Circuit Court for Montgomery County
Case No. 138709C

UNREPORTED*

IN THE APPELLATE COURT

OF MARYLAND

No. 48

September Term, 2023

CARLTON L. WILLIAMS

v.

STATE OF MARYLAND

Nazarian,
Leahy,
Wright, Alexander, Jr.
(Senior Judge, Specially Assigned),

JJ.

Opinion by Leahy, J.
Concurring Opinion by Nazarian, J.

Filed: June 4, 2024

* This is an unreported opinion. This opinion may not be cited as precedent within the rule of stare decisis. It may be cited for its persuasive value only if the citation conforms to Rule 1-104(a)(2)(B).

On July 29, 2021, the State charged, Carlton L. Williams ("Appellant"), with sexual abuse of a minor and two counts of third-degree sexual offense. The charges arose from allegations that Appellant had fondled the bare buttocks of V.,[1] a relative and the victim in this case, on at least two separate occasions. Following a two-day trial in the Circuit Court for Montgomery County, a jury convicted Appellant of sexual abuse of a minor and one of the two third-degree sexual offense charges, while acquitting him of the other.[2] On March 7, 2023, the court sentenced Appellant to an aggregate term of 25 years' incarceration, suspended all but eight, to be followed by five years' supervised probation. Appellant noted an appeal that same day and presents three questions for our review, which we have consolidated and rephrased as follows:[3]

[1] To protect her privacy, we will refer to the minor victim by the initial "V." and to the members of her family (with the exception of Appellant) by their relation to her (e.g., "Uncle"), their first initial, or a combination thereof, (e.g., "Uncle C."). *See Smith v. State*, 220 Md. App. 256, 261 (2014) ("We do not name the minor victim in this case."), *cert. denied*, 442 Md. 196 (2015).

[2] The verdict sheet indicates that the third-degree sexual offense count of which Appellant was convicted stemmed from an "alleged incident on December 25, 2020[,]" while the charge of which he was acquitted arose out of events that allegedly occurred prior to that date.

[3] In his brief, Appellant articulated the questions presented as follows:

1. Did the [t]rial [c]ourt err by refusing to ask a defense-requested question regarding each prospective juror's ability and willingness to abide by a standard of proof beyond a reasonable doubt?

2. Did the [t]rial [c]ourt err in refusing to ask a defense-requested question regarding each prospective juror's ability and willingness to respect the presumption of innocence?

> Did the trial court abuse its discretion by declining to ask the venire three *voir dire* questions requested by the defense pertaining to the burden of proof, the presumption of innocence, and the capacity of the prospective jurors to maintain their independent judgments rather than acquiesce to the majority view?

For the following reasons, we shall affirm the judgments of the circuit court.

FACTUAL AND PROCEDURAL BACKGROUND

Underlying Facts[4]

V.'s immediate family consists of her mother ("Mother"), father ("Father"), and elder brother, B. Although separated, V.'s parents remain married and reside within approximately a mile of one another. Mother is one of four siblings, including her younger brother, J. ("Uncle J."), and younger sister, A. ("Aunt A."). At all times relevant to this appeal, Aunt A. and Appellant were married and the parents of two minor children—M. ("Cousin M.") and her younger brother, J. ("Cousin J.") (collectively, "the Cousins").

> 3. Did the [t]rial [c]ourt err in refusing to ask a defense-requested question regarding each prospective juror's ability and willingness to not surrender his or [her] belief that the defendant is not guilty merely because the juror is in the minority of juror votes?

[4] As Appellant does not challenge the sufficiency of the evidence to sustain his convictions, we will forego a comprehensive recitation of the evidence presented at trial in favor of a summary sufficient "to provide a context for our discussion of the issues presented." *Washington v. State*, 180 Md. App. 458, 461 n.2 (2008). *See also Thomas v. State*, 454 Md. 495, 498-99 (2017) ("Because the issue dispositive of this appeal does not require a detailed recitation of the facts, we include only a brief summary of the underlying evidence that was established at trial.").

On the morning of December 25, 2020, V. and B., then eight and ten years old, respectively, opened Christmas gifts at Father's house. After approximately an hour, Mother drove the children first to her home and then to her parents' Rockville house, where additional unwrapped presents awaited them. Following their visit, Mother returned B. and V. to her home. Father testified, however, that at approximately 1:00 p.m., Mother asked him to"pick up the kids and take them back to her parents' house to spend some time with their cousins." After arriving at their grandparents' residence later that afternoon, B. and V. joined relatives gathered around a Christmas tree in the first-floor living room and resumed opening gifts. Among the gifts was a board game, which V., B., and the Cousins played while Father conversed with Appellant.

When they grew weary of the boardgame, V., B., and Cousin J. "broke off" to play a house-wide round of hide-and-seek. Although Appellant joined the game, Father "remained behind talking to [Uncle J.]" V. testified that as B. and Cousin J. (both of whom were evidently "it") counted, Appellant and she hid in the second-floor guest bedroom, which contained several boxes. After determining that "it wasn't a good spot . . . [b]ecause it was too hard to get in behind those boxes," V. left the bedroom and hid in the shower of the adjoining bathroom. Appellant joined V., closing the shower door behind them.

V. told the jury that while they were in the shower, Appellant pulled down her pants, placed his hands beneath her underwear, and rubbed both sides of her bare "bottom" in a

circular motion for approximately one minute. When V. asked him what he was doing, Appellant answered that "he was just trying to make sure nothing was bad in there." As Cousin J. approached them, Appellant pulled up V.'s pants. Upon returning to the guest bedroom, V. attempted to tell the Cousins what Appellant had done, but ultimately "gave up." Although V. also reported the incident to B., he did not believe her.

When it appeared that the game of hide-and-seek had ended, Father gathered the children to take them back to his house. After arriving at Father's house, B. and V. participated in a Zoom call with Father's extended family and had Christmas dinner.

