

Circuit Court for Baltimore City
Case No. 118218016

UNREPORTED
IN THE COURT OF SPECIAL APPEALS
OF MARYLAND

No. 1768

September Term, 2019

JAQUAN TERRELL BURKS

v.

STATE OF MARYLAND

Fader, C.J.,
Zic,
Moylan, Charles E., Jr.
(Senior Judge, Specially Assigned),

JJ.

PER CURIAM

Filed: April 8, 2021

*This is an unreported opinion, and it may not be cited in any paper, brief, motion, or other document filed in this Court or any other Maryland Court as either precedent within the rule of stare decisis or as persuasive authority. Md. Rule 1-104.

Following a jury trial in the Circuit Court for Baltimore City, Jaquan Burks, appellant, was convicted of first-degree murder; use of a firearm in the commission of a crime of violence; possession of a firearm by a prohibited person; and wearing, carrying, or transporting a handgun. He raises three issues on appeal: (1) whether the trial court erred in refusing to ask a voir dire question aimed at identifying prospective jurors who were unable or unwilling to apply the principles of law regarding the State’s burden of proof; (2) whether the court erred by refusing to grant his motion for a mistrial based on juror misconduct; and (3) whether the court erred by sentencing him prior to the completion of a presentence investigation. For the reasons that follow, we shall reverse Mr. Burks’s convictions and remand the case for a new trial.

Prior to trial, defense counsel for Mr. Burks filed proposed voir dire questions.

Proposed question 17 read as follows:

17. The state is required to prove the defendant’s guilt beyond a reasonable doubt. Does any member of the panel have any reservations about that standard and would hold the state to either a greater or lesser standard than beyond a reasonable doubt?

On the morning of trial, the court asked whether defense counsel had “looked at the court’s proposed voir dire.” Defense counsel responded in the affirmative and requested the court to also “include the Defendant’s requested number 17.” The court denied that request.

On appeal, Mr. Burks contends, and the State concedes, that the court erred in refusing to propound his requested voir dire question. We agree. In *Kazadi v. State*, 467 Md. 1 (2020), the Court of Appeals held that, “on request, during voir dire, 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.” *Id.* at 35-36.

To be fair to the circuit court, *Kazadi* had not yet been decided at the time of Mr. Burks’s trial. Nevertheless, the rule the Court adopted in *Kazadi* applies to “any other cases that [were] pending on direct appeal when [the] opinion [was] filed, where the relevant question [was] preserved for appellate review,” which includes this case. *Id.* at 47 (citing *Hackney v. State*, 459 Md. 108, 119 (2018)). Therefore, *Kazadi* is controlling. Although the trial court was not required to ask Mr. Burks’s exact question or to “use any particular language,” it was required to ask questions that “concisely describe the fundamental right at stake and to inquire as to a prospective juror’s willingness and ability to follow the court’s instructions as to th[at] right.” *Id.* Because the court did not ask such questions when requested to do so, and defense counsel preserved the issue, reversal is required.¹

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

¹ Because we reverse the judgment based on Mr. Burks’s *Kazadi* claim we decline to address his remaining contentions in this appeal. *See Pearson v. State*, 437 Md. 350, 364 n.5 (2014) (noting that “where an appellate court reverses a trial court’s judgment on one ground, the appellate court does not address other grounds on which the trial court’s judgment could be reversed, as such grounds are moot.”).