Circuit Court for Anne Arundel County
Case No. C-02-CR-17-002434

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 798

September Term, 2018

CHARLES DANIEL CONNORS

v.

STATE OF MARYLAND

Graeff,
Leahy,
Beachley,

JJ.

Opinion by Leahy, J.

Filed: July 26, 2021

Appellant, Charles Connors, was convicted by a jury sitting in the Circuit Court for Anne Arundel County of sixteen counts of counterfeiting checks, seventeen counts of possessing and issuing counterfeit checks, and one count of theft by a continuous course of conduct of property valued between $10,000 and $100,000. The court sentenced Mr. Connors to four consecutive five-year terms for counterfeiting checks, merged the remaining convictions, and ordered him to pay $16,370.00 in restitution. He appeals, presenting three questions for our review, which we have rephrased and consolidated as follows:[1]

> I. Did the trial court abuse its discretion by not asking the prospective jurors requested *voir dire* questions directed at the presumption of innocence, the State's burden of proof, and a defendant's right not to testify?
>
> II. Was the evidence legally sufficient to sustain the convictions?
>
> III. Did the trial court err by not merging the counterfeiting convictions into the conviction for theft scheme under the rule of lenity?

[1] Mr. Connors presented the "Questions Presented" in his brief as follows:

1. "Did the trial court err by refusing to propound to the venire appellant's proposed *voir dire* questions?
2. "Is the evidence insufficient to sustain the convictions?"
3. "Did the trial court err by failing to merge appellant's convictions for counterfeiting and issuing with his conviction for theft scheme, under which he should have been sentenced?"

Although we conclude that the evidence presented at trial was legally sufficient to convict Mr. Connors, we shall reverse Mr. Connors's convictions under *Kazadi v. State*, 467 Md. 1 (2020) and *State v. Ablonczy*, ___Md. ___, No. 28, September Term 2020 (filed June 23, 2021). For reasons to follow, we hold that Mr. Connors is entitled to a reversal of his convictions based on the trial court's refusal to propound his requested *voir dire* questions. Accordingly, we do not reach the third issue presented.

FACTS AND PROCEEDINGS

In 2016, Spencer Kligman, who lived alone in a single-family home in Edgewater, hired Mr. Connors to repair his roof and to clear small saplings from his property. Mr. Kligman paid Mr. Connors for the work by checks drawn from his checking account at Sandy Spring Bank. Mr. Kligman became dissatisfied with Mr. Connors's work and ended their contractual relationship. In December 2016, Mr. Kligman checked his balance at Sandy Spring Bank and learned that it was "significantly less than what [he] thought it should be." He subsequently discovered seventeen checks, totaling $16,370, made out to Mr. Connors drawn from his account that he did not remember writing. Consequently, he made a report of fraud to his bank, and the bank subsequently reported the fraud to the Anne Arundel County Police Department.

On March 6, 2017, Mr. Connors was charged in the District Court of Maryland for Anne Arundel County with sixteen counts of counterfeiting checks, eighteen counts of

possession of counterfeit checks,[2] seventeen counts of uttering, seventeen counts of theft, one count of theft scheme, and one count of identity theft. The case was transferred to the circuit court when Mr. Connors invoked his right to a jury trial. The State entered a *nolle prosequi* as to the individual theft counts and the identity theft count prior to trial. The remaining charges were tried to a jury on April 4 and 5, 2018.

A. Trial

The State called three witnesses. Mr. Kligman, who was age seventy-three at the time of trial, testified that he hired Mr. Connors to repair his roof and do yardwork. Mr. Connors "mostly" worked outside of Mr. Kligman's house, but "[o]ccasionally" came inside to use electricity or the restroom. Mr. Kligman could not recall the total amount he paid Mr. Connors for the work he performed, estimating that it was "[i]n the neighborhood of $1,500." He emphasized that he was "not at all sure" of that amount, however, and that he may have paid Mr. Connors $1,500 for the roof work alone. Mr. Kligman kept his checkbook in his bedroom and did not give Mr. Connors permission to write any checks from the checkbook.

