

Circuit Court for Baltimore City
Case No. 119065017

UNREPORTED
IN THE COURT OF SPECIAL APPEALS
OF MARYLAND

No. 413

September Term, 2021

ARNOLD JOHNSON

v.

STATE OF MARYLAND

Kehoe,
Zic,
Moylan, Charles E., Jr.
(Senior Judge, Specially Assigned),

JJ.

PER CURIAM

Filed: January 31, 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.

Following a jury trial in the Circuit Court for Baltimore City, Arnold Johnson, appellant, was convicted of first-degree murder and various weapons offenses. 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 and the State’s burden of proof. For the reasons that follow, we shall reverse Mr. Johnson’s convictions and remand the case for a new trial.

Prior to trial, defense counsel for Mr. Johnson filed proposed voir dire questions.

Proposed questions 23 and 24 read as follows:

23. The accused in every criminal case is presumed innocent. Unless you are satisfied beyond a reasonable doubt of the accused’s guilt solely from the evidence presented in this case, the presumption of innocence alone requires you to find the accused not guilty. Is there any member of the jury panel who is unable or unwilling to uphold and abide by this rule of law?

24. In every criminal case the burden of proving the guilt of the accused rests solely and entirely 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 unable or unwilling to uphold and abide by this rule of law?

During voir dire, defense counsel requested the court to ask prospective jurors these questions and the court refused to do so. Defense counsel objected at 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. Johnson 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 longstanding fundamental principles of the presumption of innocence, the State’s burden of proof, and the defendant’s right not to testify.” *Id.* at 35-36. That holding “applies to any case that was pending in a trial or appellate court that had not become final on direct appeal when this Court issued the opinion in *Kazadi* and in which the *Kazadi* issue had been preserved for appellate review.” *Kumar v. State*, ___ Md. ___, No. 21, Sept. Term 2021, slip op. at 9 (filed Dec. 20, 2021). This case was pending in the trial court when *Kazadi* was decided. Therefore, *Kazadi* is controlling. Although the trial court was not required to “use any particular language,” upon request it was required to ask questions that “concisely describe[d] the fundamental right[s] at stake and inquire as to a prospective juror’s willingness and ability to follow the trial court’s instructions as to th[ose] rights.” *Kazadi*, 467 Md. at 47. 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.