Circuit Court for Cecil County
Case No: C-07-CR-24-000305

UNREPORTED

IN THE APPELLATE COURT

OF MARYLAND*

No. 1548

September Term, 2024

MICHAEL KING

v.

STATE OF MARYLAND

Leahy,
Ripken,
Kehoe, Christopher B.,
(Senior Judge, Specially Assigned),

JJ.

Opinion by Leahy, J.

Filed: March 26, 2026

*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).

After a jury trial in the Circuit Court for Cecil County, Michael King, appellant, was convicted of second-degree assault and reckless endangerment. The jury acquitted him of two counts of first-degree assault and the commission of a crime of violence against a pregnant person. King was sentenced to incarceration for a period of ten years, with all but eight years suspended for the second-degree assault. The conviction for reckless endangerment merged for sentencing purposes. This timely appeal followed.

King presents one question for our review, which we rephrase as follows: "Did the circuit court plainly err by failing to propound questions on the presumption of innocence and the burden of proof during *voir dire*?"[1]

Under the facts presented in this case and for the reasons set forth below, we shall exercise our prerogative to grant plain error review.

FACTUAL AND PROCEDURAL BACKGROUND

In light of the question before us, we need not undertake a detailed account of the evidence offered at trial. It suffices for our purposes to state that, at trial, King did not dispute that he and his girlfriend, Cierra Washington, were involved in a physical altercation on April 22, 2024, during which he hit Washington in the face causing her dental implants to fall out. Washington appeared as a witness at trial pursuant to a body attachment and the court granted the State's request to treat her as a hostile witness. When

[1] The question presented in King's opening brief is: "Did the circuit court plainly err by failing to ask the *Kazadi* questions on the presumption of innocence and burden of proof during voire dire?"

questioned about the events that occurred on April 22, 2024, Washington frequently responded that she did not remember or could not recall what happened.

Washington believed that she called the police on the date of the incident. She remembered that the police wanted her to go to the hospital and that she was wearing a wig that was "halfway off." She was taken to the hospital in an ambulance, although she did not want to go. She believed "their main concern" was that she was pregnant. Washington identified photographs of herself from when she "stayed the night at the hospital." Those photographs depicted ostensive injuries to her mouth.

Officers from the Elkton Police Department who responded to the call for service described Washington as "upset," "slightly frantic," "talking quickly," "a little disheveled in appearance," and wearing a shirt that "was ripped off her shoulder." One officer observed, and was advised by Washington, that two of her teeth had been "knocked out" by her boyfriend who had "punched and kicked" her in her face. Another police officer observed holes and smears of blood on the wall in the bedroom where King was found under a blanket wearing a shirt with blood on the back of it. A "wig or hair" was found on the bedroom floor and there was a broken door.

King testified on his own behalf. After returning home from work on the evening of April 22, 2024, he and Washington had an argument about his suspected infidelity. Washington told him to "[j]ust go ahead and get out of my house and leave." When King went to the closet to pack up his belongings, he felt a sudden "hot burning sensation" as if

he had "been stabbed" or "cut." As he lunged, one of his knees went "into the wall of the closet, of the door." Washington was "very irate and screaming and yelling."

King turned and grabbed Washington into a "bear hug" to "calm her down[.]" King testified that he hit Washington to "defend" himself. He denied ever choking or kicking her and stated that he did not know she was pregnant at the time of the incident, although she had told him "that she was late" with her menstrual cycle. Washington fell onto the bed and King "got on top of her." Photographs of injuries to King's body, including scratches, marks, and bruising on his back, stomach, and arms, were admitted in evidence. When King thought that the incident between him and Washington was resolved, he cleaned up, got in bed, and went to sleep. King was awakened when he heard a male voice saying his name repeatedly. Thereafter, he was surrounded by police and arrested.

Voir Dire

Prior to trial, defense counsel submitted proposed *voir dire* questions which included the following question: "As the defendant sits before you, can each of you presume him to be innocent, without doubt, and without reservation?" King did not request any question pertaining to the State's burden of proof. Prior to the judge questioning the potential jurors, the following colloquy occurred:

> THE COURT: I gave what I will call Court's voir dire. And what I often do, actually, normally, I do Court's voir dire and it starts with I use the Defense's as a default. This time, just based on some formatting and certain different things, I wound up using the State as the default, but there was a lot of overlapping questions. I do recognize some of them did, and I did add one specifically that I felt appropriate that didn't overlap, but I will, **if [Defense Counsel] would like to address anything that is – that I didn't add that you think is appropriate. Or anything that, if it is in there, that was one**

of the State's, because I think that was on the State's voir dire that you think was inappropriate, so yes.