Mother testified that at around 7:30 p.m., she drove B. and V. from Father's house to her home. Mother related that during that roughly five-minute drive, she asked the children about the time they had spent with the Cousins at their grandparents' house. V. replied: "[W]e were playing hide and seek and [Appellant] stuck his hands down my pants." Mother responded: "[W]hat?" "[A] little confused," Mother turned to B. and asked him whether he had seen anything. Mother explained that when he answered in the negative, she inquired of V.: "[D]id you say anything to anyone, did you say anything to your cousins[?]" V. replied that she had told the Cousins and B., but "they didn't believe [her]." Finally, Mother asked V. whether "this [had] happened before," to which V. answered in the affirmative. Upon arriving home, Mother called Father and relayed to him

what V. had said. When Father joined her later that evening, Mother called Aunt A. and spoke with her briefly.

During a subsequent discussion with Mother, V. elaborated upon her initial account of what had transpired at her grandparents' home. At trial, Mother relayed V.'s later narrative of events, testifying that V. told her that while playing hide-and-seek, she initially entered "the master bedroom to hide behind a box," but relocated to the bathroom, where Appellant joined her, "stuck his hands down her pants[,]" and placed them "on her bare bottom." V. also reported to Mother a prior incident when Appellant had allegedly pulled down her pants as she was ascending the stairs from the basement of his house. V. reaffirmed and elaborated upon that account at trial, testifying that while she was "walking upstairs" at his house, Appellant approached her from behind, pulled down her pants as well as her underwear, and touched her "the same way" as he did in the bathroom shower for approximately 20 seconds.

On December 26, 2022, Father called the police to file a report against Appellant. After conducting an interview of Mother, Detective Courtney Maynes of the Montgomery County Police Department arranged for her to place a recorded call to Appellant in an effort to elicit a confession or other incriminating information. During that call, a recording of which was played for the jury, Appellant denied having intentionally touched V.'s buttocks

and claimed that any contact he made therewith was accidental. Appellant attributed any such inadvertent contact to the following alleged series of events:

> [W]e're all playing hide and seek . . . and went upstairs. Everybody went upstairs, hide and seek or whatever and [V.] got stuck. She was hiding in . . . I guess you mom's room, wherever she got stuck.
>
> * * *
>
> [S]he got stuck in like one of the boxes. The boxes near the - - I guess near the bed.
>
> * * *
>
> And I, I went to pull her out and that's when, you know, I grabbed her around the waist area when I pulled her out and stuff. When I pulled her out[,] her pants were like, you know, kind of messed up[,] so I fixed them.

Jury Selection & *Voir Dire*

Nine days before the commencement of trial, Appellant, through counsel, submitted to the court his requested *voir dire* questions, which included the following:

> 13. Accepting and following the court's instructions regarding presumption of innocence and burden of proof
>
> * * *
>
> b. The court will instruct you that [Appellant] stands before you today presumed innocent, despite the fact he is charged with several offenses. This presumption of innocence remains with [Appellant] throughout the entire trial[] unless and until[] the State proves to each of you, unanimously, and beyond a reasonable doubt, that he has committed a crime or crimes with which he is charged. Are there any members of the jury panel who would be unable to follow this instruction and give [Appellant] this presumption of innocence?

* * *

d. Is there any member of the jury panel who would hesitate to render a verdict of not guilty, even if you had [a] hunch that [Appellant] had committed the alleged crime or crimes, but were not convinced the State met its burden to prove guilt beyond a reasonable doubt?

* * *

14. Improper Influences and Prejudices

* * *

c. If you concluded that the State had failed to prove its case against [Appellant] beyond a reasonable doubt, but found that the majority of the panel disagreed with your conclusion, would you change your decision only because you found it to be in the minority view on the question of whether the State has proven [Appellant]'s guilt as to any charge?

(Cleaned up; emphasis in original).[5]

On the first day of trial, the court advised the parties that it had compiled a list of general *voir dire* questions, which provided, in pertinent part:

15. 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, however, the [S]tate is not required to prove the defendant's guilt beyond all doubt or to an absolute certainty.

[5] In this opinion, "[u]se of 'cleaned up' signals that the current author has sought to improve readability by removing extraneous, non-substantive clutter (such as brackets, quotation marks, ellipses, footnote signals, internal citations or made un-bracketed changes to capitalization) without altering the substance of the quotation." *Lamalfa v. Hearn*, 457 Md. 350, 373 n.5 (2018) (quotation marks and citation omitted).

a. If you do not consider the defendant innocent now, or if you will not require the State to convince you of the defendant's guilt beyond a reasonable doubt, please stand.

b. Is there any member of the jury panel who would hesitate to render a verdict of not guilty, if you were not convinced the State met its burden to prove guilt beyond a reasonable doubt?

c. Is there any member of the prospective jury panel who thinks the defendant should be required to prove his innocence?

Upon receipt of the court's proposed *voir dire* questions, defense counsel asked the court whether it intended for those questions "to supplant both parties' voir dire[.]" The court answered in the affirmative. During an ensuing colloquy, defense counsel expressed reservations with respect to the phrase "the [S]tate is not required to prove the defendant's guilt beyond all doubt or to an absolute certainty[,]" characterizing it as a "cherry-pick[ed] part of the reasonable doubt instruction that may be . . . favorable to the State[.]" *See* Maryland Criminal Pattern Jury Instruction ("MPJI-Cr") 2:02 (2d ed. 2022) ("[T]he State is not required to prove guilt beyond all possible doubt or to a mathematical certainty."). Rather than "highlight that portion," he requested that the court "read the entire reasonable doubt instruction[.]" Relying on and quoting from the Supreme Court of Maryland's opinion in *Kazadi v. State*, 467 Md. 1 (2020), defense counsel alternatively asked the court to propound the following three questions:

> Are there any of you who would be unable to follow the court's instructions on reasonable doubt[?] That's number one. Number two, is there any member of the jury who would hesitate to render a verdict of not guilty if

> you had a hunch that the defendant had committed the alleged crime, but were not convinced of that fact beyond a reasonable doubt? That's number two . . . . I am requesting it. Three, the court will instruct you that the defendant is presumed to be innocent of the offenses charged throughout the trial unless and until the defendant is proven guilty beyond a reasonable doubt. Is there any member of the jury panel who would be unable to give the defendant the benefit of this presumption of innocence?

