

Circuit Court for Baltimore City
Case No. 11730001

UNREPORTED
IN THE COURT OF SPECIAL APPEALS
OF MARYLAND

No. 1921

September Term, 2019

TYRONE GERALD WHITE

v.

STATE OF MARYLAND

Friedman,
Gould,
Woodward, Patrick L.
(Senior Judge, Specially Assigned),

JJ.

PER CURIAM

Filed: February 12, 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, Tyrone Gerald White, appellant, was convicted of first-degree murder, use of a firearm in the commission of a crime of violence, and possession of a firearm by a prohibited person. He raises a single issue on appeal: whether the trial court erred in refusing to ask voir dire questions aimed at identifying prospective jurors who were unable or unwilling to apply the principles of law regarding the presumption of innocence, the State’s burden of proof, and the defendant’s right not to testify. For the reasons that follow, we shall reverse Mr. White’s convictions and remand the case for a new trial.

Prior to voir dire, defense counsel for Mr. White requested that the court ask the following questions:

Number 12, “Is there any member of the panel that believes merely because a person is indicted by the grand jury or charged by criminal information, this raises a presumption of guilt on the part of that individual?”

* * * *

I am asking for number, number 8 - - number 17 is in every criminal case. “The burden of proving the guilt of the accused rests on the State. The accused has no burden and does not have to prove his innocence. Is there any member of the jury panel who is unwilling or unable to uphold and abide by this rule of law?”

* * * *

Next request would be number 18 which is, “Every person accused of a crime has an absolute constitutional right to remain silent and not testify. You may not consider his silence in any way determining whether he is guilty or not guilty. Is there any member of the jury panel who is unable or unwilling to uphold or abide by this rule of law?”

The court refused those requests and defense counsel objected at both the time the court declined to ask the questions, and again when the court asked the parties if the seated jury was acceptable.

On appeal, Mr. White contends, and the State concedes, that the court erred in refusing to propound his requested voir dire questions. 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. That holding applied not only to Mr. Kazadi, but also to “any other cases that [were] pending on direct appeal when [the] opinion [was] filed, where the relevant question [was] preserved for appellate review.” *Id.* at 47. This case was pending on appeal when *Kazadi* was decided. Therefore, *Kazadi* is controlling. Although the trial court was not required to ask all of Mr. White’s proposed questions or to “use any particular language,” it was required to ask questions that “concisely describe the fundamental right[s] at stake and to inquire as to a prospective juror’s willingness and ability to follow the court’s instructions as to th[ose] rights.” *Id.* Because the court did not ask such questions when requested to do so, and defense counsel preserved the issue, reversal is required.

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.