

Circuit Court for Anne Arundel County  
Case No. 02-K-14-001387

UNREPORTED  
IN THE COURT OF SPECIAL APPEALS  
OF MARYLAND

No. 903

September Term, 2017

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JOSEPH PATRICK SOULE

v.

STATE OF MARYLAND

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Fader, C.J.  
Graeff,  
Shaw Geter,

JJ.

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Opinion by Shaw Geter, J.

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Filed: March 20, 2020

\*This is an unreported opinion, and 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

Appellant, Joseph Patrick Soule, was convicted in the Circuit Court for Anne Arundel County of second-degree murder and sentenced to thirty years' incarceration. On appeal before this Court, we affirmed his conviction. *Soule v. State*, 2019 WL 290600, at \*1 (Md. Ct. Spec. App. Jan. 23, 2019), vacated, 2020 WL 995214 (Md. Mar. 2, 2020). The opinion was based, in part, on the holding in *Twining v. State* regarding *voir dire* questions. 234 Md. 97 (1964).

On January 24, 2020, the Court of Appeals issued an opinion in *Kazadi v. State*, No. 11, 2020 WL 398840 (Md. Mar. 2, 2020), wherein the *Twining* holding was overruled. Thereafter, on March 2, 2020, the Court of Appeals vacated our opinion in *Soule* and remanded to this Court “to consider whether or not the holding in *Kazadi* should be applied in this case and, if so, to reconsider [our] prior opinion.” We determine that *Kazadi* is applicable and we reconsider the following issue:

Did the trial court abuse its discretion when it denied appellant's requested *voir dire* questions regarding appellant's constitutional rights?

Appellant alleges the “court improperly refused to allow *voir dire* questions” he offered in violation of his constitutional rights. Appellant contends that he was prejudiced when the court declined to ask questions which focused on the State's burden of proof, his right to remain silent, and his right not to testify. In response, the State maintains that the trial court is not required to ask all of appellant's questions as long as the court addressed the issues raised through other queries. In light of *Kazadi*, we hold the court abused its discretion when it denied appellant's request to ask the jury questions regarding burden of

proof and appellant’s right not to testify (albeit understandably in light of then-applicable law).

In determining whether a trial court erred in conducting *voir dire*, we review its actions for an abuse of discretion. *See Collins v. State*, 452 Md. 614, 623–24 (2017) (finding that “the trial court reaches the limits of its discretion only when the *voir dire* method employed by the court fails to probe juror biases effectively”). When requested “a trial court must ask a *voir dire* question if the *voir dire* question is ‘reasonably likely to reveal [a] [specific] cause for disqualification.’” *Pearson v. State* 437 Md. 350, 357 (2014).

The Court of Appeals reemphasized this point in *Kazadi*, stating:

On request, a trial court must ask *voir dire* questions that are reasonably likely to reveal a cause for disqualification involving matters that are liable to have undue influence over a prospective juror. Such matters may be comprised of biases related to the crime or the defendant. Certainly, the belief that a defendant must testify or prove innocence, or 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, otherwise would constitute a bias related to the defendant. As a matter of fact, it is difficult to conceive of circumstances that could be more prejudicial to a defendant’s right to a fair trial.

*Kazadi*, slip op. at 41.

The Court noted further the burden of proof, presumption of innocence and, right not to testify are three fundamental principles that are “critical to a fair jury trial in a criminal case,” and thus, “on request, a defendant should be entitled to *voir dire* questions that are aimed at uncovering a juror’s inability or unwillingness to honor these fundamental rights.” *Id.* at 42–43. The Court explained:

By making such *voir dire* questions mandatory on request, we help ensure that a juror’s inability or unwillingness to follow instructions involving these

three important fundamental rights will be discovered before trial, and that all defendants—not just ones whose trials are presided over by circuit court judges who chose to exercise the discretion to grant requests to ask such *voir dire* questions—will have the opportunity to move to strike prospective jurors for cause on the ground of an unwillingness or inability to adhere to these fundamental rights.

*Id.* at 43.

Here, appellant asked the court to inquire about the weight jurors would assign to appellant’s testimony, their ability to maintain a presumption of innocence, and their understanding of the reasonable doubt standard. In response, the court indicated that the jury instruction it selected “covers” the issues raised by appellant. The court noted the “introductory instruction does, in fact, highlight the presumption of innocence and reasonable doubt jury instruction.” In conducting its analysis, the trial court indicated that the law regarding the State’s burden would be addressed in the jury instruction exactly as required pursuant to the holding of *Twining*, 234 Md. at 100.

In *Kazadi* the Court reasoned “jury instructions on the presumption of innocence and the burden of proof are not an effective remedy for a prospective juror who is unwilling or unable to follow such jury instructions.” *Id.* at 34. Further, “[i]f a juror has a prejudice against any of these basic guarantees, a [jury] instruction [that is] given at the end of the trial will have little curative effect.” *Id.* (citing *People v. Zehr*, 469 N.E.2d at 1064 (Ill. 1984)). As such, the trial court’s reliance on *Twining* is now misplaced. Now, a trial court is required to ask *voir dire* questions regarding fundamental rights if a defendant requests them. *Kazadi*, slip op. at 44. A trial court is not required to use any particular language when complying with such a request, so long as the 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.* Thus, we remand this case to the trial court for proceedings in accordance with the holding in *Kazadi*.

**JUDGMENT REVERSED; CASE  
REMANDED TO THE CIRCUIT COURT  
FOR ANNE ARUNDEL COUNTY FOR A  
NEW TRIAL; COSTS TO BE PAID BY  
ANNE ARUNDEL COUNTY.**