Circuit Court for Baltimore City
Case Nos. 113247008
113247009
113247010

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 1631

September Term, 2016

REGINALD MACK LOVE

v.

STATE OF MARYLAND

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

JJ.

Opinion by Zarnoch, J.

Filed: March 15, 2018

This appeal arises from Reginald Mack Love's ("Love") conviction in the Circuit Court for Baltimore City for murder, attempted murder, conspiracy, and use of a firearm in the commission of a felony. Love was first tried before a jury alongside four co-defendants. That trial ended on June 12, 2015 in a hung jury on the charges against Love. Love's case was then severed from the other remaining defendants and he was tried before a jury a second time, beginning on July 27, 2016. On August 8, 2016, the jury returned a verdict of guilty on all counts. On September 19, 2016, Love was sentenced to a term of imprisonment for life plus 150 years, to be served consecutively.

On appeal to this Court, Love asks us to decide primarily one issue, which we have reworded as follows: Whether the circuit court abused its discretion by declining to ask during voir dire, "Is there any member of the jury panel who is unable to render a fair and impartial verdict because of . . . any religious, political, or philosophical belief?" We hold that the circuit court was within its discretion to deny Love's proposed question and affirm the circuit court decision.

BACKGROUND AND PROCEDURAL HISTORY

During his first trial, Love was tried with co-defendants Cornell Harvey ("Harvey"), Rashid Mayo ("Mayo"), Dequan Shields ("Shields"), and Eddie Tarver ("Tarver"). The State's theory was that, on May 24, 2013, Harvey lured Rashaw Scott ("Rashaw") -- who had his sixteen-month-old son, Carter Scott ("Carter"), with him in the backseat of his vehicle -- to an apartment complex in the Cherry Hill neighborhood. The State alleged that, once parked, Harvey exited the vehicle under the pretext of going inside a residence to see a friend, and Love and three of the other codefendants ambushed Rashaw and shot

multiple rounds into the vehicle. Carter was pronounced dead at the scene and Rashaw was seriously wounded, but survived.

Several witnesses testified, including residents of the apartment complex and several police officers. One resident testified that she observed a man exit the passenger side of the vehicle before "three or four men" wearing "thin gloves like the doctor's office" and hooded sweatshirts approached and shot into the vehicle and then ran away. Another resident who observed the shooting, but could not remember the number of shooters, testified that she saw multiple young men jump over the complex's fence wearing "latex" or "hospital gloves." After she went outside, she saw the men shoot at a red vehicle before they ran away in different directions.

A police officer testified that he was on duty in an unmarked police car with his partner near the scene of the crime when he heard gunshots. From his position, he could see two males shooting into a red vehicle. He and his partner reported the shooting to dispatch and approached the scene, where he observed three black males running away. The officer chased after the suspects, who began running toward a bus depot on Cherry Hill Road. Thereafter, while his partner searched the buses, he observed a gray Toyota Solara speeding past him. The officer, along with a Baltimore Police Department (BPD) helicopter, pursued the vehicle for approximately twenty minutes until the vehicle crashed on Winchester Street. An officer in the helicopter observed two occupants fleeing the vehicle, and several officers chased them into a wooded area. The officers apprehended

one of the vehicle's occupants, Tarver, who was still wearing a latex glove on one hand and was carrying a cell phone later identified as belonging to Love.[1]

A fingerprint examiner testified that among the prints found inside the getaway car, some prints were matched to a person by the name of "Tavon Mays," which he found to be an alias for Love. The State also presented to the jury three items from the scene -- a knit hat, a pair of latex gloves, and a blue hooded sweatshirt -- all of which contained DNA that matched Love. After detectives interviewed Rashaw, Harvey was charged with the murder of Carter. Rashaw later identified Shields and Love as participants in the crime, and they were arrested in July and August of 2013, respectively.

On August 8, 2016, the jury returned a guilty verdict on all counts. Love was sentenced to life imprisonment for the murder of Carter, plus a combined total of 150 years to be served consecutively[2] for conspiracy to commit murder, attempted murder of Rashaw, and one count of the use of a firearm in the commission of a felony in the murder of Carter. Additional facts related to the voir dire process are included below.

[1] Another officer, who also heard the gunshots and arrived near the scene soon after the shooting, testified that he observed an individual male suspect hopping over a fence. The officer pursued him on foot, but the suspect was able to reach a parked vehicle that was already running and speed away. The officer later identified that individual as Mayo.

