

**FOURTH DIVISION
MCFADDEN, P. J.,
WATKINS and PADGETT, JJ.**

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August 19, 2026

In the Court of Appeals of Georgia

A26A1224. MATHESON v. THE STATE.

PADGETT, Judge.

Following a jury trial in Towns County, Charles Jason Matheson was convicted of the attempted murder of his wife (the “Wife”). Matheson appeals from the denial of his motion for new trial, arguing that the trial court erred in declining to strike the jury pool, that his motion for mistrial based on a juror’s comments during trial was improperly denied, and that the cumulative prejudice resulting from these errors warrants a new trial. For the reasons that follow, we affirm.

Matheson does not challenge the sufficiency of the evidence supporting his conviction. Accordingly, “we review only the evidence presented at trial that is relevant to [his] enumerations of error and any factual background needed to provide

context for them.” *Eaker v. State*, 315 Ga. 202, 203(1) (881 SE2d 673) (2022). So viewed, the evidence shows that Matheson and the Wife were married in 2017 and lived in Clay County, North Carolina. Not long thereafter, they began to experience marital difficulties, due to Matheson’s suspicion that the Wife was engaged in infidelity.

On July 11, 2020, Matheson again accused the Wife of cheating on him and the couple fought “pretty much all day.” The argument carried over to the following day, escalating to the point where Matheson “put his hands around [the Wife’s] throat and started strangling [her].” The Wife obtained a domestic violence protective order and Matheson was indicted by a Clay County grand jury for assault by strangulation.¹

On January 25, 2021, Matheson attempted to get the Wife to reduce or drop the charges against him. She refused. The next day, a person wearing a hoodie entered the lobby of the Chatuge Regional Hospital Rehabilitation and Wellness Center in Towns County where the Wife worked as a receptionist. The person walked toward the front desk, drew back the hoodie, and pulled out a gun. The Wife instantly recognized the

¹ Matheson was also charged with interference with emergency communication, a misdemeanor, as part of the same indictment.

gunman as Matheson. Matheson fired the gun and shot the Wife eight times. She survived after undergoing surgery at a regional hospital.

Matheson was arrested later that day. During a custodial interview, he denied shooting the Wife. Notwithstanding, police performed a gunshot residue test on Matheson, which tested positive. Officers searched his pickup truck and found a 9mm cartridge on the passenger seat that matched the caliber of casings recovered at the scene. A Georgia Bureau of Investigation firearms expert testified that the shell casings located at the scene had been fired from either a Ruger or Taurus 9mm handgun. Law enforcement learned that approximately three weeks before the shooting, Matheson had traded a guitar for a Ruger 9mm pistol.

A Towns County grand jury returned an indictment charging Matheson with aggravated assault, aggravated stalking, and criminal attempt to commit murder, and the case proceeded to trial. During voir dire, prospective juror H. indicated that he knew “too much” about the case, expressing that, “I even think I know how many times [the Wife] was hit and all that, you know, how many shots are fired and all that.” When asked whether he could set his opinion aside and decide the case based on the evidence, prospective juror H. stated:

I — generally, I’m able to do that, but I just think I went too far on this one, and specifically, because of my wife, how she feels about certain things, I feel it’s like a control freak thing, you know, and that’s what — and nobody can — if I can’t have you, nobody can. And she specifically has problems with those guys that go out and kill their wives or their children after they’ve been rejected.

At a bench conference, trial counsel stated that he was “very concerned” about prospective juror H.’s comments, contending that they were “very damaging to the jury panel.”²

The trial court dismissed prospective juror H. for cause, proceeded with voir dire, and a jury was selected after the third panel.³ At that point, two individuals selected for the jury advised the trial court that they had overseas trips planned during the trial week. Trial counsel requested to “start over,” and again objected to the comments made by prospective juror H. The trial court decided to “start[] from the beginning” and restrike the jury. The fourth panel of potential jurors was questioned and a second jury was selected from the same group of potential jurors. The following

² According to trial counsel, the entire venire was in the courtroom to hear prospective juror H.’s comments.

³ The jury pool was grouped into four panels.

morning, before the jury had been sworn in, trial counsel moved for the jury to be excused and for a new jury to be impaneled, which the trial court denied.⁴

Following a five-day trial, the jury found Matheson guilty of all the charged offenses; the trial court merged his convictions for aggravated assault and aggravated stalking into his conviction for attempted murder for the purpose of sentencing. He filed a motion for new trial, later amended, that the trial court denied following a hearing. Matheson now appeals.

1. Matheson argues that the trial court erred in denying his motion to excuse the jury pool based, in part, on prospective juror H.’s comments during voir dire.⁵ We disagree.

