In The

Court of Appeals

Ninth District of Texas at Beaumont

NO. 09-11-00031-CV

MILLET HARRISON, JR., Appellant

V.

THE STATE OF TEXAS, Appellee

On Appeal from the 252nd District Court
Jefferson County, Texas
Trial Cause No. 66306

MEMORANDUM OPINION

Appellant Millet Harrison, Jr. appeals from a judgment extending his involuntary inpatient mental health treatment for a period of one year. In 1994, Harrison was found not guilty by reason of insanity for the murder of his mother. *See Harrison v. State*, 148 S.W.3d 678, 679, 685 (Tex. App.—Beaumont 2004, no pet.). He was committed to a mental health facility. *See id*. Each year the trial court has renewed Harrison's commitment orders. *Id.* Several times Harrison has appealed the trial court's recommitment orders. *See Harrison v. State*, No. 09-10-00017-CV, 2010 Tex. App. LEXIS 5343 (Tex. App.—Beaumont July 8, 2010, pet. denied); *Harrison v. State*, 259

S.W.3d 314 (Tex. App.—Beaumont 2008, no pet.); *Harrison v. State*, 239 S.W.3d 368 (Tex. App.—Beaumont 2007, no pet.); *Harrison v. State*, 179 S.W.3d 629 (Tex. App.—Beaumont 2005, pet. denied); *Harrison v. State*, 148 S.W.3d at 678; *Harrison v. State*, No. 07-99-259-CR, 1999 Tex. App. LEXIS 8332 (Tex. App.—Amarillo Nov. 2, 1999, no pet.) (not designated for publication); *Harrison v. State*, No. 09-98-134CR, 1999 Tex. App. LEXIS 2027 (Tex. App.—Beaumont Mar. 24, 1999, no pet.) (not designated for publication). In his 2011 recommitment proceeding, the trial court extended Harrison's inpatient mental health treatment for another year.

Harrison argues the trial court erred in denying his challenges for cause against three veniremembers. We review a trial court's ruling on a challenge for cause for abuse of discretion. *Hyundai Motor Co. v. Vasquez*, 189 S.W.3d 743, 753-54 (Tex. 2006). A veniremember is disqualified when there is "bias or prejudice in favor of or against a party in the case" or bias involving the litigation's subject matter. Tex. Gov't Code Ann. § 62.105(2),(4) (West 2005); *Vasquez*, 189 S.W.3d at 751-54 (citing *Compton v. Henrie*, 364 S.W.2d 179, 182 (Tex. 1963)).[1] When a trial court refuses to disqualify a juror for bias or prejudice, the complaining party must demonstrate that the error was harmful.

[1] Statutory standards for bias and prejudice in criminal cases mirror those applicable to civil trials. *Hyundai Motor Co. v. Vasquez*, 189 S.W.3d 743, 753 & n.47 (Tex. 2006) (citing Tex. Code Crim. Proc. art. 35.16(a)(9) (The State or the defense may challenge for cause a juror who "has a bias or prejudice in favor of or against the defendant[.]")); *see also Cortez ex. rel. Estate of Puentes v. HCCI-San Antonio, Inc.*, 159 S.W.3d 87, 91-94 (Tex. 2005) (noting similar tests in criminal voir dire cases concerning rehabilitation of jurors, limitations on scope of questioning, and standards for preserving error in denial of challenges for cause).

Shepherd v. Ledford, 962 S.W.2d 28, 34 (Tex. 1998). The complaining party must show the error was harmful by advising the trial court that "'the court's denial of the challenges for cause would force the party to exhaust its peremptory challenges and, that after exercising its peremptory challenges, specific objectionable jurors would still remain on the panel.'" *Id.* (quoting *Goode v. Shoukfeh*, 943 S.W.2d 441, 452 (Tex. 1997)).

A bias is disqualifying if it "appear[s] that the state of mind of the juror leads to the natural inference that he will not or did not act with impartiality." *Compton*, 364 S.W.2d at 182. The Texas Supreme Court discussed expressions of apparent bias by a veniremember in *Cortez ex. rel. Estate of Puentes v. HCCI-San Antonio, Inc.:*

> Statements of partiality may be the result of inappropriate leading questions, confusion, misunderstanding, ignorance of the law, or merely "loose words spoken in warm debate." *Compton v. Henrie*, 364 S.W.2d 179, 182, (Tex. 1963); *see also Mines v. State*, 852 S.W.2d 941, 945 n.7 (Tex. Crim. App. 1992) (noting that a veniremember was rehabilitated despite unequivocal answer as further questioning showed she had been confused). If a veniremember expresses what appears to be bias, we see no reason to categorically prohibit further questioning that might show just the opposite or at least clarify the statement. *See, e.g., Glenn v. Abrams/Williams Bros.*, 836 S.W.2d 779, 783 (Tex. App.—Houston [14th Dist.] 1992, writ denied). If the initial apparent bias is genuine, further questioning should only reinforce that perception; if it is not, further questioning may prevent an impartial veniremember from being disqualified by mistake.