Mr. Kligman identified three checks made out to Mr. Connors – 1) Check No. 542 on October 10, 2016 for $500; 2) Check No. 548 on September 26, 2016 for $200; and 3) Check No. 554 on September 20, 2016 for $400 – all of which bore his authentic

[2] The statement of charges twice charged Mr. Connors with possessing the same counterfeit check (Check No. 758) and mistakenly did not charge him with counterfeiting that check.

signature. In the memo section of the $500 check, Mr. Kligman had written "yardwork" and on the $400 check he had written "Roof[.]" Mr. Kligman did not recall writing the checks, but he was "[q]uite sure" it was his signature on the checks.

Mr. Kligman identified seventeen checks drawn on his account and made out to Mr. Connors that he said bore his forged signature. Those checks – numbered 543, 544, 742-749, 751-756, and 758 – totaled $16,370.[3] The checks ranged in amount from $500 to $1,800. They were dated between September 30, 2016 and December 20, 2016. On December 28, 2016, Mr. Kligman signed an "Affidavit of Check Fraud" at Sandy Spring Bank as to each of these checks, averring that he did not "sign the front" of each check, that the "maker's signature is a forgery and was not authorized by me" and that he "never received any of the proceeds thereof or benefited in any way directly or indirectly from the proceeds."

At trial, Mr. Kligman expressed varying degrees of certainty about the authenticity of the 17 checks. He testified that he didn't "think" he wrote Check No. 543 because it "just [didn't] appear to be [his] writing." When asked if the signature was his, he replied that it didn't "appear to be the way [he] sign[ed] [his] name." As to Check No. 544, he testified that the signature did not "at all look like [his] signature." He likewise testified that the signatures appearing on Check Nos. 742 and 743 were not his because neither

[3] The Statement of Charges included typographical errors as to the amount of two checks – Check 752 was for $1,000 but was charged as $1,100 and Check 758 was for $1,800 but was charged as $800. The State's motion to amend the charging document to correct these errors was granted on the first day of trial.

looked like his handwriting or signature. He testified that he was "less sure" about Check No. 744, but the signature was "just wrong" and that he did not "make his S's like that." On Check No. 745, Mr. Kligman testified that the "K" in the signature was not like his signature. Mr. Kligman testified that he did not write Check No. 746, noting that he could not decipher the words in the memo section of the check and that it was not his handwriting. He testified that the handwriting on Check Nos. 747 and 748 did not appear to be his. Mr. Kligman was "less positive" that he "did not write" Check No. 749 but did not think that he did. Upon further examination of the signature, he grew more confident, testifying, "I didn't write that. The K has nothing to do with the way I write[.]" He testified unequivocally that the writing on Check No. 751 was not his. He concluded that he had not written Check No. 752 because of the formation of the "K" in the signature. He testified that he did not write Check Nos. 753, 754, 755, 756, and 758 because the handwriting and/or signatures were not his.

Mr. Kligman further testified that he never gave Mr. Connors permission to take checks from his checkbook, never gave him any blank checks, and never gave anyone else permission to write those checks to Mr. Connors on his behalf.

On cross-examination, defense counsel asked Mr. Kligman if he had contracted with Mr. Connors to perform additional work on his house, including repairs to his siding, to run PVC plumbing pipes inside the house, to remove debris from the house, to replace a toilet, to repair drywall, to remove the front porch, and to repair holes in the walls. Mr. Kligman denied having contracted for any of that work. He was asked if he

recalled dumpsters filled with debris being present on his property. He replied that he did recall the dumpsters, but that he, not Mr. Connors, had contracted for the dumpsters to be placed there.

Defense counsel showed Mr. Kligman three written invoices – dated October 6, 2016, October 26, 2016, and November 26, 2016, respectively – for the above services. The top section of each invoice included Mr. Kligman's name and address. The middle section included columns for "Quantity," "Description," "Price," and "Amount." The "Description" column contained handwritten descriptions of tasks, such as "Fix all holes in roof" and "Start cleaning out trash from living room[.] In the "Price" column, the cost for each service was handwritten, and in the "Amount" column, the method of payment – "Cash" or "Check" – was noted. Some of the entries included check numbers that corresponded with some of the checks that Mr. Kligman testified had been forged. At the bottom of each invoice was a box labeled "Received By" with a signature purporting to be Mr. Kligman's. Mr. Kligman testified that he did not recognize the invoices, denied that he ever had received the invoices, and testified that the signatures in the "Received By" box were not his.

