

2012 IL App (2d) 110516-U
No. 2-11-0516
Order filed October 4, 2012

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IN THE
APPELLATE COURT OF ILLINOIS
SECOND DISTRICT

THE PEOPLE OF THE STATE)	Appeal from the Circuit Court
OF ILLINOIS,)	of Lake County.
)	
Plaintiff-Appellee,)	
)	
v.)	No. 10-CF-2112
)	
RICHARD R. GALLATIN,)	Honorable
)	George Bridges,
Defendant-Appellant.)	Judge, Presiding.

JUSTICE BURKE delivered the judgment of the court.
Justices McLaren and Hutchinson concurred in the judgment.

ORDER

Held: The trial court did not abuse its discretion in preventing defendant from questioning a prospective juror: the juror had told the court that she would be fair, the court had indicated to her, in response to her stated possible sensitivity to cases involving children, that this concern had no bearing on the case, and defendant's proposed questions were, at best, poorly directed at any issue of bias.

¶ 1 After a jury trial, defendant, Richard R. Gallatin, was convicted of five counts of aggravated criminal sexual assault (720 ILCS 5/12-14(a)(4) (West 2010)) and one count each of aggravated criminal sexual abuse (720 ILCS 5/12-16(a)(6) (West 2010)), aggravated robbery (720 ILCS 5/18-5(a) (West 2010)), and kidnaping (720 ILCS 5/10-1(a) (West 2010)). Defendant was sentenced to

20 years' imprisonment on each of the aggravated criminal sexual assault convictions; 3 years for aggravated criminal sexual abuse; 14 years for aggravated robbery; and 3 years for kidnaping, with all sentences to run consecutively. After the trial court denied his motion to reconsider the sentence, he timely appealed. On appeal, defendant argues that, during *voir dire*, the trial court abused its discretion by limiting his questioning of a prospective juror. We affirm.

¶ 2 We summarize the pertinent proceedings. At *voir dire*, the prospective juror (Juror No. 64) was one of four who were initially questioned together about basic principles (see *People v. Zehr*, 103 Ill. 2d 472 (1984)). As were the others, she was asked whether she promised to follow the law that the judge would give the jury; whether she promised not to use sympathy, bias, or prejudice in reaching the verdict; whether “[a]nything about the nature of the offense or anything that [she had] heard so far would cause [her] concerns about being fair to the defense or the State”; whether she promised to treat the testimony of police officers the same as that of any other witness; and whether she understood that defendant was presumed innocent, the State had to prove him guilty beyond a reasonable doubt, defendant was not required to testify, and his failure to testify could not be used against him. Juror 64 answered, “Yes” to the first, second, fourth, and fifth questions and “No” to the third question. As did the three other prospective jurors, she then stated that she accepted all of the foregoing principles and that she did not disagree with any of them. Finally, as did the three other prospective jurors, Juror 64 stated that, if during deliberations she believed that the State had proved defendant guilty beyond a reasonable doubt, she would sign a “guilty” verdict; conversely, if she believed that the State had not proved defendant guilty beyond a reasonable doubt, she would sign a “not guilty” verdict.

¶ 3 The court then allowed counsel to question the prospective jurors. Assistant State’s Attorney Kenneth LaRue asked Juror 64, “[I]f there is graphic testimony, will that affect your ability to remain fair and impartial?” Juror 64 responded, “No.” LaRue also asked her whether there was anything that would be important to know about her ability to serve as a juror. She answered, “No.” Defendant’s lead attorney, Timothy MacArthur, asked Juror 64 a few background questions. Outside the presence of the jury venire, LaRue used a peremptory challenge to exclude one of the other prospective jurors who had just been questioned, and MacArthur used peremptory challenges against two of the others. The judge noted that the defense was now out of peremptory challenges.

¶ 4 After the judge excused the three other prospective jurors, the following exchange occurred:

“JUROR NO. 64: Can I ask you something?

THE COURT: I’m sorry, what?

JUROR NO. 64: Can I ask you something?

THE COURT: Sure. Come on up.

At the bench, outside the presence of the jury venire, the exchange continued:

“JUROR NO. 64: I’m sorry.

THE COURT: And for the record, that’s Juror Number 64?

JUROR NO. 64: 64, yeah, and I should have said something. I just—if I’m being totally honest, and I don’t feel like—I feel like as if there was a different case or a different accusation, I—I work with children, so I’m just—and I have three sisters who are younger than me.

THE COURT: Keep your voice down.

JUROR NO. 64: I’m sorry.

THE COURT: I don't know what you're coming up here telling me.

