

Circuit Court for Harford County
Case No. C-12-CR-19-000014

UNREPORTED
IN THE COURT OF SPECIAL APPEALS
OF MARYLAND

No. 1005

September Term, 2019

JANEL ANTWAIN HENRY

v.

STATE OF MARYLAND

Nazarian,
Shaw Geter,
Wright, Alexander, Jr.
(Senior Judge, Specially Assigned),

JJ.

Opinion by Wright, J.

Filed: August 12, 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.

A jury, in the Circuit Court for Harford County, convicted Janel Henry, appellant, of possession with intent to distribute cocaine, possession of cocaine, possession with intent to distribute Fentanyl, possession of Fentanyl, possession of paraphernalia, and obstructing and hindering. The Court sentenced Mr. Henry to a total term of 43 years imprisonment, with all but 20 years suspended. In this appeal, Mr. Henry presents four questions for our review:

1. Pursuant to the Court of Appeals’ decision in *Kazadi v. State*, 467 Md. 1 (2020), is Mr. Henry entitled to a reversal of his convictions based on the trial court’s refusal to propound *voir dire* questions requested by the Defense regarding the presumption of innocence, the State’s burden of proof, and the defendant’s right not to testify or produce evidence?
2. Did the trial court err in denying Mr. Henry’s motion to exclude other crimes evidence?
3. Did the trial court abuse its discretion in permitting an “improper” prosecutorial closing argument?
4. Should Mr. Henry’s commitment record be corrected to accurately reflect the sentence imposed by the court?

For reasons to follow, we hold that Mr. Henry is entitled to a reversal of his convictions based on the trial court’s refusal to propound the requested *voir dire* questions. Because we reverse on that issue, we need not address Mr. Henry’s other questions.¹

BACKGROUND

¹ “Generally, where an appellate court reverses a trial court’s judgment on one ground, the appellate court does not address other grounds on which the trial court’s judgment could be reversed, as such grounds are moot.” *Pearson v. State*, 437 Md. 350, 364 n. 5 (2014).

Mr. Henry was arrested and charged with various drug-related crimes. Prior to trial, Mr. Henry submitted a list of proposed *voir dire* questions, which included the following:

11. Would any of you draw any inference of guilt from the fact that a person has been arrested or charged with a crime?

13. The Defendant has an absolute constitutional right not to testify. Would any of you draw any inference of guilt from the Defendant's election to exercise his right not to testify?

14. The State has the burden of proving guilt beyond a reasonable doubt. The Defendant does not have to prove his innocence. Would any of you draw any inference of guilt if the Defendant elects not to present any evidence?

17. If, after hearing all the evidence in this case, you think it is more likely than not that the Defendant is guilty but you are not convinced beyond a reasonable doubt as to his guilt, would you have any difficulty finding the Defendant not guilty?

On the first day of trial, during its *voir dire* of prospective jurors, the trial court posed various questions to the jury venire but did not ask Mr. Henry's requested questions regarding the presumption of innocence, the State's burden of proof, and the defendant's right not to testify or produce evidence. When the court finished posing its *voir dire* questions, defense counsel stated that he had "nothing to add." The court then proceeded with its individual examination of the prospective jurors who had responded to the court's *voir dire* questions. During that process, the following colloquy ensued:

THE COURT: Juror 26, the first question that you stood for is the one regarding having attended law school or studied law or criminology or corrections or worked for a law firm. Which one of those categories?

[JUROR]: I didn't know if it counted, but I thought I should stand. I just went to business law classes when I was going to Towson.

THE COURT: In any trial the judge at the end gives the instructions of the law that apply to the case. Would you be able to follow my instructions of law rather than relying on what you may have learned in that course?

[JUROR]: Oh, yes. It has been too many years anyway.

* * *

THE CLERK: Next is juror number 27.

[DEFENSE]: Your Honor, one thing that I wanted to mention and something that I just asked [the prosecutor], I don't know if you asked that particular question. You said it a second ago in terms of at the end of this trial you will be instructed on the law by Your Honor. Would you have difficulty following that or – I don't know if we asked that particular question or if it is something that you want to address.

