IN THE COURT OF APPEALS OF IOWA

No. 4-332 / 93-83

FILED
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CLERK SUPREME COURT

STATE OF IOWA,

Appellee,

vs.

JOEL LEE GOOSMANN,

Appellant.

Appeal from the Iowa District Court for Woodbury County, Robert C. Clem, Judge.

Defendant appeals judgment and sentences, following jury trial, entered upon his convictions of first-degree murder and going armed with intent, in violation of Iowa Code sections 707.1 and 708.8 (1991). **AFFIRMED.**

Linda Del Gallo, State Appellate Defender, and Shari Barron, Assistant State Appellate Defender, for appellant.

Bonnie J. Campbell, Attorney General, Thomas S. Tauber, Assistant Attorney General, Thomas S. Mullin, County Attorney, and Clinton L. Spurrier and James J. Katcher, Assistant County Attorneys, for appellee.

Heard by Hayden, P.J., and Sackett and Habhab, JJ. Huitink, J., takes no part.

HAYDEN, P.J.

On April 10, 1992, Chad Mackey was talking with friends in a parking lot when they noticed two people in a car looking in their direction. Mackey and two others approached the car and asked if there was a problem. Joel Goosmann, the driver, said there was not. Words, though apparently not heated, were exchanged, and Goosmann pulled out a revolver and set it on the window ledge of the car. When Mackey and company did not retreat, Goosmann cocked the weapon. Mackey took a step forward. A few seconds later the gun discharged, striking Mackey in the chest. Goosmann drove off quickly stating something about having shot him. Mackey later died at the hospital.

Goosmann and his roommate, Jarret Sands, returned home after the incident. Goosmann unloaded and hid the gun in the garage. He and Sands then returned the car to its owners and went to a party. The following day, Sands reported their involvement in the shooting to the police. On April 21, 1992, Goosmann was charged with first-degree murder and going armed with intent.

There were several media reports of the incident. On October 1, 1992, Goosmann filed a motion for change of venue alleging extensive and inflammatory reporting of the incidents jeopardized his right to a fair trial. Following a hearing, the trial court denied the motion.

Goosmann renewed his motion for change of venue twice during the four days of jury selection. Seventy-four of

the eighty-five panelists had heard something about the case. The trial court, "err[ing] on the side of being safe," sustained forty-two challenges for cause. Goosmann's renewed motions for change of venue were denied.

Goosmann relied upon a defense the shooting was an accident. He testified he did not believe the gun was loaded, he pulled the gun merely to scare Mackey's group, and it discharged because Sands bumped his arm. He testified witnesses mistook his expression of surprise as a smirk.

Goosmann was convicted as charged and now appeals. He raises two issues on appeal. First, Goosmann contends the trial court erred in denying his motions for change of venue. Second, Goosmann argues the convictions are not supported by sufficient evidence. Each issue will be discussed in turn.

I. **Change of Venue.**

The right to a fair trial by impartial jurors has its underpinnings in our state and federal constitutions. Irvin v. Dowd, 366 U.S. 717, 721-22 (1961); State v. Walters, 426 N.W.2d 136, 138 (Iowa 1988). Accordingly, we review de novo the record made for purposes of challenging the denial of a motion for change of venue. State v. Gavin, 360 N.W.2d 817, 818 (Iowa 1985). Reversal is warranted only where the trial court's decision demonstrates an abuse of discretion. State v. Harris, 436 N.W.2d 364, 367 (Iowa 1989) (citation omitted).

A defendant relying on jury prejudice as a ground for reversal must show (1) publicity attending the trial so pervasive and inflammatory prejudice must be presumed, or (2) actual prejudice on the part of the jury. State v. Siemer, 454 N.W.2d 857, 860 (Iowa 1990). Goosmann claims the record supports reversal on either ground. We cannot agree.

A. Presumptive Prejudice.

Whether publicity rises to the level of being presumptively prejudicial depends on the following factors: the nature, tone and accuracy of the articles; their timing in relation to the trial; and the impact of the publicity on the jurors as revealed through voir dire. State v. Walters, 426 N.W.2d 136, 139 (Iowa 1988).

While the media coverage of this case may well have been pervasive, "the nature and tone of the reporting was predominantly factual and no more sensational than the crimes alleged." Siemer, 454 N.W.2d at 861. It is true, as Goosmann says, the publicity included isolated inaccuracies, as well as isolated references to matters which were not admissible into evidence and to matters which could be viewed as emotional rather than factual. However, our supreme court has repeatedly held that publicity including minor or isolated inaccuracies, or references to inadmissible matters, is not enough to create a presumption of prejudice. Id. at 861; Harris, 436 N.W.2d at 367.

Furthermore, most of the publicity, and especially that which discussed the case in any detail, appeared within two weeks after the crime. Most of the rest of the publicity touched only peripherally on the case, or merely reported procedural matters such as continuances and pretrial legal maneuvers, with little mention of the facts. Almost six months elapsed between the appearance of most of the publicity concerning the case and the beginning of the trial. Iowa case law makes clear the passage of several months between the appearance of initial publicity and the beginning of the trial was sufficient to dissipate any prejudice which the publicity might have created. State v. Spargo, 364 N.W.2d 203, 208 (Iowa 1985) (interval of two to three months); State v. Johnson, 318 N.W.2d 417, 423 (Iowa 1982), cert. denied, 459 U.S. 848 (1982) (interval of approximately three months); State v. Cornelius, 293 N.W.2d 267, 269 (Iowa 1980) (two-month interval).

