Circuit Court for Cecil County
Case No. C-07-CR-22-000394

UNREPORTED

IN THE APPELLATE COURT

OF MARYLAND*

No. 1661

September Term, 2023

ISAIAH SOLOMON PEARSON

v.

STATE OF MARYLAND

Graeff,
Nazarian,
Zic

JJ.

Opinion by Graeff, J.

Filed: July 2, 2025

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

A jury in the Circuit Court for Cecil County convicted Isaiah Solomon Pearson, appellant, of second-degree murder, first- and second-degree assault, four counts of reckless endangerment, and several counts of weapons offenses. The court sentenced appellant to 75 years, all but 70 suspended, followed by five years of supervised probation upon release.

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

1. Did the circuit court err in excluding evidence tending to show that the victim was the initial aggressor and that appellant acted in self-defense?

2. Did the circuit court err in refusing to propound a requested voir dire question?

3. Was appellant denied a fair trial when he was tried and convicted by an all-white jury?

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

FACTUAL AND PROCEDURAL BACKGROUND

On March 21, 2022, appellant fatally shot Daquon Colson at an apartment in Elkton, Maryland. Appellant contended that he acted in self-defense in shooting Mr. Colson. A four-day trial began on July 10, 2023.[1]

The State's first witness was Nevaeh Pryer, the sister of Alexis Pryer, appellant's former girlfriend and the mother of his child. She testified that Alexis had been living in

[1] Appellant's first trial ended in a mistrial due to the State's late disclosure of evidence.

an apartment on Abbott Drive for five or six months at the time of the shooting. Appellant previously had lived at the residence with Alexis.

On the night before the shooting, Nevaeh Pryer went to her sister's house at approximately 8:00 p.m., and Mr. Colson was there. Mr. Colson was wearing jeans, a hoodie, and a ski mask. Mr. Colson wore the ski mask the entire time she was there.

The next day, Nevaeh returned to her sister's apartment to assist with an errand. After the errand, Nevaeh returned to the apartment while Alexis went to pick up Mr. Colson. Soon after Nevaeh arrived at the apartment, appellant's mother picked up Alexis' and appellant's son. Approximately 30 minutes later, Alexis arrived with Mr. Colson, who was again wearing jeans, a hoodie, and a ski mask. Nevaeh stayed at the apartment that evening with her sister and Mr. Colson to have a "kickback because [Alexis] didn't have the baby." Nevaeh had one shot of alcohol and was smoking marijuana. At approximately 8:00 p.m., appellant arrived at the apartment and began "banging on the door for like 45 minutes to an hour." Nevaeh knew it was appellant from his voice. She advised her sister to call the police, and while Alexis was on the phone with the police, appellant broke through the door.

Appellant entered the apartment and screamed: "[W]ho the F is in this house?" Appellant walked past the kitchen, and Nevaeh noticed "his hands cocked to the side." He walked back toward the bedroom where Mr. Colson was, and Nevaeh heard gunshots. Appellant ran out, and Nevaeh heard Alexis scream. Nevaeh walked to the bedroom and saw Mr. Colson lying on the floor. When the police arrived, they took her down to the

lower level of the apartment building and then to the police station, where she gave a statement. Nevaeh did not see any weapons on Mr. Colson or appellant that night.

Alexis Pryer testified that, on the night of the shooting, she resided on Abbott Drive with her son. Appellant lived at the apartment with them from September 2021 to March 2022. When appellant moved out, Alexis had the locks changed.

On March 20, 2022, the night prior to the killing, Mr. Colson was at Alexis' apartment "chilling" and "smoking." Appellant arrived late that night and took Mr. Colson home. Alexis testified that Mr. Colson had on all black that evening. Appellant did not threaten Alexis or Mr. Colson when he arrived at the apartment that evening, but he did ask Mr. Colson to leave. After appellant drove Mr. Colson home, he returned to the apartment, and he and Alexis got into a physical altercation.

