

UNREPORTED*

IN THE APPELLATE COURT

OF MARYLAND

No. 982

September Term, 2024

TYRONE FENNER

v.

STATE OF MARYLAND

Zic,
Kehoe, S.,
Eyler, James R.
(Senior Judge, Specially Assigned),

JJ.

Opinion by Eyler, James R., J.

Filed: July 7, 2026

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

A jury in the Circuit Court for Baltimore City found Tyrone Fenner, appellant, guilty of murder in the first degree, conspiracy to commit murder, use of a firearm in the commission of a crime of violence, and possession of a regulated firearm by a person previously convicted of a disqualifying offense. The court imposed aggregate sentences of life imprisonment plus ten years.¹ In this timely appeal,² appellant raises a single question:

Did the court err in striking a prospective juror for cause because of her beliefs about “systemic racism” and “implicit bias”?

We hold that this claim was waived because trial counsel accepted the empaneled jury without reservation. But even were we to reach the merits, because we perceive neither error nor abuse of discretion, we would reject appellant’s claim. Therefore, we affirm the judgments.

¹ The court sentenced appellant to life imprisonment for first-degree murder (Count 1), consecutive to the sentence in Case No. 117152013 (an unrelated case). The court further sentenced appellant to ten years’ imprisonment, the first five years without the possibility of parole, for use of a firearm in the commission of a crime of violence (Count 2), consecutive to Count 1; fifteen years’ imprisonment, the first five years without the possibility of parole, for possession of a regulated firearm after having been convicted previously of a disqualifying offense (Count 3), concurrent with Count 1; and life imprisonment for conspiracy to commit murder (Count 4), concurrent with Count 1. (The court renumbered the counts, ostensibly to align with the order they appeared on the verdict sheet, but in fact, the numbered counts, as pronounced by the sentencing court, are not consistent either with the indictment or the verdict sheet.)

² The court originally imposed sentence on July 2, 2024. Therefore, this is not a premature appeal. The reason the court convened the August 2, 2024, hearing was to clarify its original pronouncement of sentence.

BACKGROUND

It is unnecessary to set forth a detailed summary of the underlying facts elicited at trial because they are irrelevant to the issue raised on appeal. *Thomas v. State*, 454 Md. 495, 498-99 (2017); *Hill v. State*, 418 Md. 62, 66-67 (2011); *Teixeira v. State*, 213 Md. App. 664, 666-67 (2013). It suffices to say that the State presented sufficient evidence for the jury to find appellant guilty of first-degree murder of Donte Miller, conspiracy to commit murder, use of a firearm in the commission of a crime of violence, and possession of a regulated firearm after having been convicted previously of a disqualifying offense. Appellant does not contend otherwise. We must, however, quote extensively from the voir dire phase of the proceedings to provide context for the issue raised.

Because this was a 20/10 case,³ a large venire was examined. Of particular relevance here were Jurors 2183 and 2186. During the preliminary stage, when the judge addressed the entire venire, Jurors 2183 and 2186 (and two others, 2029 and 2237, also stricken for cause) answered affirmatively to eight questions, more than any other venirepersons. Among the questions to which Juror 2183 answered affirmatively, three are noteworthy:

THE COURT: . . . Would you tend to believe or disbelieve the testimony of a law enforcement officer more than the testimony of any other witness?

³ Appellant was charged with murder in the first degree and conspiracy to commit murder, both of which exposed him to life sentences. Md. Code (2002, 2021 Repl. Vol.), Criminal Law Article, §§ 2-201(b)(1), 1-202. Under Maryland Code (1974, 2020 Repl. Vol.), Courts & Judicial Proceedings Article, § 8-420(a), and Maryland Rule 4-313(a)(2), appellant was permitted twenty peremptory challenges, and the State was permitted ten peremptory challenges for each defendant. (There was only one defendant in this case.)

and:

THE COURT: . . . One or more of the witnesses in this case may be qualified to offer expert opinions. Would you tend to accept or reject any part of the testimony that witness -- of that witness because of the witness's area of expertise?

and:

THE COURT: . . . Do you hold any beliefs that would prevent you from weighing the evidence and returning a fair and impartial verdict, specifically as it relates to A; any moral, religious or ethical conviction that you may have or B; any beliefs related to race, sex, color, religion, national origin or other personal attributes that you may have?

When Juror 2183 approached the bench for individualized examination, the following occurred:

THE COURT: Hi. Are you 2183?

JUROR: Yes.

THE COURT: Welcome. You indicated -- you answered my second to last question about having certain personal beliefs. Do you remember that full question?

JUROR: Yeah.

THE COURT: Why did you say yes to that? I just want to follow-up.

JUROR: It was just based on feeling like our justice system is like inherently racist and --

THE COURT: Okay.

JUROR: -- it's a hard thing to shake.

THE COURT: So -- and do you place the blame on any particular aspect of the justice system?

JUROR: I mean just like the systemic racism that's like the underpinning of our society.

