

Circuit Court for Baltimore City
Case No. 115299028

UNREPORTED
IN THE COURT OF SPECIAL APPEALS
OF MARYLAND

No. 1531

September Term, 2019

AUBREY STOKES

v.

STATE OF MARYLAND

Nazarian,
Friedman,
Wells,

JJ.

Opinion by Friedman, J.

Filed: December 7, 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 Baltimore City convicted appellant, Aubrey Stokes, of second-degree murder.¹ After the trial court sentenced him to 30 years in prison, Stokes filed a timely notice of appeal. He asks us to consider the following questions:

1. Did the court err by not asking mandatory *voir dire* questions requested by the defense?
2. Did the court err in admitting evidence in violation of the Maryland Rules on hearsay and Appellant’s constitutional right to confrontation?
3. Did the court err in refusing to instruct the jury regarding the prior statements of a key State’s witness?
4. Did the court err in refusing to redact hearsay and the credibility-opinion statements of a detective in Appellant’s interrogation statement?

Based upon the Court of Appeals’ holding in *Kazadi v. State*, 467 Md. 1 (2020), we conclude that the trial court abused its discretion in declining to ask Stokes’s requested *voir dire* questions about the fundamental principles of the presumption of innocence, the State’s burden of proof, and the defendant’s right not to testify. Accordingly, we will vacate his convictions and remand for a new trial. Because it is not certain that Stokes’s remaining issues will arise during re-trial, we do not address them.²

¹ Stokes was first tried in 2017. Upon appeal of his convictions, this Court, in an unreported opinion, reversed and remanded the matter for a new trial. *See Aubrey Stokes v. State of Maryland*, No. 910, September Term, 2017 (filed August 21, 2018) (“*Stokes I*”).

² We point out that both issues 2 and 3 center on the fact that the trial court determined that a State’s witness was unavailable and therefore admitted his recorded testimony from Stokes’s first trial into evidence. It is possible that the witness, Zane Bogie,

BACKGROUND

In March 2015, Stokes gave Travis Dixon \$400, so that Dixon could purchase a handgun for Stokes.³ Angry when Dixon neither produced a weapon nor returned the money, Stokes sent Dixon a series of threatening text messages.

On March 27, 2015, as Stokes, his then-girlfriend Tiffany Brown, and Brown's son Zane Bogie were returning home from Mondawmin Mall, Stokes exited the hack cab in which they were riding to walk to the nearby Chelsea Terrace home of Dixon's aunt, Beverly Mills, to speak with Dixon about the \$400. Brown and Bogie continued the short distance to their home at 2401 Allendale Road.

At Brown's request, Bogie walked "a little bit up the block" to find Stokes and tell him to return home, but Stokes refused, angrily saying he had to "go get his money back." Bogie walked away, leaving Stokes to proceed down Chelsea Terrace.

Once at Mills' home, Stokes knocked on the door and asked Mills if he could speak to Dixon about the money. Dixon appeared, and the conversation between the men escalated to heated argument, with one of them producing a knife. Stokes stabbed Dixon five times in the chest before fleeing the scene. Dixon was pronounced dead at the scene.

By that time, Bogie had re-approached Stokes, who told the younger man to run. Both men ran toward their house on Allendale Road.

will appear at Stokes's second re-trial, either of his own volition or as a result of increased effort by the State to secure his attendance.

³ Stokes disputed the purpose of the loan. To the police, and during his trial testimony, he said he was merely trying to help Dixon.

