Circuit Court for Baltimore City
Case No. 119170002

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 1262

September Term, 2020

QUANTAE RICHARDSON

v.

STATE OF MARYLAND

Beachley,
Albright,
Sharer, J. Frederick
(Senior Judge, Specially Assigned),

JJ.

Opinion by Beachley, J.

Filed: June 21, 2022

A jury in the Circuit Court for Baltimore City convicted appellant, Quantae Richardson, of first-degree assault and use of a handgun in the commission of a crime of violence.[1] After the trial court sentenced him to a term of twenty-five years' imprisonment for first-degree assault and a consecutive term of twenty years' imprisonment for the handgun charge, Richardson filed a timely notice of appeal.

Richardson asks us to consider the following questions:

> I. Whether under *Kazadi v. State*, 467 Md. 1 (2020), the trial court erred in refusing to ask [a]ppellant's requested voir dire questions that related to fundamental principles of law, including the State's burden of proof and presumption of innocence?
>
> II. Whether[] the trial court abused its discretion i[n] giving the jury the flight instruction over Richardson's objection?

For the following reasons, we hold that Richardson is entitled to a reversal of his convictions based on the trial court's refusal to propound the requested *voir dire* questions. Because of our holding on the first question, we need not reach Richardson's second question.

FACTUAL AND PROCEDURAL BACKGROUND

On May 18, 2019, Juanye Scott, Scott's girlfriend, their newborn daughter, and Scott's grandfather were preparing to attend a family cookout. As Scott was placing his daughter in his grandfather's truck, Richardson came up behind Scott and attempted to hit him with a brick. Scott turned around and pulled out a gun. Richardson also pulled out a

[1] The jury found Richardson not guilty of attempted first-degree murder, but was unable to reach a verdict on attempted second-degree murder. The court ultimately granted Richardson's motion for judgment of acquittal on the attempted second-degree murder charge.

gun and fired once, missing Scott. Scott began shooting at Richardson, hitting him at least once in the upper thigh. When Richardson was shot, he fell to the ground between two parked cars. Richardson pointed his gun at Scott's grandfather and pulled the trigger, but the gun jammed and did not fire. As Scott's grandfather drove away, Scott ran several blocks up the street, where he was picked up by his grandfather, and the family proceeded to the cookout.

Richardson walked away from the scene, leaving a trail of blood. He went down a narrow alleyway and collapsed on the front porch steps of the house he shared with his mother. The house is one block from where the shooting occurred. Richardson's girlfriend hid his gun inside the house, then returned to the porch, where she applied pressure to his wound with a towel to stem the bleeding. When police arrived minutes later, "quite a lot" of blood was "pooling around" Richardson's jeans, and police applied a tourniquet to Richardson's leg, which "probably" saved his life. Richardson was transported to Shock Trauma, where he underwent surgery.

Richardson was later arrested and charged with attempted first-degree murder, first-degree assault, and various handgun charges.

Voir Dire

Prior to trial, Richardson's counsel submitted a list of proposed *voir dire* questions which included the following:

> 9. It is your duty to judge this case solely on the evidence before you, and to reach a verdict based upon the facts and the law, as it will be explained to you. You are not to allow fear of criticism by this Court or anyone else to enter into your thoughts. If you do not understand this, or cannot do this, please raise your hand.

> 10. If you come to a conclusion that the prosecution had not proven the guilt of the defendant beyond a reasonable doubt would you stand firm in your individual judgment? Or to put it a different way, would you change your position merely because most or all of the other jurors disagreed with you? If you would not, or could not stand firmly on your individual judgment, or would change your vote merely because the other jurors disagreed with you, please raise your hand.
>
> 11. An individual charged with a crime is presumed to be innocent of all charges and this presumption remains with them throughout every stage of the trial. The presumption of innocence is not overcome unless you are convinced beyond a reasonable doubt by the prosecution that the defendant is guilty. The prosecution has the burden of proving the guilt of the defendant beyond a reasonable doubt and the defendant has absolutely no duty, responsibility, or obligation to prove their innocence. Does any member of the jury panel have difficulty accepting these principles or applying these principles if selected as a juror in this case? If so, please raise your hand.

