Circuit Court for Montgomery County
Case No. 131995

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 2530

September Term, 2018

FURL JOHN WILLIAMS

v.

STATE OF MARYLAND

Arthur,
Reed,
Salmon, James P.,
(Senior Judge, Specially Assigned),

JJ.

Opinion by Reed, J.

Filed: April 20, 2021

After a jury trial in the Circuit Court for Montgomery County, Furl John Williams, ("Appellant"), was found guilty of second-degree murder, felony murder, home invasion, attempted armed robbery, two counts of armed robbery, four counts of first-degree assault, six counts of use of a firearm in the commission of a crime of violence or a felony, and possession of a firearm by a person convicted of a disqualifying crime. The court imposed an aggregate sentence of life, with all but 50 years suspended.[1] This timely appeal followed. In bringing his appeal, Appellant presents the following questions for our review:

> I. Did the trial court abuse its discretion in refusing to propound Appellant's requested voir dire questions?
>
> II. Did the trial court issue an improper and coercive jury instruction?

For the reasons set forth below, we shall vacate the circuit court's judgments and remand for a new trial.

FACTUAL & PROCEDURAL BACKGROUND

The questions presented for our consideration do not require a detailed recitation of the facts. This case arises from a robbery and shooting that occurred on the night of April

[1] Appellant was sentenced to life in prison with all but 50 years suspended for the felony murder conviction. In addition, the court imposed the following sentences to be served concurrent to the sentence imposed for felony murder: 20 years for use of a firearm in the commission of a crime of violence or felony; 10 years for attempted armed robbery; 25 years for first-degree assault; 5 years for first-degree assault; 10 years for use of a firearm in the commission of a crime of violence or felony; 25 years for first-degree assault; 10 years for use of a firearm in the commission of a crime of violence or felony; 25 years for first-degree assault; 10 years for use of a firearm in the commission of a crime of violence or felony; 10 years for armed robbery; 10 years for use of a firearm in the commission of a crime of violence or felony; 10 years for armed robbery; 10 years for use of a firearm in the commission of a crime of violence or felony; and, 5 years for possession of a firearm by a person convicted of a disqualifying crime.

28, 2017 in the Germantown area of Montgomery County. Evidence was presented at trial that Appellant and another man, Eric Lee, robbed two women in the parking lot of a townhome community. A short time later, Appellant returned to the area, entered a home located at 12839 Kitchen House Way, and fired a gun, striking a number of people and killing Amaru Johnson. A deputy chief medical examiner for the State of Maryland, who testified as an expert in anatomic and forensic pathology, opined that the cause of Mr. Johnson's death was a gunshot wound to the abdomen and the manner of death was homicide. The defense's theory was that another man, James Reed, was the shooter.

Prior to trial, Appellant submitted a written request for forty-five voir dire questions including the following:

> No. 32. In our judicial system, the Defendant enters this courtroom innocent and remains innocent until the prosecution has proven beyond a reasonable doubt that the Defendant is guilty. Is there any member of the prospective jury panel who is uncomfortable with this concept? Does everyone agree that, if the State fails to satisfy its burden, you must find the Defendant not guilty? Is there anyone who thinks the Defendant should be required to prove his/her innocence?
>
> * * *
>
> No. 35. The Fifth Amendment of the United States Constitution provides that the defendant need not testify, need not offer any evidence, and may, in fact, stand silent, since he/she is presumed innocent. Does anyone here believe that the defendant should testify or present witnesses on his/her behalf?
>
> a. If the Defendant does testify, would any of you have difficulty weighing his/her testimony in the same way you would weigh any other witness' testimony?
> b. If the Defendant does not testify, would any of you hold it against him/her in any way?

> c. If the Defendant chooses to testify, is there anyone that would find his testimony more credible or less credible only because he has been charged with these crimes?
>
> No. 36. If, at the conclusion of this case, you believe the State did not prove the case beyond a reasonable doubt, is there any member of the prospective panel who would have difficulty rendering a "not guilty" verdict?

The trial judge asked fifteen questions, which did not include Appellant's questions 32, 35, or 36. Defense counsel's objection to the circuit court's decision not to include Appellant's proposed questions was noted. Trial proceeded and, subsequently, Appellant was found guilty of second-degree murder, felony murder, home invasion, attempted armed robbery, two counts of armed robbery, four counts of first-degree assault, six counts of use of a firearm in the commission of a crime of violence or a felony, and possession of a firearm by a person convicted of a disqualifying crime.

