

**IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON**

THE STATE OF WASHINGTON,

Respondent,

v.

KHALID MOHAMED HAYBE,

Appellant.

No. 83153-4-I

DIVISION ONE

UNPUBLISHED OPINION

MANN, J. — Khalid Haybe appeals his conviction for unlawful possession of a firearm in the first degree. Haybe argues that the court violated his constitutional right to a fair and impartial jury by refusing to excuse a prospective juror despite unresolved bias. We affirm.

I.

The State charged Haybe with first degree unlawful firearm possession. During jury selection, prospective juror 16 expressed misgivings about serving on a case involving a gun. But she stated she would need to be convinced beyond a reasonable doubt before convicting.

At the end of questioning, Haybe challenged 9 jurors for cause, including juror 16. The court denied Haybe's motion to excuse juror 16 for cause. Neither party

exercised a peremptory challenge against juror 16. Haybe accepted the panel with juror 16, despite having 1 peremptory challenge available.


Haybe appeals.

II.

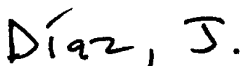
Haybe argues that the trial court erred in refusing to excuse juror 16 for cause. We decline to consider the argument given our Supreme Court's recent decision in State v. Talbott, No. 100540-7, slip op. at 1, 22 (Wash. Dec. 22, 2022), <https://www.courts.wa.gov/opinions/pdf/1005407.pdf>. In Talbott, the court considered whether a party who declines to remove a prospective juror with an available peremptory challenge has the right to appeal the seating of that juror. Talbott, No. 100540-7, slip op. at 1. The court held that "if a party allows a juror to be seated and does not exhaust their peremptory challenges, then they cannot appeal on the basis that the juror should have been excused for cause." Talbott, No. 100540-7, slip op. at 22.

Talbott is dispositive. Haybe accepted the panel without exhausting his peremptory challenges. Haybe is therefore not entitled to have his for-cause challenge to juror 16 considered on appeal.

We affirm.

  
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WE CONCUR:

  
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