(Cleaned up).

The judge declined to omit the challenged phrase from *voir dire*, explaining:

> I'll give the reasonable doubt instruction at the beginning of the case when I give the introductory instructions to the jury at the outset, so they have an understanding of what reasonable doubt is, so that they have that concept in their mind throughout the trial. And so that's why I put it there.
>
> The reason I do that here is . . . to note that while the defendant is entitled to reasonable doubt, if somebody is going to require that the State prove . . . to an absolute certainty or to a mathematical certainty, then they likewise are not following the [c]ourt's instruction[s].

Although defense counsel did not convince the judge to exclude the contested language from *voir dire* or to read MPJI-Cr 2:02 in its entirety, the judge did agree to supplement his tentative *voir dire* questions:

> I'm happy to add in if you believe -- because I think everything else is covered here. So[,] if you do not consider the defendant innocent now or if you will not require the State to convince you of the defendant's guilt beyond a reasonable doubt, please stand. Is there any member of the prospective jury panel who thinks the defendant should be required to prove his innocence -- **I'm happy to add the one about the hunch, if you think that's not covered.**

(Emphasis added). Defense counsel then specified the requested *voir dire* question to which the court had referred, stating: "Ok, so mine is 13D." The court responded: "All right, 13D. I'll put that in as [15]B. And then B would become C and C would become D. All right."[6] Prior to proceeding to the other tentative *voir dire* questions with which he was dissatisfied, defense counsel elaborated upon his exception for the record:

[6] As thus revised, the court's fifteenth *voir dire* question would have read:

15. 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, however, the [S]tate is not required to prove the defendant's guilt beyond all doubt or to an absolute certainty.

    a. If you do not consider the defendant innocent now, or if you will not require the State to convince you of the defendant's guilt beyond a reasonable doubt, please stand.

    b. ~~Is there any member of the jury panel who would hesitate to render a verdict of not guilty, if you were not convinced the State met its burden to prove guilt beyond a reasonable doubt?~~ Is there any member of the jury panel who would hesitate to render a verdict of not guilty, even if you had a hunch that [Appellant] had committed the alleged crime or crimes, but were not convinced the State met its burden to prove guilt beyond a reasonable doubt?

    c. ~~Is there any member of the prospective jury panel who thinks the defendant should be required to prove his innocence?~~ Is there any member of the jury panel who would hesitate to render a verdict of not guilty, if you were not convinced the State met its burden to prove guilt beyond a reasonable doubt?

> That clause that the State is not required to prove the defendant's guilt beyond all doubt or to an absolute certainty -- it's not fair to isolate that without . . . the additional language in the reasonable doubt instruction which says if you have any reservations -- without reservation in an important matter in your own life -- the Kazadi decision was not meant to say that you have to give the whole reasonable doubt instruction. It's just talking about those three fundamental rights. And what the [c]ourt is doing in its voir dire is -- I understand what's good for the goose is good for the gander. But the State gets that good for the goose, good for the gander at the end of the case.
>
> In voir dire, it shouldn't be highlighted, with the judge telling a prospective juror they don't have to prove their case beyond all doubt or to an absolute certainty. There's nothing -- no prejudice that comes from that assertion without putting the whole reasonable doubt -- no prejudice to the State -- in context. And you're going to give them the whole instruction at the end of the case. What Kazadi deals with is the basic four questions that have to do with . . . fundamental precepts in American constitutional law.
>
> And I think if you're going to give that phrase, you've got to give the ["]without reservation["] phrase . . . .[7] So[,] I don't want you to give it. I

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d. ~~If the State established its case against the defendant beyond a reasonable doubt, is there anyone who, by reason of your personal beliefs, could not return a guilty verdict?~~ Is there any member of the prospective jury panel who thinks the defendant should be required to prove his innocence?

[7] Defense counsel appears to have been referring to the third and final paragraph of MPJI-Cr 2:02, which reads:

> A reasonable doubt is a doubt founded upon reason. **Proof beyond a reasonable doubt requires such proof as would convince you of the truth of a fact to the extent that you would be willing to act upon such belief without reservation in an important matter in your own business or personal affairs.** If you are not satisfied of the defendant's guilt to that extent for each and every element of a [the] crime charged, then reasonable doubt exists and the defendant must be found not guilty of that [the] crime.

(Emphasis added).

> object for the record. I think it's cherry picking. It's creating an unnecessary issue. And I vehemently object to it.

Although the court agreed to adopt Appellant's proposed question on the burden of proof (*i.e.*, Appellant's Question 13B), it did not announce whether it intended to incorporate or omit his requested question regarding the presumption of innocence (*i.e.*, Appellant's Question 13D). The court did, however, expressly reject Appellant's proposed question pertaining to the venire members' capacity to withstand pressure to change their verdicts to conform with the majority (*i.e.*, Appellant's Question 14C).

The Court reasoned:

> I don't like how it's hypothetical. It's getting into the deliberations as to what they should do. They're supposed to hear and listen to the opinions of the other jurors in the case. . . . I don't like it because it sounds like I should tell them once you've made a decision in the case, then you should stand hard on that decision and not open your mind and be available to other views in the case. And so that's why I decline to give that.

At the conclusion of the discussion regarding the proposed *voir dire* questions at issue, defense counsel announced:

> For the record, all of my arguments that I've been making thus far in my voir dire, I want the record to be clear I want to preserve objections to all the questions in the defense proposed voir dire the [c]ourt has not asked or that the [c]ourt has modified unless I've clearly indicated that I'm accepting the [c]ourt's modification. So[,] I want to make sure the record is clear. I want to preserve all of our objections as previously stated.

After confirming that it had heard defense counsel's objections, the court responded: "To the extent that they've been overruled, you have whatever preservation rights you have."

