Circuit Court for Howard County
Case No. C-13-CR-23-000050

UNREPORTED*

IN THE APPELLATE COURT

OF MARYLAND

No. 2099

September Term, 2023

ROBERT CHARLES LOGAN

v.

STATE OF MARYLAND

Wells, C.J.,
Ripken,
Eyler, Deborah, S.,
(Senior Judge, Specially Assigned),

JJ.

Opinion by Wells, C.J.

Filed: March 19, 2025

The appellant, Robert Logan, asks us to grant him a new trial because the Circuit Court for Howard County declined to ask the jury venire a question during *voir dire* related to their associations with organized groups that "combat crime or help victims of crime." After a jury trial from September 5 to 8, 2023, Logan was convicted of attempted second-degree murder, first-degree assault, firearm use in a crime of violence, and firearm possession after being convicted of a crime of violence. The court sentenced Logan to an aggregate term of 25 years' imprisonment and three years of supervised probation. Logan filed a timely appeal to this Court.

Logan presents one question for our review:

> Did the trial court err in refusing to ask the organizational bias question during *voir dire*?

For the reasons set forth below, we conclude the trial court did not err in refusing to ask the crime victim organizational bias question. We affirm.

FACTUAL AND PROCEDURAL BACKGROUND

Because this appeal has to do with *voir dire*, the facts underlying Logan's charges are not particularly important except for background. On November 6, 2022, James Ott, the victim, exchanged some provocative words and hand gestures with Logan outside the entrance of the Triple Nines bar in Howard County. Ott, who never met Logan previously, proceeded to enter his parked vehicle at approximately 2:34 a.m. when five to eight gunshots struck his car. After a police investigation, numerous pieces of evidence were collected that pointed to Logan as the shooter. Logan was eventually indicted on charges of attempted first-degree murder, attempted second-degree murder, first-degree assault,

firearm use in a crime of violence, firearm possession after being convicted of a crime of violence, and malicious destruction of property.

Prior to trial in the Circuit Court for Howard County, Logan's defense counsel requested the court to ask the prospective jurors about their association with organizations that "combat crime or help victims of crime":

> 23. Have you or any members of your family ever been associated with, contributors to or any way involved with any local, state, or national community group or organization to combat crime or help victims of crime, such as CASA, Operation Identification, Neighborhood Watch, Guardian Angels, Mothers Against Drunk Driving, and/or other similar organizations?

(hereinafter the "crime victim organizational bias" question). On September 5, 2023, the first day of trial, Logan's counsel explained the purpose of the crime victim organizational bias question was to reveal individuals with bias from their association with "law and order type organizations." The court ultimately declined to ask the question to the jury venire:

> THE COURT: Let me see what you're [sic] 23 is. [The Court reads defense question 23 verbatim]. Why are you asking for that one?
>
> [LOGAN'S COUNSEL]: Your Honor, those -- all those organizations are uniquely, for lack of a better phrase, law and order type organizations. They assist in victims of crimes that may lead to bias being indicated on the record and aid in the intelligently (indiscernible 9:18:35) preemptory strikes. I believe the question is appropriate and would request it be asked by Your Honor.
>
> [THE COURT]:[1] I don't normally give that. What's the State's position?

[1] In Logan's summary of facts, adopted by the State, he notes: "The transcript attributes this statement to defense counsel, but it is clear from the context of the exchange that it is the court speaking."

> [STATE]: Your Honor, the State doesn't have a position. We'll defer to the Court.
>
> THE COURT: I decline to do that one. Next one.
>
> [LOGAN'S COUNSEL]: Please note my request, Your Honor.
>
> THE COURT: Okay. So noted.

During *voir dire*, Juror 26 responded affirmatively to the court's question about potential jurors' "strong feelings" toward the charged crimes or crimes involving firearms[2] and approached the bench. Logan's counsel requested to strike Juror 26 for cause after an exchange in which Juror 26 revealed they donated to organizations seeking to reduce access to firearms:

> THE COURT: I'm good. I've got you down -- let's see. You have strong feelings about the type of charges or charges in line -- involving firearms?
>
> JUROR NO. 26: Yeah. When you mentioned the firearms, I've always, kind of, held pretty strong oppositional feelings towards the ease of access to firearms, and just the number of firearms in our country.
>
> THE COURT: Uh-huh.
>
> JUROR NO. 26: I've made small donations in the past to some, like, organizations that are just helping to push legislation to help curb some of that ease of access.

