

Circuit Court for Anne Arundel County
Case No. C-02-CR-24-000412

UNREPORTED*

IN THE APPELLATE COURT

OF MARYLAND

No. 789

September Term, 2024

ANTONIO WESTMORELAND

v.

STATE OF MARYLAND

Reed,
Zic,
Harrell, Glenn T., Jr.
(Senior Judge, Specially Assigned),

JJ.

Opinion by Zic, J.

Filed: December 23, 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 Maryland Rule 1-104(a)(2)(B).

This case arises from criminal proceedings in the Circuit Court for Anne Arundel County. Following a jury trial, Antonio Westmoreland, appellant, was convicted of violating a protective order. On appeal, Mr. Westmoreland presents one question, which we have recast and rephrased as follows:¹ Whether the circuit court abused its discretion or denied or impaired Mr. Westmoreland's right to an impartial jury by rejecting his request to strike a juror. For the following reasons, we affirm.

BACKGROUND²

In November 2023, the State, appellee, charged Mr. Westmoreland with violation of a protective order, harassment, and telephone misuse. During *voir dire*, the circuit court asked all prospective jurors questions related to their potential connections with law enforcement and the State's Attorney's Office:

Has any member of the prospective jury panel or your family members, relatives, or a close personal friend ever been employed by the Department of General Services, the Anne Arundel County Police Department, the Annapolis City Police Department, the Maryland State Police, the FBI, the State's Attorney's Office or any other police department, law enforcement agency or correctional agency?

* * *

¹ Mr. Westmoreland phrased the question as follows:

1. Did the circuit court abuse its discretion by denying [Mr. Westmoreland's] motion to strike juror #7 after she belatedly disclosed, after the close of the State's case-in-chief, that she knew a person associated with the State's Attorney's Office?

² The facts underlying the charges culminating in Mr. Westmoreland's conviction are not essential for us to recount to consider the merits of the instant appeal. As such, we begin with the events directly preceding Mr. Westmoreland's trial.

Has any member of the prospective jury panel or any member of your immediate family or a close personal friend ever been employed as an attorney or in the legal field?

Several prospective jurors answered affirmatively. Juror 7 did not answer affirmatively and was selected to sit among the final 12 jurors.³ Mr. Westmoreland's counsel ultimately exercised three out of four peremptory strikes by the end of jury selection.

At trial, the State's sole witness was accompanied by Ms. H, a victim witness advocate with the State's Attorney's Office. Following the State's case-in-chief, the State disclosed to the court that Juror 7 appeared to recognize Ms. H, with whom she had been a "very good friend[.]" The court then confirmed Juror 7's negative response to the *voir dire* question concerning personal connections to the State's Attorney's Office. Mr. Westmoreland's counsel requested that Juror 7 be excused. At the State's request, the court conducted the following colloquy:

THE COURT: All right, I am going to -- I am going to see what [Juror 7] says. Can you all approach.

(Whereupon, at 3:11, Juror Number 7 returned to the courtroom.)

THE COURT: You can come in.

* * *

THE COURT: Come over here.

[JUROR 7]: I'm like, where, where do you want me?

THE COURT: Thank you.

[STATE]: You are okay.

³ Juror 7 was "Juror 21" during jury selection. For the sake of clarity, we refer to this individual only as Juror 7 throughout this opinion.

[JUROR 7]: What'd I do?

THE COURT: No, nothing. But it is our understanding that you know one of the people who is present in the courtroom?

[JUROR 7]: Um-hum.

THE COURT: Okay.

[JUROR 7]: Just now.

THE COURT: Tell me about how you know who it is -- who is it that you know, and how do you know them?

[JUROR 7]: [Ms.] H[].

THE COURT: Okay.

[JUROR 7]: Our son's Bible class. I've known her for many years. Our son's Bible class at Navy. We're really good friends.

THE COURT: Okay.

[JUROR 7]: Our husbands played at Navy together. Yeah, we go back.

THE COURT: Okay. Do you know what she does for a living?

[JUROR 7]: Yeah. Yeah, just briefly. I mean, she's, she's changed jobs, but I think she's gone back to being ---- again. It was different when we were at Navy.

THE COURT: Okay. What is your understanding of what she does?

[JUROR 7]: That she works for the State defending I guess people. I don't know. I don't -- like, we never really talked about just whatever that she does for the State, which I was kind of surprised to see her 'cause I thought this was sort of ---- field that she didn't like -- didn't really know to expect.

THE COURT: Okay, so you do not know that she works for the State's Attorney's Office?

[JUROR 7]: I, I thought when I knew her -- but I thought that at one point she, she did ---- that one, but not in -- I completely forgot about it because when I knew her, it was more that she worked for the hotel industry --

THE COURT: Oh, okay.

[JUROR 7]: -- you know, when, when I got to know her at Navy.

THE COURT: Okay, so is this someone that you regularly interact with presently?