[2] Love also received a twenty-year sentence to be served concurrently for an additional count of the use of a firearm in the commission of a felony in the attempted murder of Rashaw.

DISCUSSION

The sole issue on appeal is whether the circuit court abused its discretion in its conduct of voir dire prior to Love's trial. In Love's pre-trial submission, he requested that the trial judge ask the potential jurors, "Is there any member of the jury panel who is unable to render a fair and impartial verdict because of the defendant's race, or any religious, political, or philosophical belief?" Love argues on appeal that the trial court erred by denying his counsel's proposed voir dire question, because the question was likely to reveal potentially disqualifying criteria not otherwise fairly covered by the trial judge's other questions.

Near the end of voir dire, the trial judge asked, "Do you know of any other reason, not covered by my earlier questions, why you cannot sit as a juror in this case?" After the trial judge confirmed that neither the State nor Love's attorney had any objections to the judge's questions already posed to the jury during voir dire, the judge asked for any additional voir dire questions and the following ensued:

> [DEFENSE COUNSEL]: Did you do religion?
>
> THE COURT: Yes. Religion, sex.
>
> [DEFENSE COUNSEL]: Okay.
>
> THE COURT: Yes.
>
> STATE: Among the other, any other reason.
>
> THE COURT: Yeah. Religion is part of that. It's --
>
> [. . .]
>
> Race, color, religion, sexual orientation, age or sex.

[DEFENSE COUNSEL]: But that's the defendant.

THE COURT: Bias, you mean did I ask them --

[DEFENSE COUNSEL]: As to the defendant or just religion general? Because I remember you did a long list of the defendant's race, of his gender, but did you do the question, did they have -- can they come to a verdict if they have, if they are a Jehovah's witness. That question is the one I want. Did you do that one?

THE COURT: I did not ask that. And religion, unless they bring it up. No.

[DEFENSE COUNSEL]: Well we have in the past -- because they have to be able to judge, right?

THE COURT: Well, in theory (indiscernible) . . . . I've had Jehovah's Witnesses who sat on juries.

[DEFENSE COUNSEL]: That's what they say.

THE COURT: Well they come up here and talk to me and go well, you know, we can do that. I found the religion we cannot --

[DEFENSE COUNSEL]: But they think they can't.

THE COURT: Well, no, I mean they try to use it as an excuse because they're told they should not sit in judgment.

[DEFENSE COUNSEL]: It's basically my question 11.

THE COURT: Well, I mean, is there any member of the jury panel who is unable to render a fair and impartial verdict because of any -- I use bias, because of any religious, biblical or philosophical belief or because of the defendant's race . . . is your question. And I asked would they be bias[ed] because of those views. [. . .]

Ordinarily, one of two things happen. They respond to the religious question or religion is mentioned or they come up and tell me -- you know, various religions and almost never do I excuse them because I -- the ones who are problematic, I mean, I'm a Christian. And that means? [. . .]

> But the way the question -- is there any member of the panel who is unable to render a fair and impartial verdict -- this is your number 11. [. . .]
>
> Because of any religious, biblical or philosophical belief or because of the defendant's race. And mine is somewhat more general. It specifically raises whether they have a bias as to the defendant because of those things.
>
> [DEFENSE COUNSEL]: Yeah. But the race part, I got you. I don't have a problem with that. It's just the religion piece. Just because of my past experience in many, many, many cases where people say they can't judge so that mean[s] they're not going to participate in the deliberations.
>
> THE COURT: Well that would -- I mean, they're instructed that they have to participate. They're not -- just because they wish to ignore what the law compels them to do before the process begins. I mean if I asked the general question, you know, would you feel comfortable sitting on a jury where you have to return a unanimous verdict?
>
> They're compelled by law to do what they're supposed to do. And I have not had, I have not had that as a problem in any case in 10 years. And I've been --
>
> [DEFENSE COUNSEL]: Well the Court can note my exception.
>
> THE COURT: All right.

After denying Love's counsel's request for the question asking whether any potential juror would be unable to render a verdict because of "any religious, political, or philosophical belief," the trial judge asked an additional question about whether any member of the venire had "strong feelings" regarding the charges in this case. The case proceeded to trial and the jury rendered a unanimous guilty verdict.

