



Missouri Court of Appeals

Southern District

Division One

STATE OF MISSOURI,	)	
	)	
Respondent,	)	
	)	No. SD36520
vs.	)	
	)	Filed: March 8, 2021
DENNY E. TROLINGER,	)	
	)	
Appellant.	)	

APPEAL FROM THE CIRCUIT COURT OF HOWELL COUNTY

Honorable Steven Privette, Judge

AFFIRMED

Denny Trolinger was convicted of unlawful use of a weapon. He seeks plain error review of an unpreserved claim that the trial court should have stricken a venireperson for cause *sua sponte*. We affirm.

Background

Trolinger discussed lending his truck to an acquaintance (“RA”) so she could move some belongings. After repeated phone calls, RA went to Trolinger’s house. Trolinger agreed to loan RA the truck, which he said

would be in the parking lot of a bar. RA drove Trolinger to the bar in Trolinger's Jeep.

The truck was not in the parking lot when they arrived. Unbeknownst to RA, Trolinger had decided not to lend RA his truck. She waited in the Jeep while Trolinger went in and out of the bar several times, claiming he was trying to locate his truck and asking her to come in the bar with him.

As hours passed and daylight faded into night, RA realized Trolinger was playing games with her. She and Trolinger exchanged angry words, then she started walking away. Trolinger reached into his Jeep, produced a revolver, and fired two shots up into the air before RA made it to her friend's waiting car. He fired a third shot in the direction of the vehicle so "they would be able to see, you know, fire come out of the barrel, you know, kind of headed, you know, towards that direction." RA called the police.

Trolinger initially told police he did not have a gun and did not know who fired the shots, but on further questioning admitted he had fired three shots. His gun was recovered from the bar's mailbox. He was charged with first-degree assault, armed criminal action, and unlawful use of a weapon.

During the jury selection process, the following exchanges occurred:

[DEFENSE COUNSEL]: Have you ever asked your children about something that you -- the sort of old example is like something is broken and you knew that one of the kids breaks it, do you ever ask them about that and maybe not get an entirely truthful answer?

VENIREPERSON 14: Constantly.

...

[DEFENSE COUNSEL]: Okay. Juror No. 15, I'm going to ask you the same question. If somebody denies something that you know has happened, do you have any idea why they might do that otherwise -- other than they're guilty?

VENIREPERSON 15: If you know they did it, well, I'm sure they don't want to get in trouble.

[DEFENSE COUNSEL]: Okay.

VENIREPERSON 15: So they try and put the blame somewhere else.

[DEFENSE COUNSEL]: What if you're not sure if they did it or not and eventually, after talking to them some more, they say, "Well, yeah, I really did"? Have you ever had that experience before?

VENIREPERSON 15: With lots of kids when they were little.

[DEFENSE COUNSEL]: With kids. Yeah. I think everyone that has a child has had that experience. So do they ever -- are you ever able to get an explanation as to why -- why they didn't tell you to start out with?

VENIREPERSON 15: Sure. They didn't want to get in trouble.

Trolinger did not request Venireperson 15 be stricken for cause or exercise a peremptory strike to remove him. No objection was raised when Venireperson 15 was among the jurors announced and empaneled.

The jury found Trolinger guilty of unlawful use of a weapon and acquitted him of the two more serious charges. He did not raise jury selection error in his motion for new trial.

Discussion

On appeal, Trolinger claims Venireperson 15 should have been stricken for cause on the court's own motion because Venireperson 15 was not able to fairly and impartially consider innocent explanations for Trolinger's deception when questioned by the police. Trolinger concedes

this point has not been preserved and therefore requests plain error review under Rule 30.20.

Rule 30.20 is no panacea which a criminal defendant can use to obtain appellate review of any alleged error that is unpreserved. An appellate court is not required to engage in plain error review; the decision whether to grant or deny such a request is left to the court's discretion. The court may simply decline to exercise its discretionary authority to review the point for plain error.

State v. Sinor, 593 S.W.3d 113, 116 (Mo.App. 2020) (internal punctuation and citations omitted).

“Missouri courts have consistently held that a trial court is under no duty to remove any venire member *sua sponte*.” ***State v. Ebeirus***, 184 S.W.3d 582, 585 (Mo.App. 2006). “[J]uror challenges made for the first time after conviction are highly suspect.” ***State v. Hadley***, 815 S.W.2d 422, 423 (Mo. banc 1991). Post-conviction assertions of plain error in jury selection normally are denied without comment because trial strategy is a significant consideration in jury selection. ***State v. Baumruk***, 280 S.W.3d 600, 616 (Mo. banc 2009). “A defendant cannot stand trial, hoping for acquittal, and then challenge the selection of the jury which convicts.” ***Ebeirus***, 184 S.W.3d at 585 (quoting ***State v. Bynum***, 680 S.W.2d 156, 160 (Mo. banc 1984)).

Having reviewed the record, the parties' briefs, and the alleged error for which review is requested, we find nothing warranting the exercise of our discretion to engage in plain error review. The trial court had no duty to strike Venireperson 15 on its own motion. ***Ebeirus***, 184 S.W.3d at 585. The portion of the transcript on which Trolinger relies, quoted above, would

not support a finding of error, much less evident, obvious, and clear error that resulted in manifest injustice or a miscarriage of justice. ***Baumruk***, 280 S.W.3d at 616. It strains credulity to think that the same jury that considered the evidence and acquitted Trolinger of the two more serious charges suddenly became unable to consider his evidence and explanations fairly and impartially regarding the charge of unlawful use of a weapon.

We decline plain error review. Judgment affirmed.

JACK A. L. GOODMAN, J. – OPINION AUTHOR

NANCY STEFFEN RAHMEYER, P.J. – CONCURS

WILLIAM W. FRANCIS, JR., J. – CONCURS