Circuit Court for Baltimore City
Case No. 116062020-23

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 195

September Term, 2017

NEHEMIAS BATISTA

v.

STATE OF MARYLAND

Leahy,
Reed,
Zarnoch, Robert A.
(Senior Judge, Specially Assigned),

JJ.

Opinion by Reed, J.

Filed: September 16, 2019

On January 11, 2017, a jury in the Circuit Court for Baltimore City found Nehemias Batista ("Appellant") guilty of first degree murder of Edwin Rivera, attempted first-degree murder of Mario Vasquez, conspiracy to commit first-degree murder of Rivera, conspiracy to commit attempted first-degree murder of Vasquez, first-degree assault of Oscar Guerrero, conspiracy to commit assault of Guerrero, and second-degree assault of Erma Merivia. On February 22, 2017, the circuit court merged, for the purposes of sentencing, one of the conspiracy to commit attempted murder convictions and the conspiracy to commit assault conviction. The circuit court then sentenced appellant to life imprisonment, suspending all but thirty-five years.

Appellant noted this appeal and presents two questions for our review:

I. Did the circuit court err in failing to ask several proposed questions during *voir dire*?

II. Did the circuit court err in failing to vacate Appellant's conviction for conspiracy to commit first-degree murder and one of his convictions for conspiracy to commit murder?

For the following reasons, we answer the first question in the negative. For the second, we find that the circuit court erred in failing to vacate two of Appellant's convictions for conspiracy, and thus reverse and remand for further proceedings consistent with this opinion.

FACTUAL & PROCEDURAL BACKGROUND

This appeal follows a shooting that occurred in the early morning hours of February 6, 2016, at the Santa Clara Bar & Restaurant ("the Bar") in the Fells Point Area of Baltimore City. Axel Martinez ("Martinez") and his friends, Edwin Rivera ("Rivera"),

Mario Vasquez ("Vasquez") and Oscar Guerrero ("Guerrero") went to the Bar around 10:30 p.m. on February 5, 2016. Martinez noticed three men come into the establishment and sit at the bar. He further observed that, while playing pool with Guerrero, two of the three men got up from the bar while wearing masks from the movie "V for Vendetta,[1]" headed towards the door, and withdrew guns. Martinez later testified that only one individual fired his gun. The bullets from that gun hit both Rivera and Vasquez. The same individual also shot at Guerrero and Martinez, who was able to run and hide in the kitchen. After hearing the men leave, Martinez returned to find Rivera lying on the floor of the Bar. Rivera died later that day. During trial, Mr. Martinez claimed to have heard five gun-shots and that the shooter had a neck tattoo, which was later identified as the same tattoo on Appellant.

Guerrero recalled going to the Bar with Rivera, Vasquez and Martinez. He admitted to drinking several beers, eating food and playing pool for about three and a half hours. In the middle of playing pool, Guerrero looked over to see shots being fired at his friends. After hearing three shots, Guerrero attempted to run but was shot in his foot. Guerrero confirmed that both individuals wore masks and noted that one individual was dark-skinned, heavy set, and wore a hooded-jacket. Guerrero remembered seeing only one weapon but believed both individuals had weapons.

[1] In the film "V for Vendetta," one of the main characters wears a mask that is often known as the "Guy Fawkes Mask." Guy Fawkes was a British soldier who planned the failed Gunpowder Plot of 1607. The mask portrays a version of his face. Accordingly, the mask is a stylized face with an exaggerated smile, red cheeks, a wide mustache that is upturned at both ends, and a thin vertical pointed beard. In its modernity, the mask is worn by the hacktivist group Anonymous.

Vasquez also testified that he drank several beers, ate food and played pool at the Bar prior to the shooting. Vasquez also testified that someone held a gun on him and that he was shot in his right cheek. Two witnesses, identified as Irma Maravilla and David Hernandez, also went to the Bar the night of the shooting. While they did not see the shooters, they recalled the masks the shooters wore.

