Circuit Court for Montgomery County
Case No. C-15-CR-23-000885

UNREPORTED*

IN THE APPELLATE COURT

OF MARYLAND

No. 1960

September Term, 2024

JERMAINE L. PALMER

v.

STATE OF MARYLAND

Reed,
Shaw,
Kenney, James A.
(Senior Judge, Specially Assigned)

JJ.

Opinion by Shaw, J.

Filed: June 18, 2026

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

Appellant, Jermaine L. Palmer, was charged in the Circuit Court for Montgomery County with seven counts related to assaults on three law enforcement officers. Appellant elected a trial by jury, and he was found guilty of five of the seven counts. Appellant was sentenced, in the aggregate, to twenty-one years' incarceration, and upon release, five years' supervised probation. Appellant timely appealed and presents two questions for our review, which we have reordered:

1. Did the trial court err in refusing to propound Mr. Palmer's requested *voir dire*?
2. Did the trial court err in denying Mr. Palmer's [motion(s)] for mistrial?

We hold that the circuit court did not err or abuse its discretion, and we affirm the judgment.

BACKGROUND

On June 30, 2023, Officer Carl Greer responded to a call for a "disorderly person," later identified as Appellant, causing disturbances in the 7900 block of Spiceberry Circle in Gaithersburg, Maryland. Appellant was found shirtless, shoeless, agitated, and combative. Officer Greer suspected that Appellant was under the influence of drugs and after speaking with Appellant, he decided to wait for backup. Officers Holden Rafey, Michelle Barger, James Paglianete, Benjamin Markwell, and Christopher Wolff responded, and the officers convinced Appellant to leave the premises. Later, Officers Greer, Rafey, and Barger later learned that Appellant allegedly entered a resident's apartment prior to their initial arrival. After speaking to the resident, Officer Rafey determined that Appellant should be taken into custody. Officers located him on Washington Grove Lane. When Officer Greer attempted to detain Appellant, Appellant struck him in the face and fled, which led to a foot pursuit involving multiple officers.

Appellant was eventually apprehended at a nearby McDonalds, where Appellant punched Officers Paglianete and Markwell. Appellant was taken into custody, treated by paramedics with a sedative for signs of paranoia and "excited delirium," and then transported to a hospital. He was charged with first-degree assault, second-degree assault on a law enforcement officer, two counts of second-degree assault, fourth-degree burglary, resisting arrest, and possession of Dipentylone.

Appellant was tried by jury and convicted of five of the seven counts.

Voir Dire

Prior to trial, Appellant proposed several *voir dire* questions to the court. During a bench conference, before the commencement of jury selection, Appellant placed his requests on the record.

> **[DEFENSE COUNSEL]**: Defense requested No. 20. Is there any member of the [prospective] jury panel who feels that because a charge is prosecuted by the State's Attorney, the charge is probably correct and the defendant is probably guilty?
>
> **THE COURT:** Well, I've been in the criminal justice system for 36 years. And that means 51 percent of the charges are accurate? I think that might be fair. But so where does that get you?
>
> **[DEFENSE COUNSEL]:** Well, I think that goes –
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> **THE COURT:** In this case, this specific case?
>
> **[DEFENSE COUNSEL]:** I'm sorry. I didn't mean to interrupt the Court.
>
> **THE COURT:** No. That means are you ignoring the presumption of innocence and deciding each case on its own merits or just throwing them in with the other 51 percent?
>
> **[DEFENSE COUNSEL]:** I think the question goes inherently to whether or not there is a belief that when a charge is brought by the State Attorney's Office, does that then somewhat trump the presumption of innocence and lean towards guilt, especially in light of the fact that counsel has requested a more lengthy explanation of the presumption of innocence in its initial voir dire, so I would request that that question be asked.

THE COURT: All right. I won't ask that. I don't know what a case law requires it [sic]. But September 12th, the Supreme Court will be ruling on whether or not to use voir dire for the intelligent use of strikes. Come September 12th, I think you get that question.

[DEFENSE COUNSEL]: Defense Exhibit 21, that alludes to what counsel just mentioned, Your Honor. The Court does have, in its voir dire, 11, has anyone formed an opinion about guilt or innocence of either defendant or the fact or issue to be decided? And then 18, the defendant is presumed innocent of the charges. Does anyone disagree with the Statement of law? I would ask that that question be expanded to encompass defense requested 21, which is specifically as to the Fifth Amendment of the United States provides the defendant need not testify, need not offer evidence.

THE COURT: If I just said present evidence or testify himself, I'll add that.

