

**IN THE COURT OF CRIMINAL APPEALS  
OF THE STATE OF OKLAHOMA**

DONALD RAY MORROW,	)	<u>NOT FOR PUBLICATION</u>
	)	
Appellant,	)	
	)	
v.	)	Case No. F-2018-852
	)	
THE STATE OF OKLAHOMA,	)	
	)	
Appellee.	)	

FILED  
IN COURT OF CRIMINAL APPEALS  
STATE OF OKLAHOMA

AUG 29 2019

JOHN D. HADDEN  
CLERK

**SUMMARY OPINION**

**LEWIS, PRESIDING JUDGE:**

Donald Ray Morrow, Appellant, was tried by jury and found guilty of Count 1, first degree burglary, in violation of 21 O.S.2011, § 1431; Count 2, second degree burglary, in violation of 21 O.S.2011, § 1435; and Count 3, larceny of an automobile, in violation of 21 O.S.2011, § 1720, in the District Court of Custer County, Case No. CF-2018-1.<sup>1</sup> The jury found Appellant guilty of these crimes after former conviction of a felony, and sentenced him to fifteen (15) years imprisonment on Count 1, four (4) years imprisonment on Count 2, and six (6) years imprisonment on Count

---

<sup>1</sup> The trial court dismissed Counts 4 and 5 at the State's request on the first day of trial.

3.<sup>2</sup> The Honorable Jill C. Weedon, Associate District Judge, pronounced judgment and ordered the sentences served concurrently. Mr. Morrow appeals in the following propositions of error:

1. Appellant was prejudiced because the District Court allowed a juror with actual bias to remain on the panel rather than declaring a mistrial requested by Appellant;
2. Appellant's sentence should be modified to include credit for time served.

Appellant argues in Proposition One that the trial court erred in refusing to disqualify a juror who revealed after the commencement of trial that she was socially acquainted with a prosecution witness. Upon inquiry by the trial court, the juror explained that she had not recognized the witness by the name used during *voir dire*. She was not closely acquainted with the witness, though her aunt was "good friends" with the witness's wife. The juror testified that she had heard about "what had happened" from her aunt; but that she could set aside any prior knowledge and base her decision on the evidence.

---

<sup>2</sup> Appellant must serve 85% of his sentence on Count 1 before being eligible for consideration for parole. 22 O.S.Supp.2015, § 13.1(12).

This Court reviews a trial court's ruling on a motion for mistrial for abuse of discretion. See *Jackson v. State*, 2006 OK CR 45, ¶ 11, 146 P.3d 1149, 1156. An abuse of discretion is a clearly erroneous conclusion, contrary to the logic and effect of the facts presented. *Nicholson v. Sate*, 2018 OK CR 10, ¶ 7, 421 P.3d 890, 895. When a defendant requests a mistrial based on juror bias or misconduct, he must ordinarily show actual bias or misconduct, as well as harm resulting from the juror's service. *Edwards v. State*, 1991 OK CR 71, ¶ 13, 815 P. 2d 670, 674.

Appellant makes no persuasive showing of bias, misconduct, or actual harm. The juror scrupled to alert the trial court when she realized that she knew a prosecution witness, and assured the trial court that her prior knowledge of the witness or any facts about the case would not affect her decision. This is not deliberate concealment of information by the juror or evidence of bias against the defendant. The motion to remove this juror and declare a mistrial was properly denied. *Id.*, 1991 OK CR 71, ¶ 14, 815 P.2d at 674.

In Proposition Two, Appellant complains that the judgment and sentence does not recite the trial court's order granting credit

for time served. In *Mathis v. State*, 2012 OK CR 1, 271 P.3d 67, this Court remanded a case for correction of the judgment and sentence through an order *nunc pro tunc* “to reflect that Mathis shall be given credit for time served,” among other things. *Id.*, 2012 OK CR 1, ¶ 34, 271 P.3d at 79; *see also*, *Sears v. State*, 2019 OK CR 8, ¶ 8, \_\_\_ P.3d \_\_\_. We will make the same order here. No further relief is required.

### **DECISION**

The judgment and sentence is **AFFIRMED**, but the cause is **REMANDED** with instructions for the trial court to address Appellant’s request for correction of the judgment to grant credit for time served by order *nunc pro tunc*. Pursuant to Rule 3.15, *Rules of the Oklahoma Court of Criminal Appeals*, Title 22, Ch.18, App. (2019), the **MANDATE** is **ORDERED** issued upon the delivery and filing of this decision.

**APPEAL FROM THE DISTRICT COURT OF CUSTER COUNTY  
THE HON. JILL C. WEEDON, ASSOCIATE DISTRICT JUDGE**

**APPEARANCES AT TRIAL**

RICHARD YOHN  
P. O. BOX 1494  
CLINTON, OK 73601  
ATTORNEY FOR DEFENDANT

RICKY A. McPHEARSON  
ASST. DISTRICT ATTORNEY  
P. O. BOX 36  
ARAPAHO, OK 73620  
ATTORNEYS FOR THE STATE

OPINION BY: LEWIS, P.J.  
KUEHN, V.P.J.: Concur  
LUMPKIN, P.J.: Concur  
HUDSON, J.: Concur  
ROWLAND, J.: Concur

**APPEARANCES ON APPEAL**

JEREMY STILLWELL  
P. O. BOX 926  
NORMAN, OK 73070  
ATTORNEY FOR APPELLANT

MIKE HUNTER  
ATTORNEY GENERAL  
SHERI M. JOHNSON  
ASST. ATTORNEY GENERAL  
313 N.E. 21<sup>ST</sup> STREET  
OKLAHOMA CITY, OK 73105  
ATTORNEYS FOR APPELLEE