

COURT OF APPEALS OF VIRGINIA

Record No. 0746-25-1

DELANO MARSHON SMITH
v.
COMMONWEALTH OF VIRGINIA

Present: Judges O'Brien, Chaney and Raphael

Argued at Williamsburg, Virginia

Opinion Issued September 15, 2026*

FROM THE CIRCUIT COURT OF THE CITY OF CHESAPEAKE

Marjorie A. Taylor Arrington, Judge

Brett P. Blobaum, Senior Appellate Attorney (Virginia Indigent Defense Commission, on briefs),
for appellant.

Andrew T. Hull, Assistant Attorney General (Jason S. Miyares,¹ Attorney General; Brooke I.
Hettig, Assistant Attorney General, on brief), for appellee.

MEMORANDUM OPINION BY JUDGE MARY GRACE O'BRIEN

Following a jury trial, the circuit court convicted Delano Marshon Smith (appellant) of first-degree murder and use of a firearm in the commission of a felony. On appeal, appellant argues that the court erred by denying his motion to strike a juror for cause and by admitting certain text messages. He also asserts that the court erred by ordering supervised probation for an indeterminate period upon his release from incarceration.

* This opinion is not designated for publication. *See* Code § 17.1-413(A).

¹ Jay C. Jones succeeded Jason S. Miyares as Attorney General on January 17, 2026.

BACKGROUND

We recite the facts “in the ‘light most favorable’ to the Commonwealth, the prevailing party in the trial court.” *Hammer v. Commonwealth*, 74 Va. App. 225, 231 (2022) (quoting *Commonwealth v. Cady*, 300 Va. 325, 329 (2021)). In doing so, we discard any evidence that conflicts with the Commonwealth’s evidence and regard as true all the credible evidence favorable to the Commonwealth and all inferences that can be fairly drawn from that evidence. *Cady*, 300 Va. at 329.

On October 15, 2022, Daeshaun Everette was at an apartment in Chesapeake when his cousin, Rashee Parson, came to visit. Everette and Parson were outside talking for about 30 minutes when two men dressed in black—appellant and “Larry”—walked by. They greeted each other before the two men walked away.

Everette took Parson’s phone inside the apartment to charge. As Everette came back outside, he observed appellant and Larry returning. Everette saw the men shoot at Parson. He estimated that he heard about 30 gunshots in the span of 20 to 25 seconds. Appellant and Larry left, and Everette went to assist Parson, while a neighbor called 911.

Chesapeake Police Officer Christopher Hawk arrived at the scene and tried to help Parson, who was on the ground covered in blood. Despite his efforts, Parson died. Parson had suffered over 20 gunshot wounds. A forensic expert determined that the bullets recovered from Parson’s body came from at least two guns. Officer Hawk did not find any firearms on Parson’s person.

When Everette first spoke to the police, he denied knowing who shot Parson. Later, he admitted lying because he feared that his cousin, who still lived in the neighborhood, would be hurt or killed in retaliation if he identified appellant as the shooter. In November 2022, Everette met with the police again and identified appellant and Larry as the shooters. He was familiar with both men from the neighborhood, but he had never had a problem with them before. He identified

appellant with a high degree of certainty, explaining that he saw appellant firing a gun at Parson and “locked eyes” with appellant during the shooting.

Upon appellant’s arrest, the police seized his phone and obtained a search warrant for its content. A search of the phone revealed that less than an hour after the shooting and throughout the rest of that day, appellant repeatedly searched local news sites for information about a shooting at the apartment building. The phone’s location showed that it was a short distance from the apartment about 12 hours before the shooting and remained there until the early morning of the next day.

On November 6, 2022, appellant communicated with a user identified as “Kiyah” via text messages. Kiyah asked: “Why my mama just asked me if you killed ole boy.” Appellant asked: “Ray?” Kiyah responded: “No, the other one.” Appellant then stated: “O say no,” with a laughing and crying emoji. At trial, appellant unsuccessfully objected to the introduction of these text messages based on hearsay, authentication issues, relevancy, and the prejudice outweighing the probative value of the messages.

Jury Selection

During voir dire, Juror 3, along with the other members of the venire, confirmed that she had no interest in the outcome of the case, had not formed an opinion as to appellant’s guilt or innocence, and had no bias against appellant or the Commonwealth. She understood that appellant was presumed innocent and was not required to produce any evidence. She said she knew of no reason she could not fairly weigh the evidence and base her verdict solely on the evidence presented at trial.

