NOT DESIGNATED FOR PUBLICATION
DIVISION I

CACR07-320

NOVEMBER 28, 2007

BENJAMIN SEIBERT APPELLANT	APPEAL FROM THE UNION COUNTY CIRCUIT COURT [NO. CR2004-622-4]
V.	HON. CAROL C. ANTHONY, JUDGE
STATE OF ARKANSAS APPELLEE	AFFIRMED

Benjamin Seibert was convicted in a jury trial for possession of cocaine and possession of drug paraphernalia. He was sentenced to consecutive terms of three years' imprisonment for the cocaine conviction, three years' imprisonment for the drug paraphernalia, and fines totaling $6000. Seibert now appeals his convictions, raising five points. His first two points concern rulings that the trial court made in closing arguments about chain of custody and "common knowledge." In his third, fourth, and fifth points he contends that the trial court erred in denying his challenges for cause with regard to several jurors, in not requiring the State to produce a witness statement, and in allowing the introduction of Seibert's arrest warrant. We agree with the State that only the third point is preserved for our review. Because the court did not abuse its discretion in refusing to release the jurors for cause, we affirm the convictions.

We briefly recite the pertinent facts of this case, which began when law-enforcement officers investigating a welfare concern went to an El Dorado motel room on September 13, 2004. Seibert answered the door and gave permission for a search. A cocaine pipe lay on the floor by Seibert's feet, and in the room and bathroom were other pipes, several rocks of crack cocaine, and a Brillo pad such as is commonly used as a filter in making homemade pipes. At trial Seibert asserted that he knew nothing about these items and that, on the day before the search, he had befriended two other persons who were in the room by lending them his car and giving them a place to stay.

Closing Arguments regarding Chain of Custody

As his first point on appeal, Seibert asserts that the trial court erred in refusing to allow him to argue the issue of chain of custody in closing argument and then allowing the State to argue the issue. We do not agree.

During Seibert's closing argument, the State objected when he referred to the State's exhibits of "alleged drugs or powder" and asserted, "[T]hey did not provide you with a chain of custody, did they?" The trial court sustained the objection, which was made on the basis that the exhibits had been admitted without objection. Seibert then argued that "the chain of custody is not a question of admission but a question of whether it is appropriate to consider it as far as guilt."

The State then made a rebuttal closing argument, during which it noted that Seibert "mentioned a chain of evidence." Seibert objected to this statement, noting that the court had sustained the State's objection to his mentioning the chain of custody. The State responded

that Seibert could not be allowed to improperly taint its case and the State not be allowed to rehabilitate. The court stated, "We can do it that way or I can give them a precautionary instruction," and Seibert requested the cautionary instruction. The State requested that the court explain to the jury that the State "established that the cocaine came out of that room, that the crime lab came back and it's in the courtroom. That is what chain of custody is. It came in without objection." The court stated, "All right. We're not going to dwell on it." The State then argued to the jury:

> Chain of custody, what it means is that amount of evidence that we have to offer you to establish that the cocaine, the pipes, the things we got out of the room that these are the same ones that we got out of the room, that we sent the same stuff to the crime lab, they tested it and it came back to us and here it is for you. That is the chain and we can establish that with witnesses like we did . . . . And the crime lab submission sheets and the crime lab report . . . . It came in without objection, there is no legitimate issue there.

We will not address the issue Seibert now raises because he failed to obtain a specific ruling on his objection at trial. *See*, *e.g.*, *Sheridan v. State*, 313 Ark. 23, 852 S.W.2d 772 (1993). Moreover, were we to address it, we would find that the trial court properly allowed the State to rehabilitate in rebuttal closing argument. *See id.* (State's remark was an invited comment made in response to the defendant's closing argument, which "opened the door" to the State's remark).

Closing Argument regarding "Relative Resources" and DNA

As his second point on appeal, Seibert contends that the trial court erred in sustaining the State's objection to these remarks that he made in his closing argument:

> [W]e talk about this presumption of innocence and the resources of the State, I was drawing an analogy to how in recent years there's been a lot of publicity about wrongfully convicted people who were convicted by a jury of twelve good men and women. It wasn't until DNA came out that these people were exonerated. . . . I ask you to remember this when you weigh this evidence, when you weigh the credibility because on these capital cases on these murder cases, on these rape cases where these people have been subsequently exonerated the State brought an incredible canopy of technology and resources to convict these people.