On March 21, 2022, the day of the shooting, Alexis ran some errands and then went to pick up Mr. Colson. Before picking up Mr. Colson, Alexis saw appellant at a traffic light, and they "play[ed] cat and mouse on the road." Alexis picked up Mr. Colson, went to the tobacco and liquor store, and then returned to her apartment. Alexis "took some shots," "started smoking," and fell asleep on the couch. Her sister and Mr. Colson woke her up because appellant was "banging on the door" and "pinging [her] phone." Alexis then took a shower to "try to wake [herself] up." After her shower, appellant was "still banging," so she called 911.[2] Appellant eventually pushed through the door, and Alexis

[2] A recording of the 911 call was admitted into evidence and played. Alexis identified appellant's voice on the recording saying: "Who in the house"?

tried to "tussle him" to prevent him from going to the back room where Mr. Colson had gone. Alexis then heard shots fired, and she saw appellant running out the door. The police arrived approximately two minutes after the shooting and took Alexis to the station, where she provided a statement. Alexis testified that she did not see Mr. Colson with a gun, and she never had a gun in the apartment. When asked if she saw appellant with a gun on the night of the killing, she stated that "[h]e never took his hand out of his pocket."[3]

Ulysses Demond, an officer with the canine unit of the Elkton Police Department, testified that, on the night of March 21, 2022, he was dispatched to Abbott Drive along with Corporal Todd Finch and Sergeant Amanda Banik to respond to a "domestic with someone trying to kick the door in." During Officer Demond's testimony, the State showed footage from the body camera he was wearing on the night of the shooting. Officer Demond testified that, when he went to the back bedroom of the residence, he saw Mr. Colson lying on the floor with blood on his shirt. Mr. Colson had no pulse; Officer Demond applied a chest seal on his wound and began CPR. Once medics arrived, Officer Demond secured the scene and assessed it for evidence.

[3] Mark Blevins and Maia Sagapolutele, who lived next door to Alexis with their then infant son, also testified about the events of March 21, 2022. Mr. Blevins testified that he heard "a lot of kicking, a lot of screaming." He looked through the peep hole and saw a person with a blue hoodie, black puffy vest, and dark colored jeans. The person was banging on the door for six to ten minutes. Mr. Blevins did not see anything in the person's hands. Mr. Blevins called the police after he heard gunshots, then picked up his son and laid down on the floor with his fiancé and son until police arrived. The police instructed Mr. Blevins and Ms. Sagapolutele to leave the apartment so police could investigate. When they returned, they discovered three bullet holes in their bedroom. Ms. Sagapolutele identified appellant in a photograph and testified that she did not see appellant with "anything in [his] hands" on the night of the shooting.

Defense counsel attempted to establish that Officer Demond knew Mr. Colson based on Mr. Colson's prior criminal record. The State objected to any reference to Mr. Colson's prior criminal history, asserting that is was inadmissible under Maryland Rules 5-404 and 5-405. The court sustained the State's objection after Officer Demond stated that he did not have personal knowledge of Mr. Colson and could not speak to his character or reputation.[4]

Ronald Odom, Support Services Bureau Commander for the Elkton Police Department, testified about the crime scene investigation after the shooting. During the investigation, he observed a couple of cellphones, as well as shell casings, in the back bedroom where Mr. Colson was located. On cross-examination, Mr. Odom stated that, during his "cursory" search of the apartment, he did not look inside cabinets, under the mattress in the bedroom, in cereal boxes, or in the toilet tank.[5] Appellant's counsel asked Mr. Odom if he knew Mr. Colson prior to arriving on the scene. The State objected on the basis that counsel was attempting to improperly introduce character evidence through Mr. Colson's prior contacts with police.

[4] Robert Bradley Borkowski, a career services firefighter paramedic, also testified that he attempted to resuscitate Mr. Colson. Mr. Borkowski pronounced Mr. Colson deceased at the scene.

[5] Kelly Sexton, a crime scene technician for the Maryland State Police and certified bullet trajectory specialist, also testified about her investigation of the crime scene. Other than shell casings, she did not "observe any other weapons or ammunition in the apartment."

