

COURT OF APPEALS
RICHLAND COUNTY, OHIO
FIFTH APPELLATE DISTRICT

STATE OF OHIO	:	JUDGES:
	:	Hon. John W. Wise, P.J.
Plaintiff-Appellee	:	Hon. Patricia A. Delaney, J.
	:	Hon. Earle E. Wise, Jr., J.
-vs-	:	
	:	
GEROME RICHARDSON	:	Case No. 18CA24
	:	
Defendant-Appellant	:	<u>OPINION</u>

CHARACTER OF PROCEEDING: Appeal from the Court of Common Pleas, Case No. 2017-CR-0785

JUDGMENT: Affirmed

DATE OF JUDGMENT: November 30, 2018

APPEARANCES:

For Plaintiff-Appellee

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For Defendant-Appellee

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Wise, Earle, J.

{¶ 1} Defendant-Appellant, Gerome Richardson, appeals his February 23, 2018 conviction in the Court of Common Pleas of Richland County, Ohio. Plaintiff-Appellee is the state of Ohio.

FACTS AND PROCEDURAL HISTORY

{¶ 2} On November 28, 2016, appellant was an inmate at the Richland Correctional Institution. Corrections Officer Joseph Smith performed a random search of appellant's bed area. On appellant's television stand was an address book that contained suboxone. At his rules infraction hearing, appellant admitted to possessing the drug.

{¶ 3} On November 22, 2017, the Richland County Grand Jury indicted appellant on one count of possession of drugs in violation of R.C. 2925.11. On February 20, 2018, appellant filed a motion in limine to exclude his statements made to the rules infraction board, and sought access to or a copy of the address book which appellant claimed did not belong to him. The trial court denied access to or a copy of the address book, and journalized its decision by judgment entry filed March 20, 2018.

{¶ 4} A jury trial commenced on February 22, 2018. The jury found appellant guilty as charged. By sentencing entry filed February 26, 2018, the trial court sentenced appellant to twelve months in prison.

{¶ 5} Appellant filed an appeal and this matter is now before this court for consideration. Assignments of error are as follows:

{¶ 6} "THE TRIAL COURT ERRED TO DEFENDANT/APPELLANT'S PREJUDICE BY REFUSING TO ORDER THE STATE TO PRODUCE THE CONTAINER OF THE ALLEGED DRUG, THE ADDRESS BOOK."

II

{¶ 7} "THE TRIAL COURT ERRED TO DEFENDANT/APPELLANT'S PREJUDICE BY REFUSING TO ORDER A MISTRIAL DUE TO CONDUCT BY A JUROR."

III

{¶ 8} "THE TRIAL COURT ERRED BY ALLOWING A JUROR QUESTION, OVER OBJECTION, THAT WAS ADVERSARIAL IN NATURE AND PREJUDICIAL TO THE DEFENSE."

I

{¶ 9} In his first assignment of error, appellant claims the trial court erred in refusing to order appellee to produce the address book. We disagree.

{¶ 10} Corrections Officer Joseph Smith testified he conducted a random search of appellant's bunk area, "[j]ust his." T. at 165. He did not search a neighboring bunk area. T. at 187. Each bunk has a bolted-on stand to hold an inmate's television and/or belongings. T. at 167. On appellant's stand was an address book. T. at 168, 170. Inside the book, Officer Smith found suboxone wrapped in a white piece of paper. T. at 169, 220-221. The book was confiscated for further investigation unrelated to the suboxone i.e., "possible SPD material in it." T. at 174.¹ The book was given to "the SPD officer" for

¹There is no indication in the record what "SPD" stands for. We can only assume it refers to a specific Police Department.

further investigation. T. at 175. Appellant repeatedly asked Officer Smith, "Where is my address book? When do I get it back?" T. at 178-179, 183. Appellant never denied that the suboxone found in the book belonged to him. T. at 178.

{¶ 11} Lieutenant Tony Benson testified "I'm the rules infraction board." T. at 197. During the rules infraction meeting, appellant pled guilty to possessing the drugs. T. at 209-210, 217.

{¶ 12} Appellant testified the address book did not belong to him. T. at 293. Appellant explained Officer Smith was "shaking close to my area." *Id.* Appellant further explained: "I went over there and just stood and watched him shake down me and my neighbor. He was on his hands and knees on my neighbor's bed, and he grabbed that book out of my area, which is right next to my neighbor's bed, like between the locker box and the floor." *Id.* Appellant stated the suboxone was not in his possession. T. at 299. He testified he never asked anyone for the address book after it was confiscated. *Id.* He stated "the names and addresses in [the book] were not mine." T. at 326. On cross-examination, appellant explained he pled guilty at the rules infraction meeting because Lieutenant Benson was "going to find me guilty regardless," and he would receive a lesser penalty if he admitted to the charge. T. at 309. Appellant denied that it was his signature on page two of the rules infraction disposition form containing his guilty plea, although it matched his signature on the conduct report he admitted to signing. T. at 306, 313-314; State's Exhibit 4 and 6.

{¶ 13} Two days before trial, appellant filed a motion in limine, seeking access to or a copy of the address book which he claimed did not belong to him "and as such the book needs to be examined." From the transcript, we are unable to determine if a

discussion was held on the motion prior to the commencement of the trial, as the transcript begins with voir dire. The only information about the address book is that it was handed over to an SPD officer for further investigation. The book was not presented at trial. The trial court denied the motion, journalizing its decision on March 20, 2018.

