

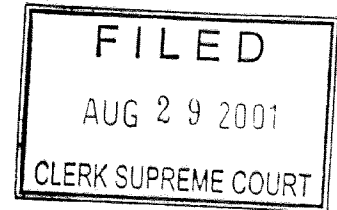
IN THE COURT OF APPEALS OF IOWA

No. 1-421 / 00-306
Filed August 29, 2001

STATE OF IOWA,
Plaintiff-Appellee,

vs.

WILLIAM DENNIS MOREHEAD,
Defendant-Appellant.



Appeal from the Iowa District Court for Polk County, Linda R. Reade,
Judge.

The defendant appeals from the judgment and sentence entered upon jury verdicts finding him guilty of first-degree robbery in violation of Iowa Code section 711.2, operating a motor vehicle without the owner's consent in violation of section 714.7, receipt, transportation, dominion and control of a firearm by a felon in violation of section 714.26; and trafficking in stolen weapons in violation of section 714.16A. **AFFIRMED.**

Linda Del Gallo, State Appellate Defender, and Robert P. Ranschau,
Assistant State Appellate Defender, for appellant.

Thomas J. Miller, Attorney General, Kevin Cmelik, Assistant Attorney
General, John P. Sarcone, County Attorney, and George Karnas, Assistant
County Attorney, for appellee.

Considered by Sackett, C.J., and Vogel and Vaitheswaran, JJ.

VAITHESWARAN, J.

An attendee at a convention of ministers was robbed at gunpoint outside an Altoona motel. The attendee later identified the robber as William Dennis Morehead. Following a high-speed chase, state troopers apprehended Morehead in a stolen car. They discovered a gun in the trunk of the car matching the description of a stolen gun and the description of the gun used in the Altoona robbery.

The State filed charges and the case proceeded to a jury trial. Attorneys conducted preliminary off-the-record questioning of prospective jurors, then held on-the-record discussions in chambers with four members of the pool who stated they had heard of the case. One of the four jurors was retained. Two more were removed for cause. After the district court denied defense counsel's motion to remove the fourth prospective juror for cause, defense counsel used one of her strikes to remove him.

The jury that was ultimately impaneled convicted Morehead of first-degree robbery, operating a vehicle without the owner's consent, receipt, transportation, dominion and control of a firearm by a felon, and trafficking in stolen weapons. See Iowa Code §§ 711.2, 714.7, 724.26, 724.16A (1997). The court adjudged him guilty and sentenced him to prison terms not exceeding twenty-five, two, five, and ten years respectively, to be served consecutively. This appeal followed. The sole issue on appeal is whether the district court committed reversible error in refusing to remove the fourth prospective juror for cause. We conclude it did not and, accordingly, we affirm.

Iowa Rule of Criminal Procedure 17(5)(k) governs challenges for cause.¹ The question to be answered in applying this rule is "whether the juror holds such a fixed opinion on the merits of the case that he or she cannot judge impartially the guilt or innocence of the defendant." *State v. Gavin*, 360 N.W.2d 817, 819 (Iowa 1985). A district court is afforded broad discretion in making this determination. *State v. Tillman*, 514 N.W.2d 105, 107 (Iowa 1994). Therefore, our review is for abuse of discretion. *State v. Simmons*, 454 N.W.2d 866, 868 (Iowa 1990). However, if we find a district court abused its discretion in denying a challenge for cause, we need not reverse where the biased juror has been removed through the exercise of a strike. *State v. Neuendorf*, 509 N.W. 2d 743, 747 (Iowa 1993).² Under these circumstances, the defendant must establish based on matters appearing of record that the impaneled jury was biased. *Id.*; see also *State v. Escobedo*, 573 N.W.2d 271, 276 (Iowa Ct. App. 1997) (noting claims that jury was not impartial must be grounded on evidence appearing in the record).

Morehead contends the district court abused its discretion in denying his challenge for cause. Assuming without deciding that he is correct, his appeal

¹ Under this rule, a prospective juror may be stricken if the juror has "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."

² The United States Supreme Court recently held that a defendant's exercise of a peremptory challenge under Federal Rule of Criminal Procedure 24(b) is not impaired when the defendant chooses to use a peremptory challenge to remove a juror who should have been removed for cause. *United States v. Martinez-Salazar*, 528 U.S. 304, 316, 120 S. Ct. 774, 782, 145 L. Ed. 2d 792, 804 (2000). The Court had previously held that the loss of a peremptory challenge in this manner did not amount to a violation of the constitutional right to an impartial jury as long as the sitting jury was impartial. *Ross v. Oklahoma*, 487 U.S. 81, 87, 108 S. Ct. 2273, 2278, 101 L. Ed. 2d 80, 89 (1988). The court also held in *Ross* that this scenario was not a due process violation because the defendant received the number of challenges afforded him under state law. *Id.*

must nevertheless fail because he did not establish that the jury hearing his case was anything but impartial. The parties agreed to in-chambers questioning of prospective jurors with whom they had concerns. They selected five members of the pool for this process: four who stated in preliminary questioning that they had been exposed to pre-trial publicity, and a fifth whose son had been represented by defense counsel. The district court then asked counsel whether there were “[a]ny other jurors that we need to talk to individually that we know of at this stage?” Defense counsel answered “No, Your Honor.” Although defense counsel later challenged the entire pool for cause on the ground that thirteen of the thirty members had been victims of crimes similar to those with which Morehead was charged, she elected not to pursue individual questioning of the thirteen after the district court denied her challenge. There is also no record showing defense counsel exercised all of her remaining strikes, indicating she would have exercised the one she was forced to use to strike the fourth juror. See *Martinez-Salazar*, 528 U.S. at 317, 120 S. Ct. at 783, 145 L. Ed. 2d at 804 (concurring opinion) (noting defendant did not show that if he had not used peremptory challenge curatively, he would have used it peremptorily against another juror); *Tillman*, 514 N.W.2d at 108 (noting defendant must show jury was biased as a result of the defendant’s use of all of the peremptory challenges); Cf. *United States v. Taylor*, 207 F.3d 452, 454 (8th Cir. 2000) (noting defendant claimed no bias with respect to jury panel ultimately rendering conviction). For these reasons, we conclude Morehead failed to establish that reversal is warranted. We affirm Morehead’s judgment and sentences.

AFFIRMED.