At a motions hearing on January 9, 2020, the day before trial commenced, the court reviewed the proposed jury *voir dire* with counsel. The court began by asking Richardson's counsel if he had any objection to the State's proposed *voir dire*. Counsel responded, "Not as the questions are phrased." The court then turned to discuss Richardson's proposed *voir dire*. Richardson's counsel proceeded methodically to address each of his proposed *voir dire* questions in turn. The following colloquy occurred concerning questions 9, 10, and 11:

> [DEFENSE COUNSEL]: Nine, 10, and 11 from the defense proposed voir dire, I'm not exactly sure where the Rules Committee is right now with this, they may have already passed this.
>
> THE COURT: They haven't.
>
> [DEFENSE COUNSEL]: I know it's being debated.
>
> THE COURT: It's down there, it's sitting in Annapolis, they've indicated to the Court or I read somewhere,

they're not going to hear that until the summer sometime.

[DEFENSE COUNSEL]: Okay.

THE COURT: It's very possibly when they come back from summer break. So we'll stay with the, I forget the name of the case but it's out of the 1960's, we'll stay with the rule -- the instruction as it is. I don't get into -- well, strike that. For voir dire, I don't get into State's -- strike that, defendant's nine, defendant's 10 or defendant's 11. I will note that once the jury is selected, it is now part of pre-trial instructions to at least give them an idea of how the proceeding goes along, but I don't get into the State presents evidence, the defense can present evidence, or the examinations, cross-examinations. I will do a basic pre-trial introductory statement to the jury but I will include that the State has the full burden of proof beyond a reasonable doubt and that the defendant carries a presumption of innocence throughout these proceedings.

[DEFENSE COUNSEL]: Well, I --

THE COURT: So if you're asking the Court to read nine, 10 and 11, I am denying that request.

[DEFENSE COUNSEL]: That would be my request.

THE COURT: All right. Those are denied.

The court agreed to give the vast majority of Richardson's remaining *voir dire*, with no objection from the State. The only other question that caused any substantive discussion was question 3 concerning the "facts" of the case, but the defense promptly agreed that the court could use the State's *voir dire* on this subject.

The next day, after the court propounded *voir dire* to the entire venire but before questioning jurors individually, the following colloquy occurred:

THE COURT:	[Defense counsel], just for the record, I did not ask your number 19 because I had already asked it.
[DEFENSE COUNSEL]:	Yes.
THE COURT:	Okay?
[DEFENSE COUNSEL]:	I'd agree with that.
THE COURT:	Anything else from the State?
[THE STATE]:	Your Honor, this is my mistake. In the voir dire, whether any jurors know any potential witnesses or anyone I think you mentioned, I don't believe Detective Brian Coffin.
THE COURT:	Coffin?
[THE STATE]:	C-O-F-F-I-N.
THE COURT:	I didn't see it here, so Detective Brian Coffin?
[THE STATE]:	Brian Coffin. I apologize, Your Honor.
THE COURT:	No, okay. You all can just step to the side.
[DEFENSE COUNSEL]:	*No other exceptions.*
THE COURT:	*Any other? None from you.*
[DEFENSE COUNSEL]:	*No.*

(Emphasis added). The court then proceeded to question individual jurors who had responded affirmatively during *voir dire*. No further mention was made of Richardson's questions 9, 10, and 11.

As noted above, the jury convicted Richardson of first-degree assault and use of a handgun in a crime of violence. Due to the Covid-19 pandemic, Richardson was not sentenced until December 2020. Richardson then noted this timely appeal.

STANDARD OF REVIEW

"An appellate court reviews for abuse of discretion a trial court's decision as to whether to ask a voir dire question." *Colkley v. State*, 251 Md. App. 243, 300 (2021) (quoting *Pearson v. State*, 437 Md. 350, 356 (2014)). "[E]ven with respect to a discretionary matter, a trial court must exercise its discretion in accordance with correct legal standards." *Williams v. State*, 251 Md. App. 523, 546 (2021) (alteration in original) (quoting *Alston v. Alston*, 331 Md. 496, 504 (1993)).

