FILED
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CLERK SUPREME COURT

IN THE COURT OF APPEALS OF IOWA

STATE OF IOWA,	)	
Plaintiff-Appellee,	)	Filed May 31, 1988
vs.	)	
MONROE JOHNSON,	)	8-36 87-248
Defendant-Appellant.	)	

Appeal from the Iowa District Court for Woodbury County (No. 41874), Edwin L. Mitchell and Michael S. Walsh, Judges.

Defendant appeals from his convictions, following a jury trial, for the crimes of sexual abuse in the third degree, pandering, and harboring a runaway child. **AFFIRMED.**

Charles L. Harrington, Chief Appellate Defender, for defendant-appellant.

Thomas J. Miller, Attorney General; Mark Sabrowski and Julie Ann Halligan, Assistant Attorney General; and Peter E. Van Etten, Assistant Woodbury County Attorney, for plaintiff-appellee.

Heard by Donielson, P.J., and Sackett and Habhab, JJ.

HABHAB, J.

The defendant was accused of harboring a thirteen-year-old runaway girl, arranging for her to work as a prostitute, and sexually abusing her. He was charged in a four-count trial information with sexual abuse in the first degree, pimping, pandering, and harboring a runaway child.

Four days before trial was scheduled to begin, the defendant was arrested on an unrelated federal bank robbery charge. This arrest triggered certain local newspaper articles and broadcast news accounts; these accounts not only reported the bank robbery arrest, but also referred to the charges involved here and to the defendant's extensive criminal history. In response to this publicity, the defendant filed motions requesting both a change of venue and a continuance. (His theory in seeking a continuance was that the passage of some time would dampen some of the prejudice resulting from the publicity.) The district court denied both motions.

After a trial, the jury found the defendant guilty of third-degree sexual abuse, pandering, and harboring a runaway. The defendant has appealed from the resulting convictions.

I.

The defendant contends the district court erred by rejecting his motions for change of venue and for a continuance. He argues the eve-of-trial publicity after his bank robbery arrest was so inflammatory that a fair trial was impossible without either a change of venue or a continuance.

Iowa Rule of Criminal Procedure 10(10)(b) provides that a court shall grant a change of venue where the evidence demonstrates that "such degree of prejudice exists in the county in which the trial is to be had that there is a substantial likelihood a fair and impartial trial cannot be preserved with a jury selected from that county . . . ." The defendant "must show either actual

prejudice on the part of the jury or must show that the publicity attending the case was so pervasive and inflammatory that prejudice must be presumed." State v. Robinson, 389 N.W.2d 401, 403 (Iowa 1986). Media accounts which are factual and informative in tone will not be presumed to have created prejudice against the defendant. See State v. Spargo, 364 N.W.2d 203, 208 (Iowa 1985).

The media coverage to which the defendant objects was largely factual in tone and not inflammatory. In addition, of the twelve individuals who served as jurors for the defendant's trial, only three had heard any media coverage relating to the defendant. A review of voir dire reveals that these three jurors did not hear anything that would prevent them from following the court's instructions and give the defendant a fair trial. Indeed, they testified they would.

The record reveals that the court took extra precautionary procedures to insure that the defendant's jury was not being influenced by publicity. First, the defendant's jury was chosen only after an extensive voir dire proceeding. As indicated earlier, only three of the twelve jurors heard any reports and there is no showing that the three heard anything to prevent them from being impartial.

Second, on October 2, 1986, before the first witness was sworn in, Judge Mitchell held individual discussions with each juror to again ascertain whether they had been exposed to any media accounts. The court was satisfied that none of the jurors had been affected and further stated:

> The Court is impressed with the jury's testimony this morning, indicating that they are fully aware of the need to avoid such matters and that they will, in fact, actively seek to avoid any publicity which would in any way affect their judgment in this trial.

The defendant failed to show either actual prejudice on the part of the jury or show that the publicity attending the case was so pervasive and inflammatory that prejudice was to be presumed. Robinson, 389 N.W.2d at 403. There-

fore, we uphold the trial court's decision to overrule the defendant's motion for a change in venue.

Because there was no prejudice to the defendant from the publicity in question, the trial court did not abuse its discretion in overruling the defendant's motion for a continuance. We therefore affirm.

II.

The defendant contends the district court erred by overruling his challenges for cause to two potential jurors. He asserts he was prejudiced by this action because he was required to exercise peremptory strikes that he might otherwise have used to eliminate different potential jurors. The defendant bases his claim on Iowa Rule of Criminal Procedure 17(5)(k), which provides in part:

> 5. Challenges for Cause. A challenge for cause may be made by the state or defendant, and must distinctly specify the facts constituting the causes thereof. It may be made for any of the following causes.
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> * * *
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> Having formed or expressed such an opinion as to the guilt or innocence of the prisoner as would prevent the juror from rendering a true verdict upon the evidence submitted on the trial.

Id.

It is within the trial court's discretion to allow or disallow challenges to jurors for cause, and the reviewing court will not interfere with the ruling unless there has been a clear abuse of discretion. State v. Rhodes, 277 Iowa 332, 288 N.W. 98 (1938), cert. denied, Rhodes v. State of Iowa, 310 U.S. 626, 60 S. Ct. 980, 84 L. Ed. 1398 (1940); State v. Johnson, 145 N.W.2d 8, 10 (1966).

In determining a prospective juror's qualifications, we must look to the entire record of the examination. In this respect the trial judge sits as the judge of the facts on the question of existence of a ground for challenge. State v. Williams, 285 N.W.2d 248, 267 (Iowa 1979), cert. denied, Williams v. Iowa,

446 U.S. 921 (1980). When we consider the record as a whole as to the juror challenges, we determine the trial court did not abuse its discretion.

As to both panelists that were challenged, their examination reveals that each was understandably uncomfortable with the issues involved in this case. However, as stated by the court, "a case such as this is difficult and probably uncomfortable for literally everyone." But the relevant inquiry is whether the particular juror could be fair and would follow the court's instructions. Both panelists answered they could.

Appellate counsel extracted certain portions of the record which, when taken alone, may cause concern as to whether the prospective juror was able to render a true verdict upon the evidence submitted on the trial. But when the extracted portion is considered with the prospective juror's entire testimony, we conclude that the trial court's ruling was correct. However, we believe the following admonition from State v. Beckwith, 242 Iowa 228, 238-39, 46 N.W.2d 20, 26 (1951), has significance:

> We have said, and have repeated it often, that trial courts should use the utmost caution in overruling challenges for cause in criminal cases when there appears to be a fair question as to their soundness. Although this admonition has been too often disregarded, we again call attention to the language in State v. Teale, 154 Iowa 677, 682, 135 N.W. 408, 410 [(1912)], wherein we said: "We are constrained to say in this connection, however, that we see no occasion in the ordinary administration of the criminal law in this state for the close rulings on the qualifications of jurors that are constantly brought to our attention. Although a ruling may be technically right, if it must be so doubtful as to raise a fair question as to its correctness, it is far better to give the accused the benefit of the doubt, to the end that he and all other men may be satisfied that his rights have not been invaded. Confidence in the fairness and impartiality of each member of a jury, which shall be sworn to try a man on a charge involving his life or liberty, is of the greatest importance to the welfare of the state. Indeed, it is of such paramount importance to every citizen that the time and expense necessary to secure jurors as to whom no doubt may rightly exist is an insignificant consideration."

The contentions of the defendant do not require reversal. We affirm.

AFFIRMED.