

IN THE  
**ARIZONA COURT OF APPEALS**  
DIVISION TWO

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THE STATE OF ARIZONA,  
*Appellee,*

*v.*

JUSTIN TYLER GRANDSTAFF,  
*Appellant.*

No. 2 CA-CR 2022-0044  
Filed October 20, 2022

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THIS DECISION DOES NOT CREATE LEGAL PRECEDENT AND  
MAY NOT BE CITED EXCEPT AS AUTHORIZED BY APPLICABLE RULES.

NOT FOR PUBLICATION

*See* Ariz. R. Sup. Ct. 111(c)(1); Ariz. R. Crim. P. 31.19(e).

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Appeal from the Superior Court in Pima County  
No. CR20203976001  
The Honorable Catherine M. Woods, Judge

**AFFIRMED**

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COUNSEL

Mark Brnovich, Arizona Attorney General  
Linley Wilson, Deputy Solicitor General/Section Chief of Criminal Appeals  
By Joshua C. Smith, Assistant Attorney General, Phoenix  
*Counsel for Appellee*

Robert A. Kerry, Tucson  
*Counsel for Appellant*

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**MEMORANDUM DECISION**

Presiding Judge Eckerstrom authored the decision of the Court, in which Chief Judge Vásquez and Judge Cattani concurred.

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ECKERSTROM, Presiding Judge:

¶1 Justin Grandstaff appeals from his convictions and sentences for two counts of first-degree murder and one count of discharging a firearm at a residential structure. Grandstaff argues on appeal that the trial court erred in rejecting his challenge to a juror for cause. We affirm.

¶2 In October 2020, Grandstaff shot and killed two people by firing his gun into a residence. He was charged with two counts of first-degree murder, one count of aggravated assault, and one count of firing into a residential structure.<sup>1</sup>

¶3 During jury selection, Grandstaff's counsel asked the potential jurors whether they would have "a problem if the defense doesn't put on witnesses" and "Mr. Grandstaff doesn't testify." A juror responded that she "may have" the need to "hear from Mr. Grandstaff" "depending on . . . what's all presented." She stated that it "would depend on what his defense was" and agreed she might "hold it against him" if he did not testify. Grandstaff moved to excuse the juror for cause, but the trial court denied the request, noting "she has clearly expressed through [previous] answers or non-answers to some specific questions that she will follow the law and judge the case on the evidence, including observing the defendant's constitutional rights."

¶4 Grandstaff's counsel then asked the juror, "[W]ould you be able to set aside the fact that he may have remained silent and not testified . . . or do you think that you would have it creep into your thought process and deliberation the fact that he had not testified?" The juror responded, "I guess I would hope it wouldn't creep into my thought processes but until . . . it's presented to me, I don't know how I'd feel one way or the other."

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<sup>1</sup>The aggravated assault charge was later dismissed pursuant to the state's motion.

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But later, when questioned directly by the trial court, the juror agreed she would “honor the defendant’s constitutional right to remain silent if he chooses to do that and still evaluate the case in its entirety, including any possible self-defense claim.” The court then denied Grandstaff’s renewed challenge.

¶5 At trial, Grandstaff argued he had acted in self-defense, but he did not testify. He was convicted as described above and sentenced to concurrent life terms with the possibility of release after twenty-five years for his murder convictions, and a 10.5-year prison term for his conviction of firing into a residential structure, to run concurrently with his life terms. This appeal followed.

¶6 Grandstaff argues the trial court erred by denying his juror challenge, citing the juror’s several statements reflecting she was not certain she could disregard his decision to not testify. A trial court “must excuse a prospective juror or jurors from service in the case if there is a reasonable ground to believe that the juror or jurors cannot render a fair and impartial verdict.” Ariz. R. Crim. P. 18.4(b). The challenging party must “establish by a preponderance of the evidence that the juror cannot render a fair and impartial verdict.” Ariz. R. Crim. P. 18.5(h).

¶7 We review a trial court’s decision whether to strike a juror for cause for an abuse of discretion. *State v. Burns*, 237 Ariz. 1, ¶ 22 (2015). Because that court is in “the best position to observe the potential jurors,” it is given great deference on whether to strike a juror or jury panel. *State v. Johnson*, 247 Ariz. 166, ¶ 106 (2019); see also *State v. Martinez*, 196 Ariz. 451, ¶ 28 (2000) (“A juror’s preconceived notions or opinions about a case do not necessarily render that juror incompetent to fairly and impartially sit in a case.”). A trial court “must consider the entirety of a prospective juror’s demeanor and behavior,” but, “if a juror’s promise to uphold the law is coupled with ambiguous statements and uncertainty,” the trial court “may strike the juror for cause.” *Burns*, 237 Ariz. 1, ¶ 23 (emphasis added); see also Ariz. R. Crim. P. 18.5(h).

¶8 Were we to adopt Grandstaff’s position, rather than deferring to the trial court’s evaluation, we would instead require a trial court to strike any juror who expressed uncertainty about applying the law.<sup>2</sup> No

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<sup>2</sup>Grandstaff insists the juror expressed “strongly held views about Mr. Grandstaff not testifying.” That is not an accurate characterization of the juror’s statements. And we reject his argument that the trial court was required to assume the juror told the court she would follow its directions

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authority permits that approach. And, it would require a trial court to disregard a juror's later statements that the juror would follow the law – here, specifically that the juror would respect Grandstaff's right to remain silent. But a court is permitted to “rehabilitate a challenged juror through follow-up questions to assure the court that he can sit as a fair and impartial juror.” *State v. Acuna Valenzuela*, 245 Ariz. 197, ¶ 24 (2018). The juror here stated she would follow the law, and the trial court was entitled to rely on that statement despite that the fact she had earlier expressed concerns.<sup>3</sup>

¶9 We affirm Grandstaff's convictions and sentences.

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only because “it was the only way to get the attorneys and the judge to stop asking her the question.” The credibility of the juror is for the trial court to evaluate. *See State v. Acuna Valenzuela*, 245 Ariz. 197, ¶ 24 (2018).

<sup>3</sup>Accordingly, we do not address Grandstaff's argument that the improper denial of challenge to a juror for cause requires automatic reversal.

In so concluding, we do not suggest that the trial court must always credit jurors' appropriate answers to questions designed to rehabilitate them. *See State v. Comer*, 165 Ariz. 413, 431 n.1 (1990) (Corcoran, J., specially concurring) (“I would prefer to have trial judges rely less on attempts to rehabilitate prospective jurors through the use of generic questions . . . that beget self-serving answers, and rely more on common sense.”). This is particularly so considering Arizona's recent rule change eliminating peremptory strikes. *See Ariz. Sup. Ct. Order R-21-0020* (Aug. 30, 2021). Indeed, the comment to the revised rule cautions that “[t]he court should refrain from attempting to rehabilitate prospective jurors by asking leading, conclusory questions that encourage prospective jurors to affirm that they can set aside their opinions and neutrally apply the law.” Ariz. R. Crim. P. 18.5(f) cmt. to 2022 amend.