Circuit Court for Baltimore County
Case No. C-03-CR-22-005912

UNREPORTED

IN THE APPELLATE COURT

OF MARYLAND*

No. 132

September Term, 2024

NYKHI JMANI ROBINSON

v.

STATE OF MARYLAND

Graeff,
Friedman,
Wright, Alexander, Jr.
(Senior Judge, Specially Assigned),

JJ.

Opinion by Graeff, J.

Filed: December 17, 2025

*This is an unreported opinion. This opinion may not be cited as precedent within the rule of stare decisis. It may be cited for persuasive value only if the citation conforms to Md. Rule 1-104(a)(2)(B).

Nykhi Robinson, appellant, was convicted in the Circuit Court for Baltimore County of first-degree premeditated murder and use of a firearm in the commission of a crime of violence relating to the fatal shooting of Vincent Leach on October 3, 2022. Appellant and co-defendant[1] ("C.D.") were tried together, after which C.D. was acquitted on all counts.

On appeal, appellant presents the following questions for this Court's review, which we have rephrased slightly, as follows:

1. Did the court err in asking a compound form of the law enforcement affiliation question in voir dire?

2. Did the court err in denying appellant's motion to sever his trial from C.D.'s trial?

For the reasons set forth below, we shall reverse the judgments of the circuit court.

FACTUAL AND PROCEDURAL BACKGROUND

On October 3, 2022, Baltimore County 911 received a report of shots fired near the intersection of Bel Air Road and Silver Spring Road. Officer Vincent Skinner responded to the call. In the dumpster area of the Hallfield Apartment complex, Officer Skinner discovered Mr. Leach lying on the ground in a puddle of blood with what appeared to be a gunshot wound. Officer Skinner immediately requested medical units.

Captain Michael Hoffman, an Emergency Medical Services Captain with the Baltimore County Fire Department, responded to the scene at 6:07 p.m. and found Mr.

[1] The records related to C.D.'s case have been expunged. We refer to him with the initials C.D., which are not his real initials. Another co-defendant, Mashaal Shabazz, was tried separately, and he was also acquitted.

Leach unresponsive, not breathing, and with no pulse. Captain Hoffman pronounced Mr. Leach deceased at 6:08 p.m. The autopsy report stated that Mr. Leach was shot ten times, and the Medical Examiner ruled Mr. Leach's death a homicide.

Detective James Lambert, a homicide detective, arrived at the scene at 6:40 p.m. on October 3, 2022. Kimberly Johnson, Mr. Leach's girlfriend, confirmed Mr. Leach's identity as the victim.

Ms. Johnson subsequently consented to a search of the bedroom that she and Mr. Leach shared. Inside a black storage container in the bedroom closet, the police found "designer packaging of marijuana," including a blue bag that had the word "cookies" written on the front of it and "Georgia Pie" written across the back. Ms. Johnson explained that Mr. Leach sold marijuana and typically completed about four or five transactions a day. The majority of these transactions took place at the Hallfield Apartment complex's dumpster area.

The police did not recover the weapons that were used in the murder, but they found empty boxes for two 10-millimeter handguns in the search of appellant's residence. Jason Birchfield, a Firearms Unit Supervisor for the Baltimore County Police Department, testified that two firearms were used in the murder of Mr. Leach. He also explained that a 10-millimeter firearm can fire .40 caliber ammunition. The police found six .40 caliber shell casings on the ground around the crime scene.

Several eyewitnesses testified. Dylan Digiorgio, a resident of the Hallfield Apartments, testified that he heard approximately eight gunshots. From his apartment

window, he "saw two people in dark clothing masked up running towards . . . a car," and one of the men tucked a gun in his pocket. He described both men as "a lighter build, two . . . skinny athletic type dudes" in their twenties or thirties. The two masked individuals entered a four-door, silver Acura sedan.

