2019 IL App (3d) 150345-U

Order filed March 5, 2019

IN THE

APPELLATE COURT OF ILLINOIS

THIRD DISTRICT

2019

THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from the Circuit Court
	)	of the 21st Judicial Circuit,
	)	Kankakee County, Illinois,
Plaintiff-Appellee,	)	
	)	Appeal No. 3-15-0345
v.	)	Circuit No. 13-CF-272
	)	
KAMRON T. TAYLOR,	)	Honorable
	)	Kathy S. Bradshaw-Elliott,
Defendant-Appellant.	)	Judge, Presiding.

JUSTICE WRIGHT delivered the judgment of the court.
Justice Holdridge concurred in the judgment.
Justice Holdridge also specially concurred.
Justice McDade dissented.

ORDER

¶ 1 *Held*: The trial court safeguarded defendant's right to a fair trial by conducting a thorough investigation of the circumstances involving alleged third party communication with a sitting juror before denying defendant's request to remove the juror for cause.

¶ 2 During a jury trial, one of the jurors (juror PA) reported to the trial court that she believed she had been followed during a lunch break. After questioning juror PA and the other jurors, the trial court ruled that neither juror PA, nor any of the other jurors, needed to be removed.

Following trial, defendant was convicted on all charges and sentenced to more than 100 years of imprisonment. On appeal, defendant argues he was deprived of his right to a fair trial before an impartial jury due to the trial court's failure to remove juror PA.

¶ 3 I. BACKGROUND

¶ 4 On July 12, 2013, Kamron T. Taylor (defendant) was charged by indictment with first degree murder (720 ILCS 5/9-1(a)(1), (2) (West 2012)), attempted armed robbery (720 ILCS 5/8-4(a) (West 2012)), residential burglary (720 ILCS 5/19-3(a) (West 2012)), escape (720 ILCS 5/31-6(c) (West 2012)), aggravated unlawful use of a weapon by a felon (720 ILCS 5/24-1.6(a)(2)(3)(A) (West 2012)), and unlawful possession of a weapon by a felon (720 ILCS 5/24-1.1(a) (West 2012)). The charges stemmed from incidents that occurred on June 24, 2013, when defendant allegedly shot and killed a man, entered a woman's home and attempted to rob her, and fled from the Kankakee police station after he had been arrested.

¶ 5 Defendant pled guilty to the aggravated unlawful use of a weapon by a felon and unlawful possession of a weapon by a felon charges. The remaining charges went to a jury trial, which was held over several days in February 2015.

¶ 6 On the second-to-last day of trial, juror PA told the courthouse's chief of security that she believed she had been followed over the lunch break. The court then questioned juror PA in the presence of defendant, defense counsel, and the prosecutor. Juror PA stated the following:

> "When I got in my car, I was — and I don't know these streets. I pulled up to the stop sign and I noticed an older model gray car with one person in it. It was African American, and they had a hood up in it, that they were behind me, and then when I made the left I think is that Court Street that — that runs out this way in front of the courthouse? I made a left onto Court Street and went on down to like 45 and 52. The car

> stayed very close behind me. I made a right onto 45/52 and it continued to follow me. I couldn't get a plate number. The water on the back of my windshield was preventing that and so because they were following me so closely I went in to the Ultra parking lot okay, and I went a couple of rows over to the left and the car went a little bit to the right. Now I went down and I parked and I kind of sandwiched myself in between some other cars, kind of hiding, and I watched them. They went down one row. They were about maybe four rows over. They went down the one row of cars very slowly, circled and then came back up. So now they're like three rows over from me, very slowly, and when they got to the end of the row they veered off to the left, and it appeared that they went towards the direction of the McDonald's so they were leaving the Ultra parking lot and that was when I backed up and I left [and drove immediately to the Bourbonnais police department to report the incident]."

The court asked juror PA, "[d]id you associate the car or the person that was following with either the victim's family or the defense's family." Juror PA said she did not associate the person with anyone. Juror PA also stated that when she returned to the jury room, she had told the other jurors about what had happened. The record indicates that all but one of the jurors had returned from lunch.

¶ 7 Juror PA then told the court that she "[a]bsolutely" could still serve as a fair and impartial juror. When defense counsel was allowed to question juror PA, juror PA said that the incident did not make her scared of defendant or make her think he was guilty. Juror PA also said she thought the fact that she had been followed was associated with the case, but that she was not going to be intimidated "one way or the other."

¶ 8 Defense counsel then requested juror PA's removal. The trial court denied counsel's request, stating:

> "I think she was quite adamant that she doesn't associate the following with either the victim's family or the defendant's family and in this case both sides are African American. She may associate with the case but not on either side and she says she can still be fair and impartial, and she very strongly said it will not affect her in deliberation, that she's not gonna be intimidated. So I see no reason to remove her."

