AFFIRM; and Opinion Filed November 8, 2017.

In The
Court of Appeals
Fifth District of Texas at Dallas

No. 05-17-00031-CR

JIMMY RAY WALLACE, Appellant
V.
THE STATE OF TEXAS, Appellee

On Appeal from the 397th Judicial District Court
Grayson County, Texas
Trial Court Cause No. 066170

MEMORANDUM OPINION

Before Justices Lang-Miers, Brown, and Boatright
Opinion by Justice Boatright

A jury found appellant guilty of murder, and the trial court assessed his punishment at life imprisonment. Appellant argues the trial court erred by denying challenges for cause that he lodged against two prospective jurors. We affirm.

A challenge for cause is proper when the venire member possesses "a bias or prejudice against the defendant or against the law upon which either the State or the defense is entitled to rely." *Gardner v. State*, 306 S.W.3d 274, 295 (Tex. Crim. App. 2009). The party asserting the challenge has the burden to show the challenged venire member understands the requirements of the law but cannot overcome his prejudice and follow the law. *Davis v. State*, 329 S.W.3d 798, 807 (Tex. Crim. App. 2010). We review the record to determine whether the challenged individuals expressed convictions that would interfere with their ability to serve and to abide by

their oath as jurors. *Buntion v. State*, 482 S.W.3d 58, 84 (Tex. Crim. App. 2016). We will reverse the trial court's ruling only for a clear abuse of discretion. *Id.*

Venireperson No. 4: Mr. Fraser

While part of the venire, Mr. Fraser was asked by counsel whether he could "set it aside" if the defense did not put on any evidence. He responded that it would be hard for him to do so because the State was "proving something" and the defense was "just saying something," but he concluded that he could put his concerns aside. Fraser was questioned later individually, and the trial judge explained the State's burden of proof. Fraser responded that he could follow the court's instructions and hold the State to its burden. Defense counsel asked if Fraser could put it aside if appellant did not testify and tell his side of the story. Fraser responded that it "would be harder for [him] to judge" and that the case would be "clearer" if appellant would testify. But when the judge explained the instruction the jury would receive indicating that jurors could not hold the failure to testify against appellant "in any shape, form or fashion," Fraser stated he would be able to follow that instruction.

Because Fraser said he would follow the law and expressed no conviction that would interfere with his ability to serve and abide by his oath, the trial court did not abuse its discretion in denying the challenge for cause. We overrule appellant's first issue.

Venireperson No. 12: Mr. Sly

When Mr. Sly was sitting with the venire, he raised his hand when defense counsel asked whether anyone thought a defendant should testify; counsel did not ask any follow-up questions at that time. When questioned later individually about the defense not putting on any evidence and about the defendant not testifying, Sly explained that he "just want[ed] to hear both sides of the story." But when the prosecutor asked if he could follow instructions from the judge concerning the defendant's right not to testify and the State's burden of proof, Sly responded that

he could. The trial court did not abuse its discretion in denying the challenge for cause on this ground.

Sly also disclosed during voir dire that he knew one of the State's witnesses. Defense counsel asked Sly subsequently whether the witness's testimony would affect Sly's ability to make a decision; he responded that he "would tend to believe" what the witness said. But Sly also stated he would not have difficulty making an independent decision based on the witness's testimony: he assured counsel that he was able to think for himself. Then he added, "But like I say, he's a trustworthy guy. I would tend to believe what he had to say." Sly's responses were vacillating on this issue of bias toward his witness-acquaintance. We give particular deference to the trial court when the prospective juror's responses are vacillating, unclear, or contradictory. *Buntion*, 482 S.W.3d at 84. Indeed, if the prospective juror vacillates or equivocates on his ability to follow the law, a reviewing court *must* defer to the trial court's judgment. *Brown v. State*, 913 S.W.2d 577, 580–81 (Tex. Crim. App. 1996). The trial court concluded Sly was able to follow the law, and we are bound by its judgment on this issue. *Id.* We overrule appellant's second issue.

We affirm the trial court's judgment.

/Jason Boatright/
JASON BOATRIGHT
JUSTICE

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Court of Appeals
Fifth District of Texas at Dallas

JUDGMENT

JIMMY RAY WALLACE, Appellant	On Appeal from the 397th Judicial District Court, Grayson County, Texas
No. 05-17-00031-CR V.	Trial Court Cause No. 066170.
	Opinion delivered by Justice Boatright.
THE STATE OF TEXAS, Appellee	Justices Lang-Miers and Brown participating.

Based on the Court's opinion of this date, the judgment of the trial court is **AFFIRMED**.

Judgment entered this 8th day of November, 2017.