2017 IL App (5th) 140194-U

NO. 5-14-0194

IN THE

APPELLATE COURT OF ILLINOIS

FIFTH DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from the
	)	Circuit Court of
Plaintiff-Appellee,	)	White County.
	)	
v.	)	No. 12-CF-101
	)	
CANDICE M. BROWN,	)	Honorable
	)	Barry L. Vaughan,
Defendant-Appellant.	)	Judge, presiding.

PRESIDING JUSTICE MOORE delivered the judgment of the court.
Justices Welch and Barberis concurred in the judgment.

ORDER

¶ 1 *Held*: Conviction is reversed, and cause remanded for possible further proceedings, where the defendant has demonstrated that she was prejudiced, and therefore denied a fair trial, because an objectionable juror sat on her jury as the result of decisions made by the trial judge during *voir dire*; principles of double jeopardy do not bar further proceedings in this case.

¶ 2 The defendant, Candice M. Brown, appeals her conviction, following a trial by jury in the circuit court of White County, for the offense of obstruction of justice. For the following reasons, we reverse and remand.

¶ 3 FACTS

¶ 4 The facts necessary to our disposition of this appeal follow. On September 17, 2012, the defendant was charged, by information, with one count of obstruction of justice. The charge stemmed from statements the defendant made in a voluntary interview she gave on August 31, 2012, to White County Sheriff Doug Maier and Illinois State Police Agent Rick White. At the time of the interview, Sheriff Maier and Agent White were investigating the homicide of Jessica Evans, and the disappearance of Evans's boyfriend, Jacob Wheeler, both of which they believed had happened on August 26, 2012. The defendant's then-boyfriend, Danny K. Coston, was a suspect in the case, and was subsequently convicted of the sexual assault of Evans and the murders of both Evans and Wheeler.

¶ 5 The information filed against the defendant alleged that during her interview with Sheriff Maier and Agent White, the defendant "with the intent to obstruct the prosecution of Danny K. Coston, knowingly furnished false information concerning the whereabouts of Danny K. Coston during the early morning hours of August 26, 2012, in that she informed [Sheriff Maier] that Danny did not leave the house until 5:00–6:00 a.m. on August 26, 2012." The defendant was arrested and, that same day, released on bond. Discovery and other preliminary procedural matters followed. On January 15, 2014–six days prior to the defendant's scheduled trial date of January 21, 2014–the State filed an amended information, which included as count I the count described above, and added as count II a count that alleged that during her interview with Sheriff Maier and Agent White, the defendant "with the intent to obstruct the prosecution of Danny K. Coston,

knowingly furnished false information concerning the whereabouts of Danny K. Coston during the early morning hours of August 26, 2012, in that she informed [Sheriff Maier] that approximately fifteen minutes after he had left the house, she went and found him and got him to come home at that time."

¶ 6 On January 21, 2014, the defendant's jury trial commenced. During *voir dire*, it quickly became apparent that it would be difficult to choose a jury in White County that was not familiar with either the defendant, her case, or Coston's high-profile double-homicide case. Although it is not clear from the record why such a procedure was employed–because it was standard procedure, because of lack of available courthouse space, or for some other reason–it is clear from the record that each group of 14 potential jurors was questioned in the presence of the entire remaining group of potential jurors. This is clear from the record because at one point during the questioning of the second group of potential jurors, the trial judge stated, "[Y]ou've heard me ask questions of the earlier jurors," and during the questioning of the third group of potential jurors, the State's Attorney stated, "You've already heard me say it twice," followed shortly thereafter by, "As you've seen, we stand up here and address the first two groups."

¶ 7 From the first group of 14 potential jurors, the following information was adduced. One potential juror, Mr. Nelson, indicated that his wife had worked with the defendant three years before; when asked if anything about that would cause him "to favor or disfavor" the defendant, he answered, "Maybe." Mr. Nelson also indicated that he was familiar with the case against the defendant, from "the paper and on the radio," as did Ms. Elder, Ms. Proctor, Mr. Johnson, Mr. Armstrong, and Mr. Hindman. All six of them

stated that they could decide the case based upon the evidence presented at trial, rather than any information they had heard elsewhere. When the trial judge admonished the first 14 potential jurors about the four principles of law set forth in Illinois Supreme Court Rule 431(b) (eff. July 1, 2012), commonly known as the "*Zehr* principles,"[1] each of the 14 potential jurors indicated, individually, that he or she both understood and accepted each principle. After additional questioning, the trial judge allowed the State's Attorney to question the first 14 potential jurors. When he asked them if any of them were familiar with the Coston case, all 14 raised their hands. They all indicated that they nevertheless could be fair and impartial in this case. When the State's Attorney asked Mr. Nelson if he could promise to "apply the law and the facts in reaching [his] verdict," Mr. Nelson, responded, "No." He was asked again, and again responded, "No." He later agreed that it was because of the relationship between his wife and the defendant. When defense counsel questioned the jurors, he asked each one if they would want someone like them sitting on the jury if they were charged with the crime of obstruction of justice.

[1]See *People v. Zehr*, 103 Ill. 2d 472, 477 (1984). The principles are that a defendant: (1) is presumed innocent of the charge(s) against him or her; (2) is not required to offer any evidence on his or her own behalf; (3) must be proved guilty beyond a reasonable doubt; and (4) may not have his or her failure to testify held against him or her. We commend the trial judge for his thorough and exhaustive questioning of the potential jurors with regard to these principles.

Mr. Johnson stated he would not, then reiterated, "I wouldn't want me on there at all." He stated, however, that he could still be fair in this case.

