UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 0917

September Term, 2016

RASHAD WHITEHURST

v.

STATE OF MARYLAND

Kehoe,
Arthur,
Eyler, James R.
(Senior Judge, Specially Assigned),

JJ.

Opinion by Eyler, James R. J.

Filed: April 27, 2017

A jury in the Circuit Court for Baltimore City convicted Rashad Whitehurst, appellant, of possession of marijuana, stemming from a traffic stop on September 29, 2014. He notes this appeal and presents two questions for our review, which we have rephrased:[1]

1. Did the court err in denying appellant's motion to suppress?

2. Did the court abuse its discretion in refusing to ask appellant's requested *voir dire* question?

For the reasons stated below, we answer both questions in the negative. As such, we affirm.

BACKGROUND

On the evening of September 29, 2014, Detective William Janu and Detective Sergeant Troy Blackwell were patrolling in an unmarked police vehicle in the 700 block

[1] Appellant's questions presented, taken verbatim from his brief, read:

> 1. Whether the trial court erred in denying Mr. Whitehurst's motion to suppress because: (A) Sergeant Blackwell did not credibly articulate reasonable suspicion to pull over Mr. Whitehurst for a tinting violation as required by *State v. Williams*[, 401 Md. 676 (2007)], and (B) even if the stop was supported by reasonable suspicion, the officers exceeded the permissible scope of the stop by ordering Mr. Whitehurst out of the car and starting investigative questioning wholly unrelated to the alleged traffic violations?
>
> 2. Whether the trial court committed reversible error by refusing to ask *any voir dire question* about racial bias, despite Defense Counsel's request, as required by *Hernandez v. State*[, 357 Md. 204 (1999)] and *Contee v. State*[, 223 Md. 575 (1960)]?

of Preston Street.[2] Detective Janu and Detective Sergeant Blackwell explained that they were assigned to the Operational Intelligence section, tasked with investigating "violent crime and narcotics."[3] As such, they were wearing "tactical vest covers," which displayed the word "Police" on the front and back, and their badges were visible.

Around 7:00 P.M. the officers observed a silver Honda Accord pass them, traveling in the opposite direction. Detective Sergeant Blackwell stated that the Honda's windows had a "dark tint," such that he believed it was illegal. Accordingly, the officers turned around, initiated a traffic stop, and pulled the vehicle over in the 1900 block of Druid Hill Avenue.

Detective Janu approached the driver's door, while Detective Sergeant Blackwell walked to the front passenger's door. Detective Janu asked the driver to roll down all of the windows, which was done. The officers observed appellant in the driver's seat and a female in the front passenger seat, as well as a bag in the back seat. Detective Janu advised appellant that he was being stopped because of the tint on the vehicle. Detective Janu asked

[2] We note that the transcript refers to the location alternatively as "Presstman," "Crestman" and "Crestmont." Appellant, in his opening brief, states he was stopped on Preston Street. The State does not dispute that assertion.

All law enforcement personnel in this case are members of the Baltimore City Police Department, unless otherwise noted.

[3] The court accepted Detective Janu and Detective Sergeant Blackwell as experts in the identification and packaging of controlled dangerous substances.

for appellant's license and registration. Appellant produced a registration indicating the car belonged to Rhonda Lynn King-Burke, but he did not produce a license or other ID.[4]

At that point, Detective Janu asked appellant to step out of the vehicle. Detective Sergeant Blackwell then asked appellant if there was anything illegal in the car, to which appellant responded, "weed." Detective Sergeant Blackwell observed multiple "jugs" in a white plastic bag on the back seat, and the jugs contained a green "plant substance," which was later determined to be marijuana.[5] Appellant was placed under arrest.[6]

Around the time appellant was placed under arrest, Detectives Dwayne Weston and Bandele Charles arrived to assist. During a search of the car, Detective Bandele recovered a loaded, operable .22 caliber revolver from a secret compartment behind the glovebox.

