Circuit Court for Harford County
Case No.: 12-K-17-001000

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 2950

September Term, 2018

QUADELL RASHON POLLINS

v.

STATE OF MARYLAND

Leahy,
Wells,
Battaglia, Lynne, A.
(Senior Judge, Specially Assigned),

JJ.

Opinion by Battaglia, J.

Filed: February 3, 2020

Appellant, Quadell Rashon Pollins,[1] was convicted by a jury in the Circuit Court for Harford County of first degree murder and the use of a firearm in the commission of a crime of violence. Pollins was sentenced to life in prison with all but forty years suspended, twenty years to run consecutively for the firearm offense, and five years' probation upon release. The issues in this case involve a jury instruction regarding flight, a jury instruction regarding missing evidence and a voir dire question, as queued up by Pollins in the following questions, which we have renumbered:

> 1. Did the trial court err in giving a jury instruction on flight where it was not generated by the evidence?
>
> 2. Did the trial court err in refusing to give a missing evidence instruction?
>
> 3. Was the trial court's voir dire question about experiences, attitudes or predispositions clearly erroneous, and was trial counsel ineffective in failing to object to it?

For the reasons set forth below, we shall answer Pollins' questions in the negative and shall affirm the judgments of the Circuit Court.

FLIGHT INSTRUCTION

Although the testimony adduced at trial contained some inconsistencies with regard to the timeline of events and other details, we summarize the relevant facts with respect to the flight instruction in the light most favorable to the requesting party, which, here, is the State. *See Page v. State*, 222 Md. App. 648, 668–69, *cert. denied*, 445 Md. 6 (2015); *Hoerauf v. State*, 178 Md. App. 292, 326 (2008).

[1] Different spellings of Pollins' middle name are used throughout the briefs, trial court transcripts and motions. For the purpose of this opinion, however, we use "Rashon."

In the late hours of May 28, 2017, Pollins and Gary Gibson, the victim, left a trailer located in Riverside, Maryland, at which both men had been staying. Pollins had been renting a room from the trailer's owner, but at times, as indicated at trial, would stay at his sister's home in Essex or elsewhere with a friend. Gibson, a friend of the trailer's owner, had arranged to stay at the trailer for about a week.

According to testimony adduced at trial, at around 11:00 p.m., Pollins and Gibson left the trailer by car to visit a woman named "Blue." As indicated at trial, however, Pollins returned to the trailer about ten minutes later in a hurried manner and without Gibson. The trial testimony further provided that Pollins "pulled up . . . real fast and grabbed some stuff out of the car and ran into the house"—he was in "panic mode." Witnesses also stated that Pollins then burned what appeared to be clothing in a barrel in the backyard, after which Pollins and a woman packed some clothing and left the trailer.

At around 3:00 a.m. the following day, Harford County police responded to a call at a residence located a short distance from the trailer. Upon arriving at the scene, officers discovered a cold and unresponsive Gibson, who had been shot. Gibson was later declared dead. The same day, Pollins returned to the trailer, informed the owner that he was moving out, collected the remainder of his belongings and hid in the bushes until a friend of his returned to the trailer, when he asked the friend for a ride to Essex.

After the close of evidence at the trial for which Pollins had been charged with Gibson's death, Judge Kevin Mahoney, sitting in the Circuit Court for Harford County,

gave the jury instructions before they deliberated. At the request of the State,[2] Judge Mahoney included a flight instruction, congruent with Maryland Criminal Pattern Jury Instruction 3:24:

> A person's flight immediately after the commission of a crime or after being accused of committing a crime is not enough by itself to establish guilt, but it is a fact that may be considered by you as evidence of guilt. Flight under these circumstances may be motivated by a variety of factors, some of which are fully consistent with innocence. You must first decide whether there is evidence of flight, then you must decide whether this flight shows a consciousness of guilt.

