

UNREPORTED
IN THE COURT OF SPECIAL APPEALS
OF MARYLAND

No. 2659

September Term, 2015

ANTONIO THOMAS

v.

STATE OF MARYLAND

Arthur,
Reed,
Alpert, Paul, E.
(Senior Judge, Specially Assigned),

JJ.

Opinion by Alpert, J.

Filed: October 18, 2016

*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.

Antonio Thomas, appellant, was convicted by a jury sitting in the Circuit Court for Baltimore City of reckless endangerment and was subsequently sentenced to time served.¹

Appellant raises three questions on appeal:

- I. Did the trial court err in refusing to ask during voir dire if any of the prospective jurors would be more likely to believe a witness called by the State than a witness called by the defense?
- II. Did the trial court err in denying defense counsel's *Batson*² challenge?
- III. Did the trial court err in excluding testimony of a co-defendant, who had confessed at his guilty plea hearing that he had stabbed the victim?

We answer the first question in the affirmative and therefore reverse appellant's conviction.

We decline to answer appellant's remaining two questions for it is unlikely they will reappear at re-trial.

FACTS

On the morning of November 5, 2013, a fight broke out in the "day room" of the Baltimore City Detention Center. Appellant and three other inmates were involved in the fight, and appellant was ultimately charged with stabbing James Gasque in the neck with a "homemade knife." Four correctional officers testified at appellant's trial: three for the State and one for the defense. Both parties introduced several exhibits into evidence.

¹ The jury acquitted appellant of first-degree assault, second-degree assault, and openly wearing and carrying a dangerous weapon with intent to injure.

² *Batson v. Kentucky*, 476 U.S. 79 (1986).

DISCUSSION

Appellant argues that we must reverse his conviction because the trial court refused to ask the venire whether any member of the prospective jury panel “believe[s] that evidence introduced by the State is more credible than evidence introduced by the defense?” The State concedes that the trial court erred and reversal is required.

Voir dire protects a defendant’s right to a fair and impartial jury and is guaranteed by the Sixth Amendment to the United States Constitution, made applicable to the States through the Fourteenth Amendment, and by Article 21 of the Maryland Declaration of Rights. *State v. Logan*, 394 Md. 378, 395-96 (2006)(citations omitted). “[T]he overarching purpose of voir dire in a criminal case is to ensure a fair and impartial jury.” *Wright v. State*, 411 Md. 503, 508 (2009)(quotation marks and citation omitted). There are two main areas of inquiry that may reveal cause for a juror’s disqualification: (1) whether the prospective juror meets the minimum statutory qualifications for jury service, and (2) whether the prospective juror’s state of mind about the case or any collateral matter is reasonably likely to have an undue influence over him. *Dingle v. State*, 361 Md. 1, 9-10 (2000)(quotation marks and citations omitted).

Maryland continues to adhere to limited voir dire. *Id.* at 13 (citation omitted). This means that a trial court need not ask any specific question but it bears the responsibility:

to conduct an adequate voir dire to eliminate from the venire panel prospective jurors who will be unable to perform their duty fairly and impartially and to uncover bias and prejudice. . . . To that end, the trial judge should focus questions upon issues particular to the defendant’s case so that biases directly related to the crime, the witnesses, or the defendant may be uncovered.

Washington v. State, 425 Md. 306, 313 (2012)(quotation marks and citations omitted). 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[.]” *Id.* at 325 (quotation marks and citation omitted). We review for “abuse of discretion a trial court’s decision as to whether to ask a voir dire question[.]” looking to the record as a whole. *Pearson v. State*, 437 Md. 350, 356 (2014)(citation omitted).

Maryland appellate courts have held that a juror may not favor a witness based on the witness’s category or affiliation – whether the witness is testifying for the State or the defense. *Moore v. State*, 412 Md. 635, 653-54 (2010)(citing *Bowie v. State*, 324 Md. 1, 8-9 (1991)). The Court of Appeals has explained when a trial court is required to ask the venire a category or affiliation bias question:

[I]f there are no defense witnesses, there will be no need for a Defense–Witness question. Where, however, there will be one or more defense witnesses, then it follows that the Defense–Witness question must be asked. Because the State always has the burden of proof and there usually will be State’s witnesses, it seems clear, that in such cases, the State–Witness question always is also required.

Moore, 412 Md. at 655. When the court fails to ask such a question, the court abuses its discretion thereby committing reversible error. *Id.* at 668.

Here, the defense requested the trial court to ask the venire whether it would give “evidence” produced by the State more weight. The court refused. While the question is an evidence question and not a witness question, it nonetheless called the trial court’s attention to the qualifying area. We note that the form of the question ultimately asked of the venire is within the discretion of the trial court. *See Casey v. Roman Catholic*

Archbishop of Baltimore, 217 Md. 595, 606 (1958)(“We do not say, or even intend to intimate, that the court was required to propound the precise questions submitted. The form of the questions to be asked is clearly within the sound discretion of the court.”).

Under the circumstances presented, by refusing to ask the evidence category/affiliation question, as requested by appellant, the trial court abused its discretion. Accordingly, we shall reverse and remand for a new trial.

JUDGMENT REVERSED.

**COSTS TO BE PAID BY MAYOR
AND CITY COUNCIL OF
BALTIMORE.**