Mei-Sean Lee testified that she worked at the Edgewater branch of Sandy Spring Bank as a teller in the summer and fall of 2016. She was familiar with Mr. Connors because he "used to come and cash checks about twice a week, every week, and then he would stay and speak to [her] for a while." She recalled that the checks Mr. Connors cashed were drawn on Mr. Kligman's account. Mr. Connors had spoken to her about

how he and Mr. Kligman met, explaining that he lived "catty-corner" behind Mr. Kligman's property and that he had knocked on the door one day and offered to repair Mr. Kligman's roof. Thereafter, according to Mr. Connors, Mr. Kligman hired him to "gut" the house because Mr. Kligman was "kind of like a hoarder or something like that." Mr. Connors showed Ms. Lee photographs of the inside of Mr. Kligman's house depicting the disarray. Ms. Lee identified numerous still images taken from the Sandy Spring Bank surveillance camera that depicted her and Mr. Connors at her teller station in the fall of 2016.

Detective Michael Krok with the Anne Arundel County Police Department testified that he was assigned to the case on December 20, 2016 after Mr. Kligman made a report of check fraud. He subpoenaed financial records and the surveillance footage from Sandy Spring Bank. On March 6, 2017, he filed charges against Mr. Connors.

At the close of the State's case, Mr. Connors moved for judgment of acquittal on all counts, arguing that Mr. Kligman's vague and equivocal testimony about the genesis of numerous of the allegedly forged checks was insufficient to generate a jury issue. The State responded that there was overwhelming circumstantial evidence that Mr. Connors stole checks from Mr. Kligman, forged his signature on them, and then cashed them for his benefit. The court denied the motion for judgment.

Mr. Connors called one witness: Amanda Tate, his fiancé. Ms. Tate testified that in summer and fall 2016, she lived in Edgewater, along with her mother, and that she

could see Mr. Kligman's house from her backyard. Mr. Connors moved into their house as a roommate. He was working as a carpenter during the day and as a bartender at night.

Ms. Tate and her mother also owned the house directly next door to Mr. Kligman's house, which they leased to tenants. The condition of Mr. Kligman's property was causing issues for her because it was overgrown and lacked running water. There was a tarp on the roof because of holes and the siding was falling apart. The shrubs and grass were so overgrown that she could not see the doors or the windows.

Ms. Tate recalled that Mr. Kligman hired Mr. Connors to repair the roof, clear brush from the yard, and do some work inside the house. She testified that after Mr. Connors cleared the overgrowth, his friend hauled it away in a trailer attached to a pick-up truck. According to Ms. Tate, Mr. Connors's friend hauled away eight to ten loads of yard waste and shingles and a third man hauled away another four to six loads. She observed Mr. Connors pay the men. Mr. Connors also removed trash from inside Mr. Kligman's house.

Ms. Tate further testified that she had observed Mr. Kligman sign the invoices for payment to Mr. Connors. Mr. Kligman initially paid Mr. Connors in cash, but then paid him by check. Mr. Connors stopped working for Mr. Kligman after a few months because they had a "fight over money that was still owed and a free dumpster."

On cross-examination, Ms. Tate testified that Mr. Connors never performed any plumbing work inside Mr. Kligman's house, though she stated that he had purchased the

supplies to do so prior to their falling out. She asserted that she observed Mr. Connors doing other work on the interior of Mr. Kligman's house, however.

At the close of all the evidence, defense counsel renewed his motion for judgment of acquittal on all charges on the same bases and made additional argument. He argued that there was no evidence that Mr. Connors was the person who forged any checks. Given that Mr. Kligman could not definitively state which checks were signed by him and which were not, defense counsel argued that no reasonable juror could find beyond a reasonable doubt that any of the checks bore forged signatures. The court denied the motion on all counts.