Appellant was charged with possession of marijuana, possession of marijuana with the intent to distribute, wearing or carrying a handgun, carrying a gun in a vehicle, and unauthorized possession of a firearm. The jury acquitted appellant of all charges except the charge of possession of marijuana. The court subsequently sentenced appellant to a one-year prison term.

[4] Appellant did, however, provide his name to the officers. Later, the officers learned that Rhonda Lynn King-Burke is appellant's mother.

[5] Savitri Sharma, a chemist with the Baltimore crime lab, testified that the officers recovered between 33 and 35 grams of marijuana.

[6] The officers permitted the female passenger to leave the scene.

DISCUSSION

I. The Motion to Suppress

Prior to trial, appellant moved to suppress all of the evidence recovered from the traffic stop. At the suppression hearing, the only witness was Detective Sergeant Blackwell. He testified that he was a twenty-year veteran of the department and that, in 2012, he attended a one-day window tint training course in New Jersey, called "Top Gun." He also testified that he had window tint on his personal vehicle, and he had conducted "hundreds" of traffic stops based on suspicion of illegal tint.

As part of his qualifications, Detective Sergeant Blackwell testified that with a legally tinted window, "you can still see – you can still see through . . . at least to see a silhouette." Concerning the vehicle appellant was driving, the following colloquy occurred:

> [THE STATE]: Okay. All right. And what, if anything, did you observe while you were on patrol on the 700 block of Preston Street?
>
> * * *
>
> [DETECTIVE SERGEANT BLACKWELL]: It was – I came across a silver Honda Accord . . . with heavy black tint on it.
>
> Q: Okay. And when you say heavy black tint on it, can you describe for the Court what –
>
> A: Sure, in other words to make it simple, it's limo tint.
>
> Q: Okay.
>
> THE COURT: It's what?
>
> [DETECTIVE SERGEANT BLACKWELL]: It's like limo tint where you cannot see in it at all.

THE COURT: Okay. Okay.

[THE STATE]: Okay. So you can't see at all –

[DETECTIVE SERGEANT BLACKWELL]: Correct.

Q: -- through all the windows?

A: Oh, when it drove past me, I only saw the side. I didn't see the front window. So the side and the back was blacked out.

Q: Were you able to see if the vehicle was occupied by anybody else other than the driver?

A: Not until the windows were rolled down.

* * *

Q: Okay. And what specifically – can you describe in a little more detail in terms of the tint? You said it was like limo tint.

A: Yeah, it was like limo tint which I know is illegal. So once we saw it, caught up with it, pulled it over on the 1900 block of Drew [sic] Hill Avenue –

Q: Okay. When you say limo tint, comparing it to a normal car, say that I purchased from a dealer that had tinting on it –

A: Sure.

Q: -- versus a limo tint, can you describe the difference?

[DEFENSE COUNSEL]: Objection. Your Honor, I'm going to object to –

THE COURT: Sustained.

On redirect examination, Detective Sergeant Blackwell stated, "[T]he best way I can explain it, the tint that he had on there, I don't care what time of the day or night it is, I know for a fact that tint was illegal. . . . It was that dark."

The suppression court recognized that the window tint was, in fact, legal but stated that was immaterial to a determination of whether the officers had reasonable articulable suspicion that the tint was illegal. The court determined that the officers did not violate appellant's constitutional rights in asking him for his license and registration or to step out of the vehicle. The court reasoned that, when appellant could not produce a license, the officers had reasonable suspicion to continue questioning appellant, whereupon he admitted to possessing marijuana, which the court determined was in plain view on the back seat. Thus, the court concluded that the stop and subsequent events were lawful.

On appeal, appellant maintains that the court should have suppressed the evidence recovered from the traffic stop. He argues that the officers did not have reasonable articulable suspicion to stop him for illegal window tint for any one of three reasons: 1) Detective Sergeant Blackwell lacked sufficient training in identifying illegal window tint; 2) due to the timing and location of the stop, the officers could not have identified the tint as illegal; and/or 3) the officers failed to ascertain if a post-manufacturing tinting label appeared on the window. In addition, appellant argues that Detective Sergeant Blackwell failed to compare the Honda's window tint to a properly tinted window, as required by *State v. Williams*, 401 Md. 676 (2007). Lastly, appellant argues that, even if the stop was lawful, when the officer asked questions unrelated to the stop, the stop became unlawful.