During its general *voir dire* of the venire, the court posed—without objection—the following questions:

> THE COURT: . . . [L]adies and gentlemen, 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. However, the State is not required to prove the defendant's guilt beyond all doubt or to a mathematical certainty.
>
> Now, if you do not consider the defendant innocent now, or if you will not require the State to convince you of the defendant's guilt beyond a reasonable doubt, please stand.
>
> (No response)
>
> THE COURT: Seeing no response. Is there any member of the jury panel who would hesitate to render a verdict of not guilty if you were not convinced of the defendant's guilt beyond a reasonable doubt?
>
> (No response)
>
> THE COURT: Seeing no response. Is there any member of the prospective panel who thinks that the defendant should be required to prove his innocence at trial?
>
> (No response)
>
> THE COURT: Seeing no response. Now, if the State establishes its case against the defendant beyond a reasonable doubt, is there anyone who by reason of your personal beliefs could not return a guilty verdict in this case?
>
> (No response)
>
> THE COURT: Seeing no response.

We will include additional facts as necessary in our discussion of the issues.

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 [court]." *Washington v. State*, 425 Md. 306, 314 (2012). *See also State v. Ablonczy*, 474 Md. 149, 157 (2021) ("The 'extent of the examination of potential jurors rests in the sound discretion of the court.'" (cleaned up) (quoting *Langley v. State*, 281 Md. 337, 341 (1977)). Thus, appellate courts "'review[] for abuse of discretion a trial court's decision as to whether to ask a *voir dire* question.'" *Lopez-Villa v. State*, 478 Md. 1, 10 (2022) (quoting *Pearson v. State*, 437 Md. 350, 356 (2014)). In so doing, we view the court's *voir dire* determinations "'in the light of the questions actually propounded and the purpose of the *voir dire* examination[.]'" *Stewart v. State*, 399 Md. 146, 167 (2007) (quoting *Shifflett v. State*, 80 Md. App. 151, 156 (1989), *aff'd*, 319 Md. 275 (1990)), *abrogated on other grounds by Kazadi*, 467 Md. at 44 n.12.

In Maryland, the exclusive purpose of *voir dire* "'is to elicit specific cause for disqualification, not to aid counsel in the intelligent use of peremptory strikes.'" *Kazadi*, 467 Md. at 46 (quoting *Collins v. State*, 463 Md. 372, 404 (2019)). *See also Collins v. State*, 452 Md. 614, 623 (2017) ("'[U]ndergirding the voir dire procedure and, hence, informing the trial court's exercise of discretion regarding the conduct of the voir dire, is a single, primary, and overriding principle or purpose: to ascertain the existence of cause for disqualification.'" (quoting *Dingle v. State*, 361 Md. 1, 10 (2000))). Thus, "[o]n request,

a trial court must ask a *voir dire* question if and only if the *voir dire* question is 'reasonably likely to reveal specific cause for disqualification.'" *Pearson*, 437 Md. at 357 (cleaned up) (quoting *Moore v. State*, 412 Md. 635, 663 (2010)). "There are two categories of specific cause for disqualification: (1) a statute disqualifies a prospective juror; or (2) a collateral matter is reasonably liable to have undue influence over a prospective juror." *Thomas*, 454 Md. at 505 (cleaned up). "The latter category is comprised of 'biases directly related to the crime, the witnesses, or the defendant.'" *Pearson*, 437 Md. at 357 (quoting *Washington*, 425 Md. at 313). As is pertinent to this case, "an unwillingness or inability to comply with jury instructions on the presumption of innocence [or] burden of proof . . . constitute[s] a bias related to the defendant" and is therefore a specific cause for juror disqualification. *Kazadi*, 467 Md. at 45.

In assessing whether the omission of a requested *voir dire* question will frustrate the purpose of *voir dire*, "an appellate court looks at the record as a whole to determine whether the matter has been fairly covered." *Washington*, 425 Md. at 313-14. *See also Collins*, 463 Md. at 391 ("An appellate court reviews for abuse of discretion a trial court's 'rulings on the record of the *voir dire* process as a whole[.]'" (quoting *Pearson*, 437 Md. at 356)). We will not disturb a trial court's refusal to propound a requested jury *voir dire* question if the record reflects that the issue was fairly covered by—and thus cumulative of—other questions actually asked. *See Stewart*, 399 Md. at 163 ("Questions should not be

argumentative, cumulative, or tangential."); *Curtin v. State*, 393 Md. 593, 613 n.10 (2006); *Burch v. State*, 346 Md. 253, 293 (1997) ("[T]he court need not ordinarily grant a particular requested [question] if the matter is fairly covered by the instructions . . . given." (quotation marks and citation omitted)); *Thomas v. State*, 139 Md. App. 188, 201 (2001) ("Significant to the determination of whether there has been an abuse of discretion is whether the proposed question was 'more than adequately covered by the trial court's voir dire.'" (quoting *Miles v. State*, 88 Md. App. 360, 381 (1991))). Nor does a court abuse its discretion by declining to pose questions that are "speculative, inquisitorial, catechizing or 'fishing,' or those asked in the aid of exercising peremptory challenges[.]" *Stewart*, 399 Md. at 162. Ultimately, then, "'[t]he standard for evaluating a court's exercise of discretion during the *voir dire* is whether the questions posed and the procedures employed have created a reasonable assurance that prejudice would be discovered if present.'" *Collins*, 452 Md. at 623-24 (quoting *White v. State*, 374 Md. 232, 242 (2003)). *See also Wright v. State*, 411 Md. 503, 508 (2009) ("A trial court reaches the limits of its discretion only when the voir dire method employed by the court fails to probe juror biases effectively.").

DISCUSSION

Waiver & Preservation

Before reaching the merits of Appellant's arguments, we will first address the State's assertion that the omission of his proposed *voir dire* question on the State's burden

of proof and application of the reasonable doubt standard is not properly before us. *See Lopez-Villa*, 478 Md. at 10 ("It remains a requirement that to preserve any claim involving a trial court's decision about whether to propound a *voir dire* question, a defendant must object to the court's ruling." (cleaned up)). The State asserts that because the court initially agreed to adopt his proposed question on the burden of proof, "it was incumbent upon [Appellant] to bring . . . to the court's attention" the ultimate omission of that question during *voir dire*. By failing to do so, the State concludes, Appellant "waive[d] the issue on appeal."[8, 9] In his reply brief, Appellant rejoins that "[c]oncerns about trial counsel's preservation of the *voir dire* inquiry regarding reasonable doubt are symptomatic of the rushed atmosphere created by the trial judge."