THE COURT: All right. Do you think you'd be able to listen to evidence in this case and decide for yourself if someone was guilty or not guilty or do you think that either some other aspect of this would enter into your thinking besides just --

JUROR: I mean I think it would depend on the individuals giving testimony, you know, --

THE COURT: Okay.

JUROR: -- demeanor.

THE COURT: Okay. So you would attempt to assess somebody's demeanor and decide if they were worthy of belief or not?

JUROR: Yeah.

THE COURT: Okay. So just thinking of people that are part of the system. So let's say a police officer testifies and they say -- and they're wearing body camera let's say and they say I went and I located something on the ground and I picked it up and my body camera shows me picking it up off the ground. Would you believe them or would you -- would other thoughts enter into your mind about whether they could be believed?

JUROR: If there's a body cam and that footage is, you know, clear, I guess I would tend to believe them.

THE COURT: Okay. So there are -- so -- so there are circumstances where you'll give somebody a chance?

JUROR: Yeah.

THE COURT: But they could --

JUROR: Yeah.

THE COURT: -- if you -- if you don't believe they're worthy of belief then you would assess their credibility to be not believable.

JUROR: Yeah.

THE COURT: Okay. Is that based -- now -- and let[']s come back to your concerns about systemic racism. Where does that come into play for you when it comes to just making those determinations about the facts?

JUROR: Again, I -- I think it's just sort of interpreting what they're - - what they're stating. If the -- with what they're talking about is something that's clear cut as like there was footage and I did X, Y, Z, but if it's like something about their interpretation of something else, that's when I think I would question.

THE COURT: Okay.

JUROR: Or just in general have a hard time divorcing what they're saying from what I know about kind of like our society and the wider --

THE COURT: Okay.

JUROR: -- world.

THE COURT: Does anyone want to ask any follow-up questions on this point?

[PROSECUTOR]: No, Your Honor.

[TRIAL COUNSEL]: No, Your Honor.

The prosecutor moved to strike Juror 2183 for cause. Trial counsel opposed. The court decided to conduct “a follow-up[.]” The following colloquy occurred:

THE COURT: Come on back. I'll just ask other questions. You indicated -- oh, I'm sorry, can you come back up? All right. You've been a juror before.

JUROR: Yes.

THE COURT: And which -- where? In the city or somewhere else?

JUROR: In Washington, D.C.

THE COURT: Okay. And do you recall if that was a criminal or civil case?

JUROR: Criminal.

THE COURT: And about how long ago was that?

JUROR: I think it was like four years ago.

THE COURT: Four years ago. Okay.

JUROR: Yeah.

THE COURT: And do you remember if the verdict was guilty or not guilty?

JUROR: I think it was guilty.

THE COURT: Okay. Is there any reason -- anything that's happened since then that would make it difficult for you to be a fair and impartial juror again?

JUROR: Yeah, just -- just having more awareness of like I said like these like structural issues in our society that just make me feel like I'm interpreting things that --

THE COURT: Okay.

JUROR: -- come from those sources of authority differently.

THE COURT: Fair enough. You also indicated you have strong feelings about crimes charged here, firearms, somebody with a prior record having a gun again. What -- can you express those strong feelings?

JUROR: Well, that's more like my sort of just based on experiences I've had of sort of people repeating -- I don't know -- repeating offenses from -- despite having been able to move on from a previous offense and that sort of makes me feel like, personally it's like a -- a fear I have of -- they would be more dangerous when they're in that position than when they're --

THE COURT: Okay.

JUROR: -- starting fresh I guess.

THE COURT: Fair enough. You also indicated you had some sort of potential leanings with an expert witness testifying. In what ways? Do you recall that question?

JUROR: Yeah, but that was the question that was are you more likely to believe or disbelieve --

THE COURT: Right.

JUROR: -- right. So I would say I'm more likely to believe somebody if they're purported to be an expert --

THE COURT: Okay.

JUROR: -- than if they're not.

THE COURT: And what if that expert was a police officer?

JUROR: Then it's a little bit gray.

THE COURT: Okay. And what if it's not a police officer, but somebody that works for the police department? I listed a few names that were, you know, just techs that do certain things or have specialized training, but they're not law enforcement officers.

JUROR: Again, I think it's gray. I think if -- if again, if it's something that's -- that there's some concrete evidence behind or if it's their impression I think I'm less likely to --

THE COURT: Okay.

JUROR: -- but --

THE COURT: I think I know why you -- I asked the question about whether you'd give more or less credibility to police officers. Do you think you've addressed that already or do you want to speak more to that?

JUROR: No. Yeah. I just -- yeah, I think I just have questions about how much they're in touch with their own biases and how that's informing how they're talking about things and.

THE COURT: Okay. You also indicated that you -- either you or somebody you know has been a victim, witness or charged with a crime. Who does that apply to?