The State maintains that the court properly denied the motion to suppress. The State contends that although Detective Sergeant Blackwell relied solely on his visual observations of the window tint, as the officer did in *Williams*, that case is distinguishable from this one. Furthermore, the State argues, there is no requirement for training in

identifying window tint under specific environmental conditions or that officers check for a post-manufacturing label. Moreover, the State maintains, the officers did not exceed constitutional limits by questioning appellant after the initial stop.

Standard of Review

"In reviewing a trial court's decision to grant or deny a motion to suppress, an appellate court ordinarily limits its review to the record of the motions hearing." *Sinclair v. State*, 444 Md. 16, 27 (2015). In this undertaking, we "'review[] for clear error the trial court's findings of fact, and review[] without deference the trial court's application of the law to its findings of fact.'" *Robinson v. State*, 451 Md. 94, 108 (2017) (quoting *Varriale v. State*, 444 Md. 400, 410 (2015)). Additionally, we view the evidence and reasonable inferences therefrom in the light most favorable to the prevailing party. *State v. Sizer*, 230 Md. App. 640, 644 (2016) (citing *Longshore v. State*, 399 Md. 486, 498 (2007)).

Unquestionably, a vehicle stop implicates constitutional rights pursuant to the Fourth Amendment of the United States Constitution.[7] *See Brice v. State*, 225 Md. App. 666, 695 (2015), *cert. denied*, 447 Md. 298 (2016). This Court has recognized that "[i]n assessing the traffic stop, the only concern is whether the officer possessed sufficient information to objectively justify the stop; the officer's subjective intent is irrelevant." *Santos v. State*, 230 Md. App. 487, 495 (2016) (citing *Jackson v. State*, 190 Md. App. 497, 503 (2010)). To that end, a "traffic stop is justified under the Fourth Amendment if the

[7] The Fourth Amendment provides, in part: "The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated[.]" U.S. CONST. amend IV.

officer has a reasonable articulable suspicion that a traffic law has been violated." *Turkes v. State*, 199 Md. App. 96, 115 (2011) (citing *Williams*, 401 Md. at 690). It is of no moment that the officers may have had an ulterior motive in stopping appellant, as a pretextual stop has been held to be constitutional. *See Santos*, 230 Md. App. at 495 (discussing *Whren* stops which "'permit[] [police] to exploit the investigative opportunities presented to them by observing traffic infractions even when their primary, subjective intention is to look for narcotics violations'" (quoting *Charity v. State*, 132 Md. App. 598, 601 (2000))).[8]

Reasonable Articulable Suspicion of Illegal Window Tint

Maryland Code (1977, 2012 Repl. Vol.), Transportation Article ("Trans."), § 22-406(i)(1)(i) provides that a person may not operate a passenger vehicle in Maryland if "there is affixed to any window of the vehicle any tinting materials added to the window after manufacture of the vehicle that do not allow a light transmittance through the window of at least 35%[.]" Subsection (i)(2) of that statute permits police officers to stop a vehicle for violation of subsection (i)(1) and issue a citation and/or repair order.

State v. Williams is instructive as to the reasonable articulable suspicion required for a traffic stop based on possible illegal window tint. In that case a police officer stopped Williams at 12:40 A.M. on the basis of illegal window tint. 401 Md. at 679. The officer

[8] *Whren* stops take their name from *Whren v. United States*, 517 U.S. 806 (1996).