Maryland Rule 8-131(a) governs the general scope of appellate review and provides that "[o]rdinarily, an appellate court will not decide any other issue unless it plainly appears

[8] The State also claims that because Appellant "did not specifically object to the court's . . . formulation with regard to the presumption of innocence or articulate the claims he now makes on appeal[,]" "arguably" failed "to preserve his appellate claim as to th[at] . . . portion of the voir dire question posed by the court." We will assume, without deciding, that this issue is properly before us. Even if it were not, however, we would exercise our discretion to address it pursuant to Maryland Rule 8-131 (a). *See Elliott v. State*, 417 Md. 413, 435 (2010).

[9] We note in passing that although Appellant ultimately accepted the empaneled jury, he did not waive appellate review of the court's rejection of his requested *voir dire* questions by doing so. *See Ablonczy*, 474 Md. at 164-65; *Foster v. State*, 247 Md. App. 642, 651-52 (2020), *cert. denied*, 475 Md. 687 (2021).

by the record to have been raised in or decided by the trial court[.]" Rule 4-323(c), in turn, "delineates the method of objecting to the adverse ruling of a trial court on a proposed *voir dire* question[.]" *Ablonczy*, 474 Md. at 159. *See also Smith v. State*, 218 Md. App. 689, 700 (2014) ("Maryland Rule 4-323(c) governs the manner of objections during jury selection, including objections made during *voir dire*." (quotation marks and citations omitted)). The latter rule provides, in pertinent part:

> For purposes of review . . . on appeal . . . , 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.

Md. Rule 4-323(c) (emphasis added).

The pretrial submission of a written *voir dire* request does not satisfy Rule 4-323(c)'s requirement that a party object to or otherwise express disagreement with an order or ruling "at the time [it] is made or sought" and is therefore insufficient to preserve the omission of such questions for appellate review. *See Lopez-Villa*, 478 Md. at 11-12 ("[M]erely submitting proposed *voir dire* questions, which are later rejected or modified by the trial court, is [not] sufficient to satisfy the preservation requirement of Md. Rule 4-323(c)."); *Brice v. State*, 225 Md. App. 666, 679 (2015) ("If a defendant does not object to the court's decision to not read a proposed question, he cannot 'complain about the court's

refusal to ask the exact question he requested.'" (quoting *Gilmer v. State*, 161 Md. App. 21, 33, *vacated in part on other grounds*, 389 Md. 656 (2005))), *cert. denied*, 447 Md. 298 (2016). In *Lopez-Villa*, the Supreme Court of Maryland articulated the rationale for this preservation requirement, explaining that because "[s]trategies and positions of a party often change over the course of litigation . . . [,] [a] failure to object in the face of the court's ruling could indicate that the party has abandoned their previous position or acquiesced with the court's reasoning for rejecting the proposed question." 478 Md. at 12-13. Thus, "[a]bsent a contemporaneous objection or expression of disagreement, the court . . . may very well believe that defense counsel agrees with its rejection or modification of its previously submitted proposed *voir dire* questions." *Id.* at 13.

Maryland Rule 4-323(c)'s contemporaneous objection rule is not absolute. Rather, "[t]his requirement is excused when 'a party has no opportunity to object to a ruling or order *at the time it is made*[.]'" *Lopez-Villa*, 478 Md. at 12 (emphasis in original) (quoting Md. Rule 4-323(c)). A party is not relieved of the obligation to contemporaneously object, however, merely because doing so might interfere with the court's efforts to keep the case moving at an efficient pace, and thereby vex the presiding judge. In *Acquah v. State*, 113 Md. App. 29, 60 (1996), this Court reiterated that the obligation to timely object persists when counsel is placed in such a "precarious position."

> The dilemma is [that] he or she must choose between, on the one hand, remaining mute and not protecting a client's interest or, on the other hand,

> incurring the wrath of a trial judge in an effort to preserve a record on which the lower court's actions may be reviewed. Nevertheless, it is incumbent upon counsel to state with clarity the specific objection to the conduct of the proceedings and make known the relief sought.

Id. (quoting *Braxton v. Faber*, 91 Md. App. 391, 407 (1992)).

Prior to jury selection in this case, Appellant repeated his written request that the court ask on *voir dire* whether "any member of the jury . . . would hesitate to render a verdict of not guilty *if you had* [*a*] *hunch that [Appellant] had committed the alleged crime*, but were not convinced of that fact beyond a reasonable doubt." (emphasis added).[10] The court, at least ostensibly, agreed to adopt that question, stating: "I'm happy to add the one about the hunch, if you think that's not covered." Appellant responded: "I definitely want you to add that." Absent an adverse ruling with respect to that question, there was initially no basis for Appellant to object or otherwise express his disagreement, and thus nothing to appeal. The grounds for objecting became apparent, however, when the court ultimately omitted the "hunch language" from *voir dire*. Appellant failed to object to that omission "contemporaneous with the court's action[,]" *Lopez-Villa*, 478 Md. at 12—either during or immediately after *voir dire*, or at the bench conference immediately thereafter. Acordingly, we hold that Appellant failed to preserve his challenge to the court's failure to

[10] With the exception of the emphasized language, Appellant's requested *voir dire* question was substantively identical to the one proposed and ultimately asked by the trial court.

ask his proposed *voir dire* question on the State's burden of proof and application of the reasonable doubt standard.[11]

Kazadi v. State

The parties agree—as do we—that *Kazadi* is critical to the resolution of the remaining issues on appeal. We will therefore begin our analysis with an examination of that case.

