UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 1710

September Term, 2014

STEVEN WOOLFORD

v.

STATE OF MARYLAND

Meredith,
Berger,
Kenney, James A., III
(Retired, Specially Assigned),

JJ.

Opinion by Kenney, J.

Filed: October 22, 2015

*This is an unreported opinion, and it may not be cited in any paper, brief, motion, or other document filed in this Court or any other Maryland Court as either precedent within the rule of stare decisis or as persuasive authority. Md. Rule 1-104.

A jury in the Circuit Court for Baltimore City convicted Steven Woolford, appellant, of possession of heroin with intent to distribute, and found him not guilty on charges of armed robbery, robbery, assault, and possession of a firearm by a prohibited person. He was sentenced to twenty years with all but ten years suspended, plus three years of supervised probation. He raises three issues that we restate as follows:[1]

> 1. Did the trial court abuse its discretion in denying a mistrial during *voir dire*, after some prospective jurors saw a Central Booking photograph of appellant that was inadvertently left exposed by the prosecutor?
>
> 2. Did the trial court err or abuse its discretion in denying defense requests to *voir dire* prospective jurors about their occupations?
>
> 3. Is there sufficient evidence to support appellant's conviction for possession with intent to distribute?

We conclude that the trial court did not abuse its discretion in denying a mistrial or in conducting *voir dire*. Because there was ample evidence to support appellant's conviction, we shall affirm it.

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[1] As stated in appellant's brief, the issues are:

1. Did the trial court err when it failed to declare a mistrial during *voir dire* after a prospective juror said that a mugshot of Mr. Woolford had been left exposed on the prosecutor's table?

2. Did the trial court err in its conduct of *voir dire*?

3. Was the evidence sufficient to sustain Mr. Woolford's conviction for possession with intent to distribute?

FACTS AND LEGAL PROCEEDINGS

At approximately 3:45 p.m. on January 1, 2014, Baltimore City Police Officers John Beamer and Tyler Jay Sentz, along with other uniformed officers, responded to a citizen's request for assistance. While the officers were in front of a drugstore located at 2509 Pennsylvania Avenue, a male walked past them and stated, "there's a guy getting robbed out back."

Officer Beamer went around the building to the rear parking lot, where he observed appellant with his hands in his pockets, standing close to Richard Davis. Upon seeing the police officer, appellant started walking in the opposite direction. Pointing at appellant, Mr. Davis "stated he just robbed me." Officer Beamer asked appellant to stop, but he "fled on foot."

Beamer pursued and apprehended appellant. Concealed in appellant's pants was a plastic bag containing what was later determined to be nine gel caps of heroin; appellant also had three gel caps elsewhere on his person. A wallet claimed by Mr. Davis to be his was recovered from appellant's pocket, along with separately stored cash in the amounts of $51 and $69.

Appellant was arrested and taken to a police station, where he made a videotaped, post-*Miranda* statement that was played for the jury. In the taped interview with Detective Eric Green, appellant insisted that he did not have a gun or rob anyone, but admitted that he had sold drugs to Davis, as follows:

> [DET. GREEN]: Okay. But you said you hadn't seen – you hadn't served him before?
>
> [APPELLANT]: Uhn-uhn.
>
> [DET. GREEN]: All right. What was the conversation like?
>
> [APPELLANT]: No, it was a transaction.
>
> [DET. GREEN]: What was the transaction?
>
> [APPELLANT]: Narcotics.
>
> [DET. GREEN]: What kind of narcotics?
>
> [APPELLANT]: Heroin.
>
> [DET. GREEN]: Heroin. Did he give you any currency?
>
> [APPELLANT]: He gave me currency, yeah.
>
> [DET. GREEN]: And what did you give him in return?
>
> [APPELLANT]: (inaudible)
>
> [DET. GREEN]: How many?
>
> [APPELLANT]: Four.
>
> [DET. GREEN]: What kind of packaging were they in?
>
> [APPELLANT]: Caps.

Appellant explained that he ran when Officer Beamer "came around the corner," because he still had "five or 10 more" gel caps of heroin on him.

At trial, Detective Green, who testified as an expert in sales, distribution, and packaging of CDS for street distribution, stated that the heroin gel caps recovered from appellant were "packaged in a manner consistent with distribution." In his trial testimony, Mr. Davis confirmed that he went to the parking lot to buy heroin from appellant.

We shall add additional facts in our discussion of the issues raised by appellant.

DISCUSSION

I. Motion for Mistrial

Appellant contends that "the trial court erred in failing to declare a mistrial during *voir dire* after a prospective juror said that a mug shot . . . had been left exposed on the prosecutor's table." Based on the evidentiary record and the applicable law set forth below, we conclude that the trial court did not abuse its discretion in denying appellant's request for a mistrial.

The Record

The trial court asked the sixty members of the venire panel as a group to indicate any affirmative response to *voir dire* questions by standing, and then proceeded to individually question each person who did so. After twenty-eight veniremen had been interviewed, Juror 8236, who works in the Baltimore City criminal justice system, informed the court that while waiting in line to approach the bench, she recognized appellant from a photograph that was lying face-up on the prosecutor's table. We set forth the relevant portion of the transcript:

THE COURT: Hi, Ms. Wood. Okay, so you have a philosophical, moral, or religious objection why you can't sit?

JUROR 8236: (inaudible).

THE COURT: Yes, here in the courthouse?