[DEFENSE COUNSEL]: **Yes, Your Honor. And I did review the Court's voir dire, and I am fine with it.** I just wanted to add a question with respect to I did note that the Court used one of my questions regarding whether or not the jurors have any strong feelings regarding domestic violence. I think it is necessary, however, to add a question about whether they have had any personal experiences, whether the juror –

THE COURT: But did you have that in there?

[DEFENSE COUNSEL]: I didn't see –

THE COURT: I don't know if that was one of your questions, either. I mean –

[DEFENSE COUNSEL]: It wasn't one of my questions, Your Honor.

THE COURT: Oh, okay.

[DEFENSE COUNSEL]: But as I was thinking about it, I think that the Court, because even though the Court is going to ask about whether a juror has been the victim of a crime, as I was explaining to [the Prosecutor], people perceive crimes to be things that are reported. Somebody might have been the victim of a domestic violence situation but they never reported it, so you might not believe that they are the victim of a crime. So I think that it is really important to add a question as to whether or not the juror or an immediate family member, you know, has never been the victim of domestic violence, or even has ever been accused of.

THE COURT: We can – I don't know, because sometimes, I see [the Prosecutor's] mix of victim, witness, defendant. And sometimes, if I don't use that mixture, then I normally say, anybody been a victim, including domestic violence? So I think that is fair, and I can keep his victim, witness, defendant then just as a separate one, or I can change his victim, witness, defendant, and just enumerate that out into three questions.

[DEFENSE COUNSEL]: Your Honor, I am fine however the Court chooses to –

THE COURT: Yeah.

[DEFENSE COUNSEL]: -- address it. I just think that it is important that it is addressed.

THE COURT: All right. [Mr. Prosecutor], any objection?

[PROSECUTOR]: No, Your Honor.

THE COURT: All right. So I will figure it out. I might just, what I will do is we will take Court's 11 and just turn that into three separate questions. So then, when I have the victim, I will say anyone been the victim of a crime, including domestic violence; is that fair enough?

[DEFENSE COUNSEL]: Yes, Your Honor.

THE COURT: Yeah.

[DEFENSE COUNSEL]: Thank you.

THE COURT: And then I will just have a separate anybody been a witness, anybody been a defendant? **Anything else [defense counsel]?**

[DEFENSE COUNSEL]: **No, Your Honor. Thank you.**

THE COURT: All right. Mr. [Prosecutor], anything?

[PROSECUTOR]: No, Your Honor.

(Emphasis added). The record discloses that the trial court failed to ask the presumption of innocence question requested by defense counsel. The court did not ask counsel at the close of *voir dire* whether they had any objections or additional questions for the venire.

DISCUSSION

Voir Dire

King contends that the circuit court committed plain error in failing to propound *voir dire* questions on the presumption of innocence and the burden of proof as required

by *Kazadi v. State*, 467 Md. 1 (2020).[2] The Sixth Amendment to the Constitution of the United States and Article 21 of the Maryland Declaration of Rights both guarantee a criminal defendant the right to an impartial jury. U.S. Const. amend. VI;[3] Md. Const. Decl. of Rts. Art. 21;[4] *see also Lopez-Villa v. State*, 478 Md. 1, 10 (2022) ("We have held that Article 21 of the Maryland Declaration of Rights 'guarantees a defendant the right to examine prospective jurors to determine whether any cause exists for a juror's disqualification.'") (quoting *Bedford v. State*, 317 Md. 659, 670 (1989)).

