UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 1858

September Term, 2015

TREMAYNE LEWIS

v.

STATE OF MARYLAND

Meredith,
Leahy,
Beachley,

JJ.

Opinion by Beachley, J.

Filed: January 5, 2017

*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.

After a five-day trial in the Circuit Court for Baltimore City, a jury convicted Tremayne Lewis, appellant, of murder in the first degree, assault in the first degree, and related handgun offenses. Appellant was sentenced to a term of life-plus-thirty years' imprisonment. Appellant presents two questions on appeal:

1. Did the lower court err in failing to dismiss the charges against Mr. Lewis after his trial was delayed for over sixteen months?

2. Did the lower court err in failing to excuse for cause a juror, who had a total visual impairment, from serving in a case which featured a significant amount of visual evidence?

We hold that the trial court did not violate appellant's speedy trial rights, and that appellant waived any objection to the visually impaired juror.

Factual Background

At approximately 3:32 p.m. on July 22, 2013, Baltimore City police received a call of a shooting in the 2500 block of East Preston Street, near the intersection with Milton Avenue. Upon their arrival, police found a victim, later identified as Clarence Gray, with a "massive head wound," lying on the sidewalk. A second victim, Wayne Patterson, was found sitting on Milton Avenue with a gunshot wound to his arm. Gray died as a result of multiple gunshot wounds, but Patterson survived.

On March 5, 2014, appellant was indicted in the Circuit Court for Baltimore City for first degree murder of Gray, attempted first degree murder of Patterson, and other related charges. On July 27, 2015, having still not been brought to trial, appellant moved to dismiss on speedy trial grounds. The trial court denied appellant's motion, and jury selection began the next day. During jury selection, both parties moved to strike for cause

a prospective juror who was totally visually impaired. The trial court declined to strike the juror for cause. Neither party used a peremptory challenge to strike the juror and he was therefore seated on the jury.

Appellant was ultimately convicted of murder in the first degree and other related offenses. Given the issues raised in this appeal, a recitation of facts about the evidence presented at trial is unnecessary. Instead, we shall include additional facts as necessary to provide context to the issues raised on appeal.

DISCUSSION

I.

Appellant argues that the trial court erred in denying his motion to dismiss on speedy trial grounds. The State concedes that the nearly sixteen month delay was of constitutional dimension, but asserts that the lower court properly denied the motion to dismiss. We agree with the State.

The Sixth Amendment to the United States Constitution and Article 21 of the Maryland Declaration of Rights guarantee a criminal defendant the right to a speedy trial. *State v. Kanneh*, 403 Md. 678, 687 (2008). In assessing whether one has been denied this constitutional right, we make our own independent examination of the record to determine whether the right has been denied. *Glover v. State*, 368 Md. 211, 220 (2002); *accord Howard v. State*, 440 Md. 427, 446-47 (2014). "We perform a *de novo* constitutional appraisal in light of the particular facts of the case at hand; in so doing, we accept a lower court's findings of fact unless clearly erroneous." *Glover*, 368 Md. at 221. Further, this inquiry examines the specific facts of each case, and so "the review of a speedy trial motion

should be 'practical, not illusionary, realistic, not theoretical, and tightly prescribed, not reaching beyond the peculiar facts of the particular case.'" *Brown v. State*, 153 Md. App. 544, 556 (2003) (quoting *State v. Bailey*, 319 Md. 392, 415 (1990)).