Defense counsel noted an objection to the instruction, stating he did not "believe" there was any evidence of flight, but "that there has been evidence that it can be argued over." Judge Mahoney explained his rationale for providing the flight instruction:

> I do believe that the evidence did generate an issue on that. There was testimony that Mr. Pollins came back to the trailer after the murder and that he was, first of all, in a hurry and that he took some items. Again, there is obviously conflicting testimony, but there was testimony that he took items out of the car at some point, one witness represented it as clothing. He then went into the trailer and there was this burning in the barrel situation. Then although Mr. Pollins is then purported to have stayed at the trailer for some period of time, that he then left and then arguably went to another residence at which time there was another bag of items, whether it be clothing or something else, that was disposed of and the witness observed a gun in what was described as Keta's purse. So, I thi[nk] there is at least an argument generated as to flight and that instruction was appropriate.

Pollins argues that, although his behavior following his return to the trailer without the victim ten minutes after having left the trailer with the victim, in isolation, might constitute "some evidence" of flight, any such inference of flight, however, was later

[2] Judge Mahoney, on the record, made reference to a discussion with regard to the State's request for a flight instruction, indicating that it took place in chambers.

"negated" by the fact that he had "carried on his normal activities, frequented his usual locales, and associated with the same people as before [the victim] was murdered." Accordingly, Pollins contends that, while there may have been evidence to support an instruction regarding concealment or destruction of evidence[3] or suppression, alteration or creation of evidence,[4] there was no proof that he feared apprehension to warrant a flight instruction.

The State, conversely, of course, disagrees and posits that the testimony adduced at trial did support a flight instruction as Pollins' behavior upon his return to the trailer

[3] Maryland Criminal Pattern Jury Instruction 3:26 provides:

> You have heard that the defendant [concealed or destroyed] evidence in this case. Concealment or destruction of evidence is not enough by itself to establish guilt, but may be considered as evidence of guilt. Concealment or destruction of evidence may be motivated by a variety of factors, some of which are fully consistent with innocence.
>
> You must first decide whether the defendant [concealed or destroyed] evidence in this case. If you find that the defendant [concealed or destroyed] evidence in this case, then you must decide whether that conduct shows a consciousness of guilt.

[4] Maryland Criminal Pattern Jury Instruction 3:27 provides:

> You have heard that the defendant [suppressed, altered or created] evidence in this case. Such conduct is not enough by itself to establish guilt, but may be considered as evidence of guilt. It may be motivated by a variety of factors, some of which are fully consistent with innocence.
>
> You must first decide whether the defendant [suppressed, altered or created] evidence in this case. If you find that the defendant [suppressed, altered or created] evidence in this case, then you must decide whether this action shows a consciousness of guilt.

demonstrated "some" consciousness of guilt. Accordingly, the State posits that any explanation for Pollins' behavior was an issue best left for the jury to decide.

"The main purpose of a jury instruction is to aid the jury in clearly understanding the case, to provide guidance for the jury's deliberations, and to help the jury arrive at a correct verdict." *Cruz v. State*, 407 Md. 202, 209 (2009) (quoting *Chambers v. State*, 337 Md. 44, 48 (1994)). Maryland Rule 4-325(c) addresses, in part, when and how courts are to give jury instructions, providing that a "court may, and at the request of any party shall, instruct the jury as to the applicable law and the extent to which the instructions are binding." We review a trial judge's decision whether to give a jury instruction under the abuse of discretion standard. *Thompson v. State*, 393 Md. 291, 311 (2006).

"A requested jury instruction is applicable if the evidence is sufficient to permit a jury to find its factual predicate." *Page*, 222 Md. App. at 668 (quoting *Bazzle v. State*, 426 Md. 541, 550 (2012)). The minimum threshold of evidence required to generate a jury instruction is low; the requesting party "needs only to produce some evidence that supports the requested instruction[.]" *Bazzle*, 426 Md. at 551; *see also Page*, 222 Md. App. at 668. In our review of whether there was "some evidence" to support the provision of the instruction, "we view the facts in the light most favorable to the requesting party, here being the State." *Page*, 222 Md. App. at 668–69 (citing *Hoerauf*, 178 Md. App. at 326). "Some evidence" is not "strictured by the test of a specific standard. It calls for no more than what it says—'some,' as that word is understood in common, everyday usage. It need not rise to the level of 'beyond a reasonable doubt' or 'clear and convincing' or 'preponderance.'" *Dykes v. State*, 319 Md. 206, 216–17 (1990).

