

Circuit Court for Baltimore City
Case No. 24-C-16-002313

UNREPORTED
IN THE COURT OF SPECIAL APPEALS
OF MARYLAND

No. 2404

September Term, 2017

OFFICER JAMES CRAIG

v.

MYREQ WILLIAMS

Graeff,
Kehoe,
Berger,

JJ.

Opinion by Berger, J.

Filed: June 3, 2019

*This is an unreported opinion, and it may not be cited in any paper, brief, motion, or other document filed in this Court or any other Maryland Court as either precedent within the rule of stare decisis or as persuasive authority. Md. Rule 1-104.

This appeal arises out of an action filed by Myreq Williams (“Williams”), appellee, against Officer James Craig (“Officer Craig”), appellant, a Baltimore City police officer. Williams alleged that he sustained injuries as a result of Officer Craig’s use of excessive force. Following a trial in the Circuit Court for Baltimore City, a jury returned a verdict in favor of Williams and awarded him \$130,000 in damages.

On appeal, Officer Craig poses a single question, which we set forth *verbatim*.

Did the circuit court commit reversible error when it refused to ask prospective jurors whether pretrial media coverage of the Baltimore City Police Department left any prospective juror with an incurable negative impression of Baltimore City police officers, when the trial involved claims of misconduct by a city police officer and the trial took place at a time of intense, negative media coverage of the Baltimore City Police Department?

For the reasons explained herein, we affirm.

FACTS AND PROCEEDINGS

In April 2015, Freddie Gray died from injuries sustained while in the custody of Baltimore City police officers. Gray’s death sparked widespread debate and protests in Baltimore City. The civil unrest resulted in the Mayor of Baltimore City issuing a city-wide curfew and the Governor of Maryland declaring a state of emergency.

On April 28, 2015, Williams was out past curfew following demonstrations at the intersection of Pennsylvania Avenue and North Avenue in Baltimore City. Officer Craig became concerned when he saw Williams run down a street and board a bus. Believing that Williams had a gun, Officer Craig stopped the bus and then boarded the bus. Ultimately, Officer Craig removed Williams from the bus and Williams suffered a broken

arm. Thereafter, Williams filed a complaint in the Circuit Court for Baltimore City alleging that Officer Craig's use of excessive force caused Williams' injury.¹

On January 31, 2018, Williams and Officer Craig appeared in the circuit court for trial. Prior to the start of trial, counsel submitted questions they requested the circuit court ask the jury during *voir dire*. Officer Craig's counsel proposed thirty-two questions to the circuit court. Among the proposed questions was Question No. 16:

Has any member of the jury panel obtained any information from newspaper articles or other media sources regarding the Baltimore City Police Department and/or specific members of the Baltimore City Police Department that would cause you to have a negative impression regarding the Defendant, current and former Baltimore City Police officers?

Officer Craig's counsel sought to include Question No. 16 because of negative publicity surrounding the Baltimore Police Department.²

The proposal prompted the following exchange between counsel for Officer Craig and the circuit court:

[COUNSEL FOR OFFICER CRAIG]: Your Honor, as I -- basically tagging on what I asked before, I do believe there has been a great deal of negative publicity in the press, in the written media, on the blogs and social media as to particular

¹ Williams was initially one of six co-plaintiffs in a lawsuit brought against several police officers. The complaint was captioned as *Larry Lomax, et al. v. Lieutenant Christopher O'Ree, et al.* Williams and Officer Craig, however, are the only parties in this appeal.

