

IMPORTANT NOTICE
NOT TO BE PUBLISHED OPINION

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RENDERED: SEPTEMBER 22, 2005
NOT TO BE PUBLISHED

Supreme Court of Kentucky FINAL

2004-SC-0439-MR

DATE 10-13-05 ENAG/GRH/DC

KELVIN QUARLES

APPELLANT

V. APPEAL FROM McCracken Circuit Court
HONORABLE R. JEFFREY HINES, JUDGE
2003-CR-00389

COMMONWEALTH OF KENTUCKY

APPELLEE

MEMORANDUM OPINION OF THE COURT

AFFIRMING

This appeal is from a judgment based on a jury verdict that convicted Quarles of first-degree robbery and being a first-degree persistent felony offender. He was sentenced to a total of twenty-five years in prison.

The only question presented is whether the trial judge abused his discretion in denying a motion to remove a juror for cause.

At approximately 1:45 a.m., an individual brandishing a gun robbed a Five Star Food Mart located in a Shell gas station. A police officer responded to the robbery within minutes and observed a person near the food mart. He could see money in the one hand of this person and something dark in his other. The suspect, later identified as Quarles, fled when the police officer approached, but was soon apprehended.

After police recovered the gun and money that Quarles tried to discard during the pursuit, they took him back to the food mart for a witness identification. The two

employees working at the time of the robbery immediately recognized Quarles as the robber. A store surveillance camera recorded the crime.

Quarles was indicted for first-degree robbery, first-degree fleeing or evading police, possession of a firearm by a convicted felon and being a first-degree persistent felony offender. Before trial, the fleeing or evading police charge was dismissed and the firearm charge was severed. Accordingly, Quarles was only tried on the two remaining counts -- first-degree robbery and being a first-degree persistent felony offender. The jury convicted him of both charges.

At the penalty phase, the defendant admitted his guilt, but indicated that he did not plead guilty because he wanted to be sentenced by a jury instead of a judge. The jury sentenced Quarles to twenty years on the robbery charge, which was enhanced to twenty-five years for being a first-degree persistent felony offender. This appeal followed.

Quarles argues that the trial judge committed reversible error in refusing to excuse Juror #21 for cause because he allegedly could not consider the full range of penalties for first-degree robbery. We disagree.

During voir dire, defense counsel informed the panel that Quarles was charged with first-degree robbery, which carried a penalty of ten to twenty years. She then asked the panel, if they found him guilty, would anyone “have a problem giving him as little as ten years?” Juror #21 indicated that he would have a problem with that if it was armed robbery. The following exchange then took place:

Defense: You’d have a problem with that? So for armed robbery, you feel like the penalty shouldn’t be as low as ten?

Juror #21: I mean in some instances, I haven’t heard the case yet. In case of poverty

or something like that I might feel compassion in that direction, but for armed robbery for the sake of robbery, ten years is not enough.

Defense: Is twenty years something you could consider?

Juror #21: (Affirmative nod)

Defense: Twenty is enough, but ten is not? Does anybody else feel the same way? Anybody else feel that there's no robbery that's worth as little as ten years? [Juror #21] do you realize that in order to sit on the jury you have to be able to consider all ranges of penalty, as low as ten as high as twenty?

Juror #21: (Affirmative nod)

Defense: Do you think, you said you haven't heard anything about it, so it might depend on the case?

Juror #21: (Affirmative nod)

Defense: Would it depend on the case or you said if it was poverty?

Juror #21: If they're in dire financial straits or had a family they're trying to support and weren't able to support them, I'd probably take that into consideration.

Defense: Okay. But just a straight robbery case you'd want to know more personal things about the person and as to why they did it?

Juror #21: When they're using a gun they're threatening someone's life.

Defense: Your honor.

Judge: I think he's qualified. He said under certain circumstances he'd consider the minimum so I think he's within range.

Defense: Okay, you [referring to Juror #21] have said depending on other information that you may have.

Quarles exercised all of his peremptory challenges, but did not strike Juror #21. The juror sat on the petit jury.

The trial judge has broad discretion in determining whether to excuse a juror for cause. Mills v. Commonwealth, 95 S.W.3d 838 (Ky. 2003). That determination will not be reversed on appeal absent a clear abuse of discretion. Id.

Here, Juror #21 clearly indicated that he could consider the full range of penalties. He expressed misgivings about the minimum penalty only when there were no mitigating circumstances. That did not require the trial judge to excuse him for cause. See Mabe v. Commonwealth, 884 S.W.2d 668 (Ky. 1994). Contrary to the claim by Quarles, Juror #21 did not limit the circumstances he would consider in mitigation. The trial judge did not abuse his discretion or commit any error in denying the motion to excuse this juror for cause.

Quarles received a fundamentally fair trial. He was not denied any of his due process rights under the state or federal constitutions.

The judgment of conviction is affirmed.

All concur.

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