159 S.W.3d 87, 92-93 (Tex. 2005). In reviewing a trial court's decision on whether to strike a veniremember for cause, an appellate court must consider the entire examination, not just answers that favor one litigant or the other. *Id.* at 93. "[V]eniremembers are not necessarily disqualified when they confess 'bias,' so long as the rest of the record shows

that is not the case." *Id.* Because trial judges are present during voir dire, trial judges are "in [a] better position . . . to evaluate the juror's sincerity and his capacity for fairness and impartiality." *Swap Shop v. Fortune*, 365 S.W.2d 151, 154 (Tex. 1963).

The voir dire in this case included some preview of the case. *See Vasquez*, 189 S.W.3d at 753. Counsel for the State told the veniremembers that Harrison was found not guilty for the offense of murder "by reason of insanity." He explained Harrison was "charged with having killed his mother[.]" Harrison's counsel further explained that "[o]bviously, Mr. Harrison has been at Rusk State Hospital since that verdict was rendered and has not been free." Harrison's counsel then asked questions about whether the veniremembers had "formed an opinion about whether he is suffering from a mental illness at this time[.]" The trial court permitted individual questioning of seven of the veniremembers at the bench at the conclusion of the general voir dire. Three were excused for cause, two because they could not listen to the evidence and had already concluded Harrison was mentally ill.

Harrison argues the trial court abused its discretion in denying his challenges for cause for veniremembers 3, 25, and 29. Harrison contends that during voir dire, these three veniremembers "expressed the fact that they had formed an opinion and that opinion would influence his or her verdict." Harrison objected to the trial court's failure to grant his challenges for cause as to the three veniremembers he challenges in this

appeal, and the trial court overruled the objections. Harrison requested three additional challenges and the trial court denied the request.

After the trial court identified the veniremembers that would comprise the jury panel, Harrison re-urged his objection to the trial court's failure to grant the challenges for cause, and argued that veniremembers 1 and 7 were objectionable jurors who would not have made it on the jury panel if the trial court had not refused to grant Harrison's challenges for cause. The trial court overruled the objection, denied Harrison's request for additional strikes, and noted that Harrison considered veniremembers 1 and 7 to be objectionable jurors.

VENIREMEMBER 3

In his first issue, Harrison argues the trial court abused its discretion in denying Harrison's challenge for cause of veniremember 3. During voir dire, veniremember 3 admitted at that point he had "no idea" whether Harrison was mentally ill, but stated that if he had to vote at that moment without hearing any evidence, he had already formed an opinion that he could not set aside. State's counsel asked if Veniremember 3 would violate his juror's oath and find Harrison mentally ill even if the State failed to present any evidence. Veniremember 3 answered, "No, I wouldn't do that." He stated he would find Harrison "sane" if the State "just sat there and didn't say nothing." Although his opinion was that Harrison was mentally ill, Veniremember 3 acknowledged that he is not a doctor and that he could set his opinion aside and hold the State to its burden of proof.

The Supreme Court has explained that "[i]t can be a close question whether a juror's response indicates a prejudice due to personal animus or bias, rather than a fair judgment of the previewed evidence." *Vasquez*, 189 S.W.3d at 754. Determining whether counsel's questions "seek external information or a preview of a potential verdict[,]" and whether the jurors' answers "assume or ignore the evidence disclosed to them turns on the courtroom context, and perhaps the looks on their faces." *Id.* at 755. The Court has cautioned that "a trial court should not disqualify a juror based on an answer to an inquiry that seeks 'an opinion about the evidence.'" *Id.* at 751 (quoting *Cortez*, 159 S.W.3d at 94). The Supreme Court has further explained that "the relevant inquiry is not where jurors *start* but where they are likely to *end*. An initial 'leaning' is not disqualifying if it represents skepticism rather than an unshakeable conviction." *Cortez*, 159 S.W.3d at 94.

Although veniremember 3 stated he had an opinion as to whether Harrison was mentally ill, he also acknowledged that "[a]ccording to the law I must listen." He said that he could set his opinion aside and hold the State to its burden. Veniremember 3 expressed a willingness to approach the evidence with an impartial and open mind. *See Goode*, 943 S.W.2d at 452 n.4, 453; *Sullemon v. U.S. Fid. & Guar. Co.*, 734 S.W.2d 10, 15-16 (Tex. App.—Dallas 1987, no writ). On this record, we cannot say the trial court abused its discretion in refusing to strike veniremember 3. Issue one is overruled.

