

UNREPORTED
IN THE COURT OF SPECIAL APPEALS
OF MARYLAND

No. 2582

September Term, 2015

RENEWICK BARTHOLOMEW PERRY, JR.

v.

STATE OF MARYLAND

Wright,
Berger,
Shaw Geter,

JJ.

Opinion by Berger, J.

Filed: October 3, 2017

*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.

A jury in the Circuit Court for Baltimore County convicted Renwick Perry, Jr., appellant, of first-degree assault, attempted robbery with a dangerous weapon, conspiracy to commit robbery with a dangerous weapon, use of a firearm in a crime of violence, and illegal possession of a firearm after having been convicted of a disqualifying offense. Appellant was sentenced to a total of 100 years' imprisonment, with all but 55 years suspended. In this appeal, appellant presents the following questions for our review, which we rephrase:¹

1. Whether the trial court erred when it refused to ask prospective jurors a more specific “police-witness” question and instead asked a broader “occupational-witness” question?”
2. Whether the trial court erred in permitting the State to call a witness after the witness expressed his intention to refuse to testify?
3. Whether the trial court erred in failing to merge for sentencing purposes appellant’s convictions for first-degree assault and attempted armed robbery?

¹ Appellant phrased the questions as:

1. Was the trial court’s manner of asking the police bias *voir dire* question tantamount to a failure to propound the question?
2. Did the trial court err by permitting the State to call Avery Perry as a witness, after he expressed his intention to refuse to testify?
3. Did the trial court impose an illegal sentence when it failed to merge for sentencing Appellant’s convictions for first-degree assault and armed robbery?

Based on the Court of Appeals’s recent decision in *Thomas v. State*,² we answer question 1 in the affirmative and reverse the judgments of the circuit court. Accordingly, we need not address appellant’s other questions.

BACKGROUND

On December 8, 2013, Abdullah Majid was working at a 7-Eleven store in Baltimore County when an unidentified individual entered the store, pointed a gun at Majid, and demanded that he “open the drawer.” Majid failed to comply, and the assailant shot him. A witness to the shooting called 911, and the police responded to the scene. By that time, the assailant had fled. Majid was then transported to the hospital, where he was treated. Appellant was later arrested and charged as the assailant.

Prior to trial, appellant’s trial counsel submitted proposed *voir dire* questions to the court. As part of those proposed questions, appellant requested that the following question be posed to the jury venire:

Would any of you tend to believe the testimony of a police officer more than the testimony of some other witness merely because of the fact that this person is a police officer? If so, please raise your hand.

The State also submitted proposed *voir dire* questions to the court. Like appellant, the State requested that the court ask the jury venire about bias toward a police-witness, specifically, whether any prospective juror would “give the testimony of a police officer greater weight than any other witness merely because he/she is a police officer.”

² See *Thomas v. State*, No. 25, September Term, 2017, 2017 WL 320587 (filed July 28, 2017).

During *voir dire*, the trial judge did not ask either of the above questions. Instead, the court posed the following to the jury venire:

Another principle of law about which the jury will be instructed is what we call credibility of witness. In all jury trials whether civil or criminal the judge decides issues of law but the jury decides issues of fact. In that regard, based on testimony and other admissible evidence the jury decides what evidence they find persuasive.

My instructions will include some factors that you may consider in judging witness credibility. Ultimately, if selected as a juror in this case it is for you to decide who you believe, that is to say, who is right or wrong, who is truthful or untruthful, who is correct or mistaken.

At the conclusion of the case and during deliberations the jury will have the benefit of having observed and listened to all the witness testimony, viewing all of the evidence and discussing the evidence with their fellow jurors.

Mindful of that principle, are there any perspective jurors who would automatically give more or less weight to the testimony of any witness merely because of that witness's title, profession, education, occupation or employment?

Now, folks, that's a tough question because it's asked in a vacuum. Let me try to give you some semblance of an example.

