

Circuit Court for Harford County  
Case No. C-12-CR-20-000284

UNREPORTED  
IN THE APPELLATE COURT  
OF MARYLAND\*

No. 1332

September Term, 2021

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WILLIAMS REINA-DIAZ

v.

STATE OF MARYLAND

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Graeff,  
Tang,  
Raker, Irma S.  
(Senior Judge, Specially Assigned),

JJ.

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Opinion by Graeff, J.

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Filed: July 7, 2023

\*At the November 8, 2022 general election, the voters of Maryland ratified a constitutional amendment changing the name of the Court of Special Appeals of Maryland to the Appellate Court of Maryland. The name change took effect on December 14, 2022.

This is an unreported opinion. This opinion may not be cited as precedent within the rule of stare decisis. It may be cited for persuasive value only if the citation conforms to Md. Rule 1-104(a)(2)(B).

A jury in the Circuit Court for Harford County convicted appellant, Williams Reina-Diaz, of sexual abuse of a minor. The court sentenced appellant to 25 years' incarceration, all but 10 suspended, and five years of supervised probation. The court also ordered that appellant register as a Tier III Sex Offender, and that he maintain lifetime registration as a sex offender.

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

1. Did the circuit court err by denying a motion to strike a juror for cause and depriving defense counsel of the full exercise of his peremptory challenges?
2. Did the sentencing court illegally order lifetime supervision?

For the reasons set forth below, we shall affirm the judgment of the circuit court, but remand to correct the record.

### **FACTUAL AND PROCEDURAL BACKGROUND**

The minor victim, whom the State refers to as "T.J.," testified that appellant was her stepfather. At the time relevant to this appeal, she lived with her mother, appellant, and her siblings. She recalled that appellant sometimes took care of her while her mother was at work, and the two "really had fun" spending time together. On the evening of January 5, 2020, however, when T.J. was 15 years old, she fell asleep on the couch in the living room of the family's trailer. She woke up and heard "the sound of a female moaning." T.J. believed appellant was playing a pornographic video on his phone. T.J.'s four-year-old sister was asleep on T.J.'s leg. T.J. had a blanket over her head. She then felt appellant's

hand touch her, “at first . . . over top of [her] shorts . . . and then . . . underneath [her] shorts.” T.J. stated that appellant touched and put his fingers inside of her vaginal area, and T.J. knew it was appellant touching her because he was the only other person in the room. T.J. did not want appellant to touch her, and she “turned to the side” so appellant would think she was waking up. Appellant then removed his hand, and T.J. got up and carried her sister to their bedroom. She then saw appellant sit down on the couch in the living room.

After the incident, T.J. could not sleep, and she cried for hours. She “didn’t want to come home to see [appellant] again,” so she packed clothes in a bookbag and “pushed the bookbag out of the window so [her] mom wouldn’t see.” In the morning, T.J.’s mother, K.J., told T.J. that appellant would be taking T.J. to the school bus stop. T.J. was upset because she did not want to be in the car with him. While in the car, appellant questioned T.J. about what was in her bag, and he then asked her if she “needed to speak with [her] mom.” She replied: “How about you tell my mom what you did to me?”

K.J. testified that, after appellant returned home from taking T.J. to the bus stop, he told her that T.J. had taken an extra bag with her to school. K.J. found this unusual, so she decided to go to the school to speak with T.J. When she arrived, T.J. began screaming and crying. She told her mother that she had packed a bag of clothes because appellant “had touched [her] vaginal area.” K.J. called the police immediately, and T.J. subsequently explained the incident to a police officer and an agent from Child Protective Services. K.J.

testified that she then confronted appellant about the incident, and appellant said that he had not done anything, and T.J. was lying.

Trooper Adam LeCompte, a police officer assigned to the Harford County Child Advocacy Center, testified that he was called to conduct an investigation of possible child abuse on January 6, 2020. Trooper LeCompte interviewed appellant, who told him that “he was watching Netflix in the main room of the residence with his younger daughter and his stepdaughter and that . . . nothing else had happened” that night.

Appellant did not testify. As indicated, the jury found appellant guilty of sex abuse of a minor.

This appeal followed.

## **DISCUSSION**

### **I.**

#### **Jury Selection**

Appellant contends that the circuit court improperly denied him the right to a peremptory challenge because he was required to use a peremptory strike on a juror “who should have been stricken for cause.” The State disagrees, asserting that the court “properly exercised its discretion in denying defense counsel’s motion to strike prospective Juror #13 for cause.”