DISCUSSION

In *Kazadi*, 467 Md. at 35–36, 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 long-standing fundamental principles of the presumption of innocence, the State's burden of proof, and the defendant's right not to testify." The Court made clear, however, that its holding would only apply "where the relevant question has been preserved for appellate review." *Id.* at 47 (citing *Hackney v. State*, 459 Md. 108, 119 (2018); and *State v. Daughtry*, 419 Md. 35, 77 n.26 (2011)).[2]

Richardson contends that the court committed reversible error when it refused to propound his requested *voir dire* questions 9, 10, and 11. In its brief, the State concedes that questions 9, 10, and 11 "implicated *Kazadi*, as they addressed the presumption of

[2] Additionally, *Kumar v. State*, 477 Md. 45, 68 (2021), made clear that "*Kazadi* applies to any case pending in a trial or appellate court that had not become final on direct appeal when the opinion was issued . . . and in which the issue was preserved for appellate review." As in *Kumar*, Richardson was found guilty prior to the issuance of *Kazadi*, but was not sentenced until after *Kazadi* was issued.

innocence and the State's burden of proof."[3] However, it argues that Richardson waived his right to challenge the court's omission when, after the trial court questioned the jury venire, Richardson's counsel stated that he had "no other exceptions."

Objections regarding *voir dire* questions are governed by Rule 4-323(c):

> 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.

There is no question that, at the January 9, 2020 motions hearing, Richardson's counsel preserved the *Kazadi* issue by making known to the court that he wanted it to ask questions 9, 10, and 11. The issue was thoroughly discussed and the court clearly understood what defense counsel sought. Although "the rule does not require the objection to be stated with particularity or specific language," *Newman v. State*, 156 Md. App. 20, 51 (2003), *reversed on other grounds*, 384 Md. 285 (2004), defense counsel here unequivocally requested the court to propound questions 9, 10, and 11 to the venire. The

[3] Although the State concedes that questions 9 and 10 "implicated *Kazadi*," we are skeptical about the correctness of the State's concession. *Kazadi* questions concern "the fundamental principles of presumption of innocence, the State's burden of proof, and the defendant's right not to testify." *Kazadi*, 467 Md. at 9 (2020). Richardson's question 9, in contrast, concerns whether a juror would be swayed by "fear of criticism by this Court or anyone else." Question 10, though it mentions the burden of proof, ultimately concerns whether a juror would submit to peer pressure. However, question 11 is undoubtedly a *Kazadi*-type question. We shall follow the parties' lead and refer to the omitted questions as the "*Kazadi* questions."

court affirmatively denied those *voir dire* requests. As of January 9, therefore, Richardson had preserved the issue for appellate review.

The next day the court questioned the potential jurors, leaving out questions 9, 10, and 11. After the court completed its questioning of the venire, Richardson's counsel told the court he had "no other exceptions." The State contends that this comment constituted a waiver of Richardson's prior objection. We disagree.

We preliminarily note that if Richardson's counsel had simply said "No exceptions," rather than "no other exceptions," we would likely conclude that such a response would constitute an explicit waiver of all potential exceptions to the *voir dire*. *See Brice v. State*, 225 Md. App. 666, 679 (2015) (noting that "appellant waived his right to the requested questions by defense counsel responding 'No' to the court's request for any further comment or objection to the *voir dire* questions that had been asked"). "Generally, a waiver is the intentional relinquishment of a known right, or conduct that warrants such an inference." *Id*. (quoting *Brockington v. Grimstead*, 176 Md. App. 327, 355 (2007), *aff'd*, 417 Md. 332 (2010)). In the instant case, counsel stated "No *other* exceptions," and the court echoed the word "other" in its response, "Any other? None from you." The record does not provide any further clarification of what was meant by the word "other" in this context.

In construing the phrase "No other exceptions," we are cognizant of the principles underlying Rule 4-323(c). "The rules for preservation of issues have a salutary purpose of preventing unfairness and requiring that all issues be raised in and decided by the trial court." *Conyers v. State*, 354 Md. 132, 150 (1999).

> Preservation rules like Md. Rule 4-323(c) are designed to provide fairness to the trial court, which should be permitted "to resolve as many issues as possible so as to avoid unnecessary appeals." *In re A.B.*, 230 Md. App. 528, 535, 148 A.3d 371, 375 (2016). The Rule is also designed to provide fairness to opposing parties, who should be afforded the opportunity to respond to any alleged error in the court's ruling in their favor.

Lopez-Villa v. State, 478 Md. 1, 13 (2022). "The broader principle underlying our preservation decisions focuses on whether the party objecting on appeal gave the circuit court a proper opportunity to avoid or resolve errors during the trial, not on hyper-technicalities." *Smith v. State*, 218 Md. App. 689, 702 (2014).

