

Circuit Court for Frederick County  
Case No. C-10-CR-19-001099

UNREPORTED  
IN THE COURT OF SPECIAL APPEALS  
OF MARYLAND

No. 935

September Term, 2021

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CHRISTOPHER D. ALEXANDER

v.

STATE OF MARYLAND

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Wells, C.J.,  
Graeff,  
Tang,

JJ.

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Opinion by Graeff, J.

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Filed: May 23, 2022

\*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.

A jury in the Circuit Court for Frederick County convicted Christopher D. Alexander, appellant, of second-degree rape, second-degree assault, possession of phencyclidine (“PCP”), and possession of drug paraphernalia. The court sentenced appellant to a term of 20 years’ imprisonment, all but 10 years suspended, on the conviction for second-degree rape, one year, consecutive, on the conviction for possession of PCP, and one year, consecutive, for possession of drug paraphernalia. The conviction for assault merged into the rape conviction.

On appeal, appellant presents the following question for this Court’s review, which we have rephrased slightly, as follows:

Did the circuit court abuse its discretion in denying appellant’s motion for a mistrial after a juror disclosed midtrial that he knew appellant?

For the reasons set forth below, we shall affirm the judgments of the circuit court.

## **FACTUAL AND PROCEDURAL BACKGROUND**

### **I.**

#### **The Underlying Incident**

On the evening of April 23, 2019, the victim visited appellant at his residence in Frederick, Maryland, to style his hair. Appellant made three mixed drinks for the victim during the visit. She could not remember much of what occurred that evening after her third drink. She recalled waking up in the early hours of April 24, 2019, confused and in appellant’s bed wearing no pants or underwear. When she realized that appellant was engaging in vaginal intercourse with her, she jumped up, put on her pants, gathered her belongings, and exited the residence. The victim reported the sexual assault to officers of

the Frederick City Police Department (“FCPD”) shortly thereafter. She then went to Frederick Memorial Hospital, where she underwent a Sexual Assault Forensic Examination.

FCPD officers subsequently executed a search warrant at appellant’s residence. They found, among other things, vials of PCP, oxycodone pills, and codeine tablets.

## II.

### Jury Selection and Voir Dire

Jury selection began on May 4, 2021. After the prospective jurors were sworn in, the prosecutor, defense counsel, and appellant introduced themselves, in turn, to the venire.

The court then began voir dire, as follows:

[THE COURT:] At this point, ladies and gentlemen, I will be asking a number of questions. If your answer is yes or maybe to any of the questions, I’d like you to stand, and I’ll identify you only by your juror number. Please wait, because we’re writing them all down. If you have any questions regarding an answer, please don’t ask it at this time, we’ll be bringing everybody up to the bench that may have questions; but if your answer is yes or maybe, please stand.

\* \* \*

Does any member of the prospective jury panel know the defendant, Christopher D. Alexander? If so, please stand.

I see no responses.

Does any member of the prospective jury panel know any member of the defendant’s family? If so, please stand.

I see no responses.

\* \* \*

[THE COURT:] Does any member of the jury panel hold or know of any bias or prejudice for or against the defendant in this case? If so, please stand.

And I see no response.

\* \* \*

THE COURT: Is there anything not yet mentioned that could affect your ability to make a fair and impartial judgment in this case? In other words, is there anything that you haven't yet told us that could affect your ability to base your judgment solely on the evidence presented in the courtroom, or to follow the law as I will instruct you? If so, please stand.

\* \* \*

And the gentleman in the back, No. 1?

JUROR NO. 1: 1.

Juror No. 1 stated that he was scheduled to move out of the State the following Monday. After he indicated that he could change his move date if necessary, he was seated as a juror, without objection.

After the jury was sworn, the court made remarks regarding the anticipated course of trial and gave preliminary instructions to the jury. The court stated that, due to COVID-19, precautions were being taken, including requiring all persons to wear masks. Attorneys and witnesses, however, occasionally would be permitted to remove their masks when it became necessary to speak with clarity or ensure proper recording of the proceedings.

**III.**

**Juror No. 1's Note**

After the State rested its case-in-chief, appellant testified. The court allowed appellant to remove his mask while testifying.

