

UNREPORTED  
IN THE COURT OF SPECIAL APPEALS  
OF MARYLAND

No. 2058

September Term, 2015

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LARRY SIMMONS

v.

STATE OF MARYLAND

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Krauser, C.J.,  
Meredith,  
Thieme, Raymond G., Jr.  
(Senior Judge, Specially Assigned),

JJ.

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PER CURIAM

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Filed: December 6, 2016

\*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.

In 1980, Applicant was tried by a jury in the Circuit Court for Baltimore County on two charges of first degree murder. Following the close of the evidence, the trial court instructed the jury, in pertinent part: “[U]nder the law of Maryland, you, the jury in a criminal case, is judge of the law as well as the facts. And whatever I say to you as to the facts, or whatever instructions I give you as to the law is advisory only. You are judges of both the law and the facts. And you are in no way bound by what I may say to you as to either.” The jury subsequently convicted Applicant of the offenses.

In *State of Maryland v. James Leslie Adams-Bey, Jr.*, 449 Md. 690 (2016), the Court of Appeals, reaffirming its holding in *State v. Waine*, 444 Md. 692 (2015), stated: “Lest there be any doubt, a jury instruction advising the jury that it is the judge of the law is an advisory only instruction. Such an instruction constitutes structural error if the court does not also inform the jury that it is bound by the presumption of innocence and the beyond a reasonable doubt standard.” *Adams-Bey*, 449 Md. at 705 (citations omitted). The Court concluded: “Having confirmed that the trial court gave an advisory instruction, [Adams-Bey] is necessarily entitled to a new trial, and it would be an abuse of discretion to deny [him] relief in light of *Waine*.” *Adams-Bey*, 449 Md. at 708 (citation omitted). The Court further concluded that Md. Code, § 7-109 of the Criminal Procedure Article “grants the Court of Special Appeals the authority to reverse or remand a circuit court’s decision to deny a motion to reopen” a petition for post-conviction relief, and “therefore provides the Court . . . the authority to determine that the circuit court had abused its discretion and to afford the appropriate relief.” *Id.* at 703 (emphasis omitted).

In light of *Adams-Bey*, this Court ordered Respondent to show cause why the above-captioned application for leave to appeal should not be granted, the circuit court’s order denying Applicant’s motion to reopen his post-conviction proceeding should not be reversed, and the case should not be remanded with instructions to the circuit court to reopen Applicant’s post-conviction proceeding, vacate Applicant’s convictions, and award him a new trial. Respondent “avers that [it] is unable to show cause,” and “acknowledges that . . . the jury” at Applicant’s trial “was instructed in a manner equivalent to the instructions found to be structural error in” *Adams-Bey*.

We therefore hold that the circuit court abused its discretion in denying Applicant’s motion to reopen his post-conviction proceeding. Accordingly, we order that Applicant’s application for leave to appeal be and hereby is granted, the circuit court’s order denying Applicant’s motion to reopen his post-conviction proceeding be and hereby is reversed, and the case is remanded, with instructions to the circuit court, to reopen Applicant’s post-conviction proceeding, vacate Applicant’s convictions, and award him a new trial.

**APPLICATION FOR LEAVE TO APPEAL  
GRANTED. JUDGMENT OF THE  
CIRCUIT COURT FOR BALTIMORE  
COUNTY DENYING MOTION TO  
REOPEN POST-CONVICTION  
PROCEEDING REVERSED. CASE  
REMANDED WITH INSTRUCTIONS TO  
GRANT MOTION TO REOPEN POST-  
CONVICTION PROCEEDING, VACATE  
APPLICANT’S CONVICTIONS, AND  
AWARD A NEW TRIAL. COSTS TO BE  
PAID BY BALTIMORE COUNTY.**