Circuit Court for Queen Anne's County
Case No. C-17-CR-19-000236

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 1048

September Term, 2019

JESSE JAMES RINGGOLD

v.

STATE OF MARYLAND

Berger,
Beachley,
Sharer, J., Frederick
(Senior Judge, Specially Assigned),

JJ.

Opinion by Sharer, J.

Filed: February 19, 2021

Jesse James Ringgold was convicted by a jury in the Circuit Court for Queen Anne's County of attempted second-degree burglary and conspiracy to commit second-degree burglary.[1]

In this appeal, appellant asks:

> Did the trial court commit reversible error by not asking mandatory *voir dire* questions requested by the defense?[2]

For the reasons that we shall discuss, we reverse the judgments of the circuit court and remand for a new trial.

Preamble

Initially, we point out that this opinion follows the decision of the Court of Appeals in *Kazadi v. State*, 467 Md. 1 (2020), which was filed on January 24, 2020. The ruling at issue in this appeal was made by the trial court, without the benefit of *Kazadi*, on August 8, 2019. Nonetheless, the jurisdiction of this Court was established because this appeal was pending at the time of the filing of *Kazadi*.

Background

Although we have reviewed the record as a whole, "[i]t is unnecessary to recite the underling facts in any but a summary fashion because for the most part 'they … do not bear on the [single] issue[ ] we are asked to consider.'" *Teixeira v. State*, 213 Md. App. 664, 666 (2013) (citation omitted). It is adequate for us to report the following:

[1] The circuit court imposed concurrent eight-year sentences on the convicted counts, to run consecutively to a six-year term for violation of probation.

[2] In his opening brief, appellant also asserted that the evidence was not sufficient to sustain his convictions. He subsequently, by line entered on June 10, 2020, withdrew that claim.

On February 16, 2019, in Chester, a deputy sheriff of the Queen Anne's County Sheriff's Department completed a traffic stop of a vehicle driven by appellant, in which appellant's brother Joshua was a passenger. The deputy recognized Joshua Ringgold as the subject of an outstanding warrant. Joshua Ringgold was then detained, and appellant was released.

Shortly thereafter, near the location of the traffic stop, a breaking and entering of, and theft of goods from, shipping containers at the premises of Chesapeake Outdoors was reported. Investigation implicated the Ringgold brothers. As we have noted, appellant was charged, tried, and convicted of offenses relating to that crime.

Voir Dire

Appellant contends that the trial court committed reversible error by not asking certain of his proposed questions of the jury venire. Among the questions requested by appellant's trial counsel was No. 12:[3]

> In our legal system, a criminal defendant is presumed innocent unless the State proves beyond a reasonable doubt that he … is guilty. Does any prospective juror have any objection to or reservation about these principles or believe that the fact that a person has been charged is evidence that the person is guilty?

After that question was not asked of the venire, defense counsel asked the court for permission "to address some of the questions that weren't asked." In support of his request, defense counsel addressed the court:

[3] Appellant's counsel also proposed two additional questions that the court declined to ask, dealing with prejudice based on appellant's race and religious/philosophical views that could impede impartiality.

> The first one is the presumption of innocence. If they are unable to abide by that principle. I know the Court is going to ask them or advise them -- instruct them at the end of the trial, but if someone is coming to the table without that, it's not going to help having an instruction at the end of the case and I think it would show any bias that they have towards that or leaning towards that because that is an important constitutional right. So that's No. 12 on my *voir dire.*

The court responded:

> I mean, I believe those would have come out in terms of whether they could be fair, number one. And, number two, in the one about the prosecutorial agency, whether any of them work for that or law enforcement and it may still come out when they come up here for that. So I'm not going to give any further questions on *voir dire*….

Jury selection proceeded and, when twelve jurors were seated, the court asked:

THE COURT: Is the jury as it's now constituted acceptable to the State?

[PROSECUTOR]: Yes, Your Honor.

THE COURT: And [to] the defense?

[DEFENSE COUNSEL]: Yes, Your Honor.

Thereafter, the court continued with additional *voir dire* for the seating of alternate jurors and, after the seating of two alternate jurors, the court again asked:

THE COURT: … Is the jury as it's now constituted acceptable to the State?

