UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 1951

September Term, 2013

JASON DAVIS

v.

STATE OF MARYLAND

Eyler, Deborah S.,
Kehoe,
Davis, Arrie W.
(Retired, Specially Assigned),

JJ.

Opinion by Kehoe, J.

Filed: July 21, 2015

Appellant, Jason Davis, was convicted by a jury in the Circuit Court for Montgomery County of three counts of second-degree burglary, three counts of misdemeanor theft, and four counts of malicious destruction of property. Prior to trial, Davis moved to suppress evidence and to sever the cases against him. Both motions were denied.

He presents four questions for our review, which we quote:

1. Did the trial court err in denying the motion to suppress?

2. Did the trial court err in denying the motion for severance?

3. Did the trial court err in refusing to ask, during *voir dire*, if any of the prospective jurors (a) would be more likely to believe a witness called by the State than a witness called by the defense and (b) would be more likely to believe the testimony of an alleged victim because of the witness' status as a victim?

4. Did the trial court err in refusing to instruct the jury on mere presence as the scene of a crime in response to a jury question asking if the defendant's presence at the crime scene is enough to be found guilty of burglary?

For the reasons discussed below, we affirm the motions court's rulings. We reverse based on the trial court's refusal to ask a proposed *voir dire* question, and remand for a new trial. Accordingly, we need not reach the fourth issue.

FACTUAL AND PROCEDURAL BACKGROUND

We shall recount the facts presented at the pre-trial hearing, as those presented at trial have no bearing on the issues before us.

Shortly after midnight on December 27, 2012, Officer Derek Teichler of the Montgomery County Police arrived at Juanita's Restaurant off of Route 355 in Montgomery County responding to an alarm. He observed that the front door was pried open and maintained a perimeter until K9 Officer John Greene arrived.[1] The two cleared the building, and Officer Greene located a witness who had seen the incident from nearby Somerville Road.[2] Officer Teichler observed Officer Greene interviewing the witness at the scene. As a result of the interview Officer Greene issued a lookout for: a Ford van, possibly Econoline, with green or bluish block letters on it, and the word "furniture" written on it. The officers had difficulty locating Juanitas' owner, so Officer Teichler left the scene, and traveled toward Gaithersburg, where he believed the owner to be. As Officer Teichler was driving on Crabbs Branch Way, he passed an Econoline van with the words "Gary Furniture" written in block letters on the side. This was the only vehicle he passed while on Crabbs Branch Way.

As the vehicle fit the description of the lookout, Officer Teichler activated his emergency equipment and initiated a stop of the vehicle. The vehicle continued on for about a mile before stopping. There were two individuals inside the vehicle, and Officer Teichler

[1]Officer Greene's name is also spelled in the transcripts as "Green." We elect to use the spelling "Greene" as this is the spelling the officer used when he gave direct testimony.

[2]We note that Juanita's is located near the corner of Somerville Road and Redland Road in Rockville.

approached the driver, whom he identified as Davis, asked for his license and registration, and waited for backup to arrive. Davis provided an I.D. card to Officer Teichler, but not a driver's license. The inside of the vehicle appeared messy, and Officer Teichler could not identify anything which he thought might have come from Juanita's. After backup arrived, the witness was shown the vehicle and positively identified it as the one he saw nearby Juanita's during the burglary. Officer Teichler spoke with the passenger outside the vehicle, and found his answers to be evasive. The van was seized and its two occupants were detained and transported to the Rockville District Station.

Police obtained a search warrant for the vehicle and conducted a search. They recovered a black crow bar from the middle console of the van. During an interview the vehicle's passenger indicated that when Officer Teichler was following them, Davis told him to hide the crowbar because he had committed a burglary.

Davis was arrested on charges in connection with the Juanita's Restaurant break-in on December 27, 2012 and was released on the same day. Additional facts will be presented as they become relevant to our discussion.

