (2010) (quoting *Dingle v. State*, 361 Md. 1, 9 (2000)) (internal citations omitted). "In the absence of a statute or rule prescribing the questions to be asked of venirepersons during the examination, 'the subject is left largely to the sound discretion of the court in each particular case.'" *Id.* (quoting *Corens v. State*, 185 Md. 561, 564 (1946)). Questions asked of the *venire* panel should "'discover the state of mind of the juror in respect to the matter in hand or any collateral matter reasonably liable to unduly influence him.'" *Id.* at 645 (quoting *Corens*, 185 Md. at 564). The court should tailor the questions to the case, with "the ultimate goal [of] obtain[ing] jurors who will be 'impartial and unbiased.'" *Id.* (quoting *Dingle*, 361 Md. at 9).

A 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.'" *Consol. Waste Indus., Inc. v. Standard Equip. Co.*, 421 Md. 210, 219 (2011)

(quoting *King v. State*, 407 Md. 682, 711 (2009)). Stated another way, a court abuses its discretion "where no reasonable person would take the view adopted by the [trial] court . . . or when the court acts without reference to any guiding principles." *Aventis Pasteur, Inc. v. Skevofilax*, 396 Md. 405, 418 (2007) (internal quotation marks and citations omitted). "An abuse of discretion may also be found where the ruling under consideration is clearly against the logic and effect of facts and inferences before the court, or when the ruling is violative of fact and logic." *Bord v. Balt. Cty.*, 220 Md. App. 529, 566 (2014) (citations omitted).

The trial court did not abuse its discretion in refusing to ask the appellant's proposed *voir dire* questions because those questions were "covered" by the *voir dire* questions the court asked. The court asked the following pertinent questions of the *venire* on *voir dire*:

> Okay, thank you. Now, this question again has three parts. So, I do ask you to listen carefully and once again, don't answer until I have completed all three parts of the question. ***First, would any member of the jury panel be inclined to give either more or less weight to the testimony of a police officer than to any other witness in the case merely because the witness is a police officer? Second, 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 he or she is a prosecution witness?*** Third question, 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 he or she is a defense witness? If your answer to any of those three questions is yes, we ask that you do stand.
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> * * *

> Okay. Now, this case must be based on the evidence presented, not based on the ***race***, gender, ethnicity, religion or country of origin of the Defendant or any of the witnesses. Therefore, ***does any member of the jury panel have any experience, attitude or predisposition in his or her background that would make it difficult for you to decide this case without regard to race, gender, ethnicity, religion or country of origin?*** If so, please stand.

(Emphasis added.)

The appellant's proposed question as to whether potential jury members believe black men are predisposed to committing violent crimes was addressed by the court's question asking the *venire* if any potential juror would have difficulty "decid[ing] this case without regard to race, gender, ethnicity, religion or country of origin[.]" The appellant's proposed question and the court's question targeted the same information–whether any of the potential jurors would be unduly influenced by considerations of the appellant's race. As such, we perceive no abuse of discretion in the court's refusal to ask the appellant's question in place of its own.

With respect to the appellant's proposed question about the police technicians, the court asked the *venire* whether any potential juror would give more or less weight to the testimony of a police officer simply because the witness was a police officer. Also, the court asked whether any potential juror would give more or less weight to a prosecution witness, solely because the witness testified for the State. Both the appellant's proposed question and the court's questions sought the same information–whether any potential juror would be biased for or against the testimony of a police witness merely because of the

witness's affiliation with the police department. This was sufficient to cover the appellant's proposed question about police technicians. Moreover, the court instructed the jury about the weight to give expert testimony, and the appellant was free to question Mr. Wagster about his expert qualifications and his testimony.

Finally, the proposed question about the bias of the potential jurors regarding the testimony of the complainants also was covered by the court's questions. The court's question as to whether any potential juror would give more or less weight to a prosecution witness targets the same information as the appellant's proposed question. The appellant argues that the complainants "are in a different category than just a witness" for the State, but we fail to see a difference. The complainants–Maron and Ms. Umeozulu–testified for the State and were, therefore, prosecution witnesses.

Defense counsel explained that he included this proposed question because Maron and Ms. Umeozulu were the victims, they harbored bias against the appellant because he allegedly abused Megan, and therefore they had a motive to testify against him. That is an argument that defense counsel could–and did–make to the jury, and is information that could have been brought out during cross-examination. It was not appropriate for *voir dire*. We perceive no abuse of discretion in the court's refusal to ask this question.

II.

The appellant contends the commitment record must be corrected to properly reflect the sentence announced in open court. Specifically, he points out that the commitment

record provides that sentences were imposed for all of the weapons offense convictions, when, in fact, the sentencing court imposed sentences only for the use of a handgun in a crime of violence and possession of a firearm by a prohibited person convictions. The State agrees that the commitment record should be corrected to reflect the sentences actually imposed.

"'When there is a conflict between the transcript and the commitment record, unless it is shown that the transcript is in error, the transcript prevails.'" *Lawson v. State*, 187 Md. App. 101, 108 (2009) (quoting *Douglas v. State*, 130 Md. App. 666, 673 (2000)). *See also Dedo v. State*, 105 Md. App. 438, 461–62 (1995) (noting that a sentence on the commitment record should reflect the same sentence announced in court and on the transcript), *rev'd on other grounds*, 343 Md. 2 (1996).

In this case, the sentence announced in court was as follows:

> I am, I remember that the jury found you guilty on all counts and quite candidly I would have as well. This is a case where I agreed with the jury's verdict. I think this is what happened. I recognize that he is denying it right now and I'm not going to take any umbrage at that except I don't think he's being honest with himself at this point. But given the nature of the crime, the fact that it could have been a terrible tragedy, I think that, but and also taking into account his, his relative youth, I am going to be and I want everybody to listen to the end of my sentence. I am going to be imposing a sentence of life, but I am suspending all, I am suspending all but twenty years. He'll get credit for this time served. He'll have a five year probationary period when he has completed the term. Uh, my estimation is that he would serve something like eleven or twelve years minus the two years, I may be wrong about that, but minus the two years that he's getting credit for. I don't believe, and uh, on the gun charges I think there was a count for – what were the gun charges? Uh, handgun in the commission of a

> crime of violence, that's mandatory five without parole. I will impose that five, but that will be concurrent, not consecutive and I think there was a second gun charge that did not merge and that was possession, uh someone who was disqualified for prior felony.
>
> * * *
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> Right and that will be five years, but yet again will run concurrently, not, not consecutively.

Accordingly, the commitment record conflicts with the transcript, and, as neither party contends the transcript is in error, the transcript prevails. Because the court did not announce in open court sentences for the weapons offense convictions except the two referenced above, the commitment record should be amended to correct this and reflect the sentence issued by the court.

JUDGMENTS OF THE CIRCUIT COURT FOR BALTIMORE CITY, AS MODIFIED TO CORRECT THE COMMITMENT RECORD, AFFIRMED. COSTS TO BE PAID 1/2 BY THE APPELLANT AND 1/2 BY THE MAYOR AND CITY COUNCIL OF BALTIMORE.