Kazadi was charged with and tried for first-degree murder and related weapons offenses. On the day of jury selection, Kazadi submitted a written request that the circuit court ask the prospective jurors several *voir dire* questions, including:

> The Court will instruct you that the State has the burden of proving the Defendant guilty of the offenses charged beyond a reasonable doubt. Are there any of you who would be unable to follow and apply the Court's instructions on reasonable doubt in this case?
>
> Is there any member of the jury panel who would hesitate to render a verdict of not guilty if you had [a] hunch that the Defendant had committed the alleged crime, but were not convinced of that fact beyond reasonable doubt?
>
> The Court will instruct you that the Defendant is presumed to be innocent of the offenses charged throughout the trial unless and until the Defendant is proven guilty beyond a reasonable doubt. Is there any member of the jury panel who would be unable to give the Defendant the benefit of the presumption of innocence?

[11] As we explain below, even though this issue is not preserved, we exercise our discretion to address it and conclude that there was no abuse of discretion in the court's failure to phrase Appellant's proposed question on the burden of proof precisely as he requested.

467 Md. at 9-10 (cleaned up). The court denied Kazadi's request, reasoning: "Those are covered adequately in the instruction portion of the case and I think are covered in other questions that [I] ask." *Id.* at 10. After conducting *voir dire*, the court asked the parties "whether there were any objections." *Id.* Defense counsel answered "that he wanted the circuit court to ask the questions in his proposed *voir dire* that the court had declined to give." *Id.* Rather than revise its initial ruling, the court simply responded: "'[Y]ou've preserved your objection[.]'" *Id.* (cleaned up). The jury ultimately acquitted Kazadi of first-degree murder, but convicted him of, among other things, second-degree murder. *Id.* at 20.

On appeal, we affirmed the circuit court's decision, holding that it properly applied the then-controlling precedent of *Twining v. State*, 234 Md. 97 (1964). *Id.* In that case, the Supreme Court of Maryland held that trial courts need not ask requested *voir dire* questions regarding "the presumption of innocence and the burden of proof" provided that those "rules of law . . . were fully and fairly covered in subsequent instructions to the jury." *Twining*, 234 Md. at 100. Because the Maryland Supreme Court's "mandate on this question [wa]s clear," we concluded that "any challenge to such binding precedent must be pursued in that Court." *Kazadi v. State*, 240 Md. App. 156, 169 (2019). Kazadi filed a petition for certiorari, which the Court granted.

In reversing our decision, the Supreme Court of Maryland overruled *Twining* "to the extent that [it] held . . . 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[.]" *Kazadi*, 467 Md. at 9. The Court reasoned that the three principles underlying the *Twining* holding "ha[d] been essentially vitiated in the decades since" the case was decided. *Id.* at 36. First, empirical research has revealed that "jury instructions on the presumption of innocence and the burden of proof are not," as the Court had presumed, "an effective remedy for a prospective juror who is unwilling or unable to follow such jury instructions." *Id.* at 38. Secondly, the *Twining* Court relied upon a determination that "it was 'generally recognized that it is inappropriate' to ask during *voir dire* whether any prospective jurors would be unwilling to follow jury instructions." *Id.* at 39 (citation omitted). In *Kazadi*, however, the Court determined that "this . . . pronouncement . . . is no longer accurate and that the current prohibition on asking the questions on request is no longer warranted in Maryland Courts."[12] *Id.* at 43. Lastly, and most significantly, the *Twining* Court "took the position that there was no point in determining whether prospective jurors would follow jury instructions, given that jurors were free to disregard

[12] In *Kazadi*, the Court observed that this purported general recognition was "even at the time, at best, tenuous," and that courts are currently divided on the appropriateness of asking *voir dire* questions aimed at assessing prospective jurors' ability and willingness to follow the court's instructions. *Id.* at 40.

jury instructions anyway[.]" *Id.* In *Stevenson v. State*, 289 Md. 167 (1980), however, the Supreme Court of Maryland clarified that the jury's role as arbiter of the law "'is limited to deciding the law of the crime, or the definition of the crime, as well as the legal effect of the evidence before the jury.'" *Kazadi*, 467 Md. at 43 (quoting *Stevenson*, 289 Md. at 178). "'[A]ll other aspects of law (e. g., the burden of proof, the requirement of unanimity, the validity of a statute)," the Court explained, "'are beyond the jury's pale, and . . . the [jury instruction]s on these matters are binding upon that body.'" *Id.* (quoting *Stevenson*, 289 Md. at 180). The Court reaffirmed that sentiment the following year in *Montgomery v. State*, 292 Md. 84 (1981), holding "that jury instructions on fundamental rights, such as the presumption of innocence, the burden of proof, and the right not to testify, 'are not the law of the crime[, and] they are not advisory[.]'" *Kazadi*, 467 Md. at 43-44 (quoting *Montgomery*, 292 Md. at 91).

Having dispensed with the rationale on which *Twining* rested and determined that the case "is no longer good law[,]" *id.* at 44 (footnote omitted), the Maryland Supreme Court held that "an unwillingness or inability to comply with jury instructions on the presumption of innocence, burden of proof, or a defendant's right not to testify . . . would constitute a bias related to the defendant." *Id.* at 45. As trial courts are required to ask requested *voir dire* questions "that are reasonably likely to reveal a cause for disqualification," the Court concluded: "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 presumption of innocence, the burden of proof, and the defendant's right not to testify." *Id.* at 48. The Court expressly declined, however, to prescribe "any particular language [a trial court must use] when complying with a request to ask" such *voir dire questions*. *Id*. at 47. Instead, the Court merely mandated that "[t]he questions . . . 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. See also Pearson*, 437 Md. at 369 n.6 ("A proposed *voir dire* question need not be in perfect form, and the trial court is free to modify the proposed question as needed." (cleaned up)); *Dingle*, 361 Md. at 13 ("[T]he trial court has broad discretion in the conduct of voir dire, most especially with regard to the scope and the form of the questions propounded[.]"); *Casey v. Roman Catholic Archbishop of Balt*., 217 Md. 595, 606 (1958) ("We do not say, or even intend to intimate, that the court was required to propound the precise questions submitted. The form of the questions to be asked is clearly within the sound discretion of the court.").

