

NOTICE
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2013 IL App (4th) 111072-U

NO. 4-11-1072

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

FILED
April 30, 2013
Carla Bender
4th District Appellate
Court, IL

THE PEOPLE OF THE STATE OF ILLINOIS,)	Appeal from
Plaintiff-Appellee,)	Circuit Court of
v.)	Morgan County
STEVEN MARK PRYER,)	No. 10CF145
Defendant-Appellant.)	
)	Honorable
)	Richard T. Mitchell,
)	Judge Presiding.

JUSTICE KNECHT delivered the judgment of the court.
Justices Appleton and Holder White concurred in the judgment.

ORDER

¶ 1 *Held:* The appellate court held the trial court did not abuse its discretion when it denied defendant's (1) motion for change of venue, and (2) motion for continuance to allow defendant an opportunity to file a second amended motion for a new trial.

¶ 2 In September 2010, the State charged defendant, Steven Mark Pryer, with four counts of first degree murder (720 ILCS 5/9-1(a)(1), (a)(1), (a)(2), (a)(3) (West 2010)) (counts I, II, III, and IV), and residential burglary (720 ILCS 5/19-3 (West 2010)) (count V) arising from the August 18, 2010, residential burglary and shooting of Diann Hoagland. In October 2010, the State charged defendant with home invasion (720 ILCS 5/12-11(a)(5) (West 2010)) (count VI) and first degree murder (720 ILCS 5/9-1(a)(3) (West 2010)) (count VII). In September 2011, a jury found defendant guilty of residential burglary and first degree murder (count VII). In November 2011, the trial court sentenced defendant to life in prison for murder and a consecutive

15 years in prison for residential burglary.

¶ 3 On appeal, defendant argues (1) the trial court's denial of his motion for a change of venue deprived him of a right to a trial by an impartial jury, and (2) the court abused its discretion when it denied defendant's motion to continue, which requested 60 days to obtain and review trial transcripts and prepare a second amended motion for a new trial. We disagree and affirm.

¶ 4 I. BACKGROUND

¶ 5 In September 2010, the State charged defendant with four counts of first degree murder (720 ILCS 5/9-1(a)(1), (a)(1), (a)(2), (a)(3) (West 2010)) (counts I, II, III, and IV), and residential burglary (720 ILCS 5/19-3 (West 2010)) (count V). The State later charged defendant with home invasion (720 ILCS 5/12-11(a)(5) (West 2010)) (count VI) and first degree murder (720 ILCS 5/9-1(a)(3) (West 2010)) (count VII). The State later dismissed counts I, II, III, IV, and VI.

¶ 6 A. Defendant's Motion for Change of Venue

¶ 7 In August 2011, defendant filed a motion for change of venue asserting "there has been extensive newspaper coverage of this matter such that the Defendant cannot receive a fair trial by a Morgan County jury." Defendant attached 14 articles from the online edition of the Jacksonville Journal Courier. These articles are from the time period spanning September 28, 2010, to August 3, 2011. Five of the articles, dated September 30, 2010, October 4, 2010, February 1, 2011, March 7, 2011, and March 9, 2011, mentioned defendant's previous murder convictions. For example, the September 30, 2011, article titled "Man accused in homicide has prior run-ins with law, including violent past," stated "A jury trying Pryer in the 1982 killing of

David and Mary Davidson heard how Pryer stabbed the couple up to 20 times as his accomplice, the couple's son Ralph, beat them with a crowbar, according to news accounts of the case."

¶ 8 At the hearing on the motion, defense counsel stated "I do not have affidavits from people in the community saying that [defendant] cannot get a fair trial. Actually I have inquired, but I, I don't find anyone that's willing to say that, but I think that because it is a small county." The trial court denied the motion.

¶ 9 *B. Voir Dire*

¶ 10 On September 13, 2011, the trial court began jury selection. Of the 12 jurors selected, 6 indicated they had read or heard about the case in the newspaper. All six stated this would not affect their deliberations in the case outcome. Defendant tendered three jury members and who stated they had read or heard about the case, and did not object to any jury member on the basis of media exposure. Our review reveals one venireperson indicated her exposure to media accounts might affect her ability to decide the case and the court removed her for cause.

¶ 11 *C. Defendant's Trial*

¶ 12 Later that day, defendant's jury trial commenced. The evidence is summarized as follows. On the morning of August 18, 2010, defendant broke into the Hoagland residence in rural Morgan county. He removed a coin collection from the residence and rummaged through the house. While searching the house, he came in contact with a bedroom dresser, where he transferred his blood to the furniture. At approximately 11:30 a.m., Diann Hoagland returned from her morning walk and discovered defendant's truck in the driveway. Defendant shot Diann in the head and chest and fled with his loot. Diann died in the front yard to her home.

