Circuit Court for Cecil County
Cases No. C-07-CR-23-000258 & No. C-07-CR-23-000414

UNREPORTED*

IN THE APPELLATE COURT

OF MARYLAND

No. 1751

September Term, 2024

KEVIN A. SOPER

v.

STATE OF MARYLAND

Arthur,
Beachley,
Sharer, J. Frederick
(Senior Judge, Specially Assigned),

JJ.

Opinion by Arthur, J.

Filed: January 8, 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 Maryland Rule 1-104(a)(2)(B).

On September 5, 2024, following a trial in the Circuit Court for Cecil County, a jury found appellant Kevin A. Soper guilty of eight violations of Maryland's Wiretap Act, Maryland Code (1974, 2020 Repl. Vol.), §§ 10-401 to -414 of the Courts and Judicial Proceedings ("CJP") Article. The jury acquitted Soper of one count of disorderly conduct.

On October 15, 2024, the court sentenced Soper to eight concurrent sentences of 90 days, all of which were suspended in favor of 18 months of supervised probation.

Soper, representing himself, noted a direct appeal to this Court. He presents the following questions, which we have combined and rephrased:

I. Did the trial court err in determining that Maryland has jurisdiction over Soper's case?

II. Did the trial court err in denying Soper's recusal motion?

III. Did the trial court err in denying Soper's removal motion?

IV. Did the trial court err in declining to permit Soper to admit federal statutes and policies into evidence and to argue federal preemption to the jury?

V. Did the trial court err in admitting the recordings Soper made into evidence?[1]

[1] Soper formulated his questions as follows:

1. Does the Maryland prosecutor have jurisdiction to prosecute a criminal case where the act alleged took place on Federal Property with an arrest performed by Federal Police Officers for charges pre-empted by Federal Statutes and Polices?
2. Does the Maryland Circuit Court have jurisdiction to hear a criminal case where evidence of Federal Jurisdiction is presented by a criminal defendant?
3. Does the Federal Assimilative Crimes Act confer some jurisdiction

(continued)

For the reasons set forth in this opinion, we shall affirm the judgments of the circuit court.

BACKGROUND

On January 31, 2023, Sergeant Dale Money, a United States Department of Veterans Affairs ("VA") police officer working at the Perry Point Veteran's Affairs Medical Center, responded to a call for service on the Perry Point campus. He encountered a doctor who informed him that a patient, later determined to be Soper, was "refusing to wear their mask fully over their face."

Sergeant Money testified that, as soon as he greeted Soper, Soper "held up a cell phone and asked for [his] name and badge number." Sergeant Money responded to Soper's request and proceeded to explain to him that, at that time, the VA's policy required everyone who entered a VA facility to wear a mask over their face. Soper

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to The State, preempting Federal Supremacy to prosecute in a State Court an alleged act that is not a crime on concurrent Federal Properties?

4. Did the Circuit Court Judge abuse his discretion in not granting Soper's Motion to Recuse?
5. Did the Circuit Court Judge(s) err in not granting Soper's Motion for Removal and Hearing?
6. Did the Circuit Court Judge err by disallowing Soper the defense of Federal issues, specifically Federal Statutory supremacy over State Statutes to the jury?
7. Did the Circuit Court Judge prejudice the Soper's defense to the jury?
8. Did the Circuit Court Judge prejudice Soper by allowing video to be shown at the jury trial contrary to [Maryland's Wiretap Act]?

initially argued with Sergeant Money, but eventually complied with the mask policy. At that point, Sergeant Money spoke with the doctor to see if she was willing to continue the appointment. The doctor, who was visibly upset as a result of her interaction with Soper, declined. Sergeant Money directed Soper to the scheduling desk to make an appointment with a different doctor.

Sergeant Money testified that, although Soper did not say that he was recording their interaction, the sergeant assumed that he was. He said that Soper never sought or obtained his permission to record him.

