

Circuit Court for Baltimore City
Case No. 120183004

UNREPORTED
IN THE COURT OF SPECIAL APPEALS
OF MARYLAND

No. 1829

September Term, 2021

DAVID BATES

v.

STATE OF MARYLAND

Berger,
Reed,
Alpert, Paul E.
(Senior Judge, Specially Assigned),

JJ.

Opinion by Alpert, J.

Filed: September 22, 2022

*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.

David Bates, appellant, was convicted by a jury sitting in the Circuit Court for Baltimore City of various crimes related to the breaking and entering of a tobacco store in Baltimore City.¹ Appellant raises one question on appeal: Did the circuit court abuse its discretion when it declined to ask defense counsel’s proposed voir dire questions about whether any member of the jury panel believed that a person charged with a crime is more likely to have committed that crime? For the following reasons, we shall affirm.

FACTS

Because the sole question on appeal relates to voir dire, we shall provide only a brief summary of the facts established at trial. In the early morning hours of May 31, 2020, a group of about ten males broke into Davidus Cigars: breaking the glass of the front door; tipping over cabinets and breaking more glass once inside the store; and taking \$62 worth of cigars. The store surveillance footage showed one of the individuals wearing a face mask and having a blue cast on his left arm. The investigating detective identified appellant, with whom he had had previous contact, as the individual wearing the mask and cast.

Prior to trial, appellant submitted a written list of proposed voir dire questions to the court. Among other questions that appellant asked the court to pose to the prospective jurors were the following two questions about charges/indictment:

23. Does any member of the jury panel believe that if a person is charged with a crime that it is likely that they committed that crime?

¹ Specifically, appellant was convicted of second-degree burglary, two counts of fourth-degree burglary, and malicious destruction of property valued at greater than \$500.

* * *

26.b. There has been an indictment in this case. An indictment is nothing more than a formal method of presenting charges. It is the manner in which the Defendant, the Court, and the jury are informed what charges the Defendant is facing. An indictment has no evidentiary value. Do you believe that it is more likely that David Bates is guilty merely because he has been charged by way of indictment with a crime?

The trial court did not ask these two questions. Instead, among other things, the trial court asked the venire² the following:

It is a principle of law relating to this trial that the Defendant has certain legal rights. Among them are, the presumption that the Defendant, although accused of a crime or crimes, is presumed innocent of any of the alleged charges. That the State must establish the Defendant is guilty of any crime of which he is charged beyond a reasonable doubt before he can be found guilty.

That the Defendant has the right not to testify about any matter related to the trial of this case. If any member of the panel does not agree with or cannot follow the instructions that the Defendant has all of these legal rights, please stand. Seeing no affirmative response.

At the conclusion of voir dire, the trial court asked the parties whether they had any exceptions. Defense counsel advised the court that it had not asked questions #23 or #26b.

The following colloquy occurred:

[THE COURT:] They were told that he was presumed to be innocent. If they can't abide by that, this question is essentially a different form of that same question.

I mean, he is presumed innocent. This says, do you have, do you believe if a person is charged with a crime it is likely they committed the crime. They were told he is presumed innocent.

² Due to the COVID-19 restrictions, the prospective jurors were separated into two venire groups of about 20 individuals each. The court asked both groups the same voir dire questions.

If they can't presume that he's innocent, this essentially is the same question. They believe he is guilty. Well, nobody answered the question about presumption of innocence.

[DEFENSE COUNSEL]: I would disagree, but please note our - -

THE COURT: Okay. All right.

[DEFENSE COUNSEL]: -- exception.

THE COURT: Okay. Anything else?

[DEFENSE COUNSEL]: No.

A jury was subsequently empaneled with appellant preserving for appellate review his objection to the trial court's refusal to ask his two proposed questions.

DISCUSSION

Citing *Kazadi v. State*, 467 Md. 1 (2020), appellant argues that the trial court abused its discretion when it declined to ask his two proposed voir dire questions. He argues that his questions, which asked whether a prospective juror believed that a person charged with a crime is more likely to be guilty of those crimes, are embedded in the concepts of the three fundamental criminal principles discussed in *Kazadi*: the presumption of innocence, the State's burden of proof, and a defendant's right not to testify. According to appellant, only if a juror can set aside the belief that a charge makes it more likely that the defendant is guilty of the crimes can a juror "truly follow the court's instructions [on the three principles discussed in *Kazadi*] and afford the defendant" the right to an impartial jury and a fair trial. The State responds that appellant's argument lacks merit. The State argues that the trial court soundly exercised its discretion in not asking appellant's specific questions

because they had been fairly covered when the trial court advised the prospective jurors about the three principles discussed in *Kazadi*. We agree with the State.

The sole purpose of voir dire in a criminal case in Maryland is to ensure a fair and impartial jury. *Dingle v. State*, 361 Md. 1, 9 (2000) (citations omitted). To this end, parties have a right to have their voir dire questions asked when “directed to a specific cause for disqualification, and failure to allow such questions is an abuse of discretion constituting reversible error.” *Moore v. State*, 412 Md. 635, 646 (2010) (quotation marks and citations omitted). This is unlike many other states that allow voir dire for the “intelligent exercise of peremptory challenges.” *Washington v. State*, 425 Md. 306, 312 (2012) (quotation marks and citations omitted). Additionally, a court need not ask a requested voir dire question if the matter is fairly covered by other questions actually asked. *Curtin v. State*, 393 Md. 593, 613 n.10 (2006). In examining a challenged question, we look to “the record as a whole to determine whether the matter has been fairly covered.” *Washington*, 425 Md. at 313-14.