Voir dire "'is the mechanism whereby the right to a fair and impartial jury . . . is given substance.'" *State v. Ablonczy*, 474 Md. 149, 157-58 (2021) (quoting *Dingle v. State*, 361 Md. 1, 9 (2000)). It allows courts to propound questions "to determine the existence of bias or prejudice" that would disqualify potential jurors. *Id.* (citation omitted). Maryland employs limited *voir dire*, "the sole purpose" of which "is to ensure a fair and impartial jury by determining the existence of cause for disqualification, and not as in many other states, to include the intelligent exercise of peremptory challenges." *Washington v. State*, 425 Md. 306, 312 (2012) (quoting *Stewart v. State*, 399 Md. 146, 158 (2007),

[2] There is no issue of a *voir dire* question on King's right not to testify because he testified at trial on his own behalf.

[3] The Sixth Amendment provides, in pertinent part, that "[i]n all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed[.]"

[4] Article 21 provides, in part, that "in all criminal prosecutions, every man hath a right to . . . a speedy trial by an impartial jury, without whose unanimous consent he ought not to be found guilty."

abrogated on other grounds by *Mitchell v. State*, 488 Md. 1 (2024)). "On request, a trial court must ask a *voir dire* question if and only if the *voir dire* question is 'reasonably likely to reveal [specific] cause for disqualification[.]'" *Pearson v. State*, 437 Md. 350, 357 (2014) (quoting *Moore v. State*, 412 Md. 635, 663 (2010)).

Generally, the "'extent of the examination [of potential jurors] rests in the sound discretion of the trial court[.]'" *Ablonczy*, 474 Md. at 157 (quoting *Langley v. State*, 281 Md. 337, 341 (1977)). For that reason, we normally review "for abuse of discretion a trial court's decision as to whether to ask a *voir dire* question." *Pearson*, 437 Md. at 356. However, in *Kazadi*, the Supreme Court of Maryland held that, if requested, "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." *Kazadi*, 467 Md. at 9 (emphasis added). Judge Shirley Watts, writing for the majority, explained the reasons underpinning this departure from precedent, including that

> 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 46.

More recently, in *State v. Jordan*, the Supreme Court of Maryland considered whether "the harmless error doctrine applies to the specific error under *Kazadi"* where defendant had requested a *voir dire* question on the right not to testify, and the trial court declined to ask the question. 480 Md. 490, 493-94 (2022). In that case, the defendant did testify at trial. *Id.* at 500. The Court first determined that the "*Kazadi* error" at issue fell under the category of trial error, rather than structural error, because, among other reasons, there was "no claim that the jury was not properly instructed on matters pertaining to [defendant's] fundamental constitutional rights[,]" and "the error committed here can readily be assessed for its impact or influence on the jury verdict." *Id.* at 511-12. Thus, the Court held that the trial court's failure to propound the *Kazadi voir dire* question on the right not to testify was "trial error subject to the harmless error doctrine." *Id.* at 512; *but see id.* at 516-28 (Watts, J., dissenting, joined by Biran, J.) (trial court's "failure to ask a mandatory upon request voir dire question about a constitutional right constituted reversible error, i.e., not harmless error."); *id.* at 528-33 (Biran., J., dissenting, joined by Watts, J.) (explaining why trial court should have asked all three of the *Kazadi* questions, whether or not they were requested by the defendant, and that the court's failure to propound any one of the *Kazadi* questions constituted structural error that mandates reversal and a new trial). As in *Jordan*, we hold that the trial court erred in failing to propound defense counsel's submitted proposed *voir dire* question on the presumption of innocence.

Preservation

In criminal trials, objections to a trial court's ruling, other than to evidentiary rulings, are governed by Maryland Rule 4-323(c), which provides:

> 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.

"To preserve any claim involving a trial court's decision about whether to propound a *voir dire* question, a defendant must object to the court's ruling." *Foster v. State*, 247 Md. App. 642, 647 (2020), *cert. denied*, 475 Md. 687 (2021). Here, during *voir dire*, the court did not ask King's proposed question about the presumption of innocence or any other questions about the presumption of innocence or the State's burden of proof. Defense counsel did not object to the court's failure to ask the proposed question on the presumption of innocence. At the conclusion of jury selection, the trial judge asked defense counsel and the prosecutor if the jury as seated was acceptable and both indicated that it was acceptable.[5] King acknowledges, as he must, that he failed to object to the trial court's failure to read his proposed *voir dire* question on the presumption of innocence and failed

[5] If a claim "involves the court's decision to ask a *voir dire* question over a defense objection, the defendant must renew the objection upon the completion of jury selection." *Foster*, 247 Md. App. at 647-48. The case at hand did not involve the trial court's decision to ask a *voir dire* question over defense objection.

to request any question with respect to the State's burden of proof. In light of those failures of preservation, he asks us to exercise our discretion to grant plain error review.