Shortly after the shooting, at around 1:00 AM, a taxi cab driver, Jose Romero ("Romero"), arrived at the Bar. One person approached Romero to enter the taxi and told Romero that other passengers were coming. Romero testified that once all the individuals got into the cab, he took them to a location on North Point Road. The testimony continued:

> [Ms. Deihl]: And why did they – what did they say when they weren't going to pay you?
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> ****
>
> [Mr. Romero]: They didn't have any money.
> [Ms. Deihl]: Okay. Did they say anything else to you?
> [Mr. Romero]: Yes.
> [Ms. Deihl]: What did they say?
> [Mr. Romero]: That they had killed.
> [Ms. Deihl]: That they had what?
> [Mr. Romero]: that they had killed
>
> ****
>
> [Ms. Deihl]: Ok. Did they say anything else to you besides we're the ones that had killed?
> [Mr. Romero]: Yes.
> [Ms. Deihl]: What did they say?
> [Ms. Romero]: That I didn't know them. That I shouldn't say anything.

Romero was later shown a photo array but was unable to identify anyone, including the individual who had stated that he had killed someone.

Following the shooting, an investigation into the incident began. Aneila Harvey, a crime lab technician from the Baltimore City Police Department, recovered a black hat,

black leather jacket, beer bottles, two live cartridge cases, and two projectiles from the scene around 2:00 a.m. on February 6, 2016. After researching the phone number that had called Romero's taxi cab company, the police determined that the call had come from a residence on Gough Street in Baltimore City.

The morning after the incident, the police were able to obtain a search warrant in Baltimore County to search the residence in question. During Detective Michael Moran's search, he recovered a .45 handgun in a linen closet, wrapped in a towel, along with a letter addressed to Melvin Zavala. Also found in the home were three cell phones, a pair of camouflage pants in a book bag, a plastic mask, and a sweatshirt. Detectives also encountered Oscar Melendez, a resident of the Gough Street home. Melendez later testified that a man named Melvin, later identified as Melvin Zavala, and another individual named Juan also lived at the residence. Melendez stated that Melvin came home on February 6, 2016 at about 1:45 a.m. with two other men**.**

Detective Eric Ragland, lead investigator, assisted Detective Moran with the search. While in the residence, Detective Ragland found Nehemias Batista ("Appellant") and a man identified as "Chicas" inside the home. Detectives found a cell phone and pellet gun on Appellant. Ragland later testified that Appellant and Chicas resembled the shooters in the surveillance footage on the night of the shooter. Police also found Melvin Zavala hiding in the home's basement. At this time, Appellant, Chicas, and Zavala were arrested. No fingerprints could be retrieved from the mask found at the residence or within Romero's taxi cab. However, Detective Ragland testified that Zavala's DNA and the DNA from an "indeterminate minor contributor" were found on the pellet gun found on Appellant.

Back at the police station, Detective Ragland interrogated Appellant. During the questioning, Appellant stated that he had gone to the Bar to meet his girlfriend. Appellant also told Detective Ragland that while he had drawn a pellet gun at the Bar, he did not mean to harm anyone.

At trial, Appellant testified in his own defense and confirmed that he went to the Bar after being dropped off by a friend named Antonio**.** He also testified that he, Chicas, and Zavala had smoked marijuana at Zavala's home prior to heading out to a bar named Arizona. After spending some time at Arizona and consuming alcohol, the three went to the Bar, where they continued to drink.

While at the Bar, they sat across from Rivera, Vasquez, Martinez and Guerrerro. According to Appellant's testimony, he, Chicas, and Zavala believed the four men across from them were making fun of them. Appellant further testified that he believed Chicas wanted to scare the men for making fun of them, and subsequently pulled out his pellet gun. Appellant then pulled out his pellet gun, but stated that he did not fire it. Instead, Appellant testified that it was Chicas who fired his weapon and shot at least one person. Appellant stated that he, Chicas, and Zavala then got into a cab and returned to Zavala's house. The next morning, Zavala's home was searched and the three men were arrested.

Prior to the beginning of Appellant's trial, the circuit court presided over a two-day *voir dire* process. During the first day of *voir dire*, the court asked prospective jurors numerous questions. On the second day, the court asked the same questions to an additional panel of prospective jurors.

