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IN THE
APPELLATE COURT OF ILLINOIS
FIRST DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS,) Appeal from the
) Circuit Court of
 Plaintiff-Appellee,) Cook County.
)
 v.) No. 15 CR 1062
)
 JAMES MORRIS,) Honorable
) Vincent M. Gaughan,
 Defendant-Appellant.) Judge, presiding.

JUSTICE CONNORS delivered the judgment of the court.
Justices Cunningham and Harris concurred in the judgment.

ORDER

¶ 1 *Held:* Defendant’s convictions for two counts of being an armed habitual criminal affirmed where there was no abuse of discretion by the trial court when it denied defendant’s motion to excuse a venireperson for cause.

¶ 2 Following a jury trial, defendant James Morris was convicted of two counts of being an armed habitual criminal (720 ILCS 5/24-1.7(a) (West 2014)) and sentenced to concurrent terms of 78 months’ imprisonment. On appeal, defendant contends that the trial court abused its discretion when it denied his motion to excuse a venireperson for cause. We affirm.

¶ 3 Defendant elected to have a jury trial. At the beginning of jury selection, the trial court informed the venire that defendant was charged with two counts of being an armed habitual criminal. The court explained that one count was for possession of a rifle, and the second count was for possession of a handgun, both occurring after defendant had been convicted of two prior felony qualifying convictions. The court also explained trial procedure and defendant's presumption of innocence.

¶ 4 During *voir dire*, which was conducted by an assistant state's attorney (ASA), prospective juror K.K. was asked about her employment and her children. The following colloquy then occurred:

“[ASA:] You marked that you served on a jury before?”

[K.K.:] I have.

[ASA:] All right. Were you the foreperson of the jury?

[K.K.:] I was not.

[ASA:] All right. Without telling us which way you went or what the decision was, did the jury reach a verdict?

[K.K.:] We did.

[ASA:] Okay. You marked that you've been the victim of a crime?

[K.K.:] Yes.

[ASA:] Can you tell us about that?

[K.K.:] Sexual assault with a gun about 10 years ago.

[ASA:] I'm sorry to hear about that. Was anybody ever caught or charged?

[K.K.:] The – He was killed at the end of the evening with – by policemen.

[ASA:] Sorry to hear – Sorry about the whole thing.

Anything about that to prevent you from being fair and impartial in this case?

[K.K.:] To be honest, it was a convicted felon who had been released and had a gun with him.

[ASA:] Okay.

[K.K.:] Talking about it's hard.

[ASA:] Sure. Is it something that would be hard for you to kind of set aside in this particular case?

[K.K.:] I think I could be impartial.

[ASA]: Okay. All right.

THE COURT: Ma'am, the easiest thing to the world is, you know, we just want to find out what's in your heard [*sic*] at this time. Nobody knows about the future or anything else like that. And it's very traumatic that happened. Why don't you look at Mr. Morris. Can you give him a fair trial?

[K.K.]: I can. I think I can.

THE COURT: And can you give the State a fair trial?

[K.K.]: I think I can.

THE COURT: Thank you. All right.

[ASA]: Thank you very much, ma'am.

You marked down that someone in your family had been the victim of a crime. Is that something else or a close friend?

[K.K.:] It's the same. My daughter was in the house.

[ASA:] Okay. All right.”

The ASA then questioned K.K. about what she did in her free time. After K.K., the ASA questioned numerous more members of the venire.

¶ 5 Following questioning, defense counsel moved to dismiss the entire venire, bring in a new venire, and start over. Counsel argued that K.K. was “very emotional, clearly traumatized.” Counsel argued that the venire had to be dismissed because when K.K. was asked if she could be fair, she stated that the man who assaulted her was a convicted felon. Counsel argued that based on the charges, the venire knew that defendant was a twice-convicted felon. Counsel argued that K.K.’s comment put too much importance on being a convicted felon, and strongly indicated that there is a propensity for felons to commit violent crimes as the assault on K.K. involved both a felon and a gun. Counsel asserted that the venire was tainted, and that defendant could not receive a fair trial.

¶ 6 The ASA objected and argued that K.K. answered the questions truthfully. The ASA argued that the prospective jurors were asked many times by him and the court if they could be fair and impartial, and they repeatedly answered yes. The trial court found that the entire venire was not tainted and denied counsel’s motion to dismiss the venire.