JUROR: So I was I guess technically a victim of like indecent exposure in college. So --

THE COURT: I got it. Okay.

JUROR: -- ten or 15 years ago.

THE COURT: Based on those experiences -- based on that experience would that affect your ability to be a fair and impartial juror?

JUROR: No.

THE COURT: Okay. All right. Anybody want to ask any follow-up questions?

[PROSECUTOR]: If you had a police officer that testified, would you start them off at the same position as any other witness or would they have to jump over like a higher hurdle for you to believe the credibility of their testimony?

JUROR: Yeah. Again, I think it -- it will depend on what exactly is the object of the testimony, but I think that's my -- that's where I feel like I'm not -- I'm not impartial because I -- I would want them to prove more than other experts so to speak.

THE COURT: Okay.

JUROR: Like you said, start -- they're starting kind of lower in terms of my -- their credibility with me.

[TRIAL COUNSEL]: Is that -- is that because they have access to more resources or is that just simply because they're police officers? Such as, you know, police department has experts, the police department has resources to investigate a case. So is it that you want to see that they use those resources or is it just simply because they have a badge they start out lower?

JUROR: Yeah, I think -- I think have them being a part of that culture tends towards again certain biases that I --

THE COURT: Okay.

JUROR: -- I think they have that. I don't -- that they'd have to kind of prove that they don't as they're testifying, if that makes sense.

THE COURT: All right. Thank you very much.

(Emphasis added.)

The prosecutor renewed her motion to strike Juror 2183 for cause, and trial counsel once again opposed. Trial counsel contended that Juror 2183's assertion that "requiring the police department . . . to provide proof" is not "a wrong view" and should not be disqualifying. The prosecutor countered that Juror 2183 admitted that, in assessing witness credibility, "a police officer . . . would start at a lower level" and "would have to meet a higher threshold" than other witnesses, a remark that "stood out" to the prosecutor. The court replied:

Here's the problem I have. I don't believe this person. I think she's trying to get off this jury. I don't think she believes anything she just said and here's my proof of that. And because the record will reflect that she gave all those answers and a lot of them on their own would be oh, okay, oh my God, she really believes that. She should not be on this jury.

However, she's accumulated answers that contradict themselves. She's got strong feelings about violent crime, right, and like oh, and she's had these experiences, but when it comes to that, she's been a victim of a crime. I mean clearly respects that things should be prosecuted and the system is racist, you know. And -- and I don't know if that was her word or if it was -- I forgot her word. I don't want to misquote her, but she -- [said the justice system is racist.]^[4]

(Emphasis added.)

⁴ The bracketed text was spoken by the prosecutor, but the court immediately adopted that statement.

The court then expressed doubt as to whether a prospective juror’s attempt to avoid jury service is “enough reason to strike them for cause[,]” opining that its “assessment of” Juror 2183 “is not that she can’t do it, but she just doesn’t want to be here[,]” and it denied the prosecutor’s motion to strike Juror 2183 for cause, declaring, “I think she just wants off the jury.”

Juror 2186 answered affirmatively to (among others) having a close relative employed in the law and to the expert-witness question. When Juror 2186 approached the bench for individualized examination, the following occurred:

THE COURT: Of course. You also indicated that you had some leanings if somebody is an expert witness.

JUROR: Yes.

THE COURT: I don’t know if you remember that. Tell me about that.

JUROR: Because I do have somebody that is in the crime scene unit. I do know a friend that’s in there, so I would probably believe her if she --

THE COURT: If she testified.

JUROR: Yeah.

THE COURT: Did you hear her name on this list?

JUROR: No, I did not.

THE COURT: You’re not going to hear from her.

JUROR: No.

THE COURT: Okay.

JUROR: Because I would -- I would -- I would -- her like somebody that I believe is an expert witness I would tend to believe them more.

THE COURT: If you knew the person?

JUROR: Not if I knew them, but just in general just based on their expertise and the education and --

THE COURT: Okay.

JUROR: -- training that they've gone through.

THE COURT: Makes sense. If you -- I don't know anything about this case, so I was -- I've been giving this example which is if an expert testified and said this is what my learned treatise tells me and that's how I know this and then one of the lawyers that was opposite that person said well, I have that treatise right here, can you read it and it revealed the exact opposite information. Would that discount or discredit that testimony from the expert because you were shown something to the opposite?

JUROR: Do you mean by treatise like just documentation?

THE COURT: Just their books that they read to understand to make them experts in the first place.

JUROR: Got ya.

THE COURT: Whatever their training was.

JUROR: I would still have a tendency to believe the expert just because if that's what they were trained to do.

THE COURT: But if you were shown their training was to do opposite, would you say oh, okay, well, maybe I shouldn't give them this much credit or would you say it doesn't matter, if they're sitting in the chair and they're talking I believe them no matter what?

JUROR: Possibly. It's hard -- it's hard to say.

THE COURT: Okay.

JUROR: I guess it just depends on the situational [sic].