[DEFENSE COUNSEL]: You have that, Your Honor.

THE COURT: Oh, I do.

[DEFENSE COUNSEL]: But it also combines because he is presumed innocent. So if Your Honor is inclined to include that in its question.

THE COURT: I haven't told the jury yet that he's presumed innocent?

[DEFENSE COUNSEL]: You have, Your Honor.

THE COURT: If you're asking me to repeat it. All right. I'll overrule that request.

[DEFENSE COUNSEL]: Defense requested 23, is there any member of the special jury panel who thinks the defendant should be required to prove his innocence? So this –

THE COURT: Objection noted.

Thereafter, the court proceeded to ask the following related questions during voir dire:

THE COURT: Has anyone already formed an opinion about the guilt or innocence of the defendant or about any fact, issue to be decided based on the little bit I've read to you of the allegation or for some other reason you've formed an opinion? Any reason whatsoever?

***

Defendant is presumed innocent of the charges. Does anyone disagree with that statement of law?

(No affirmative response.)

The State is required to prove a defendant's guilt beyond a reasonable doubt. At the end of the case, I'll read you instruction on that law. Does anyone disagree with that statement of law that the State is required to prove a defendant's guilt beyond a reasonable doubt?

> (No affirmative response.)
>
> Does anyone feel the State must prove defendant's guilt beyond all doubt into a mathematical certainty?
>
> (No affirmative response.)
>
> ***
>
> Defendant's only responsibility is to show up, and Mr. Palmer clearly has done that. He has no obligation to present evidence. He has no obligation to testify. Would anyone, does anyone here believe the defendant should be required to present evidence or to testify?
>
> ***
>
> I've asked you a lot of questions. Does anyone have any other reason why they think they could not sit as a fair and impartial juror in this case for reasons not addressed by any of the questions that I've asked?

At the close of *voir dire*, the court inquired whether the parties were satisfied with the jury. Appellant stated, "No, Your Honor. Defense is satisfied subject to prior objections."

Motions for Mistrial

On the second day of trial, following a court recess, Appellant informed the court that he observed a Sheriff's deputy, wearing a "thin blue-line patch" on the front of his uniform the day before, talking on his radio. Appellant stated that the deputy was seen by the jury, shaking Officer Greer's hand when he exited the witness stand. Appellant added that he observed another deputy wearing two "thin blue-line patches" on his vest earlier that day. Appellant moved for a mistrial based on the displayed "messaging," pursuant to *Smith v. State*, 481 Md. 368 (2022).

The court inquired about the delayed disclosure, and Appellant stated the initial patch was seen towards the end of the previous day and that Appellant could not recall when the specific deputy began their shift. The court asked about the patch's size and appearance, and Appellant stated the patch worn by the deputy the day before was "fairly large" and identical to the one currently worn by a deputy in the courtroom. Appellant then

indicated another deputy wearing the same patch. Appellant asked the officer to stand and if Appellant could approach him. The court expressed that it could not see the patch due to its small size, but, nevertheless, ordered the deputy to remove it. Appellant's counsel admitted she could not see the patch, but noted the patch seen the day before was larger and more prominent. The court disagreed, finding the jury is "very far from the sheriffs," and that jurors and deputies did not interact.

The court offered to voir dire the jurors, and Appellant declined.

> **THE COURT:** All right. I'll find that you've waived it by not raising it in a timely manner. I would have happily addressed it as I just did with the sheriff in the courtroom today. I'll further find that you're waiving it by not having me even voir dire the jury if they have seen any type of symbolism, or anything, but I will give a jury instruction if you so request me to do so about if they had seen anything, and I'll consider such.
>
> **[DEFENSE COUNSEL]:** I will submit a –
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> **THE COURT:** So I'll deny the motion.
>
> **[DEFENSE COUNSEL]:** – proposed jury instruction, Your Honor. I just do want to note for the Court my concern about – and I understand the Court has denied my motion, but just for the purposes of the record – the concern for counsel about voir dire-ing each and every juror is that, Your Honor, I think that we see this all the time – it then runs the risk of highlighting the issue. I would request that the Court – because again, this was seen later in the day yesterday. As soon as I saw it today at the appropriate break, I then reviewed case law, and I'm raising it to the Court. So I would respectfully disagree with the –
>
> **THE COURT:** I can ask it in a generic, general way but – if they've seen anything. Well, you sit on it. Think about it tonight. Okay?
>
> **[DEFENSE COUNSEL]:** Thank you, Your Honor.