DISCUSSION

I. The Motion to Suppress

Davis first asserts that the motions court erred in denying his motion to suppress evidence. He moved to suppress all the fruits resulting from Officer Teichler's stop of the

van, which he contended was made absent reasonable articulable suspicion. Davis further argued that, because there was no reasonable articulable suspicion to stop the van, there was not probable cause to arrest him, and everything that flowed from the stop and arrest should have been suppressed as fruit of the poisonous tree.

Following argument, the motions court found:

> I find that there is a preponderance of the evidence here that the officer had a minimum of articulable suspicion to stop this vehicle, and I think he had probable cause to stop this vehicle, based on the fact that it was a far different cry in the case that was cited to me with respect to just a black male with a black top.
>
> Here we have a very specific identification of a very specific vehicle, possible Econoline, and it was an Econoline, a van, which it was a van, and it had the word "Furniture" on the side, which is the most identifying mark that you could possibly have, and the close proximity, three-quarters of a mile from the scene of the burglary. So the officer acted properly in stopping the vehicle. I agree there's no evidence that he stopped it for any other reason. He was very candid that was the reason he stopped the vehicle.
>
> Then if you only have articulable suspicion, it certainly ripened into probable cause when the witness came to the scene and said that was the vehicle that he saw at the scene of the burglary.
>
> * * *
>
> We don't have a situation where somebody just says something happened, stop a vehicle. We have the officer saying that the door was pried open, we have a call for a burglary at Juanita's, and we have a lookout. Now we don't exactly know where the lookout came from or who put it out there, but I think the officers have a – it matches up, because the van matches the lookout, it's close proximity to where the burglary took place, and it all fits, especially when he sees the vehicle and he stops the vehicle.

Davis asserts that the initial stop was illegal, because Officer Teichler admitted it was not based on Davis' driving, but rather on the lookout disseminated by Officer Greene. Relying on *Price v. State*, 37 Md. App. 248 (1977), it follows, according to Davis, that the State should have produced some testimony at the motions hearing which would have indicated the factual basis upon which Officer Greene issued the lookout. Without such factual basis, Davis argues that Officer Teichler lacked reasonable articulable suspicion to stop the van.

We have described the nature of our review of a motion to suppress:

> When reviewing the denial of a motion to suppress, this Court looks solely at the record of the suppression hearing, extending great deference to the factual findings of the suppression judge with respect to determinations regarding witness credibility and the weighing of first-level facts. *Cooper v. State,* 163 Md. App. 70, 84 (2005) (citing *Alston v. State,* 159 Md. App. 253, 261-62 (2004)). Such determinations will not be disturbed unless clearly erroneous. *Cooper*, 163 Md. App. at 84 (citing *State v. Rucker,* 374 Md. 199, 207 (2003)). All facts must be viewed in the light most favorable to the prevailing party on the motion. *Id.*
>
> Although great deference is given to the trial court in relation to its factual findings, we perform "our own independent constitutional appraisal of the law as it applies to the facts of the case." *Cooper*, 163 Md. App. at 84 (citing *Alston*, 159 Md. App. at 261-62).

Collins v. State, 192 Md. App. 192, 214-15 (2010).

The Court of Appeals discussed the reasonable suspicion standard:

> A traffic stop is justified under the Fourth Amendment where the police have a reasonable suspicion supported by articulable facts that criminal activity is

afoot. *Whren,* 517 U.S. at 812–13; *Myers v. State,* 395 Md. 261, 281 (2006); *Cartnail,* 359 Md. at 284–85. Thus, a traffic stop violates the Fourth Amendment where there is no reasonable suspicion that the car is being driven contrary to the laws governing the operation of motor vehicles or that either the car or any of its occupants is subject to seizure or detention in connection with the violation of any other applicable laws.

Delaware v. Prouse, 440 U.S. 648, 650 (1979); *Rowe v. State,* 363 Md. 424, 433 (2001).