The case was sent to the jury on a special verdict sheet detailing fifty-one separate charges. Questions 1 through 16 pertained to the counts for counterfeiting private documents and specified the check numbers and the amount of each check.[4] Questions 17 through 33 pertained to the counts for possession of counterfeit private documents and specified the check numbers and the amount of each check. Questions 34 through 50 pertained to issuing counterfeit documents and specified the check numbers and the amount of each check. The last question asked if the jury found Mr. Connors guilty of

[4] As noted earlier, the statement of charges included a redundant charge. Mr. Connors was charged in Count 17 and again in Count 34 with possessing counterfeit check No. 758. He mistakenly was not charged with forging that check. At trial, the State *nol prossed* Count 34.

"Theft between $10,000 and $100,000." The jury returned a verdict of guilty on all counts.

B. Appeal

Mr. Connors noted a timely appeal on June 25, 2018. On May 16, 2019, after Mr. Connors and the State filed their opening briefs with this Court, Mr. Connors filed an unopposed motion to stay the appeal pending the resolution of *Kazadi v. State*, 467 Md. 1 (2020), which then was pending before the Court of Appeals. By order entered June 4, 2019, we granted the motion to stay. The Court of Appeals issued its decision in *Kazadi* on January 24, 2020. Thereafter, by order entered April 2, 2020, we lifted the stay and permitted additional briefing on the *voir dire* issue. On November 18, 2020, we ordered a stay of this appeal because the Court of Appeals granted certiorari in *State v. Ablonczy*, No. 28, September Term, 2020, and the Court's decision could, in turn, control our decision in the instant case. On June 23, 2021, the Court of Appeals issued its decision in *Ablonczy*. On June 23, 2021, Mr. Connors filed an "unopposed motion to lift stay," which we granted on June 30, 2021.

DISCUSSION

I.

Voir Dire

A. Jury Selection

Prior to the jury selection process in the underlying case, Mr. Connors submitted written proposed *voir dire* questions, including:

> 14. The Defendant in every criminal case is presumed innocent. Unless you are satisfied beyond a reasonable doubt of the accused's guilt solely from the evidence presented in this case, the presumption of innocence alone requires you to find the accused not guilty. Based solely on Mr. Connors being the Defendant in this criminal case, does any member of the jury panel feel that he is probably guilty?
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> 15. In every criminal case, the burden of proving the guilt of a Defendant rests solely and entirely on the State. A Defendant has no burden and does not have to prove his innocence. Does any member of the jury panel believe that in order to return a verdict of not guilty, a defendant must prove his innocence?
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> 16. Every person accused of a crime has an absolute constitutional right to remain silent and not testify. If a defendant chooses not to testify the jury may not consider his/her silence in any way in determining whether he/she is guilty or not guilty. Knowing this, do you believe that a defendant who chose not to testify had something to hide? Would you need to hear a defendant testify before returning a verdict of not guilty?

On the first day of trial, defense counsel objected to the circuit court's decision not to ask questions 14, 15, and 16 (as well as other requested *voir dire* questions), noting that he believed it was a denial of Mr. Connors's right to due process. The court explained that it would not ask these questions, explaining,

> So . . . those are all the very basi[c] tenants of our system of justice and they, I believe, [] are fairly covered. There are going to be instructions, but if you look at . . . there's one that asks if they've already formed any opinion about guilt or innocence. . . . There's one about any reason that I've not gone into why you should not sit as a juror in this case, and I think that really covers anything that would be something where a person just doesn't agree with our system of justice.

At the end of jury selection, the court asked defense counsel if he was satisfied with the jury as seated and he replied: "The Defense is, Your Honor."

B. Analysis

Before *Kazadi v. State*, 467 Md. 1 (2020), binding authority held that a circuit court did not abuse its discretion by declining to ask prospective jurors in a criminal trial if they will follow the law, including by affording a criminal defendant the presumption of innocence or by requiring the State to meet its burden of production. *See Twining v. State*, 234 Md. 97, 100 (1964) ("It is generally recognized that it is inappropriate to instruct on the law at this stage of the case, or to question the jury as to whether or not they would be disposed to follow or apply stated rules of law."). In *Kazadi*, the Court of Appeals overruled *Twining*, in part, and held that, if requested, "a trial court *must* ask whether any prospective jurors are unwilling or unable to comply with the jury instructions on the fundamental principles of presumption of innocence, the State's burden of proof, and the defendant's right not to testify." 467 Md. at 9 (emphasis added). The Court determined that *Twining*'s holding was "based on outdated reasoning and ha[d] been superseded by significant changes in the law." *Id*. It reasoned that "the belief that a defendant must testify or prove innocence, or an unwillingness or inability to comply with jury instructions on the presumption of innocence, burden of proof, or a defendant's right not to testify, otherwise would constitute a bias related to the defendant" and, as such, *voir dire* questions seeking to uncover that bias must be asked upon request. *Id*. at 45. The Court gave its decision prospective effect but made its decision applicable to "any other cases that are pending on direct appeal when this

opinion is filed, where the relevant question has been preserved for appellate review." *Id.* at 47.

