

STATE OF MICHIGAN  
COURT OF APPEALS

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PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

MARCUS DONTE MIDDLEBROOK,

Defendant-Appellant.

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UNPUBLISHED

July 18, 2006

No. 260589

Ingham Circuit Court

LC No. 03-000466-FC

Before: Donofrio, P.J., and O’Connell and Servitto, JJ.

PER CURIAM.

Following a jury trial, defendant was convicted of assault with intent to murder, MCL 750.83; felony-firearm, MCL 750.227b; and unlawful driving away of a motor vehicle (UDAA), MCL 750.413. Defendant was sentenced to prison terms of 30 to 60 years for assault with intent to murder, two years for felony-firearm, and 40 to 60 months for UDAA. The assault with intent to murder sentence was imposed consecutively to the felony-firearm sentence and concurrently to the unlawful driving away in a motor vehicle conviction. This case arose when defendant received a ride from his girlfriend’s roommate, shot her in the face with a handgun at close range, pushed her down the bank of a river, forced her at gunpoint to walk out to midstream, and then drove away in her car. We affirm.

Defendant first contends he was denied his right to a fair trial when (1) the jurors discussed a witness’ testimony prior to jury deliberations, and (2) the jurors were exposed to extraneous information. We disagree. We review for an abuse of discretion the trial court’s denial of a motion for mistrial. *People v Messenger*, 221 Mich App 171, 175; 561 NW2d 463 (1997). We will only reverse the denial of a mistrial founded on juror misconduct when the misconduct “affected the impartiality of the jury or disqualified its members from exercising the powers of reason and judgment. A new trial will not be granted if no substantial harm was done thereby to the defendant, even though the misconduct may merit a rebuke from the trial court if brought to its notice.” *Id.*

In this case, the court received a letter from one of the jurors indicating problems in the jury room. A recorded interview with the juror indicated that the other jurors had discussed the credibility of one of the witnesses before deliberations. The juror also indicated that the “colored” juror told other jurors that her family told her to “watch her back,” and she also allegedly noted that defendant had “quite a family.” The complaining juror admitted that the “watch her back” comment was a joke. The court brought two other jurors into chambers

separately for questioning, including the allegedly problematic juror. They explained that they had not discussed the case with anyone, including family members or other jurors. The accused juror explained that her comment was directed at the court's instruction that the jury avoid contact with anyone who might be involved in the case, and that the comments from her family were meant entirely in jest and related to her jury duty, generally, not to the case. The complaining juror was excused by consent of the parties and the court. Under the circumstances, defendant presented no evidence, beyond the bare allegation, that any of the jurors discussed the credibility of any witness prior to jury deliberations or that the jury was exposed to extraneous information. Because defendant failed to demonstrate that the jurors engaged in any meaningful misconduct or tainted their deliberations with any extraneous influences, the trial court did not abuse its discretion in denying defendant's request for a mistrial.

Defendant next contends that the court erred in sustaining the prosecutor's challenge of a potential juror for cause on the basis that the potential juror had expressed her bias for the defense. We disagree. "We review for abuse of discretion a trial court's rulings on challenges for cause based on bias." *People v Williams*, 241 Mich App 519, 521; 616 NW2d 710 (2000). A party may challenge a juror for cause if the juror is "biased for or against a party or attorney;" "shows a state of mind that will prevent the person from rendering a just verdict, or has formed a positive opinion on the facts of the case or on what the outcome should be;" or "has opinions or conscientious scruples that would improperly influence the person's verdict . . . ." MCR 2.511(D).

In this case, defendant contends the potential juror explained that while she had biases toward the defense, she could put those biases aside. However, the potential juror clearly acknowledged that, as a result of her employment, she had biases in favor of the defense. She asserted that she was not certain that she could set those biases aside and decide the case based solely upon the evidence presented in court. Although she initially said she would follow the court's instructions, she modified her answer and noted that she was not sure she could put her experience aside and follow the court's instructions. "This Court defers to the trial court's superior ability to assess from a venireman's demeanor whether the person would be impartial." *Williams, supra* at 522. The court did not abuse its discretion by excusing the potential juror for cause.

Affirmed.

/s/ Pat M. Donofrio  
/s/ Peter D. O'Connell  
/s/ Deborah A. Servitto