After propounding the initial set of questions, the circuit court asked the parties if they wanted to ask any additional questions. The State responded by requesting five additional questions: whether anyone had strong feelings about the charges (specifically, murder and attempted murder), whether anyone was not at least eighteen years old, whether anyone was not a resident of Baltimore City, whether anyone did not speak English, and whether the anticipated length of trial would be an undue burden for anyone.[2] The circuit court agreed to ask the question about strong feelings, but declined to ask the other four questions suggested by the State.

The circuit court also asked Appellant's counsel whether she requested any additional questions. Defense counsel indicated that she wanted the circuit court to ask prospective jurors if anyone spoke Spanish. At the bench, Appellant's counsel indicated that Spanish speakers may choose to interpret Appellant's testimony instead of relying on the translation of the court-provided translator, which Appellant's counsel seemed to think should be avoided. The circuit court ultimately denied Appellant's request to ask prospective jurors if anyone spoke Spanish.

After the trial began, on January 6, 2017, Juror No. 11 submitted the following note to the circuit court:

> Your Honor, I speak Spanish [and] have noticed that the older translator is missing a few points when translating from Spanish to English. I don't know if any of these points were critical, but I did want to mention I noticed this in a few instances.

[2] The prosecutor stated that she wanted the circuit court to advise jurors that the trial would likely take seven (7) to ten (10) days.

At the beginning of proceedings on January 9, 2017, the circuit court informed the referenced translator of the juror's note.

At the conclusion of the trial, the jury convicted Appellant of first degree murder of Edwin Rivera, attempted first-degree murder of Mario Vasquez, conspiracy to commit first-degree murder of Rivera, conspiracy to commit attempted first-degree murder of Vasquez, first-degree assault of Oscar Guerrero, conspiracy to commit assault of Guerrero, and second-degree assault of Erma Merivia. On February 22, 2017, the circuit court sentenced Appellant to life imprisonment for both first-degree murder of Rivera and attempted murder of Vasquez. As Appellant was found guilty of first-degree murder, the court merged the conspiracy to commit murder conviction. The court also sentenced Appellant to fifteen (15) years imprisonment for the first-degree assault of Guerrero, ten (10) years imprisonment for second-degree assault of Erma Merivia, and merged the conspiracy to commit assault conviction. The court noted that all sentences would run concurrently to each other and that court was suspending all but 35 years.

This appeal followed.

DISCUSSION

i. Voir Dire

A. Parties' Contentions

Appellant argues that the trial court erred in not posing the following five questions during *voir dire*: (1) whether anyone was a resident of Baltimore City; (2) if anyone was at least eighteen years old; (3) if anyone could speak English; (4) if anyone spoke Spanish; and (5) whether the anticipated length of the trial would create obstacles for anyone. He

contends that by failing to ask these questions, the trial court committed reversible error because three of those questions concern juror qualifications as codified by statute. Moreover, he maintains that the fourth and fifth questions were tailored to identify a disqualifying bias in jury members.

The State contends that these issues were not preserved, if not affirmatively waived, and are not properly before this Court for appellate review. Alternatively, the State argues that even if this issue was properly before this Court, a reversal is not warranted because Appellant was not prejudiced by the trial court's ruling.

B. Standard of Review

When considering Appellant's questions regarding *voir dire*, we review the trial court's decision for an abuse of discretion. *See Pearson v. State*, 437 Md. 350, 356, (2014) (quoting *Washington v. State*, 425 Md. 306, 314, (2012)) ("Because trial judges retain wide discretion regarding the *voir dire* process, we review a trial judge's decisions during *voir dire* under an abuse of discretion standard."). This broad discretion of conduct extends to the scope and format of the questions propounded. The trial judge need not make an inquiry, unless it is directed toward disqualification. *See Dingle v. State*, 361 Md. 1, 13-14 (2000) ("It is well-settled that a trial judge has broad discretion in the conduct of *voir dire*, especially regarding the scope and form of the questions propounded, and that he or she need not make any particular inquiry of the prospective").

