Circuit Court for Baltimore City
Case No. 122193002

UNREPORTED*

IN THE APPELLATE COURT

OF MARYLAND

No. 1640

September Term, 2023

TAVON JAMAL GREEN, JR.

v.

STATE OF MARYLAND

Wells, C.J.,
Friedman,
Tang,
JJ.

Opinion by Tang, J.

Filed: January 9, 2025

*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).

Following a jury trial in the Circuit Court for Baltimore City, Tavon Green, Jr., the appellant, was convicted of first-degree murder, use of a firearm during the commission of a crime of violence, and carrying a handgun on his person. The court sentenced the appellant to life imprisonment plus twenty years.[1] On appeal, the appellant raises the following question, which we quote:

> Did the [trial] court err by refusing to ask venirepersons whether they could honor the fundamental due process principle that charges alone raise no presumption of guilt?

For the reasons that follow, we shall affirm the convictions.

BACKGROUND

Because the sole question on appeal relates to *voir dire*, we do not need to provide a detailed summary of the facts adduced at trial. Just before midnight on April 1, 2022, Joshua Whittington was shot at the corner of Carey and Baltimore Streets in West Baltimore. Based on surveillance camera footage and other investigations, the shooter was identified as the appellant.

Before trial, the defense submitted its list of proposed jury *voir dire* questions. One of the proposed questions, labeled "11.a.," asked whether any potential juror would have reservations about abiding by the following principle: "The fact that charges have been filed against the defendant raises no presumption whatsoever of the guilt of the defendant."

During *voir dire*, the court asked the following question, among others:

[1] The court sentenced the appellant to life imprisonment for first-degree murder and twenty consecutive years' imprisonment for use of a handgun during the commission of a crime of violence. The sentence for carrying a handgun was merged.

> You must presume the defendant innocent of the charges now and throughout the trial unless and until after you've heard and seen all the evidence, the State convinces you of the defendant's guilt beyond a reasonable doubt. 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.
>
> In a criminal case like this one, each side may present arguments about the evidence, but the State has the burden of proof. The defendant need not testify on his own behalf or present any evidence. Would you hold it against the defendant if he were to exercise his constitutional right to remain silent and/or his right not to present any evidence? If so, would you please stand.

After the court finished asking the *voir dire* questions, it inquired if there were any exceptions. The defense objected that the court had not asked proposed question 11.a. The court acknowledged that it did not ask that question. After discussing the objections regarding this and other proposed questions, the court decided not to ask any additional *voir dire* questions. The court then empaneled the jury and proceeded with trial.

DISCUSSION

Relying on *Kazadi v. State*, 467 Md. 1 (2020), the appellant contends that the circuit court erred in refusing to ask proposed question 11.a., which inquires whether potential jurors can accept the principle that charges against a defendant do not raise a presumption of guilt—what he refers to in his brief as the principle that "charges are not evidence." The State argues that the substance of question 11.a. was covered because the court asked the venirepersons whether they could honor the fundamental due process right regarding the presumption of innocence. We agree with the State.

An appellate court reviews a trial court's decision as to whether to ask a *voir dire* question for abuse of discretion. *Mitchell v. State*, 488 Md. 1, 16 (2024); *see Dingle v. State*,

361 Md. 1, 14 (2000) (explaining that the trial court has broad discretion in "determin[ing] the content and scope of the questions on voir dire [and] how voir dire will be conducted"). "[A] trial court must ask a voir dire question upon request if it is reasonably likely to reveal specific cause for disqualification." *Mitchell*, 488 Md. at 16–17 (citations and internal quotation marks omitted). "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." *Id.* at 17 (citation omitted). "The second category comprises biases directly related to the crime, the witnesses, or the defendant." *Id.* (citation and internal quotation marks omitted). The failure to allow questions that may show cause for disqualification is an abuse of discretion constituting reversible error. *Id.* at 16.

Focusing on the second category, the Supreme Court of Maryland in *Kazadi* explained that "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." 467 Md. at 45. Accordingly, the Court held that "[o]n 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 explained that the "long-standing fundamental rights" concerning these presumptions are "critical to a fair

jury trial in a criminal case" and that, when requested, *voir dire* questions about a juror's inability or unwillingness to honor those fundamental rights are mandatory. *Id.* at 46.

The appellant tacitly acknowledges that the circuit court advised the venire of the three fundamental rights as required by *Kazadi*. However, he argues that the court should have also asked the venire whether it could abide by the principle that charges against him raise no presumption of his guilt, that is, that "charges are not evidence." In other words, he argues that this principle is also a fundamental constitutional principle that jurors must be able to honor. Although *Kazadi* did not specifically address this question, the appellant contends that the Court's reliance on *State v. Lumumba*, 601 A.2d 1178 (N.J. Super. Ct. App. Div. 1992), supports the need for a trial court to pose this question. We disagree.