Our Court of Appeals has posited that, "although '[f]light by itself is not sufficient to establish the guilt of the defendant,' it 'is a factor that may be considered in determining guilt.'" *Thompson*, 393 Md. at 303 (quoting *Sorrell v. State*, 315 Md. 244, 228 (1989) then *Davis v. State*, 237 Md. 97, 105 (1964)). Moreover, flight may be indicative of a consciousness of guilt by the defendant. *Id.* "Concomitantly, we have recognized that a defendant's flight may be motivated by reasons unconnected to the offense at issue in the case and that the determination as to the motivation for flight is properly entrusted to the jury." *Id.*

A flight instruction is appropriately given when four inferences may reasonably be drawn from the evidence:

> that the behavior of the defendant suggests flight; that the flight suggests a consciousness of guilt; that the consciousness of guilt is related to the crime charged or a closely related crime; and that the consciousness of guilt of the crime charged suggests actual guilt of the crime charged or a closely related crime.

Thompson, 393 Md. at 312. Flight in this context "is defined as an 'act or instance of fleeing," especially "to evade arrest or prosecution. . . . Also termed *flight from prosecution*; *flee from justice*." *Hoerauf*, 178 Md. App. at 323 (quoting Black's Law Dictionary 670 (8th ed. 2004)). Flight requires that an individual move from one location to another in a manner that is beyond normal human locomotion. *Id.* at 324 (citation omitted). There must also be "attendant circumstances that reasonably justify an inference that the leaving was done with a consciousness of guilt and pursuant to an effort to avoid apprehension or prosecution based on that guilt[.]" *Hoerauf*, 178 Md. App. at 324, 325; *see also Page*, 222 Md. App. at 669.

In the instant matter, all four inferences were supported by the evidence adduced during trial. The evidence showed that Pollins' hurried actions upon returning to the trailer were accompanied by furtive conduct that could reasonably justify an inference of a consciousness of guilt and an effort to avoid apprehension based on that guilt. The trial court did not err in delivering the instruction.

MISSING EVIDENCE INSTRUCTION

At trial, testimony was adduced that after Pollins had returned to the trailer without Gibson, he burned what appeared to be clothing in a barrel situated behind the trailer. Pollins contends that the trial court abused its discretion in denying his request to give a missing evidence instruction to the jury with respect to the barrel, because police officers did not recover it when the property initially had been searched. Defense counsel's theory was that, if physical evidence from the barrel could not be produced, Pollins was entitled to an evidentiary inference that was unfavorable to the State.

At the close of evidence and before Judge Mahoney gave instructions, he reopened a discussion that had previously taken place in chambers of a missing evidence instruction requested by defense counsel:

> [DEFENSE COUNSEL]: As to the missing evidence instruction, the fact that there is basically nothing about even the presence of a barrel in the backyard is an indication – and the State did do or Detective Kramer did do two search warrants. The first one was definitely almost congruent with the murder and there is nothing. It wasn't there. There is no diagram, no nothing. So, I believe that the State's failure to preserve the presence of a burning barrel is – the onus is on them to have done so. Because they did not do that, we should be entitled to the instruction that the fact that they have no evidence of it gives rise to or can give rise to, not a presumption, but –
>
> THE COURT: An inference?

> [DEFENSE COUNSEL]: An inference that is detrimental to the State and favorable to the Defendant.