In *Santos*, 230 Md. App. at 504, we explained that *Whren* stops are different from *Terry* stops. We remarked that "[w]here reasonable suspicion quickly appears after a *Whren* traffic stop . . . the rules pertaining to *Terry*-stops take over." *Id.* Then, we analyze "whether the police pursued their investigation from that point in a diligent and reasonable manner." *Id.* A *Terry* stop refers to *Terry v. Ohio*, 392 U.S. 1 (1968).

advised Williams that he had been stopped for illegal tint and that he would receive a repair order. *Id.* at 681. Upon request, Williams provided his license and registration, which did not reveal any outstanding issues. *Id.* A K-9 officer then arrived, and the dog alerted to possible contraband. *Id.* A subsequent search revealed quantities of cocaine and marijuana, and Williams was arrested. *Id.* Four days later Williams had the vehicle inspected, which indicated that Williams's windows were legally tinted. *Id.*

The officer testified that the back window of Williams's car was "darker than 'normal'" and that "he should have been able to see into the car" at a well-lit intersection, but he could not. *Id.* The officer stated further that he had made approximately twelve stops to issue repair orders for tinting and had not received any training in that area. *Id.* at 680. According to the officer, "'if the officer in their [sic] own opinion feels it's too dark, then you can stop the vehicle.'" *Id.* The officer acknowledged that there are instruments that can readily measure light transmittance, but he had not been trained in their use, and he did not have one available. *Id.* Instead, the officer testified that Williams's window "'appeared dark to me'" and "'[a]ppeared darker than a normal window[.]'" *Id.* (emphasis omitted).

The suppression court granted Williams's motion to suppress, reasoning that Williams's tint was, in fact, legal and concluding that the officer "'ha[s] to be right on [the tint].'" *Id.* at 682.

After discussing the statutes and regulations addressing vehicle tint in Maryland, the Court of Appeals discussed *Whren* stops. *Id.* at 685-86. The Court determined that the suppression court had created a standard "wholly inconsistent with *Whren*, with both pre-

and -post *Whren* Fourth Amendment jurisprudence, and with common sense." *Id.* at 686. The suppression court's "absolute correctness" standard was improper. *Id.* at 687. Rather, the Court of Appeals determined that "the appropriate minimum standard [to justify a traffic stop based on illegal window tint] is reasonable articulable suspicion." *Id.*

Turning to Williams's case, the Court reasoned that the officer lacked reasonable articulable suspicion. *Id.* at 691. The Court recognized that an officer's visual observations – without the assistance of a tint measurement device – may be sufficient to give rise to a reasonable suspicion of illegal tint. *Id.* The problem in *Williams*, however, "was [the officer] comparing the darkness of the rear window to a window without any tinting." *Id.* Recognizing that a tinted window will clearly be darker than a non-tinted window, the Court held: "If an officer chooses to stop a car for a tinting violation based solely on the officer's visual observation of the window, that observation **has to be in the context of what a properly tinted window, compliant with the 35% requirement, would look like.** If the officer can credibly articulate that difference, the court could find reasonable articulable suspicion, but not otherwise." *Id.* at 692 (emphasis added).

We applied that standard in *Turkes*, *supra*, 199 Md. App. In that case, an officer stopped Turkes at 11:45 A.M. after observing his vehicle drive past. *Id.* at 103-04. The officer testified that the tint on Turkes's vehicle was "so dark that [he] could not see who was in the vehicle." *Id.* at 104. Once stopped, Turkes exited the vehicle and starting walking "quickly" toward a nearby building. *Id.* The officer called Turkes back to the car, and when Turkes re-entered the vehicle, the officer observed a small black bag in the door well. *Id.* Turkes, realizing that the officer had seen the bag, began to look "nervously" at

the officer. *Id.* The officer then informed Turkes that he had been stopped for a window tint violation, and he would be free to leave once the officer had written a repair order. *Id.* Turkes provided his license and registration. *Id.*

From his police cruiser, behind Turkes's vehicle, the officer observed Turkes looking through his rear view mirror and moving around in his seat. *Id.* at 104-05. When the officer returned to give Turkes the repair order, he asked Turkes to step out of the car to sign it. *Id.* at 105. As Turkes complied, the officer observed that the black bag was no longer in the door well. *Id.* The officer then asked Turkes if there was anything illegal in the vehicle, and Turkes consented to a search. *Id.* at 106. After searching the vehicle, and failing to find the black bag, the officer patted down Turkes and, after a short pursuit on foot, located the bag, which contained a quantity of cocaine. *Id.* at 106-07. The circuit court denied Turkes's motion to suppress. *Id.* at 113.