JUROR 8236: Yes. I've assisted him, (inaudible) every day and I, **as I was standing there just looking at the photograph**, I think I may have documented (inaudible) information (inaudible) case. So I may know a little more than what the actual (inaudible).

THE COURT: Okay.

JUROR 8236: So (inaudible) I don't think that I would be (inaudible) because I know a little more, have seen a little more, I don't think I would be fair.

THE COURT: Okay, so would you tend to lean towards one side right now?

JUROR 8236: There could be a possibility, not so much just because of this but just overall, daily, everything that I've seen (inaudible).

THE COURT: Yeah.

JUROR 8236: (inaudible)

THE COURT: Okay. Yes. Any questions of Ms. Wood? So based on everything that you see day in and day out are you –

JUROR 8236: Yeah, and also the fact that I have entered information on this particular case. **I didn't realize that looking at the Defendant but when I was looking at the photographs (inaudible) it came back to me.**

THE COURT: You have to make sure all your papers are down, okay?

[PROSECUTOR]: (inaudible)

THE COURT: Go flip them, okay.

[DEFENSE COUNSEL]: Perhaps that could be done now, Your Honor.

THE COURT: Okay. All right.

JUROR 8236: I do it, you know, every day.

THE COURT: Right, that's your work. Right. Okay. Thank you.

[DEFENSE COUNSEL]: I thank the juror for pointing that out, Your Honor.

(Emphasis added.)

The trial court then asked for "[a]ny motions" with respect to Juror 8236. Defense counsel responded by asking the court to strike all the veniremen who had an opportunity to see the photograph, or in the alternative, to grant a mistrial, as follows:

> [DEFENSE COUNSEL]: I'm going to have to think about it for a minute. I guess, what would the motion be, strike out all persons who have stood up and the last that have gotten in close enough to see [the prosecutor's] desk. A photograph, a mug shot, is just not a good thing for anybody to be looking at.
>
> **I'm going to move to strike every person who has stood up and gotten in line, including everybody who is standing up now. There's one, two, three, four, five six, people standing up now and that essentially, it knocks out half the panel. I mean, it's regrettable but I don't feel I have a choice in order to get my client a fair trial to do anything but ask for the elimination of those persons who stood up and have had an opportunity to see the mug shot of the Defendant sitting wide open on [the prosecutor's] desk. I'll alternatively move for a mistrial but (inaudible) it's the same thing, moving this, respectfully, I don't think we have enough people left.**
>
> THE COURT: Okay.
>
> [DEFENSE COUNSEL]: It can't help but impact potential jurors as they line up to have basically on a plate in front of them a mug shot of the Defendant. We make all this effort, artificial as it may be with COs in the room, to try to

minimize the incarcerated nature of the individual and there's a mug shot straight up there, unnecessarily. I'm not saying [the prosecutor] did it maliciously but it's just negligent and unfortunate and I think I'm obliged to think the Court has to give me the relief I'm asking for. **I'm not enthused about it, we've spent some time on this already. I really want to get this case over and done with in two days but I can't go forward fairly trusting in everybody that's stood up to this moment, and there's some people I want on the jury.**

THE COURT: Would you like to put anything on the record?

[PROSECUTOR]: Yes, briefly, Your Honor. First, this was not malicious or intentional on the State's part. I do apologize, it was an oversight on the State's part to leave the photograph out. As far as the photograph goes, it is not going to be part of the State's case, it [is] not evidence the State intends to use nor does it identify at any point that he is a suspect in a crime. It simply has, there's a photograph, a clean head shot, there's not, it's not a photo array, it doesn't have any other discernable language on it that would indicate that he is in custody. It's simply a photograph.

And the State again would apologize. Certainly, however, I did not mean to leave that out there or interfere with the Court's business today and to interfere with the picking of the jury.

[DEFENSE COUNSEL]: I'm not suggesting you did. But it's the top half of the page that's the photograph. At the bottom half there's a number of indications or writings of kind. Exactly what they are I don't know, I'm too far away to see them. But it's not facing me, it's facing the jurors and it, with all due respect, the fact that it's not going to be part of the State's case is even more problematic. Now they're not going to have an opportunity to put it in context, they're going to have the notion that this, oh, yeah, remember there's that other picture out there.

They're just, it just compounds the problem. It's something that jurors are being allowed to see that's not even going to be part of the case. That's bad on top of bad. Not maliciously, but problematically, yes. We are right now at page six of this *voir dire* list and about to talk to 8226, who I assume is standing up. Or we did, we did just talk to 8226.

THE COURT: No. 8236. That's how you found [out] about it.

[DEFENSE COUNSEL]: So we're moving up to page seven, **so from the top of page seven, the next seven people and up to that page seven, everybody that stood up on pages one through six, I'm moving to disqualify them from service in this panel.**

THE COURT: No, I'm not striking half. Either we strike all and we do it all over again, but I don't believe, I mean, yes, it was inappropriate. And I know it was accidental to have just a picture of the Defendant there. **That's assuming that every single person has seen it. But we can't make that presumption** and if it's the picture of an arrest, you know, when they do that Central Booking arrest, –

[DEFENSE COUNSEL]: I'm going to ask the State to bring it up so the Court can see what it is.

THE COURT: Okay, yeah. Let me see it.

[PROSECUTOR]: I'm not going to grab it individually, I'm going to grab a stack so they don't know what I'm grabbing.