[JUROR 7]: No, I haven't -- I haven't -- I haven't seen her for a couple years.

THE COURT: Okay, and knowing that she works for the State's Attorney's Office, would that in any way impact your ability to listen to the facts of this case --

[JUROR 7]: No.

THE COURT: -- and render a fair and impartial verdict?

[JUROR 7]: No. No, I don't -- I don't -- I don't think so. No. I shouldn't say "I don't think," but no.

THE COURT: Okay, Counsel, did you have any questions?

[DEFENSE]: I don't have any more questions.

THE COURT: Okay. [State]?

[STATE]: No, Your Honor, I believe that sheds light on the situation.

THE COURT: Okay, thank you, ma'am.

[JUROR 7]: Okay.

THE COURT: You can return to the jury room.

Neither the State nor defense counsel had any additional questions for Juror 7 following the court's colloquy. The court stated that it was "not inclined to strike [Juror 7]" based on her responses but offered each party the opportunity to make final arguments:

[DEFENSE]: I would just restate what I said earlier ---- have any new ones because she mentioned that they were really good friends. I understand that she didn't realize she was ---- or she does work there. I think that there is probably -- as with old friends, there is a lot of trust and, you know, picking up -- your friend would be doing whatever is correct for you. So that is my concern. She wouldn't even realize that she is being biased in the case. And like I said, I am not alleging any

maliciousness on her part saying that she didn't know her later. It is just I think it would be appropriate since we do have an alternate to excuse her based on -- based on all of this.

THE COURT: [State]?

[STATE]: Your Honor, if the situation was that they are still active friends and they see each other, that would cross practices. She stated she hasn't seen her for years. This is somebody that she knew. She couldn't give specifics, go into depth about what she does and the intricacies of being a victim witness advocate. I believe she stated she could be fair and impartial. So I don't think, given her explanation of not seeing her for years -- obviously they recognized each other. But I don't think it was the kind of relationship that would warrant excusing her at this time.

THE COURT: Okay. All right, I am not going to excuse the juror. Based on my conversation with her, I think the relationship that she described was certainly significantly more attenuated --

[STATE]: And I apologize for misrepresenting that.

THE COURT: -- than what the State described. And she unequivocally said that she could be fair.

[DEFENSE]: ---- my continuing objection to it.

The jury, which included Juror 7, found Mr. Westmoreland guilty of violation of a protective order, and the court sentenced him to 90 days' incarceration minus time served. Mr. Westmoreland timely appealed. We supplement with additional facts as appropriate.

STANDARD OF REVIEW

“[T]he substitution of an alternate juror for a regular juror lies within the sound discretion of the trial judge and such an exercise of discretion will not be disturbed on appeal unless arbitrary and abusive in its application.” *Williams v. State*, 231 Md. App. 156, 196 (2016) (citation modified). An “[a]buse of discretion exists when no reasonable

person would take the view adopted by the trial court or when the court acts without reference to guiding rules or principles.” *State v. Robertson*, 463 Md. 342, 364 (2019) (citation modified).

DISCUSSION

I. THE CIRCUIT COURT DID NOT ABUSE ITS DISCRETION OR DENY OR IMPAIR MR. WESTMORELAND’S RIGHT TO AN IMPARTIAL JURY BY REJECTING THE MOTION TO STRIKE.

A. The Parties’ Arguments

As we understand his brief, Mr. Westmoreland contends that the circuit court abused its discretion by allowing Juror 7 to continue to sit on the jury after “belated[ly]” disclosing her “really good friend[ship]” with Ms. H. He further argues that this belated disclosure “took away [his] right” to use a peremptory strike, thereby “inherently prejudic[ing]” him in violation of the Sixth Amendment and Article 21 of the Maryland Declaration of Rights.⁴ The State counters that the court “soundly exercised its discretion” in denying Mr. Westmoreland’s request to strike because it determined that Juror 7 “could be fair and impartial notwithstanding any relationship she had with [Ms. H.]” The State additionally argues that because Mr. Westmoreland did not raise any concerns about his right to exercise a peremptory strike before the trial court, this argument is not preserved for appellate review.

⁴ Mr. Westmoreland acknowledges, however, that the circuit court “never considered the denial of opportunity caused by the belated disclosure and [his] right to exercise a peremptory strike had this disclosure been timely.”

B. The Circuit Court Did Not Abuse Its Discretion.

“At any time before the jury retires to consider its verdict, the trial judge *may* replace any jury member whom the trial judge finds to be unable or disqualified to perform jury service with an alternate [juror.]” Md. Rule 4-312(g)(3) (emphasis added). Although this Rule “does not define the circumstances under which a juror shall become unable or disqualified to perform his duties[,] . . . [e]ach case must be evaluated on a case-by-case basis.” *Martin-Dorm v. State*, 259 Md. App. 676, 691 (2023) (citation modified). *Cf. Dillard v. State*, 415 Md. 445, 465-66 (2010) (holding in part that a *voir dire* examination is required to correct possible juror prejudice). Trial judges are in the best position to determine whether a juror can be fair and impartial, *Ware v. State*, 360 Md. 650, 666 (2000), and “we will not, based on the cold record provided to us, substitute our judgment for that of the trial judge.” *State v. Cook*, 338 Md. 598, 617 (1995).