Darin Daubert, who lived in a house next to the Hallfield Apartments, heard gunshots coming from the direction of the apartment complex. He saw a car backed into one of the parking spots and a male with a hoodie get in the car on the passenger side front door. This person was "pretty thin" and between 5'9" and 5'10." The car was an older model, "silver-ish, gold-ish . . . champagne" colored luxury sedan, which he believed to be a Mercedes-Benz.

Detective Lambert extracted data from Mr. Leach's phone, which showed that Mr. Leach had received Instagram messages from an unknown Instagram account at 3:10 p.m. on October 3, 2022. Mr. Leach and the unknown Instagram account messaged back and forth between 3:10 p.m. and 4:31 p.m., negotiating a marijuana sale. The unknown Instagram account initially sought to purchase one pound of marijuana from Mr. Leach, but the parties ultimately settled on a quarter pound for $600. Mr. Leach then messaged the Instagram account the address for the Hallfield Apartments.

The Instagram user responded that he needed to find a ride to get to Mr. Leach's address. Mr. Leach then sent the Instagram user his cell phone number and instructed the Instagram user to text his phone if he was coming. Fifteen minutes later, a phone number ending in 5607 texted Mr. Leach, stating that he was on the way and would be there in 30

minutes. At 5:37 p.m., the 5607 number sent Mr. Leach a text message, stating that he was five minutes away. Five minutes later, at 5:42 p.m., gunshots were heard in the vicinity of the Hallfield Apartments.

Detective Lambert obtained a court order for AT&T, the network provider for the 5607 number, to get phone records and a "ping"[2] for the device associated with the 5607 number. He linked the 5607 phone number to appellant through an August 2022 AT&T bill, which was paid for with a credit card in appellant's name. Detective Lambert obtained a search warrant for Apple to get the iCloud account associated with the 5607 phone number. He learned that it was connected to NykhiRobinson@ICloud.com. Through Department of Labor records, Detective Lambert confirmed that this email address had previously been used by appellant. By reviewing the call records for the 5607 phone, Detective Lambert noted that the phone number that communicated most frequently with the 5607 device belonged to Brianna Jackson, appellant's girlfriend.

Detective Lambert then ran a background search on appellant. He discovered that appellant, Mr. Shabazz, and C.D. were all involved in a car accident together in July 2022. Detective Lambert then investigated Mr. Shabazz and C.D. and discovered that they had been stopped in a routine traffic stop in June 2022 while driving a silver 2010 Acura TL,

[2] Detective Lambert explained that a ping allows an officer to get real time locations for a phone. "[A] cell phone reveals its general geographical location whenever it sends or receives a call or text message. If one 'pings' a cell phone—that is, sends signals to the phone—the phone may reveal its general geographical location at frequent, predictable intervals." *State v. Copes*, 454 Md. 581, 621 n. 59 (2017).

which matched the description of the car that Mr. Digiorgio and Mr. Daubert witnessed leaving the crime scene shortly after the murder. The Acura TL was registered to C.D.'s Mother, who told Officer Lambert that C.D. was the primary operator of the vehicle. Officer Lambert obtained warrants for historical cell cite records and pings for the cell phones belonging to Mr. Shabazz and C.D.

Special Agent Garrett Swick, a member of the Federal Bureau of Investigation ("FBI"), conducted historical cell site analysis, which allowed him to see what cell phone towers the devices had utilized to access the cellular network. Agent Swick explained that, when a cell phone connects to the cellular network, the device will send and receive signals from nearby cell phone towers. When a phone connects to a tower, an analyst can estimate how far the cell phone was from the tower, and in what direction the cell phone's signal came from.

Prior to the date of the murder, the last outgoing cell site activity data that Agent Swick could find for the 5607 device, appellant's phone, was in early September, a month prior to the shooting. Based on the data, Officer Swick believed that this phone was a prepaid phone that had run out of minutes and did not have service. If a phone is not connected to a cellular network, it would not hit off a cellular tower, but the phone could still be used by connecting to a Wi-Fi network or hotspot. Appellant's phone did connect to a cell tower near the crime scene at 5:48 p.m. on October 3, 2022. This was the only location data for this device on the date of the murder.