THE COURT: Okay. Okay. And put everything over there. Mr. [Prosecutor], can you flip everything over, like don't have even a single piece of paper that's up, okay, over there, please.

[PROSECUTOR]: Your Honor, I apologize.

THE COURT: Okay. Okay, so what are we talking about, oh, this. Okay. So **yes, this is the Central Booking arrest photo, okay.** But that's just, he has stacks of paper over there, that's assuming that people –

[DEFENSE COUNSEL]: It's not right, Judge. It implies as a Defendant, nobody else in this room, very few people in this room have had their picture in that format, I'm pretty sure. Because you weeded out everybody with a criminal record, pretty much.

THE COURT: The only reason why –

> [DEFENSE COUNSEL]: The only people who might have seen pictures like that are people who have been arrested. So they know it[']s an arrest charge.
>
> THE COURT: **See, no, only you and that woman, Ms. Wood, who enters criminal information in the Circuit Court for Baltimore City knows what that picture [sic]. And, I mean, people who work in the system. But no one is going to dispute, and it probably, the testimony and the evidence in this trial is going to indicate that the Defendant was arrested, based on this.** Yeah.
>
> [DEFENSE COUNSEL]: It might be, Judge, but the context, and if this isn't even going to be part of the State's case, it just, in my view, makes it even worse. They're exposed to some criminal justice document with a picture of the Defendant's head taking up more than half the page, I want to have it marked as Defense Exhibit No. 1 for the purpose of this discussion and I have a copy of it somewhere, I think. It's probably a discovery disclosure. [I]f not, I'll ask that we mark that particular page and introduce it.

(Emphasis added.)

Before ruling on appellant's request to strike prospective jurors or in the alternative for a mistrial, the trial court sought to determine who had actually seen the photograph:

> THE COURT: Ladies and gentlemen of the jury, has anybody, any members of the jury looked at any pieces of paperwork on either the prosecution's side or the defense side, that they've noticed. Please raise your hand. Okay, would you all, all the ones that just rai[s]ed their hand, we've got to jump them in line okay. . . .

Noting that Juror 8236, who "works in criminal," was "a Court strike," the trial court addressed the following six individuals who indicated they had seen appellant's photograph among the exposed papers on the State's side, in the following order:

- **Juror 8246** said that although he initially could not see appellant's face from the back of the courtroom, he recognized appellant when he saw "[t]he picture . . . on the table." Juror 8246, who "work[s] for the City," was in line because, although he did

not "know [appellant] personally," he had "seen his face just in pasing" while "travel[ing] around the City" performing his job. This panel member was struck by the court after he stated that he "felt . . . the system . . . wouldn't be fair" and that he would be biased in favor of the defense.

- **Juror 8265**, who told the court that he had to care for his wife after her recent cancer surgery, said that he saw what "looked like a wanted poster for the Defendant." The trial court also struck this juror for cause.

- **Juror 8213** was the only venireman who was *voir dired* before Juror 8236 and indicated that he saw something on the State's desk. In the initial *voir dire*, he was asked about his employment. He assured court and counsel that neither his . . . job with the Department of Treasury, nor his father's employment with the Inspector General, would affect his ability to be fair. Defense counsel elicited that Juror 8213 was "all about specifics and details." When Juror 8213 returned to be *voir dired* about the photo, he said that he "saw the photo," but that "shouldn't affect anything" and that he could still be fair. Defense counsel asked, "What kind of a photo did you think it was," and Juror 8213 answered, "It was a mugshot." Defense counsel then renewed his "motion to strike everybody that stood up[.]" The trial court denied that motion but noted "an ongoing motion and objection[.]" Later, defense counsel accepted Juror 8213 as an individual juror and . . . accepted the entire empaneled jury subject to his previously stated objections.

- **Juror 8299** stated that he saw a "black and white . . . big blown up picture" on the prosecutor's desk. When defense counsel asked his "impression of what that photo was," Juror 8299 answered, "Yeah, I was going to come up here and say why they didn't flip it over because everybody walking by should have seen it. To me it shouldn't have been faced up anyway." This venireman had two brothers convicted for "petty crimes" but stated that he could be fair. A jury of twelve, plus two alternates, was seated before his number was called.

- **Juror 8253** also advised that he saw "the picture." When the court inquired what it "looked like to you," this venireman answered, "Just the picture of (inaudible)." Juror 8253, who had been the victim of someone "pull[ing] out a weapon on" him, stated that he nevertheless would keep an open mind and be fair. Defense counsel later accepted Juror 8253 as an individual juror, while accepting the entire empaneled jury subject to his previously stated objections.

- **Juror 8272** said that he saw "what appeared to be the Defendant's picture," which "looked like it was something to do with either a booking photo or something like that." This venireman, who is "a fraud investigator" with experience working "together with the Attorney General's Office, sometimes the FBI, sometimes the State's Attorneys' Office," explained that "in that line of work a prior history of crime is something that we'd consider a red flag." Defense counsel later exercised one of appellant's peremptory strikes to excuse Juror 8272 from being seated as an alternate.

