UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 669

September Term, 2016

JAMES GOSS

v.

STATE OF MARYLAND

Woodward,
Kehoe,
Thieme, Raymond G., Jr.
(Senior Judge, Specially Assigned),

JJ.

Opinion by Thieme, J.

Filed: March 9, 2017

A jury in the Circuit Court for Baltimore City convicted James Goss, appellant, of one count of first-degree assault, two counts of second-degree assault, and one count of carrying a deadly weapon openly with intent to injure. Appellant was sentenced to a total term of 33 years' imprisonment. In this appeal, appellant presents the following questions for our review:

1. Did the trial court err in refusing to ask, during voir dire, whether any potential jurors had strong feelings about the crime of assault against a police officer?

2. Did the trial court err in refusing to provide jury instructions on the issues of voluntary and involuntary intoxication?

For reasons to follow, we answer question 1 in the affirmative and reverse the judgments of the circuit court. Because we reverse, we need not answer question 2.

BACKGROUND

In July of 2016, appellant went to a party at an apartment in Baltimore City, where he consumed some alcohol. At some point appellant "started feeling dizzy," so he left the party and went to the second-floor apartment of a friend, Chardonnay Hall, who lived in the same building where appellant had attended the party. After arriving at Ms. Hall's apartment, appellant took Ms. Hall's keys and left. Ms. Hall, who was home at the time, described appellant as being "intoxicated."

Later that night, Ms. Hall heard "banging" on her apartment door. She opened the door and found appellant "completely intoxicated." Appellant came into the apartment and sat down, at which time Ms. Hall asked for her keys. Appellant started yelling, and Ms. Hall "pushed him away." Appellant then punched Ms. Hall in the face and attempted to

put her in "a choke hold." Ms. Hall "started screaming for help," after which one of the building's security guards, Germaine Davidson, knocked on the apartment door and asked "if everything was okay." Appellant then grabbed two knives and stated that he would "cut" both himself and Ms. Hall if anyone came into the apartment. Mr. Davidson "backed up towards the elevator and called the police."

After "talking" with appellant for some time, Ms. Hall managed to take the knives away from him and exit the apartment. As Ms. Hall was moving toward the building's elevator, appellant gained possession of "another set of knives" and followed Ms. Hall out of the apartment. Appellant then walked past Ms. Hall, got in an open elevator, and "went downstairs." Ms. Hall remained on the second floor.

By this time, a Baltimore City police officer, Anthony Callow, had arrived on the scene, and Mr. Davidson, the security guard, was in the process of assisting him. After appellant exited the elevator, he walked through the building's lobby and toward the front door, passing by Mr. Davidson. Mr. Davidson told Officer Callow, "that's him right there," and they followed appellant to the front door. As appellant reached the building's front door, another officer, Teddy Parris, was attempting to enter the building. Upon being confronted by Officer Parris, appellant stabbed the officer in the head with a knife. Officer Parris then "charged" at appellant and tried "to get him on the ground." During the ensuing struggle, appellant stabbed the officer "probably six more times."

Mr. Davidson, who witnessed the stabbing, "jumped in," grabbed appellant's wrist, and tried to "get him down on the ground." After fighting with appellant for approximately twenty seconds, Mr. Davidson managed to subdue appellant with the help of Officer

Callow. Appellant was handcuffed at his wrist and ankles and carried to a nearby police car.

Following his arrest, appellant was indicted on eleven counts related to the incident, including six counts specific to the attack on Officer Parris: attempted first-degree murder (Count 1), attempted second-degree murder (Count 2), first-degree assault (Count 3), intentionally causing physical injury to a law enforcement officer (Count 4), second-degree assault (Count 5), and reckless endangerment (Count 6). In each of these counts, the officer's name was stated as "Officer Teddy Parris."