II. The Trial Court's Decision Not to Ask Love's Proposed Question was Not an Abuse of Discretion.

In Maryland, "the sole purpose of voir dire is to ensure a fair and impartial jury by determining the existence of cause for disqualification, and not as in many other states, to include the intelligent exercise of peremptory challenges." *Collins v. State*, 452 Md. 614, 622 (2017) (quoting *Stewart v. State*, 399 Md. 146, 158 (2007)); *see also Wright v. State*, 411 Md. 503, 508 (2009) (Citation omitted) ("The *only* purpose of voir dire in Maryland is to illuminate to the trial court any cause for juror disqualification.") (Emphasis added).[3] Pursuant to Md. Code (2013), Cts. & Jud. Pro. ("CJP"), § 8-102(a), "[e]ach adult citizen of this State has" both "[t]he opportunity" and, "[w]hen summoned . . . , the duty" to serve on a jury. No citizen of this State may "be excluded from jury service due to color, disability, economic status, national origin, race, religion, or sex." CJP § 8-102(b). Maryland Rule 4-312 governs the examination of potential jurors and provides, in pertinent part, that "the trial judge . . . may conduct the examination [of qualified jurors] after considering questions proposed by the parties." Md. Rule 4-312(e)(1). The trial judge also "may submit to the jurors additional questions proposed by the parties." *Id.* Further, "[a] party may challenge an individual qualified juror for cause," which "shall be made and

[3] Additionally, the Court of Appeals explained in *State v. Logan*, "Voir dire is critical to the protection of a criminal defendant's right to a fair and impartial jury, as guaranteed by the Sixth Amendment to the United States Constitution and Article 21 of the Maryland Declaration of Rights." 394 Md. 378, 395 (2006) (citing *Curtin v. State*, 393 Md. 593 (2006)).

determined before the jury is sworn, or thereafter for good cause shown." Md. Rule 4-312(e)(2).

In *Washington v. State*, the Court of Appeals explained an appellate court's review of a trial judge's decision whether to ask a particular question of the jury during voir dire:

> We review the trial judge's rulings on the record of the voir dire process as a whole for an abuse of discretion, that is, questioning that is not reasonably sufficient to test the jury for bias, partiality, or prejudice. [*White v. State*, 374 Md. 232, 243 (2003)]. It appears to be the universal rule that on appellate review, the exercise of discretion by trial judges with respect to the particular questions to ask and areas to cover in voir dire is entitled to considerable deference.

425 Md. 306, 313 (2012); *see also Wright*, 411 Md. at 508 (quoting *Dingle v. State*, 361 Md. 1, 13 (2000)) (explaining that "the trial court has broad discretion in the conduct of voir dire"). We accord substantial deference to the trial judge's conclusions, "unless they are the product of a voir dire that 'is cursory, rushed, and unduly limited.'" *Washington*, 425 Md. at 314 (quoting *White*, 374 Md. at 241). We give this deference because "[t]he trial judge has had the opportunity to hear and observe the prospective jurors, to assess their demeanor, and to make factual findings." *Id.*

A trial judge abuses his or her discretion, "constituting reversible error," by refusing to ask potential jurors a question requested by a party during voir dire when the question requested is "directed to a specific cause for disqualification."[4] *Moore v. State*, 412 Md.

[4] Broadly speaking, "a court abuses its discretion 'where no reasonable person would take the view adopted by the trial court, or when the court acts without reference to any guiding principles.'" *Thompson v. State*, 229 Md. App. 385, 404 (2016) (quoting *Aventis Pasteur, Inc. v. Skevofilax*, 396 Md. 405, 418 (2007)).

635, 666-67 (2010) (quoting *Casey v. Roman Catholic Archbishop of Baltimore*, 217 Md. 595, 605 (1958)); *see also Wright*, 411 Md. at 508 (Citation omitted) (explaining that a trial court "reaches the limits of its discretion only when the voir dire method employed . . . fails to probe juror biases effectively"). "Thus," the Court of Appeals in *Pearson v. State* explained, "a trial court need not ask a voir dire question that is 'not directed at a specific [cause] for disqualification [or is] merely fishing for information to assist in the exercise of peremptory challenges[.]'" 437 Md. 350, 357 (2014) (quoting *Washington*, 425 Md. at 315) (Internal quotation marks omitted).

The Court in *Pearson* provided the following broad rule for determining whether a question pertains to a "specific cause for disqualification":

> 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 . . . . The latter category is comprised of "biases directly related to the crime, the witnesses, or the defendant[.]"