¶ 8 From the second group of 14 potential jurors–which, as noted above, had been present for the questioning of the first group of 14 potential jurors–the following information was adduced. One potential juror, Mr. Winter, indicated that he was formerly a sheriff's deputy and that he would believe Sheriff Maier over other witnesses. As the trial judge continued to try to get Mr. Winter to say he would be fair and impartial, Mr. Winter instead stated, on four consecutive occasions, that he would "have a problem." Mr. Winter then opined that although he would not put his life in the sheriff's hands, "[i]n this case[,] I'll believe him. I'm going to have a problem with it." The trial judge nevertheless continued to engage him, in the presence of the rest of the venire, about Sheriff Maier, which prompted Mr. Winter to state, "I worked with him, and I worked in the sheriff's department, and I know a little bit about how it works." He agreed that if Sheriff Maier testified, he "would be leaning toward him." Other potential jurors indicated that although they knew Sheriff Maier, they would weigh his testimony the same as that of any other witness.

¶ 9 Potential juror Ms. Nelson[2] indicated that she had heard about the defendant's case from "the local paper as well as news media," as did Mr. Winter, Ms. Gossett, Mr. Lewis, Mr. Overturf, Ms. Malone, Mr. Boren, Ms. Mayberry, Ms. Murdach, Mr. Elliott, and Mr.

[2]It is not clear from the record whether Ms. Nelson in the second group of potential jurors was related to Mr. Nelson in the first group of potential jurors.

Williams. Of these 11 potential jurors, all except for Mr. Overturf and Ms. Murdach stated that they could decide the case based upon the evidence presented at trial, rather than any information they had heard elsewhere. Mr. Overturf, who stated that he had read "every bit of it" in the newspaper, described himself as "black and white," and stated, "I don't know. I really don't know." He then stated, "You hear so much. You just can't disregard what you read, everything you read," and eventually stated, "I just wouldn't be a good juror." Ms. Murdach simply answered "I'm not sure," when asked if she could put aside what she had heard elsewhere.

¶ 10 When the trial judge admonished the second group of 14 potential jurors about the *Zehr* principles, each of the 14 potential jurors indicated, individually, that he or she both understood and accepted each of the first three principles. With regard to the fourth principle–which the trial judge characterized as "the idea that the defendant's failure to testify cannot be held against him or her"–Ms. Mayberry stated that she understood the principle; with regard to accepting it, she stated that "[h]onestly," she "probably would" attach a negative connotation to the defendant's failure to testify. Likewise, Ms. Murdach stated that she understood the principle but did not accept it.

¶ 11 Immediately thereafter, Mr. Elliott stated that he understood the principle, but when asked if he accepted it, he stated, "I would probably question it." The trial judge then gave two hypothetical situations in which a defendant might not testify–when advised by counsel not to testify, and when a defendant does not believe the State has proven its case–and asked him if he would "accept it at that face value" or would continue to "have these negative connotations?" Mr. Elliott stated, "I would have to

accept it then." The trial judge responded that Mr. Elliott did not have to accept it, even though "[t]hat's the law." When asked again, Mr. Elliott stated that he accepted the principle.

¶ 12 The trial judge then allowed the State's Attorney to question the second 14 potential jurors. When he asked them about their familiarity with the Coston case, all 14 indicated familiarity with it. When he asked if their familiarity with the Coston case would "have any impact on your decision if you're on the jury in this case," Mr. Winter indicated that it would; Mr. Overturf indicated that he did not know if it would; Ms. Malone indicated it would "depend on what is brought out in this case"; Mr. Boren indicated it would "be a big issue"; and Ms. Murdach indicated that it "[p]robably would." Mr. Elliott stated, "It would still be on your mind." The State's Attorney followed up by asking, "So, possibly?" to which Mr. Elliott answered, "Possibly." Mr. Elliott was then asked by the State's Attorney if he could "sit here and impartially judge the facts," to which he responded, "I don't think so." Ms. Gossett was then asked if the fact that she currently worked with Evans's mother would "in any way impact your ability to sit here and fairly and impartially judge this case?" She stated, "I'm not sure." The State's Attorney then asked, "Will that sway your opinion one way or the other, you think?" Ms. Gossett answered, "I don't think so." Upon further questioning, Ms. Murdach added that her connection to Evans's family "possibly" would impact her decision, and that she was not sure she could set it aside. Mr. Knight stated that the case was "all about being fair to her," and added, "I cannot sit here and tell you that I can

honestly be fair to her." Ms. Murdach stated that she did not believe she could set her emotions aside "and decide without sympathy or bias."

¶ 13 When defense counsel questioned the potential jurors, he asked each one if they could give the defendant "a level playing field"; Mr. Winter stated, "No," as did Ms. Gossett, and Ms. Murdach stated, "I'm not sure." Defense counsel reiterated that he might advise the defendant not to testify, and asked if anyone would hold that against him. Ms. Mayberry answered, "I might," and Mr. Overturf stated that if he believed the defendant "lost her case" because of it, he would; Mr. Hayes then stated that he agreed with Ms. Mayberry, and Ms. Malone stated, "It might come into my mind later on." Defense counsel then asked the second group of 14 potential jurors if they would want someone like them sitting on the jury if they were "charged with a serious offense" like the defendant was. Ms. Gossett stated, "Probably wouldn't want me," but then, upon further questioning, added, "I could be fair." Mr. Boren stated, "I could be fair, probably." Upon further questioning, he stated he would "[a]bsolutely" be okay with someone such as himself sitting on the jury. Defense counsel then indicated that he was "not going to bother asking" Mr. Winter the question; nevertheless, Mr. Winter, uninvited, stated in front of the entire venire, "You don't want me on this jury."

