Cite as 2018 Ark. App. 66

ARKANSAS COURT OF APPEALS

DIVISION IV
No. CR-16-1092

DORIAN LACY APPELLANT	**Opinion Delivered** January 31, 2018
V.	APPEAL FROM THE CLARK COUNTY CIRCUIT COURT [NO. 10CR-15-96]
	HONORABLE ROBERT McCALLUM, JUDGE
STATE OF ARKANSAS APPELLEE	AFFIRMED

PHILLIP T. WHITEAKER, Judge

Appellant Dorian Lacy appeals the order of the Clark County Circuit Court denying his motion for new trial. This appeal follows our previous opinion in this case, *Lacy v. State*, 2017 Ark. App. 509 (*Lacy I*), in which we ordered supplementation of the record and addendum and rebriefing because of deficiencies in Lacy's abstract. Those deficiencies have been cured, and we now reach the merits of Lacy's arguments. We affirm.

I. *Background*

Lacy entered a plea of guilty to one count of rape, but he opted to be sentenced by a jury. Following a sentencing trial, the jury sentenced Lacy to forty years in the Arkansas Department of Correction. Several weeks after the sentencing, the prosecuting attorney disclosed to Lacy's counsel that a juror had reported that he was personally familiar with the rape victim. Lacy promptly filed a motion for a new trial, asserting that although it was

believed the juror was not aware of his familiarity with the victim at the time of voir dire, the juror nonetheless failed to notify counsel or the court before the jury reached a verdict.

The circuit court held a hearing on Lacy's new-trial motion. The juror in question testified that during voir dire, he was only asked if he knew the defendant or the witnesses, not whether he knew the victim, who had not been identified during jury selection. The juror explained that once he realized he recognized the victim, he did not mention it during the trial, nor did he make the other jurors aware that he knew her during deliberations. The circuit court took the matter under advisement and subsequently issued an order denying Lacy's motion for a new trial. Lacy filed a timely notice of appeal and now argues that the circuit court's ruling constituted an abuse of discretion.

II. *Standard of Review*

Lacy filed a motion for a new trial based on allegations of juror misconduct. As the moving party, he bears the burden of proving that a reasonable possibility of prejudice resulted from any such juror misconduct. *Todd v. State*, 2016 Ark. App. 280, 494 S.W.3d 444. This court will not presume prejudice in such situations. *Id.* Jurors are presumed unbiased and qualified to serve, and the burden is on the appellant to show otherwise. *Id.* Whether prejudice occurred is a matter for the sound discretion of the circuit court. *Id.*

"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, . . . [w]here, from the misconduct of the jury, or from any other cause, the court is of opinion that the defendant has not received a fair and impartial trial." Ark. Code Ann. § 16-89-130(c)(7) (Repl. 2005). The decision whether to grant or deny a motion for

new trial lies within the sound discretion of the circuit court. *Jones v. State*, 355 Ark. 316, 136 S.W.3d 774 (2003). We will not reverse a circuit court's order granting or denying a motion for a new trial unless there is a manifest abuse of discretion. *Smart v. State*, 352 Ark. 522, 104 S.W.3d 386 (2003).

III. *Discussion*

On appeal, Lacy argues that the circuit court abused its discretion in denying his motion for new trial because the juror's failure to disclose the fact that he had a personal connection to the victim, as well as the juror's discussion with the other jurors about "prejudicial extraneous information," unduly prejudiced his substantial rights. He notes that the juror told the rest of the venire that he had observed "drug use and inappropriate things" in the victim's neighborhood,[1] and he posits that such information "injected into the other jurors' minds the notion that [Lacy's] assault of [the victim] was just one aspect of a much larger and much more reprehensible reality." He suggests that prior to the juror's conversation, the panel was "focusing on [his] conduct as an individual and [was] not considering [his] conduct as part of a larger problem," but after the juror's observations, the jury must have seen his "individual conduct [as] playing a role in a much larger and much more condemnable system."

Lacy's argument is without merit for several reasons. First, the conclusion he reaches in his argument is inherently speculative. Second, it is well settled that a juror is not required to set aside his or her own personal knowledge and experiences when considering the

[1]The juror noted that some of his fellow jurors had expressed disbelief about the sort of environment the victim lived in, and he acknowledged that he told them that he frequently observed similar shocking situations as part of his ministry.

evidence presented at trial. *See* AMI Crim. 2d 103; *Richardson v. State*, 2015 Ark. App. 507, at 5, 471 S.W.3d 240, 242. In fact, this court has held that "knowledge obtained by a juror and brought into the jury room from the ordinary scope of his life experiences, including knowledge obtained through his profession or vocation, does not qualify as 'extraneous prejudicial information' as contemplated by [Arkansas Rule of Evidence] 606." *Campbell v. State*, 2014 Ark. App. 171, at 6–7, 432 S.W.3d 673, 677.

Third, Lacy's argument that he was unduly prejudiced fails in light of the fact that the jury sentenced him below the maximum sentence for the Class Y felony with which he was charged. The Class Y felony offense of rape carries a possible sentence of ten to forty years or life. *See* Ark. Code Ann. § 5-4-401(a)(1) (Repl. 2013). The jury sentenced Lacy to only forty years after his sentencing hearing, during which the State played a videotape of Lacy's statement to police in which he confessed to sexually assaulting and raping his niece multiple times when she was between the ages of three and six. Because he received less than the statutory maximum sentence on the rape charge, he cannot show prejudice. *See Cartwright v. State*, 2016 Ark. App. 425, at 6, 501 S.W.3d 849, 852–53; *Nelson v. State*, 2015 Ark. App. 697, 477 S.W.3d 569; *Gillean v. State*, 2015 Ark. App. 698, 478 S.W.3d 255.

Affirmed.

GLADWIN and BROWN, JJ., agree.

Worlow Law, LLC, by: *Jacob Worlow*, for appellant.

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