To determine whether cause for disqualification exists, voir dire “questions should focus on issues particular to the defendant’s case so that biases directly related to the crime, the witnesses, or the defendant may be uncovered.” *Dingle*, 361 Md. at 10. The voir dire process is not “foolproof,” and perfection is not required in its execution. *Wright v. State*, 411 Md. 503, 514 (2009). A court acts within its discretion if “the questions posed and the procedures employed have created a reasonable assurance that prejudice would be discovered if present.” *Stewart v. State*, 399 Md. 146, 159 (2007). “An abuse of discretion

occurs where no reasonable person would take the view adopted by the circuit court.” *Williams v. State*, 457 Md. 551, 563 (2018).

In *Kazadi v. State, supra*, the Court of Appeals held that “[o]n 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 presumption of innocence, the burden of proof, and the defendant’s right not to testify.” *Kazadi*, 467 Md. at 48. The Court of Appeals explained that the “long-standing fundamental rights” concerning these presumptions are “critical to a fair jury trial in a criminal case,” and *voir dire* questions about a juror’s inability or unwillingness to honor those fundamental rights are mandatory, when requested. *Id.* at 46. The Court, however, declined to prescribe the use of “any particular language[,]” stating:

A trial court is not required to use any particular language when complying with a request to ask during *voir dire* whether any prospective jurors are unwilling or unable to comply with the jury instructions on the presumption of innocence, the burden of proof, and the defendant’s right not to testify. The questions should concisely describe the fundamental right at stake and inquire as to a prospective juror’s willingness and ability to follow the trial court’s instruction as to that right. This is all that need occur.

Id. at 47. Notably, the Court of Appeals did not hold that a trial by a fair and impartial jury was impossible without asking such questions; such questions were required only if requested, and the court was under no obligation to ask them *sua sponte*. *Id.* at 46-47.

Appellant concedes that the trial court advised the prospective jurors on the three fundamental rights as required by *Kazadi*. Nonetheless, citing two cases discussed in *Kazadi*: *State v. Cere*, 480 A.2d 195 (N.H. 1984) and *State v. Lumumba*, 601 A.2d 1178 (N.J. Super. Ct. App. Div. 1992), appellant argues that he was *also* entitled to have the trial court specifically ask the prospective jurors whether they “believed [he] was more likely

guilty because he had been charged with a crime.” We disagree with appellant for several reasons.

First, Maryland is a limited voir dire State and the Court of Appeals in *Kazadi* was very clear about what three questions were required during voir dire, if requested by either party. Appellant’s argument that a trial court must also ask about the venire’s belief whether a person charged with a crime is likely to have committed that crime was not a part of the *Kazadi* holding.

Second, when the Court of Appeals cited *Cere* and *Lumumba* in *Kazadi*, it was in no way an endorsement of those cases, rather, the Court cited those cases and several others only in its discussion surveying what other jurisdictions had done regarding requests during voir dire on the three fundamental legal rights at issue in *Kazadi*. 467 Md. at 28-35. The Court of Appeals noted in its discussion that some States/courts had required an advisement on one, two, or all three rights and some States/courts did not. *Id.* For example, the Supreme Court of New Hampshire held in *Cere* that in future criminal trials, the following questions shall be asked:

Do you believe that because the defendant has been charged with a crime, he (she) is probably guilty and therefore must present evidence to prove that he (she) is innocent?

If you have such a belief, would that belief prevent you from accepting from this court and applying to this case the correct formulation of law; that is, that a defendant is presumed innocent until proven guilty, that the State has the burden of proving guilt beyond a reasonable doubt, and that the defendant need present no evidence whatsoever on his own behalf?

Cere, 480 A.2d at 198. The Superior Court of New Jersey in *Lumumba* held that a trial court shall advise the venire about the presumption of innocence and the basic principles

governing indictments, but the *Lumumba* court was silent about the State’s burden of proving guilt beyond a reasonable doubt and a defendant’s right not to testify. *Lumumba*, 601 A.2d at 1189. Interestingly, none of the cases discussed by *Kazadi*, other than *Cere* and *Lumumba*, mention the charging document.

Third, and lastly, the trial court here did refer to appellant’s “charges,” as appellant had requested. The trial court advised the venire: “It is a principle of law relating to this trial that the Defendant has certain legal rights. Among them are, the presumption [that] the Defendant, although accused of a crime or crimes, is presumed innocent of any of the alleged charges.” That the trial court did not ask appellant’s question in precisely the way appellant wanted is not an error by the trial court.

For the above reasons, we are persuaded that the questions asked by the trial court met the requirements of *Kazadi*, and the trial court did not err in declining to ask the questions posed by appellant. Accordingly, we shall affirm.

**JUDGMENTS OF THE CIRCUIT
COURT FOR BALTIMORE CITY
AFFIRMED.**

**COSTS TO BE PAID BY
APPELLANT.**