C. Analysis

Under the Sixth Amendment of the United States Constitution and Article 21 of the Maryland Declaration of Rights, a defendant has the right to an impartial jury. *Pearson v. State*, 437 Md. 350, 356 (2014). As the Court of Appeals stated in *Dingle v. State*:

> *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 Right . . . is given.

361 Md. 1, 9 (2000) (internal citations omitted).

Trial judges have broad discretion regarding the scope and form of questions during *voir dire*. *See Washington v. State*, 425 Md. 306, 313 (2012). A trial court, however, is obligated to ask questions posed to unveil a specific cause for disqualifications. *See Pearson*, 437 Md. at 357 (citing *Moore v. State*, 412 Md. 635, 663 (2010)).

Preservation of Questions

Appellant contends that the trial court erred in declining to ask three questions regarding statutory juror requirements within Baltimore City, and that such error warrants reversal. However, before this Court may review if the trial court committed error, we must first determine if the issue is eligible for appellate review. According to the statutory guidelines given to this Court,

> *the appellate court will not decide any other issue unless it plainly appears by the record to have been raised in or decided by the trial court*, but the Court may decide such an issue if necessary or desirable to guide the trial court or to avoid the expense and delay of another appeal.

Md. Rule 8-131(a) (emphasis added). The purpose of the rule is to "require counsel to bring the position of their client to the attention of the lower court at the trial so that the trial court can pass upon, and possibly correct any errors in the proceedings, and . . . prevent the trial of cases in a piecemeal fashion." *Robinson v. State*, 404 Md. 208, 216-17 (2008) (quoting *Fitzgerald v. State*, 384 Md. 484, 505 (2004)).

Here, the State requested on the first of a two-day venire panel whether anyone was not a resident of Baltimore City, not yet eighteen years old, or could speak the English language. The trial court denied the State's request. Appellant did not subsequently request similar questions be asked, maintaining that the questions would have been futile considering there was no sign that the trial court would have changed its ruling. This argument is not persuasive. We have established that, even in the most "precarious" positions, it is vital that counsel clearly raise an issue to preserve it:

> The dilemma is [that] he or she must choose between, on the one hand, remaining mute and not protecting a client's interest or, on the other hand, incurring the wrath of a trial judge in an effort to preserve a record on which the lower court's actions may be reviewed. Nevertheless, it is incumbent upon counsel to state with clarity the specific objection to the conduct of the proceedings and make known the relief sought.

Acquah v. State, 113 Md. App. 444, 478 (2008) (quoting *Braxton v. Faber*, 91 Md. App. 391, 407 (1992)). Appellant's failure to readdress a mandatory juror disqualification question merely because the objection presents a strong possibility for denial is a small inconvenience when ensuring that a defendant's right to an impartial jury is properly implemented. Complaining that an objection would be fruitless does not excuse Appellant's lack of due diligence to preserve the issue.

Appellant further contends that issues may be preserved by it being "raised in or decided by the trial court" pursuant to Md. Rule 8-131(a). Specifically, Appellant asserts that the trial court's decision regarding a *voir dire* question posed by the State amounts to preservation of the three statutory questions. In support of his argument, Appellant cites a footnote in *Collins v. State*, 192 Md. App. 192, 204 n. 10 (2010). Based upon our review of the record, this case is distinguishable from that case.

In *Collins*, the State argued that Appellant did not preserve the issue of a *Hicks* violation because the State, not the defense trial counsel, raised the issue before the trial court. *Id*. This Court concluded that Appellant preserved this issue because he filed two motions related to the violation in addition to the trial court deciding on the issue. While raising the issue was not explicit, it was sufficient for preservation. Here, however, the record does not indicate that Appellant's trial counsel raised the issue of the statutory question, whether in writing or orally, before the trial court. Appellant did not even raise these questions in his written *voir dire*. Thus, we find *Collins* inapplicable to the case at bar.