Plain Error Review

As reflected in Maryland Rule 8-131(a),[6] we have the discretion to review unpreserved errors, but that discretion is rarely exercised because "fairness and judicial efficiency require ordinarily that all challenges to a trial court's ruling should be presented first to the trial court." *Wright v.* State, 247 Md. App. 216, 228 (2020). "Plain error review is 'reserved for those errors that are compelling, extraordinary, exceptional or fundamental to assure the defendant a fair trial.'" *Newton v. State*, 455 Md. 341, 364 (2017) (quoting *Robinson v. State*, 410 Md. 91, 111 (2009)). Plain error review "'1) always has been, 2) still is, and 3) will continue to be a rare, rare phenomenon.'" *Wright*, 247 Md. App. at 228 (quoting *Morris v. State*, 153 Md. App. 480, 507 (2003)). We may exercise our discretion to engage in plain error review only if the following four conditions are satisfied:

> (1) "there must be an error or defect – some sort of 'deviation from a legal rule' – that has not been intentionally relinquished or abandoned, *i.e.*, affirmatively waived, by the appellant"; (2) "the legal error must be clear or obvious, rather than subject to reasonable dispute"; (3) "the error must have affected the appellant's substantial rights, which in the ordinary case means he must demonstrate that it 'affected the outcome of the district court proceedings'"; and (4) the error must "seriously affect[ ] the fairness, integrity or public reputation of judicial proceedings."

[6] Maryland Rule 8-131(a) provides, in part, that "[o]rdinarily, an appellate court will not decide any … issue [other than jurisdiction] unless it plainly appears by the record to have been raised in or decided by the trial court, but the Court may decide such an issue if necessary or desirable to guide the trial court or to avoid the expense and delay of another appeal."

Newton, 455 Md. at 364 (quoting *State v. Rich*, 415 Md. 567, 578 (2010) (quoting in turn *Puckett v. United States*, 556 U.S. 129, 135 (2009))).

"Meeting all four conditions is, and should be, difficult." *Winston v. State*, 235 Md. App. 540, 568 (2018) (citing *Givens v. State*, 449 Md. 433, 469 (2016)). Each of the four conditions "is, in itself, a necessary condition for plain error review[.]" *Winston*, 235 Md. App. at 568. As a result, we "need not proceed sequentially through the four conditions" but may instead "begin with any one of the four" and end our analysis if we conclude that that condition has not been met. *Id.*

Analysis

King argues that notwithstanding defense counsel's failure to object to the trial court's omission of questions about the presumption of innocence and the burden of proof, as required by *Kazadi*, we should exercise plain error review because the failure to ask those questions deprived him of his constitutional right to a fair and impartial trial. Preliminarily, we note that King did not request a *voir dire* question on the State's burden of proof. Under *Kazadi*, the trial court was required to ask a *voir dire* question on the State's burden of proof only upon request. *Kazadi*, 467 Md. at 35-36 ("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 was under no obligation to ask a question on the burden of proof *sua sponte*. *Id.* at 46-47. In light of King's failure to request a question on the State's burden

of proof, the trial court did not err in refusing to ask such a question. Md. Rules 8-131(a) and 4-323(c). For that reason, we shall limit our analysis to the question King did request, which addressed the presumption of innocence.

King maintains that all four of the requirements for plain-error review were satisfied. Our analysis begins with the threshold condition for plain error review, that there is "an error or defect – some sort of [d]eviation from a legal rule – that has not been intentionally relinquished or abandoned, i.e., affirmatively waived by the appellant." *Newton*, 455 Md. at 364. King maintains that defense counsel's statement that she was "fine" with the court's *voir dire* questions under the circumstances presented here should be viewed as a forfeiture of his right to raise the issue on appeal rather than an affirmative waiver. We agree.

