

ARKANSAS COURT OF APPEALS

DIVISION I
No. CACR10-10

ANDREW ROBINSON

APPELLANT

V.

STATE OF ARKANSAS

APPELLEE

Opinion Delivered May 12, 2010

APPEAL FROM THE CLARK
COUNTY CIRCUIT COURT
[CR-2008-217]

HONORABLE ROBERT E.
McCALLUM, JUDGE

AFFIRMED

DAVID M. GLOVER, Judge

This case arose out of an incident in the Clark County jail where appellant, Andrew Robinson, damaged two security cameras. He was tried by a jury and found guilty of the offenses of misdemeanor criminal mischief and impairing the operation of a vital public facility (Class C felony). He was sentenced to one year on the misdemeanor conviction. For the felony conviction, he was sentenced as an habitual offender to twenty years in the Arkansas Department of Correction. The sentences were to be served concurrently. In addition he was fined a total of \$11,000. Appellant does not challenge the sufficiency of the evidence supporting his convictions. For his sole point of appeal, appellant contends that the trial court erred in denying his motion for a mistrial. We affirm.

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The pertinent facts involving the motion for a mistrial are as follows. During the sheriff's testimony about the jail incident involving appellant, he stated:

Actually, there was two times when we had the cameras torn down, the first time they were just hanging by the wires and they were able to be put back up. The second time the cameras were torn down, they were no longer able to use them.

Appellant's counsel objected and, in a bench conference, it was discussed that the sheriff was not talking about appellant with respect to the earlier occurrence when the cameras were torn down. The trial court sustained the objection about discussing any prior damage to the cameras. But appellant's counsel further contended that the sheriff had left the impression that there had been more than one occasion where appellant had damaged the cameras, and "[f]or that reason, I think we're almost looking at a mistrial." The trial court then responded that it was going to deny the mistrial, but added: "I'm wondering if I need to instruct the jury." Acknowledging that it had been under the impression that the sheriff was talking about appellant tearing down cameras on two different occasions, the trial court stated: "Why don't you clear that up by questioning him." The bench conference was then concluded.

The essence of appellant's argument is that the trial court erred in denying his request for a mistrial because there was never any clarification of the sheriff's testimony on this point, and the trial court did not admonish the jury about it. We find no merit to the argument.

Through subsequent questioning, it was made clear that the incident in question happened on December 9, 2008, the incident for which appellant was being tried. Thereafter, appellant raised no further objections at trial claiming that the State had not sufficiently cleared up the matter, and he did not request an admonition or instruction for the jury.

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As our supreme court explained in *Burks v. State*, 2009 Ark. 598, at 7, 359 S.W.3d 402,

407,

[o]ur standard of review for appeals of an order denying a mistrial motion is well established, and a circuit court's refusal to grant a mistrial is difficult to overcome:

A mistrial is an extreme and drastic remedy that will be resorted to only when there has been an error so prejudicial that justice cannot be served by continuing with the trial or when the fundamental fairness of the trial has been manifestly affected. The circuit court has wide discretion in granting or denying a mistrial motion, and, absent an abuse of that discretion, the circuit court's decision will not be disturbed on appeal. Among the factors this court considers on appeal in determining whether or not a circuit court abused its discretion in refusing to declare a mistrial are whether the prosecutor deliberately induced a prejudicial response and whether an admonition to the jury could have cured any resulting prejudice.

King v. State, 361 Ark. 402, 405, 206 S.W.3d 883, 885 (2005) (citations omitted). It is also well settled that an admonition to the jury usually cures a prejudicial statement unless it is so patently inflammatory that justice could not be served by continuing the trial. *Zachary v. State*, 358 Ark. 174, 188 S.W.3d 917 (2004). Where the possible prejudice could have been cured by an admonition to the jury, this court has found no abuse of discretion when defense counsel has refused the circuit court's offer of such a curative instruction. *Ferguson v. State*, 343 Ark. 159, 33 S.W.3d 115 (2000). Furthermore, we have held that remarks, which amount to inadvertent references to previous illegal conduct, may be cured by an admonition from the circuit court ordering the jury to disregard the statement. *Hall v. State*, 314 Ark. 402, 862 S.W.2d 268 (1993); *Mitchael v. State*, 309 Ark. 151, 828 S.W.2d 351 (1992).

Here, appellant's objection to the testimony about prior camera destruction was sustained; it was followed by his motion for mistrial, which was then denied. At this point in the trial, it would have been easy to clear up any confusion for the jury. Appellant did not avail himself of the opportunity. If appellant did not think that goal was accomplished, he should have sought more relief. Instead, he made no further objections and did not make any further requests for clarification. Therefore, we find no abuse of the trial court's discretion

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in denying the mistrial at the time it was requested, and any argument that the matter was never sufficiently clarified was waived by appellant's failure to do anything further after the denial of the mistrial.

Affirmed.

VAUGHT, C.J., and GRUBER, J., agree.