After questioning all the veniremen who stood in response to any of the group *voir dire* questions, the trial court again denied defense counsel's motion to strike those who either approached the bench or were in line before the photo was turned over. The court explained:

> [A]ccording to *Thompson v. State,* which is a 1998 case, the higher court found no abuse of discretion on the part of the trial judge in refusing to grant a mistrial or a motion for a new trial based on the assertion that several of the jurors inadvertently saw the appellant handcuffed and shackled while he was being transported back to the jail. Even i[f] the sighting actually occurred, there's nothing [i]n the records to indicate the jury was prejudiced in any way by the incident. The jury in this case already knew that the appellant was being detained during the trial, as the trial judge pointed out. So I have point[ed] out, I think it's going to come . . . out in evidence that the Defendant got arrested for this charge. I have *voir dired* everybody in this panel, we haven't excused anybody about that potential picture and even despite their observations, some actually said they're in favor of the Defendant. So for all those reasons and the reasoning in *Thompson v. State,* your ongoing [defense] objection, I'm going to overrule.

Appellant's Challenge

As detailed above, out of the thirty-five panel members who had an opportunity to see appellant's "mug shot" before it was turned over, only seven – Jurors 8213, 8236, 8246, 8253, 8265, 8272, and 8299 – indicated that they saw the photo. Ultimately, the empaneled

jury included five jurors who approached the bench before the photo was turned over but did not indicate that they saw it (*i.e.*, Jurors 8179, 8182, 8185, 8188, and 8220), five jurors who did not approach the bench at all during *voir dire* (*i.e.*, Jurors 8101, 8112, 8117, 8206, 8212), and two jurors who did see the photo and were *voir dired* about it as set forth above (*i.e.*, Jurors 8213 and 8253).

Appellant contends that "there was a substantial risk that the jurors who had approached the bench when the mug shot . . . was exposed on the prosecutor's desk saw the mug shot and would consider it as a factor in determining whether [he] was guilty or not guilty." In his view, the trial court's remedial *voir dire* to determine the impact of the photo was an inadequate remedy because the court asked who saw "any pieces of paperwork on either the prosecution's side or the defense side" and then questioned only the six additional individuals who responded. Appellant points out that, of the fifteen veniremen who were not struck for cause after having previously approached the bench, only one admitted to seeing the photo. He maintains that "[i]t strains credulity that none of the other fourteen [prospective] jurors noticed the photograph, which was described by other [prospective] jurors as a 'mug shot,' as a 'wanted poster,' and as [a] 'big blown up picture.'" Moreover, appellant continues, their descriptions of the photo disproved "[t]he trial court's belief that only someone involved in the criminal justice system would 'know . . . that picture[.]'" In appellant 's view, "[t]here was no way to ameliorate the prejudice from exposing prospective

jurors to an unexplained mug shot" of appellant, so that "[a] mistrial was the only appropriate remedy."

To be sure, a prospective juror may regard a "mug shot" photograph of the defendant as evidence that he has committed other crimes. Such evidence of other wrongs is generally inadmissible because of the "'fear that jurors will conclude from evidence of other bad acts that the defendant is a 'bad person' and should therefore be convicted, or deserves punishment for other bad conduct and so may be convicted even though the evidence is lacking[.]'" *Behrel v. State*, 151 Md. App. 64, 124 (2003) (quoting *Harris v. State*, 324 Md. 490, 496 (1991)). *See* Md. Rule 5-404(b). Thus, showing the jury a "mug shot" photograph could improperly influence jurors to convict. *See, e.g.*, *Straughn v. State*, 297 Md. 329, 333 (1983) ("[The] use of police identification photos may tend to prejudice the defendant by implying to the jury that he has a prior criminal record."); *Arca v. State*, 71 Md. App. 102, 103-06 (1987) (allowing jury to see photo array was an abuse of discretion because photograph prejudicially depicted defendant in "the front and profile views commonly associated with police 'mug shots[]'").

Nevertheless, mug shot photos are not inadmissible *per se.* A decision "to admit mug shots of a defendant as substantive evidence will not be reversed absent a showing of clear abuse of discretion." *Straughan*, 297 Md. at 334-36. In *Straughan*, for example, the Court of Appeals held that the trial court did not abuse its discretion in admitting a photo array that included "masked" mug shots showing front and side views, with serial numbers covered.

Id. at 336-37. *Cf. also Hof v. State*, 97 Md. App. 242, 303 (1993) ("Where identification is an issue and the mug shot that was selected pretrial helps . . . to bolster the subsequent in-court identification, the probative value [of a 'sanitized' mug shot showing front and side views of the accused] has been established"); *Cobey v. State*, 73 Md. App. 233, 246 (1987) (concluding that the trial court did not abuse discretion in admitting mug shots that "were 'sanitized' by cutting off the chest plates appellant was holding in them," where assailant's identity and lack of facial hair were at issue).

In this case, the photograph in question was described as a standard "Central Booking" photo, which is a single black and white "head shot" of appellant without any clothing or wording indicating that it was taken in connection with an arrest or incarceration.[2] Nevertheless, it was described by prospective jurors who saw it as a "mugshot," "wanted poster," and "booking photo," which indicated that it was recognizable as a post-arrest photograph made upon intake in the criminal justice system.

Because the State did not attempt to use the photo at trial, its admissibility is not at issue in this appeal. Instead, the question is whether the trial court abused its discretion in failing to declare a mistrial when that photo was inadvertently displayed by the prosecution during *voir dire*, so that some prospective jurors had an opportunity to view it.

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[2] Although defense counsel requested that the photo be marked as a defense exhibit, that document is not listed as an exhibit or included in the record transmitted to this Court.