Forfeiture "is the failure to make a timely assertion of a right, whereas waiver is the 'intentional relinquishment or abandonment of a known right.'" *Savoy v. State*, 420 Md. 232, 240 (2011) (quoting *Rich*, 415 Md. at 580 (quoting in turn *United States v. Olano*, 507 U.S. 725, 733 (1993))). That distinction is important as "[w]aived objections cannot be reviewed on appeal (save for the rare case in which a reviewing court, as a matter solely of its discretion, forgives the waiver), whereas forfeited objections are reviewable for plain error." *Joyner v. State*, 208 Md. App. 500, 517 (2012). In *Yates v. State*, we examined whether trial counsel's "acquiescence" to a jury instruction constituted waiver or forfeiture. 202 Md. App. 700, 721-22 (2011). In that case, "at the conclusion of the instructions," the

trial judge asked "whether counsel had any objections," to which defense counsel responded, "[n]one." *Id.* at 722. We concluded that this constituted a forfeiture, stating:

> We do not view this as an affirmative waiver of his right to challenge the jury instruction. Rather, his failure to object constituted a forfeiture of his right to raise the issue on appeal, but did not preclude this court from deciding whether to exercise its discretion to engage in plain error review.

Id.

We reached a different conclusion in *Choate v. State*, where we declined to notice plain error because the defendant affirmatively waived his objection by expressing satisfaction with the jury instructions that were given. 214 Md. App. 118, 130 (2013). In that case, Choate agreed that the jury should be instructed as to two specific aggravating factors of first-degree rape, identified as factors (i) and (iii), but objected to instruction on another factor identified as factor (ii). *Id.* at 129. The trial court determined that factor (ii) was appropriate. In holding that the objection was waived, we noted that defense counsel failed to renew his objection to the instruction on factor (ii) after the instruction had been given and replied, "Satisfied, Your Honor," when the judge asked whether the parties were satisfied with the jury instructions. *Id.* at 129-30.

Similarly, in *Booth v. State*, 327 Md. 142 (1992), during a bench conference, the State asked the court for a supplemental instruction on allocution. *Id.* at 178. The court then "specifically asked defense counsel if he had 'any objection to [the instruction],' to which defense counsel replied: 'Actually, no. We would not have any objection to that.'" *Id.* The court then gave that instruction to the jury, without any objection from defense counsel. *Id.* at 178-79. On appeal, the defendant argued that the trial court's allocution

instruction, "coupled with part of the prosecutor's rebuttal argument, unfairly denigrated [the defendant]'s allocution." *Id.* at 177. Maryland's Supreme Court held that the defendant's argument on the allocution instructions "does not require even plain error analysis." *Id.* at 180. The Court explained:

> This is because there is more here than the simple lack of an objection to the instruction as given. Here defense counsel *affirmatively advised the court that there was no objection to the instruction* which the court immediately thereafter gave to the jury. *Error, if any, has been waived.*

Id. (citations omitted) (emphasis added).

We have clarified that a defendant "preserves the issue of omitted *voir dire* questions under [Maryland] Rule 4-323 by telling the trial court that he or she objects to his or her proposed questions not being asked." *State v. Smith*, 218 Md. App. 689, 700-01 (2014). In *Brice v. State*, we held that a party who fails to object to an intentionally omitted *voir dire* question "waives his [or her] right to the requested questions" if the trial court asks for "any further comment or objection to the *voir dire* questions that [have] been asked" and defense counsel responds in the negative. 225 Md. App. 666, 679 (2015). In *Brice*, defense counsel requested "police witness questions in his written proposed *voir dire*[,]" but he waived the defendant's right to the questions by "responding 'No' to the court's request for any further comment or objection to the *voir dire* questions that had been asked." *Id.*

In the instant case, the defense asked the court to include the question, "As the defendant sits before you, can each of you presume him to be innocent, without doubt, and without reservation?" The court provided the parties with its *voir dire* questions, which it

claimed to have compiled using the parties' proposed *voir dire* questions. The record does not reveal why the court's *voir dire* questions did not include the defense's presumption of innocence question. Prior to conducting the *voir dire*, the trial judge asked defense counsel if she "would like to address anything that is – that I didn't add that you think is appropriate" or if there was anything included that she thought "was inappropriate." Defense counsel responded that she reviewed the court's *voir dire* and was "fine with it." The trial judge proceeded to question the potential jurors as a group. At the conclusion of the group questions, the judge did not ask the parties if they had any issues, additions, or corrections to the questions asked.