The State opposed the giving of the instruction, arguing that it did not possess any knowledge of the barrel's significance until months after the initial search of the trailer:

> [THE STATE]: [W]hen the detectives went out to [the trailer] to conduct the search and seizure warrant, they went out there twice; once I believe it was like June 3rd right after they spoke with Ms. Stamation, Mr. Williams and Ms. Labrenz. The search and seizure warrant covered the property as well as the interior of the trailer, and that's where we get the pictures of the trailer.
>
> Detective Kramer went through the entire property. If he did find anything, he didn't make a note of it. At that time in June of 2017 he had no idea about the Defendant burning items in a trash can. As I indicated in chambers, it was not until January 25th when Ms. Stamation was brought in to do trial prep for the trial that was originally set in March did she make a mention of the Defendant burning his clothing in that trash [c]an.
>
> The recorded statement of Greg Buchanan occurred on January 22nd, 2018. In his statement Mr. Buchanan mentions the same thing, that he says he saw the Defendant burning items.
>
> By that point it has been six months at least and Mr. Williams no longer lives at that property. Detective Kramer could have gone back to the property to see, one, if the barrel was even there even though Mr. Williams didn't live there anymore and the likelihood of anything be found in it was slim to nothing that had anything to do with this case.
>
> Detective Kramer did look in that barrel in June before he even knew anything about things being burned in there and he found nothing. Because he found nothing, Detective Kramer did not make a note of it in any police report or in his actual notes that he didn't find anything because he didn't know there was any relevance to the barrel. He looked through the barrel because that is what you do when you execute a search and seizure warrant; you look under the bed, in the kitchen cabinets. He didn't know what relevance anything would have been. He was just looking for possible pieces of evidence in this case. . . . Detective Kramer had no way of knowing that those items were being burned in that trash can because he didn't find that out until six months later.

Judge Mahoney denied defense counsel's request, explaining that:

> Detective Kramer testified that he reviewed the site when he was there with the other detectives in the course of executing the search warrant, that he

> looked all over the property and made note of anything that was in his view relevant or appropriate to preserve. The fact that nothing was preserved with respect to the barrel, and, of course, as we have heard no witness came forward until by my calculation almost eight months later to point the investigator to that barrel as a possible source of evidence is significant, because certainly eight months later it is very possible that there would not have been anything that would have been derived and would have been useful in this case.
>
> What is more significant to me is that, whether by way of scientific testing or by way of simple eyeballing of something such as the barrel, regardless the investigators didn't find anything or see anything which was incriminating to this Defendant.
>
> Again, as with the missing witness instruction or lack thereof, nothing precludes the defense from making issue or raising that issue to the jury's attention in closing argument that there was nothing and that were there had been any likelihood of something being recovered presumably the detective, the professional that he is, would have preserved it, tested it and kept it for future use in this case.
>
> So, I don't believe that a missing evidence instruction is warranted in this case.

After Judge Mahoney gave instructions, defense counsel noted an objection to the absence of the missing evidence instruction with respect to the barrel.

The State, during closing argument, posited that Pollins had burned evidence of the crime in the barrel:

> Ms. Stamation, as she was outside as she said smoking a blunt, she could see him put clothes in the barrel. Why is that important? Because you heard from [the assistant medical examiner] that because of the sinuses there would have been lots of blood splatter. By the fact that the Defendant was shot in his cheek and that there was stippling, these little marks around his cheek, we know there was close contact about four feet away. We know it had to be someone that Mr. Gibson knew, because it was four feet away.
>
> Now, he was a big man. We also know that it wasn't a robbery. Remember, the contents of his wallet we still found there. You heard from [the assistant medical examiner] that as soon as he was shot he would have been incapacitated. He would have dropped. If he was in the car, again there would have been blood in there. He dropped right on that driveway outside of 1533 Mitchell Lane. The Defendant left him there, came back and burned

> the clothing that had the blood spatter on it, and he had to get out of there. You heard testimony that he was seen leaving by Mr. Buchanan in [the car].
>
> ***
>
> On the night of May 29th, 2017 in the early morning hours the Defendant loaded that clip with bullets. He then took the victim to a secluded area where he knew no one would hear him. He shot the victim in the face and left his body there. He came back, burned his clothes, and he was seen with the gun afterwards.