Coincidentally, Larry Davidson, a former police officer, observed the two men running, one with knife in hand. Suspicious, Davidson followed the men. When they went inside, Davidson called the police. The police responded to 2401 Allendale Road. By then, Stokes had already left, but Bogie was taken to the police station and interviewed. The execution of a search and seizure warrant turned up no relevant evidence, but information obtained from Dixon’s cell phone led the police to Stokes.⁴

During a recorded interview with the police, Stokes initially denied any involvement in Dixon’s death. Later, he admitted to being on Mills’ porch when Dixon was stabbed, but he claimed that a man named Louis Hicks was the perpetrator. The police investigated Hicks as an alternate suspect, but their investigation was hindered by the fact that Hicks had died in May 2015. In any event, the police believed, “everything pointed to [Stokes], there was nothing to suggest that Mr. Hicks was at the scene.” Moreover, Mills had mentioned only one assailant during her 911 call, and Hicks did not match the description of either of the men that Davidson had seen running near the scene of the murder.

Herman Sumpter, Stokes’ former roommate, was arrested on drug charges in August 2015. He told the police that he knew something about a murder and explained that Stokes had told him that he “gave the kid \$400 to get a gun and the kid kept the money,” which led to an “altercation” that ended in Stokes stabbing Dixon. Presented with a photo array, Sumpter chose Stokes as the person who said he had committed the murder.

⁴ Over a period of months, Bogie gave the police three statements. It was not until the third statement that he mentioned Stokes had been living with him.

DISCUSSION

In writing, prior to the start of trial, defense counsel asked the trial court to include the following *voir dire* inquiries:

14. Do you belong to a neighborhood watch, Citizens on Patrol, or any similar organization?

15. Do you support or share the views of any organization or group that seeks changes in the criminal laws, the sentencing of offenders, the rights of victims of crime, or the rights of persons accused of committing a crime?

* * *

19. In a criminal case, like this one, each side may present arguments about the evidence, but the State has the only burden of proof. The defendant need not testify in his own behalf or present any evidence at all.

a. Would you tend to believe or disbelieve the testimony of a witness called by the defense more than the testimony of a prosecution witness?

b. Would you hold it against a defendant if he chooses not to testify or present any evidence?

20. 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.

* * *

22. Do you hold any moral, religious or ethical conviction or belief that would prevent you from weighing the evidence and returning a fair and impartial verdict?

During a hearing the day before the start of trial, the court discussed requested *voir dire* with the prosecutors and defense counsel:

[DEFENSE COUNSEL]: We'd ask for defense 14.

THE COURT: Madam State?

[PROSECUTOR]: Your Honor, I would object to that one.

THE COURT: Denied.

[DEFENSE COUNSEL]: Defense 15.

THE COURT: Madam State?

[PROSECUTOR]: I would object to that one.

THE COURT: Denied.

* * *

[DEFENSE COUNSEL]: Defense, we'd ask for [D]efense 19.

THE COURT: Defendant's 19 and 20, I'll deny. They're jury instructions. And, in fact, they're pretrial jury instructions now.

[DEFENSE COUNSEL]: Your Honor, the only—our only, the reason the defense would ask for it is that by the time we get to pretrial jury instructions, they're already on the jury. But, I know, will these folks—

THE COURT: I hear you but they're pretrials now. Is it four or five days this case is going to be?

[PROSECUTOR]: Four.

[DEFENSE COUNSEL]: Four, okay.

THE COURT: Okay. So that's 21.

[DEFENSE COUNSEL]: And just 22 and 23, I think the State probably has something similar. But the catchall question for any convictions or other reasons the person cannot be fair.

THE COURT: Don't they do that in number 5 and 6?

[PROSECUTOR]: Number 6, I think, is there any reason whatsoever—

THE COURT: Right.

[DEFENSE COUNSEL]: Oh, okay. Sorry.

[PROSECUTOR]: --that you cannot render a fair and impartial—

THE COURT: So, I'll deny 22.

After the trial court propounded its *voir dire* questions in accordance with its pre-trial ruling, the attorneys approached the bench, where defense counsel stated, “Thank you. And Your Honor, just for the record, if you note our exceptions to those questions of Defense that’s not being asked.” The court noted the objections. The jury was then selected with no further objection by either side, the trial commenced, and Stokes was convicted and sentenced, as noted above.