¶ 14 When defense counsel finished questioning the second group, the trial judge stated that he needed "to ask a couple of follow-up questions." He proceeded to do so, also in the presence of the entire venire. He reminded Mr. Elliott that Mr. Elliott had stated that he had heard information about the defendant's case outside the courtroom, and was not sure he could put that information aside and decide her case solely on the facts presented

in court. He then asked Mr. Elliott if, at that moment, he thought he "could be a fair and impartial juror in this case?" Mr. Elliott responded, "I could be." The trial judge then asked Ms. Mayberry again if she accepted the fourth *Zehr* principle, to which she responded, "I understand that's the law, but just personally I view that as a negative." Upon further questioning, she stated that she would not hold it against someone for exercising their right not to testify. The trial judge then asked her, "Can you set aside your preconceived notion of how things–the world the way things ought to be and decide the world the way things are?" Ms. Mayberry answered, "I don't know, I mean, if I could or not." The trial judge subsequently asked her, "[A]s you sit there right now, do you think you could be a fair and impartial juror given all the questions that you've been asked?" She responded, "I definitely think I'm a fair person and everything." No additional questions were asked of the second group of 14 potential jurors.

¶ 15 Outside the presence of the jury, the trial judge, the State's Attorney, and defense counsel met to take up motions to excuse potential jurors. On the State's motion, and without objection from the defendant, Mr. Nelson was excused for cause, as were Mr. Knight and Mr. Overturf. Defense counsel then moved to excuse for cause Mr. Usery, who was a member of the White County Board and listed the State's Attorney and Sheriff Maier as friends; the State objected, and the motion was denied. Defense counsel then moved to excuse for cause Mr. Johnson; the State did not object, and the motion was granted. Defense counsel next moved to excuse for cause Mr. Winter; the State did not object, and the motion was granted. The trial judge *sua sponte* raised the question of excusing for cause Ms. Murdach; neither party objected, and she was excused for cause.

Defense counsel then moved to excuse for cause Ms. Gossett; the State objected, and the motion was denied, with the trial judge stating that Ms. Gossett "did testify she would be fair and impartial; in her own mind she could be a fair and impartial juror." He continued, stating that Ms. Gossett "testified over and over that she accepted the *Zehr* principles," and "indicated over and over and over that she would be fair and impartial and decide the case based on the facts."

¶ 16 Counsel for the defendant then moved to excuse for cause Ms. Mayberry; the State objected, and the motion was denied, with the trial judge stating that although Ms. Mayberry expressed reservations about the fourth *Zehr* principle, "she said while she might have a personal problem with that, she would set that aside. She would apply the law as instructed, and she would not hold that against the defendant, Ms. Brown, if she did not testify." The trial judge then stated, again with regard to the fourth *Zehr* principle, "she said she understood that and that was the law and would follow the law," adding, "I believe in the end she did say she would be a fair and impartial juror and decide the case based on the law and the evidence."

¶ 17 Defense counsel then moved to excuse for cause Mr. Elliott; the State objected, and the motion was denied, with the trial judge stating that Mr. Elliott "did initially say he was not sure he could judge the case based on the facts in this case as opposed to what he heard on the street, but he was rehabilitated and did at the end say he would make a decision based on the evidence in this case." The trial judge added that Mr. Elliott had said "he would set aside what he had heard outside the courtroom; that he would be a fair

and impartial juror." The trial judge continued, "I think I did ask him a couple of times after that if he thought he would be fair and impartial, and he indicated that he would."

¶ 18 Subsequently, defense counsel used his seven peremptory challenges to strike Mr. Usery, Mr. Armstrong, Ms. Allen, Ms. Nelson, Ms. Gossett, Mr. Boren, and Ms. Mayberry. Because he was then out of peremptory challenges, defense counsel reasserted his challenge for cause of Mr. Elliott. Without comment, the trial judge denied the motion for cause and Mr. Elliott was seated on the defendant's jury. The parties decided that, because seven potential jurors had called in sick that morning with a flu bug that was circulating, it would be wise to have an alternate juror. Each side was allotted one peremptory challenge with regard to the selection of the alternate juror. Defense counsel used his peremptory challenge to prevent Mr. Williams from being the alternate juror. To continue with the process of selecting an alternate juror, a third group of potential jurors–this time numbering 7, rather than 14–was questioned.

¶ 19 From the third group of potential jurors–which, as noted above, had been present for the questioning of the first and second groups of 14 potential jurors–the following information was adduced. Potential juror Mr. Griggs indicated that he knew Sheriff Maier. He was asked by the trial judge if he would "automatically believe or not believe" the testimony of Sheriff Maier, based on his "social knowledge of the sheriff." Mr. Griggs responded, "I would believe it." Upon further questioning, he indicated that he would evaluate Sheriff Maier's testimony the same as that of any other witness. Ms. Wenzel also knew Sheriff Maier, and "might take his testimony more to heart" than that of other witnesses. The remaining five potential jurors knew Sheriff Maier as well; four

of them indicated that they would evaluate his testimony the same as that of any other witness, but the fifth, Ms. Bunting, stated, "Well, if he came in with the uniform, it wouldn't be based on his name or that, but I was raised in a home where the police always tell the truth, so I would have a problem with that." When the trial judge attempted to point out that police officers might not be lying, but still might be mistaken, Ms. Bunting interrupted to state, "I heard you say that before today, but I still would have a problem with that." The trial judge persisted, asking if she "automatically would favor" Sheriff Maier's testimony," to which Ms. Bunting responded, "I think perhaps honestly I would."

¶ 20 When asked if they had heard information outside of the courtroom about the defendant's case, all seven responded that they had, but five stated that they could decide the defendant's case based solely on the evidence presented in court. The other two were Mr. Ballard and Ms. Bunting. Mr. Ballard was asked twice by the trial judge if he could do so; both times he responded, "I think so." Ms. Bunting responded, "Since it's law, I guess I would have to. I would try." When the trial judge continued to engage her about it, she responded, "I would try. I don't know." Despite this answer, the trial judge asked, "Do you think you would be able to, or is there a doubt in your mind you could?" She answered, "I think there's a small doubt."

