Circuit Court for Montgomery County
Case No.: 4438820V

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 3039

September Term, 2018

ROSEMARY SMITH

v.

ROLLINS REAL ESTATE MANAGEMENT CO., INC.

Graeff,
Friedman,
Eyler, James R.
(Senior Judge, Specially Assigned),

JJ.

Opinion by Eyler, James R., J.

Filed: March 23, 2020

Rosemary Smith, appellant, filed suit in the Circuit Court for Montgomery County against Rollins Real Estate Management Co., Inc., appellee, and two other defendants, seeking damages for personal injuries sustained when she fell outside of a restaurant located in a strip mall managed by appellee.[1]

The case was tried before a jury. During voir dire, potential jurors responded affirmatively to a question as to whether they were familiar with the premises in question. The court denied appellant's motion to strike the potential jurors for cause. Three of the potential jurors who responded were empaneled and served on the jury. The jury returned a verdict in favor of appellee, and judgment was entered in its favor. This appeal followed.

As phrased by appellant, there is one issue for our review.

> Did the circuit court abuse its discretion in failing to strike jurors for cause who had previously visited the precise location where the Plaintiff fell and were witnesses to a major factual issue at trial?

We conclude that the circuit court did not err, and thus, we affirm the judgment.

BACKGROUND

On December 11, 2014, appellant fell outside of the entrance to the Outta the Way Café (the Café), located in a strip mall, in Derwood, Maryland. On that day, appellant arrived at the mall, escorted a friend into the entrance to the Café, and left to go to her car to get her phone. While exiting, she rolled her foot and fell. Appellant testified that "a separation in the sidewalk," with one side higher than the other, caused her to fall. Prior to the fall, appellant had frequented the Café often over a 10 to 15-year period.

[1] Appellant also sued Fredland Properties, LLC, and Ziggy Lane Properties, LLC. They were dismissed prior to trial.

Frank Landolt, Director of Leasing Management for appellee, testified that, prior to the fall, he visited the premises often. He acknowledged that gaps sometimes occurred in the sidewalk as a result of freezing and thawing. He was not aware of the separation in question but acknowledged that it could have been there for some time and might have been covered by a mat.

The alleged defect was repaired in July 2018. The case was tried on November 19, 2018. The court ruled that appellant could not introduce evidence of that repair, but photographs showing the condition of the sidewalk shortly after appellant's fall were admitted into evidence.

During voir dire, the potential jurors were asked whether they were familiar with the Café. Sixteen people responded affirmatively. The court conducted follow up questioning at the bench. As noted earlier, three of those who responded served on the jury. One of those jurors stated that he or she had eaten at the Café several times over a 10-year period, most recently the week before trial. Another juror stated that he or she had eaten several times at the Café over a 20-year period and had "leftovers in the fridge at home from there." The third juror stated that he or she had eaten there "more times than [the juror could] count," later explaining that she ate there "once a month" over the prior two-year period. During the follow up questioning, the jurors also stated that they had not noticed anything unusual during any of their visits and that there was nothing about the visits that would affect their decision in this case.

DISCUSSION

The sole issue on appeal is whether the court erred in not striking for cause the three jurors in question. Appellant does not challenge the conduct of voir dire, either as to the original question or as to the follow up questioning.

As both parties have stated, our standard of review is to determine whether the court abused its discretion in denying appellant's request to strike these jurors for cause.

> We review the trial judge's rulings on the record of the voir dire process as a whole for an abuse of discretion, that is, questioning that is not reasonably sufficient to test the jury for bias, partiality, or prejudice. *White*, 374 Md. at 243. It appears to be the universal rule that on appellate review, the exercise of discretion by trial judges with respect to the particular questions to ask and areas to cover in voir dire is entitled to considerable deference. The trial judge has had the opportunity to hear and observe the prospective jurors, to assess their demeanor, and to make factual findings. The judge's conclusions are therefore entitled to substantial deference, unless they are the product of a voir dire that "is cursory, rushed, and unduly limited." *Id.* at 241. *See also Mu'Min v. Virginia*, 500 U.S. 415, 428, 111 S. Ct. 1899, 1907 (1991) (noting that the findings of the trial judge on the issue of juror impartiality should be upheld absent manifest error); *Rosales-Lopez*, 451 U.S. at 189, 101 S. Ct. at 1634 (noting that "[b]ecause the obligation to impanel an impartial jury lies in the first instance with the trial judge, and because he must rely largely on his immediate perceptions, federal judges have been accorded ample discretion in determining how best to conduct the *voir dire* ").

Washington v. State, 425 Md. 306, 314 (2012).

Appellant argues that the jurors were "unwitting witnesses" to an issue in dispute. Appellant further argues that, because the alleged defect had been repaired, the jurors who visited after that fact might have thought that the area in question was the same as it was at the time of the accident. Appellant concludes that the jurors "injected extrinsic evidence" into the case, and their knowledge was tantamount to jurors making an outside inquiry.

Appellant relies on *Drolsum v. Luzuriaga*, 93 Md. App. 1 (1992), and *Wiseman v. State*, 72 Md. App. 605 (1987). In *Drolsum*, the dispute was over the location and use of a roadway easement. The judge's law clerk visited the property that was the subject of the easement and then discussed the visit with the judge. 93 Md. App. at 13. This Court, observing that neither a judge nor a jury may conduct an independent investigation, held that the court erred in obtaining the information. *Id.* at 14.

In *Wiseman*, the defendant was accused of violating his probation. The judge, in order to determine the facts, had a telephone conversation with the defendant's employer and probation officer outside of courtroom proceedings. As in *Drolsum*, the court erred in investigating disputed evidentiary facts. 72 Md. App. at 609-10.

In the case before us, neither the judge nor the jury conducted an independent investigation. We are aware of no authorities to support the proposition that merely because a juror visited the site of an accident prior to an accident, the juror must be struck for cause in a trial arising out of the accident. To be sure, in a given case, there may be circumstances that would result in striking a juror for cause. For example, in a case in which a defect is alleged to exist, if a juror acknowledged having personal knowledge of the alleged defect, it might give rise to a presumption of bias. This is not that case. This case is more akin to a juror in an automobile accident case that, prior to trial, frequently drove past the site where the accident occurred.

Although not squarely on point, *Stevens v. Barnhart*, 45 Md. App. 289, 293 (1980) is instructive. In *Stevens*, a medical malpractice case, out of twelve seated jurors and one alternate, four were patients of the defense expert witness and one was a fellow church goer

of the expert. We held that the court did not err in refusing to strike the jurors for cause because

> "[n]either mere acquaintance with an individual or group, nor mere relationship to witnesses, other than parties, is sufficient basis for challenging a prospective juror for cause. *Goldstein v. State*, 220 Md. 39 (1959). Bias on the part of prospective jurors will never be presumed, and the challenging party bears the burden of presenting facts, in addition to mere relationship or association, which would give rise to a showing of actual prejudice. *See Bristow v. State*, 242 Md. 283 (1966)."

Id. at 293-94 (quoting *Borman v. State*, 1 Md. App. 276, 279 (1967)).

We find no distinction between the jurors' acquaintance with the expert witness in *Stevens* and the jurors' acquaintance with the premises in this case. As in *Stevens*, appellant failed to satisfy her burden of presenting facts beyond the jurors' mere association with the Café that would give rise to actual bias.

JUDGMENT OF THE CIRCUIT COURT FOR MONTGOMERY COUNTY AFFIRMED. COSTS TO BE PAID BY APPELLANT.