STANDARD OF REVIEW

"The manner of conducting voir dire and the scope of inquiry in determining the eligibility of jurors is left to the sound discretion of the [trial] judge." *Washington v. State*, 425 Md. 306 (2010) (*Citing Curtin v. State*, 393 Md. 593 at 603, (2006)). However, if a party requests a question directed to a specific cause for disqualification, "then the question must be asked and failure to do so is an abuse of discretion." *Smith v. State*, 218 Md. App. 689, 699 (2014) (citations and quotations omitted).

DISCUSSION

A. Parties' Contentions

Appellant contends that the trial court abused its discretion in refusing to ask his requested voir dire questions. The State counters that Appellant's acceptance of the jury

panel without qualification resulted in a waiver of his objection to the trial court's failure to ask his proposed voir dire questions. The State's argument is without merit.

B. Analysis

As a preliminary matter, we note that the trial transcript, as initially prepared, mistakenly identified the prosecutor as objecting to the trial judge's decision not to ask certain questions on voir dire. After the filing of this appeal, a corrected version of the transcript was prepared indicating that defense counsel, not the prosecutor, was the speaker who objected to the trial judge's decision not to ask certain questions on voir dire. In our consideration of the issue, we shall rely on the corrected transcript.

Prior to trial, Appellant submitted a written request for forty-five voir dire questions including the following:

> 32. In our judicial system, the Defendant enters this courtroom innocent and remains innocent until the prosecution has proven beyond a reasonable doubt that the Defendant is guilty. Is there any member of the prospective jury panel who is uncomfortable with this concept? Does everyone agree that, if the State fails to satisfy its burden, you must find the Defendant not guilty? Is there anyone who thinks the Defendant should be required to prove his/her innocence?
>
> * * *
>
> 35. The Fifth Amendment of the United States Constitution provides that the defendant need not testify, need not offer any evidence, and may, in fact, stand silent, since he/she is presumed innocent. Does anyone here believe that the defendant should testify or present witnesses on his/her behalf?
>
> a. If the Defendant does testify, would any of you have difficulty weighing his/her testimony in the same way you would weigh any other witness' testimony?
>
> b. If the Defendant does not testify, would any of you hold it against him/her in any way?

> c. If the Defendant chooses to testify, is there anyone that would find his testimony more credible or less credible only because he has been charged with these crimes?
>
> 36. If, at the conclusion of this case, you believe the State did not prove the case beyond a reasonable doubt, is there any member of the prospective panel who would have difficulty rendering a "not guilty" verdict?

The trial judge decided to ask fifteen questions, none of which included Appellant's questions 32, 35, or 36. As the following exchange shows, defense counsel objected to the court's decision not to ask Appellant's proposed voir dire questions:

> [DEFENSE COUNSEL]: Okay. So there's a lot of questions that you're not asking, which, of course, we have to put on the record at the end that we object.
>
> I'm also putting on the record right now that we object to you not asking any of our questions, because we think that they are all relevant to this case. It's relevant to whether these jurors can be fair and impartial, and this is a very serious case that involves four people injured, one person dead, three others injured by bullets, and there's going to be a lot of people who have a lot of emotion about this. And we're supposed to find out what kind of emotion they have, and whether they – you know, start crying because of the witnesses, and the facts that you hear, because you realize that your grandfather was shot, and all of a sudden it does hit you that this bothers you.
>
> THE COURT: Okay. All right. I get it. And we've already been over this. I'm asking the questions I'm asking. I feel that they cover all the areas that you're talking about. They cover all the areas the Court of Appeals has said have to be asked. You can put on the record what you want asked, or, you can just attach a copy, and say I wanted all these asked. You can do all that.
>
> [DEFENSE COUNSEL]: Okay. Well, you have our copy, right, because we –
>
> THE COURT: I assume it's somewhere, you know, in this file. I mean did you file it?
>
> [DEFENSE COUNSEL]: I did.

THE COURT: Okay.

[DEFENSE COUNSEL]: I mean I can give you another one.

THE COURT: Well, then it's in the court file.

[DEFENSE COUNSEL]: Right.

THE COURT: Right.

[DEFENSE COUNSEL]: So, we would like to incorporate all our questions –

THE COURT: Okay.

[DEFENSE COUNSEL]: -- and say that we would like them all to be read. I will repeat that at the end, because it's required for me to do that.

THE COURT: Right. Okay.

