

SUPREME COURT OF ARKANSAS

No. CR 12-378

REGINALD ARNOLD

APPELLANT

V.

STATE OF ARKANSAS

APPELLEE

Opinion Delivered October 25, 2012

APPEAL FROM THE PULASKI
COUNTY CIRCUIT COURT
[NO. 60CR-11-785]

HONORABLE WENDELL GRIFFEN,
JUDGE

AFFIRMED.

PAUL E. DANIELSON, Associate Justice

Appellant Reginald Arnold appeals from the judgment and commitment order reflecting his convictions for capital murder and aggravated robbery and his sentence to life imprisonment without parole. His sole assertion on appeal is that the circuit court erred in refusing to hear testimony from a juror in support of his motion for new trial based on Arkansas Rule of Evidence 606(b) (2012). We affirm Arnold's convictions and sentence.

Because Arnold does not challenge the sufficiency of the evidence against him, only a brief recitation of the facts is necessary. *See, e.g., Blanchard v. State*, 2009 Ark. 335, 321 S.W.3d 250. Suffice it to say, on July 10, 2010, police found Jose Martinez-Lopez lying face down near the Geyer Springs and Baseline area of Little Rock. He suffered from a gunshot wound to the middle of his forehead. The police eventually received information relating to Martinez-Lopez's killing and developed two suspects, one of whom was Arnold. Arnold was subsequently arrested, charged, and ultimately convicted, as already set forth.

On January 5, 2012, Arnold filed a motion for new trial, in which he alleged that his rights to due process and a fair trial were denied. Arnold based his claims on a letter sent after his trial to the circuit court in which a juror stated that she might have misunderstood the instructions for capital murder and doubted whether she had followed the instructions correctly. The State responded to Arnold's motion, averring that Ark. R. Evid. 606 precluded the circuit court's consideration of the information in the juror's letter.

A hearing was held on Arnold's motion on February 2, 2012, at which Arnold attempted to call the juror who authored the letter, Ms. Horton. The State objected to Ms. Horton's testimony, asserting that Ark. R. Evid. 606 prohibited the testimony unless there was an allegation of outside influence on the jury. Arnold, however, maintained that Ms. Horton's testimony regarding her opinions and understanding of the jury instructions did not fall under Rule 606 and that the Rule violated his right to due process.

The circuit court disagreed, stating:

[T]he issue of her testimony is squarely covered by Rule 606 of the Arkansas Rules of Evidence, specifically Rule 606(b). . . . The letter from Juror Horton—Ms. Horton dated December 20, 2011 does not reference any extraneous prejudicial information that may have been brought improperly to the juror's attention or any outside influence that may have been brought to bear upon her or any other juror. The letter rather goes to the very kind of information that Rule 606(b) says that a juror may not testify about and that no affidavit or evidence or statement by that juror can be received and based upon 606(b) and the holding in *State versus Osborn*, [337 Ark. 172, 988 S.W.2d 485 (1999),] the Court is going to rule that Ms. Horton's testimony cannot be allowed for purposes of the motion for new trial.

. . . .

Motion for new trial is denied.

Arnold now appeals.

For his sole point on appeal, Arnold argues that the circuit court erred in refusing to

hear the testimony of a juror in support of his motion for new trial. He contends that the circuit court erred in finding that Ark. R. Evid. 606(b) prohibited the testimony. He asserts that the juror was not going to testify regarding the jury's deliberations, but instead was prepared to testify to her misunderstanding and misapplication of the jury instructions. Alternatively, Arnold avers, if the testimony was properly excluded, his right to a fair trial demanded that the circuit court make the appropriate inquiry to ensure that Arnold received a fair trial. He urges that his constitutional right to a fair trial is paramount to a rule of evidence.

The State counters that the circuit court's ruling was correct, as Rule 606(b) prohibited Ms. Horton from testifying about any misunderstanding she had. It further asserts that Arnold failed to obtain a ruling on his alternative argument that the application of Rule 606 violated his right to due process. In the alternative, the State claims that this court has held that the rationale behind the Rule passes constitutional muster.

The decision of whether to grant or deny a motion for a new trial lies within the sound discretion of the circuit court, and this court will not reverse that decision absent an abuse of discretion. *See Miller v. State*, 328 Ark. 121, 942 S.W.2d 825 (1997). The burden of proof in establishing jury misconduct is on the moving party. *See Henderson v. State*, 349 Ark. 701, 80 S.W.3d 374 (2002).

In the instant case, the circuit court precluded Ms. Horton from testifying on Arnold's motion for new trial, basing its ruling on Rule 606(b) of the Arkansas Rules of Evidence, which provides as follows:

Upon an inquiry into the validity of a verdict or indictment, a juror may not testify as to any matter or statement occurring during the course of the jury's

deliberations or to the effect of anything upon his or any other juror's mind or emotions as influencing him to assent to or dissent from the verdict or indictment or concerning his mental processes in connection therewith, nor may his affidavit or evidence of any statement by him concerning a matter about which he would be precluded from testifying be received, but a juror may testify on the questions whether extraneous prejudicial information was improperly brought to the jury's attention or whether any outside influence was improperly brought to bear upon any juror.

Ark. R. Evid. 606(b). The purpose of Rule 606(b) is to attempt to balance the freedom of secret jury deliberations with the ability to correct an irregularity in those deliberations. *See Davis v. State*, 330 Ark. 501, 956 S.W.2d 163 (1997).

Rule 606(b) states plainly that a juror may not testify as to the effect of anything upon his mind as influencing him to assent to the verdict. *See Veasey v. State*, 276 Ark. 457, 637 S.W.2d 545 (1982). Certainly, a juror's understanding of the jury instructions and its effect on her deliberation fall within this very prohibition. *See also Hall v. Levine*, 104 P.3d 222 (Colo. 2005) (observing that Colorado Rule of Evidence 606(b), which language mirrors that of Ark. R. Evid. 606(b), applied even if the affidavits showed that the jury misunderstood the law or facts, failed to follow instructions, or applied the wrong legal standard); 75B Am. Jur. 2d *Trial* § 1625 (2012) ("The rule applies even on grounds such as mistake, misunderstanding of the law or facts, failure to follow instructions, lack of unanimity, or application of the wrong legal standard."); 66 C.J.S. *New Trial* § 235 (2012) ("[O]rdinarily, a juror's claim that he was confused over the law or evidence and therefore participated in the verdict on an incorrect premise is a matter that inheres in or is intrinsic to the deliberative process and cannot be used to impeach the verdict."). For this reason, we cannot say that the circuit court abused its discretion in prohibiting Ms. Horton's testimony and denying Arnold's motion for new trial.

Arnold's alternative argument also fails, as a review of the record reveals that the State's contention is correct. Arnold failed to obtain a ruling on his claim that application of the Rule violated his right to a fair trial, and we have held that the failure to obtain a ruling precludes our review on appeal. *See Wedgeworth v. State*, 2012 Ark. 63.

For the foregoing reasons, we affirm Arnold's convictions and sentence.

Pursuant to Arkansas Supreme Court Rule 4-3(i) (2012), the record has been examined for all objections, motions, and requests made by either party that were decided adversely to Arnold, and no prejudicial error has been found.

Affirmed.

Robert M. "Robby" Golden, for appellant.

Dustin McDaniel, Att'y Gen., by: *Brad Newman*, Ass't Att'y Gen., for appellee.