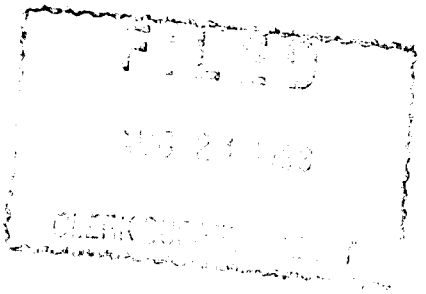
IN THE COURT OF APPEALS OF IOWA

No. 8-380 / 98-0027
Filed August 28, 1998



STATE OF IOWA,
Appellee,

vs.

DANIEL J. PEDUZZI,
Appellant.

Appeal from the Iowa District Court for Marion County, Terry L. Wilson, Judge.

On appeal from his convictions for domestic abuse assault with injury in violation of Iowa Code sections 708.1 and 708.2A(2)(b) (1997), and interference with official acts in violation of Iowa Code section 719.1, defendant claims the district court committed reversible error by denying his challenge to the jury panel. **AFFIRMED.**

Ronald F. Walker, Knoxville, for appellant.

Thomas J. Miller, Attorney General, Mary Tabor, Assistant Attorney General, Terry E. Rachels, County Attorney, and Lois Vroom, Assistant County Attorney, for appellee.

Considered by Sackett, P.J., and Huitink and Streit, JJ. Vogel, J., takes no part.

STREIT, J.

Peduzzi appeals claiming the trial court erred in denying his motion challenging the jury panel for bias. Because Peduzzi has not proven by substantial evidence the jury was prejudiced to the extent he was denied a fair and impartial trial, we affirm.

I. Background Facts & Proceedings.

Peduzzi was charged with carrying a concealed weapon, domestic abuse assault with injury, and interference with official acts. On the day of his trial, a display designed by the Iowa Coalition Against Domestic Violence was located throughout the first floor of the courthouse. The display consisted of red, life-size cardboard figures representing victims of domestic violence. Brochures on domestic violence were available near the display.

The defendant filed a motion challenging the jury panel claiming the display deprived him of his right to obtain a fair trial. He argues the display influenced potential jurors. The motion was denied. The potential jurors were questioned about whether they could make an impartial decision after being exposed to the display.

The jury found the defendant guilty of domestic abuse assault with injury and interference with official acts.

II. Standard of Review.

Peduzzi claims his constitutional right to a fair trial was denied because the jury panel was biased by the display. *See* U.S. Const. Amend. VI. Appellate review of constitutional claims is de novo. *State v. Veal*, 564 N.W.2d 797, 806 (Iowa 1997).

III. Effect of Domestic Abuse Display on Jury.

Peduzzi claims the jury panel was biased because they saw the domestic abuse display upon entering the courthouse. To prove his claim, Peduzzi must show by substantial evidence exposure to the display prejudiced the jury panel to the extent it was not possible to pick a fair and impartial jury. *See State v. Farmer*, 492 N.W.2d 239, 241(Iowa App. 1992)(defendant had burden to show by substantial evidence pretrial publicity prejudiced the jury panel to the extent it was not possible to pick a fair and impartial jury).

When determining jury prejudice, the crucial question is not what a juror has been exposed to, but whether the juror holds such a fixed opinion of the merits of the case he or she cannot judge impartially the guilt or innocence of the defendant. *State v. Lanscak*, 404 N.W.2d 192, 193 (Iowa App. 1987); *see also State v. Johnson*, 318 N.W.2d 417, 422 (Iowa 1982)(exposure to influential material by itself does not create a substantial likelihood of prejudice in the minds of prospective jurors.).

In this case, each juror was questioned during voir dire as to whether their determination of Peduzzi's innocence or guilt would be biased by their exposure to

the display. Peduzzi argues the fact the jurors were questioned during voir dire about the display helps prove his claim the jurors were prejudiced. To the contrary, vigorous voir dire of prospective jurors is a safeguard which insures a fair and impartial jury in the face of material which may cause impartiality or prejudice. *See State v. Farmer,* 492 N.W.2d at 241. Some of the jury panel in this case indicated they could not fairly decide Peduzzi's case because of the subject matter of domestic abuse.[1] These potential jurors were dismissed. Of the panel members chosen for jury duty, each indicated during voir dire they would not be biased by the display or the issue of domestic abuse.

The display was an statement against domestic violence. However, it was not placed at the Marion County courthouse in response to Peduzzi's trial or to influence the outcome. No view on Peduzzi's guilt or innocence was expressed by the display. The display was a memorial which moved across Iowa. Coincidently Peduzzi was on trial for domestic abuse when the display was located at the Marion County Courthouse. The underlying message of the display—that domestic abuse has real victims—is a recurrent message in this society. It is unlikely potential jurors had not already been exposed to a similar message.

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[1] Even the jurors who indicated they could not judge Peduzzi's guilt or innocence fairly because of the issue of domestic abuse, did not specifically indicate they had formed their beliefs after viewing the display. Rather, it is likely their views on the issue of domestic abuse we already formed before viewing the display.

Because there is nothing in the record which proves by substantial evidence the jury was prejudiced by the display and Peduzzi was denied his right to a fair and impartial trial, his claim is denied.

AFFIRMED.

Sackett, P.J., and Huitink, J., concur specially.

SACKETT, J. (concurring specially)

I concur specially. Defendant was convicted of domestic assault after he allegedly injured his girlfriend during an argument. She did not want him charged or prosecuted. The police came to the scene because defendant called 911. At trial, the girlfriend testified she pushed defendant. He pushed her. He then used a martial arts hold he was taught to use so he would not be hurt and he would not hurt her. She testified it did not hurt her, though it left a mark.

On the morning of the trial, in the courthouse lobby where all jurors entered, was a display set up by the Iowa Coalition Against Domestic Violence. The display advocated positions on issues relevant to defendant's trial. Defendant made a motion challenging the jury panel as being prejudiced by the display and contending the display violated his right to a fair trial. Defendant contends his motion should have been sustained and he should have been tried to a different panel. He contends he is entitled to a new trial.

The majority on appeal has found defendant was not prejudiced by the display. I agree with the majority that, under this record, the defendant has failed to make the required showing to succeed in being granted a new trial. However, my concurrence in the result should not be interpreted as condoning displays within a courthouse facility that advocates a position on issues being litigated in the facility.

Through the two centuries of American jurisprudence, rules have been carefully crafted to provide for fair trials attempting to assure an accused is tried and

convicted *only* on evidence deemed admissible in a court of law. To assure a justice system that is both fair and perceived as fair, displays or literature that emphasizes or advocates an issue in a trial, even if the position is known and is valid, should not be set up within court facilities. Displays in a court facility can appear to have the approval of the facility. They further can appear to show the court subscribes to the group's position.

I respect and applaud advocacy groups. They are important in our society and should be nurtured. Yet, to allow courthouse lobbies to be their forums when trials are in progress puts the justice system at risk of appearing to be controlled by those able to muster the greatest force.

Political advocacy is forbidden in and near polling places. We recognize, in entering a polling place, one should be entering neutral ground. I believe our courthouses should offer litigants the same neutrality.

Huitink, J., joins this special concurrence.