Cite as 2023 Ark. App. 542

ARKANSAS COURT OF APPEALS

DIVISION I
No. CR-22-791

DANIEL MCGUIRE	APPELLANT	Opinion Delivered November 29, 2023
V.		APPEAL FROM THE YELL COUNTY CIRCUIT COURT, NORTHERN DISTRICT [NO. 75NCR-21-26]
STATE OF ARKANSAS	APPELLEE	HONORABLE, JERRY DON RAMEY, JUDGE
		AFFIRMED

ROBERT J. GLADWIN, Judge

This appeal arises from a felony sentencing order entered by the Yell County Circuit Court sentencing appellant Daniel McGuire ("McGuire") to ten years in the Arkansas Department of Correction (ADC) for possession of drug paraphernalia and forty years for possession of a controlled substance with purpose to deliver. McGuire argues that the circuit court committed reversible error by denying his challenge to strike juror Michael McAllister ("McAllister") for cause. We affirm.

I. *Background Facts*

On September 26, 2022, McGuire pleaded guilty in the Yell County Circuit Court to possession of methamphetamine with the purpose to deliver, Ark. Code Ann. § 5-64-420(a) & (b)(3) (Supp. 2021), and possession of drug paraphernalia, Ark. Code Ann. § 5-64-

443(a)(2) (Supp. 2021). Sentencing was reserved for a jury, which was empaneled that same day.

During the course of voir dire, the parties and the circuit court questioned McAllister, a potential juror. Upon learning that the case involved illicit drugs, McAllister informed the court and the parties that he "had several break-ins and robberies because of druggies" and that he was in the process of prosecuting "a couple of guys" in another jurisdiction. Furthermore, McAllister stated that he had lost "thousands of dollars to drug people trying to feed their habit" and that he was "angry at these people."

The circuit court asked McAllister whether he could be fair and impartial, and he stated that he would "try" but that he was "angry." At this time, the court elaborated, "So the question is, can you give the State and Defense a fair and impartial trial," to which McAllister stated, "I'd have to look at what is presented, and base it on that." When questioned whether he could allow each side to start on even footing, McAllister added that it had "been very traumatic over the years, having to deal with this again and again and again" but that he would "try." However, McAllister also maintained that he would "try and consider everything before [he did] something," and when asked if he could base his decision on what was presented in court, he responded affirmatively.

Regarding sentencing, McAllister stated he was "definitely not [at] minimum, and maximum I would, probably, be midway on that." Further, McAllister added that if someone is pleading guilty—and has past experiences—he should not get off "scot-free." McAllister was alluding to a prior reference made in court that McGuire had "past experiences" that could

figure into sentencing. At this time, defense counsel stated, "That's all I've got." Questioning continued for McAllister's panel, with two potential jurors being excused for cause. The parties then retired to separate rooms to exercise their peremptory strikes; when they returned to the courtroom, the circuit court read the names of the potential jurors who had been peremptorily struck—McAllister's name was not on the list; thus, he was seated as a juror.

Defense counsel approached the bench and informed the court that he was out of challenges but requested that McAllister be dismissed for cause, stating that "his answers reflected a very strong bias against [his] client in favor of the State on the sentencing range" and that his "personal history" would "make it very hard for him to make an objective decision." The circuit court denied the request to dismiss McAllister and instead asked him additional questions outside the presence of the other jurors. The court asked whether McAllister "could be neutral and impartial" and "does your preconceived position present a problem?" McAllister answered, "I need to have something to base a judgment on." He further elaborated, "I would look at minimum, but anything from there, I would have to have additional information." When questioned by defense counsel, McAllister explained that his anger was toward the individuals who had broken into his store, damaged things, and stolen from him, but that he did not have any animosity toward the appellant.

After confirming once more that McAllister would consider the full range of sentencing, the circuit court held that it was satisfied with McAllister remaining on the jury.

Defense counsel reiterated his objection for the record, and the court moved forward, further noting that the defense was out of strikes.

The parties stipulated that McGuire is a habitual offender for the purpose of sentencing, and the jury ultimately recommended that McGuire be sentenced to ten years on the possession-of-drug-paraphernalia charge and forty years on the charge of possession of a controlled substance with purpose to deliver. The judge imposed the sentences recommended by the jury and ordered them to be served concurrently. A timely notice of appeal was filed; this appeal followed.

II. *Standard of Review*

"The decision to excuse a juror for cause rests within the sound discretion of the trial court and will not be reversed absent an abuse of discretion." *Holder v. State*, 354 Ark. 364, 383, 124 S.W.3d 439, 452–53 (2003) (quoting *Nooner v. State*, 322 Ark. 87, 97–98, 907 S.W.2d 677, 682 (1995)). "Persons comprising the venire are presumed to be unbiased and qualified to serve." *Holder*, 354 Ark. at 383, 124 S.W.3d at 452–53 (quoting *Taylor v. State*, 334 Ark. 339, 347, 974 S.W.2d 454, 459 (1998)). An abuse of discretion is a high threshold that does not simply require error in the circuit court's decision but requires that the court acted improvidently, thoughtlessly, or without due consideration. *Harris v. State*, 2018 Ark. App. 219, 547 S.W.3d 709.