### **A.**

#### **Proceedings Below**

The court asked the prospective jury the following question:

Under the law the defendant has an absolute right to remain silent and decide not to testify. As a juror, you would not be allowed to draw an adverse or negative inference or any inference of his guilt if he decides not to testify. Is there any member of this panel who believes that the defendant has a duty or responsibility to testify, or that he must be guilty or may be guilty because he decides not to testify? If so, please stand.

Prospective Juror #13 was among the jurors who affirmatively answered the question.<sup>1</sup>

Subsequently, Juror #13 approached the bench regarding his affirmative answers to that and other questions, and the following occurred:

THE COURT: All right. And then you also stood for the question that I asked as follows: Under the law a defendant has a right to remain silent and not testify. And as a juror, you cannot draw an adverse inference or decide that he is guilty if he decides not to testify. Despite that, do you believe that a defendant should have to testify?

[PROSPECTIVE JUROR #13]: I think if you don't then there's probably something that you are trying to hide.

THE COURT: All right. Would you be able to accept the law, the premise of the law that you can't draw that inference?

[PROSPECTIVE JUROR #13]: Uh-huh. Yes.

Defense counsel then asked a follow-up question: "If you felt somebody had something to hide, would you be more likely to find them guilty than not guilty?" Juror #13 answered: "Yes."

Defense counsel moved to strike the juror for cause. The State responded that the juror should not be stricken because he "indicated that he could be fair and impartial in

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<sup>1</sup> Although not clearly indicated by the transcript, the parties agree that Juror #13 did affirmatively answer this question, and it is clear from the court's subsequent discussion with the juror that this was the case.

basically every question [the court] asked. Only the last question [defense counsel] asked about whether he would be more likely or not I think is more of a personal issue than following the law issue.” The court denied the motion to strike, stating: “I agree with the State. I think that that question doesn’t really undercut what this juror said in terms of honoring the oath of a juror.” Defense counsel responded: “Okay.”

On the following day, after the jurors had been sworn, Juror #13 confirmed that there were no changes to his answers to the court’s questions. Defense counsel ultimately exercised a peremptory challenge to Juror #13. He exercised all ten of appellant’s peremptory strikes.

## **B.**

### **Analysis**

A person “charged with a serious crime has a constitutional right to trial by an impartial jury.” *Kidder v. State*, 475 Md. 113, 121 (2021). To that end, the ““overarching purpose of voir dire in a criminal case is to ensure a fair and impartial jury.”” *Wright v. State*, 411 Md. 503, 508 (2009) (quoting *Dingle v. State*, 361 Md. 1, 9 (2000)). Consequently, “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 fundamental principles of presumption of innocence, the State’s burden of proof, and the defendant’s right not to testify.” *Kazadi v. State*, 467 Md. 1, 9 (2020).

In determining whether a prospective juror’s answers to voir dire demonstrate bias, we defer to the assessment by the circuit court, who sees and hears the juror’s response.

Juror bias is a question of fact, and we review the circuit court’s decision whether to strike a juror for cause for an abuse of discretion. *Tetso v. State*, 205 Md. App. 334, 369, *cert. denied*, 428 Md. 545 (2012). *Accord Morris v. State*, 153 Md. App. 480, 489 (2003), *cert. denied*, 380 Md. 618 (2004) (“[T]he appellate court will defer to the fact-findings of trial judge or jury whenever there is some competent evidence which, if believed and given maximum weight, could support such findings of fact.”).

The constitutional guarantee to an impartial jury does not “insure that a prospective juror will be free of all preconceived notions relating to guilt or innocence, only that he can lay aside his impressions or opinions and render a verdict based solely on the evidence presented in the case.” *Couser v. State*, 282 Md. 125, 138, *cert. denied*, 439 U.S. 852 (1978). *Accord Morris*, 153 Md. App. at 501. In *Morris*, the circuit court denied the appellant’s motion to dismiss three prospective jurors for cause, where appellant ultimately used all 10 allotted peremptory strikes. *Id.* Although these jurors initially indicated bias against criminal defendants or in favor of the police, each one “ultimately stated that he or she would be able to render a fair and impartial verdict based on the evidence in the case.” *Id.* at 497. This Court found no abuse of discretion in the denial of the motion to strike, stating: “There may have been a potential for bias in the air but there was not, as a matter of law, actual bias on the ground.” *Id.* at 499.