The court sustained the objection, explaining that "the violent character of the victim may be introduced to corroborate evidence that the victim was the initial aggressor," but first the proponent must "establish an evidentiary foundation tending to prove that the defendant acted in self-defense." The court found that appellant had not yet made a prima facie showing of self-defense.[6]

At the conclusion of the State's case, appellant's counsel moved for a judgment of acquittal on the counts of home invasion and burglary in the third degree, arguing that there was evidence that appellant lived at the residence at the time of the shooting. Counsel further moved for judgment on the counts of wear, carry, and transport of a handgun, arguing that no witness testified that appellant carried a gun into the apartment. The court denied appellant's motion for judgment of acquittal on all of those counts, finding that there was sufficient evidence for these charges to proceed to the jury.

Appellant testified that, on March 21, 2022, he was living at the Abbott Drive apartment with Alexis and his three-month-old son. Before living at Abbott Drive, appellant and Alexis resided for almost two years at the home of appellant's mother. On March 21, 2022, appellant had been staying at his mother's residence because he and Alexis had an argument two days earlier.

[6] Thomas Saulsbury, a detective with the Elkton Police Department Criminal Investigations Division, was the on-call detective on the night of the shooting. Upon arrival at the crime scene, Detective Saulsbury observed Mr. Colson "lying in the back bedroom deceased" and recognized him. On cross-examination, appellant's counsel asked Detective Saulsbury how he knew Mr. Colson. The court again sustained the State's objection because there was no evidence in the record "generating evidence of self-defense at this point."

On the evening prior to the shooting, at approximately 8:00 or 9:00 p.m., appellant went to the apartment at 601 Abbott Drive to "diffuse the situation." Appellant unlocked the door and discovered Mr. Colson, who he did not know, in his bedroom, along with Alexis and his infant son. Appellant told Mr. Colson to leave. Because Mr. Colson did not have transportation, appellant drove him home. Appellant returned to the apartment to get an explanation for what he witnessed, but Alexis would not provide one. Appellant began packing up his son's belongings to take to his mother's home, but Alexis would not allow him to take the child. Appellant testified that did not hit or threaten Alexis or anyone else.

On the evening of March 21, 2022, appellant returned to the apartment shortly before 10:00 p.m. Prior to reaching the apartment, appellant called Alexis twice, but she did not answer. He then knocked on the door because he had left his house keys at his mother's residence. Appellant heard footsteps inside, and when no one answered the door, he knocked again, and then again "a little harder," because he was frustrated. Finally, Alexis unlocked the door and let him in the house. As the door opened, appellant immediately smelled marijuana. He asked, "who's in my house?" When he did not get a response, he walked toward the hallway. The house was "pitch black dark," and the doors were closed. Appellant turned on the hallway light, opened the bedroom door, and was "attacked by a masked armed man." Appellant "got the gun away from [his] face and . . . ended up taking it from [Mr. Colson]." As Appellant was moving backwards toward the door, Mr. Colson charged him in an aggressive manner and attempted to regain control of

the gun. Appellant feared for his life, "squeezed the trigger," and the "gun went off." Appellant turned on the light and realized that the masked man was Mr. Colson. He dropped the gun in the bedroom and ran out of the room, saying to Alexis: "I know you didn't just try to set me up[.] . . . This man was literally waiting for me in my bedroom . . . behind a closed door." Appellant left the residence and went to his father's house in Virginia to "seek counsel and get lawyer money together" before turning himself in.

At the conclusion of all the evidence, defense counsel moved for a judgment of acquittal on all counts. The court denied the motion. After appellant was convicted and sentenced, appellant noted this appeal.

DISCUSSION

I.

Exclusion of Character Evidence

Appellant contends that the circuit court erred in excluding evidence tending to show that Mr. Colson was the initial aggressor and that appellant acted in self-defense. He alleges that, once he testified that he acted in self-defense, the court should have allowed evidence of Mr. Colson's prior violent behavior, including prior convictions for assault and a weapons violation and photographs showing Mr. Colson brandishing a weapon, to show that Mr. Colson was the initial aggressor.

The State contends that the circuit court properly excluded the proposed character evidence relating to Mr. Colson. It asserts that where, as here, a defendant tries to use character evidence to show that the victim acted in character and was the initial aggressor,

Rule 5-405 limits proof of character to reputation or opinion testimony as opposed to evidence of specific instances of conduct.