Later that day, Sergeant Money watched a recording of his interaction with Soper on Soper's YouTube channel, "The Angry Vet," and downloaded a copy of it. Thereafter, Sergeant Money sought and obtained charges against Soper in the District Court of Maryland for violating Maryland's Wiretap Act, which generally makes it a crime to record a conversation unless both parties consent. *See* Maryland Code CJP § 10-402.

At trial, the court admitted a copy of the recording that Sergeant Money downloaded from Soper's YouTube channel. Sergeant Money identified himself, Soper, and the doctor in the recording. He testified, without objection, that the doctor told him after the fact that "[s]he did not know she was being recorded."

On February 22, 2023, the VA Police arrested Soper and obtained his cell phone. From the cell phone, the police recovered additional recordings that Soper had made inside the VA medical center in February 2023. Those recordings depicted Soper's interactions with three VA employees, Charles Flowe, Herminio Gonzalez, and Ronald

Roane. Sergeant Money testified, without objections, that all of those employees said that they did not consent to being recorded by Soper.

Flowe and Roane testified for the State at trial. Flowe testified that Soper appeared to be recording their conversation and that he never consented to it. Roane testified that he did not know that Soper was recording their conversation and that he never consented to it.

Soper represented himself at trial. In his opening statement he admitted that he made the recordings, stating: "I'm going to tell you right now, I absolutely did make some video and recordings in the VA building . . . [a]nd you'll get . . . to find out why here shortly."

Soper testified in his own defense. He explained, in a lengthy narrative, his history of frustrations with the VA medical center. He said that, after finally getting an appointment to treat his mental health condition, and getting his medications, he thought that "everything was fine." At that point he "started doing [his] research" about making audio-video recordings inside VA facilities. He explained that he made the various recordings that included his conversations with VA employees inside the VA facility. He gave a detailed narrative of his arrest. On cross-examination, he admitted to making the recordings and posting "just about all" of them on YouTube.

In a nutshell, Soper testified that he did not willfully violate Maryland's Wiretap Act and that he made the recordings on federal property after determining, through his own research, that federal law and VA policy did not prohibit the recordings. At one point he said: "I had no intention to break any Maryland laws that day or when I posted

any videos. I did my research first. I knew what I could do."

We shall introduce additional facts as they become germane to the discussion.

DISCUSSION

I.

Broadly speaking, Soper contends that Maryland lacked jurisdiction to prosecute him for his actions on federal property, the VA medical center. He claims that the federal wiretapping statute, which requires only one party's consent to the recording (18 U.S.C. § 2511), is superior to state statutes regarding the same behavior. At bottom, Soper appears to argue that, even though Maryland has concurrent jurisdiction with the federal government to enforce laws on VA property located within Maryland, the federal wiretap statute preempts the Maryland statute.[2]

"'[F]ederal law can preempt and displace state law through: (1) express preemption; (2) field preemption (sometimes referred to as complete preemption); and (3) conflict preemption.'" *In re Google Inc. Street View Elec. Comm'ns Litig.*, 794 F. Supp. 2d 1067, 1084 (N.D. Cal. 2011) (quoting *Ting v. AT&T*, 319 F.3d 1126, 1135 (9th Cir. 2003)). "Preemption is not lightly presumed; the party claiming it bears the burden of proof." *Hicks v. State*, 109 Md. App. 113, 121 (1996). Where "'federal law is said to bar

[2] Soper also appears to argue that the VA police officers had no authority to arrest him in this case. Generally, the remedy for an unlawful arrest in a criminal case is the exclusion of any evidence obtained as a result of the unlawful arrest. *See, e.g.*, *Elliott v. State*, 417 Md. 413, 435 (2010). Here, however, Soper does not make such a claim. Instead, he seeks only a new trial because of his allegedly illegal arrest. As a result, the legality of his arrest is immaterial to his federal preemption argument. We need not, and do not, address this contention any further.

state action in fields of traditional state regulation,' a finding of preemption is appropriate only if 'that was the clear and manifest purpose of Congress.'" *List Interactive, Ltd. v. Knights of Columbus*, 303 F. Supp. 3d 1065, 1080-81 (D. Colo. 2018) (quoting *New York State Conf. of Blue Cross & Blue Shield Plans v. Travelers Ins. Co.*, 514 U.S. 645, 654 (1995)).