In *Kazadi*, 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 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. A trial court’s failure to ask the question on request is an abuse of its discretion. *Id.* at 48.

The *Kazadi* decision overruled the longstanding rule set forth in *Twining v. State*, 234 Md. 97, 100 (1964), which held that it was not an abuse of discretion for a trial court to decline to ask prospective jurors if they would presume the accused’s innocence and recognize the State’s burden of proof. *Id.* at 48. In overruling *Twining*, the *Kazadi* Court explained that “[v]oir dire questions concerning these fundamental rights are warranted because responses indicating an inability or unwillingness to follow jury instructions give

rise to grounds for disqualification – *i.e.*, a basis for meritorious motions to strike for cause the responding prospective jurors[.]” *Id.* at 41-42.

The Court of Appeals explained that *Kazadi* applies to “any other cases that are pending on direct appeal when” the opinion was filed, so long as “the relevant question has been preserved for appellate review.” *Id.* at 47. Although this case was pending on direct appeal when *Kazadi* was filed on January 24, 2020 (and amended on March 2, 2020), the State argues that Stokes is not entitled to reversal of his convictions because he waived his objection to the trial court’s ruling on his *voir dire* questions on these fundamental rights when he accepted the empaneled jury without qualification.

Kazadi did not explain what is required to preserve this type of claim for appellate review, and after a spate of appeals in which the State argued, as here, that the appellant failed to preserve the issue because the appellant accepted the empaneled jury without qualification, we recently addressed the preservation requirement in a reported case, *Foster v. State*, No. 462, September Term 2019, slip op. (Md. App. Sep. 30, 2020). In *Foster*, the trial court declined Foster’s request to ask a *voir dire* question now mandated by *Kazadi*, and Foster objected as required by Maryland Rule 4-323(c),⁵ but he later accepted the jury

⁵ Rule 4-323(c) provides:

(c) Objections to Other Rulings or Orders. For purposes of review by the trial court or on appeal of any other ruling or order, 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. The grounds for the objection need not be stated unless these rules expressly provide otherwise, or the court so directs. If a party has no

without qualification. Slip op. at 6. Applying *State v. Stringfellow*, 425 Md. 461 (2012), we concluded that Foster “did not waive his *Kazadi* claim through his unqualified acceptance of the empaneled jury,” so reversal of his conviction was required. Slip op. at 6.⁶

Here, in requests 19 and 20, Stokes asked that the trial court propound *voir dire* questions regarding the presumption of innocence, his right not to testify, and the State’s burden of proving the charges beyond a reasonable doubt. The trial court declined to propound the questions, and upon completion of *voir dire*, defense counsel asked that the court note her objection for the record. The trial court accepted the defense’s objection. Therefore, the issue was properly preserved. That defense counsel ultimately accepted the jury panel without reasserting her objection is of no moment.

We therefore reject the State’s waiver argument and hold that Stokes’s request that the court propound the subject *voir dire* questions was preserved at the time the request was made and then denied by the court. As a result, *Kazadi* requires that Stokes’ conviction be vacated. We remand the matter for a new trial, at which Stokes’ proposed *voir dire* question regarding the presumption of innocence, right not to testify, and burden of proof may be presented to the jury venire.

opportunity to object to a ruling or order at the time it is made, the absence of an objection at that time does not constitute a waiver of the objection.

⁶ The Court of Appeals recently granted *certiorari* in a case involving the same issue. See *Anthony George Ablonczy v. State*, No. 28, September Term, 2020 (cert. granted Oct. 6, 2020). The Court is expected to hear argument in that matter in January 2021.

**JUDGMENT OF THE CIRCUIT COURT
FOR BALTIMORE CITY VACATED;
CASE REMANDED FOR A NEW TRIAL;
COSTS ASSESSED TO MAYOR AND CITY
COUNCIL OF BALTIMORE.**