A circuit court's decision to admit or exclude character evidence is typically reviewed for abuse of discretion. *Vigna v. State*, 470 Md. 418, 437 (2020), *cert. denied*, 141 S. Ct. 1690 (2021). A decision to exclude evidence based on the circuit court's interpretation of a Maryland Rule, however, is reviewed as a matter of law. *Ford v. State*, 462 Md. 3, 28 (2018). Whether Rule 5-405 permitted appellant to introduce evidence of Mr. Colson's violent character through specific instances of conduct is a legal issue. The proper standard of review, therefore, is de novo. *See Xu v. Mayor of Balt.*, 254 Md. App. 205, 211, *cert. denied*, 479 Md. 467 (2022) (interpretation of Maryland Rules is reviewed de novo).

A.

Proceedings Below

At trial, defense counsel sought to introduce into evidence three photographs showing Mr. Colson holding a firearm. The State objected, arguing that appellant was improperly "trying to establish character evidence" through "prior specific instance[s] of conduct evidence" and the photographs were "overly prejudicial." The court sustained the objection.

Defense counsel subsequently requested to introduce evidence of two prior instances of violent conduct by Mr. Colson: (1) a conviction for second-degree assault; and (2) a conviction for carrying a concealed deadly weapon. Counsel argued that,

pursuant to *Thomas v. State*, 301 Md. 294, 307 (1984), *cert. denied*, 470 U.S. 1088 (1985), "the violent character of the victim may be introduced to corroborate evidence the victim was the initial aggressor." Counsel stated that appellant had raised the issue of self-defense in his testimony, and therefore, he satisfied the "prerequisite for the introduction of such evidence."

The State objected to the evidence, arguing that extrinsic evidence of a victim's character is admissible to prove self-defense only when a defendant establishes that he acted the way he did because of his knowledge of the person's reputation. It asserted that, because there was no evidence that appellant had knowledge of Mr. Colson's alleged reputation for violence, evidence of Mr. Colson's prior convictions were inadmissible. The State further argued that (1) even if evidence of Mr. Colson's reputation was admissible, it was limited to testimony as to reputation or in the form of an opinion, and therefore, evidence of specific instances of misconduct was impermissible; and (2) any probative value of Mr. Colson's convictions would be outweighed by its prejudicial effect.

The court ruled that documentation of Mr. Colson's prior convictions for assault and carrying a concealed weapon was inadmissible under Rule 5-405(b), noting that *Thomas* provided that evidence of the character of a victim is admissible for two purposes: (1) to prove the defendant's state of mind when the victim was killed, i.e., that he "had reasonable grounds to believe that he was in danger"; and (2) "to corroborate evidence that the victim was the initial aggressor." Based on the record, appellant had not established the necessary showing for the first purpose because there was no evidence that appellant

"had knowledge of [Mr. Colson's] prior acts of violence." With regard to the second purpose, the court found that appellant's testimony had adequately raised the issue of self-defense, and therefore, he could offer evidence of Mr. Colson's "character or trait of character . . . by testimony as to reputation or by testimony in the form of an opinion."

The court noted, however, that appellant was not offering opinion or reputation evidence. Instead, he sought to introduce specific instances of Mr. Colson's conduct, i.e., evidence of his prior convictions under Rule 5-405(b) to show that he engaged in acts of violence. Moreover, the court concluded that concealing a weapon was not "in and of itself a crime of violence" sufficient "to establish a reputation or character evidence as it relates to Mr. Colson" and was inadmissible for that purpose. With regard to the prior conviction for second-degree assault, the court stated that the conviction itself was not a specific instance of conduct that would

> demonstrate or stand in for character or reputation in the absence of underlying facts[.] . . . It does not establish a specific instance of conduct that the jury could perceive and appreciate as being a reasonable factual instance or conduct on the part of Mr. Colson from which they would be able to conclude that he was an individual possessed of an intrinsically violent character.

The court ruled that documentation related to Mr. Colson's conviction for second-degree assault was inadmissible under 5-405(b).