Claims that the Sixth Amendment guarantee has been violated are assessed under the four factor balancing test announced by the Supreme Court in *Barker v. Wingo*, 407 U.S. 514, 530 (1972). *See Kanneh*, 403 Md. at 687 (2008); *Peters v. State*, 224 Md. App. 306, 359, *cert. denied*, 445 Md. 127 (2015). The *Barker* factors are: 1) the length of the delay; 2) the reason for the delay; 3) the defendant's assertion of his speedy trial right; and 4) any prejudice to the defendant. *Kanneh*, 403 Md. at 688 (citing *Barker*, 407 U.S. at 530). The *Barker* Court "rejected a bright-line rule to determine whether a defendant's right to a speedy trial had been violated, and instead adopted 'a balancing test, in which the conduct of both the prosecution and the defendant are weighed.'" *Id.* at 637-38 (quoting *Barker*, 407 U.S. at 530). "None of these factors are 'either a necessary or sufficient condition to the finding of a deprivation of the right of speedy trial. Rather, they are related factors and must be considered together with such other circumstances as may be relevant.'" *Id.* at 688 (quoting *Bailey*, 319 Md. at 413-14, in turn quoting *Barker*, 407 U.S. at 533). A court must examine the "circumstances peculiar to each particular case" with "no one factor being dispositive." *Bailey*, 319 Md. at 414-15.

The law is clear that, as a threshold matter, a reviewing court does not examine the *Barker* factors unless the delay is of "constitutional dimensions." *Ratchford v. State*, 141 Md. App. 354, 358-59 (2001). To do this, we look to the length of the delay and ask whether it "crosses the line from ordinary delay to presumptively prejudicial delay." *White*

v. State, 223 Md. App. 353, 377 (2015). If the delay does not cross this threshold, the inquiry ends. *Ratchford*, 141 Md. App. at 359. As noted previously, the State concedes that the sixteen month delay in this case is of constitutional significance. We therefore proceed to examine the four *Barker* factors.

A. Length of Delay

Length of delay not only acts as a threshold for the *Barker* analysis, but also as its first factor. These functions are separate and distinct from one another. *Ratchford*, 141 Md. App. at 358. The threshold function is purely procedural; "[i]t simply marks the minimal point, short of which a court will dismiss a claim summarily and will not waste its time even inquiring into such things as reason for delay, demand-waiver, or prejudice." *Id.* Once this procedural trigger activates the *Barker* analysis, it "drops out of the picture," and does not factor into the merits of the claim. *Id.* Hence, the concept of "constitutional dimensions" is not relevant to a *Barker* factor analysis. *Id.* at 359.

When we analyze length of delay as a factor in the *Barker* analysis, however, "we view 'length of delay' in a different light." *Id.* 359. Length of delay factors into the merit of the claim, though "of the four factors we weigh in determining whether [a defendant's] right to a speedy trial has been violated . . . length of a delay is the least determinative." *Kanneh*, 403 Md. at 689-90. *See also Erbe v. State*, 276 Md. 541, 547 (1976). It is "heavily influenced by the other three factors, particularly that of 'reasons for the delay,'" and it "may gain weight or it may lose weight because of circumstances that have nothing to do with the mere ticking of the clock." *Ratchford*, 141 Md. App. at 359. In short, the length of the delay becomes significant when considered within the context of the other factors

and the unique circumstances of a particular case. *Compare Brady v. State*, 291 Md. 261, 269-70 (1981) (holding that delay of fourteen months constituted a violation of defendant's right to speedy trial), *with Kanneh*, 403 Md. at 694 (holding that delay of nearly three years did not violate defendant's right to speedy trial).

In this case, appellant was initially charged with first degree murder on February 7, 2014 in the District Court. Because jurisdiction for first degree murder resides in the circuit court, we do not consider February 7, 2014 to be the starting point for the speedy trial clock. *See State v. Gee*, 298 Md. 565, 574 (1984) (observing that issuance of a charge "does not mark the onset of formal prosecutorial proceedings to which the Sixth Amendment guarantee is applicable."); *see also* Md. Code (1974, 2013 Repl. Vol.) § 4-302(a) of the Courts and Judicial Proceedings Article (providing that "the District Court does not have jurisdiction to try a criminal case charging the commission of a felony"). Therefore, the speedy trial clock starts on the day of indictment – March 5, 2014. Because appellant's trial began on July 28, 2015, the length of the delay in this case for speedy trial purposes is sixteen months and twenty-three days.