Although no Maryland case is directly on point, we find *Kumar v. State*, 477 Md. 45 (2021), instructive. There, before *voir dire*, Kumar submitted a written list of proposed *voir dire* questions, which included *Kazadi*-type questions. *Id.* at 48. During the court's review of both the State's and Kumar's proposed questions, Kumar specifically requested the court to ask his proposed *Kazadi* questions. *Id.* at 49. After Kumar noted that "[t]here is currently a case" pending in the appellate courts that could alter the landscape of *voir dire*, the court responded, "Yeah, it's sitting there," but "[u]ntil they make a decision, the old law from about 50 years ago resumes." *Id.* The court therefore denied Kumar's request to propound the *Kazadi* questions. *Id.*

The court then proceeded to ask *voir dire* questions to the entire venire. *Id.* at 51. Upon completion of the group questions, but before the court individually questioned prospective jurors who had responded affirmatively, the following exchange occurred:

THE COURT: Anything further from the defense?

[KUMAR'S COUNSEL]:	I'll just ask the Court to note my continuing exception to the Court's refusal --
THE COURT:	Does your client want to be here?

Id. (alteration in original). The record did not provide any elaboration as to what was meant by counsel's "continuing exception to the Court's refusal --" remark. *Id.*

After determining that *Kazadi* applies to all cases pending on appeal when that decision was issued as well as other cases that had not reached final judgment, the Court of Appeals considered whether Kumar's *Kazadi* claim had been preserved. *Id.* at 60. The Court first held that "Kumar preserved the *Kazadi* claim for appellate review in accordance with Maryland Rule 4-323(c) by making known his objection to the circuit court's failure to ask the *Kazadi*-type *voir dire* questions." *Id.* at 64. In that regard, the Court noted that before the circuit court commenced its jury *voir dire*, Kumar had "at least twice" requested the *Kazadi* questions—first in writing and then orally when the court was reviewing *voir dire* with counsel. *Id.* Moreover, the "court explicitly stated that each exception was noted." *Id.*

The Court then turned to examine what occurred after the group *voir dire* questions were asked. "Specifically, after asking *voir dire* questions of the jury panel but before individually questioning prospective jurors, the circuit court asked whether there was '[a]nything further from the defense[,]' and Kumar's counsel responded: 'I'll just ask the Court to note my continuing exception to the Court's refusal --'" *Id.* at 65 (alterations in original). In construing what Kumar's counsel meant by using the term "continuing exception," the Court concluded:

> Under the circumstances of this case, the only reasonable interpretation of Kumar's counsel's reference to his "continuing exception to the Court's refusal" is that he was referring to the circuit court's refusal to ask the proposed *Kazadi voir dire* questions—*voir dire* questions 15 and 16. During the discussion between the circuit court and Kumar's counsel at the time that the court declined to ask *voir dire* questions 15 and 16, both the circuit court and Kumar's counsel acknowledged that there was a case pending on appeal that could potentially change the law concerning whether the questions should be asked. Given Kumar's counsel's discussion with the circuit court concerning the case pending in the "Court of Special Appeals" and the circuit court's observation that, until the Court made a decision, the "old law from about 50 years ago" would apply, it is difficult to conceive that Kumar's counsel's noting of a continuing exception could have been understood as anything other than applying to the circuit court's refusal to ask the *Kazadi*-type *voir dire* questions.

Id. at 65–66. The Court therefore held that Kumar sufficiently preserved his *Kazadi* claim, concluding that "Kumar's counsel's continuing exception to the circuit court's refusal to ask the proposed *voir dire* questions complied with Maryland Rule 4-323(c) because it made 'known to the court the action that the party desire[d] the court to take or the objection to the action of the court.'" *Id.* at 66 (alteration in original). Moreover,

> To agree with the State that Kumar's *Kazadi* claim was unpreserved for appellate review, we would need to determine that Kumar's counsel's noting of a continuing exception after the group questioning was entirely meaningless because it was not specific as to any particular unasked proposed *voir dire* question—even though he had excepted in only three instances to the circuit court's refusal to ask *voir dire* questions and two of the exceptions involved the *Kazadi*-type questions.

Id.