The court then proceeded to question prospective jurors individually. At the conclusion of the individual questioning, the court took a five-minute recess to provide time for defense counsel to have an off-the-record discussion with appellant. Immediately thereafter, the court advised the potential jurors about the selection process. After the jurors were selected and seated, the court recessed for lunch. After telling the jurors they were "free to go" to lunch, the judge addressed counsel, stating, "Counsel, anything – anything we can – I imagine that we're not going to, hopefully, need to talk about anything before we go on the record. So try to be back here before 2:00."

Unlike in other cases, the trial court did not ask if the parties had any objections to the verbal questions that were asked. *See e.g., Lopez-Villa* , 478 Md. at 7 (at the conclusion of *voir dire,* trial court asked counsel if it missed any questions); *Kumar v. State,* 477 Md. 45, 64-65 (2021) ("When given the opportunity to do so after the group *voir dire* questions

were asked, Kumar excepted to the circuit court's refusal to ask proposed *voir dire* questions."); *Brice*, 225 Md. App. at 679 (2015) (after the court's *voir dire*, court requested further comment or objection to the questions that had been asked). We recognize that neither Rule 4-312 nor Rule 4-323 requires a trial court to ask counsel if there are any objections to the questions asked of the potential jurors, but the record in the instant case shows no apparent pause between the verbal questioning of individual potential jurors and the recess that was taken during which an objection could have been made as to the failure to ask the presumption of innocence question. Rule 4-323(c) requires 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) (emphasis added). This requirement is excused when "a party has no opportunity to object to a ruling or order *at the time it is made*[.]" *Id.* (emphasis added). Accordingly, we do not view the absence of an objection in this specific case as an affirmative waiver of King's right to challenge the court's failure to give the requested question on the presumption of innocence. Rather, his failure to object constituted a forfeiture of his right to raise the issue on appeal. That forfeiture does not preclude us from deciding whether to exercise our discretion to engage in plain error review. In light of the particular facts of this case, we shall exercise our discretion to grant plain error review.

Plain error is error that vitally affects a defendant's right to a fair and impartial trial. *Martin v. State*, 165 Md. App. 189, 195 (2005). Here, all the requirements for plain error review are satisfied. As we have already determined, the failure of the trial court to ask

the presumption of innocence question was not affirmatively waived. Moreover, contrary to the State's argument, the fact that King agreed that the composition of the jury as seated was acceptable did not constitute a waiver of the trial court's failure to ask the requested *voir dire* question on the presumption of innocence. *See Ablonczy*, 474 Md. at 166 ("we hold that the objection to the denial of the request to ask the *voir dire* question was not waived by the later unqualified acceptance of the jury as empaneled.").

In addition, the legal error is clear and obvious. King requested a *voir dire* question on the presumption of innocence and the trial court did not ask that question or any version of it. The State maintains, prior to deliberations, the trial judge instructed the jury that King was "presumed to be innocent of the charges[,]" that this "presumption remains throughout every state of trial[,]" and that the presumption was "not overcome unless you are convinced beyond a reasonable doubt that the Defendant is guilty." The State argues that considering the court's *voir dire* question, "Are you unable or unwilling to follow the Court's instructions on the law," in conjunction with the instructions to the jury, the error was not clear and obvious. We are not convinced.

The court's jury instructions were not sufficient substitutes for an inquiry into whether any prospective juror had a bias that would arise if a juror was unable or unwilling to follow the court's instructions on the presumption of innocence. In *Kazadi*, the Supreme Court referred to the presumption of innocence, the burden of proof, and the right not to testify as "fundamental principles" and "long-standing fundamental rights" that "are critical to a fair jury trial in a criminal case[.]" *Kazadi*, 467 Md. at 45-46. The Court

acknowledged that giving questions on such "long-standing fundamental rights" "undoubtedly helps to safeguard a defendant's right to be tried by a fair and impartial jury." *Id.* at 41. Inquiries designed to explore a juror's ability and willingness to follow instructions on those fundamental rights must be asked upon request because they "are reasonably likely to reveal a cause for disqualification involving matters that are liable to have undue influence over a prospective juror." *Id.* at 45. The Court wrote 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." *Id.* Further, "it is difficult to conceive of circumstances that could be more prejudicial to a defendant's right to a fair trial." *Id.*