JUROR NO. 64: I just feel it's emotional for me more so than it would be in a different case. I am just putting it out there. I answered all the questions honestly so I just feel like I need to say that, and if, you know, I will be as impartial as I can. Yet I answered your questions, you know, as honestly as I could, but I just wanted to—

THE COURT: So you wanted us to know that this will be emotional for you?

JUROR NO. 64: It is a little bit emotional.

THE COURT: So how will it affect your ability to decide this case?

JUROR NO. 64: I'm not sure. I mean I don't have all the information.

THE COURT: You also mentioned that you have children?

JUROR NO. 64: No, I work with children.

THE COURT: Okay. Then I don't know what bearing does that have with this case?

No one has indicated—

JUROR NO. 64: Sorry.

THE COURT: What?

JUROR NO. 64: If it does involve children. I guess I'm just assuming.”

¶ 5 The judge then asked whether the parties had any questions. LaRue did not. MacArthur said that he did. The following exchange ensued:

“MR. MacARTHUR: Sure. I guess if you were to hear testimony from someone that they were I guess sexually assaulted, would your passion and feelings affect your decision on a verdict?

THE COURT: Counsel, that's the whole basis of the case. It's not a proper question. It doesn't explore bias.

MR. MacARTHUR: Even if she should—

THE COURT: No. Do you have another question? That's an improper question. Do you have another question?

MR. MacARTHUR: She shouldn't base her—

THE COURT: Do you have a question?

MR. MacARTHUR: NO, I don't, your Honor.

THE COURT: Oh, okay.

MS. BURTON [defense attorney]: Your Honor, I have a question. I'm sorry.

* * *

MR. MacARTHUR: Just one question, your Honor. You stated that you have sisters. Are you going to be able to base your verdict on the facts and evidence presented in this courtroom I guess without—without thinking about your sisters?

THE COURT: Counsel, that doesn't explore bias either.

MR. MacARTHUR: Excuse me?

THE COURT: That does not explore any bias on the part of this juror.

MR. MacARTHUR: I guess if I could just explain to the Court what I'm asking is she's supposed to be impartial without bias or prejudice but—and I'm trying to explore whether her emotions would interfere with her logic and what's presented in court, and it's completely relevant.

THE COURT: So what's the question?

MR. MacARTHUR: My question is if she is going to be able to separate the—basically are you going to be able to not think about your sisters when hearing this testimony?

MR. LaRUE: Objection.

THE COURT: Sustained.

MR. MacARTHUR: I have no further questions, your Honor.

THE COURT: All right. You [Juror No. 64] may take your seat.”

¶ 6 The jury convicted defendant as noted. Defendant moved for a new trial, contending that the trial court had erred in not striking Juror No. 64 for cause and in refusing to allow his attorney to question her about matters relevant to her fitness as a juror. The trial court denied the motion, sentenced defendant as noted, and denied his motion to reconsider the sentence. He timely appealed.

¶ 7 On appeal, defendant contends that the trial court denied him his right to an unbiased jury because the judge unreasonably interfered with his attempts to question Juror No. 64 about whether she could be fair in his case, which involved the alleged sexual assault of a young woman. The State responds that defendant forfeited any objection to Juror No. 64, because he failed to move to strike her for cause or to request more peremptory challenges, as he did later after the court refused to strike another prospective juror for cause. We decline to find forfeiture. Defendant argues not that the trial court should have stricken Juror No. 64 for cause, but that the court interfered with his inquiry into whether cause existed. See *Village of Plainfield v. Nowicki*, 367 Ill. App. 3d 522, 524 (2006) (“A trial court’s limitation on *voir dire* will constitute reversible error if it precludes a party from ascertaining whether the minds of the jurors are free from bias or prejudice which would constitute a basis of challenge for cause or which would enable him to exercise his right of

peremptory challenge intelligently”). Further, although the State correctly notes defendant’s request for extra peremptory challenges, it fails to note that the trial judge denied that request. The State cites no authority placing the burden on a defendant who has exhausted his peremptory challenges to request more peremptory challenges. Therefore, because finding forfeiture would be a hypertechnical approach to defendant’s claim that he was denied the opportunity to protect himself against a biased jury, we consider his argument on its merits.

¶ 8 We set out the basic principles governing this appeal. The manner and scope of *voir dire* are within the sound discretion of the trial court. *People v. Dixon*, 382 Ill. App. 3d 233, 243 (2008). The crucial inquiry is whether the questions posed and the procedures employed created a reasonable assurance that prejudice would be discovered if present. *People v. Jimenez*, 284 Ill. App. 3d 908, 911 (1996). If so, then the decision not to allow supplemental questions will not be reversible error. *People v. Rivera*, 307 Ill. App. 3d 821, 832 (1999).