On rebuttal, the State, again, theorized that Pollins had destroyed potential evidence in the case by burning it in the barrel:

> The Defendant was able to go outside, light something and that's when Erica Stamation saw that. If you don't want to believe anything that Ms. Stamation says alone, it is corroborated by Mr. Buchanan who said that he went inside and from the back he saw the barrel burning and the Defendant standing next to it. He wasn't out there giving Keta a kiss. He was out there getting rid of the blood splattered shirt and pants that he had on that had Mr. Gibson's blood all over it. He was getting rid of the evidence because he knew he could not be found with that evidence.

Pollins argues that Judge Mahoney erred in not giving the instruction because such a decision was premised on the "erroneous belief" that the police had no reason to suspect the barrel of containing evidentiary items. He posits that, at trial, one of the witnesses "unambiguously testified" that she informed Detective Kramer during the execution of the first search warrant of the trailer about the burning barrel and that Detective Kramer "seem[ed] interested in that" and then "took the barrel and went through the barrel." Accordingly, Pollins asserts that because the State failed to produce any evidence with respect to the barrel, he was entitled to an instruction that would have permitted the jury to draw the inference that any forensic evidence found in the barrel would have been unfavorable to the State; "in other words, that there either was no evidence corroborating

the allegation that Appellant burned clothing in the barrel or what was burned in the barrel had no connection whatsoever to the murder."

The State, conversely, argues that missing evidence instructions are generally not permitted absent extraordinary circumstances which do not exist in the present case as the State never had custody of the evidence in question nor did the purported evidence go to the "heart of the matter." As such, the State avers that Pollins was not entitled to the instruction, and further, that the proper course of action would have been for him to argue the adverse inference of the missing barrel during closing argument, which his attorney did not do.

Whether to give a missing evidence instruction is a decision within the trial court's broad discretion. *Patterson v. State*, 356 Md. 677, 688 (1999); *Jarret v. State*, 220 Md. App. 571, 592 (2014).

The Court of Appeals has stated that "a party generally is not entitled to a missing evidence instruction[.]" *Patterson*, 356 Md. at 681. In interpreting Rule 4-325(c), the rule which governs the giving of a jury instruction, the Court has noted that a trial court may be required to give a requested instruction when the requested instruction "is a correct statement of the law," is "applicable under the facts of the case" and "the content of the requested instruction was not fairly covered elsewhere in the jury instruction actually given." *Id.* at 683–84 (quoting *Ware v. State*, 348 Md. 19, 58 (1997)). The Rule requires that instructions be given with respect to the applicable law in a case; the Rule does not apply to factual matters or inferences of fact. *Id.*

When the State "fails to produce evidence, an inference may be made against" the failure to produce it. *Id.* "Many inferences, however, may be drawn from a missing piece of evidence and 'emphasis of one possible inference out of all the rest by a trial judge can be devastatingly influential upon a jury although unintentionally so." *Id.* (quoting *Yuen v. State*, 43 Md. App. 109, 114 (1979)). Evidentiary inferences are "not based on a legal standard but on the individual facts from which inferences can be drawn" and do "not normally support a jury instruction." *Id.* at 685. "While supported instructions in respect to matters of law are required upon request, instructions as to evidentiary inferences normally are not." *Id.* Accordingly, "regardless of the evidence, a missing evidence instruction generally need not be given; the failure to give such an instruction is neither error nor an abuse of discretion." *Id.* at 688. Any inference adverse to the State with regard to missing evidence is best left to be made during closing arguments. *Id.* at 683; *see also Lowry v. State*, 363 Md. 357, 375 (2001).

The Court of Appeals and this Court have time and time again affirmed the decision of a trial court to deny a defendant's request for a missing evidence instruction. *See Lowry*, *supra*, 363 Md. 357; *Patterson*, *supra*, 356 Md. 677; *Gupta v. State*, 227 Md. App. 718 (2016); *Jarrett*, *supra*, 220 Md. App. 571; *Hajireen v. State*, 203 Md. App. 537 (2012); *Grymes v. State*, 202 Md. App. 70 (2011); *Gimble v. State*, 198 Md. App. 610 (2011).

