

IN THE COURT OF APPEALS OF IOWA

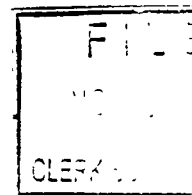
No. 1999-319 (9-572) / 98-1195

Filed November 23, 1999

STATE OF IOWA,
Plaintiff-Appellee,

vs.

MONTE WENDELL SEAGER,
Defendant-Appellant.



Appeal from the Iowa District Court for Henry County, William L. Dowell and
D.B. Hendrickson, Judges.

Seager appeals his judgment and sentence, following a jury trial, on two counts
of first degree murder. **REVERSED AND REMANDED.**

Linda Del Gallo, State Appellate Defender and **John P. Messina**, Assistant
State Appellate Defender, for appellant.

Thomas J. Miller, Attorney General, **Richard J. Bennett** and **James Kivi**,
Assistant Attorneys General, and **Michael A. Riepe**, County Attorney, for appellee.

Heard by Huitink, P.J., and Mahan and Hecht, JJ.

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HUTTINK, P.J.***I. Background Facts and Proceedings.***

Seager was first charged with the 1978 murder of Clementine and Karol Beavers in an August 1981 grand jury indictment. In February 1984 the State dismissed the indictments after Seager's successful motion to suppress a rifle seized from his residence was affirmed on appeal. *State v. Seager*, 341 N.W.2d 420, 432 (Iowa 1983). Because the rifle was not claimed in related forfeiture proceedings, it remained in State custody. Facts revealed by continuing investigations of this offense and others implicating Seager led authorities to secure a search warrant authorizing seizure of the rifle for additional ballistics testing. After these tests linked the rifle to a bullet removed from Clementine Beavers, the State refiled murder charges against Seager in 1994.

The district court, citing the preclusive effect of the decision in *State v. Seager*, sustained Seager's motion to suppress the rifle. On appeal the supreme court reversed, and the rifle was subsequently admitted at trial in this case. *See State v. Seager*, 571 N.W.2d 204 (Iowa 1997).

Prior to trial Seager moved for a change of venue. Seager claimed the notoriety surrounding these events, the victims, and widespread familiarity with his criminal history necessitated a change of venue from Henry County. Seager also relied on the results of a survey indicating seventy-five percent of registered voters in Henry County were aware of the Beavers's murders, fifty-nine percent had heard

or read about Seager, and sixty-two percent knew of Seager's 1977 second-degree murder conviction. The survey additionally indicated thirty-eight percent had formed an opinion of Seager's guilt in this case. The district court denied Seager's motion stating:

Almost twenty years will have elapsed since the date of the homicides and the time of the scheduled jury trial in this proceeding. The population of an area such as Henry County must experience substantial change over such a period of time if for no other reason than the births and deaths of residents. Certainly, some present residents of Henry County, Iowa, were not born at the time of the homicides. Likewise, it may be presumed that a portion of Henry County's present residents did not live in the area at the time of the homicides. Such population and demographics will also change over time by virtue of economic growth in the community and changes in population resulting from such growth. The survey is not helpful in identifying the source or extent of the information claimed by the persons who participated in the survey.

In a pretrial motion in limine Seager sought to exclude a portion of a statement made concerning his whereabouts on October 29, 1978. In this statement Seager told investigators he briefly left his home to water his marijuana plants located nearby. The motion was denied and, over Seager's objection, a Mt. Pleasant police officer testified: "He [Seager] said that at 7:10 he left the house to water his marijuana plants that are by a shed in the back yard."

In addition to evidence identifying Seager's rifle as the murder weapon, the State's case included evidence indicating Seager's blood type was consistent with saliva recovered from Karol Beavers's body. There was also evidence of Seager's acquaintance with Karol Beavers and proximity of their residences. The State

additionally relied on false statements Seager gave investigators concerning the type of ammunition he customarily used in his rifle.

Seager was convicted of two counts of first-degree murder and sentenced accordingly.

On appeal Seager argues the district court erred by failing to grant his motion for a change of venue. He also claims the police officer's testimonial reference to watering marijuana plants was highly prejudicial and the district court's failure to exclude that portion of his statement necessitates a new trial. Seager lastly renews arguments made concerning suppression of the rifle identified as the murder weapon.

II. Change of Venue.

A. Standard of Review.

Our review of a refusal to grant a motion for change of venue is de novo. *State v. Escobedo*, 573 N.W.2d 271, 275 (Iowa App. 1997). We recognize, however, the decision to grant or refuse a change of venue primarily rests in the discretion of the trial court, and we will reverse that decision only when the discretion has been abused. *Id.*

B. Merits.

In *State v. Siemer*, 454 N.W.2d 857, 860 (Iowa 1990), the court recited the standards relevant to Seager's motion for a change of venue:

Iowa Rule of Criminal Procedure 10(10)(b) provides that upon motion of the defendant, the trial court may transfer venue to another county

[i]f the court is satisfied . . . that 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 that county

....

This 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, 81 S. Ct. 1639, 1642, 6 L. Ed. 2d 751, 755 (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); *Walters*, 426 N.W.2d at 138; *State v. Robinson*, 389 N.W.2d 401, 403 (Iowa 1986).

A defendant relying on jury prejudice as a ground for reversal must show (1) publicity attending the trial that is so pervasive and inflammatory that prejudice must be presumed, or (2) actual prejudice on the part of the jury. *State v. Spargo*, 364 N.W.2d 203, 207 (Iowa 1985).

...

To sustain a claim of presumptive prejudice, the defendant must prove that the publicity attending the case was "pervasive and inflammatory." *Harris*, 436 N.W.2d at 367. 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 relocation to the trial; and the impact of the publicity on the jurors as revealed through voir dire. *Walters*, 426 N.W.2d at 139.