¶ 13 *D. Defendant's Sentencing and Posttrial Motions*

¶ 14 On October 25, 2011, filed a motion for a new trial, and two days later an amended motion for new trial.

¶ 15 On November 1, 2011, the trial court held a sentencing hearing. The State presented certified convictions for two counts of murder in Sangamon County case No. 82-CF-551. The State introduced a presentencing investigation report which stated this double murder "involved the defendant entering an acquaintance's parent[s'] home, along with their adopted son, and stabbing to death both of his acquaintance's adopted parents." The court sentenced defendant to life imprisonment for murder and a consecutive 15-year prison term for residential burglary.

¶ 16 After the announcement of sentence, defense counsel requested the trial court to rule on the amended motion for a new trial. The court passed on ruling and set the motion for a hearing the next week. That hearing was continued. On November 29, 2011, the court held a hearing on defendant's amended motion for a new trial. Details of this hearing are described below. The court denied defendant's amended motion.

¶ 17 This appeal followed.

¶ 18 II. ANALYSIS

¶ 19 Defendant argues (1) the trial court's denial of his motion for a change of venue deprived him of a right to a trial by an impartial jury, and (2) the court abused its discretion when it denied defendant's motion to continue, which requested 60 days to obtain and review trial transcripts and prepare another amended motion for a new trial. Defendant acknowledges he did not raise these issues in a posttrial motion and asserts we should apply plain-error review.

¶ 20 A. The Plain-Error Doctrine

¶ 21 The plain-error doctrine permits review of unpreserved claims of error where

" (1) a clear or obvious error occurred and the evidence is so closely balanced that the error alone threatened to tip the scales of justice against the defendant, regardless of the seriousness of the error, or (2) a clear or obvious error occurred and that error is so serious that it affected the fairness of the defendant's trial and challenged the integrity of the judicial process, regardless of the closeness of the evidence.' " *People v. Walker*, 232 Ill. 2d 113, 124, 902 N.E.2d 691, 697 (2009) (quoting *People v. Piatkowski*, 225 Ill. 2d 551, 565, 870 N.E.2d 403, 410-11 (2007)). The first step of plain-error review is to determine whether any error occurred. *Walker*, 232 Ill. 2d at 124, 902 N.E.2d at 697.

¶ 22 B. Defendant's Motion-To-Change-Venue Claim

¶ 23 Defendant argues the trial court's denial of his motion for a change of venue deprived him of a right to a trial by an impartial jury. Defendant did not raise this issue in a posttrial motion but asserts "this Court should not permit the State to raise forfeiture" because of "the State's insistence on denying [his] request for continuance and proceeding to the hearing on the post-trial motions already on file." On the merits, defendant asserts the 14 articles attached in support of the August 2011 motion "demonstrate[] reasonable grounds indicating there was prejudice in the community against the defendant, and a reasonable apprehension that [defendant] could not receive a fair and impartial trial in Morgan County." Defendant adds "honest and well-meaning members of a Morgan County jury venire should not have been placed in the position of potentially succumbing to inappropriate influences caused by the extensive news coverage of this tragic homicide, the defendant involved, and the defendants' [*sic*] previous criminal background involving convictions for murder," and "the unusually intense levels of publicity and intense community sentiment in Morgan County concerning the shooting death of

Diann Hoagland rendered the circumstances so inherently coercive that it was impossible for jurors chosen from the community to remain fair and impartial."

¶ 24 The State responds it should not be estopped from asserting forfeiture as "defendant's argument presumes the denial of a continuance [for the filing of a second amended posttrial motion] was error." On the merits, the State asserts defendant has failed to show "14 newspaper articles over a year about a murder case constitutes an 'unusually intense' level of publicity" and he cites no evidence of jury bias.

¶ 25 *1. Standard of Review*

¶ 26 A trial court's decision to grant or deny a change of venue is reviewed for an abuse of discretion. *People v. Sutherland*, 155 Ill. 2d 1, 14, 610 N.E.2d 1, 6 (1992). " 'A defendant is entitled to a change of venue as a result of pretrial publicity if a reasonable apprehension exists that [he] cannot receive a fair and impartial trial.' " *People v. Pelo*, 404 Ill. App. 3d 839, 872, 942 N.E.2d 463, 491 (2010) (quoting *People v. Little*, 335 Ill. App. 3d 1046, 1052, 782 N.E.2d 957, 963 (2003)). " 'In evaluating a defendant's claim that his jury was prejudiced due to pretrial publicity, a reviewing court must review the entire record, including *voir dire* testimony, to determine independently whether the defendant was denied a fair trial.' " *Pelo*, 404 Ill. App. 3d at 872, 942 N.E.2d at 491 (quoting *People v. Kirchner*, 194 Ill. 2d 502, 529, 743 N.E.2d 94, 108 (2000)).