During jury selection, defense counsel proposed the following voir dire question: "Does anyone have such strong feelings about assaults against law enforcement that you would be unable to render a fair and impartial decision based on the evidence." The State made a similar request, asking that the court propose a "modified version" based on the fact that one of the victims was a police officer and that there may be "strong feelings against him."[1] At this time, the following colloquy ensued:

> THE COURT: Well, this is what I'm going to do. I'm not going to be doing all of this. This is what we will do. For your answer for the State, the only thing – I think the more or less weight [sic] because they're testifying. They're witnesses. So the more or less weight to the testimony of a police officer covers I think what the State is talking about.
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> * * *
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> [STATE]: Your Honor, it's a little bit more because the State is saying that he – her client tried to kill him and if there's

[1] The record does not disclose the precise wording of the question proposed by the State.

> a bias against police in Baltimore or this officer in general because he's a Baltimore police officer, I'm just concerned that if we have a juror who has such strong anti-police feelings that –
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> * * *
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> THE COURT: I hear what you're saying but I am going to decline [the State's request]. I am also going to decline [defense counsel's request]. I think that it will come in in the strong feelings question. Anybody that answers I will allow you to ask them that question at the bench, okay.

The court then proceeded with voir dire, at which time it asked prospective jurors the following question: "Does anyone have strong feelings about attempted murder in the first degree, attempted murder in the second degree, assault in the first degree, assault in the second degree, reckless endangerment, carrying a dangerous weapon openly with intent to injure?" Thirty-three panel members answered this question in the affirmative. The court also asked the venire: "Would you give more or less weight to the testimony of a police officer merely because he or she is a police officer than to other witnesses in this case?" Nine panel members answered this question in the affirmative.

After the court's preliminary inquiries, the court asked if there were any exceptions to the court's voir dire, at which time the following colloquy ensued:

> [DEFENSE]: I would just reiterate my request for defense instruction number twelve leading to strong feelings based on the fact that this police officer is actually the victim of a crime, whether they would have strong feelings against, specifically against law enforcement like police?
>
> THE COURT: And I had told you could ask that here at the bench. All right, thank you.

The court then conducted additional inquiries of prospective jurors based on those jurors' responses to the court's initial inquiries. Of the thirty-three panel members who answered affirmatively to the court's general inquiry regarding the crimes charged, only a fraction was asked whether the "strong feelings" regarding the crimes charged were affected by the fact that one of the victims was a Baltimore City police officer. Of those, only one was selected as a member of the trial jury. The remaining members of the trial jury were not asked whether they had strong feelings about assaults of police officers, as each of these jurors answered in the negative when asked the court's general "strong feelings" question.

Prior to the second day of trial, the State informed the court that it was "nolle prossing" several counts, including Count IV (assault on a police officer) and Count VI (reckless endangerment). In total, seven counts were submitted to the jury, including four specific to "Officer Teddy Parris:" Count I (attempted first-degree murder), Count II (attempted second-degree murder), Count III (first-degree assault), and Count V (second-degree assault). On those four counts, appellant was acquitted of attempted first-degree murder and attempted second-degree murder, but was convicted of first-degree assault. The jury did not return a verdict on the charge of second-degree assault against Officer Parris.[2]

[2] Appellant was also convicted of second-degree assault against Chardonnay Hall, second-degree assault against Germaine Davidson, and carrying a dangerous weapon openly with intent to injure.

DISCUSSION

Appellant argues that the trial court erred in failing to ask all prospective jury members whether they had "strong feelings" about the crime of assault against a police officer. Appellant maintains that such a question was required based on the Court of Appeals' holding in *Pearson v. State*, 437 Md. 350 (2014). We agree.

"Voir dire, the process by which prospective jurors are examined to determine whether cause for disqualification exists, is the mechanism whereby the right to a fair and impartial jury, guaranteed by Art. 21 of the Maryland Declaration of Rights, is given substance." *Dingle v. State*, 361 Md. 1, 9 (2000) (internal citations and footnote omitted). 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[.]'" *Pearson v. State*, 437 Md. 350, 356 (2014) (internal citations omitted). "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." *Id.* at 357 (internal citations omitted). If a requested voir dire question is not directed at a specific cause for disqualification, a trial court need not pose such a question to the venire. *Id.* On the other hand, if a requested voir dire question is reasonably likely to uncover specific cause for disqualification, then a trial court must pose such a question. *Id.*