At the end of the day, the court's law clerk received a handwritten note from Juror No. 1. The note stated:

Not knowing the defendant by his legal name, I did not realize I do know him. Not personally, just in passing.

The law clerk gave the note to the court, which had already dismissed the jury for the day.<sup>1</sup>

The following colloquy then ensued between the court, the prosecutor, and defense counsel:

THE COURT: I'll let you both read it.

[PROSECUTOR]: I think we need to inquire further of the juror as to whether or not -- how they know them and if it would affect their ability to be fair and impartial.

THE COURT: And I literally didn't even see that there was a note. I mean, he handed it to my law clerk as he left and then my law clerk just handed it to me.

[DEFENSE COUNSEL]: May I share it with Mr. Alexander?

THE COURT: Well, I think he has a right to it.

[DEFENSE COUNSEL]: This is from Juror No. 1. I just wanted to share it with you.

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<sup>1</sup> The note was dated May 5, 2021, at 3:50 p.m.

The next day, May 6, 2021, the court summoned Juror No. 1 to appear for further voir dire outside the presence of the other members of the jury, regarding Juror No. 1's relationship with appellant. After reading the note to Juror No. 1, the court asked him if he would "be able to decide this case based on only the evidence that has been presented" and the instructions given, and Juror No. 1 said "yes." He also said that he could "render a fair and impartial verdict."

The court invited counsel to ask questions, and the following occurred:

[DEFENSE COUNSEL]: Can I ask you how you know Mr. Alexander in passing?

JUROR NO. 1: Just in passing. I guess he was acquainted with a few people that I knew. This was a long time ago.

[DEFENSE COUNSEL]: And can I ask you I guess where you saw Mr. Alexander?

JUROR NO. 1: I can't really say for sure. It was probably just out and about.

[DEFENSE COUNSEL]: Okay. And has this been once, twice, more than --

JUROR NO. 1: Maybe just a couple times.

[DEFENSE COUNSEL]: A couple times. If you could put a number on it I would ask less than 10 times?

JUROR NO. 1: Yes. I don't know.

[DEFENSE COUNSEL]: And --

JUROR NO. 1: I don't know.

[DEFENSE COUNSEL]: -- you took a pause there when you --

JUROR NO. 1: No. It is definitely less than 10 times. It is probably you know it is way less than that.

[DEFENSE COUNSEL]: And when [the court] asked if you could deliver a fair and impartial verdict you took a pause and thought about it for a second. Were you just thinking about it?

JUROR NO. 1: Yeah. I was just thinking about everything that has happened in the last couple of days and with you know I don't know of any details other than what I know here today.

[DEFENSE COUNSEL]: Okay. I have no further questions, Your Honor.

THE COURT: Madam State.

[PROSECUTOR]: Did you like hang out with him or kind of like --

JUROR NO. 1: No.

[PROSECUTOR]: Okay. And how long ago was this that you said? I am sorry. Was it long ago?

JUROR NO. 1: A few years.

[PROSECUTOR]: A few years?

JUROR NO. 1: Yeah. No more than five or so. Probably more than that honestly.

THE COURT: I didn't hear the last part.

[PROSECUTOR]: He said probably more than five years.

THE COURT: Okay. All right. Any other questions?

[PROSECUTOR]: No, Your Honor.

[DEFENSE COUNSEL]: No further questions.

Juror No. 1 then returned to the jury assembly area, and defense counsel moved for a mistrial “in light of [J]uror [N]o. 1’s hesitancy to acknowledge a fair and impartial trial defense,” as well as his perception that Juror No. 1 “seemed hesitant to explain where and how he ha[d] seen [appellant]” and that the circumstances in which he had seen Mr. Alexander “could be similar to the events in this case.”

In opposition to the mistrial motion, the prosecutor stated:

Your Honor, I don’t think the hesitancy was that he didn’t think, he was thinking he couldn’t be fair and impartial. It seemed like he was just giving it some serious thought to make sure his answer was correct. He also, he said he did not hang out with the defendant. He saw him in passing because they have mutual friends. If defense counsel wants to inquire further as to exactly what the nature of that was, but not to presume that it was hanging out at a party or something because I think that is not what he indicated. I specifically asked him if they hung out together and he said no. I don’t think, there was no hesitancy I wouldn’t call it. I would just call it being very introspective and making sure he was answering the question correctly and he did. He said he could be fair and impartial. It has been over five years since he ever even saw the defendant and he had very little knowledge of him. So, if there is further questions defense counsel wants to ask about the nature of them knowing each other in passing, but I think that based on his answers I don’t think that it is grounds for a mistrial.