THE COURT: I don't. I never ask questions involving jury instructions in accordance with *Pierson versus State*. The Court is not required to.

[DEFENSE]: I just mentioned that.

THE COURT: So, I saw that you had them in your *voir dire*. [The prosecutor] has some in her *voir dire*. I don't ask any questions that relate to instructions that the judge will provide at the end of the trial or anything else having nothing to do with statutory reasons to excuse a juror for bias for excusing a juror.

[DEFENSE]: Yes, Your Honor.

The court thereafter concluded its examination of the jurors, a jury was selected, and trial commenced. As noted, Mr. Henry was ultimately convicted. This timely appeal followed.

DISCUSSION

Mr. Henry contends that, pursuant to the Court of Appeals’ holding in *Kazadi v. State*, 467 Md. 1 (2020), the trial court erred in not propounding his requested *voir dire* questions regarding the presumption of innocence, the State’s burden of proof, and the defendant’s right not to testify or produce evidence. The State argues that the issue was not preserved because Mr. Henry did not lodge an appropriate objection at trial.

In *Kazadi v. State*, 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 fundamental principles of presumption of innocence, the State’s burden of proof, and the defendant’s right not to testify.” *Id.* at 9. The Court further held that its holding applied “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.

Objections made during jury selection are governed by Maryland Rule 4-323(c), which states, in relevant part, that “it is sufficient that a party, at the time the ruling or order is made or sought, makes known to the court the action that the party desires the court to take or the objection to the action of the court.” Md. Rule 4-323(c); *See also Wimbish v. State*, 201 Md. App. 239, 265 (2011). Thus, a defendant “preserves the issue of omitted *voir dire* questions under Rule 4-323 by telling the trial court that he or she objects to his or her proposed questions not being asked.” *Smith v. State*, 218 Md. App. 689, 700-01 (2014). “This objection does not need to be a formal exception to the ruling; rather, the

objector simply needs to make known to the circuit court what is wanted done.” *Id.* at 700 (internal citations and quotations omitted).

Here, prior to trial, Mr. Henry requested that the trial court ask whether any prospective jurors were unwilling or unable to apply the principles of presumption of innocence, the State’s burden of proof, and a defendant’s right not to testify or produce evidence. Later, during *voir dire*, the court did not propound those questions. Although defense counsel initially failed to object at the conclusion of the court’s *voir dire*, defense counsel did raise the issue during the court’s examination of individual jurors. In so doing, defense counsel noted that the court had asked one of the prospective jurors if he would be able to follow the court’s instructions at the end of the case. Defense counsel then asked if that was “something” that the court wanted “to address.” The court refused, explaining that it “saw that [defense counsel] had them in [his] *voir dire*” and that it would not ask “any questions that relate to instructions that the judge will provide at the end of the trial.”

From that, we are persuaded the trial court understood what defense counsel wanted, *i.e.*, to have his questions proposed to the jury panel, and that the court expressly refused to pose those questions. Thus, despite defense counsel’s initial failure to object, the issue was preserved for our review. *See Brice v. State*, 225 Md. App. 666, 679-88 (2015) (holding that defense counsel’s waiver of his objection to trial court’s refusal to propound a requested *voir dire* question was retracted, and thus the issue properly preserved, where defense counsel later raised the issue during the court’s individual examination of prospective jurors).

Because the issue was preserved, we must hold, pursuant to *Kazadi*, that the trial court erred in not propounding Mr. Henry’s requested *voir dire* questions regarding the presumption of innocence, the State’s burden of proof, and a defendant’s right not to testify or produce evidence. We therefore reverse Mr. Henry’s convictions and remand for a new trial.

**JUDGMENTS OF THE CIRCUIT COURT
FOR HARFORD COUNTY REVERSED;
CASE REMANDED TO THAT COURT
FOR NEW TRIAL; COSTS TO BE PAID BY
THE COUNTY.**