The trial judge proceeded to question the jury using his fifteen questions, which did not include Appellant's questions 32, 35 or 36. After the court heard from each potential juror who responded to one of the questions, defense counsel stated:

> Okay. So I guess we should make our objection to the jury voir dire that you did not ask? And I'm going to ask you to ask when we sit down, is there anyone in the room that has not approached the bench who has something that they think they should tell us before we start selection.

The trial judge agreed that the question proposed by defense counsel "might be useful," and proceeded to ask the jurors if they had anything additional to disclose. Thereafter, twelve jurors were selected and both defense counsel and the prosecutor indicated they were satisfied with the jury. Four alternate jurors were then selected. After

the jurors were sworn in, the judge gave them some preliminary instructions and then excused them for the day.

In support of his argument that the trial court abused its discretion in failing to ask his requested questions on voir dire, Appellant relies on *Kazadi v. State*, 467 Md. 1 (2020). In that case, the Court of Appeals overruled the longstanding rule set forth in *Twining v. State*, 234 Md. 97 (1964), which held that it was not an abuse of discretion for a trial court to decline to propound *voir dire* questions pertaining to the burden of proof and the presumption of innocence. *Kazadi*, 467 Md. at 36. The Court 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." *Kazadi*, 467 Md. at 35-36. A trial court's failure to ask those questions on request is an abuse of its discretion. *Id.* at 45-47. The Court reasoned:

> *Voir 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, that may not be discovered until it is too late, or may not be discovered at all.

Id. at 41-42 (citations omitted).

A trial court is not required to ask all of Appellant's question or "to use any particular language," but it is required to ask questions that "concisely describe the fundamental right[s] at stake and to inquire as to a prospective juror's willingness and ability to follow the court's instructions as to th[ose] rights." *Id.* at 47.

The Court's holding in *Kazadi* applies to cases that were pending on appeal when the decision was filed, "where the relevant question has been preserved for appellate review." *Id.* at 44, 47 (and as corrected by order dated March 2, 2020). As the instant case was pending on appeal when *Kazadi* was decided, *Kazadi* is controlling here.

Kazadi did not explain what is required to preserve this type of claim for appellate review, but we recently addressed that issue in *Foster v. State*, 247 Md. App. 642, 2020 WL 5819608 (filed September 30, 2020). In *Foster*, the trial court rejected Foster's request to ask a voir dire question now mandated by *Kazadi*. *Id.* at *1. Foster objected as required by Maryland Rule 4-323(c) [2], but later accepted the jury without qualification. *Id.* Applying *State v. Stringfellow*, 425 Md. 461 (2012), which held that the unqualified acceptance of a jury as empaneled does not result in a waiver of an objection to the trial court's refusal to ask a requested question on voir dire, we concluded that Foster "did not waive his *Kazadi* claim through his unqualified acceptance of the empaneled jury," and reversal of his conviction was required. *Id.* at *3. We wrote:

> There is no dispute in this case that the circuit court declined Foster's request to ask a voir dire question that is now mandated by *Kazadi*. Nor is there any dispute that, when the circuit court declined Foster's request, he objected as

[2] Maryland 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 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.

> required by Rule 4-323(c), but that he later accepted the empaneled jury without qualification. The only question is the effect, if any, of Foster's unqualified acceptance of the jury on the preservation of his claim. Applying [*State v. Stringfellow*, 425 Md. 461 (2012)], we conclude that Foster did not waive his *Kazadi* claim through his unqualified acceptance of the empaneled jury.

Id.

Here, as in *Foster*, it is clear the trial court denied Appellant's request for voir dire questions required by *Kazadi* and that Appellant objected as required by Md. Rule 4-323(c). It is equally clear that Appellant's unqualified acceptance of the empaneled jury did not constitute a waiver. *Foster* is controlling and requires that we vacate Appellant's convictions and remand for a new trial.

Because we reverse the judgments of the circuit court based on Appellant's first claim, we need not address his contention that the trial court improperly instructed the jury that "the verdict is unanimous so you need to reach a unanimous verdict on all these things on the verdict sheet." *See Pearson v. State*, 437 Md. 359, 364 n.5 (2004)(noting that "[g]enerally, 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.").

CONCLUSION

Accordingly, we hold the circuit court erred in not propounding Appellant's requested *voir dire* questions 32, 35, and 36. Pursuant to *Kazadi*, we vacate the circuit court's judgments and remand for a new trial.

JUDGMENTS OF THE CIRCUIT COURT FOR MONTGOMERY COUNTY VACATED; CASE REMANDED FOR A NEW TRIAL; COSTS TO BE PAID BY MONTGOMERY COUNTY.