The delay of more than sixteen months in this case, while sufficient to mandate constitutional scrutiny, is not "so overwhelming . . . as to potentially override the other factors." *Glover*, 368 Md. at 224-25. This case involves two gunshot victims, one of whom died as a result of his injuries. The Supreme Court recognized that the length of delay that can be tolerated is dependent, to some extent, on the crime for which the defendant has been charged. *Barker*, 407 U.S. at 530-531 (explaining that "the delay that can be tolerated for an ordinary street crime is considerably less than for a serious, complex conspiracy

charge”). It is significant in our analysis that this case was a murder trial. As the Court of Appeals has observed:

> While the nature of the charges do not validate automatically a specified duration of delay in trial, *see Bailey*, 319 Md. at 411, 572 A.2d at 553 (finding that drug possession and distribution charges, in and of themselves, do not justify a two-year delay), courts must be cognizant of both the degree of complexity associated with a particular charge and the potential impact an adverse verdict would have on the accused. In a murder case, for example, society has an interest in an expeditious trial, *see id.* at 395-96, 572 A.2d at 545 (discussing generally the societal interest in providing a speedy trial), but society also has an interest in ensuring that sentences of life imprisonment or death are rendered upon the most exact verdicts possible.

Glover, 368 Md. at 224. Given the nature and seriousness of the charges, the sixteen month delay in this case weighs minimally against the State.

B. Reasons for the Delay

All reasons for delay are not considered the same. Some carry greater weight than others:

> Closely related to length of delay is the reason the government assigns to justify the delay. Here, too, different weights should be assigned to different reasons. A deliberate attempt to delay the trial in order to hamper the defense should be weighted heavily against the government. A more neutral reason such as negligence or overcrowded courts should be weighed less heavily but nevertheless should be considered since the ultimate responsibility for such circumstances must rest with the government rather than the defendant.

Barker v. Wingo, 407 U.S. at 531 (footnote omitted); *see also Doggett v. United States*, 505 U.S. 647, 652 (1992) (according “considerable deference” to trial court’s findings regarding reasons for delay). We now examine the reason for each delay in appellant’s case.

March 5, 2014 to June 6, 2014

Appellant was indicted on March 5, 2014 and trial was set for June 6, 2014. This initial delay of three months is ordinarily considered as necessary pre-trial preparation and is accorded neutral weight in the overall *Barker* analysis. *See Howell v. State*, 87 Md. App. 57, 82, *cert. denied*, 324 Md. 324 (1991) ("[t]he span of time from charging to the first scheduled trial date is necessary for the orderly administration of justice, and is accorded neutral status"); *accord Henry v. State*, 204 Md. App. 509, 551 (2012).

June 6, 2014 to August 8, 2014

A week before the June 6, 2014 trial, the State moved to postpone the trial because a witness, the medical examiner, was out of the country adopting a child. The *Barker* Court recognized that "a valid reason, such as a missing witness, should serve to justify appropriate delay." *Barker*, 407 U.S. at 531; *accord Howard*, 440 Md. at 448. The medical examiner in a murder trial is undoubtedly a necessary witness. The circuit court found good cause and postponed the trial to August 8, 2014. While this two-month delay is attributable to the State, we weigh it less heavily than a deliberate attempt to delay the trial. *See Dalton v. State*, 87 Md. App. 673, 687-88 (1991).

August 8, 2014 to November 5, 2014

The August 8, 2014 trial was postponed primarily because the State provided additional discovery four days before trial and the defense needed additional time to review this material. The record reveals that this additional discovery, provided on August 4, 2014, included recordings of jail and 911 calls as well as a firearms report, and a "CAD

Report."[1] The postponement request further noted that one of the State's witnesses, unidentified in the record, was also represented by the Office of the Public Defender and needed independent legal representation to avoid a possible conflict of interest. The circuit court found good cause and postponed the trial to November 5, 2014. Appellant maintains that this delay should not be charged, in any part, to him because it was the State's belated disclosure that required counsel to request additional time to prepare.