¶ 9 The court then proceeded to question each of the other jurors individually. When asked about juror PA's demeanor when she told the other jurors what happened, the jurors had the following responses: "She seemed calm but concerned;" "I think she was a little nervous;" "Kind of nervous, like she was scared;" "She was very nervous, very upset;" "She was just kind of — she wanted to let us all know and just so we could know that we knew and so if it happened to us that we could let somebody know;" "Concerned;" "She seemed like she was worried;" "She was rather quiet;" and "Concerned." One juror had no comments regarding juror PA's demeanor and stated that juror PA simply said what she had to say. Two jurors, one of whom was the alternate, did not hear juror PA say anything about the incident. One of the jurors felt juror PA had overexaggerated the incident, and several other jurors did not feel the incident was related to the case at all. Aside from the two jurors who did not hear about the incident, all the other jurors stated that the incident did not impact their ability to be fair and impartial.

¶ 10 Defense counsel did not object to the continued service of any of these jurors, and the court stated that it found no reason to remove any of them.

¶ 11 On February 27, 2015, the jury returned guilty verdicts on all counts. On May 11, 2015, the trial court sentenced defendant to over 100 years in the Illinois Department of Corrections. Defendant filed a timely notice of appeal on May 19, 2015.

¶ 12 II. ANALYSIS

¶ 13 On appeal, defendant argues that he was deprived of his right to a fair trial before an impartial jury due to the court's failure to remove juror PA. Defendant claims that juror PA's statements showed a marked fear that compromised juror PA's ability to remain fair and impartial. Defendant accuses the trial court of mistakenly accepting juror PA's belief that she could remain impartial. The State argues that the trial court properly safeguarded defendant's right to a fair trial by conducting a thorough investigation before ruling on defendant's request to remove juror PA for cause. The outcome of this appeal is limited to the issues as addressed in the trial court and contentions of judicial error formulated by the parties to this appeal.

¶ 14 A criminal defendant has a constitutional right to an impartial jury. *People v. Rinehart*, 2012 IL 111719, ¶ 16. "The question of whether jurors have been influenced and prejudiced 'to such an extent that they would not, or could not, be fair and impartial' involves a determination that must rest in sound judicial discretion." *People v. Cosmano*, 2011 IL App (1st) 101196, ¶ 119. "This determination involves the court's consideration of all the facts and circumstances and conjecture regarding the effect that the incompetent information had upon the minds of the jurors, a determination incapable of absolute accuracy or a very high degree of reliability." *People v. Whitehead*, 169 Ill. 2d 355, 402 (1996), *overruled in part on other grounds by People v. Coleman*, 183 Ill. 2d 366 (1998). "A juror's statement upon interrogation that he has not been influenced should not be considered conclusive, for jurors themselves are incapable of knowing the effect which prejudicial matters may have upon their unconscious minds. [Citation.] The

determination of prejudice then rests not only upon what the jury says, but also upon the nature of the material and all the facts and circumstances in the record." *People v. Smith*, 341 Ill. App. 3d 729, 738 (2003).

¶ 15 A suspicion of bias, without more, is insufficient to disqualify a juror. *People v. Staten*, 143 Ill. App. 3d 1039, 1057 (1986). The trial court's decision on whether a defendant's right to a fair trial has been violated due to the compromised impartiality of a juror does not constitute reversible error unless the court abused its discretion. *People v. Hryciuk*, 5 Ill. 2d 176, 184 (1954); *People v. Rogers*, 135 Ill. App. 3d 608, 625 (1985). "[A]n abuse of discretion occurs where the trial court's decision is arbitrary, fanciful, or unreasonable to the degree that no reasonable person would agree with it." *People v. McDonald*, 2016 IL 118882, ¶ 32.

¶ 16 Upon learning that juror PA reported to court staff that a third party attempted to communicate a message to juror PA by following her car, the trial court conducted an appropriate inquiry into this matter. During the court's inquiry, juror PA expressed to the court that she "[a]bsolutely" could remain fair and impartial and would not be intimidated "one way or the other."

¶ 17 We recognize juror PA's assertion that she was unaffected is not dispositive. Other jurors reported that juror PA was "Kind of nervous, like she was scared;" "She was very nervous, very upset;" "She was just kind of — she wanted to let us all know and just so we could know that we knew and so if it happened to us that we could let somebody know;" "Concerned;" "She seemed like she was worried;" "She was rather quiet;" and "Concerned." However, when considering the statements of the other jury members, we note one of the jurors felt juror PA had overexaggerated the incident, and several other jurors did not feel the incident was related to the case at all.

¶ 18 Moreover, additional facts and circumstances present in this record cause us to conclude the trial court's decision to leave juror PA on the jury did not constitute an abuse of discretion based on the information available to the court. We recognize there is some support for defendant's contention that juror PA may have subconsciously linked the incident to defendant, the purported gunman, because juror PA's description of the person she encountered over the lunch break matched the characteristics the eyewitness attributed to the gunman. The dissent's logical points are well taken by this court. Yet, without some degree of speculation, we cannot conclusively hold that juror PA aligned the interests of her alleged pursuer with the defendant.