We review a decision to deny a mistrial during *voir dire* "under the abuse of discretion standard." *Nash v. State*, 439 Md. 53, 66-67 (2014). Such an abuse "has been said to occur where no reasonable person would take the view adopted by the [trial] court, . . . when the court acts without reference to any guiding rules or principles[,] . . . [and] when the ruling under consideration appears to have been made on untenable grounds . . . [or] is clearly against the logic and effect of facts and inferences before the court[.]" *Id.* at 67 (internal quotation marks and citations omitted). Common to these difficult explanations is "'the notion that a ruling reviewed under an abuse of discretion standard will not be reversed simply because the appellate court would not have made the same ruling[]'" and that appellate courts reviewing a ruling on a mistrial motion generally afford the trial judge "a wide berth" in the exercise of discretion *Id.* at 67, 68 (citation omitted).

When a mistrial request stems from the exposure of inadmissible evidence to the jury, "[t]he trial judge must assess the prejudicial impact of the inadmissible evidence and assess whether the prejudice can be cured." *Carter v. State*, 366 Md. 574, 589 (2001). Here, we must evaluate the prejudicial impact of an inadvertent exposure of information to prospective jurors. As the trial court recognized in citing *Thompson v. State*, 119 Md. App. 606, 622 (1998), where "several of the jurors inadvertently saw the appellant handcuffed and shackled as he was being transported back to jail, . . . [but] already knew that the appellant was being detained during the trial[,]" it may be difficult to establish "that the jury was prejudiced in any way" by such an inadvertent sighting.

In such circumstances, individual *voir dire* is ordinarily appropriate to determine the existence of both potential and actual prejudice. "[W]hen a material and relevant fact regarding a juror's conduct is unknown or obscure and must be resolved before a trial judge has 'sufficient information[,]'" the trial judge has a "duty to conduct *voir dire sua sponte*, prior to ruling . . ." on a motion for mistrial. *Nash*, 439 Md. at 69 (citations omitted). Indeed, "where there are essential factual questions that must be answered before a judge has a sufficient quantum of information on which to base the exercise of her discretion, *voir dire* of the jurors is likely the only way that the judge may obtain access to the additional information he or she needs[.]" *Id.* at 86.

We recognize that an inadvertent exposure of prejudicial information to jurors "may implicate a defendant's constitutional right to a fair and impartial verdict," but we are also mindful that "declaring a mistrial is an extreme remedy not to be ordered lightly." *Id.* at 69. As a general rule, a mistrial is warranted "only when 'no other remedy will suffice to cure the prejudice.'" *Rutherford v. State*, 160 Md. App. 311, 323 (2004) (quoting *Webster v. State*, 151 Md. App. 527, 556 (2003)).

As set forth above, defense counsel initially asked the court to strike all thirty-five veniremen who merely had the *opportunity* to see the photograph. Stating that he did not believe a jury could be seated from the remaining veniremen, defense counsel alternatively moved for a mistrial. In the course of doing so, defense counsel expressed regrets about

having to start over with a new jury panel, about not concluding trial as scheduled, and about losing veniremen that he would like to have serve on the jury.

The trial court acknowledged defense counsel's concerns but declined to accept the multiple assumptions underlying his request for a mistrial, *i.e.*, that any panel member who may have had an opportunity to see the photo actually did see it, that the photo actually prejudiced those who did see it against appellant, and that there were not enough unaffected panel members to seat a jury. The court pointed out that the prejudicial impact of the photo was questionable because the jury was going to learn that within minutes of his encounter with Mr. Davis, appellant was arrested and was subsequently jailed on robbery and drug charges. Just as the jurors in *Thompson* already knew that the defendant whom they inadvertently saw wearing shackles was being detained during his trial, this jury could be expected to infer, correctly in this case, that the photo that they inadvertently saw was taken when appellant was booked on the charges for which he was on trial.

After the State turned over the photo in a manner that did not call attention to it, the trial court instructed, in language that also did not draw attention specifically to the photograph, any venireman who actually saw any "paperwork" on either the prosecution or defense side to raise his or her hand. Six of those who had not already been struck for cause indicated that they had seen appellant's photo on the prosecution table (*i.e.*, Jurors 8213, 8246, 8253, 8265, 8272, 8299). Of these six, only Juror 8213 had already been individually *voir dired*. The court immediately questioned those six individually. In addition to asking

about the photo, the court examined each regarding their responses to the unrelated *voir dire* questions that had prompted them to line up for individual *voir dire*. The trial court also gave defense counsel the opportunity to directly question all six about the photo.

We are not persuaded that the trial court erred or abused its discretion by questioning only those veniremen who said they saw the photo. In light of concerns, as acknowledged by defense counsel, about preserving the scheduled trial date and seating otherwise acceptable veniremen, the trial court acted appropriately to determine the actual extent of the prejudice. After striking Juror 8236 and identifying the other six who actually saw the photo, the court questioned each about its impact and allowed defense counsel to do so as well.

The reasonableness of this remedial *voir dire* is underscored by the fact that defense counsel, rather than objecting to this procedure, actively participated in it. Although he obtained a continuing objection after Juror 8213 described the photograph as a "mugshot," that objection was directed to prospective jurors who saw the photo and recognized it as a mug shot.