VENIREMEMBER 25

In his second issue, Harrison argues the trial court abused its discretion in denying Harrison's challenge for cause of veniremember 25. Veniremember 25 stated she had formed an opinion as to whether Harrison is mentally ill. When asked whether she would be able to set her opinion aside in determining whether State's counsel met his burden of proof she answered, "I think it would influence me." She explained that she would be able to follow the law and find that Harrison is not mentally ill if the State "presented nothing[.]" She admitted that her opinion would influence her if the State had some evidence and when asked whether she could set that opinion aside she answered, "I guess not." Counsel for the State then asked, "[I]f I don't do my job here you say in the back of your mind, that prosecutor is not worth a flip, but the law says he didn't do his job and so I have got to find [Harrison] to be mentally okay. Will you follow the law?" Veniremember 25 responded, "Yes."

Veniremember 25 stated she could follow the law and find Harrison not mentally ill if the State did not meet its burden. The trial court was in a better position to evaluate the juror's sincerity and her capacity for fairness and impartiality. *See Goode*, 943 S.W.2d at 452-53. After reviewing the veniremember's responses, we cannot say the trial court abused its discretion in denying the challenge for cause. Issue two is overruled.

VENIREMEMBER 29

In his third issue, Harrison argues the trial court abused its discretion in denying Harrison's challenge for cause of veniremember 29. During voir dire, veniremember 29 indicated he had formed an opinion that Harrison was currently mentally ill, and he could not set that aside. Harrison's counsel asked jurors whether they could be fair and hold the State to its burden of proof, "[b]ecause I anticipate that the details of this case are kind of disturbing on what actually happened, so be prepared." Veniremember 29 answered, "No opinion. I do have an opinion." When asked what his opinion was, he responded "Yeah, that it's impartial." He stated that he formed his opinion from the media. Counsel continued to question the veniremember:

> [State's counsel]: The law says that if you are selected as a juror in a case you are going to take an oath in front of this Judge that says, Judge, I am going to base my decision on the law that you give me and what I hear just in this courtroom, nothing else. Will you follow the law and base your decision on the law he gives you and what you hear just in this courtroom and put aside any opinions or anything that you may know from the TV station? In other words, will you follow the law and that oath?
>
> [Veniremember 29]: No, sir.
>
> [State's counsel]: You are going to violate the oath?
>
> [Veniremember 29]: No, sir.
>
> [State's counsel]: Okay. I am confused. If you say, Judge, I am going to follow the law. Will you follow the law?

[Veniremember 29]: Yeah.

[State's counsel]: If that means that I didn't do my job and prove to you that man is mentally ill, will you be able to say, Judge, I find he is not mentally ill. The prosecutor didn't do his job.

[Veniremember 29]: Yes, sir.

. . . .

[Defense counsel]: Your Honor -- okay. Basically, you had formed an opinion and you can't set that opinion aside?

[Veniremember 29]: Yes, sir.

[Defense counsel]: That's going to influence your consideration that [State's Counsel] has proved whether he met his burden of proof?

[Veniremember 29]: Yes, sir.

The Supreme Court has explained that "[a] statement that is more a preview of a veniremember's likely vote than an expression of an actual bias is no basis for disqualification." *Cortez*, 159 S.W.3d at 94. In *Cortez*, the veniremember said that his experience as an insurance adjuster might give him "preconceived notions," and he "would feel bias" against the plaintiff, though he could not "answer anything for certain." *Id*. at 90. The veniremember in that case explained that '"in a way,' the defendant was 'starting out ahead[.]"' *Id.* The Supreme Court held he was not disqualified. *Id.* at 94. The veniremember never indicated an inability to find for the plaintiff, if the plaintiff proved his case. *Id.* at 93. "More significantly," the Court stated, "he said he was 'willing to try' to make his decision based on the evidence and the law." *Id*. The Court concluded, "That

is all we can ask of any juror." *Id.* The Court noted that "[a]ny bias he did express was equivocal at most, which is not grounds for disqualification." *Id*. at 94.

Veniremember 29 gave conflicting answers in response to leading questions. Statements of partiality may be the result of "inappropriate leading questions, confusion, misunderstanding, [or] ignorance of the law . . . ." *Id.* at 92. These statements do not necessarily establish disqualification. *Id.* at 93. The veniremember said that he could abide by the juror's oath to follow the law, and if the State did not meet its burden then he could find that Harrison was not mentally ill. The trial judge was in a better position than this Court to evaluate the veniremember's capacity for fairness and impartiality. *See Swap Shop*, 365 S.W.2d at 154. On this record, we cannot say the trial court abused its discretion in denying the request to strike the veniremember. Issue three is overruled. The trial court's judgment is affirmed.

AFFIRMED.

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DAVID GAULTNEY
Justice

Submitted on July 7, 2011
Opinion Delivered August 25, 2011

Before McKeithen, C.J., Gaultney, and Horton, JJ.