¶ 21 When the trial judge admonished the group of seven potential jurors about the four *Zehr* principles, each of the seven potential jurors indicated, individually, that he or she both understood and accepted each of the first two principles. With regard to the third principle–which the trial judge characterized as "the defendant is not required to offer any evidence on her behalf"–Ms. Wenzel stated that she did not accept that principle. When

asked again, she again said, "No." With regard to the fourth principle–which the trial judge characterized as "the defendant's failure to testify cannot be held against her"–Ms. Wenzel stated that she did not accept that principle. When later asked if there was anything else that might impact her qualification to sit on the defendant's jury, Ms. Wenzel declined the trial judge's invitation to discuss it in chambers, and instead stated, in front of the other potential jurors, "My son-in-law is a special investigator, state police, State of Illinois, and I tend to think that what he tells me–if he told me that someone had obstructed justice, I would believe it."

¶ 22 The trial judge then allowed the State's Attorney to question the third group of potential jurors. When he asked them about their familiarity with the Coston case, all seven indicated familiarity with it. When he asked if their familiarity with the Coston case would "impact your ability to be fair and impartial in this case," Ms. Wenzel stated, "It could." Mr. Ballard stated, "Yes, possible." When the State's Attorney pressed Mr. Ballard, he stated, "You know, I would do my best." Ms. Bunting stated that she could not set aside what she knew about the Coston case. When pressed, she stated, "I don't think so. I think I would have trouble doing that."

¶ 23 When defense counsel questioned the third group of potential jurors, he asked each one if there was anything about the nature of the charge of obstruction of justice that caused them "any heartburn or hesitation." Ms. Wenzel stated, "Yes, it bothers me." When asked to explain, she stated, "I think that's why a lot of people get away with murder and other things. They lie and have other people that lie for them." Mr. Tolley also answered "Yes" to the question. When asked to explain, he stated, "The fact that just

the way people–your trust. How you can trust them from then on, you know. Are they telling the truth throughout the whole time or are they just–I would have a problem with it." Mr. Ballard answered the question by stating, "Yes. The impact of the lie." When asked to explain, he answered, "It could save lives somewhere down the line," then followed up with, "So, yeah, I have a problem with the lie." He nevertheless stated that he would want someone like himself on the jury if he were charged with the crime. Ms. Bunting answered the question by stating, "I would have a real problem with that, with the accusation that someone had done that." When asked if she would want herself on the jury if she were charged with the crime, she answered that she "probably wouldn't." When defense counsel finished questioning the third group of potential jurors, the trial judge asked Mr. Ballard, in follow up, if he would want a juror with his frame of mind sitting on the case. Mr. Ballard answered, "No. No, sir." Subsequently, Mr. Griggs was chosen as the alternate juror in the defendant's case.

¶ 24 Once the jury was seated, testimony began. The first witness to testify on behalf of the State was Sheriff Maier. He testified about the course of the investigation, including how Coston became a suspect, the alibi Coston provided when interviewed, and the fact that officers wished to interview the defendant to see if Coston's alibi was truthful. Sheriff Maier then provided a foundation for the videotape recording of the interview with the defendant, which was admitted into evidence and played for the jury. We have reviewed the videotape recording, and will describe its contents in detail, because of its relevance to the question of the sufficiency of the evidence in this case.

¶ 25 Near the beginning of the interview–which overall we would describe as cordial, rather than confrontational–Agent White told the defendant that the interview was "very, very important," to which she replied, "I understand." He continued that the interview was "probably the most important thing" in which she would ever participate at a police department in her life. After the officers established that the defendant knew what the interview was about, the defendant was asked to give a narrative of her whereabouts, and those of Coston, at the times relevant to the investigation. The defendant's narrative was vague, but became more specific in response to questions from Agent White. She first told the officers that at around 6 a.m., she and Coston–the latter of whom had been drinking heavily the evening before and was still drunk–went to the area in question, to attempt to put Coston's boat into the Little Wabash River. Upon further questioning, she admitted that Coston left their home prior to that, "driving around, down around the bottoms," but came back. She then stated, "I guess I did go looking for him," and told the officers that after she found him, she "followed him back home." When asked when that happened, she hesitated, but eventually said, "12:30, 1 o'clock."

¶ 26 Subsequently, the defendant stated that Coston did not contact her while he was gone because it was only "15 or 20 minutes" before she went looking for him. She said she and Coston both slept at their home that night, then added that Coston was not there "real long." When Agent White asked what she meant, she said "Well, he was outside and stuff." Agent White then again made sure the defendant knew why she was being questioned, stating that Evans had ended up dead within an hour of the time Coston was down by the river near her campsite, and that physical evidence left by his truck tied him

to the area. He also emphasized for the defendant that she needed to be as specific as possible about what happened, and when it happened.

¶ 27 The defendant then reiterated that Coston was alone by the river for only "probably 15 minutes" before she left their home and found him. At this point–which was approximately 12 minutes into the 43-minute interview–Agent White asked if she got "him home then or not." The defendant indicated that she did. Agent White then looked away and frowned, and the defendant took a deep breath and sighed. Agent White looked back to the defendant and asked, "What was he doing when you found him?" The defendant then said, "Okay, I didn't get him home." She explained that she was worried. Agent White told her not to "fib," and the defendant said she would not fib, then apologized for lying the first time. She then went through her narrative again, telling officers for the first time that when she found Coston after he had been gone about 15 minutes, there was a truck parked down by the river and Coston was talking to someone who was fishing nearby. She admitted that she told Coston to "get home," then left without him. The officers did not point out to the defendant that this contradicted her earlier statement that after she found Coston, she followed him home.

¶ 28 The defendant then stated that she gave Coston 15 more minutes, then called him again on his cellphone. She said that Coston told her he had tried to put his boat in, but gotten it stuck. She then admitted that she went back to the river, where Coston's boat was stuck, then said "screw this" and went back home. She admitted that it was another two hours before she returned to the river for the third time. She stated that when she arrived after the passage of the two hours, Coston was still working on getting his boat

unstuck. She described the damage Coston had done to his truck while trying to get the boat unstuck while she was gone, conceded that after she learned of the murder of Evans she knew it did not look good that Coston had been down there, but stated that Coston was alone at the river for "two hours, tops." She also conceded that Coston had been extremely drunk and had told her he did not remember anything about the night. When Agent White stated, "See that ... that is a problem," the defendant responded that Coston had been "a happy drunk" rather than "a mad drunk," and added, "But I mean, I had my eyes on him the whole night ... pretty much."