Appellant also cites *Doe v. Dept. of Public Safety & Correctional Services*, 430 Md. 535, 543-544 (2013). In *Doe*, Doe appealed an issue relating to an *ex post facto* law that was implemented after Doe's conviction for child sexual abuse. While Doe's argument during trial did not include any discussion of the ex post facto law in question, both the State and the trial judge clearly considered the law during the trial. In response to Doe's appeal, the State argued that the issue was not properly preserved for appellate review, as Doe did not raise any issue with the ex post facto law in his complaint with the trial court.

Rejecting the State's contention, the Court of Appeals concluded that the "ex post facto issues were preserved where it was not raised by the defense but was addressed by the prosecutor and decided by the trial court." *Id.* at 543. However, the Court of Appeals made it abundantly clear in *Robinson v. State*, 404 Md. 208 (2008), that "Md. Rule 8-131(a) requires an appellant who desires to contest a court's ruling or other error on appeal to have made a timely objection at trial. The failure to do so bars the appellant from obtaining review of the claimed error, as a matter of right." *Robinson v. State*, 410 Md. 91, 103 (2009). Furthermore, unlike in *Doe*, there was no discussion by the State nor the trial judge in this case regarding the issue of statutory questions during the *voir dire* process on the second day of jury selection, from which the jury panel was ultimately selected.

Moreover, Appellant asserts he did not affirmatively waive any challenge to the trial court's denial of the three questions. Appellant cites, in a footnote, our definition of waiver in *Brice v. State*, 225 Md. App. 666 (2015), observing that "waiver is the intentional relinquishment of a known right or conduct that warrants such an inference." 225 Md. at 679 (quoting *Brockington v. Grimstead*, 176 Md. App. 327, 355, (2007) *aff'd*, 417 Md. 332 (2010)). In that case, defense counsel asked the court to ask prospective jurors if they would be more or less likely to believe a police officer merely because they are a police officer. *Id*. at 677. Defense counsel's request was denied, defense counsel subsequently answered in the negative when asked if they had any further questions or comments for *voir dire*. *Id.* at 679. This Court found that this was an intentional relinquishment, i.e., a waiver.

The record reflects waiver here where Appellant failed to raise the first three questions at any point during or after two days of *voir dire*. Accordingly, we conclude that Appellant did not preserve the issue of the three statutory questions posed by the State.

Juror Disqualification

Appellant also asserts that the trial court committed reversible error in failing to ask if anyone spoke Spanish or if the anticipated length of the trial would create obstacles for anyone. Specifically, Appellant claims that the trial court was required to ask the requested questions because they were intended to reveal specific cause for juror disqualification.

The Maryland Court of Appeals has set forth two categories of questions that may reveal specific cause for juror disqualification. *See Washington v. State*, 425 Md. 306 (2012). One category is when a juror fails to meet the statutory or constitutional juror requirements. In Maryland, the minimum statutory requirements require that a person be a citizen of the United States and reside in the county in which the trial is taking place before serving on a jury. *See* Md. Code Ann., Cts & Jud. Proc. § 8-103(a). Alternatively, a juror may be disqualified 8-131(b) if they "[c]annot comprehend spoken English or speak English." Md. Code Ann., Cts. & Jud. Proc., § 8-103(b).

The second category of questions that may reveal specific cause for juror disqualification are questions intended to "discover the juror's state of mind as to the matter in hand or any collateral matter reasonably liable to have undue influence over him." *See Washington*, 425 Md. at 313. A "[c]ollateral matter [is] reasonably liable to have undue influence over" a prospective juror. *Id.* This category is comprised of "biases directly related to the crime, the witnesses, or the defendant[.]" *Id*. The sole purpose for posing

these questions on *voir dire* is "to ascertain 'the existence of cause for disqualification'." *Owens v. State*, 170 Md. App. 35, 72 (2006). Accordingly, a trial judge is not required to ask questions that are outside of the scope of disqualifying a juror just to "fish" for information to assist a party in a subsequent appeal *Washington*, 425 Md. at 315.