Agent Swick testified that Mr. Shabazz's phone utilized a cellphone tower close to the location of the crime scene at 5:52 P.M. The phone then moved around the beltway, and at 6:14 p.m., "it ends up on [a] tower and sector that's providing service in the area of the Robinson residence." The cellphone associated with C.D. also connected to cell towers near the crime scene.

At 8:30 a.m. on the morning of the shooting, a Ring camera at C.D.'s residence captured him driving away in the Acura TL. A surveillance camera located near the Hallfield Apartments captured the sound of gunshots at 5:42 p.m., and less than two minutes later, a silver Acura TL driving past. Surveillance footage from across the street from appellant's residence showed an Acura arriving at 6:15 p.m. Two passengers exited, one from the front and the other from the back, both of whom were wearing black. The driver exited wearing white. Officer Lambert testified that it took approximately thirty minutes to travel from the crime scene to appellant's residence. That was approximately the same amount of time that elapsed between when the Acura was recorded leaving the vicinity of the crime scene and when a similar looking Acura arrived at appellant's residence.

On October 18, 2022, Corporal Jason Sutton found the Acura at 6438 Gilmore Street, which was C.D.'s residence. He observed a black male subject, "approximately 6'3", a little over 300 pounds," exit the address, get in the vehicle, and drive away. The man, identified later as C.D., "sat right down in the vehicle," and did not have to adjust the seat or any mirrors. On October 27, 2022, Detective Lambert observed C.D., Mr. Shabazz,

appellant, and Brianna Jackson entering and exiting the Acura in front of appellant's residence.

On October 28, 2022, Detective Lambert went to C.D.'s residence to conduct an interview of C.D. He told C.D. that he was looking for any potential witnesses to a crime occurring on October 3, 2022, and a tag reader in the area captured the Acura he drove in the area around the time of the crime. C.D. stated that, on the date in question, he "had to use the bathroom at a Pizza Hut *when we was going past* . . . . That's probably why." (emphasis added). Detective Lambert asked C.D. who else was in the car with him at the time, and C.D. stated that he was traveling alone. The Pizza Hut referenced by C.D. is directly across the street from the crime scene.

On November 17, 2022, Detective Lambert executed a search warrant at appellant's residence.[3] Appellant was sleeping in the living room. Detective Lambert found a cell phone plugged in at a nearby desk, but it was not the phone associated with the 5607 number that Detective Lambert had previously linked to appellant, and it was "a wifi phone," so no records could be used to map the phone's location. Officers also found a black ski mask during the search. The police never recovered the cell phone with the number ending in 5607.

[3] Detective Lambert testified that the residence was leased by appellant's mother, and appellant was not on the lease. Appellant's mother stated that appellant lived at a different address with his grandfather, but Detective Lambert testified that "address was not linked to anybody in [his] investigation."

Under the desk, Detective Lambert found two boxes for 10-millimeter handguns. The boxes were empty, and the guns were never recovered. In May 2022, appellant reported one handgun stolen, and appellant purchased the second gun in August 2022. In the weeks following the murder, appellant messaged someone about trading a .40-millimeter handgun for a 9-millimeter handgun.

That same morning, Corporal Sutton observed C.D. exit his residence, enter the Acura, and drive away. A short time later, officers stopped the Acura, ordered C.D. to exit, and subsequently took him into custody. When officers stopped the car, C.D. had a cell phone in his hand, which he left inside the Acura. The officers then transported the Acura and all its contents to police headquarters. The police then searched the vehicle, and recovered the cell phone that C.D. had left on the center console, as well as two additional phones inside the center console. The phone on top of the center console had a charge and was working, but the two that were inside the console did not have any charge and "did not appear to be functioning."

