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2015 IL App (3d) 130116-U

Order filed May 21,2015

IN THE
APPELLATE COURT OF ILLINOIS
THIRD DISTRICT

A.D., 2015

THE PEOPLE OF THE STATE OF ILLINOIS,)	Appeal from the Circuit Court of the 14th Judicial Circuit, Whiteside County, Illinois,
Plaintiff-Appellee,)	
v.)	Appeal No. 3-13-0116 Circuit No. 08-CF-283
NICHOLAS T. SHELEY,)	Honorable
Defendant-Appellant.)	F. Michael Meersman, Judge, Presiding.

PRESIDING JUSTICE McDADE delivered the judgment of the court.
Justices Carter and Holdridge concurred in the judgment.

ORDER

¶ 1 *Held:* Defendant was not denied his right to a fair and impartial jury because of pretrial publicity where each of the jurors who decided the case averred that he or she could be fair and impartial and where the pretrial publicity was not so prejudicial as to preclude the jurors from acting impartially.

¶ 2 Defendant, Nicholas T. Sheley, was charged with home invasion (720 ILCS 5/12-11(a)(2) (West 2008)), residential burglary (720 ILCS 5/19-3(a) (West 2008)) and several theories of first degree murder (720 ILCS 5/9-1(a)(1), (2), (3), (b)(16) (West 2008)) in connection with the death of Russell Reed in Whiteside County. From the time of the alleged

crimes through defendant's jury trial, local media reported Reed's death in connection with a spree of eight killings that occurred in June and July 2008, for which the media identified defendant as the sole suspect. Defendant was arrested in July 2008 and charged with multiple crimes, including eight murders. From the time of the alleged murders through defendant's jury trial in the present case, there was extensive local media coverage describing the various crimes and identifying defendant as the alleged perpetrator. Approximately one year prior to defendant's jury trial on the present charges, defendant was convicted of first degree murder in Knox County for one of the killings. The Knox County proceedings were heavily reported in the local media.

¶ 3 Prior to the jury trial in the present case, defendant filed a motion for a change of venue, arguing that pretrial publicity precluded the selection of a fair and impartial jury in Whiteside County. The court denied the motion, finding that *voir dire* questioning would determine whether a fair and impartial jury could be found. At *voir dire*, potential jurors divulged their varying levels of knowledge of defendant's charges. Several potential jurors were dismissed for cause. A jury was selected, after which defendant renewed his motion for a change of venue. The court again denied the motion. The jury found defendant guilty of first degree murder, home invasion, and residential burglary. Defendant appeals, arguing that the court erred by denying his motion for a change of venue. We affirm.

¶ 4 FACTS

¶ 5 Defendant was charged in the present case for the murder of Russell Reed. The charges included several theories of first degree murder (720 ILCS 5/9-1(a)(1), (2), (3), (b)(16) (West 2008)), in addition to home invasion (720 ILCS 5/12-11(a)(2) (West 2008)), residential burglary

(720 ILCS 5/19-3(a) (West 2008)), armed robbery (720 ILCS 5/18-2(a)(1) (West 2008)), and robbery (720 ILCS 5/18-1(a) (West 2008)).

¶ 6 The alleged murder in the present case was the first of an eight-murder spree that occurred between June 23 and July 1, 2008. The various charges alleged the following: defendant beat Reed to death in rural Whiteside County, stole his car and money, and abandoned Reed's body in the trunk of another car. Defendant travelled to Galesburg in Knox County, Illinois, where he murdered Robert Randall. Defendant stole Randall's truck and returned to Whiteside County, where he murdered four more people, including a two-year-old child. Defendant then travelled to Festus, Missouri, where he murdered an elderly couple. Defendant was eventually arrested in Madison County, Illinois, on July 1, 2008.

¶ 7 The crime spree received extensive media coverage. The coverage named Sheley as the sole suspect and referenced the present case in the context of the larger murder spree. The coverage also reflected the community's response to the murder spree as it happened. Local residents were reported to be afraid to let their children play outside. Local schools postponed summer classes, and little leagues cancelled games. The coverage reported defendant's prior criminal history, including domestic batteries and armed robberies.