Furthermore, an appellate court is to give great deference to the circuit court that sees and hears the potential jurors. *E.g.*, *Anderson v. State*, 357 Ark. 180, 204, 163 S.W.3d 333, 347 (2004).

III. *Discussion*

For his sole point on appeal, McGuire argues that the circuit court erred in denying his request to strike McAllister for cause. Specifically, appellant contends that McAllister expressed an opinion concerning the matter in controversy that indisputably "may" have influenced his judgment. Moreover, appellant maintains that the circuit court abused its discretion in its groundless attempts to "extensively rehabilitate Juror McAllister after he declared a bias against 'druggies' and the best he could do was 'try' to be fair."

"To challenge a juror on appeal, appellant must show he exhausted his peremptory challenges and was forced to accept a juror who should have been excused for cause." *Williams v. State*, 347 Ark. 728, 749, 67 S.W.3d 548, 560 (2002); *Branstetter v. State*, 346 Ark. 62, 57 S.W.3d 105 (2001). The proper test for releasing prospective jurors is whether their views would prevent or substantially impair the performance of their duties as jurors in accordance with their instructions and oath. *E.g.*, *Gay v. State*, 2016 Ark. 433, at 9, 506 S.W.3d 851, 858. Moreover, the burden is on the party challenging a juror to prove actual bias, and when a juror states that he or she can lay aside preconceived opinions and give the accused the benefit of all doubts to which he is entitled by law, a circuit court may find the juror acceptable. *Bangs v. State*, 338 Ark. 515, 998 S.W.2d 738 (1999).

While our supreme court has recognized that the bare statement of a prospective juror that the juror can give the accused a fair and impartial trial is subject to question, *Taylor*, 334 Ark. 339, 974 S.W.2d 454, any uncertainties that might arise from the response of a potential juror can be cured by rehabilitative questions. *Taylor*, *supra*; *Cox v. State*, 313 Ark.

184, 853 S.W.2d 266 (1993). Finally, even if the circuit court abuses its discretion, appellant must show prejudice as a prerequisite to a reversible-error claim. *See* *Williams v. State*, 327 Ark. 97, 938 S.W.2d 547 (1997).

McAllister stated in voir dire that he is a shop owner and is currently involved in prosecuting "a couple of guys that broke into [his] shop that are druggies." He expressed anger toward the thousands of dollars he has lost as a result but concluded that he would "try to be fair and impartial." When pressed by the circuit court on whether he could give a fair and impartial trial to both the State and the defense, McAllister responded that he would "look at what was presented, and base it on that." We agree with the State that McAllister acknowledged his personal feelings about what happened to him but committed to base his decision on the evidence presented.

After McAllister was seated as a juror—and the defense had used all of its peremptory challenges—appellant moved to dismiss McAllister for cause. While the circuit court could have properly denied the untimely motion—as it came after McAllister was seated as a juror—the court engaged in further questioning to assure McAllister's impartiality. *See Berry v. St. Paul Fire and Marine Ins. Co.*, 328 Ark. 553, 944 S.W.2d 838 (1997). Arkansas Rule of Criminal Procedure 32.2 provides the proper procedure for conducting voir dire in a criminal trial. Rule 32.2(b) specifies:

> The judge shall then put to the prospective jurors any question which he thinks necessary touching their qualifications to serve as jurors in the cause on trial. The judge shall also permit such additional questions by the defendant and his attorney and the prosecuting attorney as the judge deems reasonable and proper.

The fact that the Rule allows the circuit court to permit such additional questioning as it deems proper further underscores the discretion vested in the circuit court. *See Thessing v. State*, 365 Ark. 384, 392, 230 S.W.3d 526, 533 (2006).

Here, McAllister clarified that his anger was directed at the individuals who had injured him and his business but that he could start with the minimum sentence and would need to see additional evidence to justify sentencing the appellant to anything more. McAllister also stated he would "keep an open mind" and that he didn't have any animosity toward the appellant. Considering the broad discretion a circuit court has during voir dire, we find that the circuit court did not abuse its discretion in asking McAllister several rehabilitative questions to ensure he could be fair and impartial in rendering appellant's sentence. Furthermore, McGuire did not show any prejudice resulting from the circuit court's denial of his motion to remove McAllister for cause; thus, there can be no reversible error.

IV. *Conclusion*

Given our standard of review, we find that the circuit court did not abuse its discretion when it held that McAllister was sufficiently rehabilitated to serve on the jury; accordingly, we affirm.

Affirmed.

THYER and MURPHY, JJ., agree.

Sonia A. Kezhaya, for appellant.

Tim Griffin, Att'y Gen., by: *Kent G. Holt*, Ass't Att'y Gen., for appellee.