

Circuit Court for Baltimore City
Case No. 116214002

UNREPORTED
IN THE COURT OF SPECIAL APPEALS
OF MARYLAND

No. 712

September Term, 2018

ROBERT BLAKE

v.

STATE OF MARYLAND

Kehoe,
Beachley,
Raker, Irma S.
(Senior Judge, Specially Assigned),

JJ.

Opinion by Raker, J.

Filed: July 21, 2020

*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.

Appellant Robert Blake was convicted by a jury in the Circuit Court for Baltimore City of four counts of reckless endangerment, one count of illegally discharging a firearm within Baltimore City, and one count of illegally possessing body armor. Appellant presents the following questions for our review, which we have reordered:

- “1. Did the circuit court err by not asking certain *voir dire* questions posed by the defense?
2. Did the circuit court err in denying a *Batson* [*v. Kentucky*, 476 U.S. 79 (1986)] challenge raised by the defense?
3. Did the circuit court err in permitting improper closing argument by the prosecutor that shifted the burden to the defense?”

Based upon *Kazadi v. State*, 467 Md. 1 (2020), we shall hold that the trial court erred in refusing to ask appellant’s requested *voir dire* questions. Accordingly, we shall vacate his convictions and remand for a new trial.

I.

Appellant was indicted by the Grand Jury for Baltimore City on four counts each of attempted first-degree murder, attempted second-degree murder, first-degree assault, second-degree assault, reckless endangerment, and using a firearm during the commission of a crime of violence; and one count each of illegally discharging a firearm within Baltimore City, wearing bulletproof armor during the commission of a crime of violence, and illegally possessing body armor. The jury convicted him of four counts of reckless endangerment, illegally discharging a firearm within Baltimore City, and illegally

possessing body armor. The court sentenced appellant to a total term of incarceration of eleven years.

Appellant noted a timely appeal to this Court, raising, *inter alia*, the *voir dire* issues. Because the Court of Appeals was considering the issue of whether a trial court is required, upon request, to ask *voir dire* questions as to the willingness and ability of prospective jurors to apply the fundamental principles of the presumption of innocence, the State's burden of proof, and defendant's right to not to testify, we stayed resolution of this appeal pending its decision. *See Kazadi v. State*, No. 712, Sept. Term 2018 (filed Sept. 10, 2019); *Kazadi v. State*, Pet. No. 17, Sept. Term 2019 (filed May 14, 2019); Pet. for Writ of Cert., *Kazadi v. State*, Pet. No. 17, Sept. Term 2019 (filed Mar. 26, 2019). In *Kazadi*, 467 Md. at 35–36, the Court of Appeals held that, upon request, a trial court must ask the jury venire panel if any prospective juror would be unwilling or unable to follow jury instructions related to the presumption of innocence, the State's burden of proof, and defendant's right not to testify. We now consider this appeal.

This case is controlled by *Kazadi*. Because we shall reverse the judgment of convictions based upon the trial court's failure to ask certain required *voir dire* questions, we dispense with a recitation of the underlying facts. Defense counsel asked the trial court to include the following *voir dire* questions:

“17. Does any member of the jury panel believe that merely because a person is indicted by the Grand Jury or charged by a Criminal Information, that this raises a presumption of guilt on the part of the individual?”

19. A defendant 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?

20. In every criminal case, the burden of proving the guilt[] of a Defendant rests solely and entirely on the State. A defendant 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?

21. Every person accused of a crime has an absolute constitutional right to remain silent and not testify. If a defendant chooses not to testify[,] the jury may not consider his/her silence in any way in determining whether he/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 declined to ask these questions.

The jury was selected, the trial commenced, and appellant was convicted and sentenced as above. This timely appeal followed.

II.

In *Kazadi*, the Court of Appeals overruled *Twining v. State*, 234 Md. 97 (1964)¹ and held as follows:

“[O]n request, during *voir dire*, a trial court must ask whether

¹ The court in *Twining*, 234 Md. at 100, held that a trial court’s refusal to ask *voir dire* questions addressing the prospective juror’s willingness to follow jury instructions related to the presumption of innocence and burden of proof did not amount to an abuse of discretion.

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.”

467 Md. at 35–36. The court further stated that its holding “applie[d] to this case and any other cases that are pending on direct appeal when this opinion is filed, where the relevant question has been preserved for appellate review.” *Id.* at 47.

Before this Court, appellant argues, and the State concedes, that pursuant to *Kazadi*, the trial court erred in declining to ask appellant’s proposed *voir dire* questions related to the presumption of innocence, the State’s burden of proof, and the defendant’s right to remain silent. In its supplemental brief, the State acknowledged that appellant’s case was pending on appeal when *Kazadi* was decided, that the relevant question was preserved for appellate review, that appellant did not waive the issue by acknowledging that the jury was acceptable to him and that the requested questions were not otherwise covered by other *voir dire* questions. *See* Appellee’s Supp. Br. at 1–2. The parties agree that this Court should vacate appellant’s convictions and remand for a new trial.

In light of *Kazadi*, we hold that the trial court erred when it refused to ask appellant’s requested *voir dire* questions related to the presumption of innocence, the State’s burden of proof, and appellant’s right not to testify. The case at bar was pending on direct appeal when *Kazadi* was filed; therefore, *Kazadi* applies. Accordingly, we vacate appellant’s judgments of convictions and remand for a new trial.²

² Because we reverse on that issue, we need not address the remaining issues raised by appellant.

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