{¶ 14} Appellant now argues he was prejudiced by appellee's failure to produce the address book during the discovery process. Appellant argues without the book, it was impossible for him to present his defense because he "questioned whether the book was his. If he could have had the book, Defendant/Appellant may have been able to point to contents of it therein that would have indicated someone else's ownership." Appellant's Brief at 4.

{¶ 15} The address book was not an issue for appellant until trial. The first time appellant asserted that the address book did not belong to him was when he took the stand in his own defense. He told the jury the book did not belong to him. He was able to present his defense to the jury.

{¶ 16} Upon review, we do not find a discovery violation as argued by appellant.

{¶ 17} Assignment of Error I is denied.

II

{¶ 18} In his second assignment of error, appellant claims the trial court erred in refusing to order a mistrial. We disagree.

{¶ 19} Mistrials need to be declared only when the ends of justice so require and a fair trial is no longer possible. *State v. Franklin*, 62 Ohio St.3d 118, 127, 580 N.E.2d 1 (1991). The standard of review for evaluating a trial court's decision to grant or deny a mistrial is abuse of discretion. *State v. Maurer*, 15 Ohio St.3d 239, 473 N.E.2d 768 (1984).

In order to find an abuse of discretion, we must determine the trial court's decision was unreasonable, arbitrary or unconscionable and not merely an error of law or judgment. *Blakemore v. Blakemore*, 5 Ohio St.3d 217, 450 N.E.2d 1140 (1983).

{¶ 20} During appellant's cross-examination, the prosecutor was asking appellant about his prior convictions on drug related offenses. T. at 317. Appellant became unresponsive and the trial court immediately took a break. T. at 317-318. Outside the presence of the jury, the trial court explained the following for the record (T. at 318):

What happened earlier was, on the witness stand, it appeared that Mr. Richardson suffered some sort of health issue and was snoring on the witness stand. Whether that was a true health-related illness or he was faking, I don't know. I can't say. We did over the lunch break have a squad come and check him, and his vitals are okay. We also had him drug tested, and his drug test was negative. He was taken downstairs, and I think they got him some lunch. And it was my intention to proceed with the trial. I was going to mention something to the jury. I know that Attorney Dilts wanted to put on a motion for a mistrial based on what had occurred. Apparently - - and I heard it - - one of the jurors said something to the effect of he's overdosing, so I did want to address that.

{¶ 21} Defense counsel argued the jury was tainted by the juror's comment, arguing "I don't know of any way that that bell can be unrung." T. at 319. The trial court overruled the motion for mistrial, and issued a curative instruction to the jury. T. at 320.

The trial court informed the jury that appellant submitted to a drug test, "and his drug test came back negative. Whatever the issue was, was not drug-related." T. at 321.

{¶ 22} Appellant now argues prejudice because the juror had already decided that he was guilty and the juror was never even interviewed personally by the trial court. We note the juror who issued the statement about appellant overdosing was the alternate juror who did not participate in the deliberations. T. at 364-365.

{¶ 23} We find the curative instruction remedied any detriment to appellant, and the juror in question did not even participate in finding appellant guilty.

{¶ 24} Upon review, we find the trial court did not abuse its discretion in denying the motion for mistrial.

{¶ 25} Assignment of Error II is denied.

III

{¶ 26} In his third assignment of error, appellant claims the trial court erred in permitting a juror question that was adversarial and prejudicial over objection. We disagree.

{¶ 27} Whether to allow or disallow juror questions is within a trial court's sound discretion. *State v. Nicholson*, 5th Dist. Richland No. 2009-CA-0069, 2010-Ohio-763, ¶ 36; *Blakemore, supra*.

{¶ 28} On direct examination, Officer Smith was asked how he detected contraband when it is hidden all over the place and there are over two hundred inmates to monitor. T. at 162. Officer Smith explained as a dorm officer, he had to be very observant, for example, observing what kind of brand new items an inmate had and/or

the number of people in and out of an inmate's bunk area. *Id.* He gave the following analogy (T. at 163):

It's just like on the streets. If your neighbor has got somebody that keeps pulling up, different cars all night long, I mean, it's not something - - there's something going on there. People don't just come all throughout the night to their house without something going on there. It's basically the same in prison. If you got different inmates in and out all night, people that you don't hang out with and they're in and out, in and out, that's things we look for.

{¶ 29} Following the testimony of Officer Smith, a juror asked, "Was there a pattern when other inmates would go by [appellant's] bunk?" T. at 193. Defense counsel objected to the question, arguing Officer Smith did not testify that other inmates "went by necessarily" appellant's bunk, he was talking about "the neighbor." T. at 194. The trial court permitted the question over objection. *Id.* Officer Smith stated he did observe a lot of traffic around appellant's bunk, but not particularly on the day in question. *Id.* The prosecutor followed up with a clarification question on the comings and goings of other inmates into appellant's bunk area, with Officer Smith explaining "he definitely had a lot of people in and out of his bed area for quick moments." T. at 195. Defense counsel asked if any of the inmates that came out of appellant's bunk area were searched to which Officer Smith responded in the negative. *Id.*

{¶ 30} Appellant argues the question allowed Officer Smith to add other suspicious conduct on the part of appellant, causing prejudice. Appellant was charged with possession, not trafficking. The jury heard about appellant's prior convictions, including convictions for drug trafficking. T. at 246-249, 322-325. We do not find how the complained of question caused undue prejudice.

{¶ 31} Upon review, we find the trial court did not abuse its discretion in permitting the juror question.

{¶ 32} Assignment of Error III is denied.

{¶ 33} The judgment of the Court of Common Pleas of Richland County, Ohio is hereby affirmed.

By Wise, Earle, J.

Wise, John, P.J. and

Delaney, J. concur.

EEW/db 1116