If anyone here is a physician, I'm not picking on you, but I'm going to use you as an example. So – so two physicians are out having lunch together and I pick physicians simply because they're similarly situated, went to grade school, college, medical school, so they have very similar backgrounds, but they have some expertise, that being a physician.

So they're having lunch, they go out after lunch and they are walking down the street corner and a traffic accident happens in front of them. One of the physicians believe – thought that the green light it was – it was green and the other thought it was red, and if that is all you had that – those two pieces of

information, and you were to say, well, decide what happened, most people would say, well, I don't know. I can't make that decision. Just because one person says one thing and one person says something else. I have to hear all of the evidence and judge each witness's credibility on my own. And that's kind of the point of this question.

Stated another way, if you were selected as a juror in this case would you be able to judge the credibility of each witness' testimony based on the totality of their testimony rather than merely relying on his or her profession, education, occupation or employment?

For example, would any of you automatically give more or less weight to the testimony of a physician, a clergyman, a police officer, a fire fighter, a psychiatrist, a social worker or any other witness merely because of their title, profession, education, occupation or employment, if so, please stand.

Two prospective jurors stood in response to the court's "occupational-witness" question, and the court noted those jurors' numbers and continued with its *voir dire* of the jury venire. When the court finished, it asked if either party had any exceptions. Defense counsel responded in the affirmative:

[DEFENSE]: Your Honor, I take exception to the weight question, you included doctors and (inaudible) because I think that really takes away from the weight more or less to police officer.

THE COURT: So what question would you want me to ask then, if you take exception to that question?

[DEFENSE]: Specifically, would they give more or less weight to a police officer simply because he's a police officer.

THE COURT: Okay. Your exception is noted.

Later, one of the jurors who responded affirmatively to the court's occupational-witness question, Juror 209, was called to the bench, at which time the following colloquy ensued:

THE COURT: Okay. And one of the questions I wanted to follow-up with you is the question that dealt with credibility, remember that long question about would you tend to give more or less weight to the testimony of an individual because of their title, profession, education, occupation or employment; do you remember that question?

JUROR 209: Yes, sir.

THE COURT: Can you give us some details about that?

JUROR 209: Sure. I'm a firefighter in Howard County, assigned to our fire marshal's office and work, I have professional and personal contact with both Howard County firefighters and police officers. So I don't know any of the officers that you mentioned, but I work very close with them in that – our office.

THE COURT: Okay. Well – okay And –

JUROR 209: I think I would lend more credibility towards a police officer or firefighter's testimony than I would anybody else.

THE COURT: What if they disagree? What if two police officers disagree about what they saw, how would you resolve that?

JUROR 209: Take which one I felt was more credible, which one I thought –

THE COURT: So that's kind of the question. Are you able to sit and listen objectively to the testimony of an individual and weigh what they say, not so much who they are or what their profession is?

JUROR 209: Yes.

THE COURT: Okay. Questions from the defense? Any questions?

[DEFENSE]: So you would – if it was police officers versus lay witnesses you will still give more credibility to a police officer?

JUROR 209: Yeah.

[DEFENSE]: More weight to a police officer's testimony?

JUROR 209: I think I would, yes.

THE COURT: Okay. Well, I don't understand that. Just explain that to me?

JUROR 209: I would have a difficult time, I mean, I think I would have a difficult time saying that a police officer is not being honest or trustworthy.

THE COURT: Well, what about if he's just simply wrong, not – not intentionally misrepresenting something, what if he's simply wrong? So you have four witnesses who testify consistently one way and the officer testified, well, I didn't see it that way, you would automatically give him more weight?

JUROR 209: Yeah.

The court then dismissed Juror 209 from the bench and called to the bench Juror 287, the other juror who answered in the affirmative to the court's occupational-witness question. During that bench conference, the following colloquy ensued:

THE COURT: Okay. The other question I wanted to follow-up dealt with the question – that lengthy question about witness credibility. Would you automatically give more or less weight to the testimony of an individual because of their profession, occupation, employment, et cetera, can you give us some details about that?