Generally, the scope and form of the questions presented during voir dire rest solely within the discretion of the trial court. *Washington v. State*, 425 Md. 306, 313 (2012). In the exercise of this discretion, "[i]t is the responsibility of the trial judge to conduct an adequate voir dire to eliminate from the venire panel prospective jurors who will be unable

to perform their duty fairly and impartially and to uncover bias and prejudice." *Id.* Moreover, the questions posed by the trial court to the venire "should focus on issues particular to the defendant's case so that biases directly related to the crime, the witnesses, or the defendant may be uncovered." *Dingle,* 361 Md. at 10. The Court of Appeals has further held that:

> If there is any likelihood that some prejudices in the jurors' mind which will even subconsciously affect his decision of the case, the party who may be adversely affected should be permitted questions designed to uncover that prejudice. This is particularly true with reference to the defendant in a criminal case. Otherwise, the right of trial by an impartial jury guaranteed to him…might well be impaired[.]

Id. at 11 (internal citations and quotations omitted).

Moreover, although the trial court's discretion in conducting voir dire is broad, the Court of Appeals has admonished:

> In the exercise of that discretion, the trial judge should adapt the questions to the needs of each case in the effort to secure an impartial jury. Any circumstances that may reasonably be regarded as rendering a person unfitted for jury service may be made the subject of questions and a challenge for cause. Accordingly an examination of a juror on his voir dire is proper as long as it is conducted within the right to discover the juror's state of mind in respect to the matter in hand or any collateral matter reasonably liable to unduly influence him.

State v. Thomas, 369 Md. 202, 214 (2002) (internal citations and quotations omitted), *abrogated on other grounds by Pearson v. State,* 437 Md. 350 (2014).

In *State v. Thomas,* the Court of Appeals discussed the propriety of voir dire questions aimed at uncovering juror biases directly related to the crime charged. *Id.* at 204. There, the defendant was charged with possession and distribution of cocaine. *Id.* During jury selection, the defendant asked the trial court to inquire as to whether any prospective

jury member had "strong feelings regarding violations of the narcotics laws[.]" *Id.* The trial court refused the request, choosing instead to inform the venire of the crimes charged and then ask whether the jurors felt as if they were unable to be fair and impartial. *Id.* at 205. After being convicted, the defendant argued, on appeal, that the trial court erred in refusing his requested voir dire question. *Id.* at 206.

The Court of Appeals agreed. The Court noted that the defendant's inquiry was appropriate because it was "directed at biases, specifically, those related to the [defendant's] alleged criminal act, which if uncovered are disqualifying when they impair the ability of the juror to be fair and impartial." *Id.* at 211. The Court also noted that "it is not extraordinary for most citizens to have a bias against proscribed criminal acts and that '[p]rospective jurors with strong feelings about drugs are not uncommon.'" *Id.* (internal citations omitted). The Court held, therefore, that the trial court's refusal to propound the defendant's question was an abuse of discretion, as "[a] question aimed at uncovering a venire person's bias because of the nature of the crime with which the defendant is charged is directly relevant to, and focuses on, an issue particular to the defendant's case and, so, should be uncovered." *Id.* at 214. The Court also found that the questions actually posed by the trial court – those which asked about juror bias generally – were insufficient to reveal the biases the defendant sought to uncover:

> "[W]here the parties identify an area of potential bias and properly request voir dire questions designed to ascertain jurors whose bias could interfere with their ability to fairly and impartially decide the issues, then the trial judge has an obligation to ask those questions of the venire panel. *Merely asking general questions such as 'is there any reason why you could not render a fair and impartial verdict,' is not an adequate substitute for properly framed questions designed to highlight specific areas where*

> *potential jurors may have biases that could hinder their ability to fairly and impartially decide the case."*

Id. at 214-15 (internal citations omitted) (emphasis in original).