Ordinarily, a mutual request for a postponement is accorded neutral status. *See Marks v. State,* 84 Md. App. 269, 283 (1990) (request for joint continuance is neutral and not chargeable to either party); *accord Henry*, 204 Md. App. at 552. Further, the provision of additional discovery can be a good reason to postpone trial. *See State v. Toney*, 315 Md. 122, 133 (1989) (discovery of new evidence constitutes good cause for postponement), citing *Morgan v. State*, 299 Md. 480, 485 (1984). A postponement due to a conflict of interest may also be neutral in the *Barker* analysis. *See Ratchford,* 141 Md. App. at 362 (upholding denial of motion to dismiss where one of the many reasons for delay was that appellant's attorney withdrew due to a conflict of interest).

The motions court attributed the delay from August 8 to November 5, 2014 to the State, but ruled that it would not weigh heavily in the analysis. We concur with this conclusion. Requiring a witness to have separate representation is a valid reason to postpone a trial. *See, e.g., Duvall v. State*, 399 Md. 210, 221 (2007) (observing that the

[1] Additional discovery was provided by the State on August 14, 2014, including notes from the detectives, Patterson's medical history, and the arrest histories for the State's witnesses.

"constitutional right to counsel, under the Sixth Amendment and Article 21 of the Maryland Declaration of Rights, includes the right to have counsel's representation free from conflicts of interest") (citations omitted). And, while we have been unable to find any proffered reason why relevant items like recordings of 911 calls and the firearms report were provided to appellant just four days before the scheduled trial date, the trial court granted appellant's request for additional time to review those materials. The nearly three month delay between August 8, 2014 and November 5, 2014, the next assigned trial date, weighs slightly against the State in our analysis.

November 5, 2014 to February 5, 2015

The trial was postponed again on November 5, 2014 at the request of both parties. Appellant's counsel had requested additional discovery from the State and, at the November 5, 2014 hearing, told the presiding judge, "I advised [appellant] I can't object [to a postponement] because technically I'm not ready for trial. So it is a mutual request[.]" There was also some discussion at that hearing about other cases pending against appellant and the potential for a plea agreement; however, appellant's counsel made it clear that appellant would not accept a plea agreement. The circuit court postponed the case to February 5, 2015, finding that "this is a mutual request for postponement." In our *de novo* constitutional appraisal, we do not weigh this three month delay against either party. *Marks*, 84 Md. App. at 283.

February 5, 2015 to April 28, 2015

The February 5, 2015 trial date was postponed at the request of the State because the prosecutor was unavailable for medical reasons. The circuit court found good cause

and postponed the trial to April 28, 2015. This two month and twenty-three day delay is chargeable solely to the State, but we do not weigh it heavily. *See Ferrell v. State*, 67 Md. App. 459, 464 (1986) (the State is less culpable when the delay is due to the illness of a prosecutor). *Cf. Barker v. Wingo*, 407 U.S. at 534 (seven month delay due to illness of ex-sheriff provides "strong excuse" for delay).

April 28, 2015 to July 6, 2015

The April 28, 2015, trial was postponed once again at the request of the State, this time because the prosecutor was scheduled to be in another trial. The circuit court found good cause and postponed the trial to July 6, 2015. This two month and eight day delay is charged to the State, but, considering that prosecutors are not fungible, it does not weigh heavily in the overall analysis. *See Wilson v. State*, 281 Md. 640, 654 (1978) (concluding that delays caused by crowded court dockets and understaffed prosecutors are chargeable to the State, but are weighed less heavily than intentional delay); *Henry*, 204 Md. App. at 551 (observing that the unavailability of the prosecutor is chargeable to the State, but is weighed less heavily than an intentional delay).