On appeal, we concluded that the officer had reasonable articulable suspicion to stop Turkes for a possible tint violation. *Id.* at 115-16. The officer testified that he could not see into the vehicle at all, even to determine the number of occupants. *Id.* Furthermore, we recognized that the officer had undergone training in identifying illegal tint at the police academy and had also conducted approximately 100 stops for tinted windows. *Id.* at 116. Importantly, we noted that the officer testified, "based on his training and experience, if a window's tint is legal, a person should be able to see into the window because sunlight can get through." *Id.*

Applying the *Williams* standard in this case, we are not persuaded that the suppression court erred in its determination that Detective Sergeant Blackwell had

reasonable articulable suspicion to stop appellant. Detective Sergeant Blackwell testified that the Honda had a "heavy black tint[,]" like "limo tint," such that he could not see in it at all. Detective Sergeant Blackwell stated that with a legally tinted window, "you can still see – you can still see through . . . at least to see a silhouette." Detective Sergeant Blackwell clearly compared appellant's window with a legally tinted window, as required by *Williams*.

Furthermore, Detective Sergeant Blackwell testified that he had received training in identifying window tint at the police academy and at a separate training course in New Jersey. He made "hundreds" of stops for illegal tint. Although appellant observes that Detective Sergeant Blackwell's training was not specific to identifying window tint "at night," and that the officers used a flashlight to see into the vehicle even after appellant had rolled down the windows, that does not defeat the initial reasonable suspicion that appellant was violating the window tint law. There was testimony that the sun had set by the time police stopped appellant, but at 7 P.M. on September 29, it was not "dark" or "night." Detective Sergeant Blackwell agreed with defense counsel's characterization that it was "darker than it would be during the day." Detective Sergeant Blackwell stated that he could not see into the vehicle at all, even to determine the number of occupants.

Appellant also argues that Detective Sergeant Blackwell could have easily checked to see if there was a post-manufacturing label on the car's windshield or have used a tint comparison device, both of which would have indicated that the tint was legal. Appellant argues that the Court of Appeals provided "guidance" in *Williams* that an officer should

check for such a label, and Detective Sergeant Blackwell's failure to look for or find the label demonstrates that he lacked a reasonable suspicion to stop appellant.

The *Williams* Court recognized that applicable regulations require a label to be affixed to tinted windows to ensure compliance with the 35% requirement. 401 Md. at 692 n.3. The Court stated that when an officer stops a driver for an alleged tint violation, "one easy preliminary step before proceeding further, is to check the window to see if such a label is present, for if it is and (1) shows that the window is compliant with the 35% requirement and (2) there is no reason to suspect that the label is not genuine, any suspicion that arose from the visual observation would likely disappear." *Id.* The Court reasoned that in situations where observation of the label indicated a legally tinted window, "the officer would be obliged to apologize to the motorist and allow him or her to leave without further detention." *Id.*

The Court's "preliminary step" of checking for a label, however, is not a requirement. Moreover, the Court did not suggest that the existence of a label made the stop unlawful but rather could be relevant to the length of the stop and the decision to issue a citation. Here, the stop was extended because appellant failed to produce any identification. We are persuaded that the police officers had reasonable articulable suspicion to stop appellant for a traffic violation.

Further Detention

Our inquiry into the traffic stop is not at an end, however, as appellant contends that even if the stop was based on reasonable articulable suspicion, the officers' investigative questioning into unrelated matters violated his constitutional rights. Appellant relies

primarily on *Charity v. State*, *supra*, and *Whitehead v. State*, 116 Md. App. 497 (1997), for the proposition that police tread on constitutional rights when they push traffic stops into other investigations.

