

IN THE COURT OF APPEALS OF OHIO
FOURTH APPELLATE DISTRICT
SCIOTO COUNTY

STATE OF OHIO,	:	Case No. 15CA3703
Plaintiff-Appellee,	:	
v.	:	<u>DECISION AND</u>
CHRISTOPHER WILSON,	:	<u>JUDGMENT ENTRY</u>
Defendant-Appellant.	:	RELEASED 03/27/2017

APPEARANCES:

Robert W. Bright, Middleport, Ohio, for appellant.

John R. Haas, Portsmouth City Solicitor, Portsmouth, Ohio, for appellee.

Hoover, J.

{¶1} Defendant-appellant, Christopher Wilson (“Wilson”), appeals his conviction in the Portsmouth Municipal Court. Wilson was convicted of assault in violation of R.C. 2903.13(A) following a jury trial. On appeal, Wilson contends that the trial court erred by denying his motion for mistrial after it was alleged that the jury engaged in misconduct during deliberations. After a careful review of the record, we conclude that the alleged misconduct did not prejudice Wilson. Accordingly, we affirm the judgment of the trial court.

I. Facts and Procedural History

{¶2} Wilson was charged in the Portsmouth Municipal Court with one count of assault, a misdemeanor of the first degree, in violation of R.C. 2903.13. Wilson pleaded not guilty, and the matter proceeded to a jury trial.

{¶3} In its case-in-chief, the State called four witnesses: Fred Magneta, the alleged victim; Rhonda Price, a witness of the incident; Deputy Nick Williams, the responding officer from the Scioto County Sheriff's Office; and Deputy Matt Frantz of the Scioto County Sheriff's Office.

{¶4} Magneta testified that on October 4, 2014, Wilson punched him three times in the face outside of his residence in Rarden, Scioto County, Ohio. Price corroborated Magneta's testimony, but added that while she knew the incident occurred in October 2014, she could not remember the exact date. Deputy Williams testified that he was dispatched to Magneta's residence on October 4, 2014, due to complaints that Magneta had been assaulted. Deputy Williams stated that he did not witness the alleged assault, but he did complete an incident report, and took photographs of Magneta's injuries and the scene of the incident. Three of the photographs were admitted as exhibits in the trial court proceedings. Deputy Frantz testified that he had completed an incident report in September 2014 in which Wilson "relayed some allegations * * * about Mr. Magneta", but that he never contacted Magneta about the allegations and charges were never filed in that instance.

{¶5} In his defense, Wilson testified on his own behalf, and also presented the testimony of his mother, Teresa Newman. Newman testified that her son could not have assaulted Magneta on October 4, 2014, because he would have been present at her home to pick up his daughter from the school bus stop at or around the time that the alleged assault occurred. Wilson also denied that he punched Magneta on October 4, 2014, or at any other time, and denied that he had been to Magneta's residence on October 4, 2014. Wilson further testified that he was with his mother and was picking up his daughter from the school bus stop on October 4, 2014.

{¶6} No evidence was presented at trial by either party as to the day of the week that October 4, 2014, fell on.

{¶7} Upon the completion of the presentation of evidence, closing arguments, and final instructions, the jury deliberated and reached a verdict. As the jury was being escorted back to the courtroom, to return its verdict, a juror commented to the bailiff something to the effect “we knew he was lying when October the 4th was a Saturday * * *.” The bailiff reported the statement to the trial court and counsel for the State and defendant were informed. The trial court read the guilty verdict of the jury in open court. Following the reading of the guilty verdict, the court and counsel for the defendant inquired the jury regarding the jury’s determination given the information provided to the court by the bailiff. During this inquiry, a juror admitted to consulting a calendar on their cellphone to determine what day of the week that October 4, 2014, fell on. Furthermore, it was determined that the juror had shared the discovered information with the rest of the jury during deliberations.

{¶8} The trial court then polled the jury to determine if the fact that October 4th was not a school day was a determining factor for any of the jurors.

JUDGE: * * * With you Mr. Cassidy was that a determining factor in this matter?

JUROR CASSIDY: My mind was made up when I left the courtroom.

JUDGE: Mr. Davis was that a determining factor for you?

JUROR DAVIS: No uh I had already made up my mind before I knew that.

JUDGE: Okay. Mr. Fisher was that the determining factor for you?

JUROR FISHER: No.

JUDGE: Mr. Amburgey was that the determining factor for you?

JUROR AMBURGERY: No sir.

JUDGE: Mr. Hanson was that the determining factor for you?