We see many similarities between *Kumar* and the instant case, likely because the same trial judge presided in both cases. First, as in *Kumar*, Richardson submitted to the court in advance of trial written *voir dire*, which included *Kazadi*-type questions. Second, the colloquy between the court and Richardson's counsel concerning the *Kazadi* questions

mirrors that in *Kumar*. While in *Kumar* there was a discussion about a pending case in the appellate court, the court and counsel here recognized that the issue was "being debated" in the Rules Committee, with the court noting "it's sitting in Annapolis" and "they're not going to hear that until summer sometime." Third, as in *Kumar*, the court denied Richardson's requested *Kazadi* questions because it intended to "stay with the rule" emanating from the "case out of the 1960's." Thus, at this point in the proceedings *Kumar* and the case at bar are virtually identical, and we echo *Kumar*'s reasoning that Richardson sufficiently preserved the issue in accordance with Rule 4-323(c). *Id.* at 64.

The present case diverges from *Kumar* at the point when the respective trial courts concluded their group questioning of the jury panel. While Kumar's counsel noted a "continuing exception to the Court's refusal --," Richardson's counsel stated "No other exceptions." As in *Kumar*, we are faced with construing the meaning of counsel's statement. We substantially adopt the analysis provided in *Kumar*.

The *Kumar* Court determined that "the *only* reasonable interpretation" of counsel's reference to a "continuing exception" was that he was referring to the court's refusal to ask the *Kazadi* questions. *Id.* at 65 (emphasis added). Although counsel's statement in this case is slightly less clear than that in *Kumar*, we conclude that the *most* reasonable interpretation of "No other exceptions" is that counsel was referring to the specific exceptions evidenced by the colloquy between the court and counsel at the motions hearing held the preceding day. First, the only substantive objections concerning *voir dire* related to questions 9, 10, and 11—the *Kazadi* questions. A fair reading of the colloquy between the court and counsel at the motions hearing demonstrates that, except for the *Kazadi*

questions, the parties essentially were in agreement as to the *voir dire* questions the court would propound to the jury panel. Thus, when Richardson's counsel stated at the conclusion of the group questioning, "No *other* exceptions," we conclude that he was referring to the *only* exceptions that arose during *voir dire, i.e.* his exceptions to the court's refusal to propound the *Kazadi* questions.[4] *Compare Lopez-Villa*, 478 Md. at 15–17 (holding that defense counsel's discussion with the court after *voir dire* did not preserve Lopez-Villa's *Kazadi* claim because counsel "did not object or disagree with the court's ruling" that it was "not inclined" to give the *Kazadi* questions; and it was unlikely that the court's statement that it would "preserve for the record" "what [defense counsel] previously objected to," referred to the *Kazadi* questions because counsel never objected to the court's refusal to give those questions in the first place).

Second, given the discussion between the court and Richardson's counsel when the court reviewed the proposed *Kazadi* questions, it is likely that this experienced trial judge—who demonstrated his grasp and knowledge of the potential for change in *voir dire* in Maryland—fully understood that "No other exceptions" meant that counsel had no exceptions to the court's *voir dire* except as to its refusal to ask the *Kazadi* questions. We therefore reach the same conclusion as the *Kumar* Court—Richardson's exceptions to the court's failure to ask the requested *Kazadi* questions were preserved for appellate review.

[4] We acknowledge that Richardson's statement, "No other exceptions" came immediately after the State's request to add Brian Coffin as a potential witness. But because Richardson's counsel did not object to Coffin being added as a witness, it would be illogical to conclude that "No other exceptions" somehow related to the adding of Coffin as a witness.

To hold otherwise under these circumstances—where the issue was clearly presented to and understood by the court—would subvert the "broader principles" that preservation determinations should not be based on "hyper-technicalities." *Smith*, 218 Md. App. at 702. We therefore vacate the circuit court's judgment and remand the case for a new trial.[5,6]

JUDGMENTS OF THE CIRCUIT COURT FOR BALTIMORE CITY REVERSED. CASE REMANDED TO THAT COURT FOR A NEW TRIAL. MAYOR AND CITY COUNCIL OF BALTIMORE TO PAY COSTS.

[5] As in *Kumar*, we need not decide "the issue of whether to preserve a *Kazadi* claim it is required that an exception be made or renewed after *voir dire* questions are asked of a jury panel but before individual questioning of prospective jurors." *Kumar*, 477 Md. at 66 & n.13. That issue is not before the Court.

[6] In the event the State requests a flight instruction on retrial, we direct the court's attention to *Hallowell v. State*, 235 Md. App. 484 (2018), and *Hoerauf v. State*, 178 Md. App. 292 (2008).