Before the jury re-entered the courtroom, Appellant asked the court to communicate with the Sheriff's office. The court agreed and left the bench to make the call. Upon the court's return, the court stated the following:

> **THE COURT**: All right. We're back on the record. I did talk to the elected sheriff. He said he's addressing it immediately. So if you all could get on

> your radio to make sure no one comes up here with a patch on. All right. Thank you.

The trial continued and following Officer Wolff's testimony, Appellant renewed his motion for a mistrial. Appellant stated that an additional deputy had come into the courtroom wearing a "thin blue-lined" patch during cross-examination. The court asked the deputy whether he had a patch on, and whether he received a message to remove them. The deputy stated he did have a patch on, and that he was unaware of the message. The courtroom clerk notified the court that when the deputy walked in, he was pulled to the side and told to remove it. The court collected the patch and entered it as a court exhibit.

Appellant attempted to reiterate his grounds for a mistrial, but the court interjected asking, "can you see, where you're standing, a thin blue line on this?" Appellant's counsel stated she could not; that she has "extremely poor eyesight"; and, when asked, confirmed she does wear "corrected lenses." When asked, she stated she stood a "similar distance" as the jury from where the deputies were. In response, the court then took a tape measure and recorded seventeen feet and five inches between the bench and Appellant, and an excess of twenty-five feet between the juror box and the deputy's position. Appellant noted to the court that the deputies were not "stagnant" in the court room, and that there were additional patches that were "fairly visible." The court disagreed:

> **THE COURT:** Okay. Well, I still have no memory, and I've not been told of anywhere the sheriffs who had a patch on came anywhere near any of the jurors. I have not been shown any. And I'm happy to do further digging if you want any assistance, I will do so, where any of the patches were bigger than the one that I took from the current sheriff in the Courtroom. So I still don't believe that any of them saw it. I don't believe they could see it. And it's faded. I cannot see it from a couple of feet away, anything that makes it a thin, blue line. It seems to be a dark patch.
>
> Can I have it, please, sir? It's a white and black American flag. And so I would never have known that this is a "thin, blue line" symbolism

> anyway, much different than a mask that was worn in the appellate case. And I also renew my offer to voir dire and any jurors if they think they have seen anything about that, but I don't think it would be possible for them to see anything or to get any type of meaning from anything on here that is faded in, a dark patch on a dark vest that the sheriffs were wearing.
>
> So I will deny the request again.

Appellant then requested to reserve on the court's prior offer to conduct a general *voir dire* of the jury, which the court granted.

The next day, the court and the parties discussed proposed jury instructions. During the course of the discussion, Appellant raised the issue again.

> **[DEFENSE COUNSEL]:** I will just tell you a couple things that I need to place on the record, and just place a couple items on the record. I think there is – there appears to be a Sheriff with a patch, and he also has a water bottle, the [thin] blue line was a, originally, I think, in approximately 2021, it is a direct result of the Black Lives Matter movement after the murder of George Floyd in 2021.
>
> Chief Judge Morrissey, shortly thereafter, in 2021, banned the [thin] blue line patch for all district courts in the State of Maryland.

The court asked about the patch's appearance, and Appellant asserted it had the "same emblem," "black with the white and then the [thin] blue line." The court expressed it could not see the patch clearly, and asked Appellant to approach the bench to view it. Appellant noted the patch on record was smaller than the others, especially the larger one on the initial deputy's uniform from the first day of trial. The court suggested bringing the initial deputy and patch forward to complete the record at the close of trial.

Appellant emphasized that his challenge was based on the nature of the offenses charged "elicit[ing] certain feelings about law enforcement" and their interactions with the community as well as the "continuing sense of impropriety" of the displayed patch despite the court's prior instructions to the Sheriff's office.

Appellant then asked the court to examine the patch on the deputy present in the courtroom and his water bottle for the record, and the court agreed. The court and Appellant disagreed on whether the flag shown was the Maryland or American flag and if it included a "thin blue line." Appellant then requested the deputy to come forward.

