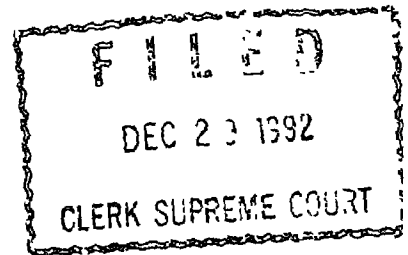


IN THE COURT OF APPEALS OF IOWA

No. 2-583 / 90-1913



STATE OF IOWA,

Plaintiff-Appellee,

vs.

WILLIAM SIMPSON EDWARDS,

Defendant-Appellant.

Appeal from the Iowa District Court for Woodbury
County, Terry L. Huitink, Judge.

Edwards appeals from his convictions, following a jury
trial, of first-degree murder in violation of Iowa Code
section 707.2 (1991) and third-degree sexual abuse in
violation of Iowa Code section 709.4(3) (1989). **AFFIRMED.**

Linda Del Gallo, State Appellate Defender, and B. John
Burns, Assistant State Appellate Defender, for appellant.

Bonnie J. Campbell, Attorney General, Thomas G. Fisher,
Jr., Assistant Attorney General, and Thomas S. Mullin,
County Attorney, for appellee.

Heard by Donielson, P.J., and Sackett, J., and Keefe,
S.J.* Schlegel, J., takes no part.

*Senior Judge from the 1st Judicial District serving on
this court by order of the Iowa Supreme Court.

SACKETT, J.

Defendant-appellant William Simpson Edwards appeals his conviction, following a jury trial, of first-degree murder in violation of Iowa code section 707.2 (1991). Defendant contends (1) the district court abused its discretion in denying his motion for change of venue, (2) his constitutional right to a fair trial by a cross-section of the community was violated, and (3) he was denied effective assistance of trial counsel because of his attorney's failure to object to what he contends were inflammatory and irrelevant statements made by the county attorney in closing arguments. We affirm.

Thirteen-year-old C.A.H. did not return home from school on February 28, 1989. A month later, a body identified as that of C.A.H. was found on a farm building site north of Hornick, Iowa. The state medical examiner performed an autopsy and determined the victim died from being struck on the head with a heavy blunt instrument. A stain on her clothing was determined to be human seminal fluid and when compared to the D.N.A. content of a sample of defendant's blood was found to match defendant's blood. At trial, the opinion was offered that the chances of a coincidental match were approximately 1 in 650,000.

Defendant was charged with the crime. Defendant moved for a change of venue to Polk, Black Hawk, or Linn County, both before trial and again after an extensive voir dire

examination of the jury panel. Defendant contends the venue of his trial should have been changed because of extensive media coverage in Woodbury County. He contends coverage of (1) the distress of the victim's family and their efforts to establish hotlines to spare families of runaway children similar grief, (2) the difficulties authorities had in identifying the decomposed body, (3) the local debate over reinstatement of the death penalty, allegedly sparked by this occurrence, and (4) the coverage of a sexual assault prosecution defendant was facing in Illinois justified the trial court granting his motion before the jury was empaneled. Defendant further contends of the first seventy-one panelists called to sit on the jury, only twelve said they had no knowledge of the case, thirty admitted having learned of the case from the media, nineteen had some connection with individuals involved in the case, including nine who knew or may have known a member of the victim's family, thirteen were aware of a trial in Woodbury County a week earlier where the reliability of D.N.A. evidence was a primary issue. Defendant contends these are further reasons supporting the granting of his motion.

In reviewing a motion denying a change of venue we determine whether the trial court has abused its discretion. See State v, Siemer, 454 N.W.2d 857, 860 (Iowa 1990). We review the record de novo because defendant has

a right under both the state and federal constitutions to a fair trial. See id.

The relevant question is not what exposure to events the jury panel has had, rather, the question is whether we find the panel holds an opinion that prevents the members from impartially determining the guilt or innocence of defendant. See State v. Gavin, 360 N.W.2d 817, 819 (Iowa 1985).

To be successful on this challenge, defendant must show us either actual prejudice or that the publicity was so pervasive that we must presume prejudiced. See Siemer, 454 at 860; State v. Spargo, 364 N.W.2d 203, 207 (Iowa 1985); Garvin, 360 N.W.2d at 819.

Defendant has not shown actual prejudice, therefore, we review to see if we can presume prejudice.

We have carefully examined and reviewed the evidence of television, radio, and newspaper reports. Defendant was not connected with the case in any way until after the body was found. Defendant's name was first linked with the case on July 21, 1989. Flight 232 crashed in Sioux city on July 19 of that year. There was publicity when defendant was returned to Sioux City and arraigned in November. The trial did not commence until October 1990. Contrary to defendant's contentions, our review of voir dire does not reveal that the jurors remembered details or that they held preconceived determination of guilt. We do not find an

abuse of discretion. See Siemer, 454 N.W.2d at 861, State v. Walters, 426 N.W.2d 136, 139-40 (Iowa 1988); State v. Cornelius, 293 N.W.2d 267, 269 (Iowa 1980).