Id. (quoting *Washington*, 425 Md. at 313). When a party requests a particular question, therefore, the trial court is required to make the inquiry in two circumstances, with some overlap. First, the trial judge must ask a question if it pertains to one of "the mandatory areas of inquiry," *Stewart*, 399 Md. at 164, such as the qualifications for serving on a jury or causes for disqualification provided by statute. *See Pearson*, 437 Md. at 357; *see also* CJP § 8-103. Second, the requested question must be asked if it "specifically deal[s] with the facts of the case, the crime, the witnesses" or the defendant and is "reasonably likely to reveal cause for disqualification." *Pearson*, 437 Md. at 357.

A. The Question Did Not Relate to a Mandatory Area of Inquiry.

CJP § 8-103 outlines certain statutory qualification criteria as well as reasons for disqualification. The statute provides three basic requirements for jury service, including that the prospective juror be: (1) "an adult as of the day selected as a prospective juror"; (2) "a citizen of the United States," and (3) "a resident of the county as of the day sworn as a juror." CJP § 8-103(a). CJP § 8-103(b) provides five disqualifying factors, stating that "an individual is not qualified for jury service" if the potential juror "[c]annot comprehend spoken" or "written English," cannot "write English proficiently," and if the potential juror possesses any of the following circumstances:

> (3) Has a disability that, as documented by a health care provider's certification, prevents the individual from providing satisfactory jury service;
>
> (4) Has been convicted, in a federal or State court of record, of a crime punishable by imprisonment exceeding 6 months and received a sentence of imprisonment for more than 6 months; or
>
> (5) Has a charge pending, in a federal or State court of record, for a crime punishable by imprisonment exceeding 6 months.

CJP § 8-103(b). For example, in *Owens v. State*, the defendant raised for the first time on appeal the contention that the trial court should have asked whether all members of the jury were United States citizens, a qualification required by CJP § 8-103(a). 399 Md. 388 (2007). The Court explained that, "[h]ad Owens sought, and the trial judge refused, a citizenship question . . . the propriety of the denial would have been preserved for appellate review as an abuse of discretion." *Id.* at 422. The Court noted, however, that "it is in the

better interests of justice to require trial judges to pose *voir dire* questions directed at exposing constitutional and statutory disqualifications when requested by a party." *Id.*

Other areas of inquiry have become mandatory if requested by a party as our caselaw has developed over time. One area the Court of Appeals has held to be mandatory upon request, if relevant, is whether "the religious affiliation of a juror might reasonably prevent him [or her] from arriving at a fair and impartial verdict in a particular case *because of the nature of the case*." *See Moore*, 412 Md. at 657 (quoting *Casey*, 217 Md. at 607) (Emphasis added). This line of questioning, however, is designed to reveal a religious bias affecting a juror's view of the circumstances or parties in the case. *See Casey*, 217 Md. at 606-07. In *Casey*, for instance, the Court held that the parties were entitled to "have the court discover . . . the existence of bias or prejudice resulting from [one's religious] affiliation" where the defendant was the Roman Catholic Archbishop of Baltimore, as a corporate entity. *Id.* at 607. Love does not argue, however, that his proposed question was intended to reveal a religious bias that was relevant to the particular parties or circumstances of this case.

Further, the Court of Appeals in *Moore* reviewed a non-exhaustive list of several mandatory areas of inquiry developed in *Curtin*, 393 Md. at 609-10 n. 8 and followed in *Stewart*, 399 Md. at 162 n. 5. *See* 412 Md. at 657. These areas include questions such as those directed at revealing a potential juror's bias against the defendant's race, ethnicity, or cultural heritage; the juror's ability to convict based on circumstantial evidence in capital cases; whether the juror would place more or less credence on the testimony of a police officer where such testimony is a principal part of the case and is diametrically opposed to

the testimony of the defendant; whether any juror holds "strong feelings" towards the violation of narcotics laws where the defendant is charged with drug-related crimes; and whether any potential juror holds such strong emotional feelings toward the sexual assault of a minor that it would affect the juror's ability to remain impartial where the defendant is charged with such crimes. *Id.* at 656-57 (citing *Stewart*, 399 Md. at 162, n. 5) (in turn, citing and adopting *Curtin*, 393 Md. at 609–610, n. 8).[5] Additionally, in *Pearson*, the Court of Appeals held that, "on request, a trial court must ask during voir dire: 'Do any of you have strong feelings about [the crime with which the defendant is charged]?'"). 437 Md. at 363.