¶ 29 The officers each questioned the defendant further, in an attempt to clarify the defendant's version of events. In contradiction of her earlier statement that when she returned after the two hours Coston was still working on getting his boat unstuck, she now–at approximately 22 minutes into the 43-minute interview–told officers that she thought Coston had "passed out and slept there for a couple of hours, to be honest." She said that she "yelled his name and we went home," and that they returned the next day to finish getting the boat unstuck. The officers continued to work with the defendant to try to clarify her story. She remained unsure about the various times involved, but agreed that she and the officers could look at her phone to see if it clarified when any of the calls between her and Coston were made. She denied that Coston was capable of murdering anyone, and when asked why she felt like she had to cover for him earlier by lying, she said she felt like she was covering for both of them because she "was freaking out" about having been so close to the scene of a murder, especially in a small town where she knew people would talk about it. Agent White said, "But innocent people have no reason to fib

to the police," to which the defendant responded, "I know, but innocent people get nervous too." Agent White reminded her to be truthful.

¶ 30 The defendant reiterated that she did not believe Coston was capable of murder, and then, in contradiction of her earlier statement that she thought Coston had been passed out for two hours, she said that she had called him during the two hours, even if she "wasn't around him." When Sheriff Maier stated that because she was not present during the two hours, the defendant did not really know what Coston did during those two hours, the defendant responded that she had "seen the physical evidence" of his efforts to free the boat during that two hours, and stated that she had "probably" called the defendant "20 times" during the two hours. She stated that although he did not answer every one of her calls, he called her "right back if he didn't answer." She emphasized that Coston would not have had time to commit a murder, because of how entangled his boat and boat trailer were.

¶ 31 At this point, approximately 28 minutes into the 43-minute interview, Sheriff Maier told the defendant that "this is serious stuff," and that "not giving us the correct information is a felony." He reminded the defendant that she had already lied to the officers. The defendant conceded that this was true. Approximately one minute later, Sheriff Maier said, "I think we've got some problems here ... I really do." He pointed out that "things don't add up." The defendant reiterated that Coston would not have had time to commit a murder, and opined that based upon the mess she found when she returned two hours later, Coston must have spent the two hours working on freeing the boat. She again apologized for "starting out lying to you." The officers asked for more details

about the night, and the defendant provided information about what Coston wore on the night of the murders and agreed that officers would need to search their home at some point.

¶ 32 Agent White then left the room, telling the defendant as he did so that if she had left anything out, she should tell Sheriff Maier. The defendant and Sheriff Maier then further discussed many of the details described above. The defendant admitted that she had tried to cover up for Coston earlier, but insisted that she no longer was. She continued to maintain that Coston did not have time to commit a murder, and would never do something like that anyway. At the end of the interview, she asked if Sheriff Maier wanted her to get her phone so they could see if any calls from the night in question were still on it. He stated that he did.

¶ 33 After the recording of the interview was played for the jury, Sheriff Maier was asked what happened next in the investigation. He testified that officers then reinterviewed Coston, who had been waiting in the lobby area while the defendant was interviewed. He testified that during the second interview with Coston, Coston made statements that led to the discovery of Wheeler's body, and led to Coston being charged with murder. Sheriff Maier was asked if, in general, an investigation is affected "when someone produces false information." He answered, "Absolutely." He was then asked if that was true with the investigation in the case at bar. He again answered, "Absolutely." He testified that if someone is not truthful, it causes investigators to have to verify what the person has said, and causes them to "tend then to not believe anything they say after

that point," which, he testified, "just slows the entire investigation down and takes our focus off what it should be on."

¶ 34 The following day, Sheriff Maier was recalled to the witness stand, this time as a witness for the defense as it presented its case. He was asked how many man hours were expended by investigators "chasing [the defendant's] previous falsehood." He testified that he could not give an exact number of hours, but that "it would be several in the fact that by her admitting she was not being honest with us[,] we spent many hours just trying to verify what later she said was the truth, and there were things that were done to try to verify even the parts later that she says [were] truthful." He posited that if the defendant had been entirely truthful, "the interview itself probably could have been over in 10 minutes," but that instead, "we spent 43 minutes just on her video." When asked if, when the defendant admitted she had been untruthful, investigators "immediately dash[ed] from the room and [sent] officers scurrying all over the world and tracking down leads," Sheriff Maier testified, "No." When asked if officers "stopped investigating" some of the defendant's statements once she admitted she had not been "truthful," Sheriff Maier testified, "I would say that at the end of that interview[,] we were still not certain as to what parts were truthful and what parts were not."

¶ 35 Sheriff Maier testified that officers subpoenaed phone records and reinterviewed Coston "to try to determine which was the accurate information." He conceded that investigators "[p]ossibly" would have sought the phone records anyway. He also conceded that some of the information provided by the defendant was helpful, because it was information not previously known to the investigators. Sheriff Maier was asked if

information provided by the defendant rendered the reinterview of Coston a more "[e]ffective interrogation," to which he responded, "We used some information that we were able to obtain from [the defendant], correct." He agreed that the reinterview of Coston took place almost immediately after the interview with the defendant, and that during the reinterview, Coston admitted for the first time to involvement in the murders.

¶ 36 On cross-examination by the State, Sheriff Maier was asked if he knew if "all of the information that [the defendant] provided you after she admitted lying to you was truthful or some of it was truthful?" He testified, "I do not know if any of it is truthful," then explained that was the case because "she changed her story several times already and gave an admission she was lying." He agreed that because the defendant provided conflicting information about what she thought Coston was doing for the two hours she was not with him–at one point saying she thought "he actually passed out and slept" but at other points saying he had been working on his truck–he did not know "how truthful that all the rest of that information was." He also agreed that the defendant did not come forward with her information prior to the August 31, 2012, interview, and reiterated how her falsehoods during that interview impacted the investigation, adding that, had she been entirely truthful with investigators, "[i]t would have made the second interview [with Coston] much more effective for us."