The court afforded counsel a second opportunity to voir dire Juror No. 1. The following examination then ensued:

[DEFENSE COUNSEL]: Thank you. Sorry, sir. I just had a few additional questions and if I could ask the events and the events that you have seen [appellant] at the places could you tell me what types of places those were? Were they houses or bars or restaurants?

JUROR NO. 1: Probably like the bar area or restaurants, yeah.

[DEFENSE COUNSEL]: Bar area and your friends that were around him do you know, could you tell me who those friends were?



JUROR NO. 1: I know my cousin knows him. Do you want names or

--

[DEFENSE COUNSEL]: If you could just provide a first name for me.

JUROR NO. 1: That is fine. My cousin, Michael --

[DEFENSE COUNSEL]: Okay.

JUROR NO. 1: -- and I guess his friend, Travis.

[DEFENSE COUNSEL]: How old are they?

JUROR NO. 1: They are older than I am. They are in their forties.

[DEFENSE COUNSEL]: Are you from Frederick originally?

JUROR NO. 1: No.

[DEFENSE COUNSEL]: Where are you from originally?

JUROR NO. 1: Originally Mississippi.

[DEFENSE COUNSEL]: Mississippi. Okay. And so, have you spoken to [appellant] through your friends?

JUROR NO. 1: No. I have never spoken to him.

[DEFENSE COUNSEL]: And I don't want to make you uncomfortable, but this case involves, it involves drugs. Were you around drugs with [appellant]?

JUROR NO. 1: I was not.

[DEFENSE COUNSEL]: Okay. Okay. I don't have any further questions, Your Honor.

THE COURT: Madam State.

[PROSECUTOR]: No further questions.

Defense counsel again renewed the motion for a mistrial. The court denied the motion, stating:

At this juncture the defense has made a motion for a mistrial. Juror No. 1 passed a note at the very end of the day before, while everybody was leaving. I have read that note into the record. Juror No. 1 was brought up two times this morning for voir dire. He was asked by the Court whether he could decide the case based only on the evidence presented and the law in which I will instruct him and he answered yes. I asked him if he would be able to render a fair and impartial verdict. He answered yes. I do further note that he indicated that he has seen the defendant in quote unquote the bar areas. It has been more than five years. I believe he stated that they didn't even speak to each other. Based on all of the above I am respectfully denying the motion for a mistrial and we will proceed in this case. Thank you.

Juror No. 1 remained on the jury.

### **DISCUSSION**

Appellant contends that the circuit court abused its discretion in denying his motion for a mistrial. He makes two arguments in support of this contention. First, appellant argues that, because Juror No. 1 failed to disclose information sought in a voir dire question, and the record does not show whether the juror's nondisclosure was intentional or inadvertent, he was entitled to a new trial. Second, appellant argues that, based on the information that Juror No. 1 disclosed during the further voir dire, "no reasonable jurist" could have found that the juror could be fair and impartial. Appellant asserts that Juror No. 1 "made several contradictory statements" regarding how, from where, and how long ago he knew appellant, and based on these discrepancies, it is reasonable to infer that the information that Juror No. 1 disclosed during the further voir dire might have been inaccurate, which raised the "possibility of unknown bias" against him.

The State contends that the argument that the court failed to determine whether Juror No. 1's nondisclosure was intentional or inadvertent is not preserved for review because appellant did not raise this argument below. In any event, it argues that the circuit court properly exercised its discretion in denying appellant's motion for a mistrial. The State asserts that the record shows that Juror No. 1's nondisclosure was inadvertent, and that he recognized appellant only after appellant removed his face mask while testifying. "That Juror No. 1 then came forward on his own initiative shows that he was not trying to conceal his familiarity with [appellant]." Moreover, the State asserts that a court, in deciding a mistrial motion based on a juror's nondisclosure of information during voir dire, is not required to make an explicit finding about whether the nondisclosure was intentional, and here, "the record supports an implicit finding that Juror No. 1's pretrial nondisclosure of his acquaintance with [appellant] was inadvertent."