As the Court said in *Moore*, "[t]he list *Curtin* developed, and adopted by *Stewart*, did not purport to list every *voir dire* case decided by this Court on the various *voir dire* questions." 412 Md. at 659. Mandatory areas of inquiry are added as the Court of Appeals "determines and holds that additional inquiries are mandatory." *Id.* Love's question, however, which he intended to reveal potential jurors who believed they could not "sit in judgment" for religious reasons, did not relate to any established mandatory area of inquiry. It did not relate to any of the qualification criteria or reasons for disqualification listed in CJP § 8-103, and it was not within any mandatory inquiry established by our caselaw. Because Love's proposed question "was not within the mandatory areas of inquiry, the trial court was required to assess whether there was a reasonable likelihood that the proposed question would have revealed a basis for

[5] For a review of caselaw and citations specific to each area of inquiry, see the Court's discussion in *Moore*, 412 Md. at 656-57 (quoting *Stewart*, 399 Md. at 162, n. 5).

disqualification." *Curtin v. State*, 165 Md. App. 60, 68 (2005), *aff'd*, 393 Md. 593 (2006) (Citation omitted).

B. The Question Was Not Reasonably Likely to Reveal a Cause for Disqualification Based on the Crime, Witnesses, or Defendant.

Our next inquiry is whether the question was reasonably likely to reveal a "specific cause for disqualification," *Pearson*, 437 Md. at 357 (quoting *Moore*, 412 Md. at 663), that is "directly related to the crime, the witnesses, or the defendant." *Id.* (quoting *Washington*, 425 Md. at 313). "In the absence of a statute or rule prescribing the questions to be asked of the venirepersons, 'the subject is left largely to the sound discretion of the court in each particular case.'" *Moore*, 412 Md. at 644 (quoting *Corens v. State*, 185 Md. 561, 564 (1946)). A question must be asked when it is "relevant to the facts or circumstances presented in a case which assists the trial judge in uncovering bias." *Moore*, 412 Md. at 662 (Citation omitted). The test for whether the trial court properly refused a party's proposed question "is whether the question[] posed and the procedures employed have created a reasonable assurance that prejudice would be discovered if present." *Washington*, 425 Md. at 313 (citing *White*, 374 Md. at 242). If, however, the trial court determines within its discretion that "a response to a requested *voir dire* question would not further the goal of *voir dire* and uncover bias among prospective members of the jury, it need not be asked and the court will not abuse its discretion in not doing so." *Moore*, 412 Md. at 662.

The purpose of asking the question offered by Love's counsel was the possibility that one or more potential jurors may believe, due to the tenets of his or her religion, that he or she was not permitted to sit in judgment of another person. During the exchange at

the bench, Love's counsel asked the trial judge, "but did you do the question, did they have -- can they come to a verdict if they have, if they are a Jehovah's [W]itness[?] That question is the one I want." The trial judge explained his reasons for not highlighting religion specifically and pointed out that he had previously asked the jurors about disqualifying biases toward the defendant. Love's counsel responded, "[T]he race part, I got you. I don't have a problem with that. It's just the religion piece. Just because of my past experience in many, many, many cases where people say they can't judge so that mean[s] they're not going to participate in deliberations."[6]

On appeal, Love contends that the purpose of asking the question was "to determine whether a juror is unfit to serve because religious beliefs prevent the juror from sitting in judgment on a fellow child of God." Love argues that the question was mandatory because "[a] juror who will not participate in deliberations is unfitted to serve" and that "[t]he 'Jehovah's Witness' question . . . was reasonably calculated to reveal a juror who will not participate in the jury's deliberations . . . ." It seems clear, however, that a potential juror who believed that he or she could not sit in judgment of another person would favor acquittal. Love's counsel even conceded during oral argument that a defendant would likely want a potential juror who held such beliefs to serve on the jury, whereas the State would not.

[6] The trial judge responded that all jurors are required by law to participate in jury deliberations and the issue of jurors refusing to participate because of particular religious beliefs in deliberations after being selected to serve on the jury had not arisen during his ten years on the bench.

Furthermore, Love acknowledges that he cannot find "any authority on the specific voir dire question at issue here -- the 'Jehovah's Witness' question." He argues, however, that,

> the fact that this particular question has not yet been included in the "mandatory" list does not end the inquiry: "We reject the premise that underlies the State's position, that any *voir dire* question not expressly mentioned in *Stewart* and *Curtin* is not mandatory." *Moore*, 412 Md. at 661, 989 A.2d at 1164. [*Cf. Owens*, 399 Md. at 422] ("Simply because it is not mandatory for a judge to pose a particular question does not make it a prohibited question.").