“We review a trial court’s denial of a motion requesting that a jury panel be excused and another panel be made available for an abuse of discretion.” *Burks v.*

⁴ Trial counsel first moved for a mistrial based on “what happened with ... jury selection.” The trial court denied the motion, noting that “it’s too early for a mistrial. The jury hadn’t [sic] been sworn yet.”

⁵ In his brief, Matheson urges us to consider the effect of allegedly prejudicial comments from two other potential jurors. However, we need not do so given that Matheson did not take issue with remarks from these potential jurors when he moved to strike the jury pool. See *Wakefield v. Kiser*, 371 Ga. App. 113, 115(1) (899 SE2d 757) (2024) (“[A]bsent special circumstances, an appellate court need not consider arguments raised for the first time on appeal.”).

State, 322 Ga. 865, 880(6) (922 SE2d 377) (2025). “In this area ... appellate courts should give substantial deference to the decisions made by trial judges, who oversee voir dire on a regular basis, are more familiar with the details and nuances of their cases, and can observe the parties’ and the prospective jurors’ demeanor.” *Purnell v. State*, 355 Ga. App. 899, 900 (843 SE2d 637) (2020) (punctuation omitted).

In determining whether a trial court is required to excuse a jury panel for remarks made during voir dire, the inquiry is whether the remarks were *inherently* prejudicial and deprived [Matheson] of his right to begin his trial with a jury free from even a suspicion of prejudgment or fixed opinion. If so, then the trial court’s failure to excuse the panel constitutes an abuse of discretion.

Johnson v. State, 340 Ga. App. 429, 435(3) (797 SE2d 666) (2017). “Generally, dismissal of a jury panel is required when, during voir dire, a prospective juror relays information that is specific to the defendant and germane to the case for which the defendant is on trial. Dismissal is not required, however, when the statements establish only gossamer possibilities of prejudice.” *Logan v. State*, 265 Ga. App. 134, 136(3) (593 SE2d 14) (2003) (punctuation omitted).

Here, regardless of how the motion to excuse the jury and for a new jury to be impaneled was phrased,⁶ the trial court did not abuse its discretion in denying Matheson's motion to strike the jury panel since prospective juror H.'s statements were not inherently prejudicial. To start with, prospective juror H. did not reveal anything new to the jury pool when he stated that he thought he knew "how many shots [were] fired." That is because before any jurors were questioned, the trial court read the indictment, which charged Matheson with making an assault upon the Wife with a pistol, "by shooting her multiple times[.]" See *Lester v. State*, 343 Ga. App. 618, 621–23(2) (807 SE2d 922) (2017) (holding that presence of pool sticks in courtroom during voir dire did not improperly influence venire where potential jurors were aware that a pool stick was involved in the crimes alleged to have been committed after trial court read indictment at the outset of jury selection).

⁶ In response to prejudicial comments before the jury pool, the proper procedural vehicle is not a motion for mistrial, which, as the trial court correctly recognized, "is not ripe until the case has begun, and the trial does not begin until the jury has been impaneled and sworn." *Purnell*, 355 Ga. App. at 901 (punctuation omitted). Rather, the proper procedural vehicle "is a 'challenge to the poll' or a motion to strike the panel and impanel new jurors who had not heard the remark." *Id.* "However, where the clear import of the motion is that the jury panel be excused and another panel be made available, the defendant's use of incorrect nomenclature may be disregarded." *Id.* (punctuation omitted).

Moreover, prospective juror H.'s statements concerning a "control freak thing" and "those guys" who kill their wives or children after they have been rejected were not so inherently prejudicial as to deny Matheson a fair trial because the statements did not convey any harmful information specific to Matheson, but merely reflected the prospective juror's — or his wife's — opinions. Under these circumstances, we find no abuse of the trial court's discretion in denying Matheson's motion to strike the entire jury panel. See *Johnson*, 340 Ga. App. at 434–36(3); *Williams v. State*, 248 Ga. App. 111, 112–13(1) (545 SE2d 669) (2001); *Hughey v. State*, 180 Ga. App. 375, 377–78(2) (348 SE2d 901) (1986) (finding that potential juror's comment, "I have arrested [the defendant]" did not imply guilt and thus was not inherently prejudicial). Cf. *Moore v. State*, 156 Ga. App. 92, 92–93(1) (274 SE2d 107) (1980) (potential juror's comment that defendant was a "firebug" was inherently prejudicial where defendant was on trial for arson); *Lingerfelt v. State*, 147 Ga. App. 371, 372–73(1) (249 SE2d 100) (1978) (prospective juror's remark that defendant was "a peeping tom" in a case involving rape and sodomy was inherently prejudicial).

2. In a related claim of error, Matheson argues that the trial court abused its discretion in denying his motion for a mistrial after a juror made improper comments regarding his guilt during trial. We discern no error.