"[T]he great weight of authority indicates that the federal Wiretap Act does not preempt state law[]" so long as state law provides the same, or more, privacy protection as the federal law. *Id.* at 1081. A Senate Report concerning the enactment of the federal statute "appears to demonstrate that, rather than leaving no room for supplementary state regulation, Congress expressly authorized states to legislate in this field." *Lane v. CBS Broad. Inc.*, 612 F. Supp. 2d 623, 637 (E.D. Pa. 2009) (citation omitted). "Congress apparently wanted to ensure that states meet base-line standards, . . . and thus federal law supersedes to the extent that state laws offer less protection than their federal counterparts." *Id.*

"[T]he two-party consent provision of the Maryland Wiretap Act is 'a departure from the federal act' and is 'aimed at providing greater protection for the privacy interest in communications than the federal law.'" *Seal v. State*, 447 Md. 64, 73 (2016) (quoting *Mustafa v. State*, 323 Md. 65, 70, 74 (1991)). Because Maryland's Wiretap Act provides greater protection for privacy interests in communication than does its federal counterpart, federal law does not preempt it.[3]

[3] In his brief, Soper mentions the Assimilative Crimes Act, 18 U.S.C. § 13. The (continued)

II.

On June 14, 2024, Soper filed a motion, with an accompanying affidavit, seeking the recusal of the trial judge. Soper directed his motion to the administrative judge of the Circuit Court for Cecil County.

As a basis for recusal, Soper claimed that the trial judge "denied and delayed motions that should be granted as a matter of law[] [and] has given the impression that [Soper's] [m]otions are not worthy of being heard nor considered[.]" He asserted that the trial judge had "acted outwardly with emotion during proceedings to the point of a physical outburst on the bench[.]" He claimed that the trial judge had "refused pertinent [f]ederal paperwork derived from" a related federal case that Soper had filed.[4] He charged that the trial judge "practiced law from the bench and on the record[.]"

On June 24, 2024, during a pre-trial hearing held before the trial judge, the State sought a postponement of the trial, which was scheduled to commence in a matter of days. Soper joined, or at least acquiesced, in that request. The trial judge directed the

Assimilative Crimes Act permits federal authorities to enforce certain state-level laws on federal property in federal court. *See United States v. Ambrose*, 403 Md. 425, 428 n.1 (2008). The Assimilative Crimes Act is irrelevant to the question of whether Maryland can enforce Maryland law in Maryland courts when the conduct in question took place on federal property. That question is resolved by discerning whether Maryland has agreed with the federal government to concurrent jurisdiction over the federal property within Maryland. Soper concedes that Maryland and the federal government share concurrent jurisdiction on VA property located within Maryland.

[4] Soper had asked a federal court to "stay the proceedings in state court and dismiss any pending charges in the state court." *Soper v. State of Md. for Cecil County*, Case No. 1:23-cv-03271-JRR, 2024 WL 3276318, at *1 (D. Md. July 2, 2024). The federal court granted the State's motion to dismiss Soper's complaint. *Id.* at *5.

parties to appear before the administrative judge, who would hear the postponement request. After finding good cause, the administrative judge granted the postponement.

During the hearing on the postponement request, Soper mentioned that the court had yet to rule on several of his motions, including a motion to recuse the trial judge. He implied that the administrative judge was the only judge who could rule on the recusal motion. The administrative judge said that the State would have 15 days to respond and that she would "rule and schedule a hearing if needed."

On that same day, June 24, 2024, the trial judge denied Soper's recusal motion.

Soper argues that the court erred in denying his motion for two reasons. First, he asserts that the circuit court fraudulently altered records to make it appear that his motion was granted on the day it was filed, which, he says, caused him to miss a deadline to seek in banc review of the denial of his motion. Second, he claims that the trial judge erred by deciding the motion himself instead of referring it to the administrative judge.