[PROSECUTOR]: Yes, sir.

THE COURT: And to the defense?

[DEFENSE COUNSEL]: Yes.

The jury was sworn, and the case proceeded to trial.

Appellant posits that the trial court erred by not asking prospective jurors his requested question No. 12, relating to the presumption of innocence and the reasonable doubt standard, pursuant to *Kazadi v. State*, *supra*.

Preservation

The issue before us in this appeal is whether appellant's claim is preserved for appellate review. The State argues that when asked by the trial court if the jury, as seated, was acceptable, defense counsel answered "Yes", thereby waiving any objections to the court's conduct of *voir dire*.

At the center of this appeal is the effect of *Kazadi v. State*. In sum, the *Kazadi* Court held that:

> Upon careful consideration of developments that have occurred in the fifty-five years since this Court decided Twining [v. State], 234 Md. 97 [(1964)], … we determine that this Court's holding as to *voir dire* questions in Twining is based on outdated reasoning and has been superseded by significant changes in the law. To the extent that this Court held in Twining that it is inappropriate to ask on *voir dire* questions concerning the presumption of innocence, the burden of proof, and a defendant's right to remain silent, we overrule the holding in Twining, and conclude 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.

467 Md. 8–9.

In the matter before us, those are precisely the questions that appellant's counsel asked the trial court to put to the prospective jurors, and which the court declined to ask. We point out at this juncture that the trial court, on August 8, 2019, the date of appellant's trial, did not have the benefit of the Court of Appeals's opinion in *Kazadi*, which, at that

time, was not yet decided. More to the point in the pending matter is the supplemental order of the Court of Appeals issued subsequent to the filing of its opinion in *Kazadi*, providing:

> Additionally, consistent with this Court's case law, we provide *Kazadi* with the benefit of the holding in this case, and we determine that our holding applies 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 appellant review.

467 Md. at 54 (citations omitted).

The parties agree that this appeal, filed on August 9, 2019, was pending before this Court at the time the *Kazadi* opinion was filed by the Court of Appeals on January 24, 2020. Thus, our determination rests on whether the *voir dire* issue has been preserved.

The State relies on the long-established precedent in Maryland jurisprudence that a party who accepts a jury panel, after it has been seated and sworn, without objection, has waived objections previously voiced. In that, the State refers us to *Pietruszewski v. State*, 245 Md. App. 292, 305 ("Grievances about both the jury selection process and the jury as constituted should be asserted before the jury is sworn because failure to do so may preclude appellate review."), *cert. denied*, 471 Md. 127 (2020).

The State acknowledges that this Court's holding in *Marquardt v. State*, 164 Md. App. 95 (2005), presents a significant obstacle to its preservation argument. Marquardt's trial counsel proposed four *voir dire* questions that the court declined to ask, two of which are relevant to the present appeal, reasoning that the subjects would be covered by the court's instructions to the jury. *Id*. at 141. Those proposed questions were:

> No. 12: Under the Constitution of the United States and the Maryland Law the burden remains throughout the trial on the State to convince you, the finders of fact, beyond a reasonable doubt that the Defendant is guilty? Would anyone have trouble complying with this?
>
> No. 14: Is there anyone who thinks the Defendant should be required to prove his innocence?

164 Md. App. at 141.

On his direct appeal, Marquardt, amid other challenges, asserted that the trial court's denial of his proposed *voir dire* questions was reversible error. *Id*. at 109. As in the present appeal, the State argued that Marquardt's acceptance of the jury, despite his noted objections to the denial of his *voir dire* questions, was acquiescence to the trial court's rulings on them. *Id*. at 142. Rejecting that argument, we said:

> We have held that it is sufficient to preserve an objection during the *voir dire* stage of trial simply by making known to the circuit court "what [is] wanted done." Here, after being asked if there were any problems with *voir dire*, appellant told the circuit court that he objected to his proposed questions … not being asked. Appellant was not required by Maryland Rule 4-323(c) to preserve the record in any other way. Moreover, accepting the jury that is ultimately selected after the circuit court has refused to propound requested *voir dire* questions does not constitute acquiescence to the previous adverse ruling.