Here, although Juror #13 initially stated that he believed that a defendant who did not testify “probably” had something they were “trying to hide,” after further questioning, he stated that he would be able to set that aside and accept the law that he could not draw

that inference. The circuit court acted within its discretion in crediting the juror's answer in this regard, and it did not abuse its discretion in denying the motion to strike Juror #13.

## II.

### **Sentence to Lifetime Sex Offender Registration**

Appellant contends that the circuit court illegally ordered lifetime sexual offender supervision under Md. Code Ann., Crim. Proc. Art. ("CP") § 11-723 (2020 Repl. Vol.). He requests that this portion of the sentence be vacated.

The State agrees that, although appellant was "properly subject to lifetime sexual offender registration," he was "not properly subject to lifetime sexual offender supervision." It asserts that the court did not impose lifetime sexual offender supervision at the sentencing hearing, but "the docket entries, commitment order and related documentation incorrectly reflect[] the imposition of lifetime sexual offender supervision," and they "should be corrected to conform to the sentencing transcript."

The State is correct that the court did not order lifetime sexual offender supervision in imposing appellant's sentence. At the sentencing hearing, the court imposed the following sentence:

Twenty-five years suspend all but 10 years to serve in this Division of Correction. When you are released, you are going to be placed on five years supervised probation. That's the maximum. The standard conditions of probation all apply. I'll waive monthly supervision fees and fines and court costs.

You must register as a Tier III Sex Offender for life. You are to have no contact by any means with [T.J.], her mother, or the other children, including your own biological child. And when I say no contact, I mean not in person, by telephone, in writing, Internet, or even through other people.

That same day, however, the court signed a form entitled “Notice of Special Conditions of Lifetime Sexual Offender Supervision.” The form indicated that, because appellant was convicted under Md. Code Ann., Crim. Law Art. (“CR”) § 3-602 (2021 Repl. Vol.) involving a child under the age of 12, the court ordered lifetime sexual offender registration.

CP § 11-723(a) sets forth the list of persons subject to lifetime sexual offender supervision, including:

- (1) a person who is a sexually violent predator;
- (2) a person who has been convicted of a violation of:
  - (i) § 3-303 or § 3-304 of the Criminal Law Article; or
  - (ii) § 3-305 or § 3-306(a)(1) or (2) of the Criminal Law Article as the sections existed before October 1, 2017;
- (3) a person who has been convicted of a violation of § 3-309 or § 3-310 of the Criminal Law Article, § 3-311 of the Criminal Law Article as the section existed before October 1, 2017, or an attempt to commit a violation of § 3-306(a)(1) or (2) of the Criminal Law Article as the section existed before October 1, 2017;
- (4) a person who has been convicted of a violation of § 3-602 of the Criminal Law Article involving a child under the age of 12 years;**
- (5) a person who is required to register under § 11-704(c) of this subtitle; and
- (6) a person who has been convicted more than once arising out of separate incidents of a crime that requires registration under this subtitle.

(Emphasis added).

The parties agree, and the record reflects, that lifetime sexual offender supervision was not appropriate here because the victim was not under the age of 12 at the time of the offense; she was 15 at the time. The question here is how we remedy this error.

“When there is a conflict between the transcript and the commitment record, unless it is shown that the transcript is in error, the transcript prevails. A similar rule applies to docket entries.” *State v. Brown*, 464 Md. 237, 269 (2019) (quoting *Lawson v. State*, 187 Md. App. 101, 108 (2009)). Accordingly, because the transcript reflects that the court did not order lifetime sexual offender supervision during the sentencing hearing, we affirm the court’s judgment, including sentencing appellant to lifetime sexual offender registration as a Tier III Sex Offender. We remand to the circuit court, however, with instructions to correct the record by removing erroneous references to appellant being sentenced to lifetime supervision under CP § 11-723.

**JUDGMENT OF THE CIRCUIT COURT  
FOR HARFORD COUNTY AFFIRMED.  
CASE REMANDED TO THAT COURT  
FOR FURTHER PROCEEDINGS  
CONSISTENT WITH THIS OPINION.  
COSTS TO BE PAID 50% BY APPELLANT  
AND 50% BY HARFORD COUNTY.**