JUROR HANSON: No.

JUDGE: Mrs. Cayton was that the determining factor for you?

JUROR CAYTON: No sir.

JUDGE: Mrs. Fischer determining factor for you?

JUROR FISCHER: No.

JUDGE: And Mrs. Martin same question to you.

JUROR MARTIN: No.

After a discussion at the bench between the trial court and counsel, the trial court inquired even further, asking each juror what was the basis of their individual decisions.

JUDGE: * * * Mr. Cassidy what is the determining factors for you?

JUROR CASSIDY: Determining factors for myself was pretty simple was why would Mr. Magneta accuse him of hitting him. You said use common sense and common sense told me he did it. * * *

JUDGE: Um Mr. Davis for you what were the determining factors?

JUROR DAVIS: Independent third party witness and then generally speaking credibility of the witnesses that I observed in court.

JUDGE: How about you Mr. Fisher?

JUROR FISHER: Uh pretty much the same thing. Just the witnesses themselves.

JUDGE: Mr. Amburgey?

JUROR AMBURGERY: I believed Mr. Magneta's testimony and Ms. Price.

JUDGE: How about you Mr. Hanson?

JUROR HANSON: I believed the witness.

JUDGE: Do you mean Mr. Magneta and the witness for the state of Ohio?

JUROR HANSON: The witnesses for the State.

JUDGE: How about you Mrs. Clayton?

JUROR CAYTON: Mrs. Price statement.

JUDGE: Mrs. Fisher?

JUROR FISHER: Mostly Ms. Price.

JUDGE: And Mrs. Martin?

JUROR MARTIN: Basically Ms. Price and also I felt bad if he had been there and not assaulted him he would have said he wasn't on his property (inaudible).

Then, the trial court took an additional step, inquiring further:

JUDGE: I have one other question for each of you. Folks, would your verdict have been any different if you never heard about October the 4th being a Saturday?

JURORS: No sir.

JUDGE: Anybody?

JURORS: No.

JUDGE: If you had looked and saw that October the 4th was a Wednesday would that have made any difference for anybody on the jury?

JUROR: No. No.

{¶9} The jury was eventually excused, and counsel for the defendant moved for a mistrial. The trial court did not immediately rule on the motion for mistrial. Instead, the trial court took the matter under advisement and permitted the parties to file post-trial briefs on the issue. The parties filed post-trial briefs, and the trial court ultimately denied the motion for mistrial. A short time later Wilson was sentenced, and a sentencing entry was filed. Wilson then filed a timely notice of appeal and the trial court entered an order staying his sentence pending this appeal.

II. Assignment of Error

{¶10} Wilson assigns the following error for our review:

Assignment of Error:

THE TRIAL COURT ERRED BY DENYING APPELLANT'S MOTION FOR MISTRIAL
RELATED TO JUROR MISCONDUCT THAT OCCURRED DURING THE TRIAL.

III. Law and Analysis

{¶11} In his sole assignment of error, Wilson contends that the trial court erred by denying his motion for mistrial due to jury misconduct. We disagree.

A. Standard of Review

{¶12} Whether or not to grant a mistrial is within the sound discretion of the trial court, and its decision will not be reversed absent an abuse of that discretion. *State v. Koon*, 4th Dist. Hocking No. 15CA17, 2016-Ohio-416, ¶ 26. An abuse of discretion occurs when the trial court makes a decision that is unreasonable, arbitrary, or unconscionable. *Id.* “In general a mistrial should not be granted based on an error or irregularity unless an accused’s substantial rights are adversely affected. *Id.* at ¶ 27. Likewise, a trial court enjoys broad discretion in dealing with matters of juror misconduct. *State v. Hickman*, 9th Dist. Summit No. 27321, 2015-Ohio-4668, ¶ 31, and cases cited therein. “Thus, an appellate court reviews the trial court’s denial of a motion for mistrial based on juror misconduct for an abuse of discretion.” *Id.*

B. The Law on Juror Misconduct

{¶13} “An inquiry into alleged juror misconduct requires a two-step analysis.” *State v. Marshall*, 4th Dist. Lawrence No. 06CA23, 2007-Ohio-6298, ¶ 57. “ ‘First the trial court must determine whether misconduct occurred. (Internal citation omitted). Then, if juror misconduct is found, the court must determine whether the misconduct materially affected the appellant’s substantial rights.’ *Id.*, quoting *State v. Coleman*, 4th Dist. Scioto No. 05CA3037, 2006-Ohio-3200, ¶ 10. “Thus, even when juror misconduct has, in fact, occurred, a complaining party must establish prejudice.” *Hickman* at ¶ 32, citing *State v. Adams*, 103 Ohio St.3d 508, 2004-Ohio-

5845, 817 N.E.2d 29, ¶ 42; *see also Marshall* at ¶ 61 (“Juror misconduct does not necessarily require reversal. The misconduct must be prejudicial.”)