As support for his argument, Love asserts that "[t]he question at issue here is of respectable lineage, a version having been recommended in the Maryland State Bar Association's *Model Jury Selection Questions for Criminal Trials*, at 15."[7] *See* Maryland State Bar Association, Special Committee on Voir Dire, MODEL JURY SELECTION QUESTIONS FOR CRIMINAL TRIALS 15, http://www.msba.org/uploadedFiles/MSBA/Member_Groups/Committees/_delete/Voir_Dire/Criminal%20Voir%20Dire%20Model%20Questions%20(2).pdf [https://perma.cc/D5LY-AZ6B] (last visited March 13, 2018).

We agree, of course, that the range of areas of inquiry listed in *Moore* and others do not make up the entire body of questions that must be asked when requested by a party. As we noted *supra*, mandatory areas of inquiry have been added to an ever-expanding list as the Court of Appeals "determines and holds that additional inquiries are mandatory." *See*

[7] Paragraph 31 ("Personal Beliefs") of the Model Jury Selection Questions provides the following model question: "Do you hold any moral, religious or ethical conviction or belief that would prevent you from weighing the evidence and returning a fair and impartial verdict?"

Moore, 412 Md. at 659. Each case may involve a different set of facts which present new questions that must be asked upon request by a party to ensure that no potential juror harbors an impermissible bias specific to the circumstances of the particular case. *See Pearson*, 437 Md. at 357

The religious conviction at issue, however, was not "directly related to the crime, the witnesses, or the defendant." *See id.* The question, therefore, did not fall within the second category of mandatory areas of inquiry -- it was not relevant to the facts or circumstances presented in this case and it would not "assist[] the trial judge in uncovering bias."[8] *See Moore*, 412 Md. at 662 (Citation omitted). Instead, Love's proposed question would have applied to a juror's belief in his or her ability to serve on a jury in any case.

As we explained above, no statute or rule lists a potential juror's particular religious, political, or philosophical beliefs proscribing the judgment of others as a disqualifying characteristic. Whether to ask Love's question, therefore, fell squarely within the broad discretion of the trial judge. *See id.* at 644. Additionally, the model questions of the MSBA's Special Committee on Voir Dire "provide[] a flexible script with committee notes as a tool for judges in the voir dire process." *Collins*, 452 Md. at 614. Clearly, the fact that a question is included in the MSBA's Model Jury Selection Questions for Criminal Trials does not render the question mandatory. Depending on the case, a trial judge may,

[8] Had the judge asked the question requested by Love's counsel, and a member of the venire responded affirmatively, explaining that his or her religious beliefs prohibited him or her from judging others, that belief, alone, would not have automatically disqualified the juror. The decision would have been within the discretion of the trial judge after hearing the potential juror's explanation.

in his or her discretion, choose to rely on the language recommended by the model questions, but not all model questions are necessarily required, even if requested.

Love's reference to the holding in *Owens* -- that "[s]imply because it is *not mandatory* for a judge to pose a particular question does not make it a *prohibited* question"-- is of no assistance to him, either. Our holding that Love's question does not fall within any established mandatory area of inquiry, nor would it reveal a disqualifying bias relevant to the circumstances in this particular case, in no way implies that the trial judge would have abused his discretion by asking the question requested by Love in the form he proposed. The converse of the holding in *Owens* is also true -- simply because it is *not prohibited* for a judge to pose a particular question during voir dire does not make it *mandatory*. *See Owens*, 399 Md. at 422.

C. The Question Proposed by Love was Fairly Covered by a Question Previously Asked.

Although it was not an abuse of discretion to deny Love's requested inquiry, we note that Love's purpose in asking the question in the form he sought was already covered by a previous inquiry. As the Court explained in *Washington*, the trial judge's discretion includes the scope and form of the questions asked. 425 Md. at 313 (quoting *Dingle*, 361 Md. at 13-14) ("[T]he trial court has broad discretion in the conduct of voir dire, most especially with regard to the scope and the form of the questions propounded."); *see also Brice v. State*, 225 Md. App. 666, 688 (2015) (quoting *Washington*, 425 Md. at 314) ("The manner of conducting voir dire and the scope of inquiry in determining the eligibility of jurors is left to the sound discretion of the judge."). The trial judge "must adapt the

questions to the particular circumstance or facts of the case, the ultimate goal, of course, being to obtain jurors who will be impartial and unbiased." *Moore*, 412 Md. at 645 (quoting *Dingle*, 361 Md. at 9) (Internal quotation marks omitted). "[I]n the effort to secure an impartial jury," however, it is within the trial judge's discretion to determine how to "adapt the questions to the needs of each case." *Id.* at 662 (quoting *Casey*, 217 Md. at 605).