> **THE COURT:** Right. What's on your water bottle? I want to make sure everything's clean, because I talked to Max about this. I want to make sure I don't have a mistrial.
>
> **THE SHERIFF:** Yes, they told us as far as arm or on our personal, which I took off, but it's on my –
>
> **THE COURT:** What's on your water bottle?
>
> **THE SHERIFF:** Yes, I have a blue line on my bottle, but it was –
>
> **THE COURT:** Why would you do that when we have this issue?
>
> **THE SHERIFF:** I didn't even realize it until I got up here, she looked at my, my water bottle –
>
> **THE COURT:** You got to put that back in the lockup and –
>
> ***
>
> **THE COURT:** I don't know flags. This is all on me, my doing, is there any symbolism on your flag right there, your American one? Is that a blue line?
>
> **THE SHERIFF:** Yes, that I took an oath to protect the Constitution of the United States, so I decided to wear an American flag on (unintelligible) Department of Maryland flag.
>
> **THE COURT:** Okay. Is it – but is that symbolism, the American flag? Is it a blue line flag?
>
> **THE SHERIFF:** No, there's no blue line on it.
>
> **THE COURT:** Okay. So it's just a regular American flag and that's just a regular Maryland flag.
>
> **THE SHERIFF:** Correct.
>
> **THE COURT:** Okay.
>
> **THE SHERIFF:** It's just in the color to match the vest, so I don't –
>
> **THE COURT:** So it kind of fades in the back. No, that's cool. All right. I don't know what I can do about that.

The court and the parties further discussed jury instructions, followed by Appellant's renewal of his motion for mistrial.

> **[DEFENSE COUNSEL]:** Your Honor, I know that the Court understands this for the purposes of the appellate record in light of the additional insignia that was in the courtroom prior to the entry of the jury, given the counsel's argument from yesterday, counsel would request a mistrial.
>
> **THE COURT:** For a water bottle while I'm talking to counsel? Denied.

Following a court recess, the court, during a bench conference, asked, again, whether Appellant would like the jurors to be individually voir dired. Appellant declined. Thereafter, the court stated the Sheriff's office was contacted to request the appearance of the initial deputy.

> **THE COURT:** So I've asked the Sheriff to see if we can have him here at 2 o'clock with that patch to make the record complete.

The court then gave the jury instructions, and the parties gave their closing arguments.

Appellant renewed his request for a mistrial, following closing arguments, on the grounds that one of the previous deputies "kept shaking his head back and forth," "rolling his eyes," and "on his phone," during counsel's closing arguments. Appellant added that another deputy stated to Appellant's counsel, outside the courtroom, that he was not wearing the "symbol," but that he "swore to take an oath" wherein "he remains to have the patch on." Appellant also asserted the "continued wearing" of the "thin blue line" patch as an additional basis. Appellant argued the repeated conducts made it impossible for him to have a "fair and impartial trial." The court asked Appellant, "Well, why don't we talk to [the] jurors individually to see if they've seen anything?"

Appellant declined, stating it "poisons the well," and was not the appropriate remedial measure under *Smith*. The court denied Appellant's motion:

THE COURT: All right. Well, kind of tying my hands, because before granting the ultimate sanction of a mistrial, courts try to see if anything lesser is available, and not being able to even inquire as to what, if anything, was seen by anyone, or anything untold by any of these jurors, I don't know how I can do what I'm obligated to do, see if there's any lesser remedy.

In fact, there's a case out there where a judge inappropriately granted a mistrial and I don't want to do that, so I will deny your request based upon something the Court did not see of any headshaking or eyerolling, which is the only additional facts that have been provided, but I will say that happens in countless cases with people in the courtroom, and I mean, I'm facing out. You know, I'm not always looking out at each individual, but I did not see that during your closing whatsoever, but so thank you for making the Court aware of that.

And can I bring the jury in now?

The court recessed following the dismissal of the jury for deliberations. During this time, within the courtroom and the parties present, the court requested Sheriff Swimford to appear before the bench.

THE COURT: I'm sorry, please sit down. All right. We are back on the record. Attorneys are present, defendant is present, jury is obviously out deliberating. Is Sheriff Swinson (phonetic sp.)?

THE SHERIFF: Swimford, sir.

THE COURT: I apologize. Swimford?

THE SHERIFF: Yes, sir.

THE COURT: Come on up. You're not in trouble with me or anything, I just need to make the record clear, because we might have something go up on appeal. You one of the guys that had the patch on on Wednesday [sic]?

THE SHERIFF: Yes, sir.

THE COURT: Do you have that patch here with you?

THE SHERIFF: I do, sir.

THE COURT: Can I see it?

THE SHERIFF: Yes, sir. May I approach?

THE COURT: You must approach. All right. For the record, it's the same one that was – same length and size as the previous one that's in the record. Does anybody want me to make this one part of the record also?

[DEFENSE COUNSEL]: No, Your Honor.

[THE STATE]: No.

The court also asked whether the parties had any questions for Sheriff Swimford, in which both parties declined. The court then asked Sheriff Swimford where he was seated on Wednesday within the courtroom. He confirmed he was seated in the back corner on that day of trial.

