

IN THE COURT OF CRIMINAL APPEALS OF TENNESSEE  
AT JACKSON  
February 6, 2018 Session

FILED

05/04/2018

Clerk of the  
Appellate Courts

**ARMARD REEVES v. STATE OF TENNESSEE**

**Appeal from the Criminal Court for Shelby County**  
**No. 10-06739 James M. Lammey, Judge**

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**No. W2017-00502-CCA-R3-PC**

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The Petitioner, Armard Reeves, appeals from the denial of post-conviction relief, alleging that he was deprived of an impartial jury based on juror misconduct and that trial counsel was ineffective in failing to pursue this issue in a motion for new trial and on direct appeal. Upon our review, we affirm the judgment of the post-conviction court.

**Tenn. R. App. P. 3 Appeal as of Right; Judgment of the Criminal Court Affirmed**

CAMILLE R. MCMULLEN, J., delivered the opinion of the court, in which JOHN EVERETT WILLIAMS and BRANDON O. GIBSON, JJ., joined.

Andrea D. Sipes (on post-conviction), Jackson, Tennessee, for the Petitioner, Armard Reeves.

Herbert H. Slatery III, Attorney General and Reporter; Zachary T. Hinkle, Assistant Attorney General; Amy P. Weirich, District Attorney General; and Glen Baity, Assistant District Attorney General, for the appellee, State of Tennessee.

**OPINION**

In June 2010, the Petitioner was involved in a multi-State, undercover drug operation during which he paid undercover law enforcement agents over \$25,000 to transport marijuana from Arizona to Tennessee. State v. Armard Reeves, No. W2012-02656-CCA-R3-CD, 2014 WL 1593153, at \*1, 2-4 (Tenn. Crim. App. Apr. 17, 2014), perm. app. denied (Tenn. Sept. 19, 2014). After the marijuana was loaded in a rental truck, transported to Tennessee, and delivered to the Petitioner, he was stopped by local police for speeding. A canine sweep detected the presence of 460 pounds of marijuana in the back of the rental truck the Petitioner was operating, and he was arrested. Id. The Petitioner was subsequently convicted by a jury of unlawful and knowing possession of 300 pounds or more of marijuana with the intent to deliver. The trial court sentenced the

Petitioner to twenty-five years as a Range I offender, noting that the Petitioner qualified as a Range II offender based on his prior convictions, but the State had failed to timely file the enhancement paperwork. *Id.* at \*4. The Petitioner appealed his conviction, which was affirmed by this court and was later denied permission to appeal by the Tennessee Supreme Court. *Id.* at \*4-12. On September 18, 2015, the Petitioner filed, through counsel, a petition for post-conviction relief, alleging that he was denied the right to an impartial jury due to juror misconduct and that he received ineffective assistance of counsel due to counsel's failure to report the same to the court.

**Post-Conviction Hearing.** At the February 22, 2017 post-conviction hearing, the Petitioner testified that, on the night after the jury began deliberations, he received a three-way telephone call from Parrish Transou, a friend with whom he had attended school, and a sitting juror on his case. According to the Petitioner, the juror said she needed a new car and asked him for \$10,000 in exchange for a not guilty verdict. When the juror purported to bribe him, the Petitioner replied, "Well, you know, we'll wait until after trial, and we'll go from there." Although the Petitioner was "really shocked and surprised" by the juror's request, he denied agreeing to the bribe and remained on the phone call for approximately twenty minutes "just listening." The Petitioner identified his phone records and phone calls from Transou, which were admitted as evidence at the post-conviction hearing. He told trial counsel about the phone call the next day after the jury returned its guilty verdict. Trial counsel told the Petitioner he would investigate the issue; however, the Petitioner claimed he did not receive any further information on the matter. The Petitioner agreed that he signed a statement acknowledging the potential juror misconduct issue, trial counsel's duty to report it to the court, and the desire for trial counsel to continue to represent him on appeal. Although the Petitioner wanted the misconduct issue to be included in the motion for new trial and on direct appeal, trial counsel told him it was in his best interest to rely on other grounds for appeal.