Significantly, defense counsel never objected or asserted in the trial court, as he does in this Court, that "it strains credulity that" among the fourteen remaining panel members who had already approached the bench before Juror 8236 alerted the court to the photograph, only one (Juror 8213) admitted to noticing it. Nor did defense counsel ask the trial court to question those fourteen individuals. When the court later asked whether

specific panel members were acceptable to the defense, defense counsel affirmatively answered "yes," without qualification, as the court seated eight different jurors who had approached the bench while the photo was visible (Jurors 8179, 8182, 8185, 8188, 8213, 8220, 8239, and 8253), including the two jurors who saw the photo and were individually questioned about it (Jurors 8213 and 8253). Defense counsel waited, until the trial court asked whether the entire jury was acceptable to the defense, to renew his earlier objection challenging veniremen who actually saw the photo on the ground that they recognized it as a "mug shot." In the absence of any request by defense counsel, the trial court did not err or abuse its discretion in failing to individually *voir dire* members of the venire who had an opportunity to see the photo but did not respond affirmatively when the court asked who saw anything on either the prosecution or the defense side.

We also reject appellant's contention that the trial court abused its discretion in denying a mistrial. Such an extreme remedy was not warranted given the thorough remedial *voir dire* and the apparent lack of prejudice. At worst, two of the jurors who served saw the photo and recognized it as appellant's booking photo. Both indicated that the photo would not affect their ability to be fair and to decide the case based on the evidence at trial. Moreover, as in *Thompson*, these jurors learned during trial that appellant had been arrested and booked on the charges for which he was on trial.

II. *Voir Dire* Regarding Occupations of Veniremen

Appellant next argues that the trial court abused its discretion in denying defense counsel's requests to *voir dire* members of the venire who failed to properly answer the portion of the jury questionnaire asking for their occupation. We again disagree.

The standards governing review of a trial court's conduct of *voir dire* have been summarized as follows:

> An appellate court reviews for abuse of discretion a trial court's decision as to whether to ask a *voir dire* question.
>
> A defendant has a right to "an impartial jury[.]" U.S. Const. amend. VI; Md. Decl. of Rts. Art. 21. *Voir dire* (*i.e.*, the questioning of prospective jurors) "is critical to" implementing the right to an impartial jury.
>
> Maryland employs "limited *voir dire*." That is, in Maryland, the sole purpose of *voir dire* "is to ensure a fair and impartial jury by determining the existence of [specific] cause for disqualification[.]" Unlike in many other jurisdictions, facilitating "the intelligent exercise of peremptory challenges" is not a purpose of *voir dire* in Maryland. Thus, 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[.]"
>
> On request, a trial court must ask a *voir dire* question if and only if the *voir dire* question is "reasonably likely to reveal [specific] cause for disqualification[.]" 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[.]"

Pearson v. State, 437 Md. 350, 356-57 (2014) (citations omitted). "The rule is . . . that questions not directed to a specific reason for disqualification and exclusion by the court

may be refused in the court's discretion." *Curtin v. State*, 393 Md. 593, 603 (2006) (citation omitted). *See also Washington v. State*, 425 Md. 306, 325 (2012) ("If the proposed question does not further the goal of uncovering bias among prospective jurors, the trial court will not abuse its discretion in refusing to pose the question.").

At the outset of *voir dire*, the trial court introduced the sixty veniremen to the charges, the parties, the attorneys, and possible witnesses. The court asked prospective jurors to respond to a series of standardized questions designed to discover possible bias. Among these were questions designed to uncover connections to law enforcement occupations. When the court asked for "any additions, corrections or modifications" to those questions, defense counsel requested additional information regarding the occupations of certain members of the jury panel.

> [DEFENSE COUNSEL]: Okay. Well with respect to the list, Your Honor, this juror profile list does not give us some of the information that we're entitled to by statute. Juror occupation, many of these jurors['] juror occupation is listed as blank. They may be unemployed, that employment status, it's not occupation. If they're a welder, if they're a detective, that's their occupation. Unemployed detective would be an answer, something to that effect. Others are listed very generally. Manager, things of that nature. Office manager on 8146. State of Maryland, that's the employer, it's not the occupation, 8174. And more, and then of course there's one guy, what's your occupation, none of your business. Well I'd like to know because it's a statutory part of my business. This is my business so I'd ask the Court when we have those people come up to answer other questions if we can get that answer from those people whose answers on the sheet are ambiguous. There may be, may be only just a few more (inaudible) of *voir dire* that we might want to call up just to get answers from people who didn't respond but by asking that question when people do come up we can eliminate most of those.

THE COURT: Okay. What would you like, State?

[PROSECUTOR]: [A]s to asking the jurors those two additional information in that [sic] which is additionally provided on the juror profile, the State believes that would be considered kind of invasive. The jurors answered the questions to the best of their ability when they submitted the questionnaire and we believe that's where it should stay.

THE COURT: Okay. So, yes, I'll address the jury information issue first. Yes, we don't control what information they're putting into the computer in terms of their identification. They know, those are prompted and they choose to fill it out or not. You're more than welcome for those that come up here that you want to know what their occupation is, I'll ask them the question. I'll ask them if there's a bias, or, you know, and then I turn to the attorneys and say do you have any other questions and you follow up on that. If you want [the] Court to strike, ask me to strike right after they've left, okay.

The trial court thereafter individually questioned several veniremen about occupational links to law enforcement, either through their own employment or a family member's, eventually striking several for cause. In addition, defense counsel was permitted to obtain occupational information from many other prospective jurors.