When the Court discussed the case of *Lumumba* in *Kazadi*, it did not endorse it. Instead, the Court cited *Lumumba* and several other cases to review the laws of various jurisdictions regarding *voir dire* questions related to the fundamental rights of the presumption of innocence, the burden of proof, and the defendant's right not to testify. *See Kazadi*, 467 Md. at 28–35. The Court was persuaded by decisions from the Sixth Circuit and state courts, such as the Appellate Division of the Superior Court of New Jersey in *Lumumba*, that giving *voir dire* questions concerning these long-standing fundamental rights, when requested, is necessary to safeguard a defendant's right to be tried by a fair and impartial jury. *Id.* at 41.

In *Lumumba*, the appellate court held that a trial court must at least ask whether prospective jurors understand the basic principles of presumption of innocence and that the

indictment is not evidence and whether they can abide by these principles. 601 A.2d at 1189. In *Kazadi*, however, the Court did not broaden its holding beyond the requirement of asking questions concerning the three fundamental rights (presumption of innocence, the burden of proof, and the defendant's right not to testify); it did not require asking potential jurors whether they could also accept the principle that the charges against a defendant raise no presumption of his guilt, or that charges filed against a defendant are not evidence.[2] 467 Md. at 35–36.

The appellant contends that question 11.a. is not encompassed by the circuit court's question about the presumption of innocence. According to the appellant, this is because the two concepts are presented separately in the Maryland Criminal Pattern Jury Instructions ("MPJI-Cr"), with MPJI-Cr 2:02 concerning the presumption of innocence and MPJI-Cr 3:00 instructing that charges are not evidence.

This argument does not persuade us. *Voir dire* and jury instructions serve different functions. "The main purpose of a jury instruction is to aid the jury in clearly understanding the case, to provide guidance for the jury's deliberations, and to help the jury arrive at a correct verdict." *Appraicio v. State*, 431 Md. 42, 51 (2013) (citation omitted). In contrast,

[2] The appellant cites cases from other jurisdictions as examples that the "charges are not evidence" question is integral to criminal trials. *See Carter v. Kentucky*, 450 U.S. 288, 291 n.3 (1981); *United States v. Peters*, 435 F.3d 746, 753 (7th Cir. 2006); *United States v. Peterson*, 483 F.2d 1222, 1227–28 (D.C. Cir. 1973); *Ida v. United States*, 191 F. Supp. 2d 426, 439 (S.D.N.Y. 2002). However, the cases cited refer only briefly to the trial court's preliminary instruction to the venire that the indictment is not evidence. Moreover, none of them discuss whether the question requested by the appellant in 11.a., or specifically the principle that "charges are not evidence," is required to be asked of venirepersons.

voir dire is intended to "uncover venireperson bias," *Moore v. State*, 412 Md. 635, 663 (2010), and "ensure a fair and impartial jury," *Dingle*, 361 Md. at 9. In this regard, "[t]he court need not ordinarily ask a particular requested question if the matter is fairly covered by the questions the court puts to the prospective jurors." *Id.* at 28.

Contrary to the appellant's assertion, the court's *voir dire* question regarding the presumption of innocence covered the subject matter in question 11.a. Question 11.a. implicitly conveyed that a defendant is presumed innocent of the charges and that the jury's conclusion should be based solely on the evidence at trial. The court explicitly referred to the appellant's "charges" when it told the jury: "You must presume the defendant innocent of the charges now and throughout the trial unless and until after you've heard and seen all the evidence . . . ." *See Washington v. State*, 425 Md. 306, 313–14 (2012) (in examining a challenged question, we look to "the record as a whole to determine whether the matter has been fairly covered"). The fact that the court did not phrase the question exactly as the appellant requested does not constitute an abuse of discretion. *See Kazadi*, 467 Md. at 47 (declining to prescribe the use of "any particular language" when complying with the request concerning the three fundamental rights outlined in the opinion: "The questions should 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. This is all that need occur.").

For the reasons stated, the circuit court did not abuse its discretion in declining to ask question 11.a. as requested by the appellant. Accordingly, we shall affirm.[3]

JUDGMENTS OF THE CIRCUIT COURT FOR BALTIMORE CITY AFFIRMED. COSTS TO BE PAID BY APPELLANT.

[3] Because we hold that the circuit court did not err in refusing to ask question 11.a., it is not necessary for us to address the parties' harmless error analyses.