The State objected, "These are not facts [in] evidence," and Seibert responded that his argument was "well known to the public." The trial court stated, "Let's move on to this case." Because the trial court did not specifically rule on the State's objection, Seibert has no specific error to argue on appeal. *See*, *e.g.*, *Sheridan*, *supra.*

Challenges for Cause

Seibert contends as his third point that the trial court erred by overruling his challenges for cause to jurors Les Chandler, Marvin Bagley, and Robert Farris because of statements that they made during jury selection. The test to be used in releasing a prospective juror for cause is whether the person's views would prevent or substantially impair the performance of his or her duties as a juror in accordance with the instructions and oath. *Anderson v. State*, 357 Ark. 180, 163 S.W.3d 333 (2004). The decision to excuse a juror for cause is left to the sound discretion of the trial court and will not be reversed absent an abuse of discretion. *Id.* When a defendant argues that he was forced to accept a juror that he would have refused, he must show that the trial court should have excused the juror for cause, that the defendant had exhausted his peremptory challenges, and that he demonstrated prejudice in that he was forced to accept a juror against his wishes. *Noel v. State*, 28 Ark.

App. 158, 771 S.W.2d 325 (1989). Chandler stated that he had a strong opinion about drugs: he said that a nephew had a drug conviction, which would concern Chandler although he could not honestly say that it would affect him. He said that drugs affect a lot of innocent people but he could set all that aside, look at the evidence, and weigh everything in the light of his common sense and the law as he was instructed. Seibert challenged Chandler for cause because he had strong feelings, did not know if he could be impartial, and was of the opinion that drugs affected a lot of innocent people. The trial court overruled Seibert's objection.

Bagley stated that he had two sons-in-law who worked for the police department but did not think that it would affect his view of the case. He said that he was very close to his sons-in-law and had tried to discourage them from police work because of the dangers. Seibert objected to Bagley for cause because of his relationship with these men. The court denied the motion, noting that "we just put the Mayor on the jury so his relationship isn't an issue and besides that [Bagley] answered the question he could be fair and impartial."

Farris stated that "on a penalty range . . . I would be leaning more toward the maximum penalty because a few years ago my best friend got killed by somebody that was on drugs and I think that may affect my decision." He expressed his feeling that the punishment did not match the crime in a lot of cases and that in drug cases, "They just give them a little slap on the hand and they go back and do it again. If we had it a little more hard . . . they might think twice about it." Seibert objected for cause because Farris leaned toward

the maximum penalty. The court denied the objection because Farris indicated that he could consider the full range, and Seibert exercised a peremptory challenge against him.

The State notes that Juror Chandler stated that he could be impartial, and Seibert did not exercise an available peremptory challenge to exclude him. Thus, Seibert has not established how he was prejudiced by Chandler's presence on the jury. Seibert has not established that Farris, who stated that could consider the entire sentence range as instructed by the court, had any bias that would prevent or substantially impair the performance of his juror duties in accord with his oath and instructions. Moreover, Seibert exercised a peremptory challenge to exclude him. Finally, Seibert failed to demonstrate bias by Bagley, who said that his decision would not be affected by his relationship with his sons-in-law in law enforcement, and he was excused by a peremptory challenge that Seibert exercised. We find no abuse of discretion by the trial court in its denial of Seibert's challenges for cause of these three jurors.

Request for a Witness Statement

As his fourth point on appeal, Seibert contends that the trial court erred when it did not require the State to produce a statement of witness Lisa King, which Seibert requested for impeachment purposes. The State had asserted that there were no statements referenced in the file, and during a short break the court allowed the prosecutor to speak with law-enforcement officers to determine if King had given a statement. The court then stated to Seibert that the prosecutor had indicated that there were no statements.

Siebert acknowledges that he did not obtain a ruling, but he asserts that the court improperly denied him access to impeachment materials by its refusal to acknowledge or rule on his multiple requests. He cites no authority or case law in support of his arguments. The merits of an argument on appeal will not be addressed when the appellant presents no citation to authority or convincing argument in its support and it is not apparent without further research that the argument is well taken. *Williams v. State*, 363 Ark. 395, 214 S.W.3d 829 (2005). Furthermore, the State denied that it had a statement from King, and Seibert did not offer any evidence of the existence of such a statement.

Introduction of an Arrest Warrant into Evidence

Seibert raised a relevancy objection at trial to the State's introducing into evidence a certified copy of a bench warrant issued to him in November 2004 for failure to appear. The relevancy argument that he presented to the court was that the issue was whether he possessed drugs and drug paraphernalia. The State responded that the fact of Seibert's flight from the court's jurisdiction was evidence of his guilt. The court overruled his objection.

Seibert now asserts that it is improper to introduce arrest warrants into evidence for any purpose because of the dangers of hearsay and prejudice. Because he has changed the nature of his objection on appeal, this issue is not preserved for our review. A party cannot change the grounds for an objection or motion on appeal but is bound by the scope and nature of the arguments made at trial. *Green v. State*, 365 Ark. 478, 231 S.W.3d 638 (2006).

Affirmed.

GLADWIN and HEFFLEY, JJ., agree.