Appellant's counsel then informed the court that she intended to call three law enforcement officers to testify as to Mr. Colson's reputation for violence. Appellant's counsel sought to question Officer Desmond about Mr. Colson's second-degree assault charges because he was the arresting officer. The State objected on the ground that none

of the officers had personal knowledge regarding Mr. Colson's character or reputation. The court reserved ruling on the issue, stating that it needed "to see the statement of probable cause [to] determine whether or not" Officer Desmond had personal knowledge of the conduct leading to the second-degree assault charges. The court also questioned whether anyone knew whether the other officers had any "testimony to offer regarding Mr. Colson's character or reputation."

The next day, the court asked defense counsel for her proffer with regard to the proposed testimony of the officers. Counsel advised that she was unable to obtain the probable cause statement, and she requested that she be allowed to question the officers outside the presence of the jury to determine their personal knowledge of Mr. Colson's prior arrests. The State objected, noting that defense counsel should have investigated and secured these witnesses well before the last day of trial, and it had "no obligation to produce witnesses beyond this point."

The court excluded the testimony of all three officers. It found that appellant was "unable to proffer . . . relevant, admissible, and material" testimony regarding Mr. Colson's alleged violent disposition, and it was not "inclined to engage in what would functionally be discovery from the witness stand at this point in the proceedings."[7]

[7] Appellant's counsel noted for the record that, when she attempted to obtain a proffer from the officers during a brief court recess, they refused to answer any of her questions. The court responded that counsel "had ample opportunity to explore the issue with those witnesses," and had she addressed the matter earlier, testimony could have been compelled through compulsory process.

B.

Analysis

In addressing the admissibility of the evidence, the parties rely on Maryland Rules 5-404 and 5-405. Although Rule 5-404(a) generally prohibits evidence of a person's character to prove action in conformity therewith, Rule 5-404(a)(2)(B) provides that "an accused may offer evidence of an alleged crime victim's pertinent trait of character." Here, appellant wanted to admit the proffered evidence to show that the victim had a violent character.

In cases where a defendant raises the issue of self-defense, a victim's character is admissible for either of two purposes. First, it may be admissible to show the defendant's state of mind when the victim was killed, i.e., "to prove that defendant had reasonable grounds to believe that he was in danger." *Thomas*, 301 Md. at 306. "To use character evidence in this way, the defendant first must prove: (1) his knowledge of the victim's prior acts of violence; and (2) an overt act demonstrating the victim's deadly intent toward the defendant." *Id.* at 307. Appellant concedes that this purpose "is not applicable to the present case."

Second, the purpose at issue here, evidence of a victim's violent character may be admissible "to corroborate evidence that the victim was the initial aggressor." *Id.* To use character evidence for this second purpose, the defendant must first introduce evidence supporting his claim that he acted in self-defense. *Id.* The defendant does not need to show that he had any knowledge of the victim's violent reputation. *Id.*

Rule 5-405 sets forth the methods of proving character, as follows:

> (a) **Reputation or opinion. —** In all cases in which evidence of character or a trait of character of a person is admissible, proof may be made by testimony as to reputation or by testimony in the form of an opinion. On cross-examination, inquiry is allowable into relevant specific instances of conduct.
> (b) **Specific instances of conduct. —** In cases in which character or a trait of character of a person is an essential element of a charge, claim, or defense, proof may also be made of relevant specific instances of that person's conduct.

Pursuant to Rule 5-405(a), proof of the victim's violent character was admissible by reputation or opinion evidence. *Accord* 5 Lynn McLain, *Maryland Evidence: State and Federal* § 404:3, at 751 (3d ed. 2013) ("If a criminal defendant charged with murder or assault and battery claims self-defense, she may introduce reputation or opinion evidence of the victim's propensity for violence, in order to prove that the victim acted 'in character' and was the initial aggressor."). Although appellant attempted unsuccessfully to introduce such evidence, he does not challenge the court's rulings in that regard.[8]

Appellant's challenge in this Court involves the court's ruling excluding evidence of prior convictions and photos of the victim pointing a gun. This evidence, however,

[8] As indicated, appellant requested to call three law enforcement officers to testify to Mr. Colson's reputation for violence. He was unable, however, to "proffer to the Court what testimony" they would offer that would be "relevant, admissible, and material to the issue of Mr. Colson's purported violent disposition." Notably, the court stated that Officer Demond "testified that he did not know the name of the victim in this matter." In response to counsel's argument that appellant should at least be able to explore the officer's familiarity with Mr. Colson on the stand, the court found that appellant's counsel "had ample opportunity" to question these witnesses or arrange compulsory process prior to the final day of trial, and it was not "inclined to engage in what would functionally be discovery from the witness stand." Appellant has not challenged the court's ruling in this regard.

involves specific instances of conduct, which Rule 5-405 provides is admissible only during cross-examination, *see* Rule 5-405(a), or if the character trait is an essential element of a charge, claim, or defense. *See* Rule 5-405(b).