¶ 27 *2. Defendant's Jury Was Fair and Impartial*

¶ 28 The State contends defendant's argument it should be estopped from asserting forfeiture is premised on the presumption the trial court's denial of the motion to continue was error. As discussed below, it was not. We agree with the State. On the merits, defendant's claim

he was deprived a fair and impartial jury fails.

¶ 29 Defendant's motion for change of place for trial was not supported by an affidavit showing the nature of the prejudice alleged (see 725 ILCS 5/114-6(b) (West 2010) (motion to change place of trial must be supported by affidavit)). Of the 14 articles defendant submitted in support of his motion, the March 9, 2011, article is the most recent article to mention the 1982 double murder. This article was published approximately six months prior to defendant's trial.

¶ 30 Defendant's contention a presumption of prejudice existed in Morgan County is without merit. His reliance on *Skilling v. United States*, 561 U.S. ___, 130 S. Ct. 2896 (2010), is unpersuasive. Contrary to his suggestion, defendant's case is not "within the ambit of cases" discussed in *Skilling*, nor is it similar to the national media exposure in the wake of the downfall of Enron. See *Skilling*, 561 U.S. ___, 130 S. Ct. at 2915 ("A presumption of prejudice, our decisions indicate, attends only the extreme case."); *Rideau v. Louisiana*, 373 U.S. 723, 726 (1963) (defendant appeared on television and admitted in detail the commission of the bank robbery, kidnaping, and murder, and led to "kangaroo court proceedings"); *Estes v. Texas*, 381 U.S. 532, 536-38 (1965) (media overran the courtroom and caused "considerable disruption"); *Sheppard v. Maxwell*, 384 U.S. 333, 358 (1966) (overturning Sam Sheppard's conviction where a "carnival atmosphere" pervaded the trial).

¶ 31 Defendant's suggestion his case is similar to *Estes* and *Sheppard* is misplaced as the complained-of media coverage in defendant's case occurred before trial, not during. Defendant provided no evidence the media coverage involved a "dramatically staged admission of guilt" as in *Rideau*, or how many Morgan County residents remembered reading or hearing about the 1982 double murders. *Skilling*, 561 U.S. ___, 130 S. Ct. at 2916. Defendant provided

no evidence to the trial court how 14 newspaper articles over an 11-month period qualifies as "unusually intense" or "extensive news coverage". Defendant seeks to rely on supposition to determine Morgan County was overexposed by these articles. This is not an extreme case of publicity raising a presumption of prejudice. As the Court noted in *Skilling*, "[p]rominence does not necessarily produce prejudice, and juror *impartiality*, we have reiterated, does not require *ignorance*." (Emphases in original.) *Skilling*, 561 U.S. ___, 130 S. Ct. at 2914-15.

¶ 32 Defendant has not cited any evidence the empaneled jury was biased or prejudiced. The record shows the trial court took great care and effort to question each potential juror about whether he or she had read or heard about the case. Of the 12 jurors selected, only 6 had read or heard about the case. Two of the six stated they had read or heard about the case when it first happened. The other four did not indicate when they read or heard about the case, but stated they had read about it in the newspaper. No juror stated he or she remembered reading about defendant's prior criminal history or had formed an opinion about the case. These six jurors stated their exposure to news reports would not impair their ability to be fair and impartial. The record shows the jury that heard defendant's case was fair and impartial. Defense counsel accepted the venire with jurors who said they had read or heard about the case.

¶ 33 C. Defendant's Motion-To-Continue Claim

¶ 34 Defendant asserts the trial court abused its discretion when it denied defendant's motion to continue, which requested 60 days to obtain and review trial transcripts and prepare a second amended motion for a new trial. Defendant contends the court "denied defense counsel's motion for continuance without considering any of the factors necessary to properly balance the concern for judicial efficiency against a defendant's right to properly defend his case."

