UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 0521

September Term, 2015

STERLING MELTON

v.

STATE OF MARYLAND

Meredith,
Woodward,
Kenney, James A., III
(Senior Judge, Specially Assigned),

JJ.

Opinion by Woodward, J.

Filed: December 14, 2016

*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.

Sterling Melton, appellant, was arrested and charged with one count of wearing, carrying, or transporting a handgun, and one count of possession of a regulated firearm after having been convicted of a disqualifying crime. After a two-day jury trial in the Circuit Court for Baltimore City, appellant was convicted on both counts. Thereafter, appellant was sentenced to concurrent terms of incarceration of seven years on the first count and five years on the second count.

On appeal, appellant presents three questions for our review, which we have rephrased:[1]

1. Did the trial court err by not asking appellant's requested *voir dire* question of "whether anyone had strong feelings about firearm possession[?]"

2. Did the trial court err by failing to comply with the procedure required by *Batson v. Kentucky*?

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[1] The questions presented as stated in appellant's brief are:

1. Did the trial court err during *voir dire* when, rather than complying with [appellant's] request to ask "whether anyone has strong feelings about firearm possession," the court instead asked a question about whether the jurors thought they could be impartial?

2. Did the trial court fail to comply with the procedure required by *Batson v. Kentucky*, when it offered [appellant] no opportunity to demonstrate possible pretext in the [S]tate's proffered explanations for striking African-American members from the *venire*?

3. Did the court fail to exercise necessary discretion when it allowed unvarying rules and sheriff's department policy to dictate that [appellant's] feet remain shackled during the reading of the verdict?

3. Did the trial court abuse its discretion by requiring appellant's feet to be shackled during the rendition of the verdict?

We answer each of the questions in the negative and, accordingly, affirm the judgments of the circuit court.

BACKGROUND

On September 23, 2014, appellant was arrested and charged with wearing, carrying, or transporting a handgun (Count One), and possession of a regulated firearm after having been convicted of a disqualifying crime (Count Two). Appellant initially went to trial on these charges on February 12, 2015. On the second day of trial, however, the trial court granted appellant's motion for a mistrial because of the State's failure to disclose certain discovery before trial. Appellant was re-tried on April 29, 2015. The trial was conducted over the next day-and-a-half.

At trial, Lieutenant Virgil Sampson testified that he was on duty in the 1700 block of West North Avenue in Baltimore City on September 23, 2014. Lieutenant Sampson was riding with his partner, Detective Charles Bennett, when he saw appellant walking toward him. Lieutenant Sampson knew that there was an outstanding warrant for appellant's arrest. Lieutenant Sampson stopped his car; the officers got out of the car and immediately apprehended appellant. Lieutenant Sampson then conducted a pat down of appellant and found a .38 caliber handgun in his pocket. The parties stipulated that appellant had been convicted of a prior crime that disqualified him from possessing a regulated firearm.

On April 30, 2015, the case was submitted to the jury. The jury came back shortly afterwards and rendered a verdict of guilty on both counts. On May 19, 2015, appellant

was sentenced to seven years in prison on Count One, and five years in prison on Count Two, the sentences to be served concurrently. Appellant filed his Notice of Appeal the next day.

DISCUSSION

I. *Voir Dire*

During the *voir dire* process, appellant submitted several requested questions to the trial court. Among his requested *voir dire* questions was a question that asked: "Does anyone have strong feelings concerning possession of a handgun?" When it read the requested *voir dire* questions to the venire, the court did not ask that question. Instead, after discussing the allegation that appellant was in possession of a firearm, the court asked the jury panel: "Now, without knowing any more than that, do you think you could fairly and impartially judge this case? If you think you'd have any trouble because of the nature of the case, please stand." Three members of the jury panel stood in response to that question.

After the trial court finished asking all of the *voir dire* questions, but before bringing jurors to the bench for individual questioning, defense counsel asked to approach the bench. The following exchange occurred:

[DEFENSE COUNSEL]: **Your Honor, I had basically asked whether the Court can ask the question whether anyone has any strong feelings about firearm possession.**

THE COURT:	I already asked whether they can be fair and impartial; I'm not going to ask it – I asked them – the question was whether they could – whether [appellant] was in possession of a firearm and then I asked if they could be fair and impartial in judging that.
[DEFENSE COUNSEL]:	And my request is that because it's a little bit different, because of the issue of firearm possession is something that can be a heated political topic, it's something that people often have strong feelings about, my request is that in order to know whether or not the jury can be fair, whether it's a –
THE COURT:	But they've already said they can be fair.
[DEFENSE COUNSEL]:	**Well, beyond the mere assertion, it's important to be able to evaluate that with information, which is what the process is about.**
THE COURT:	**All right.**

(Emphasis added).