As noted in *Jarret*, 220 Md. App. at 593, and as still holds true today, we can only find one case in which a Maryland appellate court has held that a trial court abused its discretion by not giving a missing evidence instruction. In *Cost v. State*, 417 Md. 360 (2010), an incarcerated defendant was charged with stabbing a fellow inmate in a prison

cell. *Id.* at 363. Before the crime scene could be examined, the victim's cell had been cleaned and no physical evidence, such as towels, bedding and blood-stained clothing had been preserved. *Id.* at 366–67. At trial, Cost requested a missing evidence instruction, but the trial court declined to give one, of which the Court of Appeals held to be an abuse of discretion under the exceptional circumstances of that case. *Id.*

The Court noted that "the crime scene, allegedly containing blood-stained linens and clothing, and dried blood on the floor, certainly would contain highly relevant evidence with respect to the crime for which Cost [was] charged, which normally would be collected and analyzed." *Id.* at 380. The Court further observed that "the missing items were actually held as evidence, completely within State custody" and "at least some of these items were eventually submitted for laboratory examination, but were rejected because they were not submitted quickly enough, and because chain of custody was not properly preserved." *Id.* The Court additionally reasoned that the instruction was proper because the "evidence destroyed while in State custody was highly relevant to Cost's case" as a "factual issue at trial was whether [the victim] was, indeed, stabbed, and whether the alleged stabbing caused significant bleeding, as [the victim] insisted." *Id.*

In so holding, the Court noted that *Cost* was "not typical" and had "unusual facts." *Id.* at 380. The *Cost* case, as the Court observed, "may constitute the exceptional circumstance that the *Patterson* Court foresaw, one which compels a missing evidence jury instruction relating to an evidentiary inference." *Id.* 378–79.

In the present matter, Judge Mahoney properly denied defense counsel's request for a missing evidence instruction. No evidence was adduced to support the argument that the

barrel contained highly relevant evidence that went to the heart of the case against Pollins. There was also no evidence adduced at trial that the State ever possessed the barrel or any of its contents, as in *Cost*. Although there was testimony which indicated that police officers were informed of the barrel's relevance at the time of the execution of the search warrant, such testimony did not support only one inference of which would necessarily be unfavorable to the State.

VOIR DIRE QUESTION

Pollins next takes issue with the following question Judge Mahoney posed to the venire panel during voir dire:

> The case must be decided based on the evidence presented, not on race, gender, ethnicity, religion or country of origin of the Defendant or any witnesses. Therefore, does any member of the jury panel have any experience, attitude or predisposition in his or her background that would make it difficult for you to decide the case without regard to race, gender, ethnicity or country of origin?

Only one juror, Juror No. 83, answered "yes" to the question. At the bench, Juror No. 83 explained:

> Well, the thing is I worked or grew up in East Baltimore and I worked most recently in a predominantly African-American part of town and I was assaulted getting out of work. It was a carry out. That was mainly the thing, getting out of work at two o'clock in the morning.
>
> THE COURT: Are you telling me that you would be more inclined to believe the Defendant's guilt simply because he is African-American?
>
> [JUROR NO. 83]: I don't want to go through – I don't want to say that, but I have to say I have a predisposition in my head, yeah.
>
> THE COURT: With regard to African-Americans as a whole?
>
> [JUROR NO. 83]: Yes.

Both parties agreed to striking Juror No. 83 for cause.

Just before posing the above question to the jury venire, Judge Mahoney also asked, in response to defense counsel's request, "[d]oes any member of the jury panel hold or know of any bias or prejudice for or against this Defendant in this case?" No one responded.

Upon completion of voir dire, Judge Mahoney asked the parties whether they had any issues with respect to "general voir dire?" Pollins' trial counsel excepted only to the phrasing of a question other than the one about which Pollins now complains and took issue with "[n]othing else" regarding voir dire. After the jury had been empaneled, counsel for Pollins informed the trial court that the jury was "acceptable," which also, generally, signals acceptance of voir dire as propounded. *See State v. Stringfellow*, 425 Md. 461, 469 (2012) ("Generally, a party waives his or her voir dire objection going to the inclusion or exclusion of a prospective juror (or jurors) or the entire venire if the objecting party accepts unqualifiedly the jury panel (thus seated) as satisfactory at the conclusion of the jury-selection process.").

