Circuit Court for Baltimore City
Case No. 118309010

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 2203

September Term, 2019

WILLIAM LEE LUCAS

v.

STATE OF MARYLAND

Fader, C.J.,
Nazarian,
Gould,

JJ.

Opinion by Fader, C.J.

Filed: May 4, 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.

William Lee Lucas, the appellant, seeks reversal of his jury convictions arising out of a shooting and attempted robbery. Pursuant to the Court of Appeals' decision in *Kazadi v. State*, 467 Md. 1 (2020), he is entitled to a new trial because the Circuit Court for Baltimore City declined to ask certain voir dire questions that, although discretionary at the time of Mr. Lucas's trial, are now mandatory if requested. Accordingly, we must reverse and remand for further proceedings.

Mr. Lucas also contends that the circuit court abused its discretion when it denied his motion for mistrial without conducting voir dire of a juror whom Mr. Lucas's attorney believed may have seen Mr. Lucas in shackles. We discern no abuse of discretion on that issue because the court's decision was based on its personal observation that the juror had not and could not have seen Mr. Lucas in shackles.

BACKGROUND

The State charged Mr. Lucas with various crimes related to a 2018 robbery and shooting in Baltimore. The underlying facts are not relevant to the issues on appeal. In October 2019, a jury convicted Mr. Lucas of first-degree assault, robbery with a deadly weapon, reckless endangerment, and multiple firearm and conspiracy offenses. This timely appeal followed.

DISCUSSION

I. THE TRIAL COURT ERRED IN NOT ASKING THE VENIRE PANEL MR. LUCAS'S PROPOSED VOIR DIRE QUESTIONS.

Mr. Lucas contends that the circuit court abused its discretion by not asking the following two voir dire questions, which he had requested:

> 10. The State has the burden of proof in this as in every other criminal case to prove beyond a reasonable doubt all elements of each offense charged and the defendant has no burden of coming forward with any evidence in order to establish his innocence. If you are selected as a juror in this case, will any of you have difficulty in accepting and applying the rule of law that an accused is presumed innocent?
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> 11. The defendant need not testify, need not offer any evidence, and may, in fact, stand mute, since he stands presumed innocent. Does anyone here feel the defendant should testify or put forth evidence on his own behalf before you could find him not guilty?

In accord with then-prevailing Court of Appeals precedent, which gave trial courts discretion whether to ask such questions, *see Twining v. State*, 234 Md. 97, 100 (1964), the circuit court declined to ask them.

On January 24, 2020, the Court of Appeals issued its decision in *Kazadi*, in which it overruled *Twining* and held that, upon request, a trial court must ask the members of the jury venire panel whether they would be unwilling or unable to follow instructions related to: (1) the presumption of the defendant's innocence, (2) the State's burden of proof, and (3) the defendant's right not to testify. 467 Md. at 35-36. Failure to ask such questions upon request is an abuse of discretion that mandates reversal. *Id.* at 27, 47-48. In an order issued in March 2020, *id.* at 54, the Court extended the benefit of its ruling to "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.

This appeal was pending at the time the Court issued its decision in *Kazadi*. The parties agree, as do we, that Mr. Lucas's proposed questions ten and 11 are *Kazadi* fundamental rights questions that a trial court is now required to ask if requested. He is

thus entitled to the benefit of that ruling—reversal of his convictions and a new trial—provided he preserved the question. It is on the issue of preservation that this appeal turns.

The State contends that Mr. Lucas both waived and failed to preserve his current claim. The State contends that Mr. Lucas waived his *Kazadi* claim by accepting the jury as it was empaneled without exception. As the State recognizes, however, this Court has recently rejected that same waiver argument. *See Foster v. State*, 247 Md. App. 642, 650 (2020) (holding that a defendant's acceptance of the jury's composition does not waive the prior objection to an unasked *Kazadi* question). We are thus compelled to do so here as well.[1]

The State also contends that Mr. Lucas did not preserve his challenge to the trial court's failure to ask his proposed voir dire questions ten and 11 by not objecting "in clear and unambiguous language" after the court concluded its voir dire of the jury. We disagree. Upon conclusion of voir dire, the trial court asked the parties if they had any objections to the questions the court had proposed. Both answered no. The court then asked if either party requested additional voir dire. The State did not, but Mr. Lucas did. He first objected to the court's failure to ask "if anybody's been a victim of a crime," which was part of his