The trial court then said the following to the jury panel:

> **Counsel, quite correctly, have [sic] said that I should ask a question in another way.**
>
> There was no injury in this case. There was no attempt to cause injury in this case. There was no confrontation. There were no hard words. But the case does involve the ultimate question of whether you, as a jury, would find that the State, in its evidence, has proved that [appellant] was in possession of a firearm, a gun.
>
> Now, if you have such – I've already asked the question about whether you think you could be fair and impartial in such a case, and several people stood up. **I think I probably should ask, once**

> **again, for those people and anybody else who would have trouble or think they would have trouble in such a case, to please stand.**

(Emphasis added).

Two additional members of the venire stood in response to the above question. Defense counsel made no objection to the rephrased question.

In the instant appeal, appellant contends that the trial court erred by failing to ask the jury venire during *voir dire* the question that he specifically requested: "Do any members of the panel have strong feelings about the crime of firearm possession?" Specifically, appellant asserts that his proposed question is mandatory under the Court of Appeals case of *Pearson v. State*, 437 Md. 350 (2014), because it "is reasonably likely to reveal a specific cause for disqualification." Appellant points out that under *Pearson*, if requested, a trial court must ask: "[Do any of you] ha[ve] strong feelings about the crime with which the defendant is charged?" Appellant also argues that the trial court's rephrased question was a compound question, and the *Pearson* Court expressly held that it was not permissible to ask a question as a compound question.

The State counters that appellant waived his right to this claim of error by not objecting to the trial court's rephrased question. The State concedes that appellant initially made a request for the subject question, but claims that, when the trial court agreed and rephrased the question to the jury panel, appellant did not object to the rephrased question. The State argues that, because appellant failed to satisfy the requirement to object under Maryland Rule 4-323(c), his claim is not preserved for appellate review.

"An appellate court reviews for abuse of discretion a trial court's decision as to whether to ask a *voir dire* question." *Pearson*, 437 Md. at 356. "[I]f a question is 'directed to a specific cause for disqualification' then the question must be asked and failure to do so is an 'abuse of discretion.'" *Moore v. State*, 412 Md. 635, 654 (2010) (quoting *Casey v. Roman Catholic Archbishop of Balt.*, 217 Md. 595, 605 (1958)).

Before we can address whether the trial court abused its discretion by not asking appellant's requested question, we must first decide whether appellant failed to preserve such issue for appellate review. Maryland Rule 8-131(a) provides in part that "[o]rdinarily, the appellate court will not decide any [ ] issue unless it plainly appears by the record to have been raised in or decided by the trial court[.]" The rule requires a defendant to make "'timely objections in the lower court,'" or "'he will be considered to have waived them and he cannot now raise such objections on appeal.'" *Breakfield v. State*, 195 Md. App. 377, 390 (2010) (quoting *Caviness v. State,* 244 Md. 575, 578 (1966)). Maryland Rule 4-323(c) governs, among other things, objections made during *voir dire* and jury selection. The Rule provides:

> [I]t is sufficient that a party, at the time the ruling or order is made or sought, makes known to the court the action that the party desires the court to take or the objection to the action of the court. The grounds for the objection need not be stated unless these rules expressly provide otherwise or the court so directs. If a party has no opportunity to object to a ruling or order at the time it is made, the absence of an objection at that time does not constitute a waiver of the objection.

Md. Rule 4-323(c). "An appellant preserves the issue of omitted *voir dire* questions under Rule 4-323 by telling the trial court that he or she objects to his or her proposed questions

not being asked." *Smith v. State*, 218 Md. App. 689, 700-01 (2014). If a defendant does not object to the court's decision to not read a proposed question, he cannot "complain about the court's refusal to ask the exact question he requested." *Gilmer v. State*, 161 Md. App. 21, 33, *vacated in part on other grounds*, 389 Md. 656 (2005).