Defendant next contends his jury panel was not drawn from a fair cross-section of the community. Defendant's argument on this issue has to be rejected under the dictates of State v. Jones, ____ N.W.2d ____ (Iowa 7-22-92). Even taking defendant's evidence in the most favorable light, he has failed to demonstrate an absolute disparity greater than 1.16 percent.

Defendant's last contention is his trial counsel was not effective in failing to object to the following:

Yesterday you were sent home sometime before noon Undoubtedly you looked around as you left the . . . courthouse building. Undoubtedly you noticed what a lovely fall day it was yesterday. At about 3:15 . . . you saw children scurrying home from school But one child did not return home from school yesterday afternoon This happened because of the selfishness of one man. William Simpson Edwards A man who violated the most sacred law of God and our society What he did was he took the world's most prized possession. The life of a child. Before doing that he used her sexually, and when he was finished with her, he threw her away like a bag of garbage What kind of a man is this? How did he repay the generosity of people who put them up, let them live in their house, who paid for their meals? . . . This is what he gave us back. This is how he repaid the generosity of people in our county. This is what he left. That's all there is left of her. Her blood on this jacket, her blood on these clothes, pair of mittens. That's all that's left. Except for one thing. What's also left of her was on this board. Her blood. She left her blood here. This defendant has had a fair trial as guaranteed him by the Constitution. He did not give [the victim] a fair trial. He did not think of her rights to live,

her right to grow up, her right to marry, her right to have children and grandchildren. She didn't get a fair month-long trial. She got four or five or six minutes of life after he struck her. And she got dumped in a corn crib like a sack of garbage Bring back a verdict that you can be proud of.

Defendant contends this argument was calculated to inflame the passions or prejudices of the jury and were an unjustified attempt to humanize the victim. The county attorney's remarks are the type of comments that seek to arouse prejudice against the defendant in the minds of the jury and are the type of comments that should be used with extreme care. See generally State v. Grady, 183 N.W.2d 707, 711 (Iowa 1971). Where the issue at trial is the determination of guilt, reference to the murder victim's family's loss should be used sparingly unless it is relevant to a particular issue in dispute. See State v. Broughton, 450 N.W.2d 874, 876-77 (Iowa 1990). We cannot say if the proper objection were made a portion of this argument should not have been moderated or stricken. This, however, is not our first concern. Defendant brings this issue before us on an ineffective assistance of counsel claim. Established principles govern our review of defendant's sixth amendment claim that his trial attorney was not effective. Our ultimate concern is with "the fundamental fairness of the proceeding whose result is being challenged. See Strickland v. Washington, 466 U.S. 668, 696, 104 S. Ct. 2052, 2069, 80 L. Ed. 2d 674, 699

(1984). We must consider whether counsel's conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied on as having produced a just result. Id. at 686, 104 S. Ct. at 2064, 80 L. Ed. 2d at 692-93. We review de novo the totality of relevant circumstances. See State v. Risdal, 404 N.W.2d 130, 131 (Iowa 1987).

Defendant bears the burden of proving by a preponderance of the evidence that both (1) his trial counsel failed to perform an essential duty, and (2) prejudice resulted. Id. at 131-32. To prove his counsel failed to perform an essential duty, defendant must overcome the strong presumption his trial counsel's actions were reasonable under the circumstances and fell within the normal range of professional competency. See State v. Hildebrant, 405 N.W.2d 839, 841 (Iowa 1987). To prove prejudice resulted from trial counsel's failure to perform an essential duty, defendant must show a reasonable probability that if his trial counsel had not erred, the result of his trial would have been different. A reasonable probability is a probability "sufficient to undermine confidence in the outcome. Strickland, 466 U.S. at 694, 104 S. Ct. at 2068, 80 L. Ed. 2d at 698.

The first question we address is whether defendant has shown a reasonable probability that if this particular jury argument had not been made, the result of his trial would have been different.

The evidence against defendant was very substantial. Defendant had assisted Patti Peterson in providing child care for the victim and her sister in February 1989. Defendant was black. A witness identified a black man picking up a girl bearing the victim's description on the day she disappeared. Seminal fluid found on the victim's clothing was found to match defendant's D.N.A. and there was evidence that the chance of coincidental match was 1 to 650,000. Two men incarcerated with defendant in the Woodbury County jail in May 1990 testified defendant told them during an exercise period that he had had consensual sexual relations with the victim but that she terminated the intercourse claiming that she was going to tell. He said when she threatened to tell others, he struck her on the back of the head with a board, killing her. With this evidence against defendant, we do not find that had the jury argument not been given, he would not have been convicted. We need make no determination whether defendant's trial counsel erred in not objecting to the testimony.

AFFIRMED.