As the Supreme Court of Maryland has explained, character may be an element of a crime, claim, or defense when character is at issue, such as a person's poor driving ability in an action for negligent entrustment of a motor vehicle. *Vigna*, 470 Md. at 431. Circumstantial character evidence, by contrast, is used to suggest that a person acted consistently with his or her character, for example, when a defendant alleges that a crime victim had a violent disposition and was the initial aggressor in an altercation. *Id.* at 439.[9]

Because proof of the victim's violent character is not an essential elements of a self-defense claim, such evidence, if admissible, may be introduced on direct examination only by testimony as to reputation or in the form of an opinion. Rule 5-405(a). *See Williamson v. State*, 25 Md. App. 338, 346-47, *cert. denied*, 275 Md. 758 (1975) (when evidence of victim's violent reputation is admissible to corroborate self-defense claims, the "customary rule allowing only evidence of general reputation applies" and evidence of specific acts is disallowed). *Accord U.S. v. Bordeaux*, 570 F.3d 1041, 1050 (8th Cir. 2009) (victim's violent character is not an essential element of self-defense claim and prior bad acts

[9] The Supreme Court of Indiana has explained that the victim's character is not an essential element of a defendant's claim of self defense because, regardless of whether the victim had violent propensities, the jury could still determine that the defendant did not act in self-defense. *Brooks v. State*, 683 N.E.2d 574, 577 (Ind. 1997).

testimony was inadmissible). Accordingly, the circuit court did not err in excluding evidence of specific instances of conduct relating to Mr. Colson's alleged violent character.

II.

Voir Dire Question

Appellant next contends that the circuit court erred in refusing to propound the following voir dire question: "Would any of you change your verdict if the majority of the other jurors disagreed with you?" The State contends that appellant's argument with regard to the proposed voir dire question is not preserved for this Court's review. It further asserts that the court properly exercised its discretion in declining to ask the question because "it was a misstatement of the law."

We generally review a circuit court's decisions regarding voir dire for an abuse of discretion. *Lewis v. State*, 262 Md. App. 251, 278 (2024). "Trial judges have 'broad discretion in the conduct of voir dire, especially regarding the scope and form of the questions propounded.'" *Id.* at 278-79 (quoting *Thomas v. State*, 454 Md. 496, 504 (2017)). A court "need not make any particular inquiry of the prospective jurors unless that inquiry is directed toward revealing cause for disqualification." *Dingle v. State*, 361 Md. 1, 13-14 (2000). "[O]n 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." *Washington v. State*, 425 Md. 306, 314 (2012).

A.

Proceedings Below

At pretrial conference, appellant's counsel requested the court to ask the following voir dire question: "Would any of you change your verdict, if the majority of the other jurors disagreed with you?" The State objected, asserting that the premise of the question was covered in the court's opening and closing instructions to the jury, and "part of a jury's job is to come to a unanimous decision together." The court declined to include the question, stating:

> I'm not sure how anybody can really even answer that question honestly until they're kind of in the context of the jury room, right. And it's almost kind of asking people, are you so phenomenally weak willed that you can sit here now and tell me that you're not going to be able to arrive at your own decision. The Court is not inclined to include proposed question 21.

Counsel for appellant made no argument with regard to that proposed question. At the conclusion of the discussion, the court asked if there was "[a]nything further on voir dire?" Appellant's counsel replied: "No, Your Honor."

On the morning of trial, the court asked if there were any preliminary issues that needed to be addressed. There was discussion regarding proposed voir dire questions, but defense counsel did not object to the omission of its proposed voir dire question 21, regarding whether any jurors would change their verdict if the majority of the panel disagreed with their view.