Ordinarily, an appellate court will overturn the denial of a recusal motion only "upon a showing of abuse of discretion." *Surratt v. Prince George's County*, 320 Md. 439, 465 (1990). Judges are presumed to be impartial, and "[t]he person seeking recusal bears a 'heavy burden to overcome the presumption of impartiality.'" *Karanikas v. Cartwright*, 209 Md. App. 571, 579 (2013) (quoting *Attorney Grievance Comm'n v. Blum*, 373 Md. 275, 297 (2003)). "[A] judge's duty to sit where not disqualified is equally as strong as the duty not to sit where disqualified." *In re Turney*, 311 Md. 246, 253 (1987).

Soper asserts that the court both back-dated the order denying the recusal motion

to June 14, 2024, and falsely indicated that his recusal motion had been granted. In support of his allegation, Soper points to an ambiguous docket entry, which reads: "06/14/2024 Order - Motion/Request/Petition Granted Judicial Officer Baynes, Keith A." On August 28, 2024, the administrative judge found no basis for Soper's allegation that the clerk had changed or falsified any documents.

Soper claims, nonetheless, that the alleged fraud frustrated his ability to seek in banc review of the court's order pursuant to Maryland Rule 4-352. He is incorrect.

Rule 4-352 provides for in banc review of certain judgments or determinations by a circuit court in a criminal case. Rule 4-352 states that in banc review of those judgments or determinations "is governed by the provisions of Rule 2-551[.]"

Maryland Rule 2-551(b) provides, with exceptions not here pertinent, that a notice for in banc review must be filed within ten days of the judgment sought to be reviewed. In banc review is available, however, only for appealable orders. *State v. Phillips*, 457 Md. 481, 511-12 (2018). Because "[t]he decision to recuse is interlocutory, and is therefore not subject to immediate appeal[,]" *Doering v. Fader*, 316 Md. 351, 360 (1989), Soper had no right to seek in banc review of the decision to deny his recusal motion at that time. *Accord Board of Lic. Comm'rs for Montgomery County v. Haberlin*, 320 Md. 399, 407 (1990). As a result, he was not prejudiced by whatever did or did not occur with the docket entries.

Soper also claims that only the administrative judge had the authority to rule on his motion to recuse. Again, he is incorrect.

In support of his argument, Soper appears to rely principally on Maryland Rule 3-

505(b), which generally provides that, at any time before trial, a litigant may direct a motion to the administrative judge seeking reassignment to a different trial judge. Rule 3-505, however, applies only to cases in the District Court of Maryland. *See* Md. Rule 1-101(c); Md. Rule 4-254(a). It has no applicability to Soper's circuit court case.

In Maryland, "the question of recusal . . . ordinarily is decided, in the first instance, by the judge whose recusal is sought[.]" *Surratt v. Prince George's County,* 320 Md. at 464. "When bias, prejudice or lack of impartiality is alleged, the decision is a discretionary one, unless the basis asserted is grounds for mandatory recusal[,]" *id.* at 465, such as when "the asserted basis for recusal is personal conduct of the trial judge that generates serious issues about his or her personal misconduct[.]" *Id.* at 466. Thus, for example, a trial judge could not properly decide a recusal motion that was based on an allegation that he had sexually harassed the attorney for one of the litigants. *Id.* at 469.

Because the allegations in this case do not involve personal misconduct and are not remotely similar to the allegations in *Surratt*, the trial judge could decide Soper's recusal motion.

III.

On August 12, 2024, Soper moved to remove his case to a circuit court in another county on the ground that he could not receive a fair and impartial trial in Cecil County. In support of his motion, Soper relied on essentially the same allegations as those in his recusal motion. In addition, he asserted that the trial judge erroneously denied his recusal motion and that the court had fraudulently falsified or changed court documents related to that denial.

On August 28, 2024, the administrative judge denied the removal motion. The administrative judge found that the trial judge and clerk of the court had not exhibited "an appearance of prejudice" against Soper. The judge rejected Soper's claim that documents had been falsified. Finally, the judge found no legal basis for removal. Soper challenges that decision.