The State also argues that, based on the information that Juror No. 1 disclosed during the further voir dire, the circuit court reasonably determined that Juror No. 1 was not biased against appellant. It asserts that Juror No. 1's uncertainty and contradictory statements indicated that his "remote acquaintance" with appellant "barely made an impression upon him," and he was unlikely to be influenced by his brief encounter years ago.

"Appellate review of a decision to deny a mistrial is conducted 'under the abuse of discretion standard.'" *Vaise v. State*, 246 Md. App. 188, 239 (quoting *Nash v. State*, 439 Md. 53, 66–67 (2014)), *cert. denied*, 471 Md. 86 (2020). A mistrial is "'an extreme sanction' that should only be granted 'when no other remedy will suffice to cure the

prejudice.” *State v. Zadeh*, 468 Md. 124, 145 (2020) (quoting *Burks v. State*, 96 Md. App. 173, 187 (1993)). “[A] trial court’s denial of a motion for mistrial will not be reversed ‘unless the defendant was so clearly prejudiced that the denial constituted an abuse of discretion.’” *Parker v. State*, 189 Md. App. 474, 493 (2009) (quoting *Hunt v. State*, 321 Md. 387, 422 (1990)). *Accord Kosh v. State*, 382 Md. 218, 226 (2004) (“The determining factor as to whether a mistrial is necessary is whether ‘the prejudice to the defendant was so substantial that he was deprived of a fair trial.’”) (quoting *Kosmas v. State*, 316 Md. 587, 594–95 (1989)). “The trial judge is in the best position to decide whether the motion for a mistrial should be granted. Accordingly, we will not interfere with the trial judge’s decision unless appellant can show that there has been real and substantial prejudice to his case.” *Bynes v. State*, 237 Md. App. 439, 456 (2018) (quoting *Wilson v. State*, 148 Md. App. 601, 666 (2002), *cert. denied*, 374 Md. 84 (2003)).

“The Sixth Amendment to the United States Constitution, as applied to the States through the Fourteenth Amendment, guarantees criminal defendants an impartial jury trial.” *Williams v. State*, 394 Md. 98, 105–06 (2006). To be sure, a juror’s nondisclosure of information during voir dire may warrant a mistrial or a new trial. *See id.* at 115–16. In this case, however, we agree with the State that the court did not abuse its discretion in denying the motion for a mistrial.

Critical to the analysis of whether a mistrial or a new trial is warranted is whether the judge is able to question the juror regarding the failure to disclose the information and determine whether that failure indicates prejudice to the defendant. *Id.* at 114–15. Where

the failure to disclose a relationship is intentional, it may be inferred “that the juror is not impartial.” *Id.* at 116 (quoting *State v. Woods*, 550 S.E.2d 282, 284 (S.C. 2001)). Where, however, a judge is able to voir dire the juror and determine that the failure to disclose was inadvertent and unintentional, the relationship not disclosed was minimal and existed in the remote past, and the juror could still render a fair and impartial verdict, the judge does not abuse his or her discretion in denying a mistrial. *Leach v. State*, 47 Md. App. 611, 618–19, *cert. denied*, 290 Md. 717 (1981). *Accord Burkett v. State*, 21 Md. App. 438, 445 (1974).

That is the situation here. The record shows that Juror No. 1 did not respond to the voir dire inquiry regarding whether he knew appellant because he did not realize, until appellant testified, that he previously had seen appellant. He explained that he had seen appellant a couple of times “in passing” years ago when he was “out and about.” He had never spoken to appellant, and his note explained that he did not know appellant by his legal name, and he did “not realize he knew [appellant]. Not personally, just in passing.”

Thus, the record indicates that the nondisclosure was inadvertent and unintentional, that Juror No. 1 had merely seen appellant “in passing” in the remote past, and that the juror said he could be fair and impartial and decide the case only on the evidence presented and the instructions given. Under these circumstances, the circuit court did not abuse its discretion in determining that there was no juror bias requiring a mistrial.

**JUDGMENTS OF THE CIRCUIT COURT  
FOR FREDERICK COUNTY AFFIRMED.  
COSTS TO BE PAID BY APPELLANT.**