Juror 3 advised that when she was in high school, her mother was the victim of a violent crime, and she recalled the impact on her mother and the entire family. When appellant’s counsel asked her if she would have difficulty with the violent nature of the crime in this case, Juror 3

responded that it was a “possibility” and that she was “not really sure.” Appellant’s counsel stated that the evidence included graphic videos and images of blood and the victim on the ground. Juror 3 said that that she would be “honest” and that it would be “hard to see,” given the victim’s youth. She explained it might bother her based on what had happened to her mother. She stated that she “would try [her] best” to follow the court’s instructions and base her decision only on the evidence presented. She acknowledged that if the victim’s family was in the courtroom during trial, as expected, she would “relate to them,” but that would “[n]ot necessarily” impact how she viewed the evidence.

The court then asked her to clarify: “Will you be able to be fair and impartial to the Commonwealth and to the defendant, even though it may be difficult for you?” Juror 3 replied that she “would do it to the best of [her] ability.” Neither counsel nor the court asked any additional questions.

Appellant’s counsel moved to strike Juror 3 for cause, arguing that she demonstrated that it would be difficult for her to listen to the evidence because of the victim’s youth and her own experiences. The court denied the motion, finding that although Juror 3 stated it would be difficult for her to hear the evidence, she repeatedly said that she would try her best to judge the case fairly. The court concluded that “everyone” says they will try to be fair and the court did not hear Juror 3 say that she would be prejudiced when considering the evidence. The jury found appellant guilty of first-degree murder and use of a firearm in the commission of a felony, and the court sentenced appellant to a total of 73 years’ incarceration, with 20 suspended under the condition that defendant be placed on supervised probation “[f]or an indeterminate period.”

ANALYSIS

I.

“Both the United States and Virginia Constitutions guarantee the right to be tried by an impartial jury.” *Rodriguez v. Commonwealth*, 85 Va. App. 664, 690 (2025). “It is the duty of the trial court, through the legal machinery provided for that purpose, to procure an impartial jury to try every case.” *Lovos-Rivas v. Commonwealth*, 58 Va. App. 55, 60 (2011) (quoting *Salina v. Commonwealth*, 217 Va. 92, 93 (1976)).

“The striking of any individual potential juror for cause . . . is committed to the sound discretion of the trial court.” *Townsend v. Commonwealth*, 270 Va. 325, 329 (2005). “[A]n underlying question of juror impartiality is one of fact, and the trial court’s determination on the subject is ‘entitled to great deference on appeal’ unless ‘plainly wrong or unsupported by the record.’” *Burton v. Commonwealth*, 85 Va. App. 408, 419 (2025) (quoting *Northcraft v. Commonwealth*, 78 Va. App. 563, 588 (2023)).

On the other hand, the jury panel “must be ‘free of potential bias or other disqualifying characteristics before’ the parties ‘exercis[e] peremptory challenges.’” *Rodriguez*, 85 Va. App. at 690 (alteration in original) (quoting *Ramos v. Commonwealth*, 71 Va. App. 150, 157 (2019)). Further, “it is well settled that ‘any reasonable doubt as to a juror’s qualifications must be resolved in favor of the accused.’” *Id.* at 691 (quoting *Castillo v. Commonwealth*, 70 Va. App. 394, 423 (2019)). “In other words, in determining whether a prospective juror can give the accused a fair and impartial trial, ‘nothing should be left to inference or doubt.’” *Id.* (quoting *Goodwin v. Commonwealth*, 71 Va. App. 125, 135 (2019)). “[E]ach case must be determined under its own facts and circumstances.” *Burton*, 85 Va. App. at 419 (quoting *Temple v. Moses*, 175 Va. 320, 336 (1940)). “[I]n assessing a juror’s impartiality, the appellate court reviews the

voir dire of each juror as a whole, not just isolated statements by that juror.” *Goodwin*, 71 Va. App. at 136.

Appellant argues that the court erred by denying his motion to strike Juror 3 for cause because she could not show that she was impartial. We agree.

“If [a juror] has any interest in the cause, or is related to either party, or has expressed or formed any opinion, or is sensible of any bias or prejudice, he is excluded by the law.” *Keepers v. Commonwealth*, 72 Va. App. 17, 42 (2020) (alteration in original) (quoting *Lovos-Rivas*, 58 Va. App. at 60-61). “[T]he test of impartiality is whether the venireperson can lay aside the preconceived views and render a verdict based solely on the law and evidence presented at trial.” *Cressell v. Commonwealth*, 32 Va. App. 744, 761 (2000). A court commits manifest error “when the record shows that a prospective juror cannot or will not lay aside his or her preconceived opinion.” *Taylor v. Commonwealth*, 67 Va. App. 448, 456 (2017).