The police then executed a search warrant on C.D.'s residence. In a basement bedroom, officers found a backpack, jacket, and ski mask. Within the backpack, officers found a blue bag labeled "cookies," which contained marijuana. The blue bag was similar to the bag found in Mr. Leach's residence. Officers did not, however, find any bags that had the words "Georgia Peach" written on them.

The State initially planned to try appellant and C.D. together. Mr. Shabazz's case was scheduled to be tried separately.[4]

On October 10, 2023, approximately one month before trial, appellant asked the court to sever his case from C.D.'s case, arguing that he was in a different posture from C.D. because no phone was found on him, and the phone ending in 5607 was never found. Appellant argued that the cellphone data demonstrated that Mr. Shabazz and C.D. were together on the day of the murder, but there was no evidence tying him to the co-defendants or the crime scene.

Appellant further argued that C.D. made a pre-trial statement to police that did not directly implicate appellant, but it put C.D. in a different posture and in a different light than appellant. The State conceded that C.D.'s pre-trial statement could not come into evidence against appellant if the cases were severed. The State argued, however, that C.D.'s statement nevertheless was mutually admissible because it did not implicate appellant, and the court could instruct the jury that it did not apply to appellant. The court denied appellant's motion to sever.

On November 14, 2023, a six-day trial began. Testimony was elicited, as discussed, *supra*. The jury found appellant guilty of first-degree premeditated murder and use of a firearm in the commission of a crime of violence.

[4] The State advised at oral argument that Mr. Shabazz had his own trial because there was a confrontation clause issue under *Bruton v. United States*, 391 U.S. 123 (1968).

On November 17, 2023, appellant filed a motion for a new trial, arguing, among other things, that appellant's case should have been severed from C.D.'s case because C.D. made pretrial statements "in which he admitted to occupancy of the [Acura]." The court denied the motion for a new trial. It sentenced appellant to life on the conviction for first-degree premeditated murder, all but 60 years suspended. On the conviction for use of a firearm in the commission of a crime of violence, the court sentenced appellant to 20 years, consecutive, the first five years to be served without parole.

This appeal followed.

DISCUSSION

Appellant contends that the circuit "court erred in asking a compound form of the law enforcement affiliation question in *voir dire*." He asserts that the law enforcement question was required because it was reasonably likely to give rise to a for-cause challenge. Appellant argues that use of a compound question was impermissible under *Dingle v. State*, 361 Md. 1 (2000), because it allowed the venire members to decide for themselves if they could be fair and impartial.[5]

The State contends that appellant's argument is not preserved because, even though he joined in C.D.'s objection during voir dire, his counsel later accepted the jury. In any

[5] Appellant argues that, if "Maryland moves to expanded *voir dire*," and amends the Maryland Rules to allow parties to obtain information that may inform the use of peremptory challenges, "the amended Rule should apply retroactively to this case." Given our resolution of the appeal, we need not address this issue. Nevertheless, we note that, at this time, there is no new rule to apply retroactively.

event, it argues that "the trial court properly exercised its discretion in asking two related but discrete voir dire questions about potential jurors' association with law enforcement."

A.

Proceedings Below

Prior to propounding questions on voir dire, the court advised the venire that it would be asking some compound questions. It stated that, in that situation, if a juror had an affirmative response, it would take the juror's number and follow up individually later to get more details.

At issue in this appeal is the following two-part question:

> Are you or any member of your immediate family affiliated in any way with any law enforcement agency? By law enforcement agency I mean any Federal, State, County or City police department, sheriff's department including the State's Attorney's Office. If so, please stand.

Twenty-eight venire members stood.

The court then asked a follow-up question:

> For those of you who responded to the first part of the question which is whether you or a family member is a member of any law enforcement agency, would that fact prevent you or substantially impair you from rendering a fair and impartial verdict if selected as a juror in this case.
>
> If it would not, have a seat. If you think that it might, please remain standing.