Analysis

A. The Burden of Proof Question

Although not preserved, we will exercise our discretion to address Appellant's assertion that the court abused its discretion by omitting his proposed *voir dire* question on the State's burden of proof and application of the reasonable doubt standard, which was

identical to the one at issue in *Kazadi*. In response to the merits of Appellant's initial contention, the State argues that "the court was not required to phrase the question precisely as the defendant's counsel phrased it in *Kazadi*," and that the *voir dire* questions that it did pose sufficiently "described the fundamental right at stake[] and inquired as to the willingness and ability of prospective jurors to apply that standard." We agree with the State.

As recounted above, defense counsel requested that the trial court to ask the venire the following question during *voir dire*: "Is there any member of the jury panel who would hesitate to render a verdict of not guilty, even if you had [a] hunch that [Appellant] had committed the alleged crime or crimes, but were not convinced the State met its burden to prove guilt beyond a reasonable doubt?" As the State correctly points out (and Appellant blithely ignores), the court did pose a nearly identical *voir dire* question, asking the venire: "Is there any member of the jury panel who would hesitate to render a verdict of not guilty if you were not convinced of the defendant's guilt beyond a reasonable doubt?" Thus, the court clearly inquired into the venire's ability and willingness to comply with an instruction on Appellant's right to be convicted only upon proof beyond a reasonable doubt. Prior to posing that question, moreover, the court concisely described that right, stating: "[Y]ou must presume [Appellant] innocent of the charges . . . unless and until . . . the State convinces you of [Appellant's] guilt beyond a reasonable doubt."

Notwithstanding Appellant's suggestion to the contrary, it is of no consequence that the court omitted his proposed "hunch" language from the *voir dire* question at issue. First, as discussed above, the *Kazadi* Court expressly rejected any requirement that a "trial court . . . use any particular language when complying with a request to ask . . . *voir dire*" questions. *Kazadi*, 467 Md. at 47. The trial court was, therefore, under no obligation to ask a burden of proof question in the particular language proposed—either by defendant Kazadi or by Appellant. Finally, omission of the "hunch" clause did not remotely detract from the purpose of either the question in particular or *vior dire* in general, *i.e.*, "to ensure a fair and impartial jury by determining the existence of specific cause for disqualification."[13] *Pearson*, 437 Md. at 357 (cleaned up).

B. The Presumption of Innocence Question

Appellant also challenges the court's omission of his proposed *voir dire* question on the presumption of innocence. As addressed *supra*, the trial court was "not required to use any particular language when complying with a request to ask" a *voir dire* question regarding the presumption of innocence provided that it "concisely describe[d] the

[13] The sole substantive distinction between the proposed and the ultimately propounded *voir dire* questions is the omission from the latter of the dependent clause "even if you had [a] hunch that [Appellant] had committed the alleged crime or crimes[.]" Because "beyond a reasonable doubt" is the highest of proof recognized by our legal system and a mere "hunch" does not meet any legal standard, the existence of the latter is irrelevant to whether the State has satisfied the former standard.

fundamental right at stake and inquire[d] as to [the prospective jurors'] willingness and ability to follow . . . instruction[s] as to that right[.]" *Kazadi*, 467 Md. at 47. Appellant claims that the court's question lacked sufficient clarity to satisfy that standard, arguing that it "buried the presumption of innocence question deep within" a single inquiry, which addressed the following "four separate issues": "(1) the defendant is presumed innocent; (2) the State has the burden of proof; (3) that burden of proof is beyond a reasonable doubt; and (4) the State's burden does not require proof to a mathematical certainty."

As a preliminary matter, the presumption of innocence and allocation of the burden of proof are hardly "separate issues." Rather, the former presumption is precisely that which allocates to the State the burden in criminal cases of (i) producing evidence and (ii) persuading the factfinder of the defendant's guilt beyond a reasonable doubt. *See Bell v. Wolfish*, 441 U.S. 520, 533 (1979) ("The presumption of innocence . . . allocates the burden of proof in criminal trials; it also may serve as an admonishment to the jury to judge an accused's guilt or innocence solely on the evidence adduced at trial[.]"). *See also Evans v. State*, 28 Md. App. 640, 676 n.13 (1975) ("[T]he phrase 'presumption of innocence' has been adopted by judges as a convenient introduction to the statement of the burdens upon the prosecution, first of producing evidence of the guilt of the accused and, second, of finally persuading the jury or judge of his guilt beyond a reasonable doubt."), *aff'd*, *State v. Evans*, 278 Md. 197 (1976); *Jordan v. State*, 246 Md. App. 561, 582-83 ("The

presumption of innocence means simply that at a criminal trial, the State carries the complete burden of proving all elements of the crime against the defendant beyond a reasonable doubt."), *cert. denied*, 471 Md. 120 (2020).

The court properly advised the prospective jurors of the requirement that they presume Appellant's innocence throughout trial. As the State points out, for example, Appellant fails to mention that the court also asked, "Is there any member of the prospective panel who thinks that the defendant should be required to prove his innocence at trial?" Appellant challenges the court instruction to the jury, which, once again, was

> . . . 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. However, the State is not required to prove the defendant's guilt beyond all doubt or to a mathematical certainty.
>
> Now, if you do not consider the defendant innocent now, or if you will not require the State to convince you of the defendant's guilt beyond a reasonable doubt, please stand.

Under this instruction, the presumption of innocence could only be rebutted by the State satisfying its corresponding burden of proving his guilt beyond a reasonable doubt. Thus, by confirming that they both considered Appellant "innocent now" and would hold the State to its burden of proof beyond a reasonable doubt, the prospective jurors affirmed by implication that they would continue to apply that presumption unless and until, in view of all of the evidence, the State overcame that presumption with proof of Appellant's guilt

beyond a reasonable doubt. In sum, while perhaps not a model of precision or clarity, we are persuaded that this *voir dire* inquiry, together with the other instructions given by the court, adequately addressed Appellant's right to the presumption of innocence.