¶ 37 Agent White also testified, during the State's case. When asked about the effect of false information on the course of an investigation, he testified that "you obviously don't know if you can believe anything they would say from that point forward," and that even if someone who previously lied later claims to be telling the truth, "you're always going

to wonder, you know, if you can believe anything they have to say." With regard to this particular case, Agent White testified that investigators "ended up interviewing Coston, I think, a total of four times to try to find out, you know, was he really gone for 15 minutes, or was it the two hours which, I think, she said the third time[,] or was it more?" Agent White added that "several interviews had to be conducted because we had her telling us one thing and him telling us something different." He conceded that it is not uncommon for investigators to interview a suspect more than once, if the suspect is willing to speak to them. He also conceded that officers "probably would have" looked at phone records even if the defendant had not been interviewed.

¶ 38 Ultimately, the defendant was convicted of both of the counts with which she was charged. She was sentenced to 30 months of probation, 60 days in the county jail, and 100 hours of community service. The sentence was imposed on count I only, with count II merging therewith. This timely appeal followed.

¶ 39 ANALYSIS

¶ 40 On appeal, the defendant raises two claims of error, contending that: (1) the evidence was insufficient to support her conviction; and (2) she was denied a fair trial as the result of errors made by the trial judge during the *voir dire* process. We begin by addressing the latter contention.

¶ 41 With regard to this contention, the defendant posits that the trial judge erroneously failed to excuse two jurors–Ms. Mayberry and Ms. Gossett–for cause, which resulted in a third objectionable juror, Mr. Elliott, being seated on the jury when the defendant ran out of peremptory strikes after using them on Mayberry and Gossett, and when the trial judge

would not excuse Elliott for cause. The State responds by contending that the trial judge's decision not to excuse Mayberry and Gossett for cause was a sound one, and that even if it were not, the defendant cannot demonstrate the required prejudice against her, because Elliott was sufficiently rehabilitated and therefore no objectionable juror was allowed to sit on the jury.

¶ 42 We first note "that the right to trial by an impartial panel of jurors is one of the most priceless safeguards of individual liberty," and that the "violation of that right requires a reversal." *People v. Reinbold*, 247 Ill. App. 3d 498, 502 (1993). We review a trial judge's decision to excuse or not excuse a potential juror for cause under the abuse of discretion standard. See, *e.g.*, *People v. Ramsey*, 239 Ill. 2d 342, 419 (2010). We find the decision of our colleagues in the Third District in *In re Commitment of Trulock*, 2012 IL App (3d) 110550–which also involved a claim that the failure to strike two jurors for cause led to the use of peremptories to eliminate those jurors and ultimately, following the exhaustion of peremptories, resulted in an objectionable juror serving–to be instructive with regard to the rest of the general body of law applicable to this case. As the *Trulock* court observed, a trial judge's "determination of whether a person is competent to sit as a juror will not be reversed on appeal unless it is against the manifest weight of the evidence." *Id.* ¶ 43. We will find a determination to be against the manifest weight of the evidence only if: (1) "it is clearly apparent from the record that the trial court should have reached the opposite conclusion"; or (2) the determination "itself is unreasonable, arbitrary, or not based upon the evidence presented." *Id*.

¶ 43 It is axiomatic that one of the reasons *voir dire* is conducted "is to filter out those potential jurors who are either unable or unwilling to be fair and impartial." *Id.* ¶ 44. To conduct such filtering, a trial judge "should consider the potential juror's entire *voir dire* examination and should not single out any certain statement." *Id.* The burden to demonstrate that a member of the venire is not competent to sit on a jury falls on the party challenging the venire member, and "[m]ere suspicion of bias or partiality is not sufficient to disqualify a potential juror." *Id.* Moreover, "the well-settled rule in Illinois is that a court's failure to remove a juror for cause is grounds for reversal only if prejudice can be shown; that is, only if the party challenging the juror has exercised all of [its] peremptory challenges and an objectionable juror was allowed to sit on the jury." *Id.* ¶ 45.

¶ 44 Although *Trulock* is a recent case, the principles that underlie its reasoning are longstanding. In 1978, in *People v. Stone*, 61 Ill. App. 3d 654, 663, 667 (1978)–yet another case involving a claim that the failure to strike two jurors for cause led to the use of peremptories to eliminate those jurors and ultimately, following the exhaustion of peremptories, resulted in an objectionable juror serving–we held that grounds for reversal existed where the examination of the three potential jurors in question revealed "their reluctance to assume the impartial position required of them as jurors," and where the record was "replete with expressions of self-doubt concerning their ability to be impartial." We reiterated the principle that a trial judge must not single out certain statements, but must instead "regard the examination of each prospective juror as a whole to determine the individual's state of mind." *Id.* We noted that although the three

potential jurors each displayed "an occasional hint of neutrality," they also "each displayed marked signs of prejudice" that required the trial judge to excuse them for cause. *Id*. Following *Stone*, in *People v. Johnson*, 215 Ill. App. 3d 713, 724-26 (1991), this court held there to be reversible error where we found that three potential jurors who were crime victims or had close friends or relatives who were victims of violent crimes also "equivocated when first asked whether they could be fair and impartial." In the case of one potential juror, it was not until the trial judge asked him a leading question that the potential juror testified that he could be impartial. *Id*. at 726.