The State maintains that the police did not exceed the scope of the traffic stop in this case. The State acknowledges that the investigation of the window tint was "derailed" during the stop, but this was due to appellant's failure to provide identification, the vehicle's registration indicated an owner other than appellant, and appellant admitted that there was marijuana in the car. The State argues that there are key distinguishing features between this case and *Charity* and *Whitehead*.

The Court of Appeals has held that the purpose of a traffic stop is to enforce the traffic laws, and "'[o]nce the purpose of that stop has been fulfilled, the continued detention of the car and the occupants amounts to a second detention.'" *McCree v. State*, 214 Md. App. 238, 260 (2013) (quoting *State v. Green*, 375 Md. 595, 610 (2003)), *aff'd*, 441 Md. 4 (2014). Continued detention is permissible, however, "'if either (1) the driver consents to the continuing intrusion or (2) the officer has, at a minimum, a reasonable articulable suspicion that criminal activity is afoot.'" *Id.* at 261 (quoting *Green*, 375 Md. at 610). "If neither of these conditions is present, the stop must end." *Id.* (citing *State v. Ofori*, 170 Md. App. 211, 235 (2006)).

In *Charity v. State*, an officer observed three vehicles traveling "closely together" in rainy conditions. 132 Md. App. at 602. The officer determined that the two trailing cars were following too closely, and he initiated a traffic stop. *Id.* Another police officer issued a written warning to the driver of one of the vehicles, and the vehicle was allowed to

proceed on its way. *Id.* With the other vehicle, however, the officer developed a suspicion that the driver and his passenger were involved in drug running because there were 72 air fresheners hanging from the rear view mirror. *Id.* at 602-03. Moreover, the driver had a North Carolina driver's license, while the passenger had a New York license and Virginia identification card. *Id.* at 603, 621. The officer questioned the driver and passenger separately as to their travel plans and received inconsistent stories. *Id.* Standing outside in a driving rain, Charity "ostensibly consented" to a patdown, which revealed a small quantity of marijuana. *Id.* A subsequent search of the vehicle revealed a large quantity of cocaine. *Id.* at 603. The circuit court denied Charity's motion to suppress. *Id.* at 604.

On appeal, this Court determined that the initial traffic stop was a constitutional *Whren* stop. *Id.* at 610. We then recognized that "[w]e must assess the reasonableness of each detention on a case-by-case basis and not by the running of the clock." *Id.* at 617. In Charity's case, we concluded that the stop should have lasted no longer than the one for the other vehicle. *Id.* at 620. We reasoned that the officer's questioning "of 'whence they cometh and whither they goeth' had no remote bearing on the traffic infraction of following too closely." *Id.* at 622. Accordingly, we held that once the officer had told Charity the reason for the stop, and Charity apologized for the infraction, and there was no issue with Charity's license and registration, "any further detention of [Charity] to engage in a narcotics-related investigation was beyond the scope of what is permitted[.]" *Id.* at 629. Furthermore, we determined that the officer did not have a "*Terry*-level articulable suspicion that drug-related activity was afoot." *Id.* at 631. We, therefore, reversed and granted Charity's motion to suppress. *Id.* at 639.

In *Whitehead v. State*, a police officer stopped Whitehead for speeding. 116 Md. App. at 498. Whitehead provided his registration, but no identification. *Id.* The officer ordered Whitehead out of the car and questioned him and the passenger separately as to their travels, receiving inconsistent stories. *Id.* at 498-99. After learning that there were no issues with Whitehead's driving status, and Whitehead refused to sign a consent form to permit a search of the vehicle, the officer nevertheless conducted a K-9 search, which revealed a quantity of cocaine. *Id.* at 499. The circuit court denied Whitehead's motion to suppress. *Id.* at 500.