For similar reasons, we conclude that the error in this case affected King's substantial rights. In *Kazadi*, the Supreme Court recognized that only *voir dire* questions can reveal "a juror's inability to understand, or unwillingness to follow" a trial court's instructions. *Id.* at 38-39. The problem of seating a juror who will not abide by the trial court's instruction on the fundamental principle of the presumption of innocence cannot be cured by jury instructions. *Id.*

Lastly, the failure to ask the requested *voir dire* question constituted an error that seriously affected "the fairness, integrity [and] public reputation of judicial proceedings." *Newton*, 455 Md. at 364. As the Court explained in *Kazadi*:

> From our perspective, the problem is that, although jury instructions may inform a juror of a defendant's fundamental rights, jury instructions cannot

> cure a juror's inability to understand, or unwillingness to follow the instructions. . . . Simply put, if a trial court seats a prospective juror who is unwilling or unable to follow jury instructions on the presumption of innocence and the burden of proof, jury instructions, which are given at the end of trial will be too little, and too late to uncover the basis for disqualification.

Kazadi, 467 Md. at 38-39.

In conclusion, because the Supreme Court has repeatedly declared that a defendant's substantial rights are affected when a trial court fails to ask a *voir dire* question when requested on the "fundamental principle" of the presumption of innocence, our analysis turns largely on the first prong of plain error review; namely, whether there was "an error or defect – some sort of 'deviation from a legal rule' – that has not been intentionally relinquished or abandoned, *i.e.*, affirmatively waived, by the appellant[.]" *Newton*, 455 Md. at 364 (quoting *Rich*, 415 Md. at 578).[7] Here, it appears that the trial court's failure to ask King's requested *voir dire* question on the presumption of innocence

[7] With regard to the State's argument that King has not shown that the error affected the outcome of the proceeding, we also point to the following passage from *Kazadi*:

> 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, 467 Md. at 45 (emphasis added).

was inadvertent, just as defense counsel's failure to notice that the requested question was not included in the court's proposed questions appears to have been inadvertent. We cannot, however, permit this inadvertence to adversely prejudice the defendant's right to a fair trial. *See Kazadi,* 467 Md. at 45 ("[I]t is difficult to conceive of circumstances that could be more prejudicial to a defendant's right to a fair trial."). Unlike most of the cases that have addressed the preservation of a *Kazadi* issue, there was no refusal by the court in this case to ask the requested question. *See Jordan*, 480 Md. at 495 (court declined to ask requested *voir dire* question on the right to remain silent and not testify); *Lopez-Villa,* 478 Md. at 6-7 (court refused to ask requested *voir dire* question on the presumption of innocence and State's burden of proof); *Kumar*, 477 Md. at 48-50 (court declined to ask proposed questions regarding the presumption of innocence, the State's burden of proof, and the defendant's right not to testify); *Ablonczy*, 474 Md. at 152 (trial court declined to pose *voir dire* questions on the presumption of innocence, burden of proof, and the right to remain silent); *Foster*, 247 Md. App. at 647 (court declined to ask defense question on defendant's right to remain silent and not testify); and, *Hayes v. State*, 247 Md. App. 252, 273 (2020) (court denied defense counsel's questions on the burden of proof and the presumption of innocence). Had the trial court refused to ask the question on the presumption of innocence before defense counsel stated that she was "fine with" the proposed *voir dire*, then we would likely conclude counsel knowingly waived the issue.

The problem was compounded by the fact that at the conclusion of *voir dire,* the trial court did not ask counsel if there were any objections or missed questions. Under the

facts presented in this case, we cannot say that defense counsel affirmatively waived any objection to the court's failure to ask the *voir dire* question on the presumption of innocence. Accordingly, we shall exercise our discretion to grant plain error review, vacate the judgments of the circuit court, and remand for a new trial.

JUDGMENTS OF THE CIRCUIT COURT FOR CECIL COUNTY VACATED; CASE REMANDED TO THAT COURT FOR A NEW TRIAL; COSTS TO BE PAID BY APPELLEE.