[2] The "strong feelings" question asked to Logan's jury venire was:

> 9. Does any member of the panel have strong feelings about the crimes of attempted first degree murder, attempted second degree murder, first degree assault, firearm use in the crime of violence, firearm possession with disqualifying conviction, malicious destruction of property or crimes involving firearms?

THE COURT: Okay. Do you believe, even with your feelings, that you can be fair and impartial in weighing the facts when there's an allegation involving firearms?

JUROR NO. 26: I hope so, but I don't know. My feeling is almost like, if you're out with a firearm, like, why do you have it with you if you're not, kind of, planning on using it in some sort. I know they're used for defense, as well, but -- so I feel like, probably, but I don't know. Without knowing all the, like, facts, necessarily, I don't know how well I can answer that.

THE COURT: Okay. All right. Let's see, the lawyers may have some questions.

JUROR NO. 26: Okay.

THE COURT: [State], any questions?

[THE STATE]: So are you -- made, kind of --

JUROR NO. 26: Yeah.

[THE STATE]: -- inference already?

JUROR NO. 26: Right.

[THE STATE]: If you -- putting your feelings aside, because everybody comes with certain biases and feelings, listening to the evidence --

JUROR NO. 26: Uh-huh.

[THE STATE]: -- listening to Judge Tucker's instructions, could you evaluate the evidence as it exists in this courtroom in coming to your determination as a potential -- as a juror?

JUROR NO. 26: Yes. I think I (indiscernible - 11:335:47).

[THE STATE]: Okay.

THE COURT: [Logan's Counsel]?

[LOGAN'S COUNSEL]: I don't have any questions.

THE COURT: All right. Thank you, sir.

> JUROR NO. 26: Thank you.
>
> THE COURT: You can go back to your seat. Thank you.
>
> [LOGAN'S COUNSEL]: Your Honor, I would make a motion for cause in Juror No. 26, just within that -- his statement, specifically, about -- talked about carrying a weapon then you're automatically assuming that they're intending to use it, which, to me, that came off as presuming guilt just based on carrying a firearm.
>
> THE COURT: I don't know. I don't know about that one. [State], you want to ask a question?
>
> [THE STATE]: When asked if he could -- I think a lot of times people come up, and, you know, they discuss their feelings. And then when asked, specifically, if they can listen to the evidence and the laws instructed by the Court, then they're able to say -- and will -- or they are -- he was able to say, "I can do that."
>
> THE COURT: And that's -- he did say that. I'm going to deny a cause strike on that one.

Logan then used a peremptory strike to remove Juror 26. His trial lasted from September 5 to 8, 2023. Logan was ultimately convicted of attempted second-degree murder, first-degree assault, firearm use in a crime of violence, and firearm possession after being convicted of a crime of violence, but he was acquitted of attempted first-degree murder and malicious destruction of property. Logan was sentenced to an aggregate term of 25 years' imprisonment, to be followed by three years of supervised probation. On December 29, 2023, Logan filed a timely appeal to this Court.

STANDARD OF REVIEW

"'An appellate court reviews for abuse of discretion a trial court's decision as to whether to ask a *voir dire* question.'" *Kazadi v. State*, 467 Md. 1, 24 (2020) (quoting *Pearson v. State*, 437 Md. 350, 356 (2014)).

DISCUSSION

I. The Court Did Not Abuse its Discretion in Choosing Not to Ask Logan's Crime Victim Organizational Bias Question.

A. Parties' Contentions

Logan, citing *Dingle v. State*, 361 Md. 1 (2000), and *State v. Shim*, 418 Md. 37 (2011), contends the court was required to ask the crime victim organizational bias question. Specifically, Logan argues the question could have revealed bias toward the defendant, which is a specific cause for disqualification that is required to be asked to the jury venire. Logan then cites *Baker v. State*, 157 Md. App. 600 (2004), for the proposition that questions about potential jurors' "strong feelings" toward the crimes charged do not sufficiently uncover specific causes for disqualification that the crime victim organizational bias question reveals. Additionally, Logan asks us to follow the approach we took in *Thomas v. State*, 139 Md. App. 188 (2001), and take judicial notice of the records in other cases where the *voir dire* question was effective in revealing a specific cause for disqualification.[3]