In *Sweet v. State*, 371 Md. 1 (2002), *abrogated on other grounds by Pearson v. State*, 437 Md. 350 (2014), the Court of Appeals again determined the propriety of a voir dire question aimed at uncovering juror biases directly related to the crimes charged. *Id.* at 3. There, the defendant was charged with second-degree assault and third-degree sexual offense against a minor. *Id.* at 2. During voir dire, the defendant requested that prospective jurors be asked whether "the charges stir up strong emotional feelings[.]" *Id.* at 9. The trial court declined the request, and the defendant was convicted. *Id.* at 3.

The Court of Appeals ultimately reversed the defendant's convictions, holding that the trial court erred in refusing the defendant's requested voir dire question. *Id.* at 10. Citing *Thomas*, the Court determined that "the inquiry was directed at biases, specifically those related to [the defendant's] alleged criminal act, that, if uncovered, would be disqualifying when they impaired the ability of the juror to be fair and impartial." *Id.*

Conversely, in *Curtin v. State*, 393 Md. 595 (2006), the Court of Appeals found no abuse of discretion in a trial court's refusal to propound a voir dire question regarding bias toward handguns. *Id.* In that case, the defendant was accused of robbing a bank with an accomplice who brandished a gun. *Id.* at 611. At trial, the defendant claimed that he was not a participant in the robbery and, in the alternative, that the accomplice did not use a real gun. *Id.* In light of these facts, the Court of Appeals concluded that "no analysis or weighing of issues pertaining to the gun was required by the jurors in this case, other than

accepting or rejecting the State's evidence demonstrating that a gun was used in the commission of the crime." *Id.* (internal citations omitted).

Then, in *State v. Shim*, 418 Md. 37 (2011), *abrogated on other grounds by Pearson v. State*, 437 Md. 350 (2014), the Court of Appeals once again found error in a trial court's refusal to propound a requested jury instruction that was directly related to the crime charged. *Id.* at 40. There, the defendant, charged with murder, asked the trial court to inquire into prospective jurors' "strong feelings concerning the violent death of another human being." *Id.* at 39. The trial court refused, and the defendant was convicted. *Id.* at 42.

In reversing the defendant's conviction, the Court discussed with favor its holdings in *Thomas* and *Sweet*, noting that "the potential for bias exists in most crimes[.]" *Id.* at 54. The Court also discussed *Curtin*, explaining that its holding in that case was consistent with *Thomas* and *Sweet* because the voir dire question in *Curtin*, unlike the ones in *Thomas* and *Sweet*, was not "*directly related* to the crime, the witnesses, or the defendant." *Id.* at 52 (emphasis in original). In the end, the Court reemphasized the holdings of *Sweet* and *Thomas*, holding that a voir dire question targeted at uncovering biases directly related to the crimes charged was required "[w]hen requested by a defendant" and "regardless of the crime." *Id.* The Court then suggested that the question be posed as such: "Does any member of the jury panel have such strong feelings about [the charges in this case] that it would be difficult for you to fairly and impartially weight the facts?" *Id.*

The Court of Appeals later reaffirmed this requirement in *Pearson, supra*. The Court did abrogate, however, the language of the voir dire question enunciated in *Shim*,

noting that the language conflicted with prior precedent and "shifted responsibility to decide a prospective juror's bias from the trial court to the prospective juror, *i.e.*, 'Does any member of the jury panel have *such* strong feelings about [the charges in this case] *that it would be difficult for you to fairly and impartially weight the facts.*'"[3] *Pearson,* 437 Md. at 363 (emphasis in original). The Court then refined the suggested language and held that "on request, a trial court must ask during *voir dire*: 'Do any of you have strong feelings about [the crime with which the defendant is charged]?'" *Id.*

In light of the aforementioned case law, we hold that the trial court in the instant case abused its discretion in refusing appellant's requested voir dire question regarding assaults on police officers. Section 3-203 of the Maryland Criminal Code, titled "Assault in the second degree," provides that "[a] person may not commit an assault." Md. Code, Criminal Law § 3-203(a). The statute also provides, in a separate subsection, that "[a] person may not intentionally cause physical injury to another if the person knows or has reason to know that the other is…a law enforcement officer engaged in the performance of the officer's official duties[.]" Md. Code, Criminal Law § 3-203(c)(2). A person guilty of violating subsection (a) is guilty of "the misdemeanor of assault in the second degree," whereas a person guilty of violating subsection (c) is guilty of "the felony of assault in the second degree." Md. Code, Criminal Law §§ 3-203(b) and (c)(3).