¶ 7 The court and the parties then began accepting venire members to serve on the jury. Defendant had exercised five of his peremptory challenges when K.K.’s name was offered as a juror. Defense counsel moved to strike K.K. for cause, again stating that she had been very emotional. Counsel asserted that K.K. indicated that she would have trouble being fair, and that her attacker had been a convicted felon. Counsel acknowledged that K.K. eventually said she

would not hold anything against either side, but maintained that K.K. was very distraught after questioning. Counsel stated that she thought K.K. was crying during the rest of jury selection. The trial court stated that it did not notice any tears. The ASA agreed with the court that K.K. was not sobbing. The court stated that it had great respect for counsel's assertion that K.K. was crying, but that she was not doing so on a continuous basis, and she was not weeping or taking big breaths.

¶ 8 The ASA responded that K.K. stated that she could be fair. He stated that K.K. was very honest about the fact that her attacker had been a convicted felon, but said she could set that aside and give defendant a fair trial. Defense counsel asked to have K.K. questioned further. The court denied that request. The court noted that it asked K.K. to look at defendant and asked her if she could give him a fair trial, and under oath she replied "yes." The court denied defendant's request to strike K.K. for cause. Defendant then used his sixth peremptory challenge to excuse K.K. As the parties neared the end of jury selection, defendant used his seventh peremptory challenge to excuse a juror. Immediately thereafter, defense counsel accepted and tendered the final panel, which was also accepted by the State. Both parties then accepted the next two jurors as the alternates without objection. The jury was sworn and dismissed for the weekend.

¶ 9 On Monday, the court asked defendant if he recalled that during jury selection, one woman (K.K.) stated that she had been the victim of a sexual assault by a convicted felon. The court stated that at defense counsel's request, it was going to ask each individual juror a series of questions to see whether they could be fair. The court separately asked each juror if he or she recalled a juror's statement that she had been the victim of a crime committed by a felon, and if so, if they could put that aside and decide the case based solely on the evidence presented at trial.

The court also directed each juror to look at defendant, and asked if they could give him a fair trial. Following the questioning, the parties made a mutual motion to dismiss one juror on the grounds that she appeared to be having some issues understanding English. All of the remaining jurors affirmatively responded that they would give defendant a fair trial. There is no indication in the record that defense counsel made any further objections in regards to the jury.

¶ 10 At trial, Chicago police officer Joshua Zapata testified that about 8:50 p.m. on January 2, 2015, he was driving an unmarked police vehicle with Officer Patrick Kelly and Sergeant Nicola Soto as passengers. Another unmarked police vehicle was directly behind them occupied by Officers Peter Stevens and Jose Flores. While stopped at the intersection of West End and Karlov Avenues, Zapata observed a group of 7 to 10 men standing about 75 feet away on Karlov. One of the men was holding a large black rifle, about two-and-a-half feet in length. Zapata quickly turned his vehicle onto Karlov. As he did so, the group of men dispersed. The man with the rifle and another man fled through an alley. Zapata drove into the alley and followed the men. From a distance of about 35 feet, Zapata was able to see the men. In court, Zapata identified defendant as the man with the rifle. He named Anthony Sago¹ as the other man.

¶ 11 Defendant and Sago turned left and ran through another alley. Zapata followed them in his vehicle. Defendant tossed the rifle into an empty lot to his left and continued running. The alley became impassable, and Zapata stopped his vehicle. Kelly jumped out of the vehicle and chased defendant on foot. Zapata backed out of the alley and drove down Karlov. Zapata saw Sago walking on West End. Zapata and Soto exited their vehicle and detained Sago. Soto conducted a pat-down search of Sago and recovered a loaded .45-caliber handgun from his

¹ Sago was not tried with defendant and is not a party to this appeal.

waistband. Sago was placed in custody inside Zapata's vehicle. Zapata observed that further down West End, Kelly, Stevens and Flores were placing defendant in custody.

¶ 12 Kelly testified that while riding in a police vehicle driven by Zapata on the night of January 2, he observed a group of men, including defendant, standing on the street. Defendant was holding a rifle in his hand. Kelly identified defendant in court. Kelly testified the same as Zapata about their pursuit of defendant and Sago through the alleys. Kelly observed defendant discard the rifle into a vacant lot. A few seconds later, Kelly exited his vehicle and chased defendant on foot. Kelly, Stevens and Flores detained defendant on West End and placed him in custody. Kelly observed Stevens remove a loaded .380-caliber handgun from defendant's person. Kelly learned that the rifle was recovered from the vacant lot by Officer Carlos Rojas.

¶ 13 Rojas testified that on the night of January 2, he and his partners, Officers De La Rosa and Valentin,² responded to a call for assistance at an address on Karlov. The officers arrived at the address within 30 seconds. Rojas exited their vehicle and walked into a vacant lot adjacent to the address. Towards the back of the lot, he recovered an SKS rifle loaded with six rounds. Lying on the ground about three feet away from the rifle was a loaded .32-caliber handgun. Valentin recovered the handgun. No one was ever charged with possession of that handgun.