[1] The State observes that the Court of Appeals is currently considering the same question decided in *Foster* in its review of this Court's unreported decision in *Ablonczy v. State*, No. 3219, Sept. Term, 2018, 2020 WL 3401190, at *4 (Md. Ct. App. June 19, 2020), *cert. granted*, 471 Md. 102 (2020). *See Petitions for Writ of Certiorari - October, 2020*, https://www.courts.state.md.us/coappeals/petitions/202010petitions (last visited Apr. 9, 2021) (identifying the issue presented in *Ablonczy* as "Should accepting a jury as ultimately empaneled waive any prior objection to the trial court's refusal to propound voir dire questions?"). Should the Court of Appeals reach a different decision in that appeal, the State has preserved its waiver argument in Mr. Lucas's case.

requested voir dire question eight. The court explained its reasoning for not asking that question. The following exchange ensued:

> [DEFENSE COUNSEL]: Okay. And then the others were about whether my client -- I know you're going to say that you covered this in whether the jury would be able to apply the law as you -- I just want to make the record clear that in my last trial last week we did get affirmative responses to specifically people saying that -- because they don't understand what the law is. And when you say the law, it could be anything.
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> THE COURT: But the purpose of voir dire is not to educate them as to the law. At least that is the law in Maryland thus far.
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> [DEFENSE COUNSEL]: Exactly. So that the question saying do you believe that a person needs to -- would you believe that you need to hear testimony before you could find somebody not guilty, we got several affirmative responses --
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> THE COURT: I don't know who the judge was, but wouldn't happen in my court. I wouldn't ask the question.
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> [DEFENSE COUNSEL]: Okay. And my position is --
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> THE COURT: And no disrespect. We've known each other -- your anecdotal discussions about what happened in any particular case is not controlling some case law I'm obligated to follow.
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> [DEFENSE COUNSEL]: I know. I'm not saying that. What I'm saying is that you're saying to the jurors would you be able to apply the law, they're saying yes.
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> THE COURT: Would they as they're instructed to do so, and they said yes. And I will instruct them as to the law.
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> [DEFENSE COUNSEL]: Okay. Those were my objections --
>
> THE COURT: Okay.

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." *Brice v. State*, 225 Md. App. 666, 679 (2015) (quoting *Smith v. State*, 218 Md.

App. 689, 700-01 (2014)). "[I]t 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.'" *Brice*, 225 Md. App. at 678-79 (second alteration in *Brice*) (quoting *Marquardt v. State*, 164 Md. App. 95, 143 (2005), *overruled in part on other grounds by Kazadi*, 467 Md. at 27).

In its brief, the State argued that Mr. Lucas's objection in the colloquy above was not to the court's failure to ask proposed voir dire question 11 but instead was "aimed at the broad language that the court used in asking the prospective jurors if they 'would be unwilling to apply the law as the Court [instructed].'" In context, that is not a tenable interpretation of the discussion. Mr. Lucas had already expressly stated that he had no objection to the court's voir dire questions. His objection was made in response to the court asking whether he requested additional voir dire questions. In that context: (1) Mr. Lucas's reference to "the question saying do you believe that a person needs to -- would you believe that you need to hear testimony before you could find somebody not guilty," could refer only to his proposed question 11;[2] and (2) in his prior statement, "I know you're going to say that you covered this in whether the jury would be able to apply the law," the word "this" was again a reference to question 11. Mr. Lucas thus "ma[de]

[2] At oral argument, the State conceded that Mr. Lucas's objection could be interpreted as a reference to his proposed question 11 but argued that it could also be interpreted as referring to whether the jury would need to hear *any* testimony before it would find a defendant not guilty. Mr. Lucas, however, had not proposed any such question.

known to the circuit court 'what [was] wanted done,'" *Brice*, 225 Md. App. at 678-79 (quoting *Marquardt*, 164 Md. App. at 143), and nothing more was required.[3]

Because the court did not ask proposed voir dire questions required by *Kazadi* and Mr. Lucas preserved and did not waive the issue, we must reverse the convictions and remand for a new trial.

II. The Trial Court Acted Within Its Discretion in Denying Mr. Lucas's Motion for a Mistrial Based on Its Observation that a Juror Had Not Seen Mr. Lucas in Shackles.