¶ 45 Against the backdrop of these principles of law, we consider the defendant's argument. We note, as described in detail above, that the *voir dire* process in this case uncovered multiple potential jurors who were not able to accept all of the *Zehr* principles, as well as a tremendous amount of potential prejudice against the defendant herself, primarily because of out-of-court information that almost all of the potential jurors possessed both about the defendant's case, and about Coston's high-profile double-homicide case. We also note, as described above, that all of the questioning of the potential jurors took place in front of the other potential jurors, which means that the entire venire was exposed to a great deal of potentially prejudicial information, as repeatedly espoused by some of the more problematic potential jurors (including those who were eventually excused for cause), about, *inter alia*¸ their beliefs about the believability of Sheriff Maier over any other witness, their beliefs about the *Zehr* principles, and their beliefs about the pretrial publicity about the defendant's case and about Coston's.

¶ 46 With regard to the latter, we are mindful of the fact that–at least with regard to a motion for a change of venue–"potentially harmful publicity within a community alone does not establish proof of community prejudice, as each case must be judged on its own facts," as well as the fact that "knowledge of a case will not of itself disqualify for jury service." *People v. Gendron*, 41 Ill. 2d 351, 354-55 (1968). However, as the Supreme Court of Illinois went on to observe in *Gendron*, that is why *voir dire* is crucial: because it is, " 'in a typical instance of pretrial publicity, probably the most valuable means of ascertaining partiality or indifference among persons summoned as jurors.' " *Id*. at 355 (quoting *People v. Kurtz*, 37 Ill. 2d 103, 108 (1967)). Indeed, this court has held that "where there is extensive pretrial publicity, the trial court should be cognizant of the possibility that veniremembers will have predetermined a defendant's guilt or innocence," and that, accordingly, it "should err on the side of caution and either grant adequate peremptory challenges or take greater care before denying challenges for cause when jurors indicate that they expect the defendant to prove his innocence." *People v. Reinbold*, 247 Ill. App. 3d 498, 504-05 (1993).

¶ 47 Although we are not unsympathetic to the situation in which the trial judge found himself, it is clearly apparent from the record that in moving forward with *voir dire* in the manner that he did, he disregarded the bedrock principle–found in *Trulock*, *Stone*, and *Johnson*, among other cases–that a trial judge must regard the examination of each prospective juror as a whole, and that with almost all of the potentially problematic jurors he instead continued to press them until he was able to get an answer that he considered satisfactory, at which point he apparently considered them rehabilitated, for he later

denied challenges for cause that should have been granted. He also did not act in a manner that was consistent with our ruling in *Reinbold* that "where there is extensive pretrial publicity, the trial court should be cognizant of the possibility that veniremembers will have predetermined a defendant's guilt or innocence," and that, accordingly, it "should err on the side of caution and either grant adequate peremptory challenges or take greater care before denying challenges for cause when jurors indicate that they expect the defendant to prove his innocence." 247 Ill. App. 3d at 504-05. This was particularly true, as the defendant contends, with potential jurors Mayberry, Gossett, and Elliott.

¶ 48 We begin with Mayberry, and initially note that even her final "satisfactory" answer was nonresponsive to the question asked of her and did not serve to rehabilitate her. As described above, when the trial judge denied the defendant's motion to strike Mayberry for cause, he did so because he believed that although Mayberry expressed reservations about the fourth *Zehr* principle, "she said while she might have a personal problem with that, she would set that aside. She would apply the law as instructed, and she would not hold that against the defendant, Ms. Brown, if she did not testify." The trial judge then stated, again with regard to the fourth *Zehr* principle, "she said she understood that and that was the law and would follow the law," adding, "I believe in the end she did say she would be a fair and impartial juror and decide the case based on the law and the evidence."

¶ 49 In fact, although the trial judge continued to press Mayberry until he got her to back away from her repeated assertions that she would have difficulty with a defendant's decision not to testify–and got her to instead finally state that she would not hold it

against someone for exercising their right not to testify–immediately thereafter, the trial judge asked her, "Can you set aside your preconceived notion of how things–the world the way things ought to be and decide the world the way things are?" Mayberry answered, "I don't know, I mean, if I could or not." The trial judge subsequently asked her, "[A]s you sit there right now, do you think you could be a fair and impartial juror given all the questions that you've been asked?" She responded, "I definitely think I'm a fair person and everything." She did not, as the trial judge seemed to remember, agree that "she would be a fair and impartial juror and decide the case based on the law and the evidence." She was, at best, equivocal, and as noted above did not even directly answer the trial judge's final question. Like the potential jurors in *Stone*, Mayberry displayed "an occasional hint of neutrality," but when her examination is viewed as a whole, it clearly demonstrates her "reluctance to assume the impartial position required of" her as a juror and is "replete with expressions of self-doubt" concerning her ability to be impartial. See 61 Ill. App. 3d at 667. Accordingly, it is clearly apparent from the record that the trial judge should have granted the defendant's motion to strike Mayberry for cause, and his decision not to was against the manifest weight of the evidence and was an abuse of his discretion. Had Mayberry been excused for cause, the defendant still would have had a peremptory challenge with which she could have prevented Elliott from sitting on her jury, regardless of whether it was an abuse of discretion to earlier fail to excuse potential juror Gossett for cause.

¶ 50 Nevertheless, we turn next to Gossett. When the trial judge denied the defendant's motion to excuse Gossett for cause, he stated that Gossett "did testify she would be fair

and impartial; in her own mind she could be a fair and impartial juror." He continued, stating that Gossett "testified over and over that she accepted the *Zehr* principles," and "indicated over and over and over that she would be fair and impartial and decide the case based on the facts." Strikingly absent from the trial judge's analysis was the fact that when asked by defense counsel if she could give the defendant "a level playing field," Gossett clearly and unambiguously answered, "No," and she never explained why this was so, or how it squared with her earlier statements that she could be fair and impartial, and that she understood and accepted the four *Zehr* principles. This is particularly troubling in light of her earlier equivocation about whether she would want someone such as herself on the jury, and her uncertainty, when asked by the State's Attorney, about whether the fact that she currently worked with the mother of the young woman–Jessica Evans–who was sexually assaulted and murdered by Coston, would impact her decision in the defendant's case. Her overall examination, viewed objectively and within context, demonstrates her "reluctance to assume the impartial position required of" her as a juror and is "replete with expressions of self-doubt" concerning her ability to be impartial. See *Stone*, 61 Ill. App. 3d at 667. Accordingly, it is clearly apparent from the record that the trial judge should have granted the defendant's motion to strike Gossett for cause, and his decision not to was against the manifest weight of the evidence and was an abuse of his discretion. Nevertheless, we reiterate that had Mayberry been excused for cause, the defendant still would have had a peremptory challenge with which she could have prevented Elliott from sitting on her jury, notwithstanding the failure to excuse Gossett

for cause. Therefore, if Elliott was an objectionable juror, the failure to excuse Mayberry for cause was alone sufficient to prejudice the defendant.