Even when we conclude that a proposed question was likely to reveal a cause for disqualification in a particular case, therefore, we must examine the record as a whole to determine whether the inquiry was fairly covered by another question. *See Washington*, 425 Md. at 314 (Citations omitted) ("[A]n appellate court looks at the record as a whole to determine whether the matter has been fairly covered."); *Wagner v. State*, 213 Md. App. 419, 452 (2013) (quoting *Washington*, 425 Md. at 313-14); *accord Stewart*, 399 Md. at 159–60; *see also Logan*, 394 Md. at 396 (citing *White*, 374 Md. at 243) ("We review the trial judge's rulings on the record of the voir dire process as a whole . . . .").

In *Pearson*, the Court held that the trial court was not required to ask if any potential juror had ever been the victim of a crime, in part, because the more direct question of whether any individual had "strong feelings" about the particular crime charged was more likely to reveal a basis for disqualification. 437 Md. at 359. Similarly, in *Stewart*, the Court held that the appellant's proposed question regarding the venire members' level of religious participation "was covered by the court's inquiry as to whether any prospective juror had 'religious, philosophical or personal beliefs' that would prevent the juror from

reaching a fair and impartial verdict."[9] 399 Md. 146, 159-60 (2007); *see also, e.g., White*, 374 Md. at 243-44 ("In the instant case, when the voir dire process is viewed as a whole, it is clear that the trial court conducted extensive voir dire examinations of the prospective jurors."). When another question asked is reasonably likely to reveal the same potentially disqualifying characteristic as the question requested, therefore, the trial judge has not abused his or her discretion in denying the request.[10]

In this case, the trial judge asked the venire: "Do you know of any other reason, not covered by my earlier questions, why you cannot sit as a juror in this case?" On appeal, Love asserts that this broader question was "not sufficient to identify the potential juror" who believed that he or she cannot sit in judgment of another person based on his or her "religious, political, or philosophical belief[s]." Love's only basis for this conclusion is that the "question is too general." The only authority Love conceivably relies on for this assertion is an out-of-state case in which a potential juror asserted to the trial judge, "Sir, I

[9] We recognize the similarity between this question and the question at issue in the case *sub judice*, and we reiterate that the trial judge in this case would not have abused his discretion by asking the question Love requested. The judge's decision to refuse Love's proposed question in the form requested, however, fell squarely within the trial court's discretion, particularly where another question fairly covered the same potential religious concern.

[10] Love dedicates considerable attention to whether a harmless error analysis is applicable to errors in failing to ask a required question during voir dire. He argues that it would be impossible to know the effect of not asking the question in this case. The State responds that, here, "[e]ach and every juror, when polled, answered that his or her verdict was 'the same' as the verdict announced by the foreperson." We need not address this debate, however, because it is not an abuse of discretion to deny a party's proposed voir dire question if another question has fairly covered the matter. *See Wagner*, 213 Md. App. at 452.

cannot serve on this jury . . . I cannot judge" just as the clerk was about to administer the oath. *In re Jenison*, 120 N.W.2d 515, 516, *vacated sub nom*, *In the Matter of Contempt Proceedings Jenison*, 375 U.S. 14 (1963). Thereafter, the potential juror elaborated, "My Bible tells me 'Judge not, so you will not be judged.'" *Id.*

In *Jenison*, however, the potential juror who raised this concern did not do so in response to a particular voir dire question, and even after the trial judge threatened to hold the juror in contempt, she continued to refuse to serve based on her religious beliefs. *Id.* Love notes that "[n]ot all potential jurors will be as courageous and outspoken as she was." Love cannot explain, however, why the trial judge's earlier question to the venire in this case -- whether any potential juror knew of any reason that he or she could not "sit in judgment" -- was not reasonably likely to prompt a juror with such a religious conviction to raise the same concern. Upon answering yes to the trial judge's more general question, the potential juror would have had the opportunity to explain his or her religious concerns in further detail at the bench.

Love can provide no meritorious reason to disturb the trial court's decision to deny his question after having asked a more general question that would have elicited the same response as the question proposed by Love. As we said in *Wagner*,

> [W]here the question . . . requested was not a mandatory question, and where other questions "created a reasonable assurance that prejudice would be discovered if present," . . . we cannot conclude that the court abused its discretion in conducting voir dire . . . .

