IMPORTANT NOTICE
NOT TO BE PUBLISHED OPINION

THIS OPINION IS DESIGNATED "NOT TO BE PUBLISHED." PURSUANT TO THE RULES OF CIVIL PROCEDURE PROMULGATED BY THE SUPREME COURT, CR 76.28(4)(C), THIS OPINION IS NOT TO BE PUBLISHED AND SHALL NOT BE CITED OR USED AS BINDING PRECEDENT IN ANY OTHER CASE IN ANY COURT OF THIS STATE; HOWEVER, UNPUBLISHED KENTUCKY APPELLATE DECISIONS, RENDERED AFTER JANUARY 1, 2003, MAY BE CITED FOR CONSIDERATION BY THE COURT IF THERE IS NO PUBLISHED OPINION THAT WOULD ADEQUATELY ADDRESS THE ISSUE BEFORE THE COURT. OPINIONS CITED FOR CONSIDERATION BY THE COURT SHALL BE SET OUT AS AN UNPUBLISHED DECISION IN THE FILED DOCUMENT AND A COPY OF THE ENTIRE DECISION SHALL BE TENDERED ALONG WITH THE DOCUMENT TO THE COURT AND ALL PARTIES TO THE ACTION.

RENDERED: FEBRUARY 21, 2013
NOT TO BE PUBLISHED

Supreme Court of Kentucky

2011-SC-000708-MR

RODERICK DENNIS BLINCOE — APPELLANT

V.

ON APPEAL FROM FAYETTE CIRCUIT COURT
HONORABLE ERNESTO SCORSONE, JUDGE
NO. 09-CR-01614

COMMONWEALTH OF KENTUCKY — APPELLEE

MEMORANDUM OPINION OF THE COURT

AFFIRMING

Appellant Roderick Dennis Blincoe was convicted of murder and second-degree criminal trespass, and was sentenced to life imprisonment. He claims that the trial court erred in denying his motion for a continuance and for denying his motion to strike a juror for cause. Because the trial court did not abuse its discretion in denying either motion, there is no error, and Appellant's convictions are hereby affirmed.

I. Background

Appellant Roderick Dennis Blincoe rented an upstairs room from Liese Carr in her Lexington, Kentucky home. On September 12, 2009, Carr's next-door-neighbor Donald Case was working on his front porch when he saw Appellant walking down the sidewalk. Appellant walked up Carr's driveway and went in her back door, which led to her kitchen.

A few minutes later, Case heard some loud noises coming from the direction of Carr's house. He walked over to the edge of his porch to investigate the incident further and heard someone yell "Help, call the police!" He walked over to Carr's house and saw Appellant and Carr standing next to each other. Appellant was holding an object and Carr had blood on her hands. She told Case to call the police. Case returned to his house and grabbed a hammer. When he returned with the hammer, Appellant was still there. Appellant dropped a 10.5-inch knife and began to turn to flee. Case yelled for him to stop. Instead, Appellant jumped a fence and fled.

By this time a number of neighbors had arrived to find Carr bleeding heavily from her midsection. Another neighbor had called 911. A few of them recognized the man who fled as Appellant. Soon thereafter, the police and an ambulance arrived. Carr told police that she had been stabbed by her "roommate, the black one." Carr was rushed to a hospital, but died shortly upon her arrival.

Based on eyewitness information and evidence collected at the scene, the police began a search for Appellant. The police followed a trail of blood to a church nearby, where they found Appellant and arrested him. He had many cuts and wounds, including a deep cut on his thumb, and was bleeding heavily.

Appellant was indicted for murder, third-degree burglary, and being a persistent felony offender in the first degree. It is unclear from the record, but it appears that the PFO charge did not go to the jury. At trial, Appellant was convicted of murder and second-degree criminal trespass as a lesser-included

offense of burglary. The trial court followed the jury's recommendation and imposed a life sentence on Appellant. He now appeals to this Court as a matter of right. *See* Ky. Const. § 110(2)(b).

II. Analysis

Appellant raises two issues on appeal. First, he claims that the trial court erred in denying his motion for a continuance. Second, he claims that the trial court erred in refusing to strike a juror for cause on the grounds of implied bias.

A. Motion for Continuance

The trial court entered a general discovery order at arraignment on October 30, 2009, and the Commonwealth promptly filed a notice of discovery compliance listing twenty-two separate items furnished to Appellant. In January 2011, the trial court set Appellant's trial date for September 12, 2011. The Commonwealth then filed notices of supplemental discovery. On or before June 29, 2011, approximately two and a half months prior to trial, the Commonwealth furnished a number of other documents to Appellant: crime scene photos and a video of the crime scene, photos and hand-drawn diagrams of the autopsy, results of DNA testing, Appellant's medical records from the night of the incident and his arrest, a residence record card from the Department of Corrections, and letters written by Appellant and miscellaneous paperwork.

Appellant's counsel argued that he did not discover much of this evidence until a July 26, 2011 meeting with police. He argued that while some of the evidence was in an evidence file at the police station, he had not been

made aware of it until the July meeting. The Commonwealth, however, argued that it personally provided this information to defense counsel on June 29, 2011.