July 6, 2015 to July 28, 2015

On July 6, 2015, the State once again requested a postponement because the medical examiner was out of the country adopting a second child. In addition, appellant's assigned public defender was unavailable due to a medical issue. The circuit court did not grant this postponement. Instead, the case was continued to the following day to determine when appellant's counsel would be healthy enough to try the case. While there is no transcript of this proceeding in the record, it is clear that the court rescheduled the trial for July 28,

2015. We conclude that this twenty-two day delay is chargeable to both parties and therefore neutral in our overall analysis. *See Ratchford*, 141 Md. App. at 362 (defendant cannot complain about a postponement which he/she requested).

C. Assertion of the Right

The third *Barker* factor examines the "defendant's responsibility to assert his right." *Barker*, 407 U.S. at 531. This factor is "closely related" to the other three, and "failure to assert the right will make it difficult for a defendant to prove that he was denied a speedy trial." *Id*. at 531-32. The State concedes that appellant repeatedly asserted his right to a speedy trial. In our balancing analysis, we note that appellant timely asserted his right to a speedy trial.

D. Prejudice

The final and perhaps most important factor in the *Barker* analysis is whether appellant suffered prejudice as a result of the delay. *Peters v. State,* 224 Md. App. 306, 364 (2015). As to the prejudice factor, the Court of Appeals has stated,

> Prejudice, in respect to the right to a speedy trial, has been defined to include not merely an "impairment of defense" but also "any threat to what has been termed an accused's significant stakes, psychological, physical and financial, in the prompt termination of a proceeding which may ultimately deprive him of life, liberty or property."

In re Thomas J., 372 Md. 50, 77 (2002) (quoting *U.S. v. Dreyer*, 533 F.2d 112, 115 (3rd Cir. 1976)). Moreover, any prejudice must be evaluated in light of the three primary interests the right to a speedy trial was designed to protect: "(i) to prevent oppressive pretrial incarceration; (ii) to minimize anxiety and concern of the accused; and (iii) to limit the possibility that the defense will be impaired." *Id.* (quoting *Barker,* 407 U.S. at 532).

Citing *Moore v. Arizona*, 414 U.S. 25, 26 (1973), the Court of Appeals has made clear that "*Barker* expressly rejected the notion that an affirmative demonstration of prejudice was necessary to prove a denial of the constitutional right to a speedy trial." *State v. Bailey*, 319 Md. 392, 415 (1990).

As to the first interest noted above, there is no suggestion that the delay in this case resulted in oppressive incarceration. As to the second interest, appellant's counsel claimed at the motions hearing that the case was "weighing very heavily" on appellant. However, no evidence was presented to substantiate that assertion. Moreover, appellant fails to point to any specific instance of anxiety or concern. Although an affirmative demonstration of prejudice is not required to prove the denial of an individual's speedy trial rights, the Court of Appeals has expressed "a preference for particularity when claiming anxiety and concern." *In re Thomas J.*, 372 Md. 50, 78 (2002) (citing *Bailey*, 319 Md. at 417). Appellant's lack of specificity in this regard diminishes his claim of prejudice. Indeed, the Court of Appeals has observed that "[a]ctual prejudice requires more than an assertion that the accused has been living in a state of constant anxiety due to pre-trial delay. Some indicia, more than a naked assertion, is needed to support the dismissal of an indictment for prejudice." *Glover*, 368 Md. at 230.

As to the third interest described in *Barker* – limiting the possibility that the defense will be impaired – appellant merely asserted to the motions judge that "[m]emories fade as time goes on." However, appellant provided no evidence that the delay impaired the memory of any State or defense witness.

We are unable to conclude that appellant suffered any actual prejudice by the mere possibility that witnesses' memories might fade with time. As the *Glover* Court noted:

> Passage of time, whether before or after arrest, may impair memories, cause evidence to be lost, deprive the defendant of witnesses, and otherwise interfere with his ability to defend himself. But *this possibility of prejudice at trial is not itself sufficient reason to wrench the Sixth Amendment from its proper context*. Possible prejudice is inherent in any delay, however short; it may also weaken the Government's case.

Glover, 368 Md. at 231 (quoting *United States v. Marion*, 404 U.S. 307, 321-22 (1971) (emphasis in *Glover*). We hold that there was no prejudice to appellant's defense.