Trial counsel, a criminal defense lawyer of thirty-six years, testified that, after the trial, Parrish Transou came to his office and informed him and co-counsel that one of the jurors tried to bribe the Petitioner by requesting \$10,000 in exchange for a not guilty verdict. Trial counsel immediately consulted with an ethics expert regarding the alleged misconduct, determined that he needed to report it to the court, and explained the issue to the Petitioner. Trial counsel memorialized his efforts in a letter, signed by the Petitioner, acknowledging the disclosure and the Petitioner's desire for trial counsel to continue to represent him. Trial counsel advised the court that they had hired an investigator, who ultimately determined that the claims of juror misconduct were unsubstantiated. Although trial counsel admitted that he could have included the issue in a motion for new trial or on appeal, he determined that it was not in his client's best interest to do so, because the Petitioner may have been implicated in jury tampering. Trial counsel believed he had fulfilled his ethical obligations. On cross-examination, trial counsel

confirmed that the Petitioner told him that “he didn’t want any part” of the bribe, that his report to the court was in chambers off the record, and that he did not recall the Petitioner insisting that the issue be formally raised.

Co-counsel, a criminal defense lawyer of twenty-three years, testified consistently with trial counsel’s recollection of events. Additionally, on cross-examination, she did not recall the Petitioner insisting that the issue be raised formally and asserted that, if he had, then they would have discussed the reasons not to do so.

Parrish Transou testified that he met the juror in question before the trial and maintained a relationship with her throughout the trial. He agreed that he was present in court during the Petitioner’s trial. On the day the jury began deliberating, he participated in a three-way phone call between the Petitioner, the juror, and himself. According to Transou, the juror requested \$10,000 in exchange for a not guilty verdict. He characterized the juror’s request as being made “in a laughing matter[.]” and said that when he added the Petitioner onto the call, the Petitioner said he wanted nothing to do with the bribe and hung up. He also attempted to corroborate the three-way telephone call with his phone records, admitted as an exhibit, upon which he identified his number, the Petitioner’s number, and the juror’s purported number. Finally, Transou said he had a conversation with the juror after the trial that he surreptitiously recorded. Transou claimed they discussed the results of the trial on the recording, which was also admitted as an exhibit. Transou later met with trial and co-counsel, told them about the three-way phone call, and provided them with his recorded conversation with the juror.

On cross-examination, Transou testified that he never discussed the case with the juror, that he did not inform trial counsel of the three-way call until after the trial, and that he was never interviewed by an investigator. When pressed by the State regarding whether he engaged in jury tampering by intentionally talking to the juror during the trial, Transou invoked his Fifth Amendment right against self-incrimination.

The juror in question testified and confirmed that Parrish Transou approached her after she was selected to serve as a juror in the Petitioner’s trial. She gave Transou her phone number and recalled discussing discounts related to her job as a hotel clerk. She could not remember her phone number at the time of the trial or any three-way phone call between the Petitioner, Transou, and herself. She initially said she did not recall discussing the trial results with Transou, but after hearing the recorded conversation, she identified her voice in the recording. On cross-examination and in voir dire by the court, the juror testified that she never asked for money or a car in exchange for a not guilty verdict. She stated that she was interviewed by an investigator regarding the alleged bribe and confirmed that Transou was present during at least one of the interviews.

After the hearing, the post-conviction court denied the Petitioner's request for post-conviction relief and found that trial counsel "did nothing that was deficient" and that there was "no prejudice at all." The court noted that the recorded conversation between Transou and the juror revealed no evident jury tampering and found that the Petitioner and Transou's testimonies were "incredible" and instead accredited the testimony of the juror. Regarding ineffective assistance of counsel, the court found that trial counsel "fought tooth and nail" for the Petitioner, despite the strong evidence against him. The court also noted that the credible evidence showed that the verdict was in no way affected by the improper contact and was only based on the law and evidence presented at trial. In its written order entered on February 24, 2017, the court concluded that the Petitioner failed to prove there was deficient performance or prejudice therefrom and that "the alleged juror misconduct was the product of a scheme to defraud the court and to cause a reversal." It is from this order that the Petitioner now appeals.