We review an order denying removal for abuse of discretion. *Pantazes v. State*, 376 Md. 661, 675 (2003); *Muhammad v. State*, 177 Md. App. 188, 300 (2007). We accept the trial court's factual findings unless they are clearly erroneous. *Barton v. Hirshberg*, 137 Md. App. 1, 21 (2001).

Maryland Rule 4-254(b)(1) permits a criminal defendant to file a suggestion for removal on the basis that the defendant cannot receive a fair and impartial trial in the court where the case is pending. A court may order removal "only if the court is satisfied that the suggestion is true or that there is reasonable ground for it." *Id.* A defendant seeking removal has the "heavy burden of satisfying the court that there is so great a prejudice against him that he cannot obtain a fair and impartial trial" without removal. *Simms v. State*, 49 Md. App. 515, 518-19 (1981).

We see no error or abuse of discretion in the denial of Soper's removal motion. The court was evidently unpersuaded by Soper's allegations of bias and fraudulent record-keeping. It is almost impossible for a judge to be clearly erroneous when, as here, she is simply not persuaded of something. *See*, *e.g.*, *Bricker v. Warch*, 152 Md. App. 119, 137 (2003).

Soper complains of improper delay in the court's decision on his motion. His

complaint has no basis in fact. Soper filed his motion on August 12, 2024; the State filed a timely response on August 26, 2024; and the court denied the motion two days later, on August 28, 2024.

Finally, Soper complains that the court frustrated his right to seek in banc review because the court did not rule until two days before a pretrial conference and six days before trial. Soper, however, had no right to in banc review, because the denial of a removal motion is not immediately appealable. *See Parrott v. State*, 301 Md. 411, 426 (1984). The court could not deprive Soper of a right that he did not have.

IV.

On August 29, 2024 the State filed a motion in limine, seeking, among other things, to preclude Soper from attempting to argue to the jury about federal law, preemption, and the circuit court's jurisdiction over him. At a hearing on the following day, Soper said that he planned on entering a host of federal laws, federal regulations, and VA policies into evidence during trial. The court granted the State's motion in limine as to "the jurisdiction issue" and reserved ruling on the State's motion unless the other issues came up at trial.

Soper argues that the court erred in not permitting him to discuss or enter into evidence any of the federal laws and policies that he sought to introduce and discuss. He claims that the laws and policies were admissible under CJP section 10-202, the Uniform Proof of Statutes Act. He also claims that the laws and policies were admissible because Article 23 of the Maryland Declaration of Rights states that, "In the trial of all criminal cases, the Jury shall be the Judges of Law, as well as of fact."

CJP section 10-202(a) provides as follows:

> Printed books or pamphlets purporting on their face to be the session or other statutes of the United States, any of the United States or its territories, or of a foreign jurisdiction, and to have been printed and published by the authority of a state, territory, or foreign jurisdiction or proved to be commonly recognized in its courts, shall be received in the courts of the State as prima facie evidence of the statutes.

On its face, section 10-202(a) has nothing to do with the relevance or admissibility of the federal statutes and policies that Soper sought to introduce at trial. The statute explains how a party may prove the contents of federal, state, or foreign law at trial, provided that the law is otherwise admissible. It does not make evidence of federal, state, or foreign law automatically admissible.

Under Article 23 of the Declaration of Rights, "the Jury shall be the Judges of Law, as well as of fact[.]" Nonetheless, "the jury's role with respect to the law is limited to resolving conflicting interpretations of the law of the crime and determining whether that law should be applied in dubious factual situations." *Hebron v. State*, 331 Md. 219, 233 (1993). Moreover, the trial court's instructions on the law are binding unless there is a "sound basis for a dispute as to the law of the crime[.]" *Barnhard v. State*, 325 Md. 602, 614 (1992) (emphasis omitted). Thus, "the jury's right to judge the law is virtually eliminated; the provision, as [Maryland courts] have construed it, basically protects the jury's right to judge the facts." *In re Petition for Writ of Prohibition*, 312 Md. 280, 318 (1988), *disapproved of on other grounds*, *State v. Manck*, 385 Md. 581 (2005).