B.

Preservation

We begin with the State's argument that appellant has not preserved this issue for this Court's review. "To preserve any claim involving a trial court's decision about whether to propound a voir dire question, a defendant must object to the *court's ruling*." *Foster v. State*, 247 Md. App. 642, 647 (2020) (emphasis added), *cert. denied*, 475 Md. 687 (2021). Provided that a defendant objects to a circuit court's refusal to ask a proposed voir dire question, "nothing more [i]s required to preserve the issue for review." *Id.* at 648. *Accord Smith v. State*, 218 Md. App. 689, 700-01 (2014) ("An appellant preserves the issue of omitted voir dire questions under Rule 4-323 by telling the trial court that he or she objects to his or her proposed questions not being asked.").[10]

Here, after appellant asked for his requested voir dire question, the State objected. The court agreed with the State's objection and stated that it was not inclined to include that question.

[10] Maryland Rule 4-323(c) states, as follows:

> **Objections to other rulings or orders. —** For purposes of review by the trial court or on appeal of any other ruling or order, it is sufficient that a party, at the time the ruling or order is made or sought, makes known to the court the action that the party desires the court to take or the objection to the action of the court. The grounds for the objection need not be stated unless these rules expressly provide otherwise or the court so directs.

Appellant did not object and moved on to other voir dire requests. At the conclusion of the discussion, the court asked if there was "[a]nything further on voir dire?" Appellant's counsel replied: "No, Your Honor." Under these circumstances, where appellant never made an objection to the court's decision not to include his requested voir dire question, we hold that appellant has not preserved this issue for review. We decline to address it.

III.

Racial Make-up of Jury

Appellant contends that he was "denied a fair trial when he was tried and convicted by an all-white jury." He asserts that, "of the 120 prospective jurors only two were African-American, and they were positioned in such a way that the seated jury would likely be entirely Caucasian." In an argument that consists of less than three full pages, appellant acknowledges that "he does not have a viable federal constitutional claim," but "he raises the issue to preserve the argument that such a jury violates Article 21 of the Maryland Declaration of Rights, which safeguards *inter alia* 'a speedy trial by an impartial jury.'"

A.

Proceedings Below

At the conclusion of the initial round of voir dire, appellant's counsel stated that she wanted to "raise a concern" about the lack diversity of the venire. She noted that only two of the 120 Cecil County residents in the jury venire were African American, and they were "towards the tail end of th[e] list." Counsel stated that the jury pool "certainly d[id] not

look like a cross-section or fair representation of the population of Cecil County." She argued that appellant "would not look upon an all-white jury as a jury of his peers," and appellant would be "denied a fair jury based upon the composition of this venire." Counsel clarified that she was making a challenge to the jury array.

The State asserted that appellant was "guaranteed a trial by a jury of people who live in the community who are pulled from the motor vehicle registration and the voter registration rolls . . . [he was] not guaranteed to any particular makeup of any jury." The State also noted that no juror on the panel responded affirmatively to a question whether race or ethnicity of any involved persons would affect his or her decision in the case. The State argued that "there is no right to a jury of [appellant's] liking" under the Maryland Rules or Constitution.

After reviewing case law and Maryland Rule 4-312, the court stated that "a party may challenge the array on the ground that its members were not selected or summoned according to the law," that "the question is less one of the ultimate composition of the panel, and more one of the methodology that is employed in drawing that panel." Because appellant raised an issue with the ultimate composition of the jury rather than the selection methodology, the court overruled the challenge.

After further discussion, the court heard testimony from Kelly Mullins, Jury Commissioner, regarding how a jury panel is selected. Ms. Mullins explained that, after her office determines how many jurors will be needed for the week, a computer system randomly selects the number of requested jurors from the motor vehicle and voter

registration lists,[11] and a printing company in Louisiana prints and mails out the summonses. The computerized random selection process chooses from "over 100,000" Cecil County residents. Prospective jurors fill out a questionnaire after receiving the summons, and the court determines which prospective jurors are qualified to serve. The jury commissioner's office does not collect demographic data for potential jurors, with the exception of the potential juror's place of residence, marital status, education level, gender, occupation, and spouse's occupation, if applicable. The office does not ask about the race or ethnicity of a potential juror, and there is no "way in [the] records to determine the race or ethnicity of any juror."

