

Circuit Court for Baltimore City  
Case No. 118290016

UNREPORTED  
IN THE COURT OF SPECIAL APPEALS  
OF MARYLAND

No. 1478

September Term, 2019

---

ANDRE THOMPSON

v.

STATE OF MARYLAND

---

Graeff,  
Arthur,  
Moylan, Charles E., Jr.  
(Senior Judge, Specially Assigned),

JJ.

---

PER CURIAM

---

Filed: March 23, 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 possession of heroin with intent to distribute, Andre Thompson, appellant, presents for our review a single question: whether the court abused its discretion in “refusing to propound a voir dire question, requested by the defense, aimed at identifying jurors who would be unwilling or unable to apply the legal principles that the defendant is presumed innocent and that the State has the burden of proof beyond a reasonable doubt.” 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:

You must presume the defendant innocent of the charges now and throughout this trial unless and until, after you have seen and heard all of the evidence, the State convinces you of the defendant’s guilt beyond a reasonable doubt. If you do not consider the defendant innocent now or if you are not sure that you will require the State to convince you of the defendant’s guilt beyond a reasonable doubt. please stand.

The court denied the request.

Mr. Thompson 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 Mr. Thompson “waived his request . . . when he accepted the jury panel without qualification.” We disagree. We have stated that a defendant does “not waive [a] *Kazadi* claim through his unqualified acceptance of the empaneled jury.” *Foster v. State*, 247 Md. App. 642, 651 (2020). Hence, Mr. Thompson’s *Kazadi* claim is not waived, and accordingly, we reverse the judgment of the court and remand the case for a new trial.<sup>1</sup>

**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.**

---

<sup>1</sup>The State notes that it “has filed for certiorari review in *Foster*” and a second similar case, and “urges this Court to delay its decision in this appeal pending the Court of Appeals’[s] decisions in those cases.” We decline to do so.