

Circuit Court for Baltimore City
Case Nos.: 110293018, 110293020
& 110308025

UNREPORTED
IN THE COURT OF SPECIAL APPEALS
OF MARYLAND

No. 1819

September Term, 2017

WARREN SAVAGE

v.

STATE OF MARYLAND

Meredith,
Kehoe,
Berger,

JJ.

Opinion by Kehoe, J.

Filed: February 19, 2019

*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.

Warren Savage was charged by indictment in the Circuit Court for Baltimore City with first-degree murder, conspiracy to murder, use of a handgun in the commission of a felony, and possession of a regulated firearm after having been convicted of a disqualifying offense. Savage was jointly tried with two co-defendants, Mashea Louise Ray-Simmons and Antionette McGouldrick. Savage, Ray-Simmons, and McGouldrick were convicted of second-degree murder, conspiracy to murder and use of a handgun in the commission of a felony. Only Savage was convicted of possession of a regulated firearm after having been convicted of a disqualifying offense. Savage was sentenced to imprisonment for life plus twenty-five years.

Savage's only argument on appeal is that he is entitled to a new trial pursuant to the Court of Appeals' decision in his co-defendants' appeal, *Ray-Simmons v. State*, 446 Md. 429 (2016), in which the Court determined that Ray-Simmons and McGouldrick were entitled to a new trial because the trial court had erred in denying their *Batson* challenge. The State concedes that Savage is entitled to a new trial. We agree and therefore reverse the judgments and remand for a new trial.

Following their convictions on April 19, 2012, Ray-Simmons and McGouldrick noted timely appeals to this Court. Savage's notice of appeal, however, was returned as non-compliant because his attorney failed to sign the certificate of service. Ray-Simmons' and McGouldrick's appeals proceeded jointly. Savage was not a party to that appeal.

Ray-Simmons and McGouldrick raised several issues on appeal, including a claim that the trial court erred in denying their challenge to the State's exercise of a peremptory strike under *Batson v. Kentucky*, 476 U.S. 79 (1986). On January 5, 2015, this Court

affirmed Ray-Simmons’ and McGouldrick’s convictions in an unreported opinion, *Ray-Simmons and McGouldrick v. State*, Nos. 1552 and 1553, Sept. Term, 2012 (filed Jan. 5, 2015). Ray-Simmons and McGouldrick filed petitions of certiorari in the Court of Appeals, which the Court granted, limited only to the *Batson* question.

On February 22, 2016, the Court of Appeals issued its decision in *Ray-Simmons v. State*, 446 Md. 429 (2016), holding that, because the State’s explanation for one of its peremptory challenges was not both race and gender neutral, under *Batson*, Ray-Simmons and McGouldrick were entitled to a new trial. The Court of Appeals further held that Ray-Simmons’ *Batson* challenge also preserved that challenge as to McGouldrick, because the trial court had ruled at the beginning of trial that “an objection made by one defendant would be deemed made by the others.” *Id.* at 440.

On October 4, 2017, the circuit court granted Savage’s petition for post-conviction relief, allowing his request to file a belated appeal. On October 25, 2017, Savage noted a timely appeal of his convictions to this Court.

We conclude that, pursuant to the Court of Appeals’ holding in *Ray-Simmons*, Savage is entitled to a new trial. *See Scott v. State*, 379 Md. 170, 183-84 (2004) (explaining that under the law of the case doctrine, litigants and lower courts are bound by the ruling of an appellate court upon a question presented on appeal.) (citations omitted).

THE JUDGMENTS OF THE CIRCUIT COURT FOR BALTIMORE CITY ARE REVERSED. THE CASE IS REMANDED TO THAT COURT FOR A NEW TRIAL. COSTS TO BE PAID BY THE MAYOR AND CITY COUNCIL OF BALTIMORE.