Counsel for appellant asked to approach the bench, and the following ensued:

> [C.D.'S COUNSEL]: I'm going to object to the sitting down of the people without us knowing exactly what the familial relationship is and what their relationship is to law enforcement[.]

> THE COURT: Okay. Give me a case that says that?
>
> [C.D.'S COUNSEL]: Dingle.
>
> THE COURT: No, Dingle doesn't say that. I know Dingle, I tried it.

Counsel began to speak, and the court advised that it understood what counsel was saying. The bench conference then concluded.

In response to this question, 20 members of the venire panel sat down, and eight venire members remained standing. The court took the numbers of those remaining standing after the second question.[6]

After the court finished asking questions of the whole panel, but before asking follow-up questions of the prospective jurors individually, it told the potential jurors to adjourn to another room. The court explained that, for jurors who answered questions, the court would bring them back individually, tell them what question the juror responded to, ask "something like, can you give me some more details," and then ask if the juror could render a fair and impartial verdict.

When the court reconvened with counsel to begin the individual voir dire, it said that it would start with the law enforcement question. The following then occurred:

[6] The court listed the following juror numbers as responding to the first question: 213, 58, 278, 73, 195, 267, 216, 156, 209, 140, 76, 96, 28, 61, 260, 32, 220, 298, 119, 290, 211, 84, 173, 41, 90, 247, 311, 114. After the second question, the following juror numbers remained standing: 90, 76, 58, 73, 195, 278, 216, and 156. The court struck the eight jurors who remained standing.

> [C.D.'S COUNSEL]: I thought we were going to bring them all back, that's why I didn't take their numbers down. That's --
>
> [APPELLANT'S COUNSEL]: And, Your Honor, I didn't do it at the bench, but I'm joining on behalf of [appellant], [counsel for C.D.'s] objection on that issue.

The court then went over the numbers of the jurors who responded to the first question and the number of the jurors who remained standing. The court asked if anyone had any objection to the court striking the jurors who indicated that they could not be fair and impartial, and all parties indicated that there was no objection.[7]

The court then stated that defense counsel could make his argument, and the following occurred.

> [C.D.'S COUNSEL]: My argument is that I -- the other people who responded to that question about whether or not they're related to law enforcement in some way, I have no idea -- just because they said they could be fair, that doesn't mean I can get a taste of what their relationship is.
>
> I mean, if their relationship is four police in the family for years, then I think that no matter what they say, I may want to strike them for cause.
>
> THE COURT: For cause.
>
> [C.D.'S COUNSEL]: Yeah.
>
> THE COURT: So no matter what they say. So if they say my brother is an FBI agent and I can be fair and impartial, you're going to move for cause?
>
> [C.D.'S COUNSEL]: Maybe.

[7] Later in the proceedings, the court said that it had struck these jurors.

THE COURT: That's what you just said.

[C.D.'S COUNSEL]: Depending on the situation, yes.

THE COURT: Tell me why, knowing what law enforcement agency they might be affiliated with aids you in doing that?

[C.D.'S COUNSEL]: And the relationship to the person, I mean what's their relationship. If it's the husband, my husband is a police officer. My father was a police officer, my cousin was a police officer. It's just different things like that.

THE COURT: And if they gave me that answer, what would my followup [*sic*] question be?

[C.D.'S COUNSEL]: Can you be fair and impartial.

THE COURT: And if they said yes, I could--

[C.D.'S COUNSEL]: Then I still could strike them for cause if I think they're too affiliated with police.

THE COURT: But if they say -- if they say they can be fair and impartial and I believe them, I'm not going to grant your motion for cause.

[* * *]

[C.D.'S COUNSEL]: But I can strike them on my own without --

THE COURT: Peremptory challenges.

[C.D.'S COUNSEL]: Yes.