This Court recently explained that “ambiguous or equivocal answers by jurors who have previously expressed bias are problematic; a prospective juror should be able to articulate impartiality—and equivocal responses to clarifying inquiries will generally be inadequate to overcome previously stated bias.” *Burton*, 85 Va. App. at 423. In *Burton*, this Court held the circuit court erred in not striking a juror who admitted bias against the defendant and repeatedly stated that he could not be fair to both parties, although the juror also stated he would follow all of the court’s instructions in reaching a verdict. *Id.* at 425-28.

Similarly in *Rodriguez*, the court erred in not striking a juror who believed the defendant was more likely to be guilty if he had previously been convicted of a similar offense. 85 Va. App. at 692. Specifically, when asked whether her knowledge of the defendant’s prior crimes “would be ‘so overwhelming in [her] thought process that [she] couldn’t fairly and impartially listen to the facts and the evidence and make a decision based upon the facts and the

evidence,” the juror responded that it “would be very hard, yes.” *Id.* at 693 (alterations in original). That response “cast her partiality into question” because “prior convictions alone cannot prove any element, let alone each element of the charged offenses beyond a reasonable doubt.” *Id.* The statement “demonstrated a fixed opinion that required rehabilitation,” which never occurred. *Id.*

Like *Burton* and *Rodriguez*, here, Juror 3 indicated “[p]ossibly” having trouble with the violent nature of the crime. She stated that her own experience of her mother being a crime victim could impact her ability to sit and listen to the evidence. When asked whether she would be able to follow the court’s instructions, listen to the evidence, and consider the case fairly, she responded only that she “would try [her] best.” When the court requested clarification, asking whether she could be fair and impartial, Juror 3 again answered that she “would do it to the best of [her] ability.” At no point did Juror 3 affirmatively state that she would be able to be impartial despite her own experience.² See *Burton*, 85 Va. App. at 423 (explaining that “equivocal responses to clarifying inquiries will generally be inadequate to overcome previously stated bias”). Like in *Rodriguez*, her statement that she would struggle to be fair and impartial and listen to the evidence required rehabilitation, which never occurred.

The Commonwealth relies on the unpublished opinion of *Cuffee v. Commonwealth*, No. 0834-24-1, 2025 Va. App. LEXIS 568 (Sep. 23, 2025), in which this Court found that the trial court did not err in not striking a juror who expressed that a previous experience could possibly affect his impartiality. But in that case, the juror also clearly “affirmed that he would keep an

² This case can be distinguished from *Keepers*, 72 Va. App. at 45, where this Court affirmed the refusal to strike a juror for cause when the juror answered, “I think I can,” to the question whether he could be impartial because, depending on the emphasis of the word “can” or “think,” the answer conveyed a different meaning. Appellate courts defer to trial courts that had the “opportunity to observe the juror’s tone and demeanor.” *Id.* Here, the meaning of Juror 3’s answer does not change depending on the emphasis in her answer.

open mind and apply the law to the evidence” when asked by the prosecution if he could do so. *Id.*, slip op. at 5, 2025 Va. App. LEXIS 568, at *7. In this case, Juror 3 at no point made such a clear affirmation but instead continued to state that she “would do [her] best.”

Because “any reasonable doubt as to a juror’s qualifications must be resolved in favor of the accused,” *Rodriguez*, 85 Va. App. at 691 (quoting *Castillo*, 70 Va. App. at 423), we find the court erred in failing to strike Juror 3 for cause, and we reverse the circuit court’s judgment.³

CONCLUSION

The circuit court erred in not striking Juror 3 for cause, violating appellant’s right to an impartial jury. Accordingly, we reverse appellant’s convictions and remand for a new trial, if the Commonwealth be so advised.

Reversed and remanded.

³ Appellant also assigns error to the court’s admission of certain text messages and ordering probation for an indeterminate amount of time. But because “[t]he doctrine of judicial restraint dictates that we decide cases ‘on the best and narrowest grounds available,’” *Commonwealth v. White*, 293 Va. 411, 419 (2017) (alteration in original) (quoting *Commonwealth v. Swann*, 290 Va. 194, 196 (2015)), and because we find reversible error in the court’s failure to strike Juror 3, we do not address appellant’s other assignments of error.