On August 29, 2011, defense counsel moved the trial court for a continuance on the grounds that, because they had not received some of the evidence until June 29, they needed further time to thoroughly investigate. The Commonwealth argued that the Appellant could show no prejudice and that it had already subpoenaed fifteen to twenty witnesses to testify. The trial court requested that defense counsel show, with specificity, why Appellant would be prejudiced if the trial court denied the motion. After hearing that defense counsel's reason was that they just wanted more time to make sure they adequately investigated everything and did not overlook anything, the court stated that it was not satisfied with the reason and denied the motion.

On September 7, 2011, defense counsel renewed their motion. Again, the trial court requested specific reasons why Appellant would be prejudiced if it denied the motion, and again was not satisfied with the response. Defense counsel acknowledged that the Commonwealth had provided everything, that Appellant had seen it, and that counsel had discussed it with Appellant. The trial court noted that both of Appellant's counsel were experienced trial attorneys. The court also noted that Appellant had already spent two years in jail and the next available trial date was in February of the following year. It again denied Appellant's motion.

RCr 9.24 provides that "[t]he court, upon motion and sufficient cause shown by either party, may grant a postponement of the hearing or trial." A

trial court's decision to grant or deny a motion for a continuance under RCr 9.24 is reviewed for an abuse of discretion. *Fredline v. Commonwealth*, 241 S.W.3d 793, 796 (Ky. 2007). This Court has recognized a number of factors to be considered by the trial court in making this determination: "'length of delay; previous continuances; inconvenience to litigants, witnesses, counsel and the court; whether the delay is purposeful or is caused by the accused; ... complexity of the case; and whether denying the continuance will lead to identifiable prejudice.'" *Edmunds v. Commonwealth*, 189 S.W.3d 558, 564 (Ky. 2006) (quoting *Snodgrass v. Commonwealth*, 814 S.W.2d 579, 581 (Ky. 1991), and discussing RCr 9.04).

Appellant's case had been pending for two years and the trial court noted that a continuance would have resulted in a five-month delay. The Commonwealth stated that it had already subpoenaed fifteen to twenty witnesses to testify at the September 12 trial. Also, while the charges against Appellant were serious, the case itself was not complex: there were a number of eyewitnesses who placed Appellant at the scene, the victim identified him as her assailant prior to her death, both his and the victim's DNA were on the knife used to kill the victim, and the police followed a blood trail from the scene directly to Appellant.

Importantly, Appellant was not able to point to any *identifiable* prejudice that would occur if his motion were denied. Defense counsel's argument before the trial court was that they wanted more time to review the materials, but they had also acknowledged at the September 7 pre-trial conference that they had

received all the evidence, had reviewed all the evidence, and had discussed the evidence with Appellant.

Because it is clear that the trial court properly considered the continuance factors before it denied Appellant's motions for a continuance, the Court holds that the trial court did not abuse its discretion in denying Appellant's motion for a continuance.

B. Failure to Strike Juror for Cause

Appellant claims that Juror 3649's response to questions indicated that he had an implied bias based on his relationship with the current Fayette County Commonwealth's Attorney, Ray Larson. While Mr. Larson was not handling Appellant's case directly, his office was. When asked about his relationship with Mr. Larson, Juror 3649 stated: "During my career I had a relationship with the Commonwealth Attorney. Mr. Larson and I worked on several projects together and even today, after being retired ten years, we break bread once a year at Thanksgiving time." He also noted that the dinner took place at Channel 27, a local television station, where a group of friends gather once a year. The juror went on to state that he "[did not] feel like there's a conflict" and similarly answered that he did not believe that he would feel that the Commonwealth was right and Appellant was wrong by virtue of Mr. Larson's office handling the case.

Appellant later moved to strike Juror 3649 for cause on the basis of implied bias due to the juror's "close relationship" with Mr. Larson, noting to the trial court that he described himself and Mr. Larson as friends, and that they had worked on projects together before the juror retired ten years prior.

The trial court denied the motion and stated that neither Juror 3649 nor Mr. Larson paid for their dinner, the juror had no involvement in criminal cases handled by Mr. Larson, and he was adamant that his acquaintance with Mr. Larson would have no impact on his impartiality.

Appellant thus used one of his peremptory strikes on Juror 3649 and, pursuant to the procedure outlined in *Gabbard v. Commonwealth*, 297 S.W.3d 844, 854-55 (Ky. 2009), indicated that he would have struck Juror 3686, who ultimately served as the jury foreperson, had he not used a peremptory strike on Juror 3649.

This Court reviews a trial court's determination regarding the exclusion of a juror for cause for an abuse of discretion. *Fugett v. Commonwealth*, 250 S.W.3d 604, 613 (Ky. 2008). Also, "the decision to exclude a juror for cause is based on the totality of the circumstances, not in response to any one question." *Id.* Specifically, "[t]he test for determining whether a juror should be stricken for cause is 'whether, after having heard all of the evidence, the prospective juror can conform his views to the requirements of the law and render a fair and impartial verdict.'" *Thompson v. Commonwealth*, 147 S.W.3d 22, 51 (Ky. 2004) (quoting *Mabe v. Commonwealth*, 884 S.W.2d 668, 671 (Ky. 1994)). "[T]he party alleging bias bears the burden of proving that bias and the resulting prejudice." *Cook v. Commonwealth*, 129 S.W.3d 351, 357 (Ky. 2004). Once this is shown, "[t]he court must weigh the probability of bias or prejudice based on the entirety of the juror's responses and demeanor." *Shane v. Commonwealth*, 243 S.W.3d 336, 228 (Ky. 2007).