As explained in section I, above, federal law does not preempt the Maryland Wiretap Act. For that reason, there is no sound basis for a dispute as to the "law of the

crime." Accordingly, Soper had no right to argue the law to the jury. *See Newman v. State*, 65 Md. App. 85, 103 (1985).

In his reply brief, Soper argues that the court should have allowed him to raise "federal jurisdictional issues" because, he says, the State was required to prove territorial jurisdiction. In addition, he argues that the federal laws and policies bear on whether he had the requisite mens rea or criminal intent when he made the recordings.

Ordinarily, an appellate court does not consider arguments that a party raises for the first time in a reply brief. *See*, *e.g.*, *Gazunis v. Foster*, 400 Md. 541, 554 (2007). Even if we considered Soper's arguments, however, we would find them lacking.

"Territorial jurisdiction describes the concept that[,] only when an offense is committed within the boundaries of the court's jurisdictional geographic territory, which generally is within the boundaries of the respective states, may the case be tried in that state." *State v. Butler*, 353 Md. 67, 72-73 (1999). In its motion in limine in this case, the State correctly argued that the issue of territorial jurisdiction was limited to whether the offenses occurred within the geographic confines of Cecil County. Territorial jurisdiction had nothing to do with whether State or federal law applied.

Finally, the federal laws and policies are not, as Soper thinks, relevant to whether he willfully violated Maryland's Wiretap Act. "Willfulness," under Maryland's Wiretap Act, means that the defendant acted "deliberately and intentionally" as opposed to "accidentally or negligently"; it does not require knowledge that the actions violated the Act. *Deibler v. State*, 365 Md. 185, 194-200 (2001). Thus, to prove the willfulness required to sustain a violation of the Act, the State must prove only that the defendant

made the recording on purpose. *Id.* at 200. Because Soper admitted that he made the recordings on purpose, the federal laws and policies were irrelevant.

V.

At trial, the State offered the recordings that Soper made of his conversations with the VA employees. Soper admitted at trial that he made the recordings and posted them on YouTube.

Soper contends that the trial court should have not permitted the State to introduce those recordings into evidence. He claims that they were inadmissible because they were made in violation of Maryland's Wiretap Act. He relies on CJP section 10-405(a), which provides, in general, that, "whenever any wire, oral, or electronic communication has been intercepted, no part of the contents of the communication and no evidence derived therefrom may be received in evidence in any trial, hearing, or other proceeding in or before any court, grand jury, department, officer, agency, regulatory body, legislative committee, or other authority of this State, or a political subdivision thereof if the disclosure of that information would be in violation of this subtitle."

In *Agnew v. State*, 461 Md. 672, 686 (2018), the Court that held that a person who makes a recording in violation of the Wiretap Act "cannot use" the Act "to prevent admission" of that recording. *Id.* In reaching its decision, the Court reasoned that "the intended purpose of the Maryland Wiretap Act was not to protect a party who records a conversation without the consent of the other parties, and then provide the opportunity of that party to block its admission." *Id.* Thus the Court concluded that, "where a party to a communication consents to or participates in the interception of that communication, §

10-402(a) of the Maryland Wiretap Act does not render the intercepted communication inadmissible against the consenting party." *Id.*

In his reply brief, Soper attempts to distinguish *Agnew* on the basis that *Agnew* involved surreptitious recordings, while everyone he recorded knew that they were being recorded. He asserts that the people he recorded must, therefore, have consented to being recorded. His argument misses the mark, because knowledge that one is being recorded does not equate to consent to the recording. In addition, if the people whom Soper recorded had really consented to the recording, as he says, there would be no violation of the Wiretap Act, and therefore the recordings would not be inadmissible pursuant to CJP section 10-405(a).

In light of *Agnew*, we reject Soper's assertion that the recordings were inadmissible against him under the Act.[5]

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

[5] Soper does not argue that the Wiretap Act would infringe on his First Amendment rights of freedom of speech if it were construed to make it a crime for him to use a smart phone to record his interactions with government officials, such as police officers, with a view towards publicizing the interactions on the internet. Consequently, we do not consider that argument.