² Specifically, Officer Craig's counsel was concerned with news stories pertaining to Baltimore City police officers fabricating evidence and engaging in other illegal practices. See, e.g., Justin Fenton, *Baltimore Gun Trace Task Force officers were 'both cops and robbers' at same time, prosecutors say*, THE BALTIMORE SUN, Jan. 23, 2018, <https://www.baltimoresun.com/news/maryland/crime/bs-md-ci-gttf-opening-statements-20180123-story.html> (last visited May 29, 2019).

police officers who were involved in other issues like the [RICO] matter, the federal matter, that, I think, if a juror has been following that, they may have formulated an opinion that all Baltimore City police officers have issues and I'd like to be able to weed that particular juror out. I think it's necessary and I think there is a certain bias that builds if someone has been, for instance, following the Hersl trial or the G[on]do trial.^[3]

THE COURT: Okay. Do you wish to be heard Mr. Downs?

[COUNSEL FOR WILLIAMS]: No, Your Honor.

THE COURT: Thank you. Well, I'll tell you. I understand the reason that you would like to have it, but I don't think it goes to the heart of what voir dire is in this jurisdiction. Additionally, I believe I get to that. If they have issues concerning any police officer, it's going to come up when I ask, "Would any member of the panel be inclined to give either more or less weight to a police officer?"

That's all I'm really concerned about, is what they will do if someone is up on this bench, up on this chair, testifying and to figure out whether if they have a problem with them. Then if it's because, well, I listened to the, you know, the [RICO] cases, and the Hersl cases, and I don't think any officer, you know, tells the truth or I believe all police officers. Either one, it's going to come up in that particular question.

Otherwise, in the temperature of what is going on in the entire country, that could be said for any case, criminal or civil. People may have feelings about the police in one way or the other. What we need to be concerned about is whether or not it is going to affect their ability to give a fair hearing of the evidence and that's what the Court is going to be concerned about.

So I think I get to that question already, Mr. Zollicoffer.

³ Counsel for Officer Craig was referring to the criminal trials of two former Baltimore Police Detectives: Momodu Gondo and Daniel Hersl. The federal trials took place in the United States District Court for the District of Maryland.

Thereafter, the circuit court asked sixteen questions to prospective jurors. One of the questions pertained to whether the prospective jurors had knowledge of the incident and two additional questions probed for potential biases. With regards to knowledge, the circuit court asked: “Does any member of the panel have any knowledge of this incident other than what it is that I have just told you? Any knowledge from any source whatsoever?” To further uncover any biases, the circuit court asked: “Would any member of the jury panel be inclined to give either more or less weight to the testimony of a police officer than any other witness in this case merely because that person is a police officer?” Critically, the circuit court then asked: “Does any member of the jury panel have any strong feelings regarding excessive force and battery by police officers?”

Two of the forty-five prospective jurors responded affirmatively to the police testimony question and twelve responded affirmatively to the strong feelings question. The circuit court instructed thirteen prospective jurors to approach the bench. Despite the circuit court not asking Question No. 16, several prospective jurors referenced media reports as reasons why they held biases against police officers. For example, Juror No. 4068 stated that she was “a little bias[ed]” because of “the excessive force that [she has] seen, like during the news, the stories going on during the news ... it’s just too much.” Additionally, Juror No. 4041 expressed strong feelings because of “everything that’s going on as far as with the police” and “all the police brutality.” Furthermore, Juror No. 4017 specifically referenced the Freddie Gray case.⁴

⁴ None of these three prospective jurors served on the jury. Juror No. 4041 was struck for hardship reasons and Juror No. 4068 was selected as an alternate. Counsel for

After *voir dire*, the circuit court proceeded with the trial. On February 2, 2018, the jury returned a verdict in favor of Williams and awarded him \$130,000 in damages. This appeal followed.