¶ 9 We conclude that the trial court did not abuse its discretion in barring the questions that defendant’s attorney sought to ask Juror No. 64. The proposed questions were of dubious value and, as important, the *voir dire* as a whole reasonably assured that the selection of Juror No. 64 did not deny defendant trial by an impartial jury. In short, the additional questions would have added little if anything to a procedure that was already satisfactory.

¶ 10 Initially, Juror No. 64 stated, in part, that she would follow the law as given by the judge; that she would not use sympathy, bias, or prejudice to reach a verdict; and that nothing about the alleged offense would cause her concerns about being fair. Shortly afterward, she expressed some concerns. Notably, she did *not* say that she could not be fair or that she wanted to take back anything that she had stated. Indeed, she emphasized that she had “answered all the questions honestly” and would

be “as impartial as” she could. Her concerns were not clearly focused: she felt that the case was “emotional for [her] more so than it would be in a different case,” and the facts upon which she based this statement were (apparently) that she worked with children and that she had three younger sisters (her age and their ages are not knowable from the record). Asked how the fact that the case was “a little bit emotional” would affect her ability to perform her duties, she answered, perhaps somewhat opaquely, “I’m not sure. I mean I don’t have all the information.” We note that, unlike the members of this court, the trial judge was able to observe the prospective juror’s demeanor and hear her tone of voice as she gave these answers.

¶ 11 The trial judge addressed Juror No. 64’s concerns by indicating that her work with children would have no bearing on the case. MacArthur then attempted to ask her two questions: (1) whether, if she heard “testimony from someone that they were, I guess sexually assaulted, would [her] *passion and feelings* affect [her] decision on a verdict” (emphasis added); and (2) (phrased two ways) whether she would be able to listen to the testimony “without thinking about [her] sisters.” The trial judge ruled that both questions were improper. We cannot say that either ruling was improper. MacArthur’s questions were not focused on a specific or recognized possible source of bias. The first was nebulously addressed to Juror No. 64’s “passion and feelings.” The second, even had it been allowed and answered “No,” would have fallen short of even strongly suggesting that Juror No. 64 could not be fair. The questions were vague and barely relevant to possible juror bias.

¶ 12 On the one hand, we have (1) the prospective juror’s somewhat unfocused concerns that the case would be “emotional” for her (founded in part on her incorrect belief that children might be involved); and (2) defense counsel’s even less focused attempts to explore bias with questions that were at best poorly phrased to do so. On the other hand, we have (1) the prospective juror’s

statements that she would follow the trial court's instructions, that nothing about the alleged crime would make her unable to be fair, and that she would be as impartial as she could; and (2) the trial judge's conclusion, having listened to and observed the prospective juror, that she was suitable to serve on the jury. We find no abuse of discretion.

¶ 13 Defendant relies on cases holding that it is error for the trial court to block defense counsel's questioning of prospective jurors on such *specific* matters as bias against gangs, where there will be evidence that the defendant belonged to a gang (*Jimenez*, 284 Ill. App. 3d at 912), and attitudes toward alcohol consumption and intoxication, where the defendant is charged with driving under the influence of alcohol (*Village of Plainfield v. Nowicki*, 367 Ill. App. 3d 522, 524-25 (2006)) or where he will rely on voluntary intoxication as an affirmative defense (*People v. Lanter*, 230 Ill. App. 3d 72, 76 (1992)). These opinions do not support defendant here.

¶ 14 Courts recognize that subjects such as gang membership and alcohol use are especially controversial or inherently inflammatory (*Jimenez*, 284 Ill. App. 3d at 912; *Lanter*, 230 Ill. App. 3d at 76), but they also recognize that not every potentially controversial or emotional subject renders *voir dire* questioning appropriate. Thus, in *Dixon*, the court acknowledged that prejudice against gangs is a legitimate subject of specialized inquiry, but it refused to extend the rule to prejudice against drug use and addiction. *Dixon*, 382 Ill. App. 3d at 244-45. Also, in *Lanter*, the court acknowledged that its rule for questioning about voluntary intoxication as an affirmative defense would not extend to "every affirmative defense." *Lanter*, 230 Ill. App. 3d at 76. Thus, defendant's reliance on the general proposition that people who commit sexual assaults are despised by society scarcely requires courts to allow specific questioning on this matter. That is especially so in this case, where the questioning proposed showed no promise of shedding light on the subject.

¶ 15 For the foregoing reasons, the judgment of the circuit court of Lake County is affirmed.

¶ 16 Affirmed.