As a result, Pollins did not preserve his objection to the voir dire question, as he acknowledges. He, nonetheless, asks that we address his claim as plain error or, in the alternative, as an ineffective assistance of counsel claim on direct appeal, contending that the question improperly shifted the burden of deciding if jurors could be fair and impartial from the court to the jurors themselves, thereby violating his right to a fair trial.

It is within our discretion to review an unobjected to error at trial for plain error. Plain error is "error which vitally affects a defendant's right to a fair and impartial trial." *Diggs v. State*, 409 Md. 260, 286 (2009) (quoting *State v. Daughton*, 321 Md. 206, 211 (1990)). We will exercise our discretion to recognize plain error only when the reasons for doing so are "compelling, extraordinary, exceptional or fundamental to assure the defendant a fair trial." *Id.* (quoting *Abeokuto v. State*, 391 Md. 289, 327 (2006)).

Before an appellate court can exercise its discretion to find plain error, four conditions must be met: "there must be an error or defect—some sort of 'deviation from a legal rule'—that has not been intentionally relinquished or abandoned, *i.e.*, affirmatively waived, by the appellant"; the "legal error must be clear or obvious, rather than subject to reasonable dispute"; the "error must have affected the appellant's substantial rights, which in the ordinary case means he must demonstrate that it 'affected the outcome of the [] court proceedings'"; and the error must "seriously affect[] the fairness, integrity or public reputation of judicial proceedings." *Newton v. State*, 455 Md. 341, 364 (2017) (quoting *State v. Rich*, 415 Md. 567, 578 (2010)), *cert. denied*, 138 S. Ct. 655 (2018). In each case, we will "review the materiality of the error in the context in which it arose, giving due regard to whether the error was purely technical, the product of conscious design or trial tactics or the result of bald inattention." *Diggs*, Md. at 286–87 (quoting *State v. Hutchinson*, 287 Md. 198, 203 (1980)).

We will not exercise our plain error review prerogative in the present case. The question that is under scrutiny does not specifically relate to an issue involved in a crime or any of the witnesses or Pollins himself; a question specific to Pollins was propounded

upon his request. *See Collins v. State*, 463 Md. 372, 376–77 (2019); *Pearson v. State*, 437 Md. 350, 356–57 (2014); *Dingle v. State*, 361 Md. 1, 13–14 (2000). As such, having propounded the question in contention does not invoke plain error review.

We also decline to consider Pollins' claim of ineffective assistance of counsel on direct appeal. The most appropriate mechanism for raising a claim of ineffective assistance of counsel is generally a post-conviction proceeding,[5] because, on direct appeal, "the trial court record rarely reveals why counsel acted or omitted to act, and [post-conviction] proceedings allow for fact-finding and the introduction of testimony and evidence directly related to allegations of the counsel's ineffectiveness." *Mosley v. State*, 378 Md. 548, 559–60 (2003) (citing *Walker v. State*, 338 Md. 253, 262 (1995) and *Johnson v. State*, 292 Md. 405, 434–35 (1982)).

Although Pollins asserts that it was only ineffectiveness that led to his trial counsel not objecting to the asking of the question, that was less than clear. In fact, a juror did answer to the question propounded and was subsequently struck for cause. The development of a record exploring the efficacy of the question as well as counsel's strategic decisions to request a more specific question is needed to inquire further into the effectiveness of trial counsel.

As a result, we affirm Pollins' convictions.

JUDGMENTS OF THE CIRCUIT COURT FOR HARFORD COUNTY AFFIRMED. COSTS TO BE PAID BY APPELLANT.

[5] A post-conviction proceeding "is not an appeal of the judgment; rather, it is a collateral attack designed to address alleged constitutional, jurisdictional, or other fundamental violations that occurred at trial." *Mosley v. State*, 378 Md. 548, 559 (2003).