¶ 51 Thus, we must determine whether Elliott was an objectionable juror. See, *e.g.*, *In re Commitment of Trulock*, 2012 IL App (3d) 110550, ¶ 45 ("the well-settled rule in Illinois is that a court's failure to remove a juror for cause is grounds for reversal only if prejudice can be shown; that is, only if the party challenging the juror has exercised all of [its] peremptory challenges and an objectionable juror was allowed to sit on the jury"). When denying the defendant's motion to excuse Elliott for cause, the trial judge stated that Elliott "did initially say he was not sure he could judge the case based on the facts in this case as opposed to what he heard on the street, but he was rehabilitated and did at the end say he would make a decision based on the evidence in this case." The trial judge added that Elliott had said "he would set aside what he had heard outside the courtroom; that he would be a fair and impartial juror." The trial judge continued, "I think I did ask him a couple of times after that if he thought he would be fair and impartial, and he indicated that he would."

¶ 52 We note that the trial judge's comments with regard to Elliott further evidence that the trial judge disregarded the bedrock principle that a trial judge must regard the examination of each prospective juror as a whole, and show that he instead continued to press jurors until he was able to get an answer that he considered satisfactory, at which point he deemed them rehabilitated, notwithstanding their multiple previous contradictory answers. In the case of Elliott, although he initially told the trial judge that he believed he could set aside what he had heard about the defendant's case outside of the courtroom

and could render a verdict on the basis of the evidence presented, he answered differently when asked by the State's Attorney if what he knew about the Coston case would impact his decision in the defendant's case, stating, "It would still be on your mind." The State's Attorney followed up by asking, "So, possibly?" to which Elliott answered, "Possibly." Elliott was then asked by the State's Attorney if he could "sit here and impartially judge the facts," to which he responded, "I don't think so." Later, in his individual follow-up with potential jurors, the trial judge reminded Elliott that Elliott had stated that he had heard information about the defendant's case outside the courtroom and was not sure he could put that information aside and decide her case solely on the facts presented in court. He then asked Elliott if, at that moment, he thought he "could be a fair and impartial juror in this case?" Elliott responded, "I could be." However, the trial judge did not follow up about whether Elliott could put aside what he knew about the Coston case when deciding the defendant's case, which was the line of questioning that actually produced Elliott's response to the State's Attorney that he did not think he could be fair and impartial. Accordingly, the trial judge's attempt to "rehabilitate" Elliott did little to clear the already-muddy waters.

¶ 53 Moreover, when asked about the fourth *Zehr* principle, Elliott, like Mayberry, stated that he understood the principle, but when asked if he accepted it, stated, "I would probably question it." The trial judge then gave two hypothetical situations in which a defendant might not testify–when advised by counsel not to testify, and when a defendant does not believe the State has proven its case–and asked him if he would "accept it at that face value" or would continue to "have these negative connotations?" Elliott stated, "I

would have to accept it then." The trial judge responded that Elliott did not have to accept it, even though "[t]hat's the law." When asked again, Elliott stated that he accepted the principle.

¶ 54 Viewed objectively and within context, Elliott's overall examination demonstrates his "reluctance to assume the impartial position required of" him as a juror and is "replete with expressions of self-doubt" concerning his ability to be impartial. See *Stone*, 61 Ill. App. 3d at 667. Accordingly, it is clearly apparent from the record that the trial judge should have granted the defendant's motion to strike Elliott for cause, and his decision not to was against the manifest weight of the evidence and was an abuse of his discretion. Because Elliott should have been stricken for cause, he clearly qualifies as an objectionable juror, and the defendant has demonstrated the prejudice necessary to show that she was denied a fair trial.

¶ 55 Because we reverse the defendant's conviction, we must consider whether principles of double jeopardy bar further proceedings on remand. We have thoroughly considered the defendant's first claim of error (that the evidence was insufficient to support her conviction), including the evidence properly before the jury and before this court on appeal, which is described in great detail above. After careful consideration, we agree with the State that even if we were to assume, *arguendo*, that the defendant is correct in her assertion that under the decisions interpreting the obstruction of justice statute the State was required to prove that the defendant's provision of false information materially impeded the prosecution of Coston, we would nevertheless conclude that, under our standard of review–which requires that we view the evidence in the light most

favorable to the prosecution–a rational trier of fact could have found the essential elements of the crime, including that the defendant's provision of false information materially impeded the prosecution of Coston, beyond a reasonable doubt. See, *e.g.*, *People v. Taylor*, 2012 IL App (2d) 110222, ¶ 8. Accordingly, the evidence was sufficient to convict the defendant, and principles of double jeopardy do not bar further proceedings in this case. See, *e.g.*, *People v. Jamison*, 2014 IL App (5th) 130150, ¶ 18.

¶ 56 It appears from the record that the defendant has served her sentence in this case. In reaching our conclusion about the sufficiency of the evidence, we do not mean to suggest that a retrial is warranted, or even advisable–only that further proceedings are not prohibited.

¶ 57 CONCLUSION

¶ 58 For the foregoing reasons, we reverse the defendant's conviction and remand for possible further proceedings.

¶ 59 Reversed; cause remanded.