Here, upon learning at some point in time before the end of the State’s case-in-chief, of Juror 7’s possible personal connection to the State’s Attorney’s Office, the circuit court immediately conducted a colloquy to ascertain the extent of Juror 7’s relationship with Ms. H. Juror 7 explained to the court that she had not seen Ms. H “for a couple of years” and did not know that Ms. H worked for the State’s Attorney’s Office until she recognized Ms. H during the trial.⁵ Juror 7 also confirmed that (now) knowing

⁵ Juror 7 stated that she understood that Ms. H “work[ed] for the State defending . . . people[.]” but that she “completely forgot about it.”

Ms. H worked for the State’s Attorney’s Office would not impact her ability to listen to the facts of Mr. Westmoreland’s case and render a fair and impartial verdict.

Based on this record, we conclude that the circuit court did not abuse its discretion in denying the request to strike Juror 7. Juror 7’s responses to the court’s colloquy go directly to her attenuated connection to Ms. H and clarify her inadvertent omission during *voir dire*. Moreover, we will not supplant our reading of the “cold record” for the trial court’s credibility finding that Juror 7 could remain fair and impartial. *See Ware*, 360 Md. at 666; *Cook*, 338 Md. at 617. For these reasons, we hold that the court’s denial of Mr. Westmoreland’s motion to strike Juror 7 was not an abuse of discretion.

C. Mr. Westmoreland’s Right To An Impartial Jury Trial Was Neither Denied Nor Impaired.

We turn next to Mr. Westmoreland’s alternative argument that Juror 7’s “belated disclosure” caused him to forfeit an unused peremptory strike in violation of his right to an impartial jury trial under the Sixth Amendment and Article 21 of the Maryland Declaration of Rights. The State contends that Mr. Westmoreland was not prejudiced by any impact that Juror 7’s mid-trial revelation may have had on his pre-trial exercise of his peremptory strikes, and that, in any event, this argument is unpreserved.

Peremptory strikes “are afforded by state law, and are not required by the [federal] Constitution. Nor are they guaranteed by [Maryland’s] Declaration of Rights.” *Whitney v. State*, 158 Md. App. 519, 531 (2004). To the contrary, peremptory strikes are “a privilege granted by the legislative authority which must be taken with the limitations placed upon the manner of exercise.” *Hall v. State*, 22 Md. App. 240, 243 (1974). *See*

Md. Code Ann., Cts. & Jud. Proc. (“CJP”) § 8-404(b)(2)(i) (1974, Repl. Vol. 2020). A party cannot exercise a peremptory strike on the first 12 qualified jurors after the first alternate has been called and cannot exercise *any* peremptory strikes after the jury has been sworn. Md. Rule 4-313(b)(3); *see Pietruszewski v. State*, 245 Md. App. 292, 315 (2020) (the Maryland Rules “clearly give a party the right to exercise unused [peremptory] strikes after jurors have been seated in the jury box (but not sworn), up to the time the first alternate is called”).

Mr. Westmoreland’s argument conflates the right to exercise a peremptory strike (as prescribed by CJP § 8-404(b)(2)(i) and Maryland Rule 4-313(b)(3)) with the right to an impartial jury guaranteed by the Sixth Amendment and Article 21 of the Maryland Declaration of Rights. Mr. Westmoreland’s right to an impartial jury was not denied or impaired simply because he possessed one unused peremptory strike, which he contends he *could* have used if Juror 7 had recalled and disclosed her connection to Ms. H during *voir dire*. As noted above, peremptory strikes are a “privilege” that must be exercised before a jury is sworn. *Hall*, 22 Md. App. at 243; Md. Rule 4-313(b)(3). Here, the circuit court did not deny or impair Mr. Westmoreland’s statutory right to use all of his peremptory strikes because he did not request to strike Juror 7 before the jury was sworn. Nor, as explained previously, did the court abuse its discretion in denying Mr. Westmoreland’s motion to strike Juror 7. For these reasons, we are unconvinced that Mr. Westmoreland’s right to an impartial jury was either denied or impaired.

CONCLUSION

We hold that the circuit court did not abuse its discretion in rejecting the request to strike Juror 7. We hold that the court did not otherwise deny or impair Mr. Westmoreland's right to an impartial jury under the Sixth Amendment or Article 21 of the Maryland Declaration of Rights, and accordingly, affirm.

**JUDGMENT OF THE CIRCUIT COURT
FOR ANNE ARUNDEL COUNTY
AFFIRMED; COSTS TO BE PAID BY
APPELLANT.**