We have recognized that the reasonable suspicion standard requires the police to possess "a particularized and objective basis" for suspecting legal wrongdoing. *Myers,* 395 Md. at 281; *Nathan v. State,* 370 Md. 648, 660; *Stokes v. State,* 362 Md. 407, 415 (2001), quoting *United States v. Cortez,* 449 U.S. 411, 417–18 (1981). *See Cartnail v. State,* 359 Md. at 287 (requiring more than an "'inchoate and unparticularized suspicion or hunch'"), quoting *United States v. Sokolow,* 490 U.S. 1, 7 (1989). In assessing whether the articulable reasonable suspicion standard is satisfied, this Court has adopted the "LaFave factors":

> (1) the particularity of the description of the offender or the vehicle in which he fled; (2) the size of the area in which the offender might be found, as indicated by such facts as the elapsed time since the crime occurred; (3) the number of persons about in that area; (4) the known or probable direction of the offender's flight; (5) *observed activity by the particular person stopped;* and (6) knowledge or suspicion that the person or vehicle stopped has been involved in other criminality of the type presently under investigation.

Cartnail, 359 Md. at 289 (emphasis added), quoting 4 Wayne R. LaFave, Search and Seizure § 9.4(g), at 195 (3d ed. 1996 & 2000 Supp.). *See also Myers,* 395 Md. at 281; *Stokes,* 362 Md. at 420.

Lewis v. State, 398 Md. 349, 361-62 (2007).

In this case, Officer Teichler possessed a detailed description of the suspect vehicle because of the lookout Officer Greene placed minutes earlier. Officer Teichler encountered the suspect vehicle within one mile from the scene of the crime, with no other vehicles on the road at the time in the area. He knew that the lookout was placed in reference to the burglary at Juanita's, and had investigated the crime scene immediately prior to encountering the suspect van. Officer Teichler knew that Officer Greene placed the lookout because of the conversation he had with the witness at the crime scene. Further, Officer Teichler knew that the witness had seen the incident from Somerville Road. Viewed in totality, the above factors were sufficient to support a reasonable suspicion on Officer Teichler's part that the van he stopped was involved in the burglary.

Davis' reliance on *Price v. State*, 37 Md. App. 248 (1977) in support of his assertion that the State was required to present the source of the information upon which the lookout was based is misplaced. In *Price*, a police officer conducted a *Terry*[3] stop of an individual based solely upon a lookout issued via radio three weeks following a crime. *Id.* at 249-50. The lookout was particularized, even including the suspect's name and license plate number. *Id.* The stop initiated a process which ended with the discovery of a shotgun allegedly used in the crime. *Id.* at 250. This Court held that the State failed to meet its burden of specifying

[3] *Terry v. Ohio*, 392 U.S. 1 (1968).

the particular facts which permitted the stop. *Id.* at 253. We were particularly troubled by the fact that the State could not explain how they had obtained the information leading to the lookout. *Id.* at 254. In contrast, we know that the source of Officer Greene's lookout was an eyewitness who was in the area of Somerville Road at the time of the burglary. Officer Teichler was directly involved in the investigation of the crime and had just searched the crime scene. Officer Greene issued the lookout moments after he interviewed the witness, and not three weeks after the incident. Furthermore, our opinion in *Price* specifically distinguishes it from the present case. We held:

> The test for reliability of information received by a police officer immediately prior to a stop is not the same in a case like the present as that which is applicable when police officers converge upon the scene of a crime and, upon the basis of rapid interviews with the victim and/or witnesses, communicate to headquarters a request for a lookout describing the suspects and their means of escape. In such situations a "fair inference" can be made that the information was reasonably reliable and was related by unnamed informants at the scene.

Id. at 252. Here, we are presented with precisely the situation described above. Namely, a stop based on an interview of a witness immediately following a crime.

The reasonable suspicion upon which the van was initially stopped ripened into probable cause to arrest when the witness positively identified the van as being involved in the burglary. Accordingly, we hold that the motions court did not err in denying Davis' motion to suppress.