Mr. Connors contends that reversal of his convictions is mandated by *Kazadi* because the trial court failed to his ask proposed questions 14, 15, and 16 during *voir dire* of the venire. As in *Kazadi*, the questions were proposed to ascertain whether prospective jurors would be able to apply the presumption of innocence, the State's burden of proof, and recognize the defendant's right to remain silent and not testify. Furthermore, Mr. Connors asserts that the holding in *Kazadi* applies to his case because it was pending on direct appeal when *Kazadi* was decided.

The State responds that although *Kazadi*'s holding encompasses Mr. Connors's requested *voir dire* questions, he did not preserve his claims for appellate review because he "accepted the jury without qualification." The State contends that our holding in *Marquardt v. State*, 164 Md. App. 95, 143 (2005) (that "accepting the jury that is ultimately selected after the circuit court has refused to propound requested *voir dire* questions does not constitute acquiescence to the previous adverse ruling") was undermined by the Court of Appeals's decision in *State v. Stringfellow*, 425 Md. 461, 469 (2012) (holding that Stringfellow had waived his objection by accepting the jury as empaneled without qualification).

The Court of Appeals has recently considered, and rejected, the State's argument in *State v. Ablonczy*, ___Md. ___, No. 28, September Term 2020, slip op. at 15-16 (filed June 23, 2021). In *Ablonczy*, *voir dire* questions that were requested by the defendant's

counsel fell within the parameters of questions that are mandated pursuant to *Kazadi*. *Id.* at 2. The court refused to ask the proposed questions, and defense counsel immediately objected. *Id.* at 3. However, at the conclusion of jury selection, defense counsel accepted the jury as empaneled. *Id.* Applying the Court's prior decisions in *Kazadi* and *Stringfellow* to these facts, Judge Hotten, in her opinion on behalf of the majority, rendered the following holding:

> As this Court set forth in [*State v.*] *Stringfellow*[, 425 Md. 461 (2012)], objections that relate to the determination of a trial court to not ask a proffered *voir dire* question are not waived by later acceptance, without qualification, of the jury as empaneled. Respondent noted an objection to the decision of the trial court not to ask proffered *voir dire* question number eighteen. For the reasons expressed previously, Respondent did not waive that objection by accepting the jury as empaneled without repeating his prior objection.

Id. at 15-16. Judge Hotten explained that in *Stringfellow*, the Court had differentiated and subdivided objections during *voir dire* into two categories:

> The first group of objections goes "to the inclusion or exclusion of a prospective juror (or jurors) or the entire venire[.]" *Stringfellow*, 425 Md. at 469, 42 A.3d at 32 (citing *Gilchrist*, 340 Md. at 617, 667 A.2d at 881). In that case, unqualified acceptance of the jury panel waives any prior objections. *Id.*, 42 A.3d at 32. The second group of objections, on the other hand, which are "incidental to the inclusion [or] exclusion of a prospective juror or the venire[, are] not waived by accepting a jury panel at the conclusion of the jury-selection process[.]"*Id.* at 469, 42 A.3d at 32 (citing *Gilchrist,* 340 Md. at 618, 667 A.2d at 882).

Id. at 6. The Court held in *Stringfellow*, that "an objection to a judge refusing to ask a proposed *voir dire* question" falls within the realm of "objections deemed incidental to the inclusion/exclusion of prospective jurors and, therefore, not waived by the objecting party's unqualified acceptance thereafter of the jury panel." 425 Md. at 470-71.

Accordingly, relying on its prior reasoning in *Stringfellow*, the *Ablonczy* Court held that Ablonczy's objection, which was incidental to the inclusion/exclusion of prospective jurors, was not waived after his unqualified acceptance of the jury. *Ablonczy*, ___Md. at ___, slip op. at 8.