In the instant case, instead of giving defense counsel's requested question, the trial court first told the jury panel that the "simple question" for them to decide was: "Was [appellant] in possession [of a firearm], beyond a reasonable doubt?" The court then asked the panel: "Now, without knowing any more than that, do you think you could fairly and impartially judge this case? If you think you'd have any trouble because of the nature of the case, please stand." After the completion of *voir dire*, defense counsel objected to the court's failure to ask his question: "[W]hether anyone has any strong feelings about firearm possession[?]" Defense counsel again asked the court to give such question to the venire, and the court agreed that the requested question should be asked. However, instead of asking the specific question defense counsel requested, the court rephrased its prior *voir dire* question:

> Now, if you have such – I've already asked the question about whether you think you could be fair and impartial in such a case, and several people stood up. **I think I probably should ask, once again, for those people and anybody else who would have trouble or think they would have trouble in such a case, to please stand.**

(Emphasis added).

It is clear from the above sequence of events that (1) the trial court agreed with defense counsel that her requested *voir dire* question should be given to the jury panel, and

(2) the court attempted to comply with defense counsel's request by rephrasing its earlier question. That the rephrased *voir dire* question did not convey the substance of the requested question was never made known to the court, because defense counsel did not object to the rephrased question. Thus the trial court was left with the impression that it had responded to defense counsel's objection in a manner satisfactory to defense counsel. To now allow appellant to claim an error on appeal that could easily have been corrected by the trial court if raised with the trial court would be contrary to the purpose of Rules 8-131(a) and 4-323(c). *See Robinson v. State*, 66 Md. App. 246, 255 (1986) ("One of the principal purposes of [Rule 8-131(a)] is to require counsel to bring the position of their clients to the attention of the lower court at the trial, so that the trial court can pass upon and possibly avoid or correct any errors in the proceedings."), *cert. denied*, 306 Md. 289 (1986). Therefore, "[b]ecause appellant failed to make[ ] known to the court the action [he] desire[d] the court to take or the objection to the action of the court, he waived his objection to the contested question[ ]." *Wimbish v. State*, 201 Md. App. 239, 266 (2011) (internal quotation marks omitted). Accordingly, appellant's claim of error is waived.

II. *Batson* Challenge

During jury selection, the prosecutor used his first three peremptory challenges to strike three prospective African American jurors. Defense counsel objected under *Batson v. Kentucky*, 476 U.S. 79 (1986). The following exchange between the trial court and the prosecutor then occurred:

> THE COURT: Well, tell me why you struck [juror number] 4858 first.

[PROSECUTOR]: 4858, because she is a public defender who knows [defense counsel].

THE COURT: Okay. All right. Okay. [Juror number] 4797?

[PROSECUTOR]: Because she – when I – when I said she was acceptable to the State, I made eye contact with her and she made an unhappy face at me and then groaned.

THE COURT: All right. [Juror number] 4817?

[PROSECUTOR]: 4817 has no high school diploma and he had a blank stare when I made eye contact with him.

THE COURT: Overruled.

Defense counsel did not ask to be heard, nor did she ask for the trial court to reconsider its ruling. The parties then continued with jury selection. The prosecutor later used his fourth and final peremptory challenge, after which defense counsel renewed her objection under *Batson*. The following colloquy ensued:

[DEFENSE COUNSEL]: I'm just renewing my objection for the record at this time so that it is not waived.

THE COURT: Was she a black woman?

[PROSECUTOR]: I thought she was white.

THE COURT: What?

[PROSECUTOR]: I thought she was white.

THE COURT: I thought she was white, too, okay? That's what I think. Okay. All right. You're making your objection.

Overruled.[2]

Appellant contends that the trial court failed to comply with the procedure required by *Batson*, because it failed to "conduct any review at the third step of the *Batson* analysis." Specifically, appellant claims that the court "did not engage in any dialogue with [the] State's counsel to probe the proffered explanations for his strikes[,]" nor did it "state its observations concerning the credibility of the explanations." According to appellant, "the court immediately accepted the proffered explanations, acting as a virtual rubber stamp in approving the State's explanations." Appellant also asserts that the trial court erred by failing to offer appellant the "opportunity to inquire further or to demonstrate that the explanations provided by the [S]tate were merely pretextual."