JUROR 287: Sure. So the way I interpreted [the] question would be if I was presented with testimony – testimony from

two individuals, let's say the doctors, one got their degree from University of Virginia the other from University of Texas, I would more heavily weigh the University of Virginia because it has higher credibility with me.

THE COURT: Hum. Never thought about it in that perspective. You mean, regardless of what the witness testified to, the fact that they went to one school as compared to another you would automatically give that more weight?

JUROR 287: I believe that they're better educated.

THE COURT: Okay. Questions?

[DEFENSE]: And so, you would give more weight to a police officer versus a lay witness.

JUROR 287: I would.

After the court finished with *voir dire* and began the process of selecting the jury, it returned to the subject of defense counsel's exception to the court's occupational-witness question:

THE COURT: [Defense counsel], earlier you asked – objected to the *voir dire* question how I structured it. I can tell you that in terms of the law enforcement question, the questions that I ask, I ask specifically in that sequence in terms of credibility, and then law enforcement. And while appellate, unreported appellate opinions are not controlling, I recognize that, that issue has been brought up before on appeal and the appellate courts have affirmed my method of asking those questions. So I just was to point that out.

[DEFENSE]: Okay. Your Honor, I would just simply say that when the Court asks if the jury is acceptable, I would just note my exception based on that one exception to the question just to preserve the issue for appeal.

THE COURT: I understand that. And – and I will go on to say, that, um, if I ask the questions consistent with what I believe to be the current case law. I don't ask it in a conjunctive

fashion, um, I ask the initial question, and then I – I do follow-up questions, as you’ve seen, where I tell the jurors that if they have any difficulty being fair and impartial you know, if – if they would have any difficulty, please remain standing and I will do follow-up questions, that I find that those individuals who have responded to the second part of the question by being objective and they’ve answer the question truthfully.

Ultimately, a jury was selected and empaneled, and appellant’s trial began.³ In all, ten witnesses testified; however, the court’s “occupational-witness” question was relevant to only three of those witnesses, all of whom were police officers. As we previously noted, appellant was later convicted. Appellant now argues that the trial court erred in failing to ask his proposed *voir dire* question regarding “police-witness” bias.

STANDARD OF REVIEW

“*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, guaranteed by [Article] 21 of the Maryland Declaration of Rights, is given substance.” *Dingle v. State*, 361 Md. 1, 9 (2000) (citations and footnote omitted). 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[.]’” *Pearson v. State*, 437 Md. 350, 356 (2014) (citations omitted). “There are two categories of specific cause for disqualification: (1) a statute disqualifies a prospective juror; or (2) a ‘collateral matter [is]

³ Both Juror 209 and Juror 287 were struck from the venire, the first for cause and the second based on hardship.

reasonably liable to have undue influence over’ a prospective juror.” *Id.* at 357 (citations omitted).

If a requested *voir dire* question is not directed at a specific cause for disqualification, a trial court need not pose such a question to the venire. *Id.* On the other hand, if a requested *voir dire* question is reasonably likely to uncover specific cause for disqualification, then a trial court must pose such a question. *Id.* The Court of Appeals has held that bias regarding the credibility of a police officer as a witness is a specific cause for disqualification. *Langley v. State*, 281 Md. 337, 348-49 (1977). Thus, when a police officer is expected to testify at trial, a trial court is required, upon request, to *voir dire* the jury venire to determine whether any potential juror would give undue weight to the testimony of a police officer merely because he is a police officer (sometimes referred to as the “police-witness” question). *Id.*; *See also Moore v. State*, 412 Md. 635, 654-55 (2010). “[F]ailure to allow such questions is an abuse of discretion constituting reversible error.” *Langley*, 281 Md. at 342 (citations and quotations omitted).