Id. at 143 (internal citations omitted).

In the instant appeal, the State suggests that we ignore *Marquardt* as inconsistent with *Kazadi*. The State suggests further that we reconsider *Marquardt* or actually reject its holding. That, we are not prepared to do. *Kazadi* was about whether *Twining v. State* was still good law, and the Court of Appeals determined it is not. *Marquardt* was neither argued nor briefed in either *Kazadi* or the instant case. In any event, the State's suggestion that

Marquardt is no longer precedential or persuasive was put to rest by this Court in *Foster v. State*, 247 Md. App. 642, 651 (2020), wherein Judge Arthur, for the Court, wrote:

> [T]he State argues that we should "perhaps" overrule *Marquardt*. In fact, the Court of Appeals already has overruled *Marquardt*, but only as to the merits of the underlying claim in that case, which was essentially the same as the one on which Kazadi prevailed. *Kazadi*, however, said nothing about how such a claim is preserved. By contrast, in well-considered *dicta*, the Court cited *Marquardt* with approval in [*State v. Stringfellow*, 425 Md. 461 (2012)], a decision that directly addressed the mechanics of preservation of such claims. On the issue of preservation, *Marquardt* is still good law.

As in several other cases now pending appellate review, Foster, through his counsel, requested that the trial court ask the prospective jurors the presumption of innocence, burden of proof, and right to remain silent questions.[4] 247 Md. App. at 646–47. The trial court declined to ask those questions of the venire and counsel noted an objection. *Id*. at 647. We reversed, holding that counsel's objection, made at the time *voir dire* was

[4] In one such case, particularly relevant to the present appeal, certiorari has been granted by the Court of Appeals in *State v. Ablonczy*, 471 Md. 102 (2020), on the State's petition taken from an unreported opinion filed by this Court in *Ablonczy v. State*, No. 3219, Sept. Term, 2018 (Md. Ct. Spec. App. June 19, 2020). Although we do not cite *Ablonczy* as precedent or persuasive authority, we note the following colloquy at trial, in response to defense counsel's request that prospective jurors be asked the presumption of innocence, burden of proof and right to remain silent questions:

> "THE COURT: All of these questions about the law, I don't believe they are appropriate under Maryland law.
>
> [DEFENSE]: That's fine, over my objection, I understand."

Ablonczy v. State, No. 3219, Sept. Term, 2018, *slip op*. at 5. Subsequently, when the jury was seated and counsel were asked if either had objection to the panel, neither counsel objected. As relevant to the instant appeal, the State's sole question pending before the Court of Appeals is: "Should accepting a jury as ultimately empaneled waive any prior objection to the trial court's refusal to propound voir dire questions?"

concluded and before the jury was sworn, was not waived by his subsequent acceptance of the jury as seated and sworn. *Id*. at 651–52.

There is, between *Foster* and the instant case, a distinction. Foster's counsel affirmatively objected to the court's failure to ask his proposed questions at the time the court declined to ask the questions. *See* 247 Md. App. at 647. In the matter before us, counsel did not, upon the court's refusal to ask the requested questions, state a precise objection. Rather, jury selection proceeded and, as we have noted, counsel ultimately accepted the jury as seated.

Nonetheless, we conclude that appellant's earlier argument to the trial court, at the time of jury selection, in support of his requested *voir dire* questions, was sufficient, as we said in *Baker v. State*, 157 Md. App. 600, 610 (2004), to make known to the court "what [is] wanted done." (Citation and footnote omitted). That, we hold, satisfied his preservation obligation. Our conclusion is fortified by our reading of *Kazadi*, including the order of limited retrospective application, from which we glean the intent by the Court for liberal application of the now-required *voir dire* questions. 467 Md. at 54.

Hence, because his appeal satisfied the *Kazadi* jurisdictional criteria of this Court, we hold that the trial court erred, however innocently, in not asking the requested questions, and we are constrained to reverse appellant's convictions and order a new trial.

JUDGMENT OF THE CIRCUIT COURT FOR QUEEN ANNE'S COUNTY REVERSED. CASE REMANDED FOR FURTHER PROCEEDINGS. COSTS ASSESSED TO QUEEN ANNE'S COUNTY.