THE COURT: All right. You indicated that you've been a juror before.

JUROR: Yes.

* * *

THE COURT: All right. And anything changed since then that makes you feel like you can't [be] a fair and impartial juror?

JUROR: Yeah. So my aunt actually was in the State's Attorney's Office for Baltimore City and she resigned last year, but she was a lawyer for the State.

THE COURT: And how does that affect your ability to be a fair and impartial juror?

JUROR: Just for me like just having that close relationship with her and her understanding the -- the way the city works and the State's Attorney's Office. Like I would believe kind of more the State's attorney just based on conversations that I've had with her.

THE COURT: Okay. And if you were shown information that said that the -- for some reason whatever one side is arguing shouldn't be believed, even if it was the side you were leaning to, you're saying you would still lean in that direction?

JUROR: Yeah.

(Emphasis added.)

Trial counsel moved to strike Juror 2186 for cause. The following ensued:

THE COURT: I am at the exact same place as the last person.

[PROSECUTOR]: I was going to say that. So you want to strike her.

THE COURT: I hear you're moving to strike this person.

[TRIAL COUNSEL]: Yes.

THE COURT: I am getting the same vibe which is yep, I've been a juror before and now I know -- I don't want to be a juror anymore and I'm going to say everything about leaning. Are you buying that?

[TRIAL COUNSEL]: The issue that she has is that she's maintained the positioned [sic] that regardless of any evidence to the contrary. The other person that we were talking to said if I watched body camera and thought it was the body camera I'd be good with the body camera. This one is saying even with a book in the expert's face they're still going to believe the expert.

[PROSECUTOR]: No. She said if it was on -- like if the -- the incident was on video. We don't have the incident on video.

[TRIAL COUNSEL]: Well, true. You're making it too case specific.

[PROSECUTOR]: I think --

[TRIAL COUNSEL]: We're looking for biases and prejudices.

[PROSECUTOR]: No, I know.

[TRIAL COUNSEL]: That's the --

[PROSECUTOR]: And I think they're comparable.

THE COURT: Here's what I'm going to do.

[PROSECUTOR]: If one gets struck the other gets struck.

THE COURT: Here's what I'm going to do. I'm going to reserve on this one and I'm also reopening my ruling on 2183 and reserving on that one as well.

After accumulating fifty-four prospective jurors (not counting Jurors 2183 and 2186), a sufficient number to select a jury even assuming that all peremptory strikes were exercised, the court revisited the motions to strike Jurors 2183 and 2186. The following ensued:

THE COURT: So I'm going to -- let's talk about 2183, 2183 and 2186. I said I was going to reserve on these two. Is anybody -- so as to 2183, State made a motion for cause and as to 2186 the Defense made a motion for cause. Do you all want to litigate this or do you -- does anybody want to keep any of those jurors? 218 -- 2183, do you have any objection to the State's moving to strike this person for cause?

[TRIAL COUNSEL]: Yes.

THE COURT: Okay.

[TRIAL COUNSEL]: I've stated previously on the record.

* * *

THE COURT: And then as to 2186 the Defense has stricken -- moved to strike for cause. What's your position as to that?

[PROSECUTOR]: I would be objecting, Your Honor.

THE COURT: You would be objecting to striking for cause. All right.

[PROSECUTOR]: If mine is struck, yes.

[TRIAL COUNSEL]: That's --

[PROSECUTOR]: I think they're both the same. I'm on the position that they're both --

[TRIAL COUNSEL]: I don't --

[PROSECUTOR]: -- the same --

THE COURT: They really are linked.

[TRIAL COUNSEL]: And I just -- I don't view this as being the same and that comes from the fact that a person who says they would look at a book telling the witness that they're wrong and still say the witness is right -
-

THE COURT: Yeah.

[TRIAL COUNSEL]: -- that's a problem. And that's -- that's actually what that question is designed to uncover is somebody who says because you're an expert I don't care what anyone else or anything else says. Whereas saying I can watch a body camera that you authenticated and it corroborates what it is that you say.

THE COURT: Yeah.

[TRIAL COUNSEL]: I mean that's why we give officers body cameras.

THE COURT: All right. Here's what I'm going to do. I'm going to strike 2183 and 2186 for cause. The reason why is I want to ensure, as you all do, but I also want to ensure Mr. Fenner's rights to a fair trial. Which is, Mr. Fenner, to be clear, both those people seemed like they were trying to get off this jury and I want to make sure you have jurors on your jury that are here to listen and not here to figure out how to get out of here. It means their attention isn't on this case which isn't fair to you.

So even though I think they're trying to get off, I'm going to strike them for cause. I don't -- I don't believe their answers, but I think there's something else going on with those two people and I'm going to strike them for cause so that you don't have a concern that there's jurors on this jury that aren't really listening to the case that when your life is on the line.