II. Severance

Davis was charged with burglary and related charges arising out of break-ins to five restaurants: Juanita's, Island Pride, Cuban Corner, Metro Coffee and Mobile Land[4]. All of the break-ins occurred between December 27, 2012 and January 10, 2013. All of these restaurants were located in close proximity to one another in the Rockville area. The State joined all of these charges into a single charging document for purposes of trial.[5]

In his motion to sever, Davis relied upon Maryland Rule 4-253[6] in asserting that it would be highly prejudicial for the counts related to each incident to be tried together. Specifically, Davis contended that, under *McKnight v. State*, 280 Md. 604 (1977) and

[4] This establishment is sometimes referred to as "Mobile Tree" in the record.

[5]Maryland Rule 4-203(a) governs the joinder of offenses and states:

> Multiple Offenses**.** Two or more offenses, whether felonies or misdemeanors or any combination thereof, may be charged in separate counts of the same charging document if the offenses charged are of the same or similar character or are based on the same act or transaction or on two or more acts or transactions connected together or constituting parts of a common scheme or plan.

[6]Maryland Rule 4-253(c) states:

> Prejudicial Joinder. If it appears that any party will be prejudiced by the joinder for trial of counts, charging documents, or defendants, the court may, on its own initiative or on motion of any party, order separate trials of counts, charging documents, or defendants, or grant any other relief as justice requires.

Wieland v. State, 101 Md. App. 1 (1994), that the evidence relating to each incident was not mutually admissible, and therefore severance was mandated.

In its response, the State proffered that video surveillance at Cuban Corner and Metro Coffee showed Davis wearing a distinctive jacket and that Davis was wearing that same jacket when he was arrested on December 27, 2012 for the Juanita's break-in. Video surveillance from Mobile Land showed Davis wearing the same shirt he wore when he was arrested for the Juanita's incident. Further, the State asserted that the burglar entered each restaurant by prying open a door with a crowbar or similar tool and then smashing open the cash register. Other cash, for example, a tip jar and money in a woman's purse, was not taken. The security video at Cuban Corner showed Davis using a crowbar, the same type of tool that the van's passenger said Davis directed him to hide after the Juanita's burglary. The Island Pride restaurant was located immediately next door to the Cuban Corner and was burglarized on the same night. The State contended that this evidence was mutually admissible in each of the cases, and, consequently, severance was not mandated.

The substance of the State's proffer is summarized on the table on the following page:

Restaurant:	**Date of Break-In:**	**Factual Links:**
Juanita's	December 27, 2012	Door pried open and cash register broken into; arrest photo shows Davis wearing the same jacket and/or shirt shown on the Cuban Corner, Metro Coffee and Mobile Land security videos; crowbar recovered
Island Pride	Late night of January 7th or early morning of January 8, 2013	Door pried open and cash register broken into; located immediately adjacent to Cuban Corner; break-in occurred the same night
Cuban Corner	Late night of January 7th or early morning of January 8, 2013	Door pried open and cash register broken into; security video show burglar using a crowbar; burglar wearing the same jacket that Davis was wearing when arrested for Juanita's break-in
Metro Coffee	January 9, 2013	Door pried open and cash register broken into; security video showed the burglar wearing the same jacket that Davis was wearing when arrested for the Juanita's break-in
Mobile Land	January 10, 2013	Door pried open ; security video showed the burglar wearing the same shirt that Davis was wearing when arrested for the Juanita's break-in

The motions court denied the motion to sever. It stated:

> The, all five burglaries were, as the State says, smash and pry. They were all commercial establishments. The period of time was within a short period of time; a two week period . . . December 27th 2012 to January 10th of 2013, which is just about exactly a two week period. Each one there is an indication that the door was pried and there was a smashing and that the intended prize was the cash register in each one, and coins and things were strewn about. And the State's theory is that a crowbar was used in each of the five smash - smash and pried burglaries.
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> The question is, is that common scheme of plan? The test is not could there be more similarities, the test is did they meet the minimum requirement for admissibility, for common scheme or plan. I believe when you look at five commercial establishments which the same thing was stolen in each one, and the State's theory the attempt to gain access was done the same way in each one; late at night after the businesses had closed, using a crowbar or some

> similar type of object or tool, and late at night, that it would fit the common scheme or plan exception.
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> In addition, I think it also meets the identity exception, because the theory in the State's case would be that this was the individual that did all of these because it had his signature on how he entered, what he was after, the time he entered, the type of establishment he went after, and the object was to take money from the cash register.
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> * * *
>
> [A]nd there's apparently nothing presented to the court that there's any eyewitnesses of a burglary, that it's necessary for the State, under common scheme of plan to offer all of these, and therefore the (unintelligible) value when prejudiced.