The State counters that the trial court is not required to spell out every step in the analysis leading to its ruling in a *Batson* challenge. The State argues that "the court implicitly considered the relevant factors and determined there was no purposeful discrimination by the prosecutor." According to the State, "this is the sort of case where an implicit finding at step three of the analysis is acceptable because it is apparent from the record that the court found the reason[s] to be non[-]discriminatory." (internal quotation marks omitted). The State claims that "the court was able to assess the demeanor of counsel

[2] The record does not contain any information on the racial makeup of the venire or the jury that was ultimately selected.

and the prospective jurors and make a determination as to the credibility of the explanations." Moreover, the State contends that none of the cases relied upon by appellant require the trial court to engage in extended discussions with the prosecutor about the proffered explanations. Finally, the State points out that defense counsel was not prevented from inquiring further, but rather remained silent as the court questioned the State regarding its strikes.

The standard of review for a *Batson* challenge is as follows:

> The ultimate burden of proving that a peremptory challenge was motivated by race always remains with the opponent of the challenge. The trial judge's findings in evaluating a *Batson* challenge are essentially factual and accorded great deference on appeal. Whether a reason is race-neutral rests in large part on a credibility assessment of the attorney exercising the peremptory challenge. The trial judge is in the best position to assess credibility and whether a challenger has met his burden. Accordingly, on appellate review, we will not reverse a trial judge's determination as to the sufficiency of the reasons offered unless it is clearly erroneous.

Edmonds v. State, 372 Md. 314, 331 (2002) (citations and internal quotation marks omitted).

The U.S. Constitution guarantees criminal defendants the right to an impartial jury. U.S. Const. amend. VI. Moreover, the Equal Protection Clause provides that no state shall "deny to any person within its jurisdiction the equal protection of the laws." U.S. Const. amend. XIV. In *Batson*, the Supreme Court held that "the Equal Protection Clause forbids the prosecutor to challenge potential jurors solely on account of their race[.]" 476 U.S. at 89; *see Spencer v. State*, __ Md. __, __, No. 94, September Term 2015 (filed Nov. 29, 2016) slip op. at 13-14 ("[C]ounsel in a criminal prosecution, may not use peremptory

challenges to exclude jurors based on race or on the assumption that a juror will not be impartial on account of his or her race."); *see also Ray-Simmons v. State*, 446 Md. 429, 435 (2016) (noting that striking a juror on the basis of race, gender, or ethnicity "violates both the defendant's right to a fair trial and the potential juror's right not to be excluded on an impermissible discriminatory basis." (internal quotation marks omitted)). Under *Batson*, there is a three-step process for adjudicating claims of purposeful discrimination in jury selection:

> A party claiming discrimination must first make out a *prima facie* case of purposeful discrimination, and show that the totality of the relevant facts creates an inference of discriminatory purpose. Once such a showing is made, the burden shifts to the striking party to produce neutral explanations for the exercise of its strikes. If the striking party proffers a race-neutral explanation, the trial court must then decide whether there has been purposeful racial discrimination. **The third level determination of whether there has been purposeful discrimination is one of credibility, which is measured by many factors: the demeanor of counsel, the reasonableness or improbability of the explanations, and whether the proffered rationale has some basis in accepted trial strategy.**

Berry v. State, 155 Md. App. 144, 160 (2004) (emphasis added) (citations omitted).

Appellant argues that the error in this case "lies in the lower court's failure to conduct any review at the third step of the *Batson* analysis." "[T]he critical question in determining whether [appellant] has proved purposeful discrimination at step three is the persuasiveness of the prosecutor's justification for his peremptory strike[s]." *Miller-El v. Cockrell*, 537 U.S. 322, 338-39 (2003). "Credibility can be measured by, among other factors, the prosecutor's demeanor; by how reasonable, or how improbable, the

explanations are; and by whether the proffered rationale has some basis in accepted trial strategy." *Id.* at 339. "Where questions arise in the mind of the trial judge upon hearing the explanation of the prosecutor, the judge should have no reluctance to put those questions to the prosecutor[.]" *Gray v. State*, 317 Md. 250, 259 (1989).

In the instant case, the prosecutor explained that he struck the first juror because she was a public defender who knew defense counsel. The prosecutor said that he struck the second juror because she groaned and made an unhappy face when he said that she was acceptable. As for the third juror, the prosecutor claimed that he struck him because he did not have a high school diploma and had a blank stare on his face. Upon hearing these explanations, the trial court overruled appellant's objection without any further inquiry. By overruling the objection, the court clearly made an implicit finding that the prosecutor's explanations were credible. By failing to conduct a further inquiry of the prosecutor, the court determined that the prosecutor's explanations were satisfactory, and thus there was no purposeful racial discrimination. "The trial judge is in the best position to assess credibility and whether a challenger has met his burden[;]" therefore, we do not reverse a judge's finding "unless it is clearly erroneous." *Edmonds*, 372 Md. at 331. We see no basis in the record for concluding that the court's acceptance of the prosecutor's explanations was clearly erroneous.