On appeal, we observed that once the officer learned that Whitehead's driving privileges were in order and that the car was not stolen, the officer "was under a duty expeditiously to complete the process of either issuing a warning or a traffic citation for whatever traffic offenses that he had observed." *Id.* at 503. We rejected the State's argument that the officer had reasonable suspicion to suspect criminal activity based on Whitehead's "nervous" refusal to sign the consent form because "to condone the use of a citizen's reaction to a consent form as a litmus test to determine probable cause would be to render the Fourth Amendment a dead letter and the requirement of the police to secure a valid waiver a nullity." *Id.* at 503-04. Furthermore, we concluded that the officer's questions were designed to probe beyond the scope of the traffic stop in order to justify a search of the vehicle. *Id.* at 504. We reversed the suppression court, holding that "[s]topping a car for speeding does not confer the right to abandon or never begin to take action related to the traffic laws[.]" *Id.* at 506.

Unlike in those cases, appellant did not produce identification, and after verifying that all was in order, the officers, nevertheless, pursued other possible violations. At the suppression hearing, Detective Sergeant Blackwell testified that the officers were concerned that the car may have been stolen. Appellant never informed the officers that the woman identified on the registration was his mother. We conclude that appellant's failure to provide identification and providing a registration indicating a female owner justified Detective Sergeant Blackwell's further questioning. We perceive no constitutional violation.

II. *Voir Dire*

Prior to *voir dire*, appellant's counsel requested the court to ask the following question of the *venire*: "[I]f they have any fixed biases, opinions, or prejudice[s] about people which would affect their ability to be fair and impartial [in deciding a] verdict?" The circuit court refused, determining that it was a "jury instruction." Following *voir dire*, the court asked counsel if there were any issues with *voir dire*, to which appellant's counsel's response was inaudible. In order to obtain alternate jurors, additional prospective jurors had to be called and *voir dired*. Following *voir dire* of this second panel, the court again asked counsel if there were any issues or exceptions, to which appellant's counsel had no response.

On appeal, appellant contends that the court erred in refusing to ask the proposed *voir dire* question. Appellant maintains that the proposed question was clearly directed at determining if any potential juror had any *racial* biases against appellant, who is African American. As such, the circuit court should have tailored appellant's question to seek this

information, as uncovering racial bias is a permissible *voir dire* purpose, and, indeed, is *mandatory* if requested. Moreover, appellant argues, the circuit court's failure to ask *any* question directed at uncovering racial bias constitutes error.

The State argues that appellant waived this issue by failing to state issues or exceptions, in response to the court's invitation to do so. The State further argues that appellant has not sought review under the plain error doctrine. On the merits, the State maintains that appellant's proposed question was not directed at racial bias. Because appellant did not request the court to ask a mandatory *voir dire* question, the court was under no obligation to put the question in proper form.

The Court of Appeals has remarked that "[a] defendant has a right to 'an impartial jury[.]' *Voir dire* [] 'is critical to' implementing the right to an impartial jury." *Pearson v. State*, 437 Md. 350, 356 (2014) (internal citations omitted). "In Maryland, the sole purpose of *voir dire* is to ensure a fair and impartial jury by determining the existence of cause for disqualification[.]" *Stewart v. State*, 399 Md. 146, 158 (2007). To that end, *voir dire* questions should be directed at "two broad areas of inquiry that may reveal cause for a juror's disqualification: (1) examination to determine whether the prospective juror meets the minimum statutory qualifications for jury service, and (2) examination to discover the juror's state of mind as to the matter in hand or any collateral matter reasonably liable to have undue influence over him [or her]." *Id.* at 159 (citing *Davis v. State*, 333 Md. 27, 35-36 (1993)). The Court of Appeals has remarked that the second category "is comprised of 'biases directly related to the crime, the witnesses, or the defendant[.]'" *Pearson*, 437 Md. at 357 (quoting *Washington v. State*, 425 Md. 306, 313 (2012)).

Voir dire is left to the discretion of the trial judge, and we "review[] for abuse of discretion a trial court's decision as to whether to ask a *voir dire* question." *Id.* at 356 (citing *Washington*, 425 Md. at 314). A court abuses its discretion when it refuses to ask a mandatory question; that is, "[o]n request, a trial court *must* ask a *voir dire* question if and only if the *voir dire* question is 'reasonably likely to reveal [specific] cause for disqualification[.]'" *Id.* at 357 (emphasis added) (quoting *Moore v. State*, 412 Md. 635, 663 (2010)). "The judge's conclusions [as to *voir dire*] are therefore entitled to substantial deference, unless they are the product of a *voir dire* that 'is cursory, rushed, and unduly limited.'" *Stewart*, 399 Md. at 160 (quoting *White v. State*, 374 Md. 232, 241 (2003)).