Maryland's approach to joinder and severance issues is well-established. Joinder is permitted if (1) the evidence regarding each offense is mutually admissible; and (2) the interests of judicial economy outweigh any other arguments against joinder. *See Garcia-Perlera v. State*, 197 Md. App. 534, 546–47 (2011); *Lee v. State*, 186 Md. App. 631, 670-71 (2009), *rev'd on other grounds*, 418 Md. 136 (2011). As a general rule, evidence is mutually admissible if it would be admissible as "other crimes" evidence if the cases were tried separately. *Garcia-Perlera*, 197 Md. App. at 547. Thus, courts look to Md. Rule 5-404[7] to

[7]Maryland Rule 5-404 provides:

> Other Crimes, Wrongs, or Acts. Evidence of other crimes, wrongs, or acts including delinquent acts as defined by Code, Courts Article, § 3-8A-01 is not admissible to prove the character of a person in order to show action in
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> (continued...)

resolve mutual admissibility questions. In the present case, the motions court concluded that evidence as to the various break-ins was mutually admissible because such evidence satisfied both the "common scheme or plan" and "identity exceptions." Davis asserts that the State's proffer did not meet the standard for either exception. We disagree. We begin by noting that whether evidence as to one crime is admissible in the trial of another is a question of law that we review *de novo. Wynn v. State*, 351 Md. 307, 317 (1998). If the evidence is held to be mutually admissible, then the circuit court exercises discretion to join or sever the charges, and its decision will be disturbed only where the court has abused its discretion. *Lee*, 186 Md. App. at 671.

The "common scheme or plan" exception in Md. Rule 5-404 comes in two varieties. The first is when the evidence of multiple criminal acts establishes a common *modus*

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[7](...continued)
conformity therewith. Such evidence, however, may be admissible for other purposes, such as proof of motive, opportunity, intent, preparation, common scheme or plan, knowledge, identity, or absence of mistake or accident.

There is at least one difference between a judicial decision to admit evidence of another crime in a trial and a judicial determination that joinder or severance of charges is appropriate. If the State wishes to introduce evidence of another criminal act to rebut, for example, the defense of mistake, the State must first establish by clear and convincing evidence that the other crime occurred and was committed by the defendant. *See Cousar v. State*, 198 Md. App. 486, 514 (2011). The State is not obligated to make such a showing in a hearing on a motion to sever. Instead, the facts are typically presented to the court by means of a proffer. *See*, *Wynn*, 351 Md. at 313–14; *Garcia-Perlela,* 197 Md. App. at 543.

operandi; the second, and less common variant, occurs when the prosecution seeks to show that one crime is '"part of a grand plan to commit others, such as a theft of nitroglycerine for use in blowing open a safe.'" *Reidnauer v. State*, 133 Md. App. 311, 323(2000) (quoting *McKinney v. State,* 82 Md. App. 111 (1990)). The State does not suggest that the "grand scheme" theory applies to this case.

In considering whether the evidence proffered by the State would be sufficient to establish a *modus operandi* common to all five burglaries, we find this Court's analysis in *Garcia-Perlera* to be instructive. In that case, the defendant was charged in a series of home invasions that occurred over the course of a year. The victim in each case was an elderly woman and each woman was tied up by her assailant in the course of the crime. This Court stated:

> While there are slight differences between the crimes in this case, the record evidence also reveals overwhelming similarities among them. Each incident involved the confrontational home invasion of an elderly woman living alone, accosted by a man the three surviving victims consistently described as Hispanic. The victims all resided along the River Road corridor in houses that were within walking distance of each other. All of the home invasions occurred on a weekday between Monday and Wednesday. All of the victims were "hog-tied" with their hands and feet bound together, and gagged. Three of the victims were detained in their basements. Police found items stolen from each victim during a search of appellant's apartment, and in three of the incidents recovered DNA consistent with appellant's DNA.