In this Court, appellant argues that the trial court erred in refusing to *voir dire* veniremen about incomplete or inadequate occupation information, then compounded that error by subsequently denying defense counsel's requests to question "certain jurors who had not approached the bench." In support, appellant points to two instances when defense counsel was denied occupational information.

The first exchange related to Juror 8098, as follows:

[DEFENSE COUNSEL]: Can we get number 8098 up here and tell us his occupation?

THE COURT: No. No.

[DEFENSE COUNSEL]: That's one of the things, one of the very few things the statute says that we're entitled to know.

THE COURT: Right.

[DEFENSE COUNSEL]: Occupation of the prospective juror.

THE COURT: Okay.

[DEFENSE COUNSEL]: In fact, it's not filled in because the person didn't take the time or had difficulty filling it in on the computer. That's why we have these opportunities to get the rest of the information we're entitled to at *voir dire*. I'm requesting that we get that information from number 8098 or strike him for cause.

THE COURT: Denied, and I already, you made that argument before we started jury selection and I said that the information provided by jury is what the potential juror gives to us. So and –

[DEFENSE COUNSEL]: Well then make it a different way then, let's strike the entire list since the Court seems to be ruling that the Clerk's Office is sending up defective and inadequate, insufficiently completed lists of jurors, prospective jurors, for people to be sorted through by the courts and by trial counsel because we are not being allowed to fill in the gaps up here the entire list is defective. I make a motion to strike the panel.

THE COURT: Okay, I'm going to deny that motion.

Later, defense counsel indicated that Juror 8098 was acceptable to the defense, and the State exercised one of its peremptory strikes to excuse him.

Appellant next maintains that the trial court erred in refusing "to inquire as to the occupation of Juror 8212," during the following exchange:

> [DEFENSE COUNSEL]: Prior page, 8212, no occupation. Move to have her re-examined up here.
>
> THE COURT: Which one?
>
> [DEFENSE COUNSEL]: 8212.
>
> THE COURT: You're back on page five?
>
> [DEFENSE COUNSEL]: I am, the Court's moving –
>
> THE COURT: 8212. Okay. Denied . . . .

Juror 8212, who was accepted by both defense counsel and the prosecutor, ultimately served on the jury. After the jury was sworn and recessed, defense counsel stated that he "want[ed] the record to reflect that our proceeding with this jury is not a waiver" and that "we are not waiving our objections to the insufficient, incomplete jury information that we had to work with as we selected."

Appellant contends that the trial court erred in precluding defense counsel from questioning panel members regarding missing or inadequate occupational information, because that information was essential to determine whether prospective jurors "met the minimum statutory qualifications for jury service." In appellant's view, "[t]he trial court abused its discretion when it failed to ask the question based on the erroneous belief that it was not a permissible question because it is for the jurors to 'choose to fill it out or not.'"

Title 8 of the Courts and Judicial Proceedings Article governs jury selection in criminal cases. Section 8-103 establishes qualification and disqualification criteria for jury service.[3] None of these criteria relate to occupation.

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[3] Maryland Code (1973, 2013 Repl. Vol.) § 8-103 of the Courts and Judicial Proceedings Article provides:

> (a) **Age, citizenship, and residency requirements**. – Notwithstanding § 8-102 of this subtitle, an individual qualifies for jury service for a county only if the individual:
>
> (1) Is an adult as of the day selected as a prospective juror;
>
> (2) Is a citizen of the United States; and
>
> (3) Resides in the county as of the day sworn as a juror.
>
> (b) **Disqualifying factors**. – Notwithstanding subsection (a) of this section and subject to the federal Americans with Disabilities Act,1 an individual is not qualified for jury service if the individual:
>
> (1) Cannot comprehend spoken English or speak English;
>
> (2) Cannot comprehend written English, read English, or write English proficiently enough to complete a juror qualification form satisfactorily;
>
> (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,

(continued...)

Maryland Code (1973, 2013 Repl. Vol.) § 8-212(a) of the Courts and Judicial Proceedings Article ("CJP § 8-212(a)") provides that, in addition to these statutory qualifications, each county may include in its juror qualification form, questions "consistent with the interest of the sound administration of justice[.]" CJP § 8-302(a) sets forth a basic juror qualification form, which includes "fill in the blank" questions about the "[o]ccupation of the prospective juror," "name of employer," and "[o]ccupation of spouse, if any." Under Md. Rule 4-312(c), "[b]efore the examination of qualified jurors, each party shall be provided with a list that includes each juror's . . . occupation and spouse's occupation."

To the extent appellant contends that the jury panel was not selected or summoned in compliance with Title 8, he waited too late to challenge the venire. CJP § 8-409 establishes "the exclusive procedure by which a party in a criminal case may challenge a jury on the ground that the jury was not summoned or otherwise selected in compliance with this title[.]" Under CJP subsection 8-409(b), a party who wishes to challenge the entire venire panel based on a "substantial failure to comply with a provision of this title in selecting the . . . trial jury," must do so "[b]efore examination begins in a criminal case, or, for good cause

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[3](...continued)

for a crime punishable by imprisonment exceeding 6 months.