¶ 8 In September of 2011, defendant was tried in Knox County for the murder of Randall. The trial received extensive coverage in the local media. Prior to the Knox County trial, defendant filed a motion for a change of venue, arguing that the extensive pretrial publicity prevented the selection of a fair and impartial jury. The court denied that motion, and the cause proceeded to a jury trial, after which the jury found defendant guilty of, *inter alia*, first degree murder. On appeal, defendant argued—as he does in the present case—that he was denied a fair

trial by an impartial jury because of pretrial publicity. *People v. Sheley (Sheley I)*, 2014 IL App (3d) 120012. This court affirmed defendant's convictions. *Id.*

¶ 9 Prior to the present trial, the State sought to introduce other crimes evidence that defendant: (1) spent proceeds of the Reed burglary on cocaine; (2) burglarized the home of Robert Carrier; (3) used the proceeds of that burglary to purchase cocaine; and (4) stole a car and led police on a high-speed chase. The court ruled that evidence admissible, finding it intertwined with the evidence of the present charges and probative of defendant's motive and consciousness of guilt. The State did not seek to introduce evidence of the other murders allegedly committed by defendant.

¶ 10 Defendant filed a pretrial motion to change venue based on pretrial publicity. Included with defendant's motion were subpoenaed records from the local media documenting the extent of the pretrial publicity. The State responded that the best way to determine whether a fair and impartial jury could be seated in Whiteside County was to proceed with *voir dire*. The court agreed and denied defendant's motion.

¶ 11 Jury selection in the present case began on October 19, 2012. A total of 73 potential jurors were questioned, of which 40 were dismissed for cause. Defendant exhausted his seven peremptory challenges after four jurors had been seated. Defendant was awarded an additional three peremptory strikes when choosing alternate jurors. Two alternate jurors eventually decided the case after two original jurors were dismissed for personal reasons.

¶ 12 Prior to *voir dire* defendant raised an ongoing objection to the proceedings, arguing that his motion for change of venue should have been granted. We briefly summarize the *voir dire* proceedings of the twelve jurors who rendered defendant's verdict.

¶ 13 Juror J.M. stated that she had read about the present case when the events occurred in 2008. She was aware that defendant was found guilty of murder in the Knox County case. However, she averred that she had no opinion as to defendant's guilt or innocence in the present case and believed she could be a fair and impartial juror. The State challenged J.M. for cause, arguing that she seemed confused about the concept of reasonable doubt. The court denied that challenge, pointing out that J.M. claimed she could be fair and impartial and did not remember much about the case from the media coverage.

¶ 14 Juror A.H. testified that he heard something on the news about the killings when they happened but had not thought about the case since. He heard very little about it because he did not often watch the news. The parties accepted A.H. without objection.

¶ 15 Juror S.S. averred that she had not heard anything about the case before being called to jury duty. She spent a lot of time visiting her daughter in Pennsylvania and had avoided media coverage of the case. The parties accepted S.S. without objection.

¶ 16 Juror K.S. had heard about the case in the news but could not remember the last time he had read or heard something about the case prior to being called for jury duty. He averred that he had not formed any opinion of defendant's guilt or innocence and believed he could be a fair and impartial juror. The parties accepted K.S. without objection.

¶ 17 Juror K.R. had heard about defendant's case when the killings occurred in 2008 but had not heard much since. He stated that he had no opinion as to defendant's guilt or innocence and believed he could be a fair and impartial juror. After noting his ongoing objection to the *voir dire* proceedings, defendant accepted K.R. as a juror.

¶ 18 Juror D.C. knew about defendant's case since it happened in 2008. He noted that it was the "talk of the town" when it occurred. D.C. was aware that an elderly man had been killed, his

body was discovered in the trunk of a car, and defendant was the suspect. D.C. was also aware that defendant had been found guilty of murder in the Knox County case and was suspected of a murder in Missouri. Despite his knowledge of the cases, D.C. stated that he could be fair and impartial and had no opinion as to defendant's guilt. Defendant challenged for cause, arguing that D.C. provided inconsistent answers and had trouble hearing. The State joined in the challenge. The court denied the challenge, finding D.C. conscientious and noting that he took steps to acquire hearing aids to address his hearing problem.

¶ 19 Juror J.A. had heard about defendant's case when it happened but did not remember much about it. J.A. was aware of defendant's charges in Knox County and Missouri but did not know how any of those charges had been resolved. J.A. averred that he had no opinion as to defendant's guilt or innocence. Defendant challenged J.A. for cause, arguing that J.A.'s knowledge of defendant's other crimes rendered him incapable of being impartial. The court denied the challenge.

¶ 20 Juror D.D. had heard about defendant's case in 2008 and about the trial in Knox County. He did not know what charges were involved in the Knox County case. He had not heard anything about defendant's cases in the past six months and did not remember anything specific. He did not have an opinion as to defendant's guilt or innocence and believed that he could be impartial. Defendant challenged for cause, arguing that D.D.'s job as a mortician may have exposed him to the body of one of the victims. The court denied the challenge.