[3] Alternatively, Logan asks that we, or the Supreme Court of Maryland, expand *voir dire* to aid in the intelligent exercise of peremptory challenges and apply it to Logan's case. Currently, Maryland law only requires *voir dire* to uncover specific causes for disqualification, not to aid in intelligent use of peremptory challenges. *Dingle*, 361 Md. at 10 ("[I]nforming the trial court's exercise of discretion regarding the conduct of the voir

The State argues Logan misinterprets *Dingle* and ignores the leading case on this issue, *Pearson v. State*, 437 Md. 350 (2014), which requires the court to ask a *voir dire* question about potential jurors' association with a group only if the question has a demonstrably strong correlation to a specific cause for disqualification. The State claims Logan's crime victim organizational bias question was overly broad and did not have a direct enough correlation to specific causes for disqualification, therefore the court was not required to ask it. Additionally, the State claims Logan's reading of *Baker* is incorrect and asserts that any prospective jurors' bias from organizational association was sufficiently covered by the strong feelings question, as well as other *voir dire* questions.

As we explain below, we agree with the State's analysis of the relevant case law for this issue.

B. Analysis

In *Pearson*, the Supreme Court of Maryland described the relevant law as follows:

> A defendant has a right to an impartial jury. U.S. Const. amend. VI; Md. Decl. of Rts. Art. 21. *Voir dire* (*i.e.,* the questioning of prospective jurors) is critical to implementing the right to an impartial jury.
>
> Maryland employs limited voir dire. That is, in Maryland, the sole purpose of *voir dire* is to ensure a fair and impartial jury by determining the existence of specific cause for disqualification. Unlike in many other jurisdictions, facilitating the intelligent exercise of peremptory challenges is not a purpose

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dire is a single, primary, and overriding principle or purpose: to ascertain the existence of cause for disqualification.") (quotations and citations omitted). Although we appreciate Logan directing us to recent case law, legislative activity, and recommendations of the Standing Committee on Rules of Practice and Procedure, we decline to overturn long-standing Maryland precedent and expand *voir dire* here. As such, we decline to address the issue further.

> of *voir dire* in Maryland. Thus, a trial court need not ask a *voir dire* question that is not directed at a specific cause for disqualification or is merely fishing for information to assist in the exercise of peremptory challenges.
>
> On 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. There 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 directly related to the crime, the witnesses, or the defendant.
>
> On request, a trial court must ask during *voir dire* whether any prospective juror has had an experience, "status, association, or affiliation," if and only if the experience, status, association, or affiliation has a *demonstrably strong correlation* with a mental state that gives rise to specific cause for disqualification."

437 Md. at 356–58 (emphasis in original) (footnote omitted) (cleaned up); *see also Washington v. State*, 425 Md. 306, 315–16 (2012) (discussing multiple examples of questions Maryland courts have, and have not, required the court to ask during *voir dire* upon request). Additionally, "'a trial court's process of determining whether a proposed inquiry is reasonably likely to reveal disqualifying partiality or bias includes weighing the expenditure of time and resources in the pursuit of the reason for the response to a proposed *voir dire* question against the likelihood that pursuing the reason for the response will reveal bias or partiality.'" *Pearson*, 437 Md. at 358–59 (citing *Perry v. State*, 344 Md. 204, 220 (1996)).

The reasoning in *Pearson* guides our analysis here. Pearson and his co-defendant were convicted of several drug crimes, and all of the State's witnesses were police officers. *Id.* at 354–55. The Court held the trial court was not required to ask the jury venire whether "any member of [the prospective jury's] family, friend[s], or acquaintance[s] [had] been

the victim of a crime" for three reasons. *Id.* at 354–55. First, "a prospective juror's experience as the victim of a crime lacks a demonstrably strong correlation with a mental state that gives rise to specific cause for disqualification." *Id.* at 359 (quotations and citation omitted) (cleaned up).[4] The Court said the "'victim' *voir dire* question (as well as the inevitable follow-up questions) merely allow the defendant to 'fish' for information to assist in the exercise of peremptory challenges." (quotations and citation omitted) (cleaned up). Second, the Court determined the crime victim question can consume an enormous amount of time because many people have been the victims of some type of crime, and the question requires courts to ask every juror at least two follow-up questions: what the crime was, and whether the experience would prevent the juror from fairly weighing the evidence. *Id.* at 360. Third, the Court concluded a question about whether the jurors had any "strong feelings" toward the crimes Pearson was accused of committing, which was asked during Pearson's *voir dire*, was better at revealing specific causes for disqualification than the crime victim question. *Id.*

