

Circuit Court for Baltimore City  
Case No. 819290001

UNREPORTED  
IN THE COURT OF SPECIAL APPEALS  
OF MARYLAND

No. 2594

September Term, 2019

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LATOYA JORDAN

v.

STATE OF MARYLAND

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

JJ.

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PER CURIAM

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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.

Convicted by a jury in the Circuit Court for Baltimore City of second degree assault, Latoya Jordan, appellant, presents for our review a single question: whether the court abused its discretion in refusing “to ask the prospective jurors defense counsel’s proposed voir dire question regarding a person’s right to remain silent and not testify.” For the reasons that follow, we shall reverse the judgment of the circuit court and remand the case for a new trial.

During voir dire, defense counsel requested that the court ask the following question:

Every person accused of a crime has the absolute constitutional right to remain silent and not testify. If the defendant chooses not to testify, the jury may not consider his or her silence in any way in determining whether he or she is guilty or not guilty. Is there any member of the jury who is unable or unwilling to uphold and abide by this rule of law?

The court denied the request on the grounds that the question would “be covered extensively in the [court’s] instructions at the end” and by a separate voir dire question that “discusses . . . that the defendant is presumed innocent unless the State can prove him guilty beyond a reasonable doubt,” and was “confusing because [the court and parties did not] know whether Ms. Jordan [was] going to testify or not.” Following the court’s voir dire questions, the court asked the parties if there were “any other objections or questions about the voir dire questions that [it] asked.” Defense counsel stated: “Just noting and incorporating my argument from my earlier request.”

Ms. Jordan contends that the court abused its discretion in denying the request. We agree. The Court of Appeals has stated 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 long-standing fundamental principles of the presumption of innocence, the State’s burden of proof, and the defendant’s right not to testify.” *Kazadi v. State*, 467 Md. 1, 35-36 (2020). Although a “trial court is not required to use any particular language when complying with [such] a request,” 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.” *Id.* at 47. Here, the court failed to ask such a question when requested to do so, which, under *Kazadi*, constitutes an abuse of discretion.

The State contends that Ms. Jordan’s contention is not preserved for our review, because her “objection at the close of the general voir dire did not include any claim that the court’s question[s] did not adequately cover the subject matter of her requested question . . . , that the court conflated closing instructions with voir dire questions, or that the question was not confusing.” But, we have stated that “[t]o preserve any claim involving a trial court’s decision about whether to propound a voir dire question, a defendant must object to the court’s ruling.” *Foster v. State*, 247 Md. App. 642, 647-48 (2020). The State does not cite any authority that required Ms. Jordan to specifically object to each of the court’s grounds for denying her request, and hence, her contention is preserved for our review.

The State further contends that Ms. Jordan “waived any objection she had to the court’s failure to ask [the] question . . . when she accepted, without qualification, the seated jurors,” and alternatively, that “the trial court’s error in this instance was harmless beyond a reasonable doubt” because Ms. Jordan “elected to testify.” We disagree. We have stated

that a defendant does “not waive [a] *Kazadi* claim through his unqualified acceptance of the empaneled jury.” *Foster*, 247 Md. App. at 651. Also, the Court of Appeals has stated that “[i]f there is an abuse of discretion, there is error and that error is reversible error.” *Moore v. State*, 412 Md. 635, 668 (2010) (citations omitted). Hence, Ms. Jordan’s *Kazadi* claim is not waived and the court’s abuse of discretion is not harmless error. Accordingly, we reverse the judgment of the court and remand the case for a new trial.

**JUDGMENT 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.**