E. Balancing

In balancing the four *Barker* factors, we conclude that appellant's right to a speedy trial was not violated. As reflected above, the delay of approximately sixteen months is sufficient to trigger the full *Barker* analysis. However, the length of the delay, balanced with the three other *Barker* factors, does not equate to a speedy trial violation. The reasons for the delay do not weigh heavily against the State, particularly where there is no evidence that the State intentionally delayed the trial or acted in bad faith. Moreover, we find no prejudice to appellant's defense as a result of the delay. Accordingly, the circuit court correctly denied appellant's motion to dismiss.

II.

Appellant next asserts that the trial court erred in not striking for cause a visually impaired juror. When the jury venire arrived in the courtroom, the court noted that Juror Number 2691 was visually impaired. Thereafter, this juror did not answer any of the

questions during *voir dire*, including a question that asked whether anyone had "a disability that you think might prevent you from serving fairly."

At the end of *voir dire*, and immediately before beginning jury selection, the State inquired whether the court could provide accommodations for the visually impaired juror to aid him in interpreting evidence. After the court indicated that it was unaware of any such capability, the State moved to strike Juror Number 2691 for cause. Appellant offered no objection. After further questioning the juror, the court denied the motion, noting that the juror had a right to serve and that the parties had the ability to use a peremptory challenge to strike him if they so desired.

The parties then began selecting a jury. Coincidentally, the first juror to be considered was Juror Number 2691. Both the State and appellant indicated that Juror Number 2691 was acceptable. Thereafter, the State exercised five peremptory challenges, and appellant exercised seventeen peremptory challenges.[2] Alternates were then selected, with the State exercising one challenge and appellant exercising two.

At the end of jury selection on the first day of trial, the court commented to the parties that it would "do some research" to determine whether Juror Number 2691 (now

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[2] During jury selection, the State raised a challenge under *Batson v. Kentucky*, 476 U.S. 79 (1986), to the appellant's use of peremptory challenges. The court ruled that there had been a violation in appellant striking two jurors and ordered that one of them be seated as a juror. At this point, despite the fact that appellant had already used 17 of his allotted 20 strikes, the court observed that appellant had 4 strikes remaining. The record is unclear if this was simply a mathematical error or if the court intended to return an available strike based on the reseating of one of appellant's previously challenged jurors. In either event, neither party disputes that appellant did not use all of his allotted peremptory challenges in this case.

known as Juror Number One) should be excused for cause, and asked the parties to do the same. The next morning, appellant and the State jointly moved to strike the visually impaired juror for cause. Both parties were concerned, based on the juror's response to questioning the previous day, that he would be relying upon the perceptions of other jurors to interpret any visual evidence. When the court asked the parties why neither of them had used a peremptory challenge to strike the juror, the State responded that it was concerned that doing so would have given "a bad impression to the jurors that were in the room." Appellant concurred with this assessment. The court ruled that it would hold the matter *sub curia*, noting its concern with balancing the juror's right to serve with appellant's right to a fair trial. The court also urged the parties to investigate the case law in order to help it reach the correct conclusion.

Trial then commenced with opening statements and the presentation of evidence. At the conclusion of all the evidence, the following colloquy ensued:

> [THE COURT]: Anything else?
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> [PROSECUTOR]: I do not believe at this point, Your Honor.
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> [THE COURT]: The defense?
>
> [DEFENSE COUNSEL]: No, Your Honor.
>
> [THE COURT]: Do you wish to address juror number one?
>
> [PROSECUTOR]: The State at this point does not have a problem with juror number one staying . . . .
>
> [THE COURT]: Defense.
>
> [DEFENSE COUNSEL]: No, Your Honor.

[THE COURT]: All right, well in that case juror number one will stay.

The court denied the joint motion to strike the visually impaired juror for cause. In doing so, the court observed that "[a]t this point there is no request to strike the juror," and that "both attorneys seem to accept the juror based on the juror's conduct here." Appellant made no objection to the court's comments.