[3] The Court abrogated *Thomas* and *Sweet*, which advocated similar language to that used in *Shim*, for the same reason. *Pearson*, 437 Md. at 363-64. Like with *Shim*, this abrogation did not affect the core holdings of either *Thomas* or *Sweet*. *Id.*

In Count IV of the indictment filed against appellant, it was alleged that appellant "did intentionally cause physical injury to Officer Teddy Parris, a law enforcement officer engaged in the performance of the officer[']s official duties, knowing the officer was a law enforcement officer engaged in the performance of the officer[']s official duties, in violation of Criminal Law Article, Section 3-203 of the Annotated Code of Maryland[.]" Then, in Count V of the indictment, it was alleged that appellant "did assault Officer Teddy Parris in the second degree in violation of Criminal Law Article, Section 3-203 of the Annotated Code of Maryland[.]" In short, appellant was indicted on two separate charges of assault against Officer Parris: misdemeanor second-degree assault and felony second-degree assault. Thus, under *Pearson* and its antecedents, the trial court was required to propound appellant's voir dire question regarding assaults on police officers, as said question was directly related to one of the crimes charged, namely, felony second-degree assault against Officer Parris.

In so holding, we recognize that appellant's proposed question, which asked whether prospective jurors had such strong feelings that they would be unable to render a fair and impartial verdict, incorporated, verbatim, the language the Court of Appeals expressly rejected in *Pearson*. Nevertheless, we do not find this to be fatal to appellant's argument. The question propounded by appellant was not ancillary or trivial, nor was it inconsequential, as was the question in *Curtin,* to the outcome of appellant's case. To the contrary, like the questions in *Thomas*, *Sweet,* and *Shim,* the question was directly related to a charged crime. Moreover, appellant was not alone in his request; the State also asked the trial court to propound a similar voir dire question. *See Thomas,* 369 Md. at 214-15

("[W]here the parties identify an area of potential bias and properly request voir dire questions designed to ascertain jurors whose bias could interfere with their ability to fairly and impartially decide the issues, then the trial judge has an obligation to ask those questions of the venire panel.") (internal citations and quotations omitted).

In light of these requests, and despite appellant's use of abrogated language, the trial court had obligation to propound the question to the venire. If, in doing so, the trial court found certain language objectionable, the court was "free to modify the proposed question as needed." *Shim,* 418 Md. at 55. In these situations:

> [A] trial court should follow Judge Murphy's suggestion that it "resolve a 'doubtful' and/or 'marginal' voir dire question in favor of the party who has requested that it be asked." Judge Murphy has further suggested, in two concurrences, that trial courts can avoid later problems with a simplified inquiry, in which the trial court should ask itself "does this question probe for a condition that would be likely to impair a juror's ability to decide this case on the evidence presented?" [*Curtin,* 165 Md. App. at 78, *aff'd*, 393 Md. 593 (2006) (Murphy, C.J., concurring), *Moore v. State*, 412 Md. 635, 670 (2010) (Murphy, J., concurring)]. If the answer to that question is "yes," states Judge Murphy, the question should be asked.

Shim, 418 Md. at 56; *See also Pearson,* 437 Md. at 369 n. 6 ("Where an overbroad proposed voir dire question encompasses a mandatory voir dire question…a trial court should…rephrase the overbroad proposed voir dire question to narrow its scope to that of the mandatory voir dire question[.]"); *Thomas,* 369 Md. at 214 ("In the exercise of [his discretion in conducting voir dire], the trial judge should adapt the questions to the needs of each case in the effort to secure an impartial jury.") (internal citations and quotations omitted).

