

IN THE COURT OF APPEALS OF OHIO
SIXTH APPELLATE DISTRICT
LUCAS COUNTY

State of Ohio

Court of Appeals No. L-06-1135

Appellee

Trial Court No. CR-0200503470

v.

Jeronica Phillips

DECISION AND JUDGMENT ENTRY

Appellant

Decided: May 4, 2007

* * * * *

Julia R. Bates, Lucas County Prosecuting Attorney, and
Khary L. Hanible, Assistant Prosecuting Attorney, for appellee.

Neil Stewart McElroy, for appellant.

* * * * *

PIETRYKOWSKI, P.J.

{¶ 1} Defendant-appellant, Jeronica Phillips, appeals the April 7, 2006 judgment of the Lucas County Court of Common Pleas which, following a jury verdict of guilty, sentenced appellant to four years of imprisonment for burglary, in violation of R.C. 2911.12(A)(2). Appellant raises the following assignment of error:

{¶ 2} "Assignment of Error No. 1:

{¶ 3} "The trial court erred, to the prejudice of the appellant, in denying the defendant-appellant's request to remove one of the potential jurors for cause."

{¶ 4} Appellant's sole assignment of error relates to voir dire. Appellant contends that the trial court erroneously denied defense counsel's request to remove a juror for cause. Appellant contends that the juror clearly demonstrated that he could not be fair and impartial. Defense counsel had to use one of his four peremptory challenges to remove the juror; counsel then used the remaining three challenges.

{¶ 5} The provisions at issue are Crim.R. 24(C), R.C. 2313.42(J), and R.C. 2313.43. Crim.R. 24(C) provides, in relevant part:

{¶ 6} "(C) Challenges for cause. A person called as a juror may be challenged for the following causes:

{¶ 7} "* * *.

{¶ 8} "(9) That the juror is possessed of a state of mind evincing enmity or bias toward the defendant or the state; but no person summoned as a juror shall be disqualified by reason of a previously formed or expressed opinion with reference to the guilt or innocence of the accused, if the court is satisfied, from the examination of the juror or from other evidence, that the juror will render an impartial verdict according to the law and the evidence submitted to the jury at the trial.

{¶ 9} "* * *.

{¶ 10} "(14) That the juror is otherwise unsuitable for any other cause to serve as a juror.

{¶ 11} "The validity of each challenge listed in division (C) of this rule shall be determined by the court."

{¶ 12} Similarly, R.C. 2313.42 provides, in relevant part:

{¶ 13} "The following are good causes for challenge to any person called as a juror:

{¶ 14} "* * *.

{¶ 15} "(J) That he discloses by his answers that he cannot be a fair and impartial juror or will not follow the law as given to him by the court."

{¶ 16} Finally, R.C. 2313.43 provides:

{¶ 17} "In addition to the causes listed under section 2313.42 of the Revised Code, any petit juror may be challenged on suspicion of prejudice against or partiality for either party,* * *. The validity of such challenge shall be determined by the court and be sustained if the court has any doubt as to the juror's being entirely unbiased."

{¶ 18} A trial court's refusal to remove a juror for cause under the above-quoted provisions is reviewed under an abuse of discretion standard. *Parusel v. Ewry*, 6th Dist. No. L-02-1402, 2004-Ohio-404; *State v. Schiebel* (1990), 55 Ohio St.3d 71, 78. This is so because a trial court is in the best position to assess the potential juror's credibility. Accordingly, the trial court's determination will be affirmed absent a showing that the court's attitude is arbitrary, unreasonable, or unconscionable. *Parusel*, ¶ 37, quoting *Berk v. Matthews* (1990), 53 Ohio St.3d 161, 169.

{¶ 19} At issue in this case are the following exchanges between defense counsel and Juror No. 5 during voir dire:

{¶ 20} "[Defense Counsel]: * * *. And in here the scientific evidence is going to be the fingerprint evidence, okay, and it's going to be introduced by a police officer, someone from the – the crime lab from – from the City of Toledo. Now, because the police officer testifies, will you give his testimony any more weight than you would anyone else's, any of you?

{¶ 21} "Juror No. 5: That's his job, yeah, sure you would.