THE COURT: And Judge [McAuliffe] explained in Davis, Judge [McAuliffe] explained in his concurring opinion in Davis the problem is, and Maryland still as I understand it -- I mean I know the Maryland Appellate Courts have been playing with -- probably not the right word, but dealing with voir dire for quite some time.

But it's my understanding, unless you can point to a case that says otherwise, that the purpose of strikes in Maryland is still strikes for cause, not to gain information for peremptory strikes.

You know -- that's not what Dingle said --

[C.D.'S COUNSEL]: I think it's wrong then. I mean, look, I understand what the Court is saying, but if I have somebody who -- even though they said they can be fair in my opinion maybe they can't be--

THE COURT: And--

[C.D.'S COUNSEL]: -- depending how they answer that question.

THE COURT: And you have a right--

[C.D.'S COUNSEL]: And then I--

THE COURT: Move for cause.

[C.D.'S COUNSEL]: Exactly. But I don't know what their relationship is, so why would I--

THE COURT: Ultimately the question this [c]ourt is going to ask is that, like I told them three or four times. That is, based on your response, would that prevent you or substantially impair you from rendering a fair and impartial verdict if selected as a juror in this case.

That's the question I ask them.

[* * *]

THE COURT: I understand what you're saying, [counsel] --

[C.D.'S COUNSEL]: I may not -- I may just strike them for cause and I don't want to get a Batson if some situation arises.

> THE COURT: I'm not sure how Batson plays into. But my point is, and you just confirmed it -- if you get additional information and I ask the followup [*sic*] question can you be fair and impartial and the [c]ourt is persuaded they can be fair and impartial, you could move for cause, but I'm not going to grant it.
>
> What you're looking for is additional information for peremptory challenges, and I don't think under Maryland law it's permitted.

Counsel started to say more, but the court said, "[y]our record is covered."

As the court went through the jurors it was calling back for individual questioning, it stated that it was not bringing back jurors who answered the question regarding affiliation with a police officer and sat down. At the conclusion of the individual questioning and strikes by the parties, only one of the venire members who responded to the law enforcement affiliation question, Juror No. 140, was seated on the jury. When asked if the jury panel selected was acceptable, defense counsel stated that it was acceptable.

B.

Preservation

We begin with the State's contention that appellant "waived his claim of error on voir dire when he ultimately accepted the jury without qualification." To preserve a "claim involving a trial court's decision about whether to propound a voir dire question, a defendant must object to the court's ruling." *Foster v. State*, 247 Md. App. 642, 647 (2020), *cert. denied*, 475 Md. 687 (2021). In addition, in some cases, the defendant must make another objection upon the completion of jury selection. *Id.* at 647-48.

The Supreme Court of Maryland has explained that there are two distinct categories of objections during voir dire: (1) objections that are to "the inclusion or exclusion of a prospective juror (or jurors) or the entire venire," and (2) objections that are "incidental to the inclusion/exclusion of a prospective juror or the venire." *State v. Ablonczy*, 474 Md. 149, 162 (2021). *Accord State v. Stringfellow*, 425 Md. 461, 469 (2012). If the objection relates to the first category, inclusion or exclusion of particular jurors, or the entire venire, unqualified acceptance of the jury panel waives any prior objection. *Stringfellow*, 425 Md. at 469. By contrast, if the objection is "incidental to the inclusion [or] exclusion of a prospective juror or the venire," the objection is not waived by accepting the jury panel at the conclusion of jury selection. *Id.* at 469.

The Court explained the rationale for this distinction as follows:

> Objections directly related to a prospective juror, or jurors are waived, if not preserved, because the "objection implied necessarily that the venire members would be incapable of sitting on the jury and evaluating the evidence (or lack of certain evidence) fairly and objectively because the pertinent [*voir dire*] question 'poisoned' the venire by implying [guilt]." [*Stringfellow*, 425 Md. at 471]. Failure to preserve a direct objection, therefore, must constitute a waiver because the jury has been "poisoned" in some way and the objecting party has now accepted the jury as is. [*Id.*] Objections that are incidental, however, do not "poison" the jury the same way and no waiver can be inferred from the later acceptance of the empaneled jury. [*Id.*]

Ablonczy, 474 Md. at 164-65 (alteration in original).