In *Clay v. Commonwealth*, 291 S.W.3d 210 (Ky. 2008), this Court considered a similar issue regarding a trial court's decision not to strike a juror for cause despite a previous relationship with the Commonwealth's Attorney, again Mr. Larson. In that case, the juror in question had served as a secretary at the Fayette County Commonwealth's Attorney's Office from 1974 to 1981 and had been a witness in a case prosecuted by Mr. Larson when he was appointed as an outside special prosecutor, before he became the Commonwealth's Attorney. *Id.* at 215-16. The juror also indicated that she was still close friends with a member of the office's administrative staff that still worked there. *Id.* at 216.

The Court held that the trial court did not abuse its discretion in failing to strike the juror for cause because the "connections ... are far too tenuous to constitute the 'close relationship' required to presume bias or prejudice." *Id.* The Court went on to note that "[s]ince a close relationship was not established, [the juror] testified that she could be fair to both sides, under the totality of the circumstances there is nothing in the record to indicate that she would be biased or prejudiced against Appellant." *Id.*

Juror 3649's relationship with the Commonwealth's Attorney's Office was similar to the juror's relationship with that office in *Clay*. Both jurors were acquainted with someone currently working at the office and had been for some time. Of course, Juror 3649 was acquainted with the Commonwealth's Attorney himself, while the juror in *Clay* was friends with an administrator in the office. In both cases, however, neither person was directly involved with the case being prosecuted.

Appellant points to the fact that Juror 3649 implied that Mr. Larson was a "friend" when he said that the Thanksgiving dinner was a get-together of friends. However, the fact that Juror 3649 and Mr. Larson only saw each other once per year, that the event was held at the news station rather than at their homes, that neither of them paid for the event, and that their only other interaction occurred ten years prior to the trial when they worked on other projects does not indicate that the two were "friends" in the normal sense of the word, and certainly does not imply the "close relationship" required to presume bias or prejudice. *See Clay*, 291 S.W.3d at 216 (citing *Montgomery v. Commonwealth*, 819 S.W.2d 713 (Ky. 1991)).

Appellant cites *Randolph v. Commonwealth*, 716 S.W.2d 253 (Ky. 1986), *rev'd on other grounds*, *Shannon v. Commonwealth*, 767 S.W.2d 548 (Ky. 1988), as an example of this Court finding implied bias based on a connection between a juror and the Commonwealth's Attorney's Office. There, the juror was employed as a secretary at the Office and did not disclose that relationship when asked about it during voir dire. *Id.* at 255. It was not until the next day the defendant learned of her employment there and moved for a mistrial, which was denied. This Court reversed, noting that "her position as secretary for the Commonwealth's Attorney gives rise to a loyalty to her employer that would imply bias" and that "it [was] entirely possible that she may have been in a position to have known about the case prior to trial." *Id.*

But *Randolph* is distinguishable from this case. Juror 3649 in Appellant's case was not employed at the Commonwealth's Attorney's Office, never had been employed there, did not have the same interest in maintaining

loyalty to the Office, and was not in a position to know about the case prior to trial.

Appellant also cites *Fugate v. Commonwealth*, 993 S.W.2d 931 (Ky. 1999), in which the Court held that the trial court erred in denying the appellant's motion to strike a juror for cause who had claimed that the prosecutor had prepared his will four or five years prior and had helped draft incorporation documents for a non-profit for him. The juror also stated that he was satisfied with the representation and might employ the prosecutor as his attorney in the future. The juror did, however, state that he did not think that he would be biased in the case. *Fugate* is also distinguishable from Appellant's case because there is no indication that Juror 3649 had a similar fiduciary relationship with Mr. Larson. The two appeared to merely be social acquaintances who had worked together on "projects" ten or more years prior to trial.

Because the Court holds that Juror 3649's relationship with the Commonwealth's Attorney did not rise to the level of a "close relationship" so as to presume bias or prejudice, the trial court did not abuse its discretion in denying Appellant's motion to strike Juror 3649 for cause.

III. Conclusion

For the foregoing reasons, Appellant's convictions and sentence are affirmed.

Minton, C.J.; Abramson, Cunningham, Noble, Scott and Venters, JJ., sitting. All concur.

COUNSEL FOR APPELLANT:

Samuel N. Potter
Department of Public Advocacy
Assistant Public Advocate
100 Fair Oaks Lane, Suite 302
Frankfort, Kentucky 40601

COUNSEL FOR APPELLEE:

Jack Conway
Attorney General

James Coleman Shackelford
Assistant Attorney General
Office of Criminal Appeals
1024 Capital Center Drive
Suite 200
Frankfort, Kentucky 40601-8204