STANDARD OF REVIEW

We apply the abuse of discretion standard when reviewing a trial court’s decision to not ask a proposed *voir dire* question. *Collins v. State*, __ Md. __, No. 54, Sept. Term, 2018, Slip. Op. at 18 (Ct. of App. Apr. 2, 2019). “The abuse of discretion standard is largely deferential to the trial judge’s decision.” *Williams v. State*, 462 Md. 335, 345 (2019). Indeed, an “[a]buse occurs when a trial judge exercises discretion in an arbitrary or capricious manner or when he or she acts beyond the letter or reason of law.” *Id.* (quoting *Campbell v. State*, 373 Md. 637, 666 (2003)); *Wilson v. John Crane, Inc.*, 385 Md. 185, 198 (2005) (stating that there is an abuse of discretion when “the court acts without reference to any guiding rules or principles,” or “the ruling under consideration is clearly against the logic and effect of facts and inferences before the court”). In short, “to constitute an abuse of discretion, the trial judge’s decision has to be well removed from any center mark imagined by the reviewing court and beyond the fringe of what the court deems minimally acceptable.” *Wallace v. State*, 237 Md. App. 415, 428 (2018) (internal quotations and citations omitted).

Officer Craig’s motion to strike Juror No. 4017 for cause was denied. Nevertheless, Juror No. 4017 was not seated for reasons that are unclear from the record.

DISCUSSION

Officer Craig contends that the circuit court abused its discretion in declining to ask Question No. 16 -- the proposed *voir dire* question pertaining to pretrial media coverage of the Baltimore Police Department. In doing so, Officer Craig asserts that none of the other *voir dire* questions addressed that specific basis for disqualification. Officer Craig further relies on *United States v. Dellinger*, 472 F.2d 340 (7th Cir. 1972), in arguing that trial courts should consider how current events affect a juror's state of mind. Conversely, Williams argues that the circuit court did not abuse its discretion in declining to ask Question No. 16 because the other *voir dire* questions, taken together, exposed biases against the Baltimore Police Department.⁵ For the reasons that follow, we conclude that the circuit court acted within its broad discretion when it declined to ask Question No. 16.

As discussed, *supra*, “[w]e review the trial [court’s] rulings on the record of the *voir dire* process as a whole for an abuse of discretion[.]” *Stewart v. State*, 399 Md. 146, 160 (2007). “The [court’s] conclusions are therefore entitled to substantial deference, unless they are the product of a *voir dire* that ‘is cursory, rushed, and unduly limited.’” *Id.* (quoting *White v. State*, 374 Md. 232, 241 (2003)). The primary purpose of *voir dire* is to uncover impartiality or bias on the part of individual jury members. *White*, 374 Md. at 242. As such, the decisions made by the trial court during *voir dire* will not be disturbed unless they “adversely affect[ed] appellant’s right to a fair and impartial jury.” *Id.*

⁵ In the alternative, Williams maintains that Question No. 16 impermissibly asked prospective jurors to weigh their own biases.

Notably, “the vast majority of states and all of the federal circuits” require trial courts to ask a proposed *voir dire* question if the question is relevant to counsel’s ability to intelligently exercise peremptory challenges. *Pearson v. State*, 437 Md. 350, 370 (2014) (Harrell, J., concurring). Indeed, in nearly every jurisdiction, attorneys are permitted to use *voir dire* “to elicit sufficient information to develop a rational basis for excluding a potential juror, whether for cause or by peremptory challenges.” *State v. Thomas*, 369 Md. 202, 218-19 (2002) (Raker, J., concurring), *abrogated by Pearson, supra*, 437 Md. 350.

In Maryland, however, the process of *voir dire* is “limited,” as “the sole purpose of *voir dire* ‘is to ensure a fair and impartial jury by determining the existence of [a specific] cause for disqualification[.]’” *Pearson*, 437 Md. at 356 (quoting *Washington v. State*, 425 Md. 306, 312 (2012)).⁶ Strategic tactics in jury selection, such as using peremptory challenges to sculpt a jury in one’s favor, are inappropriate in Maryland. *Id.* at 356-57. A trial court, therefore, need only ask a proposed *voir dire* question “if the *voir dire* question is ‘reasonably likely to reveal [a specific] cause for disqualification[.]’” *Id.* at 357 (quoting *Moore v. State*, 412 Md. 635, 663 (2010)).