The following types of voir dire objections are aimed at the inclusion/exclusion of a prospective juror or the venire and are therefore waived when an objecting party accepts the jury without a contemporaneous renewal of the objection:

> (1) an objection to a judge's refusal to strike prospective jurors for cause, *Mills*, 310 Md. at 39–40, 527 A.2d at 6; (2) an objection to the exclusion of a juror because of his beliefs about capital punishment, *Foster v. State*, 304 Md. 439, 450–51, 499 A.2d 1236, 1241–42 (1985); (3) a defendant who failed to object to unacceptable venire members after using all of his peremptory strikes, *White v. State*, 300 Md. 719, 729–30, 481 A.2d 201, 205–06 (1984); (4) an objection to a venire not selected randomly from registered-voter lists, *Glover v. State*, 273 Md. 448, 451–52, 330 A.2d 201, 203–04 (1975); and, (5) an objection to prejudicial remarks made by the prosecutor in earshot of the venire, *Neusbaum v. State*, 156 Md. 149, 162–63, 143 A. 872, 878 (1928).

Id. at 163.

By contrast, when a court refuses to ask a voir dire question requested by the defense, an objection is deemed incidental to the inclusion/exclusion of prospective jurors and is not waived by unqualified acceptance of the jury panel. *Foster*, 247 Md. App. at 649-50. As the Supreme Court has explained:

> [T]here is a critical difference between objections to *voir dire* questions proffered by opposing counsel (or the circuit court *sua sponte*) that the circuit court ultimately asks the jury—which are categorized as "direct" and waived—and objections based on the trial court's decision *not* to ask a party's own proffered *voir dire* questions—which are categorized as "indirect" and not waived. Counsel need not raise a prior objection when there is no one in the jury box that the objecting party specifically objected to. Rather, it is enough to simply note the exception in accordance with Md. Rule 4-323.

Ablonczy, 474 Md. at 165.

Here, the court refused to ask additional questions with respect to counsel's request to know "what the familial relationship is and what their relationship is to law enforcement." Counsel's objection, therefore, was an objection incidental to the inclusion or the exclusion of a prospective juror and was not waived by accepting the jury panel at the end of the jury selection process.

C.

Analysis

We turn now to the merits of appellant's argument, i.e. that the circuit court erred in asking a compound form of the law enforcement affiliation question during voir dire. The State contends that the court properly exercised its discretion in propounding voir dire in this case. It asserts that, by definition, the circuit court did not ask a compound question because it asked two separate questions.

"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 Art. 21 of the Maryland Declaration of Rights, is given substance." *Dingle*, 361 Md. at 9 (internal citations and footnote omitted). "To that end, [o]n 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." *Collins v. State*, 463 Md. 372, 376 (2019) (citation and quotations omitted). We review "for abuse of discretion a

trial court's rulings on the record of the *voir dire* process as a whole[.]" *Id.* at 391 (citation and quotations omitted).

In *Dingle*, 361 Md. at 8-9, the Court analyzed the propriety of compound voir dire questions. The trial court asked a series of voir dire questions related to certain experiences or associations of the prospective jurors. *Id.* at 3. It did so, however, by using a two-part question, asking first whether the prospective juror had a particular experience or association and then whether that experience or association would affect the juror's ability to be fair and impartial. *Id.* at 3-4. The prospective jurors were asked to stand only if they answered "yes" to both parts of the inquiry. *Id.* at 4-5. The Supreme Court held that this compound question was improper, noting that the trial court, not the prospective juror, must decide whether there is a cause for disqualification of the prospective juror. *Id.* at 14-15.