On August 5, 2024, the jury convicted Appellant of five of the seven counts: first-degree assault, second degree assault against a law enforcement officer, second-degree assault, resisting arrest, and possession of Dipentylone. He was sentenced, in the aggregate, to twenty-one years' incarceration, and upon release, five years' supervised probation. Appellant timely appealed.

STANDARD OF REVIEW

"An appellate court reviews for abuse of discretion a trial court's decision as to whether to ask a *voir dire* question." *Mitchell v. State*, 488 Md. 1, 16 (2024) (quoting *Lopez-Villa v. State*, 478 Md. 1, 10 (2022); *Pearson v. State*, 437 Md. 350, 356 (2014). "[T]he [f]ailure to allow questions that may show cause for disqualification is an abuse of discretion constituting reversible error." *Lopez-Villa*, 478 Md. at 10 (citation omitted).

The "decision to grant a mistrial lies within the sound discretion of the trial judge[.]" *Carter v. State*, 366 Md. 574, 589 (2001). "This court reviews a trial court's decision to decline to grant a mistrial under an abuse of discretion standard." *Bynes v. State*, 237 Md. App. 439, 456 (2018) (citation and emphasis omitted). However, the question of whether an event or practice was inherently prejudicial is a question of law reviewed *de novo*. *Smith v. State*, 481 Md. 368, 390 (2022); *Belton v. State*, 483 Md. 523, 541–42 (2023) ("We review questions of law and constitutional claims *de novo*.").

DISCUSSION

I. The trial court did not abuse its discretion in declining to propound Appellant's voir dire questions.

Appellant, in reliance of *Kazadi v. State*, 467 Md. 1 (2020), argues the trial court abused its discretion in refusing to propound his requested *voir dire* questions. Appellant asserts the court's *voir dire* did not sufficiently examine the jurors regarding the presumption of innocence and its relationship to the State's continuing burden of proof. Appellant asserts that his question twenty sought to potentially identify jurors who incorrectly or negatively perceived a defendant's presumption of innocence before or during trial. He argues the court failed to connect adequately this concept with Appellant's right not to testify or present evidence, and whether jurors believe Appellant must do so. He argues that question twenty-one sought to "explain the source and gravity" of these concepts, and question twenty-three linked them together and drew out the necessary conclusions.

The State argues that the court soundly exercised its discretion in declining to ask Appellant's *voir dire* questions and the court's *voir dire* fulfilled its obligations pursuant to *Kazadi*.[1] The State contends the court does not have to provide a "holistic constitutional narrative" during *voir dire*, nor ask verbatim Appellant's questions. The State argues the

[1] The State in its response also argued that Appellant failed to preserve his objections to his proposed questions twenty-two and twenty-four in the record nor cites them in his brief. Based on the record, Appellant did not raise these two questions to the trial court nor argues for them in his brief, therefore, this court's review, *infra*, will rest on the contested questions 20, 21, and 23. *See generally* Md. Rule 4-323(c); *see Foster v. State*, 247 Md. App. 642, 647 (2020), *cert. denied sub nom., State v. Foster*, 475 Md. 687 (2021) ("[t]o 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.").

language used was "speculative or already fairly encompassed" in the court's questions and sought to "probe juror's abstract beliefs about the legal system." The State maintains the *voir dire* process was "comprehensive and efficient." The State argues the court asked additional questions concerning the prospective juror's capacity to decide a case based solely on evidence and law, whether they possessed pre-existing opinions about the case, and whether they believed law enforcement always acts properly.

"The Sixth Amendment to the United States Constitution and Article 21 of the Maryland Declaration of Rights guarantee criminal defendants the right to a fair and impartial jury." *Mitchell*, 488 Md. at 8. "To empanel an impartial jury, a trial court examines 'prospective jurors through questions propounded by the judge (or either of the parties, if allowed by the judge) to determine the existence of bias or prejudice' through the process known as *voir dire*[.]" *Muldrow v. State*, 259 Md. App. 588, 605 (2023) (quoting *Charles v. State*, 414 Md. 726, 733 (2010)). This process aids in ensuring impaneled jurors do not hold "biases that are directly related to the defendant, [or] the crime(s) with which the defendant is charged[.]" *Mitchell*, 488 Md. at 8. "The 'extent of the examination [of potential jurors] rests in the sound discretion of the court,'" but "parties to an action triable before a jury have a *right* to have questions propounded to prospective jurors on their *voir dire*, which are directed to a specific cause for disqualification, and failure to allow such questions is an abuse of discretion constituting reversible error." *State v. Ablonczy*, 474 Md. 149, 157 (2021) (quoting *Langley v. State*, 281 Md. 337, 341 (1977) then *Casey v. Roman Cath. Archbishop of Balt.*, 217 Md. 595, 605 (1958)).

