FILED
AUG 24 1988
CLERK SUPREME COURT

IN THE COURT OF APPEALS OF IOWA

RANDY J. EKSTROM,	)	
Petitioner-Appellant,	)	
vs.	)	8-31 86-1832
STATE OF IOWA,	)	119
Respondent-Appellee.	)	

Appeal from the Iowa District Court for Webster County (No. 52329), James C. Smith, Judge.

Ekstrom was convicted of two counts of first degree murder. Following denial of his direct appeal, Ekstrom brought this action for postconviction relief. **AFFIRMED.**

Jerry L. Schnurr III of the Law Offices of M. Gene Blackburn, Fort Dodge, for petitioner-appellant.

Thomas J. Miller, Attorney General, and Ann E. Brenden, Assistant Attorney General, for respondent-appellee.

Heard by Oxberger, C.J., and Donielson and Sackett, JJ. Habhab, J., takes no part.

OXBERGER, C.J.

Appellant Randy J. Ekstrom was convicted of two counts of first degree murder. Following denial of his direct appeal, Ekstrom brought this action for postconviction relief. Ekstrom appeals from the trial court's denial of his claim. We affirm.

Ekstrom raises two issues in his appeal:

1. Whether appellate counsel provided ineffective assistance at trial for failing to raise the change of venue issue on direct appeal; and

2. Whether the trial court erred in denying the motion for change of venue.

Our review of this constitutionally-based claim is de novo. Reversal is required only when the trial court has abused its discretion in denying the motion. State v. Spargo, 364 N.W.2d 203, 207 (Iowa 1985).

Defendant does not claim actual prejudice on the part of the jury, so we shall examine only the issue of whether the publicity attending his case was so pervasive and inflammatory that prejudice must be presumed.

Defendant objects to the media's use of the word "murder." He states that there are other and less dramatic and inflammatory words to describe a death. That "by using the word murder the seed was planted that whoever was suspected, arrested, and charged in connection with these deaths had committed murder." The use of the term "murder"

is factually and logically used here. The victims' bodies were found in a trunk of their vehicle with bullet holes.

We have reviewed the news reports and find that on the whole they were objective factual reports expressing little if any view on Ekstrom's guilt or innocence. Ekstrom points to nothing in the reports that is inaccurate, misleading, or obviously intended to inflame the public against him.

In State v. Misner the court said:

> Exposure to newsworthy events will not alone give rise to a presumption of prejudice. Additionally, to the extent particular jurors may be substantially prejudiced against a defendant, rigorous voir dire can be trusted to expose those prejudices.

410 N.W.2d 216, 219-20 (Iowa 1987) (citations omitted).

Ekstrom further states that after the trial court originally dismissed his motion for change of venue, the court offered to change venue to Boone County. Ekstrom claims this proves that the court was satisfied that there was a substantial likelihood that a fair and impartial jury could not be chosen in Webster County.

We do not leap to the same conclusion as the defendant. The trial judge appears to be willing to go the extra mile to provide justice. The motion for change of venue had been denied. The trial court appears to be attempting to accommodate defense counsel's wishes. We do not conclude the trial court was stating Ekstrom could not receive a fair trial in Webster County. The defense coun-

sel in rejecting the trial court's offer to transfer venue to Boone County seems to be saying he was less concerned about the fairness of jurors in Webster County than he was concerned with trying the case in a less populated county such as Boone County.

The trial court did not abuse its discretion in ruling on the motion for change of venue. Therefore, appellate counsel could not have been ineffective for failing to raise the issue on direct appeal.

AFFIRMED.