## ANALYSIS

The Petitioner argues that he was denied the right to an impartial jury due to juror misconduct and that he received ineffective assistance of counsel based on trial counsel's failure to pursue this issue on appeal. He specifically argues that one of the jurors solicited a bribe from him in exchange for a not guilty verdict. The State responds that the Petitioner waived this issue by not alleging it in his motion for new trial or on direct appeal. Nevertheless, the State asserts that the Petitioner's claim of juror misconduct is meritless as evident through testimony and the post-conviction court's findings that the juror did not solicit a bribe and that the Petitioner and Transou engaged in potential jury tampering and perjury. Upon our review, we agree with the State.

As an initial matter, the record shows that trial counsel wisely chose not to include this issue in the motion for new trial or on direct appeal because it could have implicated the Petitioner in other criminal offenses; namely, jury tampering and aggravated perjury. Moreover, trial counsel opined that this issue, if successful, would only grant the Petitioner a new trial, exposing the Petitioner to an increased sentence as a Range II offender. Finally, trial counsel firmly but erroneously believed that the Petitioner's conviction would be overturned on appeal based on the trial court's failure to include a jury instruction for facilitation. Accordingly, to the extent the Petitioner makes a stand-alone claim that he was deprived of an impartial jury based on juror misconduct, we are inclined to agree with the State and conclude that this issue is waived. See T.C.A. § 40-30-106(g) (A ground for relief is waived if the petitioner personally or through an attorney failed to present it for determination in any proceeding before a court of competent jurisdiction in which the ground could have been presented unless it was based upon a constitutional right not recognized as existing at the time of trial or the result of state action in violation of the federal or state constitution); William Earl McCarver v.

State, No. M2009-00753-CCA-R3-PC, 2010 WL 596344, at \*4 (Tenn. Crim. App. Feb. 19, 2010). Waiver notwithstanding, and given the parallel ineffective assistance of counsel claim based on this issue, we conclude that the Petitioner received a fair and impartial trial, free from any juror misconduct.

In considering whether a defendant has been deprived of his right to trial by an impartial jury, we are mindful that every defendant is assured “a trial by a jury free of . . . disqualification on account of some bias or partiality toward one side or the other of the litigation.” State v. Akins, 867 S.W.2d 350, 354 (Tenn. Crim. App. 1995) (quoting Toombs v. State, 270 S.W.2d 649, 650 (Tenn. 1954)). Moreover, “[j]urors must render their verdict based only upon the evidence introduced at trial, weighing the evidence in light of their own experience and knowledge.” Id. (citing Caldararo ex rel. Caldararo v. Vanderbilt Univ., 794 S.W.2d 738, 743 (Tenn. Ct. App. 1990)). If the jury has been exposed to extraneous prejudicial information or subjected to an improper outside influence, the validity of the verdict is questionable and a new trial may be warranted. Id. (citing State v. Blackwell, 664 S.W.2d 686, 688 (Tenn. 1984)). Whether the constitutional right to an impartial jury has been violated is a mixed question of law and fact which we review de novo, granting a presumption of correctness only to the trial court’s findings of fact. Id. at 656 (citing Fields v. State, 40 S.W.3d 450, 458 (Tenn. 2001)).

Post-conviction relief is only warranted when a petitioner establishes that his or her conviction or sentence is void or voidable because of an abridgment of a constitutional right. T.C.A. § 40-30-103. A post-conviction petitioner has the burden of proving the factual allegations by clear and convincing evidence. T.C.A. § 40-30-110(f); Tenn. Sup. Ct. R. 28, § 8(D)(1); Dellinger v. State, 279 S.W.3d 282, 293–94 (Tenn. 2009). In order to prevail on an ineffective assistance of counsel claim, the petitioner must establish that (1) his lawyer’s performance was deficient and (2) the deficient performance prejudiced the defense. Strickland v. Washington, 466 U.S. 668, 687 (1984); Baxter v. Rose, 523 S.W.2d 930, 936 (Tenn. 1975). “[A] failure to prove either deficiency or prejudice provides a sufficient basis to deny relief on the ineffective assistance claim. Indeed, a court need not address the components in any particular order or even address both if the [petitioner] makes an insufficient showing of one component.” Goad v. State, 938 S.W.2d 363, 370 (Tenn. 1996) (citing Strickland, 466 U.S. at 697).