However, our Supreme Court in *Pearson* also held the trial court erred by refusing to ask "whether any prospective juror had ever been a member of a law enforcement agency" because it was reasonably likely to reveal a specific cause for disqualification. *Id.* at 364. Importantly, the Court did not say this question was always required in every criminal case. Instead, the question becomes required when "all of the State's witnesses

[4] This was supported by other cases in which courts held the victim question was not required.

are members of law enforcement agencies and/or where the basis for a conviction is reasonably likely to be the testimony of members of law enforcement agencies." *Id.* at 367. The Court explained "the prospective juror's professional, vocational, or social status does tend to prove bias; that a prospective juror has been, or is, a member of the group to which the principal witness for the State belongs is relevant to the determination of that prospective juror's partiality or bias." *Id.* at 367 (citing *Dingle*, 361 Md. at 16) (quotations omitted) (cleaned up).

Following the analytical framework and reasoning in *Pearson*, we first hold the prospective jurors' affiliation with organizations that "combat crime or help victims of crime" did not have a demonstrably strong correlation with a mental state that gave rise to specific cause for disqualification in Logan's case. In *Pearson*, membership in law enforcement was relevant to a potentially disqualifiable bias toward witnesses in the case because all of the State's witnesses were members of law enforcement, and potential jurors who were also members of law enforcement may have been more willing to credit the officers' testimony over defense witnesses' testimony. Here, Logan appears to primarily claim the crime victim organizational bias question would reveal specific biases toward the defendant, not witnesses or the crimes. Logan argues this is because he stipulated to having prior criminal convictions that disqualified him from possessing a firearm, and the crime victim organizational bias question was required to identify jurors belonging to "law and order type organizations" that would harbor bias toward him as someone "who had admitted, unqualifiedly, to not being a law-and-order type of person."

But Logan overlooks the fact that a person's membership in, or donation to, a group that helps victims or combats crime does not necessarily mean they would harbor bias toward someone previously convicted of a crime, especially considering not all crimes have victims. Logan's crime victim organizational bias question is therefore much more like the "victim" question than the "membership of law enforcement" question in *Pearson* because, in Logan's case, the prospective jurors' association with groups combating crime or helping victims lacks "a *demonstrably strong correlation* with a mental state that gives rise to *specific* cause for disqualification," including "biases directly related to the . . . defendant." *Pearson*, 437 Md. at 357–58 (emphasis added).

The second part of the analysis in *Pearson* further illuminates the fact that the lack of strong correlation in this case is due to the overbreadth of Logan's crime victim organizational bias question. Like the "victim" *voir dire* question in *Pearson*, affirmative responses to the crime victim organizational bias question would likely also require additional questions, such as "what the organization was" and "whether the experience would prevent the juror from fairly weighing the evidence." Thus, Logan's question appears to be "fishing" for intelligent use of peremptory strikes, which is further evident from the fact that it casts a wide net about organizations involved in combating crime and helping crime victims generally. Indeed, Logan's counsel told the trial court during *voir dire* they were asking the question because it "may lead to bias being indicated on the record and aid in the intelligently (indiscernible 9:18:35) preemptory strikes." Thus, the crime victim organizational bias question is too broad to have a *strong* correlation to a

mental state that gives rise to a *specific* bias against Logan as a previously convicted criminal.