"[A] prospective juror with bias against a criminal defendant's race, ethnicity, or cultural heritage is not qualified to sit on that defendant's jury, and therefore, a requested *voir dire* question designed to uncover such bias in a prospective juror is *mandatory*." *Hayes v. State*, 217 Md. App. 159, 169 (2014) (emphasis added) (citing *Washington*, 425 Md. at 325). Unquestionably, then, when a defendant poses a *voir dire* question seeking to ascertain if any potential jurors harbor racial bias against a defendant, the circuit court must pose that question.

A defendant may, however, fail to preserve or waive his or her right to raise the issue of rejected *voir dire* questions on appeal. We recognized in *Brice*, 225 Md. App. at 679, that "[i]f 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.'" (Quoting *Gilmer v. State*, 161 Md. App. 21, 33 (2005), *rev'd on other*

grounds, 389 Md. 656 (2005)). A defendant may waive the issue of *voir dire* if he or she makes no comment or neglects to raise the issue when the court asks for exceptions. *Id.*

In this case, we agree with the State that appellant has waived this issue for review. After *voir dire* of the first panel, the court asked counsel if there were any issues or exceptions. The transcript records appellant's counsel's response as inaudible. It is the appellant's responsibility to demonstrate where error occurred in the record and where such error was preserved. *See State v. Chaney*, 375 Md. 168, 183-84 (2003) ("'[T]he most fundamental principle of appellate review [] is that the action of a trial court is presumed to have been correct and the burden of rebutting that presumption is on the party claiming error first to allege some error and then to persuade us that that error occurred.'" (Quoting *Fisher v. State*, 128 Md. App. 79, 104 (1999))). As to the *voir dire* of the second panel, the transcript reflects no response to the court's invitation to object to *voir dire* and no request for a question related to racial bias. As such, we conclude that appellant failed to preserve the *voir dire* issue for our review.

Assuming the issue was not waived, appellant argues that, even if the proposed question was not mandatory, the circuit court should have tailored the question to address the information appellant was so clearly seeking.

In *Contee v. State*, 223 Md. 575. 577-578(1960), Contee, an African American, was on trial for allegedly raping a white woman. Contee's counsel proposed several *voir dire* questions addressing potential jurors' feelings about segregation, mixed race relations, and whether jurors would believe the testimony of a white woman over that of a black man. *Id.* at 579. The circuit court refused to ask these questions. *Id.*

On appeal, the Court of Appeals reasoned that the proposed *voir dire* questions were improper, but concluded "it is clear that the defendant was denied an opportunity either to frame additional proper *voir dire* questions which might have been proper or to request a general one concerning racial prejudices or feelings." *Id.* at 580. The Court continued: "Moreover, although it was fully apprised of the essence of what the defendant was seeking, the court failed to ask on its own motion, as it should have done, a proper question designed to ascertain the existence of cause for disqualification on account of racial bias or prejudice." *Id. See also Hernandez*, 357 Md. at 224 (remarking that where Hernandez requested a specific question as to potential racial biases, and court propounded less specific question, Hernandez's objection "coupled with the State's clarification, were sufficient to trigger the *Contee* duty on the trial court to submit a question related to race").

Unlike in the cited cases, appellant made no reference to racial basis. There must be a clear reference to the substance of what would be a mandatory question, *e.g.*, racial bias, in order to invoke a trial judge's duty to rephrase and ask the question in proper form. The requested question, as phrased, was very broad and insufficient to advise the court that the question related to racial bias.

JUDGMENTS OF THE CIRCUIT COURT FOR BALTIMORE CITY AFFIRMED. COSTS TO BE PAID BY APPELLANT.