In denying relief, the post-conviction court determined, in pertinent part, as follows:

Well, definitely an interesting case. And like I said earlier in the hearing, it’s a learning experience — a case of this magnitude — this

amount of [marijuana] — the value — the sheer value of that, I guess I should have sequestered the case; but that's neither here nor there now.

I find — and, of course, [the Petitioner's] testimony to be incredible. I don't believe anything he had to say. And as far as Mr. Transou, it was evident — it's evident to me — I think anyone looking at this situation would see that he approached this juror and befriended her — pretended to be interested in, perhaps, dating her or something, and he took advantage of her in my opinion. And it was all staged. It was all done on purpose in order for us to waste valuable time in the court system on this sort of nonsense.

I don't believe a word [the Petitioner] has to say. I certainly don't believe anything that Mr. Transou has to say. She vehemently denied having asked for ten thousand dollars or a new car.

The tape recording — frankly, when I heard that there was jury tampering when we got the investigator, Mr. Kevin Helms, I demanded to hear it. And I wanted to hear it as soon as possible, and it took me forever to get a copy so I could hear it myself. And the only recording that was ever given to me was after the jury verdict was rendered, and she's talking about how she's free and that she's wanting to know if she's going to get paid for jury duty — the eleven dollars a day, and they talked about if it had been sequestered, then she would have got more. I'm not even sure what they get. I'm not sure what they got back in 2012. I guess it's the same. But she talks about getting the certificate of jury service, and that I had indicated when I gave that to the jury that they did the right thing in finding him not guilty of possession with intent to sell because there was no indication, to me, that he possessed with intent to sell, but he definitely possessed it with the intent to deliver it. So, they did the right thing and found him not guilty of that.

Unfortunately, for the State, that they did not file the appropriate paperwork to enhance him to a higher range. That's unfortunate. He was given a maximum in the range because he undoubtedly would have gotten more than twenty-five years had they filed the appropriate paperwork.

So, everything that she testified to, I find to be very credible. I don't think she lied under oath. No one gave her an opportunity to hear this tape before — before she was called to testify. She testified that she hardly remembers any of this stuff, but I honestly believe that Mr. Transou is guilty of jury tampering.

Now, there is no way to prove that there was knowledge on [the Petitioner's] behalf except for common sense. And, to me, common sense would say that [the Petitioner] had something to do with it. But that's not proof, and that's neither here nor there. But there is no doubt that Mr. Transou is guilty of jury tampering. And he is not a man to be believed. I would not believe Mr. Transou over [the juror] on any day of any year of any century. He was not to be believed.

Here, the Petitioner argues that he was deprived of an impartial jury based on juror misconduct and that he received ineffective assistance of counsel based on trial counsel's failure to pursue this issue on appeal. However, the only testimony regarding the purported bribe was from Transou and the Petitioner, neither of whom were deemed credible by the post-conviction court. Vaughn v. State, 202 S.W.3d 106, 115 (Tenn. 2006) (factual questions involving the credibility of witnesses or the weight of their testimony are matters entrusted to the trial court). The telephone records offered to corroborate their testimony were of no consequence because they did not include the juror's phone number or provide the substance of the purported conversation. Moreover, the juror acknowledged that she had communicated with Transou during the trial, but she adamantly denied soliciting a bribe. She did not know Transou's relationship to the Petitioner until after the verdict, when Transou told her about the case. The post-verdict recording of the conversation between Transou and the juror did not contain any discussion about the Petitioner's case, money, or a bribe. Additionally, once presented with the alleged misconduct, trial counsel consulted an ethics expert, reported the allegations to the court in the presence of the State, engaged an investigator who was unable to substantiate the claims, and decided that it was in the Petitioner's best interest not to pursue the allegations further. Based on this record, we agree with the post-conviction court and conclude that the Petitioner received a fair trial and that he failed to establish deficient performance or prejudice to his case as a result of trial counsel choosing not to include this issue on appeal. Accordingly, he is not entitled to relief.

## CONCLUSION

Based upon the foregoing reasoning and analysis, the judgment of the post-conviction court is affirmed.

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CAMILLE R. McMULLEN, JUDGE