¶ 21 Juror L.K. averred that she had read about the present case when it happened, but could not recall anything specific. She harbored no opinion as to defendant's guilt. Defendant challenged L.K. for cause, which the court denied.

¶ 22 Juror P.S. averred that he had heard about defendant's case. The media coverage he encountered over the past four years led him to the opinion that defendant was guilty. After being admonished by the court, defendant averred that he could be an impartial juror and set aside his opinion of defendant. He would base his verdict on what was heard in the courtroom, not what he had heard in the media. Defendant challenged P.S. for cause, arguing he had a preconception of defendant's guilt. The court denied the challenge.

¶ 23 Juror C.M. stated that, based on the media coverage, it appeared that defendant was guilty. However, C.M. believed that everyone was innocent until proven guilty. Prior to trial, C.M. had remarked to his wife that it did not seem possible to find a fair and impartial jury in Whiteside County to hear the present case. C.M. had heard that defendant had murdered several people and defendant was found guilty of murder in Knox County. Defendant challenged C.M. for cause, arguing he had a preconceived notion of guilt. The court denied the challenge, finding C.M. educated and able to set aside any preconceived notions as to defendant's guilt.

¶ 24 Juror C.J.B. averred that she heard about the case back in 2008 but had not followed it since. She had no opinion as to defendant's guilt or innocence. Defendant challenged her for cause, which the court denied.

¶ 25 After *voir dire*, defendant filed a motion for mistrial and a change of venue, arguing that the *voir dire* proceedings established that an impartial jury was impossible to find in Whiteside County. The court denied the motion. It acknowledged that nearly all of the potential jurors knew something about the charges against defendant, however, those who were eventually selected believed they could decide the case based on the evidence and not on any preconceived notions of defendant's guilt. The court found particularly relevant that the alleged acts occurred four years before *voir dire* and that the jurors remembered very few details about the killings.

The court also noted that the amount of information was not the crucial concern. More important was the jurors' ability to set aside their knowledge of the case and render a verdict based on the evidence presented at trial.

¶ 26 Ultimately, the jury found defendant guilty of first degree murder, home invasion, and residential burglary. It found that the murder was exceptionally brutal and heinous and that Reed was over the age of 60.

¶ 27 Defendant filed a motion for a new trial, arguing, *inter alia*, that the court erred by denying his motion for change of venue. The court denied the motion. The court sentenced defendant to natural life imprisonment for first degree murder, consecutive to a 30-year term of imprisonment for home invasion and a concurrent 15-year term of imprisonment for residential burglary.

¶ 28 ANALYSIS

¶ 29 On appeal, defendant argues that the court abused its discretion by denying defendant's motion for mistrial and to change venue.¹ Because *voir dire* established that the jurors could decide the case based on the evidence presented at trial, we affirm defendant's convictions.

¶ 30 Both the United States and the Illinois Constitutions protect a defendant's right to a trial before an impartial jury. U.S. Const., amend. VI; Ill. Const. 1970, art. I, § 8. A jury's verdict must be based solely on the evidence heard during trial and not information obtained elsewhere. *Taylor*, 101 Ill. 2d at 386. If a defendant is denied his right to a fair trial because of the denial of a motion for change of venue or because of the denial of a challenge for cause to a juror, the

¹ A trial court's decision on a motion to change venue or a challenge to a juror for cause is reviewed for an abuse of discretion. *People v. Sutherland*, 155 Ill. 2d 1, 14 (1992); *People v. Taylor*, 101 Ill. 2d 377, 387 (1984).

defendant must receive a new trial. *Id.* at 387. When determining whether a defendant received a fair trial from an impartial jury, "there is no simple test which we can apply to every case." *Id.* at 391. Instead, we must base our decision on the totality of the circumstances. *Id.*

¶ 31 The right to an impartial jury does not require that jurors be completely ignorant of the case before trial. *People v. Coleman*, 168 Ill. 2d 509, 547 (1995). Heinous crimes are reported extensively in the media, and it would be unreasonable to expect jurors not to have at least heard of those cases prior to trial. *Taylor*, 101 Ill. 2d at 386. An impartial jury can be secured under such circumstances if the jurors are willing and able to put aside their preconceptions and decide the case based upon the evidence presented at trial. *Coleman*, 168 Ill. 2d at 547.

