

ARKANSAS COURT OF APPEALS

DIVISION II
No. CACR11-1261

ROY DEAN SPRATT

APPELLANT

V.

STATE OF ARKANSAS

APPELLEE

Opinion Delivered March 6, 2013

APPEAL FROM THE DESHA
COUNTY CIRCUIT COURT,
[NO. CR-11-18-1]

HONORABLE SAM POPE, JUDGE

AFFIRMED

WAYMOND M. BROWN, Judge

A Desha County jury found appellant Roy Spratt guilty of attempted residential burglary. He was sentenced to thirty years in the Arkansas Department of Correction and fined \$5,000. Spratt argues on appeal that the trial court erred by denying his motion for mistrial based on answers given by two prospective jurors during voir dire. We find no error and affirm.¹

During voir dire, the following colloquy occurred:

THE COURT: This is Mr. Roy Dean Spratt. Thank you, Mr. Spratt. You may be seated. Any of you know Mr. Spratt on a personal basis?

. . . .

PROSPECTIVE JUROR: (Indicating)

¹This is the second time this case is before us. We initially remanded it to supplement the record and for rebriefing. *Spratt v. State*, 2012 Ark. App. 514.

THE COURT: Yes, ma'am?

PROSPECTIVE JUROR: I'm a sergeant at the Arkansas Department of Corrections [sic] at Cummins where he is currently housed, and I see him on a daily basis.

The prospective juror was excused, and the following took place in a bench conference:

DEFENSE ATTORNEY: This is the good, short, one-witness trial. Your Honor, I heard what she said and I think everybody else did, too.

THE COURT: Uh-huh.

DEFENSE ATTORNEY: My client is not going to testify here today strictly because of his criminal record.

THE COURT: Uh-huh.

DEFENSE ATTORNEY: And, now, everybody knows that he's got something because he's housed in the Arkansas Department of Corrections [sic].

THE COURT: Okay. I follow you.

DEFENSE ATTORNEY: And I'm going to ask for a mistrial.

PROSECUTOR: Your Honor, the State's response to that is that they don't know why he would be housed in Cummins. He could be there pending trial. I don't know what their thoughts would be, but I would state that it's not grounds for a mistrial. That the jury wouldn't know what was going [on], why he was there.

DEFENSE ATTORNEY: Well, he's not there to visit. I think that's for sure. And he's not part of the staff. You know, he's housed at the Arkansas Department of Corrections [sic]. And now the prior conviction has come out even though the sole purpose for him not testifying was that.

THE COURT: Well, I understand your point[.] The only problem I've got is I don't know how to do anything to prevent this kind of thing from happening.

DEFENSE ATTORNEY: I understand that, Judge.

THE COURT: You know—

DEFENSE ATTORNEY: But it happened.

THE COURT: Well, I understand it happened, but, you know, I don't know how you avoid it. Now, I'm going to deny your motion for mistrial. If you want me to inquire about it, I will.

DEFENSE ATTORNEY: Well, I think that just rubs it in more.

Voir dire continued:

THE COURT: Anyone else have any familiarity with Mr. Spratt?

. . . .

PROSPECTIVE JUROR: (Indicating)

. . . .

THE COURT: Okay. [Prospective juror], you have some knowledge or information about Mr. Spratt?

PROSPECTIVE JUROR: Well, I mean, I work at the Department of Correction where he's housed, but I don't see him on a daily basis. I don't know him. Been there thirty years.

THE COURT: Okay. So would your information or knowledge affect your ability to be a fair and impartial juror?

PROSPECTIVE JUROR: Sure.

THE COURT: It would?

PROSPECTIVE JUROR: (Nodding affirmatively)

THE COURT: Okay. I'll excuse you. Thank you.

Another bench conference took place outside the hearing of the jury as follows:

DEFENSE ATTORNEY: Same objection, Your Honor. Now they know twice. I guess a curative instruction wouldn't have, might have-- And I don't know how you get around it. I don't know how you get around it. I'm going to ask for a mistrial.

We've got double-- We've got double the impact now. I'm for sure they know now he's got a criminal record.

. . . .

THE COURT: Okay. Denied.

Prior to the jury being seated, the court offered to give the jury an instruction. Appellant declined the instruction, and it was proffered as court's exhibit number one. The proffered instruction stated:

Any information you may have been exposed to concerning Mr. Spratt's present incarceration is not evidence. You may not consider it as proof of anything or for any purpose in deciding defendant's guilt or innocence.

It did not come from the mouth of any witness called by either party. So under your oath as jurors to base your decision on the evidence and law, it is improper for you to consider it at all.

Anyone who would be unable to follow this instruction?

Appellant unsuccessfully renewed his motion for mistrial at the conclusion of the State's case and at the conclusion of all of the evidence. The jury subsequently found him guilty of the charge against him and sentenced him to thirty years' imprisonment. He was also fined \$5,000. This appeal followed.

A mistrial is a drastic remedy that should only be granted when justice cannot be served by continuing the trial.² The trial court has the sound discretion to decide whether to grant a mistrial, and this decision will not be overturned absent a showing of abuse or upon manifest

²*Taylor v. State*, 2010 Ark. 372, 372 S.W.3d 769; *Jackson v. State*, 368 Ark. 610, 249 S.W.3d 127 (2007).

prejudice to the complaining party.³ Additionally, even if a remark is improper, the trial court may deny the mistrial motion and cure any prejudice by issuing a jury admonishment to disregard the remark.⁴ The failure of the defense to request an admonition may negate the mistrial motion.⁵ There is no error when the trial court fails to give an admonition or cautionary instruction where none is requested.⁶ Furthermore, we consider whether the prejudicial response was deliberately induced.⁷ While there is “always some prejudice that results from the inadvertent mention of a prior conviction,”⁸ this court has upheld denials of mistrials where, by chance remarks, it was brought out that the defendant had prior arrests, and even prior convictions, where the comment was inadvertent.⁹

Here, appellant never requested a cautionary instruction. He even declined the court’s offer to give an instruction prior to the jury being seated. It is also apparent that the trial court did not deliberately attempt to elicit the prejudicial responses from the prospective jurors. Accordingly, we find that there was no error in denying appellant a mistrial.

³*Green v. State*, 365 Ark. 478, 231 S.W.3d 638 (2006); *Jones v. State*, 340 Ark. 390, 10 S.W.3d 449 (2000).

⁴*Smith v. State*, 351 Ark. 468, 95 S.W.3d 801 (2003); *Dandridge v. State*, 292 Ark. 40, 727 S.W.2d 851 (1987).

⁵*Bragg v. State*, 328 Ark. 613, 946 S.W.2d 654 (1997).

⁶*Id.*

⁷*Parker v. State*, 355 Ark. 639, 144 S.W.3d 270 (2004).

⁸*Strawhacker v. State*, 304 Ark. 726, 804 S.W.2d 720 (1991).

⁹*Cobbs v. State*, 292 Ark. 188, 728 S.W.2d 957 (1987); *see also Novak v. State*, 287 Ark. 271, 698 S.W.2d 499 (1985).

Affirmed.

WALMSLEY and GLOVER, JJ., agree.

B. Dale West, for appellant.

Dustin McDaniel, Att’y Gen., by: *Nicana C. Sherman*, Ass’t Att’y Gen., for appellee.