

Circuit Court for Prince George's County
Case No. CT16-0960X

UNREPORTED
IN THE COURT OF SPECIAL APPEALS
OF MARYLAND

No. 910

September Term, 2018

JASON TIMOTHY HERRING

v.

STATE OF MARYLAND

Fader, C.J.
Shaw Geter,
Zarnoch, Robert A.
(Senior Judge, Specially Assigned),

JJ.

Opinion by Shaw Geter, J.

Filed: June 16, 2020

*This is an unreported opinion, and it may not be cited in any paper, brief, motion, or other document filed in this Court or any other Maryland Court as either precedent within the rule of stare decisis or as persuasive authority. Md. Rule 1-104.

A jury, in the Circuit Court for Prince George’s County, convicted Jason Herring, appellant, of first-degree felony murder, attempted second-degree murder, two counts of use of a firearm in the commission of a felony, home invasion, and knowingly possessing a regulated firearm after having been convicted of a disqualifying crime. The Court sentenced him to a total term of life imprisonment, with all but 100 years suspended. In this appeal, appellant presents three questions, which we have rephrased for clarity. They are:

1. Did the motions court err in denying appellant’s motion to suppress statements he made to police?
2. Did the motions court err in denying appellant’s motion to suppress eyewitness identification evidence?
3. Pursuant to the Court of Appeals’ decision in *Kazadi v. State*, 467 Md. 1 (2020), is appellant entitled to a reversal of his convictions based on the trial court’s refusal to propound *voir dire* questions requested by the Defense regarding the presumption of innocence and the State’s burden of proving the charges beyond a reasonable doubt?

For reasons to follow, we hold appellant is entitled to a reversal of his convictions based on the trial court’s refusal to propound the requested *voir dire* questions. Because we reverse on that issue, we need not address the issues raised in his two other questions.¹

BACKGROUND

¹ “Generally, 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.” *Pearson v. State*, 437 Md. 350, 364 n. 5 (2014).

Appellant was arrested and charged with the murder of James Haywood and the attempted murder of Kandis Ruffin. Prior to trial, he submitted a list of proposed *voir dire* questions, which included the following:

21. Our system of justice guarantees that the accused in a criminal case is presumed to be innocent. Jason Herring does not have the burden of proving their [sic] innocence. On the other hand, the State has the burden of proving guilt beyond a reasonable doubt and if the State does not meet this burden, the jury selected must find Jason Herring not guilty. Would any member of the jury panel be either unable or unwilling to apply these fundamental principles of law in reaching a verdict in this case?

On the first day of trial, during jury selection, the trial court posed various questions to the jury venire but did not ask appellant’s requested question 21 regarding the State’s burden of proof. At the conclusion of its *voir dire*, the court asked the parties if they were satisfied, and defense counsel responded that he wanted the court “to entertain reading Defendant’s No. 21 or something like it.” The following colloquy ensued:

THE COURT: All right. Does any member of the jury panel believe that the Defendant is guilty solely because he’s been charged with the crimes in this case? I see no affirmative response.

(At the bench.)

THE COURT: That’s my version of that question; plus, I already asked them if they could follow the instructions, and that would be one of the questions.

[DEFENSE]: Your Honor, I still would ask the court to –

THE COURT: I’m not going to ask it that way. My version is what I just asked.

[DEFENSE]: I understand, but I need to be clear. What I’m concerned about is that some of the jurors – some of the

prospective jurors might have a problem with the reasonable doubt instruction. People are familiar with that instruction generally speaking, but some of them may have a particular problem with that, and I think it's important to let them know that there will be instruction with regard to reasonable doubt, and that –

THE COURT: Your exception is noted.

[DEFENSE]: And, also, I would ask the Court to consider stressing – asking a question with regard to the burden of proof; that the State has the burden of proof in the case and the Defense has none.

THE COURT: Your exception is noted.

After the trial court refused to ask defense counsel's requested questions, the parties continued with jury selection. At the conclusion of jury selection, the court asked the parties if they were satisfied with the jurors chosen. Defense counsel responded that he was satisfied "with the exception of ... the questions that weren't asked."

Ultimately, appellant was convicted, as noted. This timely appeal followed.

DISCUSSION

Appellant contends that, pursuant to the Court of Appeals' holding in *Kazadi v. State*, 467 Md. 1 (2020), the trial court erred in not propounding his requested *voir dire* questions regarding the presumption of innocence and the State's burden of proving the charges beyond a reasonable doubt. The State concedes that he is entitled to his requested relief.

In *Kazadi v. State*, the Court of Appeals held that, "on request, during *voir dire*, a trial court must ask whether any prospective jurors are unwilling or unable to comply with

the jury instructions on the fundamental principles of presumption of innocence, the State’s burden of proof, and the defendant’s right not to testify.” *Id.* at 9. The Court further held that its holding applied “to this case and 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.

Here, during *voir dire*, appellant requested that the trial court ask whether any prospective jurors were unwilling or unable to apply the principles of presumption of innocence and the State’s burden of proof. The trial court refused, and defense counsel objected, preserving the issue for our review.² Thus, pursuant to *Kazadi*, we must hold that the trial court erred in not propounding the requested *voir dire* questions. We therefore reverse appellant’s convictions and remand for a new trial.

**JUDGMENTS OF THE CIRCUIT COURT
FOR PRINCE GEORGE’S COUNTY
REVERSED; COSTS TO BE PAID BY THE
COUNTY.**

² Objections made during jury selection are governed by Maryland Rule 4-323(c), which states, in relevant part, that “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.” Md. Rule 4-323(c); *See also Wimbish v. State*, 201 Md. App. 239, 265 (2011). Thus, 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.” *Smith v. State*, 218 Md. App. 689, 701 (2014).