Mr. Lucas argues that the circuit court abused its discretion by denying his motion for a mistrial after a juror allegedly saw him in shackles while officers led him out of the courtroom without first conducting voir dire of the juror. We are satisfied that the court acted within its discretion in denying the motion.[4]

"[A] mistrial is . . . 'an extreme sanction that sometimes must be resorted to when such overwhelming prejudice has occurred that no other remedy will suffice to cure the prejudice.'" *Jordan v. State*, 246 Md. App. 561, 598 (2020) (emphasis omitted) (quoting

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[3] In light of our conclusion that Mr. Lucas objected to the court's failure to ask at least his proposed question 11 after the court concluded its voir dire, we need not resolve whether Mr. Lucas was required to make that objection at that time. Although a defendant is required to object to a trial court's failure to give a requested jury instruction after the instructions have been read in order to preserve such an objection for appellate review, *see* Md. Rule 4-325(e); *see also Jones v. State*, 240 Md. App. 26, 36 (2019), there is no similar requirement, at least not an express one, for voir dire questions, *see* Md. Rule 4-323(c); *see also Foster*, 247 Md. App. at 648. *But see Brice*, 225 Md. App. at 679 (stating that 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" (quoting *Smith*, 218 Md. App. at 700-01)).

[4] We are addressing this issue, despite reversing the judgment based on *Kazadi*, in case the Court of Appeals determines in *Ablonczy* that a defendant's unqualified acceptance of an empaneled jury waives an otherwise preserved *Kazadi* argument.

Choate v. State, 214 Md. App. 118, 133 (2013)). "Generally, appellate courts review the denial of a motion for a mistrial under the abuse of discretion standard[.]" *Reynolds v. State*, 461 Md. 159, 175 (2018) (alteration in original) (quoting *Dillard v. State*, 415 Md. 445, 454 (2010)). That is because "[t]he trial judge is in the best position" to assess the motion. *Wilson v. State*, 148 Md. App. 601, 666 (2002). The trial judge has a front row seat to observe "impressions made by the witnesses" and "reactions of the jurors," a "thumb on the pulse of the trial . . . that no cold record can communicate[.]" *Bynes v. State*, 237 Md. App. 439, 456-57 (2018). An abuse of discretion occurs only when the trial court's decision is "well removed from any center mark imagined by the reviewing court and beyond the fringe of what that court deems minimally acceptable." *Nash v. State*, 439 Md. 53, 67 (2014) (quoting *Alexis v. State*, 437 Md. 457, 478 (2014)).

At 4:46 p.m. on the last day of trial, the court discharged the jury to begin deliberations, and the parties and the court began assembling the evidence that they would send to the jury room. After confirming that Mr. Lucas did not need to be in the courtroom for that process, the court directed an officer to remove him. The transcript reflects that Mr. Lucas exited the courtroom at 4:49 p.m.

The transcript next identifies untranscribed "[a]sides," and then, most pertinent here, a discussion about a juror who had reentered the courtroom unannounced and in violation of the court's instruction not to return unaccompanied. The trial judge, who was still on the bench, initially remarked: "Fortunately, [Mr. Lucas] was out of sight." In response to an unrecorded remark from defense counsel, the court reaffirmed that Mr. Lucas "was out of sight when [the juror] came through the door." Defense counsel moved for a mistrial

on the ground that "the juror was in the courtroom at the same time as Mr. Lucas was in shackles." The court disagreed and stated that "in the observation of the Court, [Mr. Lucas] was already through the door and out of sight" when the juror entered. The court continued: "Because I saw the juror come up, and I looked over, and [Mr. Lucas] was gone. And I am between where the juror was at that moment and where Mr. Lucas was." The court added that even if Mr. Lucas had still been in the courtroom when the juror entered, the bench was between the two individuals, and the juror "wouldn't have been able to see [Mr. Lucas] because this bench was in the way."[5]

The defense counsel then asked to voir dire the juror about the incident. Based on the court's personal observation that the juror could not possibly have seen Mr. Lucas—which the court stated multiple times, with evident certainty—it denied the request for voir dire and the motion for mistrial.

Mr. Lucas argues that the circuit court abused its discretion in denying his motion for mistrial without permitting him to voir dire the juror. We disagree. The choice of whether to voir dire the juror was within the circuit court's discretion; a trial court "is not required to conduct *voir dire* every time there is an allegation that the jury is prejudiced." *Nash*, 439 Md. at 76 (quoting *Butler v. State*, 392 Md. 169, 190 (2006)). Here, the trial court had personally observed the relevant events, and based on that observation, it expressed certainty that the juror had not seen Mr. Lucas in shackles. In that circumstance,

[5] The prosecutor described the bench as "a tall marble construction[.]"

the court did not abuse its discretion in declining to voir dire the juror to obtain additional information or in denying Mr. Lucas's motion for a mistrial.

JUDGMENT OF THE CIRCUIT COURT FOR BALTIMORE CITY REVERSED AND CASE REMANDED FOR FURTHER PROCEEDINGS CONSISTENT WITH THIS OPINION. COSTS TO BE SPLIT EVENLY BY APPELLANT AND THE MAYOR AND CITY COUNCIL OF BALTIMORE.