Appellant, nevertheless, argues that the trial court erred by failing to allow defense counsel to ask questions in order to explore whether the explanations offered by the prosecutor were pretextual. Appellant is correct that a trial court should permit defense

counsel to ask questions. *See Gray*, 317 Md. at 259 ("[D]efense counsel should be free to suggest questions to the court or, if the court permits, to address questions directly to the prosecutor in the more informal setting of the bench conference."). In the instant case, although the trial court did not offer defense counsel the opportunity to ask the prosecutor questions or to present argument, the court never precluded defense counsel from doing either. When the court overruled appellant's *Batson* challenge, defense counsel (1) never requested permission from the court to ask any questions about the prosecutor's explanations, (2) never asked the court to reconsider its ruling, and (3) never attempted to make an argument as to why the prosecutor's explanations were pretextual. More importantly, when the prosecutor later exercised his fourth and final peremptory challenge and defense counsel renewed her *Batson* challenge, defense counsel did not make any argument concerning the prosecutor's first three strikes. Therefore, we see no error in the trial court's overruling of appellant's *Batson* challenge.

III. Use of shackles during the rendering of the verdict

When the jury indicated to the trial court that it had reached a verdict, the parties reconvened in the courtroom. At that time, defense counsel requested that appellant be unshackled before the jury was brought in for the rendering of the verdict. The following exchange then occurred:

> [DEFENSE COUNSEL]: Your Honor, may my client be unshackled, please.
>
> THE COURT: Not at this time.

[DEFENSE COUNSEL]: Your Honor, in – before the jury –

THE COURT: **It's my practice when the jury has arrived at a decision, it's already done. Whatever is done is done.**

[DEFENSE COUNSEL]: I have a very strong objection to the jury seeing my client in shackles. That's completely inappropriate at this time. We don't know what the verdict of the jury is at this point. We don't know if there could be a possible question. We don't know if there could be some reason why they would need to go back and continue to deliberate.

THE COURT: I'm –

[DEFENSE COUNSEL]: I have very strong objection to my client being shackled in front of the jury.

THE COURT: The Court is hearing you. **But the Court's practice, my practice has always been once the jury has arrived at its decision, the Defendant remains shackled.**

[DEFENSE COUNSEL]: Your Honor, we'll be making a motion for a mistrial at that time.

[PROSECUTOR]: And, Your Honor, I don't know if it makes any difference, **but I do agree with counsel. If it's acceptable to the COs, would it be possible to cede to counsel's request?**

THE COURT: **All right. If both counsel agree, I never oppose then.**

(Emphasis added).

The trial court, however, told the officers to unshackle only appellant's hands. Defense counsel then requested that appellant's feet be unshackled as well. The court asked the officer how he felt about that request:

[THE OFFICER]:	We aren't supposed to take nothing off, but if you tell us to take it off that's – order us to do this. We are to do this.
[DEFENSE COUNSEL]:	Your Honor –
[THE OFFICER]:[3]	But we aren't supposed to take nothing off.
[DEFENSE COUNSEL]:	– my client has not been a problem throughout this whole trial. He has not demonstrated any conduct –
THE COURT:	**The Court's going to leave his – not his hands. Undo his hands. Leave his – unless – I just – I don't want to run their department. They had some problems. They have a video with Judge Heller being attacked. Rumbottom (phonetic), a guy in 2A – Rumbottom tackled a gentleman. It happened. I saw it on – I mean it can happen.**
[DEFENSE COUNSEL]:	Your Honor, my concern is that I may need to – we may need to approach to discuss some matter that is not appropriate to discuss in front of the jury.
THE COURT:	Well, then we'd have to have a mistrial.

[3] The transcript identifies the speaker as "The Sheriff." It appears from the context of the colloquy, that the same person was speaking. Thus we have identified that person as "The Officer."

[PROSECUTOR]:	**Your Honor, my proposal would be that if it's necessary to approach, I would ask that counsel ask if we can approach, excuse the jury back to the jury room –**
THE COURT:	That's fine.