213 Md. App. at 452 (quoting *Washington*, 425 Md. at 313-14). In *Wagner*, we noted that "the trial judge determined, based on his experience, that other questions asked of the panel

would elicit any bias related to the victimization of family members or friends." *Id.* at 452. Here, the trial judge explained to Love's counsel that, based on his experience, when "religion is mentioned," "they come up and tell me -- you know, various religions and almost never do I excuse them . . . ." In response to Love's counsel's concern that venire members, if chosen to serve on the jury, might silently refuse to participate in deliberations, the trial judge explained, "They're compelled by law to do what they're supposed to do. And I have not had, I have not had that as a problem in any case in 10 years." Because the question was not mandatory, the trial judge was entitled to rely on his experience to conclude that a more general question was sufficient to uncover the same religious concern among panel members. *See id.*

Finally, Love argues that "[j]udicial efficiency cannot justify the court's refusal to ask the defense's question here." Our caselaw says otherwise, however. Where the requested question does not relate to any established mandatory area of inquiry,

> the trial court . . . should weigh 'the expenditure of time and resources in the pursuit of the reason for the response to a proposed voir dire question against the likelihood that pursuing the reason for the response will reveal bias or partiality.

Curtin, 165 Md. App. at 68 (quoting *Uzzle v. State*, 152 Md. App. 548, 560-61 (2003)). The Court of Appeals held in *Pearson* that it was not an abuse of discretion to deny a party's request to ask a more general question, in part, because that question may be too time consuming relative to a more direct question. 437 Md. at 359.

In this case, the trial judge concluded that highlighting religious beliefs would encourage too many potential jurors without legitimate concerns to waste the court's time.

The trial judge had already asked a question that provided members of the venire the opportunity to raise the same concern, if it existed. A person who felt that he or she was "unable to sit in judgment because of the [potential] juror's religious . . . beliefs" would certainly hold that concern at the forefront of his or her mind immediately after being summoned. Any potential juror who believed that he or she was not permitted to sit in judgment of another person in *any* case, therefore, would not have required any specific information to know that his or her religious belief was relevant to the trial judge's broader question.

It is true that "there may be, and often is, a conflict between keeping the voir dire process limited and the goal of ferreting out cause for disqualification." *Collins*, 452 Md. at 629 (quoting *Dingle*, 361 Md. at 14). Another question, however, may reasonably be just as likely to satisfy the goal of revealing the same concern. The trial judge in this case relied on his experience to determine that emphasizing "religious beliefs" as a potential excuse from jury service produced too many claims of various religious tenets that the judge rarely found legitimate. It was within the trial judge's discretion, therefore, to ask a broader question that would permit members of the venire to claim the same religious beliefs without putting the idea into any potential juror's mind where it did not previously exist.

The problem with Love's argument, therefore, is two-fold. First, the question Love requested was not based on any statutory or other mandatory area of inquiry and had nothing to do with any jurors' impermissible biases specific to the case. The requested question's purpose was to determine whether a potential juror believed he or she was

unable to reach *any* verdict at all, presumably in any case. Although the question could have revealed a potential juror's concern that he or she could not "sit in judgment" for religious reasons, that concern, alone, is not an automatic disqualification for jury service.

Second, not having implicated any mandatory area of inquiry, it was within the trial judge's discretion to determine whether and in what form to ask about other areas that could potentially provide a basis for being unable to serve. The trial judge, based on his experience, determined that Love's proposed question would be too time consuming. Every member of the jury in this case, however, had the opportunity to raise any fear of running afoul of such a religious belief in response to the trial judge's question, "Do you know of any other reason, not covered by my earlier questions, why you cannot sit as a juror in this case?" The trial judge's broader question fairly covered the same concerns as Love's proposed question listing religious beliefs.

We hold that the trial judge did not abuse his discretion by refusing to ask the question requested by Love during voir dire. Where the question is not mandatory, the trial judge is not compelled to list specific categories of values or beliefs that are not tied to the circumstances of the case, particular witnesses, or the defendant. This is particularly so where the same subject matter was fairly covered by another question, which would have provided a substantially similar opportunity to raise the concern if it already existed in a potential juror's mind. Accordingly, we affirm the circuit court's decision and deny Love's request for a new trial.

JUDGMENT OF THE CIRCUIT COURT FOR BALTIMORE CITY AFFIRMED. COSTS TO BE PAID BY APPELLANT.