{¶14} “Furthermore, ‘[a] juror’s belief in his or her own impartiality is not inherently suspect and may be relied upon by the trial court.’ ” *Hickman* at ¶ 33, quoting *State v. Thomas*, 9th Dist. Summit No. 26893, 2014-Ohio-2920, ¶ 34. “ ‘One may not know or altogether understand the imponderables which cause one to think what he thinks, but surely one who is trying as an honest [person] to live up to the sanctity of his [or her] oath is well qualified to say whether he [or she] has an unbiased mind in a certain matter.’ ” *Id.*, quoting *State v. Gunnell*, 132 Ohio St.3d 442, 2012-Ohio-3236, 973 N.E.2d 243, ¶ 30. Thus, “[w]hile a trial court’s determination with respect to juror bias is entitled to great deference under circumstances where a juror reads outside or forbidden material, we note that the trial court’s inquiry of the juror is vital in making its determination.” *Id.*, citing *Gunnell* at ¶¶ 32-34.

C. Analysis

{¶15} After reviewing the record, we conclude that the trial court did not abuse its discretion by denying Wilson’s motion for a mistrial. “ ‘It is well established that [t]he trial judge is in the best position to determine the nature of the alleged jury misconduct and the appropriate remedies for a demonstrated misconduct.’ ” *Marshall* at ¶ 60, quoting *State v. Watkins*, 9th Dist. Summit Nos. 23133, 23145, 2006-Ohio-6380, ¶ 8. Here, once the trial court learned that a juror might have consulted outside material, and shared the findings with the rest of the jury, it conducted a thorough inquiry of each member of the jury. The trial court’s inquiry was sufficient to evaluate the extent of the misconduct and the effect it may have had on the jury’s verdict. Importantly, each member of the jury indicated that the cellphone search had no impact on his or her decision in the case. Furthermore, the trial court asked each member of the jury to explain the

basis of his or her individual verdict, and not one juror indicated that the date and day of the week was a factor. Thus, even if we were to assume that the juror's actions constituted misconduct, there was no indication that said misconduct was prejudicial. Given the exhaustive nature of the trial court's inquiry and the answers offered by the jury, we cannot say that the trial court's denial of the motion was unreasonable, arbitrary, or unconscionable. Accordingly, Wilson's sole assignment of error is overruled.

IV. Conclusion

{¶16} The trial court properly denied Wilson's motion for mistrial due to juror misconduct. Thus, having overruled Wilson's sole assignment of error, we affirm the judgment of the trial court.

JUDGMENT AFFIRMED.

JUDGMENT ENTRY

It is ordered that the JUDGMENT IS AFFIRMED. Appellant shall pay the costs.

The Court finds that reasonable grounds existed for this appeal.

It is ordered that a special mandate issue out of this Court directing the Portsmouth Municipal Court to carry this judgment into execution.

IF A STAY OF EXECUTION OF SENTENCE AND RELEASE UPON BAIL HAS BEEN PREVIOUSLY GRANTED BY THE TRIAL COURT OR THIS COURT, it is temporarily continued for a period not to exceed sixty days upon the bail previously posted. The purpose of a continued stay is to allow Appellant to file with the Supreme Court of Ohio an application for a stay during the pendency of proceedings in that court. If a stay is continued by this entry, it will terminate at the earlier of the expiration of the sixty day period, or the failure of the Appellant to file a notice of appeal with the Supreme Court of Ohio in the forty-five day appeal period pursuant to Rule II, Sec. 2 of the Rules of Practice of the Supreme Court of Ohio. Additionally, if the Supreme Court of Ohio dismisses the appeal prior to expiration of sixty days, the stay will terminate as of the date of such dismissal.

A certified copy of this entry shall constitute the mandate pursuant to Rule 27 of the Rules of Appellate Procedure.

Harsha, J., and Abele, J.: Concur in Judgment and Opinion.

For the Court

By: _____
Marie Hoover, Judge

NOTICE TO COUNSEL

Pursuant to Local Rule No. 14, this document constitutes a final judgment entry and the time period for further appeal commences from the date of filing with the clerk.