IN THE COURT OF APPEALS OF IOWA

No. 4-486 / 93-906

FILED
DEC 14 1994
CLERK SUPREME COURT

STATE OF IOWA,

Appellee,

vs.

JOSEPH HOPKINS, JR.,

Appellant.

Appeal from the Iowa District Court for Linn County, August F. Honsell, Judge.

Joseph Hopkins, Jr. appeals the judgment and sentence entered upon his convictions, following a jury trial, of first-degree murder in violation of Iowa Code sections 707.1 and 707.2 (1993). **AFFIRMED.**

Linda Del Gallo, State Appellate Defender, for appellant.

Bonnie J. Campbell, Attorney General, Robert P. Ewald, Assistant Attorney General, and Denver D. Dillard, County Attorney, for appellee.

Considered by Donielson, C.J., and Sackett and Cady, JJ.

DONIELSON, C.J.

Defendant Joseph Hopkins, Jr., appeals from the judgment and sentence entered following his conviction of murder in the first degree. He asserts the district court abused its discretion in not granting a change of venue and it erred in denying his motion to suppress evidence seized following his arrest. We have reviewed the parties' arguments and the applicable law and affirm the district court's rulings.

I. MOTION FOR CHANGE OF VENUE

Iowa Rule of Criminal Procedure 10(10)(b) mandates the granting of a motion for change of venue if the trial court determines--

> 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 the county....

In order to obtain a reversal of a conviction premised on a denial of a change of venue, a defendant must demonstrate either actual prejudice on the part of the jury or that the publicity attending the case was so pervasive and inflammatory prejudice must be presumed. State v. Green, 457 N.W.2d 20, 23 (Iowa App. 1990).

Hopkins does not assert the presence of actual prejudice. Instead, he argues the publicity attendant to his case was so pervasive and inflammatory, prejudice must be presumed. Whether publicity rises to the level of being

presumptively prejudicial depends on the nature, tone, accuracy and timing of the news reports and their impact on potential jurors. See State v. Siemer, 454 N.W.2d 857, 860 (Iowa 1990).

Mere exposure to news accounts does not, standing alone, create a substantial likelihood of prejudice. Green, 457 N.W.2d at 23. The record reflects this case had fairly extensive media coverage, but the vast majority of it was factual and informative in tone. The publicity was heavy during the period immediately following the victim's death, but had diminished significantly at the time trial was held over six months later.

Trial was scheduled to begin February 1, 1993, but, for reasons unrelated to the issue of venue, the proceedings resulted in a mistrial. Prior to commencement of the second trial, Hopkins again moved for a change of venue. He emphasized jury questionnaires from the first trial which indicated 80% of the potential jurors were aware of the case to varying degrees. 78% of the potential jurors in the second trial reported having knowledge about the case. However, through the use of the questionnaires and voir dire, five of the 45 initial panel members who held fixed opinions as to the defendant's guilt or who could not otherwise be fair and impartial were excused. Likewise, two of the 41 potential jurors questioned in the second trial were similarly excused because they held fixed opinions as to Hopkins' guilt.

The right to a fair trial by impartial jurors has its underpinnings in our state and federal constitutions. Siemer, 454 N.W.2d at 860. Accordingly, we review de novo the record made for purposes of challenging the denial of a motion for change of venue. Id. Reversal is warranted only where the trial court's decision demonstrates an abuse of discretion. Id.

We have carefully reviewed the record and cannot find an abuse of discretion in denying Hopkins' motion for change of venue. While the publicity may have been pervasive, it was, for the most part, factual and noninflammatory. The lapse of time between the initial, detailed coverage and the actual trial contributed to a dissipation of any prejudicial impact.

The trial court made extensive use of jury questionnaires and voir dire. The trial court saw and heard the potential jurors firsthand and was in the best position to assess the credibility of those who claimed impartiality. See Siemer, 454 N.W.2d at 861. Those potential jurors who held fixed opinions as to Hopkins' guilt were few in number and were excused by the court. Hopkins did not establish a presumptive showing of prejudice and denial of his motion for change of venue was not an abuse of discretion.

II. MOTION TO SUPPRESS

Hopkins had filed a motion to suppress physical evidence taken from him and the statements he made following his arrest in Moline, Illinois. He contends the police were without probable cause to make a warrantless arrest. When constitutional rights are at issue, this court will generally conduct a de novo review of the evidence. State v. Bumpus, 459 N.W.2d 619, 622 (Iowa 1990), cert. denied, 498 U.S. 1001 (1990). A warrantless search or seizure is by definition invalid unless it comes with a recognized exception to constitutional warrant requirements. Id. The State must prove by a preponderance of the evidence the search or seizure was valid. Id.

Probable cause is not determined by observation of, and reliance on, any particular factor. Id. at 624. Probable cause exists if the totality of the circumstances as viewed by a reasonable and prudent person would lead that person to believe a crime has been or is being committed and the arrestee committed or is committing it. Id. Probable cause to make an arrest turns upon the circumstances of each case. The facts must give rise to something more than a mere suspicion, but they need not be so strong as to convince officers involved in the arrest of a suspect's guilt. Id.

We find there were numerous factors which created probable cause for the arrest of Hopkins. At approximately 3 a.m. on July 22, 1992, a neighbor witnessed a man fleeing

the victim's apartment shortly after the stabbing. The neighbor's description matched Hopkins, a man she identified as someone she had previously seen at the victim's residence. Around 4 a.m. Hopkins appeared at the apartment of Mary Ratchford and asked if she would give him a ride to Illinois because he "wanted to get out of here because there was trouble going on." Ratchford and her friend Kathy Beebe drove Hopkins to Illinois. Both Ratchford and Beebe observed dried blood and blood stains on Hopkins' clothing.

When Ratchford and Beebe returned to Iowa and learned of the victim's death, they both contacted the police department and gave statements about Hopkins. During a search of the victim's apartment, police found Hopkins' name in the victim's personal papers. The police had received two anonymous calls from women indicating Hopkins might be involved in the victim's death.

Hopkins called Ratchford on the day after the murder and arranged to have her meet him at the Moline bus station at 11:00 a.m. Moline police had been advised of Hopkins' physical description, clothing and teardrop tattoo under his eye and arrested him at the bus station at 11:24 a.m.

The information gathered by the Cedar Rapids police department and shared with officers in Moline was sufficient to establish probable cause for Hopkins' arrest. The totality of the circumstances as viewed by a

reasonable and prudent person were such they would lead a person to believe a crime was committed by Hopkins.

The trial court was correct in denying the motion to suppress.

AFFIRMED.