¶ 14 Stevens testified that on the night of January 2, he and Flores were in a police vehicle following behind Zapata's vehicle. As they approached the intersection of West End and Karlov, Zapata turned right onto Karlov. Stevens observed a group of men standing in the street on Karlov. Zapata sped away in his vehicle. Stevens then heard about the foot pursuit over the radio. Stevens drove down West End to intercept the foot pursuit. He observed Kelly chasing defendant

² The first names of Officers De La Rosa and Valentin do not appear in the record.

through the alley heading towards West End. Stevens identified defendant in court. Stevens exited his vehicle. When defendant reached West End, Stevens grabbed him and handcuffed him. During a pat-down search, Stevens recovered a .380-caliber semi-automatic chrome pistol from defendant's right front pants pocket. The gun was loaded with six rounds. Stevens placed defendant in his vehicle and transported him to the police station.

¶ 15 About 11 p.m. that night, Stevens and Flores interviewed defendant at the police station. After waiving his *Miranda* rights, defendant asked the officers, for which offenses was he being charged. Stevens informed him of the charges. Defendant then stated "the long gun, the big gun is not mine. I was holding it for someone." Defendant further stated "the small gun I keep with me because the Souls keep shooting us up."

¶ 16 The State presented a stipulation that defendant had two qualifying felony convictions to sustain the charge of armed habitual criminal.

¶ 17 Verlia Jones, defendant's sister-in-law, testified for the defense that sometime between 8:30 and 9 p.m. on January 2, she was driving in the area of West End and Karlov. She had just left her in-laws house and was looking for defendant. She did not see defendant that night. As she drove down West End, she looked onto Karlov and observed at least two police vehicles and some officers. She observed a police officer exit a building holding a big gun, about three feet in length. She then drove away.

¶ 18 Following deliberations, the jury found defendant guilty of two counts of being an armed habitual criminal. The trial court sentenced defendant to concurrent terms of 78 months' imprisonment.

¶ 19 On appeal, defendant solely contends that the trial court abused its discretion when it denied his motion to excuse K.K. for cause given her equivocation on the question of whether she could remain impartial and/or give defendant a fair trial. Defendant notes that when the ASA initially asked K.K. if anything about her prior experience would prevent her from being fair and impartial in this case, she replied “[t]o be honest, it was a convicted felon who had been released and had a gun with him.” Defendant claims that this answer, as well as K.K.’s other replies of “I think I could be impartial” and “I think I can,” show her inability to be impartial. Defendant asserts that although the trial court found the last two statements from K.K. as assurances that she could be fair, the statements were equivocal. He also maintains that K.K. was distraught and crying during the remainder of *voir dire*. Accordingly, defendant argues that he was deprived of his right to a fair and impartial jury under the United States and Illinois Constitutions.

¶ 20 The State responds that the trial court properly exercised its discretion when it denied defendant’s motion to strike K.K. for cause after she ultimately stated that she could be impartial. The State points out that K.K. was asked a series of follow-up questions to ensure that if she were selected, she could fulfill her duty as an impartial juror, and she indicated twice that she could. The State further asserts that defendant received a fair trial where, after the court properly denied his motion to strike K.K. for cause, defendant used a peremptory challenge to excuse her, and he has not argued that an objectionable juror was allowed to sit on the jury.

¶ 21 A criminal defendant is guaranteed the right to a trial by an impartial jury by both the United States and Illinois Constitutions. U.S. Const., amends. VI, XIV; Ill. Const. 1970, art. I, § 8; *People v. Bowman*, 325 Ill. App. 3d 411, 422 (2001). *Voir dire* allows for the selection of impartial jurors who are free from prejudice or bias, and insures that the parties have an informed

and intelligent basis on which to exercise their peremptory challenges. *Bowman*, 325 Ill. App. 3d at 422.