Appellant contends that the trial court erred by failing to strike the visually impaired juror for cause because he was unable to "fully view, perceive, and evaluate" the "significant amount of visual evidence presented at trial." The State responds that appellant waived this issue by not exercising all of his peremptory challenges and by failing to renew his objection at the end of the trial. The State also argues that the court properly exercised its discretion in not excluding the juror under the circumstances of this case. We agree with the State that appellant waived this issue.

Maryland courts have consistently denied claims alleging trial court error in failing to strike a prospective juror for cause where the defendant has not exercised all of his allotted peremptory challenges. For example, in *White v. State*, 300 Md. 719, 726 (1984), the defendant appealed the trial court's denial of his motion to strike a prospective juror for cause. The defendant asserted that good cause to strike existed because the juror in question indicated during *voir dire* that he would find a police officer more persuasive than someone accused of a crime. *Id.* at 727. The Court of Appeals held that, assuming *arguendo* the trial court erred in not striking the juror, any error was waived because "the accused ha[d] not exercised all allowable peremptory challenges." *Id.* at 728.

Similarly, in *Ware v. State*, 360 Md. 650, 664 (2000), the defendant appealed the trial court's failure to excuse a number of prospective jurors for cause. The Court of Appeals again held that it "need not decide whether the trial judge erred in declining to excuse prospective jurors . . . because, even if there was error, it was harmless beyond a reasonable doubt." *Id.* at 665. Citing *White*, *supra*, the Court noted that, "Appellant did not exhaust his peremptory challenges." *Id.* And in *Morris v. State*, 153 Md. App. 480, 496 (2003), Judge Moylan for our Court succinctly stated the governing principle: "The contention challenging [the trial judge's] failure to strike four prospective jurors for cause cannot be sustained by Morris because of the demonstrable absence of prejudice as to him. Morris had twenty peremptory challenges, Maryland Rule 4-313, but only used eleven of them."

In the instant case, appellant concedes that he did not exhaust his full allotment of peremptory challenges. He argues, however, that he did not waive the issue because using a peremptory challenge on the visually impaired juror would have made a bad impression on the other jurors in the room. This argument lacks merit. Maryland Rule 4-313(b)(3) provides:

> **(b) Exercise of challenges.**
>
> (3) Remaining challenges. After the required number of qualified jurors has been called, a party may exercise any remaining peremptory challenges to which the party is entitled at any time before the jury is sworn, except that no challenge to the first 12 qualified jurors shall be permitted after the first alternate juror is called.

Therefore, after the first twelve jurors were qualified, appellant could have requested a bench conference to strike Juror Number One and asked the trial court not to disclose to

the other jurors which party exercised the peremptory challenge. This tactic would have alleviated any fear of a "bad impression" being attributed solely to the appellant.

Appellant's argument related to the court's failure to strike the visually impaired juror is waived for a second independent reason. The Court of Appeals has held that "where a party has previously made an objection with regard to a prospective juror or prospective jurors, and thereafter, at the conclusion of the jury selection process, unequivocally states that the jury as selected is acceptable, such party has withdrawn or abandoned his prior objection." *Foster v. State*, 304 Md. 439, 450-51 (1985). *See also White*, 300 Md. at 731 (holding that any error in denying a challenge for cause was waived in part because defense counsel "pronounced as acceptable the jury as then constituted.")

Here, appellant and the State initially made a joint motion to strike the visually impaired juror for cause. The trial court did not immediately rule on the motion, but held it *sub curia*. At the close of all evidence, the issue was raised again. When the trial court asked "Do you wish to address juror number one?" the State indicated that it did not "have a problem with juror number one staying." Appellant's response to the court's question was simply, "No, Your Honor." The trial court then denied the motion to strike for cause, noting that "[a]t this point there is no request to strike the juror" and that "both attorneys seem to accept this juror based on the juror's conduct here." By failing to object or even argue the motion to strike, appellant waived any potential objection to the juror.

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