Appellant relies on our decision in *Kegarise* to show that, on the merits, these questions should have been asked. We do not disagree that the questions relating to residency, age, and English proficiency fall within the first category of statutory juror disqualifications set forth in *Washington*. Nonetheless, Appellant's reliance on *Kegarise* is, like *Doe* and *Collins*, misplaced. In *Kegarise*, the basis for reversal was that the record revealed that the appellant's trial counsel twice requested that the "citizenship disqualification question" be asked, despite the trial court's denial. *Kegarise v. State*, 211 Md. App. 473, 487 (2013). Here, Appellant took no such action that would constitute preservation. Additionally, all prospective jurors who are selected for jury duty in Baltimore City must complete a juror qualification form prior to attending jury duty. The qualification form must be submitted either online or by mail. If submitted online, jurors first provide their juror identification number, which is provided to each prospective juror when notified of their selection for jury duty, and then asked to answer questions relating to their citizenship, residency, age, and ability to speak English.

In the alternative, if Appellant did properly preserve the three statutory questions, the court's exclusion of these questions does not warrant an automatic reversal, absent any showing of bias or prejudice. In *Owens*, we did not reverse the conviction where one of the appellant's jurors to a murder trial was not an American citizen. 170 Md. App. at 86. There,

we found that the juror made an inadvertent mistake on the juror form which did not result in any bias or prejudice to the defendant. *Id*. Thus, the trial court did not abuse its' discretion. Likewise, in *Hunt v. State*, 345 Md. 122(1997), the Court of Appeals has held that there is a rebuttable presumption that jurors are not biased. Rather, the Court of Appeals places the burden on the challenging party to show facts to the contrary. Absent bias or prejudice, a court is within its discretion to allow such prospective jurors onto a jury panel. *Id*. Here, Appellant has made no argument that he has been biased or prejudiced by any of the prospective jurors not being asked if they are a resident of Baltimore City, are at least eighteen years old, or if they speak and understand English.

Appellant further contends that the court erred when declining to ask prospective jurors if they spoke Spanish. Initially, we conclude that this issue has not been preserved, and waived, for appellate review. While Appellant did initially raise the question to the trial court, the record reflects that Appellant did not re-raise the question to the court at any point during the second day of *voir dire*, when a new panel of prospective jurors was brought in and from which jurors were selected to serve during this trial.

Even had the issue been preserved, the circuit court did not abuse its discretion in declining to ask this question. As noted above, the trial court is required to pose questions to prospective jurors that reveal "biases directly related to the crime, the witnesses, or the defendant [.]" *Washington*, 425 Md. at 313. Here, eight out of fourteen witnesses, including the defendant, needed Spanish interpreters. Specifically, Appellant wanted the court to ask prospective jurors if they spoke Spanish in an attempt to elicit disqualifying juror bias. Appellant's trial counsel's rationale was that she did not want jurors to interpret what the

interpreters were saying based on their own understanding of Spanish. Here, Appellant asks this Court to believe that speaking Spanish in a case such as this would permit a "strike for cause to any Spanish-speaking prospective juror unwilling or unable to abide by the court's interpreter's translations." We are not persuaded.

Simply being able to speak Spanish, or any language for that matter, does not make one unable to understand or unwilling to listen to that language in translation. Similarly, merely speaking Spanish does not reveal a bias directly or indirectly to the defendant, the witnesses, or crimes in this case, especially considering the victims were also Spanish-speaking and required interpreters.

Appellant cites *Thomas v. State*, 369 Md. 202 (2002), and *Sweet v. State*, 371 Md. 1 (2002), as support. We note that both cases are distinguishable from Appellant's. In *Thomas*, a narcotics case, the court abused its discretion when declining to ask prospective members of the jury if they had strong feelings about narcotics laws and violations. *Thomas*, 369 Md. at 204. In *Sweet*, a case dealing with second-degree assault and third-degree sexual offense against a minor, the court abused its discretion in declining to ask prospective jurors whether a sexual offense and assault against a child would make it difficult for he or she to remain impartial. *Sweet*, 371 Md. at 3, 9-10. The common thread between these cases is that the trial court refused to ask questions that unveiled bias directly related to the crime the defendant was accused of. By contrast, in our case, speaking

Spanish does not directly relate to Appellant committing murder, attempting murders, and committing assault.[3]

In the alternative, Appellant argues that the trial court was obligated to rephrase the question if it felt the question was overbroad. However, the trial court is only required to rephrase mandatory questions on *voir dire*. *Benton v. State*, 224 Md. App. 612, 626 (2015) (quoting *Pearson*, 347 Md. at 369 n. 6). Therefore, the trial court did not abuse its discretion in declining to ask prospective jurors if they spoke Spanish.