The Supreme Court has mandated that, when all of the State's witnesses are members of law enforcement or "where the basis for a conviction is reasonably likely to be the testimony of members of law enforcement agencies," a trial court, on request, must ask during voir dire: "Have any of you ever been a member of a law enforcement agency?" *Pearson v. State*, 437 Md. 350, 367 (2014). This is because "a prospective juror's experience as a member of a law enforcement agency has a demonstrably strong correlation with a mental state that could give rise to specific cause for disqualification." *Id.*

A prospective juror, however, is not automatically disqualified merely because they respond in the affirmative to the law enforcement question. *Id.* at 368. Rather, as the Court

explained in *Pearson*, "[a]fter the prospective juror is individually questioned by the attorneys or upon request by the trial court," the court then determines "whether or not the prospective juror's having been a member of a law enforcement agency constitutes specific cause for disqualification." *Id.* at 368-69.

There is no dispute here that the law enforcement question was a required question relating to the experiences or associations of the prospective jurors. The issue here is whether the format violated the principles of *Dingle*, 361 Md. 1 (2000). In *Dingle*, the Court explained:

> The trial judge's mistake was that he failed to appreciate that, should there be a challenge, he had the responsibility to decide, based upon the circumstances then existing, *i.e.* "in addition to the venire person's bottom line conclusion in that regard, as reflected in the answers he or she gives, the character and duration of the position, the venire person's demeanor, and any and all other relevant circumstances," *id.*, or, in other words, whether any of the venire persons occupying the questioned status or having the questioned experiences should be discharged for cause, or whether "a demonstrably strong correlation [exists] between the status [or experience] in question and a mental state that gives rise to cause for disqualification." *Id.* Because he did not require an answer to be given to the question as to the existence of the status or experience unless accompanied by a statement of partiality, the trial judge was precluded from discharging his responsibility, *i.e.* exercising discretion, and, at the same time, the petitioner was denied the opportunity to discover and challenge venire persons who might be biased.

Id. at 17 (quoting *Davis v. State*, 333 Md. 27, 61 (1993)).

Here, as the State notes, the court did not ask one compound question. It asked one question about law enforcement association, and jurors stood up in response. The court

then asked the jurors another question, i.e., whether that association would impair them from rendering a fair and impartial verdict.

At oral argument, counsel for appellant conceded, appropriately, that although the brief framed the issue as involving an improper compound question, the case did not actually involve a compound question. Nevertheless, counsel argued that the format of the question violated the spirit of *Dingle* by permitting the prospective jurors, rather than the trial court, to determine whether they could be fair and impartial. We agree.

In *Dingle*, 361 Md. at 14-15, the Court noted that, "[b]ecause the task of the trial judge is to impanel a fair and impartial jury," it is the trial judge who "must decide whether, and when, cause for disqualification exists for any particular venire person. That is not a position occupied, or a decision to be made, by either the venire or the individual venire persons." The function to determine juror bias involves credibility findings, and in *Dingle*, the trial judge "failed to appreciate that, should there be a challenge, he had the responsibility to decide, based upon the circumstances," whether the prospective juror has a mental state that gave rise to cause for disqualification. *Id.* at 17. The question in that case shifted "from the trial judge to the venire responsibility to decide juror bias." *Id.* at 21.

The same can be said for the procedure employed here. The individual jurors determined on their own whether they could be impartial. There was no questioning regarding the character or duration of their association with law enforcement, and the court could not assess the juror's credibility in answering whether that association would impair their ability to be impartial. As in *Dingle*, the quest for expediency thwarted the

responsibility of the court to determine whether there was cause to disqualify the individual jurors.[8]

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

[8] Because we reverse on the voir dire issue, and the severance issue is not likely to arise on a retrial because the co-defendants were acquitted, we need not address that issue.