Circuit Court for Charles County
Case No. 08-K-16-000516

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 1903

September Term, 2016

AARON TYRONE WATTS

v.

STATE OF MARYLAND

Woodward, C.J.,
Graeff,
Moylan, Charles, E., Jr.,
(Senior Judge, Specially Assigned),

JJ.

PER CURIAM

Filed: September 11, 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.

Aaron Tyrone Watts, appellant, appeals his convictions for driving while impaired, negligent driving, and three counts of speeding following a jury trial in the Circuit Court for Charles County. Watts raises a single issue on appeal: whether the circuit court erred in overruling his *Batson* challenge.[1] For the reasons that follow, we affirm.

During *voir dire*, appellant raised a *Batson* challenge based on the State having used two of its peremptory strikes against African-American jurors. The trial court denied appellant's challenge, finding that he had failed to demonstrate a *prima facie* case of intentional discrimination. Thereafter, the parties selected one additional juror, and two alternate jurors. The trial court then asked appellant if he was satisfied with "the special panel that's now seated." Appellant's defense counsel responded, "Yes, thank you."

In *Gilchrist v. State*, 340 Md. 606 (1995), the Court of Appeals held:

> When a party complains about the exclusion of someone from or the inclusion of someone in a particular jury, and thereafter states without qualification that the same jury as ultimately chosen is satisfactory or acceptable, the party is clearly waiving or abandoning the earlier complaint about that jury. The party's final position is directly inconsistent with his or her earlier complaint.

Id. at 618. Appellant concedes that he waived his objection to the exclusion of the African-American jurors by expressing his satisfaction with the jury at the end of *voir dire*. He nevertheless asks us to exercise our discretion to engage in plain error review. However, appellant did not merely fail to object; rather, he affirmatively waived this issue. Consequently, plain error review is not appropriate. *State v. Rich*, 415 Md. 567, 580 (2010)

[1] *Batson v. Kentucky,* 476 U.S. 79 (1986).

("Forfeited rights are reviewable for plain error . . . waived rights are not." (citation omitted)).

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