Finally, any disqualifiable bias in Logan's case, including bias toward him as a previously convicted criminal, that the crime victim organizational bias question would reveal was already covered by other questions asked to the jury venire. In the first *voir dire* question, the court informed the prospective jurors of the charges against Logan, including "possession of a firearm after being convicted of a disqualifying crime . . . ." In addition to the strong feelings question, the court asked other questions that would directly or indirectly uncover prospective jurors' disqualifiable biases based on their association with groups combating crime or helping victims, including:

> 3. Are you related to or personally acquainted with the Defendant, Robert Charles Logan . . . ?
>
> 5. If you are selected as a juror in this case, you will be required to decide this case solely based on the sworn testimony you hear from witnesses in this courtroom and any exhibits that are presented to you as evidence . . . Is there any prospective juror who believes that he or she would find it difficult or impossible to abide by these restrictions if they are selected as a juror in this case?
>
> 6. Does any member of the jury panel believe that the testimony of a police officer is any more or less credible than the testimony of a civilian witness merely because of the officer's position in a law enforcement agency?
>
> 7. Has any prospective juror or any member of your immediate family ever been employed by or associated with any municipal, state, or federal police force, law enforcement agency, prosecutor's office, or other law office?
>
> 8. Other than a conviction for a minor motor vehicle violation, has any member of the jury panel, or member of your immediate family, ever been:
>
> a. convicted of a crime, or
> b. a defendant in a criminal case?

10. Would any prospective juror be more likely to believe a witness for the prosecution merely because they are a prosecution witness?

11. Has any member of the panel ever served on a criminal jury before?

12. Under the law, a jury may not consider any possible punishment in its evaluation of the evidence in the case. Does any member of the jury panel have any difficulty accepting this principle, or would any of you have any difficulty applying it if you were chosen as a juror in this case?

13. Does any prospective juror disagree with the principle of American justice that declares all persons to be presumed innocent unless proven guilty beyond a reasonable doubt?

14. Is there any member of the panel that believes merely because a person is charged with a crime or indicted, that this raises a presumption of guilt on the part of that individual?

15. Under the law, the Defendant has an absolute right to remain silent and to refuse to testify. No adverse inference or inference of guilty may be drawn from the Defendant's refusal to testify. Does any prospective juror believe that the Defendant has a duty or responsibility to testify or that the Defendant must be guilty merely because the Defendant may refuse to testify?

16. Does any member of the panel have any fixed opinions, biases or prejudices against the defendant in this case?

17. Does any member of the jury panel feel you cannot return a fair and impartial verdict based solely upon the evidence presented in this courtroom and the law as instructed by the Court even if you disagree with those instructions?

19. Does any juror know of any matter about which you have not been asked which you feel would tend to interfere with your ability to arrive at a fair and impartial verdict in this case?

These questions adequately, and more effectively, uncovered disqualifiable biases than the crime victim organizational bias question.[5] In fact, the strong feelings question prompted the interaction with Juror 26, whose bias came from their donations to organizations that try to curb access to firearms. This shows the strong feelings question was adequate to reveal specific biases that were cause for disqualification in Logan's case.

However, Logan argues our decision in *Baker v. State* should remind us "the strong feelings question . . . does not suffice for the organizational bias question." We disagree. In *Baker*, the defendant was on trial for offenses involving the use of a handgun, and the jurors would have to decide whether the defendant used a handgun in self-defense with reasonable force. 157 Md. App. at 613. The trial court asked the jury venire whether they belonged to groups concerned with victims' rights or law enforcement issues but refused to ask a question about whether prospective jurors had "any bias or prejudice concerning handguns . . . ." *Id.* at 612–13. We held the trial court abused its discretion, stating:

> We disagree that the trial court's asking the panel whether any juror belonged to "any organization that is concerned with victims' rights or that is otherwise concerned with law enforcement issues" would reveal any jurors who had strong prejudice toward handguns, especially since the trial court specifically mentioned "MADD or SADD or organizations such as those." **Obviously, a person could have strong prejudice against handguns without joining an**

[5] Logan does not argue the crime victim organizational bias question would have revealed any biases related to witnesses in his case. However, it is worth noting that the jury venire in Logan's case was asked questions that adequately covered organizational biases related to witnesses, including whether prospective jurors, or their family, were associated with law enforcement, convicted of a crime, or were defendants in a criminal case.

> **organization. There is no reason to believe it likely that such a person would have answered in the affirmativ**e.

Id. at 613 (emphasis added). Logan argues that the inverse is also true: "someone [can] join a law-and-order organization without thinking of themselves as having strong feelings toward the crimes charged in this case." Logan, like the State, points to the interaction with Juror 26 as proof of this argument.