DISCUSSION

Appellant and the State agree that a “police-witness” question was required in this case; however, they disagree as to whether the court’s “occupational-witness” question was an adequate substitute. Appellant contends that the court’s occupational-witness question was “overbroad” and “needlessly lengthy” and, as a result, “obfuscated the issue the police bias question is intended to illuminate.” The State, on the other hand, contends that the court’s question, while perhaps over-inclusive, served the same purpose as the “police-witness” question, in that it conveyed to the jurors “that they should respond if they would

give the testimony of ‘a police officer’ ‘more or less weight’ based on the witness’s profession alone.”

In light of the Court of Appeals recent decision in *Thomas v. State*, No. 25, September Term, 2016, 2017 WL 3205287 (filed July 28, 2017), which is, for all intents and purposes, factually identical to the instant case, we agree with appellant. In that case, Ukeenan Nautica Thomas was charged in the Circuit Court for Baltimore County with various crimes related to a robbery. *Id.* at 1. Prior to trial, both the State and Thomas’ counsel requested that the trial judge ask the jury venire a “police-witness” question, which Thomas’ counsel phrased as follows:

If you are selected as a juror in the case you may hear the testimony of one or more law enforcement officers. Do any of you believe that a law enforcement officer’s testimony is entitled to greater weight than any other witness just because he is a law enforcement officer?

Id. at 2.

At trial, rather than ask the proposed question of the jury venire, the trial judge asked a broader question, which matched, nearly verbatim, the *voir dire* question he posed in the instant case:

Another principle of law about which the jury will be instructed is what we call credibility of witnesses. In all jury trials, whether it's civil or criminal, the judge decides issues of law, but the jury decides issues of fact. In that regard, based on testimony and other admissible evidence, the jury decides what evidence they find persuasive. My instructions will include some factors that you may consider in judging witness credibility. Ultimately, if selected as a juror in this case, it will be for you to decide who you believe. That is to say, who is right or wrong, who is truthful or untruthful or who is correct or mistaken. At the conclusion of the case and during

deliberations, the jury will have had the benefit of listening to and observing each witness, viewing all the other evidence presented and discussing the evidence with your fellow jurors. Mindful of that principle, are there any prospective jurors who would automatically give more or less weight to the testimony of any witness merely because of the witness' title, profession, education, occupation or employment? Now, that's a long question and it's asked in a vacuum. To start with, we want jurors who don't know anything about this case. But let me see if I can give you an example of what I'm talking about. If anyone here is a physician, I'm not picking on you. We have two physicians. And I pick physicians because they're similarly trained. They went to grade school. High school. College. Medical school. So, they're very—they have similar characteristics. They're having lunch one day. They walk out of lunch. They're walking down the street. They're chit-chatting, chit-chatting about whatever doctors chit-chat about and there's an accident that happens in front of them. One of the physicians saw it and thought the light was green and the other physician thought the light was red. And if that's all you had, and you were asked to make a decision, how would you decide? Well, most people would say, well, I gotta hear all the facts from everybody. And that's kind of the point of this question. So, stated another way, if you were selected as a juror in this case, would you be able to judge the credibility of each witness' testimony based on their testimony, rather than merely relying on his or her title, profession, education, occupation, or employment? For example, would any of you automatically give more or less weight to the testimony of a physician, a clergyman, a firefighter, a police officer, psychiatrist, social worker, electrician or any other witness merely because of their title, profession, education, occupation or employment? If so, please stand.

Id.