In Maryland, "*voir dire* is limited to questions designed to elicit bias that would be cause for a juror's disqualification from service, not questions that would assist counsel in using peremptory strikes." *Muldrow*, 259 Md. App. at 605 (quoting *Pearson*, 437 Md. at 356–57); *Collins v. State*, 463 Md. 372, 404 (2019). A trial court, upon request,

> 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 that are directly related to the crime, the witnesses, or the defendant.*

Collins, 463 Md. at 376–77 (citation modified) (emphasis added).

In *Kazadi v. State*, the Maryland Supreme Court reexamined, for the first time in fifty-five years, its ruling in *Twining v. State*, 234 Md. 97 (1964).[2] *Kazadi v. State*, 467 Md. 1, 7 (2020). Petitioner Tshibangu Kazadi was charged with multiple offenses including first degree murder. *Id*. at 8. Prior to trial, he submitted proposed *voir dire* questions to the court and requested that the court ask, "whether any prospective jurors were unwilling or unable to follow jury instructions on the presumption of innocence, the burden of proof, and the defendant's right not to testify." *Id*. The trial court declined his request. *Id*. Petitioner was convicted. He noted an appealed to this court and we affirmed his conviction. *Id*. The Maryland Supreme Court granted his petition for a writ of

[2] In *Twining v. State*, the Maryland Supreme Court held the trial court's refusal to propound the petitioner's proposed question of whether the prospective jurors "would give the accused the benefit of the presumption of innocence and the burden of proof" was not an abuse of discretion. 234 Md. at 100. The Court found, during a time where jury instructions were considered "only advisory," that the questions were encompassed in subsequent jury instructions and emphasized that generally it was "inappropriate to instruct on the law" or ask of the jurors' capacity to follow or apply it during that stage of the case. *Id*.

certiorari and reversed the conviction. *Id*. at 8, 48. The Court held that "on request, during *voir dire*, a trial court must ask whether any prospective jurors are unwilling or unable to comply with the jury instructions on the fundamental principles of presumption of innocence, the State's burden of proof, and the defendant's right not to testify." *Id*. at 9. The Court stated that, contrary to the holding of *Twining* "not all jurors are willing and able to follow jury instructions on the presumption of innocence and the burden of proof." *Id*. at 36–37. While jury instructions given at the conclusion of trial, are informative of a defendant's rights, they cannot cure a juror's "inability to understand," "unwillingness to follow instruction," or adversity toward these rights, nor can it highlight this "to the attention of the trial court and the parties – only *voir dire* questions can." *Id*. at 38–39. The Court held that, upon request, *voir dire* questions encompassing these fundamental rights assist in protecting a defendant's right to a fair trial and impartial jury, and warrant responses that "give rise to grounds for disqualification." *Id*. 41–42. The Court held, consistent with *Collins*:

> [T]he belief that a defendant must testify or prove innocence, or an unwillingness or inability to comply with jury instructions on the presumption of innocence, burden of proof, or a defendant's right not to testify, *otherwise would constitute a bias related to the defendant*.

Id. at 45 (emphasis added); *see Collins*, 463 Md. at 376–77. The Court concluded:

> [O]n request, a defendant should be entitled to *voir dire* questions that are aimed at uncovering a juror's inability or unwillingness to honor these fundamental rights . . . [to] help ensure that a juror's inability or unwillingness to follow instructions involving these three important fundamental rights will be discovered before trial, and that all defendants . . . will have the opportunity to move to strike prospective jurors for cause on the ground of an unwillingness or inability to adhere to these fundamental rights.

Id. at 46. The Court held that a trial court is not required to ask these questions unless "a defendant requests them," nor is it required to "use any particular language when complying with a request[.]" *Id.* at 47. The questions need only "describe the fundamental right at stake and inquire as to a prospective juror's willingness and ability to follow the trial court's instruction as to that right." *Id*. In analyzing whether the omission of a requested *voir dire* question will frustrate the purpose of *voir dire*, "an appellate court looks at the record as a whole to determine whether the matter has been fairly covered." *Washington v. State*, 425 Md. 306, 313–14 (2012).

In the instant case, Appellant contends that questions 20, 21, and 23 were not encompassed by the trial court's *voir dire* questions. Appellant asserts the trial court's questions failed to link the principles of the presumption of innocence, the State's continuing burden of proof, and a defendant's right not to testify or present evidence, together for a full inquiry of the jury panel.