Lastly, Appellant contends that the court erred in declining to tell jurors that the trial will be between seven to ten days Here, the State wanted the trial court to instruct the prospective jurors of the expected length of trial to determine their availability and the court declined to do so. Appellant argues that this issue was preserved for review because it was ruled on by the trial court. However, as noted above, an appellant may only challenge an issue on appeal if *they* have either objected or manifested an intent to raise and therefore preserve the issue. *Robinson*, 410 Md. at 10 (emphasis added). While it is true the State raised this issue a second time, this does not preserve the issue for Appellant. Furthermore, in agreement with the State, we find that telling jurors about the expected length of trial speaks to their availability to be at trial, not their capability to serve impartially at trial. This question is not required as codified by statute, nor does it directly relate to the crime, the witnesses, or Appellant in this case.

[3] We note that we agree with the trial court's mention that this broad question could be inadvertently discriminatory.

i. *Conspiracy Convictions*

A. Parties' Contentions

At trial, Appellant was convicted of conspiracy to murder Rivera and two other conspiracies: conspiracy to murder Vasquez and conspiracy to assault Guerrero. Appellant contends that the trial court erred by merging the latter two conspiracy convictions, and argues that those two convictions should have been vacated. Appellant cites to numerous Maryland cases in asserting that only one conviction and sentence may be imposed for a single conspiracy, no matter how many criminal acts the conspirators have agreed to commit. As the State has not alleged that Appellant engaged in separate conspiracies, the circuit court may only convict and sentence Appellant for one conspiracy charge.

The State concedes and agrees that the two conspiracy convictions that were merged should have been vacated by the circuit court. We also agree.

B. Analysis

It is well settled in Maryland that only one conviction and sentence may be imposed for a single common law conspiracy, no matter how many criminal acts the conspirators have agreed to commit. *See Tracy v. State*, 319 Md. 452 (1990). Because the circuit court merged, and did not vacate, Appellant's convictions of conspiracy to murder Vasquez and assault Guerrero, Appellant argues he was illegally sentenced.

Here, the parties agree that an error occurred and that the circuit court should have vacated two of the conspiracy convictions. Our review of the case law on this point supports the parties' belief that the court generally vacates the conviction in this

context. *See, e.g.*, *Jordan v.* State, 323 Md. 151, 161–62 (concluding that the evidence did not support the determination that two separate conspiracies—one to commit murder and the other to commit robbery—existed and remanding for the court to vacate the judgment of conviction for conspiracy to commit robbery); *Savage v. State*, 212 Md. App. 1 at 31, 42 (2013) (concluding that the evidence did not support a finding of two separate conspiracies to commit burglary with two different individuals and remanding for the court to vacate "one of the conspiracy sentences and convictions"); *Martin v. State*, 165 Md. App. 189, 210 (2005) (concluding that the record showed one conspiracy to commit murder and robbery and vacating the "conviction and sentence for conspiracy to commit robbery"). As there is no contention by the State that Appellant engaged in multiple conspiracies, it is only logical that the conspiracy convictions should be vacated here.

Accordingly, Appellant's convictions for conspiracy to murder and assault should be vacated, and the judgment of the Circuit Court for Baltimore City is reversed and remanded.

JUDGMENTS OF THE CIRCUIT COURT FOR BALTIMORE CITY AFFIRMED IN PART AND REVERSED AND REMANDED IN PART FOR FURTHER PROCEEDINGS TO VACATE THE AFOREMENTIONED CONSPIRACY SENTENCES AND CONVICTIONS; COSTS TO BE SPLIT BETWEEN APPELLANT AND THE STATE.