The parties then selected a jury. The defense exercised eighteen of its allotment of twenty peremptory strikes, and the State exercised eight of its allotment of ten peremptory strikes.⁵ As jury selection was nearing its conclusion, the following colloquy occurred:

THE CLERK: Sir, please have a seat in seat 12. Thank you. Is the panel acceptable to the Defense?

[TRIAL COUNSEL]: Acceptable.

THE CLERK: Is the panel acceptable to the State?

[PROSECUTOR]: Acceptable.

THE CLERK: State, we'll now select the alternates. Okay. Juror 2221, please step forward. Acceptable to the State as alternate one?^[6]

⁵ The defense used peremptory strikes on Jurors 2051, 2060, 2073, 2082, 2084, 2089, 2092, 2122, 2131, 2139, 2095, 2157, 2163, 2168, 2130, 2185, 2190, and 2203. The State used peremptory strikes on Jurors 2054, 2153, 2066, 2177, 2144, 2191, 2102, and 2187.

⁶ The transcript actually states:

(continued...)

Thereafter, when the parties had finished exercising their peremptory strikes on the alternate jurors,⁷ the following colloquy occurred:

THE CLERK: Ma'am, please return to your seat in the gallery. Thank you. Juror 2253 acceptable to the Defense as alternate three?

[TRIAL COUNSEL]: Acceptable.

THE CLERK: Ma'am, ma'am, please have a seat in this chair. Thank you.

JUROR: Thank you.

THE CLERK: Is alternate three acceptable to the Defense?

[TRIAL COUNSEL]: Can I just confer with my client real quick?

THE COURT: Yes.

[TRIAL COUNSEL]: Thank you.

THE COURT: One second.

[TRIAL COUNSEL]: Acceptable.

[PROSECUTOR]: Acceptable. State, we'll now select the alternates. Okay. Juror 2221, please step forward. Acceptable to the State as alternate one?

Read in context, this is almost certainly a transcription error, and we have changed attribution of that part of the text beginning with "State" to the Clerk, who, apparently, was addressing the prosecutor.

⁷ Neither party challenged Juror 2221, who became alternate juror number one. In selecting the second alternate juror, the State exercised a peremptory strike on Juror 2222, and the defense exercised one of its two allotted peremptory strikes, Md. Rule 4-313(a)(4), on Juror 2227. In selecting the third alternate juror, the State exercised a peremptory strike on Juror 2250, and the defense exercised one of its two allotted peremptory strikes on Juror 2248.

THE CLERK: Thank you. The panel has been seated. Shall I swear them in now, Your Honor?

THE COURT: Yes, please.

DISCUSSION

Parties' Contentions

Appellant contends that the trial court abused its discretion in striking Juror 2183 for cause. He asserts that the trial court struck Juror 2183 because of her stated concerns about “systemic racism” and “implicit bias,” which, he maintains, are improper grounds for striking a juror for cause. Relying upon *King v. State*, 287 Md. 530 (1980), and *Mason v. United States*, 170 A.3d 182 (D.C. 2017), appellant contends that Juror 2183’s stated beliefs did not demonstrate bias, prejudice, or lack of qualification. Appellant further asserts that, even if the empaneled jury was unobjectionable, he is still entitled to reversal.

In the alternative, appellant asserts that, even if Juror 2183 was stricken for her “purported unwillingness to serve,” that was still improper, and that in any event, the record “does not otherwise support the court’s conclusion” that Juror 2183 was trying to evade being selected to serve on the jury. And finally, appellant contends that his claim is preserved despite trial counsel’s unqualified acceptance of the empaneled jury because “the traditional waiver rule is incongruous with the law on the exclusion of a class of people[.]” and “requiring a subsequent objection here does nothing to further the goal of the preservation rule[.]”

The State counters that the claim was waived because trial counsel unqualifiedly accepted the empaneled jury. According to the State, we should reject appellant’s attempt

to reframe the argument as one of preservation rather than waiver. The State further asserts that the authorities relied upon by appellant, *King* and *Mason*, do not address the State’s waiver argument.

In the alternative, the State asserts that appellant’s “argument is premised on the misguided belief that prospective juror 2183 was stricken solely for expressing concern about systemic racism or implicit bias” but that the record is “clear[ly]” to the contrary. The State quotes Juror 2183’s comments that “I’m not impartial,” that a police witness would be “starting kind of lower in terms of . . . their credibility,” and that “they’d have to kind of prove that they don’t [have certain biases] as they’re testifying,” as providing sufficient grounds to disqualify Juror 2183 for cause. The State further points to the trial court’s finding that it did not believe Juror 2183’s answers to the voir dire questions. According to the State, the court’s finding of insincerity “would have been sufficient cause to strike prospective juror 2183 because the court’s assessment of her dishonesty is a basis to believe she would be unable to follow the court’s instructions.”