(Emphasis added).

Defense counsel reiterated her request for appellant's feet to be unshackled, and the trial court responded that it was "going to adhere to its earlier decision on hands unshackled but his feet are not. *That's the Court's decision. I take responsibility*." (Emphasis added). The prosecutor then stated: "Let me just note for the record that it's not visible from the jury's location, the shackle under the table." Defense counsel did not object or otherwise dispute such statement by the prosecutor.

The jury was brought into the courtroom and returned a guilty verdict on both counts. After the verdict, defense counsel asked to approach the bench. The trial court excused the jury to return to the jury room and then met with counsel at the bench. Defense counsel again raised the issue of appellant's shackled feet, to which the court responded:

> Okay. Overruled. And let me say this, that it is my understanding that the rules of the courthouse are that when a verdict is taken, there are two custodian personnel here and we have two custodian personnel here.
>
> **And it's also my understanding that their preference is that in a criminal case since the jury has arrived at its verdict and the decision is – has been completed that the Defendant remains shackled, both his hands and his feet.** And that was not true when I started being a judge. But I do know that . . . Judge Ellen Heller, even with having two security personnel present, was charged after a verdict. And the sheriff, now Sheriff Rumbottom, basically

> protected Judge Heller. And that may or may not be the reason why the courthouse personnel want the Defendant shackled.
>
> **There's no personal problem that I have with [appellant], but that's just the procedure and I agree with it.**

(Emphasis added).

Defense counsel made a motion for a mistrial, which was denied.

Appellant contends that the trial court erred by failing to exercise discretion when it ordered that appellant's feet be shackled during the reading of the verdict. According to appellant, because courtroom security falls under the discretion of the trial judge, the judge must exercise such discretion. Appellant argues that in the instant case the court did not exercise discretion, and thus committed reversible error, because "the court invoked the sort of inflexible, uniform rule" and delegated decision-making authority to the sheriff's department. Appellant also asserts that, "[w]hen a trial court fails to exercise the discretion it is duty-bound to employ, appellate courts do not conduct a harmless error analysis[.]"

The State responds that the trial court did in fact depart from its previously stated practice and "ultimately made an individualized decision[,]" by allowing appellant's hands, but not feet, be unshackled. The State also contends that there was no showing that the shackling was prejudicial; therefore, any error was harmless.

"We begin our analysis by noting that the trial judge has broad discretion in maintaining courtroom security." *Hunt v. State*, 321 Md. 387, 408 (1990), *cert. denied*, 502 U.S. 835 (1991). "The courts uniformly rely upon an abuse of discretion standard for reviewing the action of trial judges in the matter of restraints[.]" *Bowers v. State*, 306 Md.

120, 132, *cert. denied*, 479 U.S. 890 (1986). "The reviewing court should not determine whether less stringent security measures were available to the trial court, but rather whether the measures applied were reasonable and whether they posed an unacceptable risk of prejudice to the defendant." *Hunt*, 321 Md. at 408.

This Court has discussed the law concerning the physical restraint of defendants during trials, stating:

> **Although a trial court has discretion in maintaining courtroom security, as a general rule, an accused has a right to be tried [on the issue of guilty or not guilty] without being shackled**, chained, bound, handcuffed, gagged, or otherwise physically restrained. This is because requiring a defendant to wear shackles that will be seen by a jury implicates the defendant's due process right to a fair trial.
>
> **Shackling a defendant during the guilt/innocence phase of trial is inherently prejudicial** because it highlights the need to separate a defendant from the community at large. Accordingly, **it is appropriate only when there is a compelling state interest**. **There are three essential state interests which may justify physically restraining a defendant: Preventing the defendant's escape, protecting those in the courtroom, and maintaining order in the courtroom. Unless one or more of these factors outweigh any prejudice to the defendant, physical restraint is inappropriate.**
>
> Before exercising its discretion to order a defendant to appear in restraints, **the court must make an individualized evaluation of both the need for shackling and the potential prejudice therefrom**. **The trial judge must ensure that the record reflects the reasons for the imposition of extraordinary security measures.**

Wagner v. State, 213 Md. App. 419, 476-77 (2013) (emphasis added) (citations and internal quotation marks omitted).