Applying the foregoing precepts to the case before us, we hold, that under *Kazadi v. State*, 467 Md. 1 (2020), Mr. Connors is entitled to a reversal of his convictions based on the trial court's refusal to propound his requested *voir dire* questions; and, that under *State v. Ablonczy*, ___Md. ___, No. 28, September Term 2020 (filed June 23, 2021), his objection to the court's refusal to propound those questions was not waived by accepting the jury as empaneled without repeating his prior objection.

II.

Sufficiency of the Evidence

Though we reverse for a new trial based on *Kazadi*, we address Mr. Connors's sufficiency of the evidence argument. *See Sewell v. State*, 239 Md. App. 571, 606 (2018) ("Unless the State presented sufficient evidence at trial[,] . . . 'there can be no new trial.'") (citing *Bloodsworth v. State*, 307 Md. 164, 167 (1986)).

The applicable standard of review is well-established: "'whether, after viewing the evidence in the light most favorable to the prosecution, any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt.'" *Smith v. State*, 415 Md. 174, 184 (2010) (quoting *Jackson v. Virginia*, 443 U.S. 307, 318-19 (1979)). This standard applies "regardless of whether the conviction rests upon direct

evidence, a mixture of direct and circumstantial, or circumstantial evidence alone." *Id*. at 185 (citation omitted). An appellate court may "not second-guess the jury's determination where there are competing rational inferences available. We give deference in that regard to the inferences that a fact-finder may draw." *Id.* at 183 (internal quotations omitted).

In the instant case, Mr. Connors was convicted of sixteen counts of counterfeiting checks pursuant to Maryland Code, Criminal Law Article ("CL"), (2002, 2012 Repl. Vol., 2016 Supp.), § 8-601(a)(2); seventeen counts of possession of counterfeit checks pursuant to CL § 8-601(b); and seventeen counts of uttering counterfeit checks pursuant to CL § 8-602(a). As pertinent, "counterfeit" means to "forge" or "falsely make." CL § 1-101(c). Each of these charges thus required proof that the check at issue was forged.

Mr. Connors contends the evidence was legally insufficient to show that the checks were forged because Mr. Kligman's testimony about the authenticity of his signature on the checks was equivocal and unreliable. He emphasizes that the State did not call a handwriting expert, which he characterizes as an "evidentiary void." Therefore, Mr. Connors asserts that there is no evidence of forgery, and that the evidence was insufficient to sustain his conviction for theft by continuing scheme pursuant to CL §§ 7-104 & 7-103(f).

The State responds that Mr. Kligman's testimony, coupled with the affidavits of check fraud in evidence as to each of the seventeen checks, was sufficient to establish that all the checks were forged. We agree.

Mr. Kligman testified that he did not sign any of the seventeen checks that the State alleged were forged, and State's Exhibit 1 contained as "Affidavit of Check Fraud" for each of the seventeen checks, signed by Mr. Kligman. Here, the checks were made out to Mr. Connors and were cashed by him, which was strong circumstantial evidence that he was the one who forged the checks. Although the State did not call a handwriting expert, the jury was presented with valid checks signed by Mr. Kligman to compare against each of the seventeen checks at issue along with Mr. Kligman's testimony about why he thought they were forged. *See Sublet v. State*, 442 Md. 632, 659 (2015) (discussing that authentication of a signature may be accomplished by a "comparison to a known exemplar" "through expert testimony *or* within the confines of the jury room") (emphasis added). Any equivocation in Mr. Kligman's testimony goes to the weight, not the sufficiency of the evidence. "It is axiomatic that the weight of the evidence and the credibility of witnesses are always matters for the jury to determine when it is the trier of facts." *Binnie v. State*, 321 Md. 572, 580 (1991).

We conclude that the evidence at trial was *legally sufficient* to convict Mr. Connors of all charges.

JUDGMENTS OF THE CIRCUIT COURT FOR ANNE ARUNDEL COUNTY REVERSED. CASE REMANDED TO THAT COURT FOR NEW TRIAL. COSTS TO BE PAID BY ANNE ARUNDEL COUNTY.