The State avers that the trial court’s finding that Jurors 2183 and 2186 were “linked” “is consistent with the court’s credibility and demeanor findings, and shows that the court’s ultimate decision was not about what either prospective juror specifically said[.]” The trial court’s ruling, striking both Juror 2183 and Juror 2186, because neither juror would give their “attention” to appellant’s case, was not, according to the State, an abuse of discretion. And finally, the State asserts that, because neither party exercised all its peremptory strikes, any error was harmless—if the trial court had not stricken Jurors 2183 and 2186, each party

would have exercised a peremptory strike, and the exact same jury would have decided the case, a jury that was, in any event, “a fair one.”

In his reply brief, appellant challenges the State’s characterization of the trial court’s fact findings, asserting that the court did not find that Juror 2183 was biased. Citing *State v. Brooks*, 148 Md. App. 374, 401 (2002), appellant maintains that we may not make findings based upon our parsing of the record. Appellant further contends that his claim was not waived, repeating the arguments made in his opening brief and adding an additional argument, quoting *State v. Ablonczy*, 474 Md. 149, 165 (2021), for the proposition that “[c]ounsel need not raise a prior objection when there is no one in the jury box that the objecting party specifically objected to.” And finally, appellant asserts that he need not demonstrate prejudice, relying upon *King* and two Supreme Court decisions, *Ballard v. United States*, 329 U.S. 187, 189-90, 195 (1946) (reversing convictions where women had been “intentionally and systematically excluded” from the grand and petit jury and holding that no “showing of prejudice in an individual case” was required), and *Thiel v. Southern Pacific Company*, 328 U.S. 217, 221, 225 (1946) (reversing a judgment where “all persons who work for a daily wage” were “deliberately and intentionally excluded from the jury lists” and holding that it was “unnecessary to determine whether [Thiel] was in any way prejudiced by the wrongful exclusion or whether he was one of the excluded class”).

Analysis

Waiver

“Generally, a party waives his or her voir dire objection going to the inclusion or exclusion of a prospective juror (or jurors) or the entire venire if the objecting party accepts unqualifiedly the jury panel (thus seated) as satisfactory at the conclusion of the jury-selection process.” *State v. Stringfellow*, 425 Md. 461, 469 (2012) (citing *Gilchrist v. State*, 340 Md. 606, 617 (1995)). As an example of a claim that was waived by the failure to renew an objection upon the conclusion of voir dire, the Court listed “an objection to the exclusion of a juror because of his beliefs about capital punishment[.]” *Id.* at 470 (citing *Foster v. State*, 304 Md. 439, 450-51 (1985)).

In the instant case, trial counsel unqualifiedly accepted the empaneled jury upon the conclusion of voir dire. Moreover, the claim asserted here is materially indistinguishable from that asserted in *Foster*; in both cases, the claim was that a prospective juror was excluded because of her views on a controversial issue directly related to the administration of criminal justice. A straightforward application of *Stringfellow* leads us to conclude that trial counsel’s unqualified acceptance of the empaneled jury resulted in a waiver of the claim now raised on appeal because it is a challenge to the “exclusion of a prospective juror[.]” *Id.* at 469.

Because appellant insists that his claim is preserved, he does not ask us to review for plain error. This case would be a particularly poor vehicle for doing so. Putting aside for the moment that plain error review does not apply to affirmatively waived claims, *Beckwitt v. State*, 477 Md. 398, 464 (2022), we note that the State did not use all the

peremptory challenges to which it was entitled. If the trial court had not stricken Juror 2183 for cause, there is every reason to believe that the State would have used one of its remaining peremptory strikes to prevent her from being seated on the jury.⁸ Moreover, there is no case law (such as *Batson v. Kentucky*, 476 U.S. 79 (1986), and its progeny) supporting the notion that it would have been impermissible for the State to do so. Thus, even were we to assume that the trial court abused its discretion in striking Juror 2183 for cause, that purported abuse of discretion had no influence on the verdict.⁹

Appellant further asserts that, once trial counsel had made his objection clear to the court, and the court overruled his objection, an additional objection following the selection of the jury “would have been an exercise in futility[,]” and we therefore should consider

⁸ A similar consideration applies where a defendant claims that a trial court erroneously denied a defense motion to strike a juror for cause. “If disqualification for cause is improperly denied, but the accused has not exercised all allowable peremptory challenges, there is no reversible error.” *Morris v. State*, 153 Md. App. 480, 496 (2003) (quoting *White v. State*, 300 Md. 719, 728 (1984)), *cert. denied*, 380 Md. 618 (2004).

⁹ As the State points out in its brief, the defense also did not use all its peremptory challenges. If the trial court had declined to strike Jurors 2183 and 2186 for cause, it is almost certain that the State would have exercised a peremptory strike on Juror 2183, and the defense would have exercised a peremptory strike on Juror 2186. The result would have been the exact same jury that actually decided the case.