1. Did the trial court conduct an individualized evaluation and exercise discretion in physically restraining appellant?

Appellant correctly points out that, "a court errs when it attempts to resolve discretionary matters by the application of a uniform rule, without regard to the particulars of the individual case." *Gunning v. State*, 347 Md. 332, 352 (1997). Appellant contends that the trial court erred by applying a "uniform, inflexible standard" when it required appellant to remain shackled. Appellant argues that the application of such standard violates the need for the court to "make an individualized evaluation of both the need for shackling and the potential prejudice therefrom." *Wagner*, 213 Md. App. at 477 (internal quotation marks omitted). We disagree.

In the instant case, the trial court initially denied defense counsel's request for the shackles to be removed from appellant, saying that "the Court's practice, my practice has always been once the jury has arrived at its decision, the Defendant remains shackled." At this point, it would appear, as appellant argues, that the court applied a "uniform rule." However, when the prosecutor agreed with defense counsel that appellant should be unshackled, the court changed its mind on the issue, stating: "All right. If both counsel agree, I never opposed then."

In our view, the trial court then engaged in an individualized evaluation of the need for shackling. The court decided that appellant's hands were to be uncuffed, but that his feet remain shackled. The court explained that there had been a previous instance in the courthouse when an unshackled defendant had attacked Judge Heller. The court also

agreed to excuse the jury to return to the jury room, if necessary, to keep the jurors from seeing appellant's shackled feet.[4] Therefore, we conclude that the trial court did not apply a "uniform, inflexible standard." At the request of both parties, the court conducted an individualized evaluation of the need for shackling and exercised its discretion in ordering that appellant's feet remain shackled during the rendition of the verdict.

Furthermore, we reject appellant's contention that the trial court impermissibly delegated its "decision-making authority to the sheriff's department[.]" The court acknowledged the policy of the sheriff's department to shackle a defendant's hands and feet for the rendition of the verdict. The court then deviated from that policy by directing the unshackling of appellant's hands, but not his feet. The court explained: "That's the Court's decision. I take responsibility." We see no abuse of discretion in the shackling of appellant's feet, shielded from the jury's view, during the rendition of the verdict.

2. Was the shackling prejudicial to appellant?

Even if the trial court abused its discretion by keeping appellant's feet in shackles during the rendition of the verdict, "that is not the end of the inquiry." *Wagner*, 213 Md. App. at 478. Under the teachings of this Court's opinion in *Wagner*, appellant would still need to show that he was prejudiced.

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[4] In fact, the court did excuse the jury after the verdict was read when defense counsel asked to approach the bench.

Like the instant case, the appellant in *Wagner* was shackled during the rendition of the verdict. *Id.* at 474-75. After determining that the trial court abused its discretion in requiring the appellant's shackling, we went on to state:

> In reviewing a circuit court's order requiring a defendant to wear restraints, we must determine whether "the scene presented to jurors," and what they saw, "was so inherently prejudicial as to pose an unacceptable threat to defendant's right to a fair trial; if the challenged practice is not found inherently prejudicial and if the defendant fails to show actual prejudice, the inquiry is over."

Id. at 478 (quoting *Bruce v. State,* 318 Md. 706, 721 (1990)).

In *Wagner*, this Court held that

> requiring a defendant to wear shackles during the rendering of the jury verdict, after the jury has reached a guilty verdict and the presumption of innocence has been overcome, is not inherently prejudicial. Unless there is some indication in the record that the shackling caused prejudice to the defendant, any error in requiring shackling at this point will be deemed harmless.

Id. at 479. We determined that "the record shows no prejudice[,]" *id.* at 482, because "the shackling occurred after the jury had reached its verdict, albeit before it was announced[,]" and "the record does not reflect that the shackles were visible to the jury." *Id.* at 479.

Similarly, in this case, the shackles were put on appellant after the jury had reached a verdict. Also, as in *Wagner*, the record does not reflect that the shackles were visible to the jury. In fact, when this issue came up at trial, the prosecutor explicitly stated: "Let me just note for the record that it's not visible from the jury's location, the shackle under the table." That statement was never disputed or otherwise challenged by defense counsel.

Therefore, even if the trial court abused its discretion by requiring appellant's feet be shackled during the rendition of the verdict, there is no showing of prejudice on the record. Accordingly, any error in the shackling of appellant was harmless.

JUDGMENTS OF THE CIRCUIT COURT FOR BALTIMORE CITY AFFIRMED; APPELLANT TO PAY COSTS.