¶ 32 In some circumstances, however, the pretrial publicity is so prejudicial that jurors cannot be trusted to set aside their preconceptions and decide the case on the evidence presented. See, e.g., *Taylor*, 101 Ill. 2d at 398. In *Taylor*, the 13-year-old defendant (Taylor) was charged with the murder of a retail worker at a Peoria business. *Id.* at 382. The subsequent media coverage was "unprecedented." *Id.* at 383. The media coverage reported that Taylor's suspected codefendant had been released after passing a polygraph test, while the results of Taylor's polygraph test were "inconclusive." *Id.* *Voir dire* questioning revealed that six of the jurors who ultimately found Taylor guilty were aware that the codefendant had been released, and three connected his release to his performance on the polygraph test. *Id.* at 388. The trial court denied Taylor's motion for a change of venue and his challenges for cause to the jurors aware of the lie detector test. *Id.* at 383.

¶ 33 Our supreme court reversed the trial court, concluding that Taylor was denied a fair trial because of the "prejudicial effect of the knowledge of the lie detector test." *Taylor*, 101 Ill. 2d at 388. The supreme court noted that the results of polygraph examinations are inadmissible in

Illinois because they are highly prejudicial—so prejudicial that they are to be excluded even where a defendant agrees to admit them. *Id.* at 392. The court further explained that the "nature of the information is such that the only way to be sure that a juror is not influenced by it is to insure that the juror is never exposed to the information in the first place." *Id.* at 392-93. Based on the highly prejudicial nature of polygraph results, the supreme court held that the jurors' claims to impartiality could not be accepted, and any jurors with knowledge of the polygraph results should have been excused. *Id.* at 393.

¶ 34 Highly applicable to the present case is our decision in *Sheley I*, in which we denied an almost identical challenge by defendant. *Sheley*, 2014 IL App (3d) 120012. *Sheley I* involved defendant's challenge to his Knox County conviction for the murder of Randall, based upon pretrial publicity. The jurors' pretrial knowledge of the case in *Sheley I* is similar to that of the jurors in the present case. Multiple jurors in *Sheley I* were aware before trial of the charges against defendant relating to the Randall murder and other charges related to the other killings. *Id.* ¶¶ 11-13. One juror—Juror J.K.—stated that it was not hard to form an opinion of defendant's guilt based on the pretrial publicity. *Id.* ¶ 12. On appeal, defendant cited *Taylor* and argued that the jurors' knowledge of the other murders was so prejudicial that an impartial jury could not be seated. *Id.* ¶ 27.

¶ 35 This court upheld defendant's conviction on appeal. *Sheley*, 2014 IL App (3d) 120012, ¶¶ 29-30. We noted that the selected jurors had averred that they could set aside any information they had heard about the charges and decide the case based on the evidence at trial. The jurors were subject to extensive questioning and those jurors who were incapable of judging the case impartially were dismissed for cause. *Id.* The court distinguished *Taylor*, finding the

jurors' knowledge of defendant's other charges—although potentially prejudicial—was not so harmful as the polygraph evidence at issue in *Taylor*. *Id.* ¶ 30.

¶ 36 In the present case, we conclude that the court did not abuse its discretion by denying defendant's motion for a change of venue. Here, 11 out of the 12 jurors were aware of the charges against defendant prior to being selected for jury duty. That in itself is not enough to require reversal, as "[t]otal ignorance of the case is exceptional, and it is not required." *Taylor*, 101 Ill. 2d at 386. The majority were also aware—to varying degrees—of other charges against defendant, including his conviction for murder in Knox County. Knowledge of other crimes committed by a defendant can be prejudicial. However, we agree with our ruling in *Sheley I* that such information is not as prejudicial as the polygraph evidence at issue in *Taylor*. Unlike polygraph results, evidence of other crimes is admissible at trial under appropriate circumstances. Other crimes evidence is not the kind of "peculiarly persuasive material," the effect of which cannot be determined from *voir dire*. *Id.* at 395.

¶ 37 Here, the extensive *voir dire* questioning established that the jurors could render an impartial verdict. Each juror stated that, despite any preexisting knowledge of the case, he or she could render a verdict based solely on the evidence presented at trial. Any potential jurors who could not claim impartiality were dismissed for cause. Jurors P.S. and C.M., who stated that defendant appeared guilty based on the media coverage, averred that they could set aside what they had heard in the media and decide the case based only on the evidence presented. Their comments were similar to those of Juror J.K. in *Sheley I*, who was nonetheless held to be an impartial juror based on his ability to set aside any preconceived notions of defendant's guilt. In addition, the present trial occurred more than four years after the killings, a year more removed than in *Sheley I*. As the trial court noted, the time lapse limited the jurors' memory of the crimes,

as they stated they remembered few details of the alleged crimes. We agree with the trial court that the information about defendant's charges did not prevent the jurors from being impartial.

¶ 38

CONCLUSION

¶ 39

The judgment of the circuit court of Whiteside County is affirmed.

¶ 40

Affirmed.