We further note that appellant’s contention that it is unnecessary that he demonstrate prejudice is misplaced. The authorities he cites (*King*, *Ballard*, and *Thiel*) either involve a trial court’s systematic exclusion of an entire category of people from a venire or the exclusion of a juror for her political belief that “black men in DC are treated unfairly . . . by the criminal justice system.” *Mason*, 170 A.3d at 185. The present case does not involve the systematic exclusion of an entire class of people from the venire, nor does it involve the exclusion of a juror for her political beliefs, appellant’s protestations notwithstanding. As for the latter circumstance, we express no view as to whether a defendant must show prejudice, because it is unnecessary for us to reach that issue in deciding this case.

his claim preserved. But that ignores the rationale offered by the Supreme Court of Maryland in rejecting similar arguments in *Stringfellow* and the cases on which it relied: accepting an empaneled jury without qualification is “directly inconsistent” with the prior objection to the exclusion of a venireperson. 425 Md. at 470 (cleaned up). In any event, we are bound by *Stringfellow* and its progeny. See, e.g., *Ablonczy*, 474 Md. at 160-66 (reaffirming the holding in *Stringfellow*); *Foster v. State*, 247 Md. App. 642, 651 (2020) (“It is not up to this Court, however, to overrule a decision of the [Supreme Court] that is directly on point.”), *cert. denied*, 475 Md. 687 (2021).¹⁰

We feel compelled to respond to the argument appellant raises in his reply brief. Appellant quotes *Ablonczy*, 474 Md. at 165 (“Counsel need not raise a prior objection when there is no one in the jury box that the objecting party specifically objected to.”), out of context. *Ablonczy* was discussing *Stringfellow*’s distinction between “objections addressing ‘the inclusion or exclusion of a prospective juror (or jurors) or the entire venire’ and objections that are ‘incidental to the inclusion [or] exclusion of a prospective juror or the venire[,]’” and why they are subject to different preservation rules. *Id.* at 164 (quoting *Stringfellow*, 425 Md. at 469). The focus in *Ablonczy* was on the difference between a propounded voir dire question and an unpropounded question. *Ablonczy* applied

¹⁰ We are unaware of any authority that allows us to excuse a waiver in a direct appeal. See, e.g., *Beckwitt*, 477 Md. at 464 (stating that an appellate court may exercise its discretion to notice plain error only if the claimed error has not been “affirmatively waived” (cleaned up)); *Joyner v. State*, 208 Md. App. 500, 512 (2012) (“In the usual case, a forfeited objection could still be the subject of plain error review, while an issue that had been waived results in procedural default in every instance.”).

Stringfellow to conclude that an objection to a propounded voir dire question is waived unless defense counsel renews the objection when the venire is empaneled but that an objection to an unpropounded question is not waived by the failure to renew the objection when the venire is empaneled. *Id.* at 165. The Court reasoned that the former ““may inject the very prejudice”” that voir dire is intended ““to filter out[,]”” whereas the latter is ““like a defused bomb”” that ““cannot likewise prejudice the venire.”” *Id.* (quoting *Stringfellow*, 425 Md. at 472-73).

Thus, in context, the Court’s remark, that “[c]ounsel need not raise a prior objection when there is no one in the jury box that the objecting party specifically objected to[,]” *id.*, stands for the proposition that an unpropounded question does not have the potential to contaminate a venire, that is, “there is no one in the jury box” who has been contaminated, and thus, no renewed objection is necessary. *Id.* *Ablonczy* should not be interpreted to say that no additional objection is required when raising a claim that a trial court improperly struck a juror for cause. *See Stringfellow*, 425 Md. at 469 (“Generally, a party waives his or her voir dire objection going to the inclusion or exclusion of a prospective juror (or jurors) or the entire venire if the objecting party accepts unqualifiedly the jury panel (thus seated) as satisfactory at the conclusion of the jury-selection process.”).

Jury selection is an art. There may be any number of reasons, both articulable and unconscious, to explain why defense counsel expresses satisfaction with an empaneled jury. It is not our role as an appellate court to second-guess such a decision, and when defense counsel does so without qualification, he waives any prior objection to the inclusion or exclusion of a venireperson.

We could conclude our analysis at this juncture. Nevertheless, we shall briefly address the merits of the claim raised, even though our primary holding is that it was waived.

Merits of the Claim

“There are two categories of specific cause for disqualification: ‘(1) a statute disqualifies a prospective juror; or (2) a collateral matter is reasonably liable to have undue influence over a prospective juror.’” *Thomas v. State*, 454 Md. 495, 505 (2017) (cleaned up) (quoting *Pearson v. State*, 437 Md. 350, 357 (2014)). “The latter category is comprised of ‘biases directly related to the crime, the witnesses, or the defendant[.]’” *Pearson*, 437 Md. at 357 (quoting *Washington v. State*, 425 Md. 306, 313 (2012)).

