Cite as 2018 Ark. App. 119

# ARKANSAS COURT OF APPEALS

DIVISION II
No. CR-17-566

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| CHASE J. HALLSTED<br>APPELLANT<br><br>V.<br><br>STATE OF ARKANSAS<br>APPELLEE | **Opinion Delivered** February 14, 2018<br><br>APPEAL FROM THE BENTON COUNTY CIRCUIT COURT [NO. 04CR-16-736]<br><br>HONORABLE ROBIN F. GREEN, JUDGE<br><br>AFFIRMED |

**N. MARK KLAPPENBACH, Judge**

Chase J. Hallsted appeals his convictions for rape and sexual assault in the second degree. On appeal, Hallsted contends that the trial court erred in striking a potential juror for cause over his objection and erred in failing to declare a mistrial or admonish the jury in response to improper questions by the prosecutor. We affirm.

Hallsted first argues that the trial court abused its discretion in striking a potential juror for cause when there was no indication of actual bias. At a bench conference during voir dire, potential juror Mestrovich informed the court why he did not think he would be an appropriate juror for this case. The State moved to strike him for cause and Hallsted objected. The court declined to strike him and stated that "we'll see how it develops." Mestrovich then returned to the group of potential jurors being questioned. After voir dire of this group concluded, both the State and the defense announced that they had no strikes for cause. Both sides then submitted their peremptory strikes, and the court remarked that the State was

exercising one of its four remaining peremptory strikes. It is clear from the record that the defense was exercising three of its peremptory strikes.[1] The court then excused Mestrovich and three other potential jurors.

Although the State initially moved to strike Mestrovich for cause, the court did not grant that request. Following questioning of the group including Mestrovich, the State abandoned its request when it announced that it had no strikes for cause. Because the record does not show that Mestrovich was struck for cause, Hallsted's argument is without merit. Although Mestrovich was ultimately struck, the defense made no contemporaneous objection.

Hallsted next argues that the trial court erred in failing to declare a mistrial or admonish the jury during the sentencing phase of the trial. He claims that the prosecutor improperly questioned him regarding why he did not plead guilty and that the questions were tantamount to comments criticizing his decision to exercise his constitutionally guaranteed rights to a jury trial and to confront witnesses.

Hallsted testified during the sentencing phase that he was taking full responsibility and that he was sorry for his actions. On cross-examination, he said that he had been thinking for a few months about taking full responsibility for his actions. When the prosecutor asked why he did not take responsibility until after being found guilty, Hallsted asked how he could have

[1]Before the voir dire of this group of potential jurors, the court stated that both the State and the defense had four peremptory strikes remaining. Following the peremptory strikes in this round, the court stated that the defense had one strike remaining and the State had three remaining.

done so. The prosecutor responded that he could have said he was guilty and spared the victim from testifying. Defense counsel asked to approach. At the bench conference, defense counsel asserted that the State was asking the jury to punish Hallsted for exercising his right to a jury trial and his right to confront a witness. The court agreed that it did not want the jury thinking Hallsted should be punished for exercising his rights. The prosecutor said that he was trying to show that it was misleading for Hallsted to say that he had not had a way to take full responsibility. However, the prosecutor said that he was not implying that Hallsted did not have those rights, and he would make that clear. The court agreed, stating that "I'll let you make that clear." The prosecutor then resumed cross-examination, first stating that Hallsted absolutely had the right to have the trial.

Hallsted contends that he preserved this issue for review by timely objecting to the line of questioning. However, a trial court is generally under no duty to sua sponte declare a mistrial. *Nickelson v. State*, 2012 Ark. App. 363, 417 S.W.3d 214. The supreme court has held that failure to seek relief in the form of an admonition or a motion to declare a mistrial precludes the court's consideration of the issue. *Zachary v. State*, 358 Ark. 174, 188 S.W.3d 917 (2004) (citing *Puckett v. State*, 324 Ark. 81, 918 S.W.2d 707 (1996)).

Recognizing that he did not request further relief, Hallsted argues that the error was so serious that the trial court should have acted on its own initiative to admonish the jury or declare a mistrial. Hallsted is apparently referring to the third *Wicks* exception to the contemporaneous-objection rule that applies when the error is so flagrant and so highly

prejudicial in character as to make it the duty of the court to intervene on its own motion. *Wicks v. State*, 270 Ark. 781, 606 S.W.2d 366 (1980). The supreme court has explained that this exception is intended to be narrow and that a reversal when the trial court failed to intervene would be an "extremely rare exception." *Fink v. State*, 2015 Ark. 331, at 7, 469 S.W.3d 785, 790. We decline to apply the exception to the facts of this case. *See Jones v. State*, 2017 Ark. App. 286, 524 S.W.3d 1 (holding that a prosecutor's statements during the sentencing stage that allegedly violated the defendant's due-process rights were not errors that fall into the third *Wicks* exception). Hallsted's testimony opened the door to the line of questioning regarding his decision to take responsibility for his actions. He failed to request a mistrial or an admonishment in response to the prosecutor's allegedly improper questions, and to the extent that his objection requested any relief, he received it through the prosecutor's clarification upon resuming cross-examination.

Affirmed.

VIRDEN and MURPHY, JJ., agree.

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