¶ 22 During *voir dire*, the trial court is in the best position to observe the demeanor of a potential juror and ascertain the meaning of her remarks. *People v. Buss*, 187 Ill. 2d 144, 187 (1999). Consequently, it is within the sound discretion of the trial court to determine whether to allow a challenge to a juror for cause. *Id.* In reviewing the trial court's ruling on a challenge for cause, the juror's *voir dire* examination must be considered in its entirety. *Id.* A prospective juror may be removed for cause when her views would prevent or substantially impair her from performing her duties as a juror. *Id.* An equivocal response, however, does not require that a prospective juror be excused for cause. *Id.*

¶ 23 Here, we find no abuse of discretion by the trial court in denying defendant's motion to strike K.K. as a juror for cause. The record shows that when the ASA asked K.K. if anything about the prior attack on her would prevent her from being fair and impartial in this case, she initially gave an equivocal answer, stating "[t]o be honest, it was a convicted felon who had been released and had a gun with him." However, the ASA then asked K.K. if it would be hard for her to set that experience aside in this particular case, and she replied "I think I could be impartial." The trial court then asked K.K. to look at defendant, and asked if she could give him a fair trial. K.K. affirmatively responded "I can. I think I can." The record thus shows that after giving an initial equivocal response, K.K. affirmatively replied that she could be impartial and that she could give defendant a fair trial. Her single equivocal response did not require that she be excused for cause. *Buss*, 187 Ill. 2d at 187.

¶ 24 Moreover, when considering K.K.'s examination in its entirety, the record shows that the trial court's ruling was proper. In addition to asking K.K. if she could give defendant a fair trial, the court also asked if she could give the State a fair trial. K.K. similarly responded "I think I can." Thus, K.K. gave exactly the same affirmative answer of impartiality for both parties. The examination also shows that K.K. previously served on a jury that reached a verdict. She therefore had experience serving on a jury from which the trial court could infer that she understood the importance of impartiality and fairness.

¶ 25 In addition, the record shows that to ensure that the selected jurors would be fair, the trial court asked a series of follow-up questions to each member of the venire. The court asked each juror if he or she recalled a juror's statement that she had been the victim of a crime committed by a felon, and if so, if they could put that aside and decide the case based solely on the evidence presented at trial. The court also directed each juror to look at defendant, and asked if they could give him a fair trial. Each juror affirmatively responded that he or she would give defendant a fair trial. The record thus shows that through its questioning, the trial court ensured that defendant's constitutional right to a trial by a fair and impartial jury was not violated.

¶ 26 Defendant's assertion that K.K. should have been excused for cause because she was distraught and crying during the remainder of *voir dire* is unpersuasive. When counsel stated that K.K. was crying during the rest of jury selection, the trial court stated that it did not notice any tears. The ASA agreed with the court that K.K. was not sobbing. While the court stated that it respected counsel's assertion, it noted that K.K. was not crying on a continuous basis, nor was she weeping or taking big breaths. In addition, K.K.'s examination shows that after discussing the traumatic assault, she then shared information about her hobbies, stating that she "loves"

playing golf and scuba diving, which she described as “rare but wonderful.” She told the ASA that Aruba was “the most amazing” location for scuba diving. There is no indication in the record that K.K. was crying, distraught, or emotional during this time. The trial court, which had the opportunity to observe K.K. during her examination and while she sat in the courtroom throughout jury selection, was in the best position to observe her demeanor and assess her ability to serve on the jury. *Buss*, 187 Ill. 2d at 187. Based on this record, we cannot say that the trial court abused its discretion.

¶ 27 As the State correctly points out, this court has previously stated that “the settled principle in Illinois is that a court’s failure to remove a juror for cause is grounds for reversal only if the defense has exercised all of its peremptory challenges and an objectionable juror was allowed to sit on the jury.” *People v. Pendleton*, 279 Ill. App. 3d 669, 675-76 (1996) (citing *Spies v. Illinois*, 122 Ill. 1 (1887)). In *Pendleton*, this court explained that following *Spies*, many courts “reasoned that defendants fail to establish prejudice where they have not indicated that they were forced to accept an objectionable juror, thereby denying the trial court an opportunity to cure the alleged error.” *Pendleton*, 279 Ill. App. 3d at 676 (and cases cited therein).

¶ 28 Here, the record shows that defendant exhausted his final peremptory challenge at the very end of jury selection. Immediately thereafter, counsel accepted and tendered the final panel, and accepted the next two jurors as alternates without objection. The record further shows that immediately before trial began, the court, per counsel’s request, questioned each juror individually to insure that they could give defendant a fair trial. Each juror affirmatively responded that they could. Defendant has never alleged that an objectionable juror was allowed

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to sit on the jury. He has therefore failed to establish that he suffered any prejudice when the trial court denied his motion to excuse K.K. for cause. *Pendleton*, 279 Ill. App. 3d at 676.

¶ 29 Based on this record, we find no abuse of discretion by the trial court in denying defendant's motion to strike K.K. for cause.

¶ 30 For these reasons, we affirm the judgment of the circuit court of Cook County.

¶ 31 Affirmed.