We do not agree with Logan's inverse argument. The logic in *Baker* was correct because the strong feelings question was reasonably likely to reveal a disqualifying bias against the crimes alleged that the crime victim organizational bias question would not—potential jurors with strong feelings toward handguns who did not join an organization. Here, it is hard to imagine that asking whether any prospective jurors who had strong feelings towards the crimes charged in Logan's case, or crimes involving firearms generally, would fail to reveal jurors with disqualifiable biases due to their association with groups that "combat crime or help victims of crime." Additionally, the other *voir dire* questions asked at trial also probed potential jurors for disqualifiable biases Logan sought to uncover with the crime victim organizational bias question. We agree with the State, contrary to Logan's view, that the interaction with Juror 26 in this case provides further evidence that the strong feelings question the circuit court asked during *voir dire* adequately revealed jurors with bias from their membership in an organization.

Logan also argues *Dingle* mandates the crime victim organizational bias question to be asked when requested. Here, again, Logan misinterprets case law. In *Dingle*, the court asked the jury venire several questions in a two-part form, including: "Do you or any family

member or close personal friend belong to a victims' rights group . . . and if, in fact, your answer to that question is yes, would that fact interfere with your ability to be fair and impartial in this case?" 361 Md. at 4 n.4. In support of his argument, Logan directs us to passages where our Supreme Court acknowledged the trial court must have found all of the *voir dire* questions were relevant. *Id.* at 14, 17. However, this does not mean the Court held that questions about prospective jurors' membership in crime victims' rights groups are always required, and we do not read *Dingle* as mandating these questions.

As the State points out in its brief, the dissent in *Dingle* understood, as do we, "the dispute does not . . . concern the content of a question asked of prospective jurors. Instead, the error charged to the trial court in the present case is simply one of improper syntax." *Id.* at 23 (Raker, J., dissenting). Additionally, the State correctly notes we already rejected Logan's reading of *Dingle* in *Uzzle v. State*:

> The *Dingle* opinion did not devote any analysis to or even discuss the substantive merits of the voir dire questions before it. Assuming the questions to have been a proper subject for voir dire inquiry, its exclusive concern was with the two-part nature of the questions and the attendant instruction that the prospective jurors should only respond if their answers were in the affirmative to both parts of the questions.

152 Md. App. 548, 554 (2003). *Dingle*'s holding—that the two-part nature of the *voir dire* questions were improper—has no relevance to the issues in this case.

Logan also cites *State v. Shim* for the proposition that the specific causes for disqualification include biases directly related to the defendant. We agree, and as we explained earlier in this opinion, Logan's crime victim organizational bias question does not uncover any disqualifiable bias toward him that was not already covered by the other

voir dire questions asked at his trial. Logan says the other takeaway from *Shim* is that courts "must" resolve a "doubtful" or "marginal" *voir dire* question in favor of the requesting party. *Shim* issues no such mandate. Instead—in the context of deciding whether the phrasing "violent death of another human being" was meaningfully distinguishable from "murder" or "the criminal charges in this case"—*Shim* urged trial courts to "follow Judge Murphy's suggestion" in resolving "doubtful and/or marginal voir dire" questions in order to avoid future problems. *Shim*, 418 Md. at 55–56. Even if this wise advice was binding, we do not believe the trial court here faced a doubtful or marginal *voir dire* question.

Finally, Logan directs us to multiple cases where questions similar to the crime victim organizational bias question were effective in discovering challenges for cause. We have no doubt that questions about potential jurors' bias based on affiliation with a crime victim rights' group are appropriate and effective in some cases. However, it does not mean the court abused its discretion by choosing not to ask the question in Logan's case. *See McGee v. State*, 219 Md. 53, 58 (1959) ("Questions not directed to a specific ground for disqualification . . . may be refused in the discretion of the court, even though it would not have been error to have asked them.") (citations omitted).

In conclusion, the court was not required to ask Logan's crime victim organizational bias question during *voir dire* because the question did not have a demonstrably strong correlation with a mental state giving rise to specific cause for disqualification that would not already be revealed by the other *voir dire* questions. As such, the court did not abuse its discretion in declining to ask the question. Accordingly, we affirm.

THE JUDGMENT OF THE CIRCUIT COURT FOR HOWARD COUNTY IS AFFIRMED. APPELLANT TO PAY THE COSTS.