> Considering the totality of the circumstances, the numerous similarities between the cases are more than sufficient to establish a distinctive *modus operandi*, and the common facts could prove the alleged identity.

197 Md. App. at 548-49.

When we apply this reasoning to the facts before us, we reach the same result. The crimes in question took place over the space of two weeks. Entry into each premise was made at night, in the same manner, and the target, the cash register, was the same in each. Video surveillance evidence linked the clothing worn by the perpetrator in three of the break-ins to the clothing worn by Davis when he was arrested shortly after the first burglary occurred. Davis points out that prying a door open is not a unique way of breaking into a building and that burglars often seek to open cash registers. These are points well taken but, as *Garcia-Perlera* makes clear, the court's focus should be on the "totality of the circumstance." Consideration of all of the circumstances leads us to conclude first, that the evidence established a *modus operandi* common to all crimes and, second, that the evidence establishes that Davis was involved in each break-in.[8]

[8]The links between the crimes are the least strong as regards to the Island Pride burglary because there was no video surveillance evidence in that case. However, Island Pride was broken into on the same night as its next-door neighbor, Cuban Corner, and the same *modus operandi* was used in both cases. We believe that these connections are sufficient.

Moving on to the second prong of our analysis, namely, whether the interests of judicial economy outweigh any potential prejudice, we note that "once a determination of mutual admissibility has been made, any judicial economy that may be had will usually suffice to permit joinder unless other non-evidentiary factors weigh against joinder." *Conyers v. State*, 345 Md. 525, 556 (1997). As there was a judicial economy in trying Davis in one trial, instead of five separate trials, the second prong of our analysis is satisfied. Accordingly, the motions court did not err in denying Davis' motion to sever.

III. Voir Dire

Third, Davis asserts that the trial court erred in refusing to ask two questions in *voir dire*. The questions were: "[i]s there any member of the prospective jury panel who would tend to believe a witness called by the State more than they would believe the testimony of a witness called by the defense?" and "[w]ould any of you be more likely to believe the testimony of the alleged victim, because he or she, in this trial, has the status of being a victim and has accused the defendant of committing a crime?" These were questions 20 and 21 on the defense proposed *voir dire* list and we shall refer to these as the "State's witness question" and "victim question," respectively. Relying on *Moore v. State*, 412 Md. 635 (2010), Davis asserts that the court's refusal to ask these two questions constituted an abuse of discretion and requires reversal. The State agrees with Davis' position, and asserts that he is entitled to a new trial.

During *voir dire*, the Court asked, "is there any member of the perspective [*sic*] panel who would be more likely or less likely to believe the testimony of any witness simply because of the witness['] occupation? For example, a witness who is a police officer." When the court asked defense counsel whether there were any questions that were not asked which Davis wanted asked, the following colloquy occurred:

> [Defense Counsel]: Well, I would ask you to give number 20 on my list.
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> THE COURT: Twenty?
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> [Defense Counsel]: They, tend to believe a witness called by the State as opposed to a witness called by the defense.
>
> THE COURT: I've given they tend to believe the witness –
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> [Defense Counsel]: Okay.
>
> THE COURT: – because of their occupation. I'm not – I don't think I'm going to give that one. Do you want to note an objection to that?
>
> [Defense Counsel]: Yes.
>
> THE COURT: Consider it noted. Okay.
>
> [Defense Counsel]: Thank you. And then, 21, which is believing the testimony of the alleged victim, because they are a victim.
>
> THE COURT: The same thing. I'm not going to give that. So consider that objection noted.

