

DIVISION I

ARKANSAS COURT OF APPEALS
NOT DESIGNATED FOR PUBLICATION
KAREN R. BAKER, Judge

CACR06-265

OCTOBER 11, 2006

ROGER STEVEN SHUFFIELD

APPELLANT

APPEAL FROM THE GARLAND COUNTY
CIRCUIT COURT
[CR2004-242-1]

v.

STATE OF ARKANSAS

HONORABLE JOHN HOMER WRIGHT,
JUDGE

APPELLEE

AFFIRMED

Appellant Roger Steven Shuffield was charged with first-degree murder, felony-firearm enhancement by certain persons, and habitual offender. After the filing of these charges, appellant was arrested for felony escape, possession of drug paraphernalia with intent to deliver and manufacture methamphetamine, manufacturing a controlled substance, and simultaneous possession of drugs and firearms. On the motion of appellant, the court severed the charges of murder and possession of firearm, and the State elected to try the possession charge first.

Appellant entered a guilty plea to the firearm-possession charge, and a jury was empaneled to sentence appellant. During voir dire, the jury was asked whether they knew anything about this case, but not whether they knew anything about appellant through the media. After the hearing and deliberation, which lasted about twenty minutes, appellant was sentenced to thirty years' imprisonment by the jury. In the sentencing hearing, the State introduced evidence that established that appellant had been convicted of armed robbery in California and

second-degree murder in Utah. It also established that appellant had killed a man in Garland County, Arkansas, with the firearm he was charged with possessing.

Nine days after the jury's sentence was delivered, appellant filed a motion for a new trial on the sentencing supported by an affidavit from a jury member. A hearing on the motion was held where the affiant jury member testified that after the jury had reached its decision, one jury member mentioned that a newspaper article about appellant had been in the paper that morning. The testimony revealed that no details of the article were discussed and that the witness had read the article after he returned home from the deliberations because he was curious as to the content of the article. The witness specifically stated that the article did not influence his decision to sentence appellant to the maximum sentence. The newspaper article referenced the pending drug and escape charges.

The trial court denied appellant's motion for a new trial for sentencing. The decision on whether to grant or deny a motion for new trial lies within the sound discretion of the trial court. *Henderson v. State*, 349 Ark. 701, 80 S.W.3d 374 (2002). We will reverse a trial court's order granting or denying a motion for a new trial only if there is a manifest abuse of discretion. *Id.* A trial court's factual determination on a motion for a new trial will not be reversed unless clearly erroneous. *Id.* The issue of witness credibility is for the trial judge to weigh and assess. *Id.* Accordingly, this court will defer to the superior position of the trial court to evaluate the credibility of witnesses. *Id.*

The burden of proof in establishing jury misconduct is on the moving party. Showing allegations of juror misconduct, the moving party bears the burden of proving that a reasonable possibility of prejudice resulted from any such juror misconduct. *Id.* We will not presume

prejudice in such situations. *Id.* The moving party must show that the alleged misconduct prejudiced his chances for a fair trial and that he was unaware of the bias until after the trial. *Id.* Whether unfair prejudice occurred is a matter for the sound discretion of the trial court. *Id.* Statutory support for granting a new trial is found in Arkansas Code Annotated § 16-89-130(c)(7) (Repl. 2006), which states in pertinent part:

(c) The court in which a trial is had upon an issue of fact may grant a new trial when a verdict is rendered against the defendant by which his substantial rights have been prejudiced, upon his motion, in the following cases:

(7) Where, from the misconduct of the jury, or from any other cause, the court is of [the] opinion that the defendant has not received a fair and impartial trial.

In the case before us, no other members of the jury testified. The witness before the court specifically affirmed that he read the article only after the jury deliberated and had sentenced appellant and that the article did not influence his decision. Appellant presented no evidence that the juror's mention of the newspaper article after the decision had been reached affected the sentence determination in any way. The juror, who was reported to have mentioned the article after the sentencing, was not a witness. Appellant admits, and the record confirms, that neither the trial judge, the prosecutor, nor defense counsel asked the members of the venire if they had read or heard any reports in the media concerning appellant. When a juror is not asked about a matter during voir dire, the juror cannot answer falsely concerning it, and the jury's verdict is not void or voidable on that basis. *See Ark. Code Ann. § 16-31-107 (Repl. 1999); Zinger v. State*, 313 Ark. 70, 852 S.W.2d 320 (1993).

Under the facts of this case, we cannot say that the trial court abused its discretion in denying appellant's motion for a new trial. Accordingly, we affirm.

Affirmed.

GLADWIN and ROBBINS, JJ., agree.