We note and, therefore, provide below, Appellant's proposed *voir dire* questions, and the court's related instructed *voir dire* questions:

Appellant's Requested Questions	**Trial Court's Question**
20. Is there any member of the prospective jury panel who feels that, because a charge is prosecuted by the State's Attorney's Office, the charge is probably correct and the Defendant is probably guilty?	18. The defendant is presumed innocent of the charges. Does anyone disagree with that statement of the law?
21. The Fifth Amendment of the United States Constitution provides that the defendant need not testify, need not offer any evidence, and may, in fact, stand silent,	19. The state is required to prove a defendant's guilt beyond a reasonable doubt (and I will read you an instruction on

because he is presumed innocent. Is there any member of the prospective jury panel who feels that the defendant should testify or present evidence on his behalf before you could find him not guilty?	this at the end of the case.) Does anyone disagree with this statement of law?
	20. Does anyone feel that the state must prove the defendant's guilt beyond all doubt and to a mathematical certainty?
23. Is there any member of the prospective jury panel who thinks that the defendant should be required to prove his innocence?	21. [D]efendant's only responsibility is to show up, and he has done that. He has no obligation to present evidence or even testify. Would anyone here believe that the defense should be required to present evidence of their innocence?

We find the trial court's *voir dire* questions sufficiently covered the fundamental rights mandated by the holding of *Kazadi*. The court's question eighteen encompasses Appellant's question twenty and, in more precise terms, addresses a juror's perspective or potential bias regarding a defendant's presumption of innocence. Questions nineteen and twenty posed by the court delineate the State's burden of proof and examine a juror's understanding of the degree to which the State must establish guilt. Additionally, the court's question twenty-one offers a simpler explanation, using everyday language, of a defendant's right not to testify, as raised in Appellant's question twenty-one.

Although the trial court refused to propound Appellant's proposed *voir dire*, its questions, although not verbatim and rather simplistic, sufficiently covered the fundamental principles established in *Kazadi*. *Kazadi*, 467 Md. at 47 (holding a court's *voir dire* questions need not to be of a "particular language" but "describe the fundamental right at stake and inquire as to a prospective juror's willingness and ability to follow the

trial court's instruction as to that right."). Therefore, we hold the trial court did not abuse its discretion in declining to propound Appellant's proposed *voir dire* questions.

II. The trial court did not err or abuse its discretion in denying Appellant's motion(s) for a mistrial.

Appellant argues that the trial court erred in denying his motions for a mistrial. He asserts that the "presence of the thin blue line insignia" worn by deputies in the courtroom during trial violated his Sixth and Fourteenth Amendment rights to a fair trial. Appellant, citing *Smith*, asserts "the jury had ample opportunity to view" the insignia, as the deputies were "openly visible," and it was observed by both the court and Appellant. Appellant maintains the insignia depicts a "message of support for law enforcement." He asserts the depiction was prejudicial as the case involved multiple assault charges on police officers; six of the seven total witnesses were police officers; and three police officers testified as victims of assault. Appellant argues it created a risk of interpretation by the jury that the court approved of its "pro-law enforcement meaning, tipping the scales in favor of the State through matters that were not evidence."

The State argues the trial court properly denied Appellant's motions for a mistrial. The State contends that the patch did not create an "unacceptable risk that impermissible factors would come into play in the jury's determination" because it does not depict the "critical visual element which gives the symbol its political or cultural significance" nor is it a "highly recognizable widely discussed symbol." The State describes the depiction as "a black and grey American flag that blended in with the deputies' vests." The State asserts, in the alternative, that even if the patch depicted the "blue line," Appellant failed

to demonstrate inherent prejudice, as the record does not support that the patch was perceptible to the jury. The State maintains that, unlike *Smith*, there was not a "pattern of conduct that reinforced the symbol's presence." The State asserts the court was within its discretion to deny the motion for a mistrial and Appellant "limited the court" by declining to have the court use less restrictive alternatives, such as individually questioning the jurors to address the issue.

"The right to a fair trial is guaranteed by the Sixth Amendment to the United States Constitution, as incorporated against the States by the Fourteenth Amendment." *Smith*, 481 Md. at 392. "A fair criminal trial requires that the jurors 'be without bias or prejudice for or against the defendant and that their minds be free to hear and impartially consider the evidence and render a fair verdict thereon.'" *Id*. (quoting *Hunt v. State*, 345 Md. 122, 146 (1997)). "The conduct of a criminal trial is committed to the sound discretion of the trial judge . . . [t]hat control, however, must safeguard the defendant's constitutional rights." *Campbell v. State*, 243 Md. App. 507, 518 (2019) (citations omitted). A trial judge has the "responsibility to maintain 'a neutral, politically impartial environment[ ] dedicated to fairness and equal treatment of litigants[.]'" *Smith*, 481 Md. at 402.