(c) **Pardon of convicted individuals**. – An individual qualifies for jury service notwithstanding a disqualifying conviction under subsection (b)(4) of this section if the individual is pardoned.

shown, after a jury is sworn before it receives evidence."[4] Appellant did not request more occupational information until after the trial court completed the group *voir dire* and denied his request to bring Juror 8098 up to inquire about occupation. Defense counsel did not obtain a continuing objection and subsequently accepted the empaneled jury. The jury was sworn and had left the courtroom before defense counsel interjected that he did not intend to waive his objection to the lack of occupational information. Thus, appellant's challenge to the entire venire based on the absence of occupational information in some jury questionnaires came too late and was later waived.

But, even if appellant's challenge had been timely and the issue preserved, we are not persuaded that it would merit appellate relief. The statute does not support the claim made by defense counsel that he was entitled to obtain the occupation of every prospective juror in order to determine whether each met the qualifications for jury service. As noted, occupation is not one of the statutory criteria listed for jury qualification or disqualification under CJP § 8-103. Moreover, the trial court had already identified panel members with possible bias based on current or historical employment ties to law enforcement occupations.

[4]As explained in the Committee Note to CJP § 8-409(b): "[I]n subsection (b)(1) of this section, the term "voir dire", which formerly modified "examination", is deleted in accordance with the Council on Jury Use and Management recommendation as the term "is unnecessary and mystifying to potential jurors, litigants and other lay people". See also Douglas v. State, 9 Md. App. 647, 656 (concluding that because the challenge to array was not made "before any individual juror from that array [was] examined," the challenge to array was not timely raised). No proffer of "good cause" for a late challenge to array was made at trial or on appeal.

With respect to the lack of occupational information regarding Jurors 8098 and 8212, appellant has not established any prejudice, because Juror 8098 was excused by the State and Juror 8212 served on the jury after defense counsel accepted her without qualification.

In these circumstances, the trial court could fairly infer that defense counsel was not seeking additional occupational information in order to identify unqualified veniremen, but instead was "fishing" for information to use in making peremptory strikes. Indeed, when defense counsel took advantage of the trial court's permission to ask about occupations during individual *voir dire*, he made no attempt to strike a panel member solely on the basis of his or her occupation. Based on this record, the trial court did not err or abuse its discretion in refusing to pose occupational *voir dire* questions that did "not further the goal of uncovering bias among prospective jurors[.]" *See Washington*, 425 Md. at 325. Although not directly relevant to, or a factor in, our analysis, it would appear that defense counsel did secure for appellant a fair and impartial jury because it only convicted him of the one charge to which he essentially confessed and which was corroborated by the victim in the case.

III. Sufficiency of the Evidence

In his final assignment of error, appellant contends that the evidence was insufficient to establish that he possessed heroin "in sufficient quantity reasonably to indicate under all circumstances an intent to distribute," in violation of Maryland Code (2002, 2012 Repl. Vol.) § 5-602(2) of the Criminal Law Article ("CL § 5-602(2)"). In support, appellant

challenges the testimony of Detective Green, an expert in the sale, distribution, and identification of street-level narcotics. Specifically, appellant argues that the detective testified "only" that heroin is typically packaged "in gel caps with small Ziploc baggies" and then "summarily testified" that the heroin found on appellant was "packaged in a manner consistent with distribution," without articulating any factual basis for that conclusion.

We review a criminal conviction to determine whether, on the evidence presented, considered in the light most favorable to the State, "any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt." *Spencer v. State*, 422 Md. 422, 433 (2011); *see Jackson v. Virginia*, 443 U.S. 307, 319 (1979). Whether the evidence was legally sufficient to support a conviction is a question of law that requires this Court to make an independent judgment based on the evidence admitted at trial. *See Polk v. State*, 183 Md. App. 299, 306 (2008). "If the evidence 'either showed directly, or circumstantially, or supported a rational inference of facts which could fairly convince a trier of fact of the defendant's guilt of the offenses charged beyond a reasonable doubt[,]' then we will affirm that conviction." *Bible v. State*, 411 Md. 138, 156 (2009) (quoting *State v. Stanley*, 351 Md. 733, 750 (1998)). This standard "gives full play to the responsibility of the trier of fact fairly to resolve conflicts in the testimony, to weigh the evidence, and to draw reasonable inferences from basic facts to ultimate facts." *Jackson*, 443 U.S. at 319.

To establish possession of a controlled dangerous substance ("CDS"), the State must prove that the accused "exercise[d] actual or constructive dominion or control over" the

CDS. *See* CL § 5-101(u) (defining "possess"); CL § 5-601(a)(1) ("a person may not . . . possess . . . a controlled dangerous substance"). To prove an intent to distribute, there must be evidence that the accused intended to sell, exchange, transfer, or give away the CDS. M.P.J.I.-Cr. 4:24.1; *see* CL § 5-101(I), CL § 5-101(m), CL § 5-602(1). There is no minimum quantity of CDS required to establish such an intent to distribute. *See Collins v. State*, 89 Md. App. 273, 279 (1991).

Here, the record contains ample evidence to support the jury's finding that appellant intended to distribute the heroin he possessed. When appellant was apprehended, he had eleven gel caps of heroin on his person that, according to Detective Green, were packaged in a manner consistent with distribution. In a videotaped statement, appellant told the detective that, before he was arrested, he sold Mr. Davis four gel caps. Mr. Davis corroborated that he met with appellant for the purpose of buying heroin. This evidence provided a factual basis supporting the detective's expert opinion that appellant intended to distribute the heroin he possessed, and in turn, for the jury to find appellant guilty of possession with intent to distribute.

JUDGMENT AFFIRMED. COSTS TO BE PAID BY APPELLANT.