We also recognize that the trial court did ask the venire whether they had such strong feelings about "second-degree assault," an offense which encompasses, by statute, the crime of intentionally causing physical injury to a police officer. We do not find, however, that this question was sufficient to address the biases appellant sought to uncover with his question. Although a prospective juror likely knew, abstractly, what the court meant by "assault," the same juror likely did not know exactly what "second-degree assault" entails, let alone that such an offense incorporates the statutory-specific crime of intentionally causing physical injury to a police officer. Thus, the question as propounded by the trial court was "'in a form so general that it is likely it did not sufficiently indicate to the panel of jurors what possible bias or prejudice was being probed.'" *Thomas*, 369 Md. at 216 (internal citations omitted). And, as the Court of Appeals has emphasized, "'a party is entitled to a jury free of all disqualifying bias or prejudice without exception, and not merely a jury free of bias or prejudice of a general or abstract nature.'" *Id.* (internal citations omitted).

Within the same vein, we further note that the primary purpose behind appellant's question was not to uncover biases related to assaults, generally, but rather to uncover biases related to assaults on police officers. As previously discussed, the Court of Appeals has recognized that some crimes, such as drug crimes, engender particularly strong feelings requiring exposition. *Thomas*, 369 Md. at 211-12. Given the "strong feelings" many people have toward law enforcement, and given the current climate surrounding violence directed at (and perpetrated by) police officers, it is not a tremendous stretch to suppose that an assault on a police officer would elicit strong feelings, either positive or negative,

which may impair the ability of a juror to be fair and impartial. In fact, our courts already recognize that a police officer's "status" may cause jurors to give greater or lesser weight to the officer's testimony, which is why trial courts are required to propound requested voir dire questions aimed at uncovering these biases. *See e.g. Pearson*, 437 Md. at 367; *Langley v. State*, 281 Md. 337, 349 (1977).

The State notes that the trial court did ask prospective jurors whether they would give more or less weight to a police officer's testimony, which, the State contends, was sufficient to uncover any juror bias regarding police officers. We disagree. Such questions are designed to reveal juror bias regarding the credibility of a police officer as a witness. *See Moore v. State*, 412 Md. 635, 648-50 (2010) ("[I]t is grounds for disqualification for a juror to presume that one witness is more credible than another simply because of that witness's status or affiliation with the government."). Appellant's proposed question, on the other hand, had nothing to do with the credibility of the officer as a witness; rather, the aim of the question was to uncover biases related to the officer as a victim of the crime. This distinction is pivotal. As the Court of Appeals explained, when a court seeks to uncover biases related to a police officer as a witness, "general questions that delve into a venireperson's personal acquaintances or beliefs…while pertinent and necessary to uncover certain kinds of bias, simply do not suffice to uncover status or affiliation bias; they do not address, never mind resolve, the question of whether a venireperson would favor a particular witness or category of witness prejudicially." *Id.* at 665-66 (2010). Conversely, questions that delve into status or affiliation bias, such as the one proposed in the instant case and advocated by the State as sufficient, do not address the question of

whether a person has strong feelings about the crimes charged. In short, the question propounded by the trial court would not reveal the precise biases appellant's question rightly sought to uncover. See *Thomas*, 369 Md. at 215 ("Merely asking general questions…is not an adequate substitute for properly framed questions designed to highlight specific areas where potential jurors may have biases that could hinder their ability to fairly and impartially decide the case.") (internal citation and quotations omitted).

Finally, the State argues that any error on the part of the trial court was harmless. On this point, the Court of Appeals has stated quite clearly that "'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.'" *Moore*, 412 Md. at 666-67 (quoting *Casey v. Roman Catholic Archbishop of Baltimore*, 217 Md. 595, 605 (1958)). Because we hold that the trial court erred in failing to propound appellant's requested voir dire question, this error is reversible error. *See Id.* at 668 ("If there is an abuse of discretion, there is error and that error is reversible error. It is not, by definition, harmless.") (internal citations omitted).

JUDGMENTS OF THE CIRCUIT COURT FOR BALTIMORE CITY REVERSED. CASE REMANDED TO THAT COURT FOR A NEW TRIAL. COSTS TO BE PAID BY THE MAYOR AND CITY COUNCIL OF BALTIMORE.