C. The Ad Populum Question

Finally, Appellant complains that the court committed reversible error by declining to ask the prospective jurors whether, notwithstanding an independent determination "that the State had failed to prove the case against [Appellant] beyond a reasonable doubt," they would change their verdicts to guilty "only because [they] found it to be in the minority view[.]" Again analogizing this case to *Kazadi*, Appellant asserts that just as the proposed *voir dire* questions in that case concerned the presumption of innocence, burden of proof, and right to remain silent, the question at issue here implicated his fundamental right to a unanimous verdict. "[A] jury is not impartial," Appellant maintains, "if one juror will merely vote the way of the other 11, although not convinced of the defendant's guilt." (emphasis omitted). Nor is a conviction the unanimous decision of 12 jurors, Appellant concludes, if "[i]t is merely a verdict of 11 plus one who decided to go along with the 11."

The State counters that "[Appellant]'s attempt to implicate that right here is unavailing[,]" as he "cites no precedent . . . to support his theory that a question regarding the venire members' emotional stamina in this regard constitutes a question as to jury unanimity." Alternatively, the State rejoins that the *Kazadi* Court did not include the right

to jury unanimity as among those "courts *must* inquire into upon request." The State concludes that "the court soundly exercised its discretion in determining that the requested question did not properly express the duty to deliberate."

Appellant does not cite—nor are we aware of—any Maryland authority mandating that trial courts ask requested *voir dire* questions that probe the capacity of prospective jurors to withstand the pressure to abandon their independent judgment and acquiesce in a contrary verdict reached by the majority of their peers.[14] As proposed, the question at issue was not directly aimed at revealing prospective jurors' biases relating to the crimes charged, the witnesses, or Appellant, himself, nor was it otherwise among the mandatory *voir dire* questions recognized in Maryland. As the State correctly notes, moreover, "the requested question did not properly express the duty to deliberate." Rather, it could be seen as emphasizing tenacity to the point of discouraging collaboration and open-

[14] Among those few of our sister states that have addressed the rejection of an equivalent *voir dire* question, the intermediate appellate court of one opined that "[t]he subject of [such a] [q]uestion . . . does not directly inquire about possible prejudice or bias[,]" rendering the trial court's discretion to exclude it "quite broad." *State v. Leleae*, 993 P.2d 232, 239 (Utah Ct. App. 1999). The highest court of another characterized "a question[] designed to determine how well a prospective juror would withstand pressure to change his or her mind when jurors disagree" as "an impermissible 'stake out' question[,]" *i.e.*, a "hypothetical question[] designed to elicit in advance what the juror's decision will be . . . upon a given state of facts." *State v. Maness*, 677 S.E.2d 796, 802 (N.C. 2009) (quotation marks and citation omitted). *See also State v. Bracey*, 277 S.E.2d 390, 395 (N.C. 1981) (describing a comparable question as "designed to commit the juror to a fixed position in regard to the evidence before he has heard it from the witnesses and before he has been instructed on the law by the court").

mindedness. *See* MPJI-Cr 2:01 ("You must consult with one another and deliberate with a view to reaching an agreement, if you can do so without violence to your individual judgment. . . . During deliberations, do not hesitate to reexamine your own views."). Thus, the court was neither required to pose this question nor did it otherwise abuse its discretion by declining to do so.

For the foregoing reasons, we affirm Appellant's convictions.

JUDGMENTS OF THE CIRCUIT COURT FOR MONTGOMERY COUNTY AFFIRMED. COSTS TO BE PAID BY APPELLANT.

Circuit Court for Montgomery County
Case No. 138709C

UNREPORTED*

IN THE APPELLATE COURT

OF MARYLAND

No. 48

September Term, 2023

CARLTON L. WILLIAMS

v.

STATE OF MARYLAND

Nazarian,
Leahy,
Wright, Alexander, Jr.
(Senior Judge, Specially Assigned),

JJ.

Concurring Opinion by Nazarian, J.

Filed: June 4, 2024

I join the majority's thorough and well-reasoned opinion in all regards except one that ultimately doesn't affect the analysis or outcome. In the opening section of the Discussion on waiver and preservation, slip op. at 17-20, I would hold that Mr. Williams preserved his argument that the circuit court erred when it omitted the "hunch" language that the court previously had agreed to include in its questions to the panel of potential jurors.

Mr. Williams asked for the "hunch" question to be included and the court agreed to include it, yet the court, inadvertently it seems, failed in fact to ask it. The State characterizes Mr. Williams's failure to object to the omission as waiving the issue and inviting error, and it's true that parties should remain vigilant after successful arguments to make sure that rulings are implemented properly. Even so, I am more reluctant to charge unforced errors by the court or counsel for the State against criminal defendants. The point of requiring preservation is to ensure fairness at trial, to give trial courts an opportunity to avoid or correct errors rather than sandbagging them with new arguments on appeal. Mr. Williams held up his end of that bargain—he requested the language he wanted and the court agreed to give it. *Compare Lopez-Villa v. State*, 478 Md. 1, 15-19 (2022) (submitting proposed *voir dire* questions in writing does not by itself preserve objection to decision not to ask them) and *State v. Abolonczy*, 474 Md. 149, 159-66 (2021) (objection to denial of request to ask voir dire question not waived by defendant's unqualified acceptance of the jury as empaneled). Mr. Williams's failure, such as it was, was a failure to catch the court's

implementation mistake, not a failure to raise the issue (which, again, he won) in the first place. That, to my mind, was enough to preserve the point for appellate review.

This all said, and despite finding the issue unpreserved, my colleagues nevertheless exercised our discretion under Maryland Rule 8-131(a) to address the merits, and I agree that the voir dire questions that the circuit court did ask described the fundamental issue at stake sufficiently, even if they didn't mimic the exact language of *Kazadi v. State*. With this one caveat, then, I join the opinion in full.

The correction notice(s) for this opinion(s) can be found here:

https://mdcourts.gov/sites/default/files/import/appellate/correctionnotices/cosa/unreported/0048s23cn.pdf