Goosmann relies most heavily on the fact a high proportion of the prospective jurors had heard about his case. However, "mere exposure to news accounts will not create a presumption of prejudice." Siemer, 454 N.W.2d at 861. "Impartiality does not demand complete juror ignorance of issues and events." State v. Walters, 426 N.W.2d 136, 138 (Iowa 1988). "For the purpose of determining juror prejudice, the relevant 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." Id.

Here the court and the parties conducted a thorough individual voir dire examination. Goosmann correctly points out the examination revealed a number of potential jurors who said they could not be impartial, and as a result the trial court struck a number of potential jurors for cause. However, this simply shows the voir dire process worked correctly. Voir dire removed from the panel those potential jurors who had fixed opinions about the case. Furthermore, it is obvious the court struck some of the potential jurors for rather minor reasons, in an effort to be fair to Goosmann.

More importantly, even after the court struck those jurors, there still remained a large pool of potential jurors who either had not heard of the case at all, or who had only passing familiarity with the facts and said they could decide the case fairly. The protestations of impartiality were convincing to the trial court. We have no reason to doubt their credibility from the record before us.

Given this record, Goosmann has not borne his burden of proving "pervasive" and "inflammatory" pretrial publicity. Goosmann's presumptive prejudice claim is without merit.

B. Actual Prejudice.

Goosmann also claims the jurors were actually prejudiced against him. He relies essentially on the same

evidence he cited in support of his claim of presumptive prejudice. Goosmann points out nine of the twelve jurors who were chosen had heard or read about the case. He argues he was denied the opportunity to choose from a pool of potential jurors who had no prior knowledge of the case.

Goosmann cites no evidence any of the thirty-two potential jurors selected for possible service had or expressed any fixed opinion of his guilt. He cites no such evidence concerning the twelve jurors who actually heard and decided this case. In Siemer, our supreme court found the defendant had not proven actual prejudice although five of the twelve jurors reported they had initially formed "negative" impressions of the defendant. 454 N.W.2d at 861. Goosmann's evidence does not rise even to the level found insufficient in Siemer.

Again, based on the totality of circumstances, we cannot say the trial court abused its discretion by refusing to grant a change of venue in this case. Goosmann's claim of actual jury prejudice also fails.

II. Sufficiency of the Evidence.

Goosmann was convicted of going armed with intent and first-degree murder. Two alternative bases for first-degree murder were given to the jury. The jury did not specify whether they relied on the premeditation alternative or on the felony murder alternative with willful injury as the underlying felony.

On appeal, Goosmann argues the evidence was insufficient as a matter of law to sustain his convictions. Specifically, Goosmann claims, with respect to the felony murder charge, there was insufficient evidence to prove malice aforethought and specific intent to kill. Goosmann repeats this claim with respect to the first-degree murder charge, adding there was also insufficient evidence to prove premeditation. With respect to his conviction of going armed with intent, Goosmann argues there was insufficient evidence to prove he had the specific intent to use a dangerous weapon against another person.

Our scope of review is on assigned error only. Iowa R. App. P. 4 The standard of review in challenging the sufficiency of the evidence is well established. State v. Lampman, 342 N.W.2d 77, 81 (Iowa App. 1982). We will uphold a verdict where there is substantial evidence in the record tending to support the charge. State v. Aldape, 307 N.W.2d 32, 39 (Iowa 1981).

When reviewing a challenge to the sufficiency of the evidence, we view the evidence in the light most favorable to the State, including legitimate inferences and presumptions that fairly and reasonably may be deduced from the evidence in the record. State v. Bass, 349 N.W.2d 498, 500 (Iowa 1984); State v. Hall, 371 N.W.2d 187, 188 (Iowa App. 1985). Direct and circumstantial evidence are equally probative so long as the evidence raises "a fair inference

of guilt and [does] more than create speculation, suspicion, or conjecture." State v. Hamilton, 309 N.W.2d 471, 479 (Iowa 1981). It is necessary to consider all the evidence in the record, and not just the evidence supporting the verdict, to determine whether there is substantial evidence to support the charge. Bass, 349 N.W.2d at 500; Hall, 371 N.W.2d at 188. Substantial evidence means evidence which would convince a rational fact finder the defendant is guilty beyond a reasonable doubt. State v. LeGear, 346 N.W.2d 21, 23 (Iowa 1984); Hall, 371 N.W.2d at 188.

A review of the record demonstrates a rational jury could have found malice aforethought, premeditation, and specific intent to kill or specific intent to cause serious injury. Additionally, a rational jury could have found specific intent to use a dangerous weapon against another person. Evidence supported the inference Goosmann loaded the pistol and knew it was loaded. Goosmann said he would shoot anyone who "gives us shit." He was "a little mad" during the conversation in the parking lot. After Goosmann produced the gun, there was a pause between the moment when the victim stepped forward and the moment he fired. Goosmann fired the shot from a distance of only twelve to eighteen inches, supporting the inference he intended the shot to hit Mackey and knew it would do so. The shot struck Mackey near the center of the chest, where any bullet wound could be expected to cause serious injury or

death. There was testimony he smirked after firing the shot. Goosmann drove off quickly stating something about having shot him. After returning home, he unloaded and hid the gun in the garage. Goosmann appeared calm at a party he attended later that evening. He did not tell any of his friends the shooting was an accident. The jurors could have rationally found the State had proven all the mental elements of both crimes beyond a reasonable doubt.

For the foregoing reasons, we affirm the convictions of Joel Goosmann. Judgment of the trial court affirmed.

AFFIRMED.