Appellant's counsel argued that the "so-called random selection system" "has clearly not served . . . to assure a cross-section of the demographics of Cecil County . . . that would assure a fair jury for [appellant.]" She stated that, according to the Census Bureau, the population of Cecil County is 8.4 percent Black or African American, but the jury pool had only "two African Americans out of 120 people, or 1.6 percent." She argued that the array was "not a fair representation, and it is not a diverse enough panel to provide my client with a fair trial."

The State argued that the testimony established that the venire panel was selected pursuant to State policies and procedures, and there was no evidence that the panel was "somehow invalid, or wasn't selected properly, or ha[d] violated some right that the

[11] The motor vehicle registration list includes "anyone who is over 18 that has an ID card or driver's license."

[appellant] ha[d]." The State asserted that a defendant has a "right to a jury of your peers," not a right to "pick 12 people that you want."

The court clarified that the question before it was whether the jury selection "methodology applied meets the legal standard," noting that appellant did not "have a right to a jury of any particular composition." The court then overruled appellant's challenge to the jury panel, stating:

> [A]t this juncture, the burden is upon the challenging party of establishing that there is some prima facie demonstration that the method employed in producing the jury panel is somehow unconstitutional or failed to comport with the legal requirements. . . . Based upon the testimony of the jury commissioner, it is a randomized process that selects from pools where there would be no ascertainable way of knowing the demographic information of the panelist as it relates to their race or ethnicity. The appellate courts have had opportunities to review challenges to jury arrays, the use of voter registration lists has been upheld as constitutionally valid. . . . [H]aving heard from Ms. Mullins . . . , the Court does not find that a prima facie [case] has been made as it relates to the methodology employed in the selection of the panel.

B.

Preservation

The State contends that appellant has not made any supporting "argument demonstrating error or harm" with regard to the jury selection process, and therefore, we should "decline to consider" the merits of his claim. In support, the State asserts:

> Pearson takes no issue with the testimony of the jury commissioner for Cecil County, Kelly Mullins, that the process for selecting and sequencing jurors is blind and random, and was so in this case. (Appellant's Br. at 11). Pearson does not offer any argument to explain why, even if Article 21 need not be coextensive with the United States Constitution, it currently is not or should not be in the future. He never answers why Article 21 is different. Pearson does not offer any argument to explain why Maryland's existing and justified sensitivity to racial bias in jury selection in general translates into a specific

> prohibition on a randomized but single-race jury—particularly when he does not otherwise claim that the selection method did not comport with due process.
>
> At bottom, Pearson's brief presents a few independent theses, without supporting argument, that show no error or harm. The Court should, therefore, decline to consider this contention. *Davidson v. Seneca Crossing Section II Homeowner's Ass'n, Inc*., 187 Md. App. 601, 646 (2009) ("Where a party raises an issue on appeal, but fails to provide a proper supporting argument, which includes citation to legal authority and to material facts in the record, this Court, in the exercise of its discretion, may decline to consider the merits of the question so presented."); see also *United States v. Zannino,* 895 F.2d 1, 17 (1st Cir. 1990) (it is a "settled appellate rule that issues adverted to in a perfunctory manner, unaccompanied by some effort at developed argumentation, are deemed waived").

We agree with the State. Appellant has not provided sufficient argument in support of his assertion in this regard, and we decline to address it.[12]

JUDGMENTS OF THE CIRCUIT COURT FOR CECIL COUNTY AFFIRMED. COSTS TO BE PAID BY APPELLANT.

[12] We do note, however, that, in addressing whether the right to a jury drawn from a fair cross-section of the community is violated, courts do not look to whether the "jury itself is a representative cross-section of the community," but rather, we consider: "(1) whether the method of jury selection systemically or intentionally excluded certain prospective jurors; and (2) if so, whether those excluded constitute a 'cognizable group.'" *Kiddler v. State*, 475 Md. 113, 137 (2021). Appellant has not alleged any error in the method of jury selection here.