When irregular juror conduct is shown, there is a presumption of prejudice to the defendant, and the prosecution carries the burden of establishing beyond a reasonable doubt that no harm occurred. However, in order for juror misconduct to upset a jury verdict, it must have been so prejudicial that the verdict is deemed inherently lacking in due process. The decision whether to remove a juror from a panel lies within the sound discretion of the trial court and will not be overturned absent an abuse of that discretion. This Court also reviews the denial of a mistrial for abuse of discretion.

Sallee v. State, 329 Ga. App. 612, 618(4) (765 SE2d 758) (2014) (citation modified).

The record shows that on the fourth day of trial, the trial court was notified by the bailiffs that juror W. was “sitting in the box during the testimony and during the evidence ... cursing and making statements to the effect of the defendant’s guilt.” Matheson moved for a mistrial due to juror misconduct, which the trial court reserved ruling on. The trial court questioned juror W., who denied making any improper comments during trial. Nevertheless, the trial court removed juror W. from the jury and replaced him with an alternate. The trial court also questioned the other jurors

individually to determine if anyone had heard any inappropriate comment concerning Matheson's guilt. One juror heard "mumbling," but affirmed that he could remain "fair to both sides." Another juror stated that she heard comments that were "disturbing to [her]" and "confuse[d] [her] ability to think clearly." When questioned further by the trial court, the juror stated that she could base her verdict on the evidence and that the comments would not affect her ability to go forward as an impartial juror. A third juror indicated that she heard comments from another juror during the trial, but that she "basically blocked it out." She stated that the comments would not impact her ability to fairly decide the case. The remaining jurors said that they had not heard any comments and could remain fair and impartial. The trial court subsequently denied the motion for mistrial.

Based on this record, we conclude that the juror misconduct at issue here was not so prejudicial as to deny Matheson due process. Notably, the trial court replaced the offending juror, thoroughly questioned each remaining juror about what he or she had heard, and whether he or she had the ability to remain fair and impartial, and found that each juror could remain impartial. The trial court's actions comprised "an adequate remedy," and thus, Matheson was not deprived of a fair trial. *Sallee*, 329 Ga.

App. at 619(4). Consequently, the trial court did not abuse its discretion by refusing to declare a mistrial. See *Tripp v. State*, 349 Ga. App. 164, 172–73(2) (825 SE2d 560) (2019) (holding that trial court did not abuse its discretion in denying defendant’s motion for mistrial where juror made comments suggesting that defendant was guilty to other jurors mid-trial; the offending juror was removed and the trial court questioned remaining jurors as to whether they had heard remarks, and whether any juror possessed a preconception of guilt, innocence, or bias toward defendant); *Gresham v. State*, 303 Ga. App. 682, 684–85(1) (695 SE2d 73) (2010) (finding that trial court did not err in refusing to grant mistrial after alternate juror made comments overheard by six jurors that defendant accused of child molestation should be hung and that the alternate juror would beat the defendant with a two-by-four if her granddaughter was the victim where the jurors who heard the comments stated that the comments would not affect their ability to fairly decide case).

3. Matheson contends that he is entitled to a new trial due to the cumulative prejudicial effect of the juror misconduct. We find this argument unavailing.

“To establish cumulative error, [Matheson] must show that (1) at least two errors were committed in the course of the trial; and (2) considered together along

with the entire record, the multiple errors so infected the jury’s deliberation that they denied [Matheson] a fundamentally fair trial.” *Jackson v. State*, 317 Ga. 95, 107(4) (891 SE2d 866) (2023). Even assuming that the question of cumulative error is properly before us,⁷ assessing cumulative prejudice is necessary only when multiple errors have been shown, and Matheson has failed to establish even one error. See *Scott v. State*, 309 Ga. 764, 771(3)(d) (848 SE2d 448) (2020) (“We evaluate only the effects of matters determined to be error, not the cumulative effect of non-errors.” (punctuation omitted)). Thus, the cumulative error rule provides no basis for reversal.

Judgment affirmed. McFadden, P. J., and Watkins, J., concur.

⁷ Our Supreme Court has explained that the cumulative error rule “involve[s] evidentiary issues,” *State v. Lane*, 308 Ga. 10, 17(1) (838 SE2d 808) (2020), “which usually are easily cumulated.” *Jones v. State*, 314 Ga. 605, 617(5) n.9 (878 SE2d 505) (2022). The Court made clear in *Lane* that “[i]f a defendant in a future case seeks to argue to the reviewing court that he is entitled to a new trial based on the cumulative effect of errors outside of the evidentiary context, he would do well to explain why [cumulative error] should be extended beyond the evidentiary context.” *Lane*, 308 Ga. at 17–18(1). Here, other than a conclusory assertion that “the influence upon the jurors is cumulative,” Matheson makes no argument as to how we might aggregate harm from alleged juror misconduct before and during trial. See *Jones*, 314 Ga. at 617(5) n.9 (differentiating an issue involving an “allegedly partial juror” from evidentiary decisions).