The Court of Appeals has identified two types of inquiry suitable for uncovering a specific cause for disqualification: (1) questions designed to determine whether a prospective juror meets the minimum statutory qualifications for jury service; and (2) questions designed to discover a prospective juror’s state of mind regarding any matter reasonably likely to have undue influence over her. *Washington, supra*, 425 Md. at 313.

⁶ Only Maryland, Pennsylvania, and California adhere to this “limited” approach. *Pearson, supra*, 437 Md. at 370 (Harrell, J., concurring).

Moreover, “the trial court has broad discretion in the conduct of *voir dire*, most especially with regard to the scope and the form of the questions propounded[.]” *Dingle v. State*, 361 Md. 1, 13 (2000) (citation omitted).

In our view, the circuit court did not abuse its discretion in declining to ask whether pretrial media coverage of the Baltimore Police Department caused prospective jurors to have a negative impression of Baltimore City police officers. Indeed, of the sixteen questions the circuit court asked to prospective jurors, the following two questions adequately addressed Officer Craig’s concern:

Would any member of the jury panel be inclined to give either more or less weight to the testimony of a police officer than any other witness in this case merely because that person is a police officer?

Does any member of the jury panel have any strong feelings regarding excessive force and battery by police officers?

Critically, these two questions evoked responses pertaining to precisely what Question No. 16 sought to elicit, i.e., whether prospective jurors held biases against Baltimore City police officers as a result of media coverage. In particular, Juror No. 4068 stated that she was “a little bias[ed]” because of “the excessive force that [she has] seen, like during the news, the stories going on during the news ... it’s just too much.” Juror No. 4041 expressed strong feelings because of “everything that’s going on as far as with the police” and “all the police brutality.” Further, Juror No. 4017 specifically referenced the Freddie Gray case. As such, the circuit court had no obligation to ask any further questions probing for biases against police officers. *See Nance v. State*, 93 Md. App. 475, 482 (1992) (holding that a trial court need not ask an additional question if “the questions propounded

by the [court] adequately covered the information elicited by the requested question”), *aff’d*, 331 Md. 549 (1993).⁷

Moreover, Officer Craig’s reliance on *United States v. Dellinger*, 472 F.2d 340 (7th Cir. 1972), is misplaced. In *Dellinger*, the United States Court of Appeals for the Seventh Circuit held that the trial court’s refusal to inquire into jurors’ attitudes on various topics “curtailed defendants’ challenges for cause[.]” 472 F.2d at 370. The defendants -- the “Chicago Seven” -- were charged with violations of the Federal Anti-Riot Act after protesting the Vietnam War at the 1968 Democratic National Convention. *Id.*

Before trial, the defendants submitted several *voir dire* questions pertaining to the jurors’ opinions about the Vietnam War and “youth culture” in the United States. *Id.* The trial court refused to ask the proposed questions, and instead asked neutral questions. *Id.* Indeed, the trial court asked whether the prospective jurors could follow the law as given to them; whether they could keep an open mind; whether they could treat testimony of a government witness the same as any other witness; and whether they could be fair and impartial. *Id.* at 366. In reversing the defendants’ convictions, the Seventh Circuit concluded that the trial court failed to adequately probe for potential biases. *Id.* at 369.

In this case, the circuit court’s *voir dire* examination is readily distinguishable. In *Dellinger*, the trial court asked only neutral questions, and as a result, failed to “[inquire]

⁷ Officer Craig further maintains that the circuit court abused its discretion because Williams’s counsel did not object to Question No. 16 during *voir dire*. Officer Craig asserts that “such an omission by an experienced trial lawyer is surely one of the most powerful indicia of the propriety of the question.” We disagree. Indeed, there is no authority to support Officer Craig’s theory that a trial court is obligated to ask a proposed question when the opposing party’s attorney chooses not to object.

into the background and attitudes of the jurors[.]” 472 F.2d at 368. By contrast, here, the circuit court’s questions adequately addressed any potential bias that prospective jurors held towards police officers. Indeed, the circuit court asked whether the jurors “have strong feelings regarding excessive force and battery by police officers” and whether the jurors could treat testimony of a police officer the same as any other witness. These questions elicited responses from multiple prospective jurors. Notably, several of the prospective jurors referenced news stories and explained how the media has affected their views of police officers. In short, the prospective jurors’ responses demonstrate that the circuit court adequately probed for prejudicial bias.