“The decision as to whether to excuse a juror for cause is ordinarily left to the sound discretion of the trial judge and will not be disturbed on appeal except for an abuse of discretion.” *Ware v. State*, 360 Md. 650, 666 (2000); *see also State v. Cook*, 338 Md. 598, 607 (1995) (stating that an abuse of discretion standard applies where a judge removes a juror “for a reason particular to that juror”). ““An abuse of discretion occurs where no reasonable person would take the view adopted by the circuit court.”” *Trimble v. State*, 491 Md. 378, 406 (2025) (citation omitted) (quoting *Montague v. State*, 471 Md. 657, 673 (2020)). “Or stated another way, an abuse of discretion occurs when a ruling is ‘well removed from any center mark imagined by the reviewing court and beyond the fringe of

what that court deems minimally acceptable.” *Id.* (quoting *Faulkner v. State*, 468 Md. 418, 460 (2020)).¹¹

In the present case, appellant insists that the trial court excluded Juror 2183 as, in effect, an exemplar for a class of potential jurors articulating concerns over “systemic racism” and “implicit bias.” Appellant downplays or even ignores the trial court’s finding that Juror 2183 was expressing insincere beliefs in an attempt to avoid being selected as a juror; and he furthermore ignores the prosecutor’s objection that Juror 2183 admitted bias against police officers.

Juror 2183 acknowledged that, in assessing witness credibility, a police witness would begin from a “lower” level than other witnesses. Indeed, in response to the prosecutor’s question whether she would “start [a police officer] off at the same position as any other witness or would they have to jump over . . . a higher hurdle[.]” Juror 2183 replied that “that’s where I feel like I’m not -- I’m not impartial because I -- I would want them to prove more than other experts so to speak.” (Emphasis added.) Juror 2183’s expressly stated bias against police witnesses is a legitimate basis for striking her for

¹¹ In *Cook*, one of the authorities cited declared that a trial court’s removal of a seated juror “‘is not to be disturbed absent a showing of bias or prejudice to the defendant[.]’” *Cook*, 338 Md. at 617 (quoting *United States v. Smith*, 550 F.2d 277, 285 (5th Cir.), *cert. denied*, 434 U.S. 841 (1977)). Another cited authority stated that a trial court’s “decision to replace a juror with an alternate . . . will not be overturned if the record shows *some legitimate basis* for the decision[.]” *Id.* at 618 (cleaned up) (quoting *United States v. Boyd*, 767 F. Supp. 905, 907 (N.D. Ill. 1991)). We read those statements as equivalent to the Maryland standard, first articulated by Chief Judge Wilner for this Court more than thirty years ago in *North v. North*, 102 Md. App. 1, 13-14 (1994) (en banc), which has since been adopted both in this Court and in our Supreme Court.

cause.¹² *Mitchell v. State*, 488 Md. 1, 8 (2024) (stating that federal and state constitutions require “that members of the jury not hold biases that are directly related to the defendant, the crime(s) with which the defendant is charged, or the witnesses who will testify in the case”); *Thomas*, 454 Md. at 505; *Pearson*, 437 Md. at 357. Under these circumstances, we certainly cannot say that the trial court abused its discretion in striking Juror 2183 for cause, regardless of the reasons the court may have stated. *See Robeson v. State*, 285 Md. 498,

¹² In his reply brief, appellant asserts that the trial court did not find that Juror 2183 was biased, based on the court’s remark that “my assessment of this person is not that she can’t do it, but she just doesn’t want to be here[.]” From the court’s remark, appellant concludes that “we are stuck with the trial court’s determination because this is a credibility call that appellate courts do not (and cannot) make.” Thus, according to appellant, we must ignore Juror 2183’s answer to the prosecutor’s query about assessing credibility of witnesses, expressly acknowledging “that’s where I feel like I’m not -- I’m not impartial because I -- I would want [police officers] to prove more than other experts so to speak.” We disagree with appellant’s blinkered view of the scope of our review. *See, e.g., Ramirez v. State*, 464 Md. 532, 566-72 (2019) (finding that trial counsel performed deficiently in failing to move to strike a juror for cause and in failing to exercise a peremptory strike, where the juror’s response to the “crime victim” question was that his prior experience as a crime victim would affect his ability to be fair and impartial, and the trial court made no findings whatsoever about the juror’s bias).

In any event, the trial court’s remark that Juror 2183 “just doesn’t want to be here” must be interpreted in the context of the court’s finding that it “d[id]n’t believe this person.” The court’s finding that Juror 2183 was being untruthful in responding to the voir dire questions also would have provided grounds to strike her for cause because it would have called into serious doubt Juror 2183’s willingness to follow the court’s instructions on the law.

We find it ironic that appellant accuses the State of advocating appellate fact finding, when, out of the other side of his mouth, appellant insists that the trial court excluded Juror 2183 from the venire because of her political beliefs. The trial court made no such finding.

502 (1979) (approving the doctrine that an appellate court may affirm a trial court's judgment as being right for the wrong reason).

**JUDGMENTS OF THE CIRCUIT COURT
FOR BALTIMORE CITY AFFIRMED.
COSTS ASSESSED TO APPELLANT.**