The district court noted the vast majority of the newspaper accounts relating to Seager and this incident were informational in nature and tone. The district court also noted Seager's failure to identify inaccuracies or inflammatory remarks in news accounts. Both of these findings find abundant support in the record, and we adopt them as our own.

We, like the district court, find Seager has failed to show either presumptive or actual prejudice. This conclusion is fortified by the jury selection record indicating

those jurors seated were able to set aside prior knowledge of this case or the defendant and make their decision on the evidence. We find no abuse of discretion and affirm on this issue.

III. Evidentiary Rulings.

On evidentiary issues we review for an abuse of discretion. *State v. Hubka*, 480 N.W.2d 867, 868 (Iowa 1992). In order to show an abuse of discretion, one must show the court exercised its discretion on grounds or for reasons clearly untenable or to an extent clearly unreasonable. *State v. Bayles*, 551 N.W.2d 600, 604 (Iowa 1996).

Seager made the challenged reference to watering marijuana plants in a statement given to investigators on July 1, 1980. The statement was relevant because it was arguably incomplete, conflicting, or false when compared to Seager's earlier statements in which he failed to tell investigators he left the house on the night of the murders.¹

Seager's complaint is not with the relevance of statements made concerning his whereabouts on the night of the murders. His trial objection was limited to the inclusion of the reference to watering marijuana plants. By failing to exclude this reference, Seager argues the State was allowed to admit evidence of an irrelevant and highly prejudicial unprosecuted offense.

¹ "A false story told by a defendant to explain or deny a material fact against him is by itself an indication of guilt." *State v. Cox*, 500 N.W.2d 23, 25 (Iowa 1993); *State v. Blair*, 347 N.W.2d 416, 422 (Iowa 1984) (defendant's inconsistent statements are probative circumstantial evidence from which the jury may infer guilt).

The evidence of other crimes, wrongs, or acts is admissible under certain circumstances. Iowa Rule of Evidence 404(b) provides:

Evidence of other crimes, wrongs or acts is not admissible to prove the character of a person in order to show that he acted in conformity therewith. It may, however, be admissible for other purposes, such as proof of motive, opportunity, intent, preparation, plan, knowledge, identity, or absence of mistake or accident.

The key is “whether the challenged evidence is relevant and material to some legitimate issue other than a general propensity to commit wrongful acts.” *State v. Plaster*, 424 N.W.2d 226, 229 (Iowa 1988); *State v. Barrett*, 401 N.W.2d 184, 187 (Iowa 1987). If the evidence is relevant, then the court must determine whether the probative value of the evidence is substantially outweighed by the danger of unfair prejudice. *Plaster*, 424 N.W.2d at 229; *State v. Kern*, 392 N.W.2d 134, 136 (Iowa 1986). The “primary thrust of subsection (b) of rule 404 is to illustrate some but not all situations in which evidence relevant to establish some legitimate issue in the case is not rendered inadmissible” *State v. Barrett*, 401 N.W.2d 184, 187 (Iowa 1987).

Iowa Rule of Evidence 401 provides:

“Relevant evidence” means evidence having any tendency to make any fact that is of consequence to the determination of the action more or less probable than it would be without the evidence.

Iowa R. Evid. 401. Seager’s 1980 statement was relevant because of its tendency to show he left home on the night of the murder and his earlier statements were incomplete, conflicting, or false. Because reference to watering his marijuana plants

had no tendency to make either of these propositions more or less probable, we conclude that portion of Seager's 1980 statement was not relevant and should have been excluded.

Even if we were to conclude otherwise, the minimal probative value of this evidence is clearly outweighed by its prejudicial effect. Our supreme court has consistently held evidence of narcotics sale or use in a nonnarcotics case is highly prejudicial and is exactly the kind of evidence which should be excluded. *State v. Crone*, 545 N.W.2d 267, 274 (Iowa 1996) (illegal use of steroids less prejudicial than evidence of cocaine use); *State v. Liggins*, 524 N.W.2d 181, 188 (Iowa 1994) (evidence of cocaine delivery and distribution is inherently prejudicial); *Shawhan v. Polk County*, 420 N.W.2d 808, 810 (Iowa 1988) (plaintiff's past use of marijuana, cocaine, acid and speed was unfairly prejudicial).²

Our determination that the reference to watering marijuana plants in Seager's 1980 statement was inadmissible does not require reversal unless Seager's substantial rights were adversely affected by its admission. Iowa R. Evid. 103(a). We, like the

² In *Shawhan v. Polk County*, 420 N.W.2d 808, 810 (Iowa 1988), the court said concerning this issue:

In contrast to the lack of probative value, the potential this evidence has for causing unfair prejudice is high. See *Harless v. Boyle-Midway Div., Am. Home Prod.*, 594 F.2d 1051, 1058 (5th Cir. 1979) (testimony concerning isolated marijuana use is "precisely the type of highly prejudicial evidence that should be excluded"); *United States v. Ong*, 541 F.2d 331, 339-40 (2d Cir. 1976), cert. denied, 429 U.S. 1075, 97 S. Ct. 814, 50 L. Ed. 2d 793 (1977) ("there are few subjects more potentially inflammatory than narcotics and thus such evidence should usually be excluded in a non-narcotics trial").

court in *Liggins*, do not find the earlier recited evidence against Seager so overwhelming that it supports a finding of harmless error.³

The judgment of the district court is accordingly reversed and remanded for new trial.

REVERSED AND REMANDED.

³ In addition to the circumstantial evidence in *State v. Liggins*, 524 N.W.2d 181, 188 (Iowa 1994), the State's case included admission of guilt to a third party. The court nevertheless found that, despite this admission, the evidence was not so overwhelming so as to render the same error harmless. *Id.* at 188.