{¶ 22} "[Defense Counsel]: Okay. So if he's trained in that, you would have the tendency to believe him just because he's the police officer?

{¶ 23} "Juror No. 5: Yeah.

{¶ 24} "[Defense Counsel]: Okay. And so if he would testify as to what he determined in his examination of the fingerprints, you couldn't challenge that?

{¶ 25} "Juror No. 5: No.

{¶ 26} "* * *.

{¶ 27} "[Defense Counsel]: * * *. Would you be able to look at those [fingerprints] on your own and see if there's any discrepancies, or would you accept the total testimony of the crime lab specialist?

{¶ 28} "Juror No. 5: I'd accept the specialist. I don't have any training in looking at fingerprints.

{¶ 29} "[Defense Counsel]: Okay. But what if you looked at it and it looked like it might have been different, you could still – you would still accept the crime lab technician?

{¶ 30} "Juror No. 5: I figure he knows more than I do if there's some discrepancy.

{¶ 31} "* * *.

{¶ 32} "[Defense Counsel]: -- you're saying that just because he testifies that it's -- it matches or they're similar, you would accept that without looking any further?

{¶ 33} "Juror No. 5: Well, I guess what I would think is that they're bringing him as a witness, and obviously if -- to me, if they were not the same they would have a pretty weak case. And they wouldn't set themselves up for failure, so they must know what they're talking about.

{¶ 34} "[Defense counsel]: Okay. So you're making the presumption that because they brought the case they should have it locked?

{¶ 35} "Juror No. 5: Yes."

{¶ 36} Thereafter, the jurors were questioned regarding their ability to be fair and impartial as follows:

{¶ 37} "[Defense counsel]: You feel that you can listen to all the evidence and judge it fairly?

{¶ 38} "* * *.

{¶ 39} "[Defense counsel]: And leave Jeronica Phillips cloaked with that presumption until you begin your deliberations?

{¶ 40} "* * *.

{¶ 41} "Juror No. 5: Uh-huh."

{¶ 42} Appellant argues, in his sole assignment of error, that Juror No. 5 demonstrated a clear bias in favor of the state of Ohio and that the trial court erred by overruling his challenge for cause. Conversely, the state asserts that Juror No. 5 was not biased; he merely stated that if an expert testified regarding the fingerprints found at the scene, he would not challenge the findings due to his inexperience in fingerprint analysis.

{¶ 43} In a similar case, the Second Appellate District held that a juror who had worked with police and believed that the testimony of a police officer was entitled to more credibility than that of an ordinary citizen, was not required to be removed for cause. *State v. Carruth*, 2d Dist. No. 19997, 2004-Ohio-2317. The court noted that the juror indicated that he was willing to be fair and impartial and to put aside his prior relationship with the police. *Id.*, ¶ 29-31.

{¶ 44} A review of the voir dire transcript reveals that, when asked, Juror No. 5 indicated that he assumed the defendant was innocent. Further, as quoted above, Juror No. 5 affirmatively indicated that he could listen to the evidence, judge it fairly, and maintain the presumption of innocence until the conclusion of the evidence.

Accordingly, we find that the trial court did not abuse its discretion when it denied defense counsel's request to remove Juror No. 5 for cause. Appellant's assignment of error is not well-taken.

{¶ 45} On consideration whereof, we find that appellant was not prejudiced or prevented from having a fair trial and the judgment of the Lucas County Court of Common Pleas is affirmed. Appellant is ordered to pay the costs of this appeal pursuant

to App.R. 24. Judgment for the clerk's expense in preparation of the record, fees allowed by law, and the fee for filing the appeal is awarded to Lucas County.

JUDGMENT AFFIRMED.

A certified copy of this entry shall constitute the mandate pursuant to App.R. 27. See, also, 6th Dist.Loc.App.R. 4.

Mark L. Pietrykowski, P.J.

JUDGE

William J. Skow, J.

JUDGE

Thomas J. Osowik, J.
CONCUR.

JUDGE

This decision is subject to further editing by the Supreme Court of Ohio's Reporter of Decisions. Parties interested in viewing the final reported version are advised to visit the Ohio Supreme Court's web site at:
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