Nevertheless, Officer Craig maintains that the circuit court abused its discretion because none of the questions asked in *voir dire* probed for biases against Baltimore City police officers. In doing so, Officer Craig points to three of the questions the circuit court asked in *voir dire*. First, Officer Craig asserts that the “knowledge of this incident” question was too narrow. Second, Officer Craig maintains that the “weight of police officers’ testimony” question focused solely on credibility, and not on bias. Third, Officer Craig contends that the “strong feelings” question was too broad because it did not specifically reference Baltimore City police officers.

We are not persuaded by Officer Craig’s individualized approach to *voir dire*. Indeed, our task on appeal is not to review each question in isolation. Rather, “[o]n review of the *voir dire*, [we] look[] at the record *as a whole* to determine whether the matter has been fairly covered.” *Washington, supra*, 425 Md. at 313-14 (emphasis added). *See also Collins v. State*, ___ Md. ___, No. 54, Sept. Term, 2018, Slip. Op. at 18 (Ct. of App. Apr. 2,

2019) (“An appellate court reviews ... a trial court’s rulings on the record of the *voir dire* process as a whole”) (quotations and citations omitted).

Had the circuit court not asked the strong feelings question, coupled with the police testimony question, we might agree that Question No. 16 could plausibly constitute a mandatory question under the circumstances of this case. Nevertheless, the circuit court’s exclusion of Question No. 16 was not “clearly against the logic and effect of facts and inferences before the court.” *Wilson, supra*, 385 Md. at 198. Indeed, as discussed, *supra*, the transcript of the *voir dire* proceeding demonstrates that the sixteen questions asked, taken together, exposed any biases prospective jurors held against Baltimore City police officers.

While Question No. 16 may have aided Officer Craig’s use of peremptory challenges, “facilitating the exercise of peremptory challenges is not a proper purpose of *voir dire* in Maryland.” *Pearson, supra*, 437 Md. at 356.⁸ We, therefore, hold that the record as a whole supports the conclusion that Question No. 16 was fairly covered by the

⁸ In his brief, Officer Craig cites to two cases from the Circuit Court for Baltimore City as evidence that circuit courts in Maryland have asked prospective jurors whether media stories have caused them to have negative impressions about certain matters. Those cases have no bearing on whether the circuit court abused its discretion in the instant case. Indeed, the issue before us is not whether the circuit court had discretion to ask Question No. 16. Rather, the issue is whether the circuit court abused its discretion in declining to ask Question No. 16.

voir dire in this case. Accordingly, the circuit court did not abuse its discretion in declining to ask Question No. 16.⁹

We would be remiss if we did not point out that it would have been far preferable for the circuit court to pose Question No. 16 to the venire panel. Indeed, were we writing on a blank slate, we would be persuaded that it would have been easier, and perhaps more efficient, had the court simply asked the question posed by Officer Craig. Nevertheless, our standard of review is to determine whether the trial judge abused her discretion under the circumstances of this case. As discussed, *supra*, we discern no abuse of discretion on this record. Similarly, had the circuit court elected to further probe jurors by asking Question No. 16, we would agree that the court properly exercised its discretion. We, therefore, affirm the judgment of the Circuit Court for Baltimore City.

**JUDGMENT OF THE CIRCUIT COURT
FOR BALTIMORE CITY AFFIRMED.
COSTS TO BE PAID BY APPELLANT.**

⁹ In light of our holding that the circuit court did not abuse its discretion in declining to ask Question No. 16, we need not consider Williams' alternative argument that the question was improperly phrased.