

Circuit Court for Baltimore City
Case No. 118242027

UNREPORTED
IN THE COURT OF SPECIAL APPEALS
OF MARYLAND

No. 2182

September Term, 2019

BRYANT WHITAKER

v.

STATE OF MARYLAND

Graeff,
Ripken,
Raker, Irma S.
(Senior Judge, Specially Assigned),

JJ.

PER CURIAM

Filed: May 7, 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.

Convicted by a jury in the Circuit Court for Baltimore City of first degree murder and related offenses, Bryant Whitaker, appellant, presents for our review a single question: whether the court abused its discretion in “refusing to ask [certain] voir dire questions requested by the defense.” For the reasons that follow, we shall reverse the judgments of the circuit court and remand the case for a new trial.

Prior to trial, Mr. Whitaker submitted to the court his proposed voir dire, which included the following questions:

16. Does any member of the jury panel draw an inference of guilt from the mere fact that the Defendant has been charged?
17. The Court will instruct you that the State has the burden of proving the Defendant guilty of the offenses charged beyond a reasonable doubt. Are there any of you who would be unable to follow and apply the Court’s instructions on reasonable doubt in this case?
18. Is there any member of the prospective jury panel who would hesitate to render a verdict of not guilty if you had a hunch that the Defendant had committed the alleged crime, but were not convinced of that fact beyond a reasonable doubt?
19. The Court will instruct you that the Defendant is presumed to be innocent of the offenses charged throughout the trial unless and until the Defendant is proven guilty beyond a reasonable doubt. Is there any member of the jury panel who would be unable to give the Defendant the benefit of the presumption of innocence?
20. Under the law the Defendant has an absolute right to remain silent and to refuse to testify. No adverse inference or inference of guilty [sic] may be drawn from the refusal to testify. Does any prospective juror believe that the Defendant has a duty or responsibility to testify or that the Defendant must be guilty merely because the Defendant may refuse to testify?

The court initially asked the prospective jurors other questions. Following those questions, the court asked: “Any requests for additional voir dire from the defense?” The following colloquy then occurred:

[DEFENSE COUNSEL]: . . . I would ask for defendant’s proposed, I guess, 16 through 20. . . .

THE COURT: That – these are all – they will be covered in the preliminary instructions.

[DEFENSE COUNSEL]: Okay.

THE COURT: They will be told there is a presumption of innocence before they – they begin the trial.

Make – make sure –

[DEFENSE COUNSEL]: 17 is proof beyond a reasonable doubt. 19 is about –

THE COURT: They will be – they will be instructed about that. The issues as to law are not usually grounds for preventing someone from seating – being seated as juror, being disqualified for cause.

Following sentencing, Mr. Whitaker filed, on December 18, 2019, a notice of appeal. While the appeal was pending, the Court of Appeals, on January 24, 2020, filed its opinion in *Kazadi v. State*, 467 Md. 1 (2020), in which the Court 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.” *Id.* at 48. The Court further stated that its holding applied to not only Mr. Kazadi’s case, but also “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 (citations omitted). Hence, *Kazadi* applies to this case.

Mr. Whitaker contends that here, like in *Kazadi*, the court abused its discretion in declining to ask his requested voir dire questions. We agree. Although the court was “not required to use any particular language when complying with [the] request,” the court was required to ask “questions [that] 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.” *Id.* at 47. Under *Kazadi*, the court’s failure to ask the questions constitutes an abuse of discretion.

The State contends that “[b]ecause counsel did not object when the court determined not to ask these questions,” Mr. Whitaker’s contention is not preserved for our review. We disagree. Following the court’s statement that the jury would be told before trial began that “there is a presumption of innocence,” defense counsel noted that voir dire question 17 involved a different fundamental right, and attempted to discuss voir dire question 19. The court interrupted defense counsel in mid-sentence and made clear that it would not address whether “issues as to law” would constitute “grounds for preventing someone from . . . being seated as [a] juror.” It is clear from the court’s response that an additional objection by defense counsel would have been futile, and hence, defense counsel’s specific request for the voir dire questions and subsequent remarks are sufficient to preserve Mr. Whitaker’s contention for our review. Accordingly, we reverse the judgments of the court and remand the case for a new trial.

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