¶ 35

1. *The Motion*

¶ 36 On November 29, 2011, defense counsel filed a written motion for continuance on the grounds defendant needed time to review transcripts of the proceedings "in order to file a complete motion dealing with alleged errors of the [c]ourt, in seeking a new trial." At the hearing on the October 2011 motions, counsel stated the following:

"Your Honor, this is a request for continuance in order to allow time for the court reporter to prepare a transcript of proceedings, including the jury selection. It became apparent to me, as well as the defendant, that we had to rely on our collective memories as to trial matters, evidence, rulings of law, and I certainly think we—we cannot remember everything that happened. I don't think anyone could. But I think in order to adequately represent my client I need to review the proceedings of the [c]ourt that would be available if a transcript was typed up. This is an important case. It's a murder case. My client is sentenced to life imprisonment, and I think that we—the [c]ourt should allow, and I think I should be required to do everything possible to be an advocate for my client. I point out to the [c]ourt that if the motion[is] not allowed, and if the post-trial motion is not allowed, there would be a—an appeal, and a transcript of proceedings would be ordered anyway, so I don't think we're wasting the court reporter's time. My client has no money to pay

for this, so I would ask that it be at the [c]ounty's expense at this point, so again it's just—I want to do everything I can to be an advocate for my client, and I think fair play would—I won't say dictate, but would suggest to the [c]ourt that what I'm asking is not unreasonable."

The State objected and stated "We're ready to argue that [amended motion] today." The trial court ruled as follows:

"Okay. I agree, and I appreciate the fact that you're doing everything that you can for your client. My understanding of the law is that you do not have a right to that transcript; however, he would have a right if he seeks to appeal the case. The matter has been set for almost a month now, and your client's been transported back here. I think everybody has planned for the hearing today, so I'm going to deny the motion to continue."

¶ 37 *2. Standard of Review*

¶ 38 "It is well settled that the granting or denial of a continuance is a matter resting in the sound discretion of the trial court, and a reviewing court will not interfere with that decision absent a clear abuse of discretion." *Walker*, 232 Ill. 2d at 125, 902 N.E.2d at 697; *People v. Norris*, 214 Ill. 2d 92, 104-05, 824 N.E.2d 205, 213 (2005). Factors a trial court may consider in determining whether to grant a continuance includes the movant's diligence, the interests of justice, the history of the case, the complexity of the matter, docket management, judicial economy, and inconvenience to the parties. *Walker*, 232 Ill. 2d at 125-26, 902 N.E.2d at 697-98.

¶ 39

3. No Error Occurred

¶ 40 Defendant insists this case is similar to *Walker*. In *Walker*, defense counsel informed the trial court she was not ready for trial because of a calendaring mistake and requested a continuance. The trial court denied the motion stating " 'this has been set.' " *Walker*, 232 Ill. 2d at 117, 902 N.E.2d at 693. The supreme court found the trial court "immediately and reflexively denied the continuance request on the sole basis that the case had been set for trial." *Walker*, 232 Ill. 2d at 129, 902 N.E.2d at 699. The trial court made "no comment regarding the interests of justice," the severity of the charges, the complexity of the case, "made no mention of docket management, judicial economy or inconvenience to the parties or witnesses in connection with the continuance request." *Walker*, 232 Ill. 2d at 127, 902 N.E.2d at 698. The trial court's summary rejection "distinguishes this case from those instances where parties dispute the correctness of a circuit court's weighing of relevant factors in deciding whether to grant or deny a continuance." *Walker*, 232 Ill. 2d at 127, 902 N.E.2d at 698.

¶ 41 We disagree with defendant's characterization of the trial court as having "completely abdicated its responsibility to conduct an informed deliberation of defense counsel's motion" (see *Walker*, 232 Ill. 2d at 129, 902 N.E.2d at 699). Defendant's argument merely disputes the correctness of the court's decision. We note defendant's motion was nearly a month after defendant first requested a ruling on the amended motion and filed after the hearing had previously been continued. The *Walker* trial court did not exercise its discretion. Here, the trial court considered the interest of judicial management, economy, and the inconvenience to the parties. Defendant's request had nothing to do with defense counsel's ability to defend defendant at trial, but requested time to file a second amended posttrial motion if the trial transcripts

revealed something. As the court pointed out, defendant did not have a right to a free transcript to prepare his posttrial motion. See Ill. S. Ct. R. 607(b) (eff. Dec. 13, 2005) (right of indigent defendant to transcript on appeal). As the State raises, the written motion to continue was required to be supported by affidavit (725 ILCS 5/114-4(a) (West 2010)). It was not. We do not find the court abused its discretion in these circumstances.

¶ 42

III. CONCLUSION

¶ 43 We affirm the trial court's judgment. We award the State its \$50 statutory assessment against defendant as costs of this appeal. 55 ILCS 5/4-2002(a) (West 2010).

¶ 44 Affirmed.