The Court of Appeals has recently described the nature of *voir dire*:

> An appellate court reviews for abuse of discretion a trial court's decision as to whether to ask a *voir dire* question. *See Washington v. State*, 425 Md. 306, 314 (2012) ("We review the trial [court]'s rulings on the record of the *voir dire* process as a whole for an abuse of discretion[.]" (Citation omitted)).
>
> 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. *Washington*, 425 Md. at 312 (citation omitted).
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> Maryland employs "limited *voir dire*." *Id.* at 313 (citation omitted). 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[.]" *Id.* at 312 (citations omitted). Unlike in many other jurisdictions, facilitating "the intelligent exercise of peremptory challenges" is not a purpose of *voir dire* in Maryland. *Id.* at 312 (citations omitted). 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[.]" *Id.* at 315 (citation omitted).
>
> 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[.]" *Moore v. State*, 412 Md. 635, 663 (2010) (citation omitted).

Pearson v. State, 437 Md. 350, 356-57 (2014), *reconsideration denied* (Apr. 17, 2014). *Voir dire* is "left largely to the sound discretion of the court in each particular case. *Moore v. State*, 412 Md. 635, 644 (2010). "[A]ny proposed question related to the facts of the case, designed to uncover [venireperson] bias, [and] is directed to a specific cause for disqualification . . . must be asked." *Id.* at 650. Addressing whether a defense witness question is mandatory when requested, the Court of Appeals held:

> [T]he Defense-Witness question is mandatory in cases such as this one, because it falls within the very core of the purpose of *voir dire*, it is designed to uncover venireperson bias. The question specifically addresses whether a witness sponsored by the State would receive a "'presumption of credibility'" in direct contravention to a defendant's right to a fair and impartial trial. *Voir Dire*, as this Court has held numerous times, is supposed to uncover bias favoring one witness over another solely because of that witness's status or affiliation demonstrates bias. . . . [I]t is not enough to confine the inquiry to occupation, to assume a fair trial, it is necessary to extend the inquiry to whether a venireperson would also favor or disfavor a non-official witness, simply because of his or her status or affiliation with the State or defense.

Id. at 663-64.[9]

As discussed in *Moore*, Davis was entitled to have the court ask the State's witness question. The proposed question went to the heart of the fairness discussed in *Moore*, and was crafted in order to discover potential bias among the venire, either for or against a witness based purely on their affiliation with either the State or the defense. In declining to ask the State's witness question, the court made reference to the question he had already asked regarding whether the venire would be more likely to credit a witness' testimony because of their occupation. This question, while helpful, does not fairly cover the topic raised in Davis' proposed State's witness question. Specifically, it ignores whether a

[9]The *voir dire* questions at issue in *Moore* were: "Would any prospective juror be more likely to believe a witness for the prosecution merely because he or she is a prosecution witness?" and "Would any prospective juror tend to view the testimony of a witness called by the defense with more skepticism than witnesses called by the state, merely because they were called by the defense?" *Moore v. State*, 412 Md. 635, 642 (2010).

prospective juror might credit a State's witness over a defense witness, regardless of their occupation. Accordingly, we are persuaded that the circuit court abused its discretion and committed reversible error in failing to ask the State's witness question. We reverse.

The issue regarding the victim question is subsumed in the above ruling. As the victim would be an individual called by the State in support of its case, the proposed State's witness question fairly encompasses the victim question. Consequently, the more circumscribed victim question need not be asked, as its content is fairly covered by the proposed State's witness question.

In conclusion, we affirm the rulings of the motion courts denying appellant's motion to suppress evidence and his motion for severance. As we have explained, the trial court's refusal to ask the State's witness question to the voir dire panel requires reversal of appellant's convictions.

THE JUDGMENT OF THE CIRCUIT COURT FOR MONTGOMERY COUNTY IS REVERSED AND THE CASE IS REMANDED FOR PROCEEDINGS CONSISTENT WITH THIS OPINION.

COSTS TO BE PAID 2/3 BY APPELLANT AND 1/3 BY MONTGOMERY COUNTY.