After the court completed its questioning of the jury venire, Thomas' counsel took exception to the court's phrasing of the above question, arguing that the question did not address the bias he was seeking to uncover, namely, whether the jurors would give undue weight to a police officer's testimony. *Id.* at 3. Thomas' counsel asked that the court pose

the question using the language proposed by him prior to trial. *Id.* The court declined that request, and a jury was selected and empaneled. *Id.* at 3-4. During the evidentiary phase of trial, only three witnesses for which the “occupational-witness” question was relevant testified, and all of those witnesses were police officers. *Id.* at 9. Thomas was ultimately convicted. *Id.* at 4. After Thomas noted an appeal, this Court filed a certified question of law in the Court of Appeals regarding whether the trial court erred in posing its “occupational-witness” question rather than Thomas’ more specific “police-witness” question. *Id.* The Court of Appeals issued an order granting *certiorari* on this Court’s certified question and reformulated our question to ask:

Whether a broader occupational bias question posed during *voir dire* is appropriate in determining whether potential jurors would give undue weight to a police officer’s testimony, based on his or her position as a police officer, when a more specific police-witness question was requested by [Thomas’] counsel?

Id.

On appeal, Thomas argued that the trial court’s “lengthy, convoluted inquiry...obfuscated the police-witness question, thereby evading the spirit of the required inquiry and serving no legitimate purpose.” *Id.* at 6. The State countered that “because ‘police officer’ was contained in the question portion of the trial judge’s inquiry, the question ‘sufficiently indicated’ to the venire what possible bias or prejudice was being probed.” *Id.* In other words, the “thrust of the State’s argument [was] that it was not an abuse of discretion for the trial judge to ask the police-witness question within the broader framework of the occupational bias question[.]” *Id.* at 8.

The Court of Appeals ultimately disagreed with the State and answered this Court’s reformulated question in the negative. *Id.* at 9. In so doing, the Court recognized that *Langley* and its progeny, most notably *Moore, supra* and *Bowie v. State*, 324 Md. 1 (1991), stood “broadly for the proposition that if a potential juror is likely to give more credibility to a specific witness based on that witness’s occupation, status, category, or affiliation then, upon request, the trial judge must ask a *voir dire* question that seeks to uncover that bias.”

Id. The Court cautioned, however, that

our decision in *Moore* also stands for the proposition that the occupational bias question is only mandatory if the trial judge determines that a specific witness who is testifying in the case could, due to his or her occupation, status, or affiliation, be favored or disfavored exclusively on the basis of his or her occupation, status, or affiliation. The inquiry must, therefore, be tailored to the witnesses who are testifying in the case and their specific occupation, status, or affiliation.

Id. at 9.

Noting that the only witnesses who testified at Thomas’ trial, “for which the occupational bias question was relevant, were two police officers and one detective,” the Court concluded that “the trial judge was required to tailor the occupational bias question specifically to the witness’s occupation as police officers, which he failed to do when he included six other occupations in his inquiry that were not relevant[.]” *Id.* The Court then held that

when a party requests that an occupational bias question be asked during *voir dire*, including the police-witness question, the trial judge is required to initially determine whether any witnesses testifying in the case – based on their occupation, status, or affiliation – may be favored or disfavored on the basis of that witness’s occupation, status or affiliation, and then

propound a *voir dire* question that is tailored to those specific occupations, statuses, or affiliations.

Id.

In the present case, appellant asked the trial court to pose a “police-witness” question to the jury venire but the court, as it did in *Thomas*, chose to pose a broader “occupational-witness” question without first determining to whom the “occupational-witness” question may apply. Moreover, although the court’s question did mention police officers, it also included many other occupations that were not relevant, as the only witnesses to testify, for which the “occupational-witness” question was relevant, were three police officers. Because the court’s question was not, pursuant to *Thomas, supra*, appropriately tailored to the specific occupation for which an “occupational-witness” question would be relevant, *i.e.*, police officers, the trial court’s question did not meet the requirements of *Langley*. Accordingly, the trial court abused its discretion, and that abuse of discretion constituted reversible error.

**JUDGMENTS OF THE CIRCUIT COURT FOR
BALTIMORE COUNTY REVERSED. COSTS TO
BE PAID BY BALTIMORE COUNTY.**