"Events or practices that inject outside influences into the courtroom, if sufficiently prejudicial, can violate a defendant's right to a fair trial." *Id*. at 392–93. A defendant may demonstrate a violation of his or her right to a fair trial by proving either "actual prejudice" or "inherent prejudice." *Id*. at 393. To prevail on a claim of inherent prejudice, the defendant must:

> (1) have objected to the challenged practice in the trial court, (2) demonstrate, based on the record of the proceeding in the trial court, that the challenged practice was observable by the jury; and (3) establish that the challenged practice created an unacceptable risk that impermissible factors would come into play in the jury's determination of the case. If the defendant meets all of these requirements, the State may attempt to show that the challenged practice was necessary to further a compelling governmental interest.

Id. at 400. For a claim of inherent prejudice, a reviewing court makes its decision "based on the unique facts and circumstances" of the case. *Id*.

In *Smith v. State*, the Maryland Supreme Court, as matter of first impression, considered whether the "display of the thin blue line flag" on face masks worn by bailiffs "violated [a petitioner's] right to a fair trial under the Sixth Amendment[.]" 481 Md. at 374. Petitioner, Everett Smith, was charged with first-degree assault, second-degree assault, and related charges for the assault of his minor daughter. *Id*. at 381. Before jury selection, Petitioner raised an objection to courtroom bailiffs wearing face masks that displayed a "thin-blue lined flag," and he requested the bailiffs wear alternative masks. *Id*. at 382. The court declined, stating that the bailiffs' masks, if they were a "political statement," were protected under the First Amendment. *Id*. at 384–85. At the trial's conclusion, Petitioner was found guilty of second-degree assault and second-degree child abuse by a custodian. *Id*. at 388. He appealed his convictions, and we affirmed. *Id*. Appellant filed a petition for writ of *certiorari*, which, the Maryland Supreme Court granted, and the Court reversed the convictions. *Id*. at 390, 414.

The Court held that, in a criminal trial the display of "an extraneous message of support for law enforcement is improper[,]" because "[i]t injects a pro-law enforcement variable into what should be a neutral environment[.]" *Id*. at 402. The Court stated that

although the depiction bears multiple meanings[3], it has no place in a criminal trial. *Id*. 403–04. The Court determined the depiction rose to a level of inherent prejudice and explained that because a bailiff is an officer or agent of the court, "any political message that bailiffs convey to the jury – verbally or non-verbally– in the course of performing their duties may well be imputed by the jurors to the court." *Id*. at 405–06. The Court found the risk of impermissible factors was heightened by the "contemporary climate" when petitioner's trial occurred. *Id*. at 408–12. Given this, the Court held that the bailiff's display "created an unacceptable risk" of the jurors' believing that the court was siding with law enforcement in this moment of political upheaval." *Id*. at 412. The Court also indicated the record supported a finding the "jury had ample opportunity to view" the symbol as the masks were required to be worn by the Sheriff, as a general safety precaution, and the jurors' attention was directed to the bailiffs multiple times, and the bailiffs were referenced on multiple occasions. *Id*. at 412–13.

Appellant argues, in reliance on *Smith*, that his Sixth Amendment right to a fair trial was violated, because the deputies were wearing a "thin blue-line" patch on their uniform. The State contends the patch did not create an "unacceptable risk," because the patch, unlike *Smith*, does not depict the "critical visual element which gives the symbol its political or cultural significance" or is a "highly recognizable widely discussed symbol."

[3] The Court highlighted the "thin blue line, among other things, can be viewed as expressing general support for law enforcement, or expressing the belief that police stand between civilized society and criminals, or expressing support for white supremacy." *Smith*, 481 Md. at 403.

We are not persuaded. Based on the record, Appellant has not established inherent prejudice. The patch, contested by Appellant, was admitted as Court's Exhibit No. 1. It depicts a regular American Flag with black and grey coloring. Unlike *Smith*, there is no distinctive "thin blue-line" portraying a "message of support for law enforcement," or any other form of "messaging." Therefore, we hold the court did not err or abuse its discretion in denying Appellant's motion for a mistrial.

JUDGMENT OF THE CIRCUIT COURT FOR MONTGOMERY COUNTY AFFIRMED. COST TO BE PAID BY APPELLANT.