¶ 19 Our comprehensive review of this unique record leads us to conclude the trial court applied an appropriate level of scrutiny to juror PA's assertions, using a trained judicious eye focused on the totality of the facts and circumstances known to the court at that time. Therefore, we conclude the trial court's decision to leave juror PA on the jury did not constitute an abuse of discretion.

¶ 20 III. CONCLUSION

¶ 21 The judgment of the circuit court of Kankakee County is affirmed.

¶ 22 Affirmed.

¶ 23 JUSTICE HOLDRIDGE, specially concurring:

¶ 24 I agree with the majority's judgment. I write separately to share my analysis, which provides additional support for the majority's holding. Any communication, contact, or tampering with a juror during a trial "about the matter pending before the jury" is presumed to be prejudicial to the defendant. *Remmer v. United States*, 347 U.S. 227, 229 (1954)). However, I do not believe that a presumption of prejudice should apply in this case because it is not clear that *any* contact, communication, or tampering "about the matter pending before the jury" occurred.

Juror PA reported that a car driven by a black person wearing a hoodie briefly followed her as she was driving to lunch during the jury trial. The person driving the car did not communicate with PA about the trial or about anything at all. PA assumed that the person driving the other car was interested in the outcome of the criminal trial and was trying to intimidate her. However, PA pointed to nothing supporting that assumption aside from the fact that a stranger in another car had briefly followed behind her as she drove on a busy street and into a shopping mall. Under these circumstances, the trial court could have reasonably concluded that no third party contact, communication, or tampering with PA occurred.[1] I do not believe that we must presume that any improper contact with PA actually occurred, much less that such contact was prejudicial to the defendant.

¶ 25 In any event, even assuming *arguendo* that a third party improperly attempted to communicate a message about the trial to PA, any such contact was harmless beyond a reasonable doubt and cannot be deemed prejudicial under the circumstances presented in this case. To warrant a reversal, "it must reasonably appear that the jurors, or at least some of them, have been influenced or prejudiced so that they can no longer be fair and impartial." *People v. Smith*, 341 Ill. App. 3d 729, 738 (2003); see also *People v. Staten*, 143 Ill. App. 3d 1039, 1056-57 (1986). After interviewing PA and the other jurors and after considering all of the relevant facts, the trial court reasonably concluded that the alleged incident did not bias PA against the defendant or otherwise prejudice the defendant because: (1) PA could not identify the man who allegedly followed her; (2) she only knew that he was a black man wearing a hood; (3) both the victim and the defendant were black; and (4) PA did not know which side of the trial the man was associated with. Although PA associated the incident with the case, she did not know how or

[1]In fact, all but one of the other jurors did reach that conclusion. After PA informed the other jurors about the incident, all but one of the other jurors told the trial court that they did not associate the alleged incident with the case.

with which party the incident was associated. Accordingly, while the alleged incident may have frightened and upset PA, it is difficult to see how it could have biased her against the defendant or otherwise affected her ability to remain fair and impartial.

¶ 26 The fact that PA had "real concerns" about the alleged incident and about the safety of the other jurors cannot justify reversal of the defendant's conviction absent evidence (aside from PA's unsupported assumption) that some improper third party contact actually occurred which could have biased PA against the defendant. In my view, what ultimately matters is not whether PA found the alleged incident upsetting, but whether the incident was likely to bias her against the defendant or otherwise compromise her impartiality. PA did not associate the alleged incident with either the victim's family or with the defendant, and when the trial court interviewed her about the incident, she adamantly insisted that she could still be fair and impartial and that the incident would not affect her deliberations. I find nothing in the record suggesting otherwise.[2]

¶ 27 To avoid any possible appeal issue, the more prudent course would have been for the trial court to grant the defendant's motion to dismiss PA from the jury and replace her with an alternate juror. Under the circumstances presented in this case, however, I find no reversible error and no prejudice to the defendant. As noted above, the facts do not support a reasonable inference that the alleged incident biased PA against the defendant. Moreover, the evidence against the defendant was overwhelming. He was identified as the shooter by the victim's girlfriend and by three other witnesses. Accordingly, in my view, any error on the trial court's part was harmless beyond a reasonable doubt. I therefore join the majority's judgment affirming the defendant's conviction.

[2]I do not believe that the facts of this case support a presumption that PA harbored a racial bias against African-Americans.

¶ 28 JUSTICE McDADE, dissenting:

¶ 29 I do not believe defendant, Kamron Taylor, was tried by a fully impartial jury because one of his jurors was animated by racial bias and I therefore respectfully dissent from the decision affirming his conviction.

¶ 30 I have read the exceedingly troubling incident with juror PA in a different and arguably more visceral way than that set out in the majority decision and special concurrence and I strongly believe PA should have been dismissed because her continued presence undermined the neutrality of Taylor's jury and the fairness of his trial.

¶ 31 I note first that, as a practical matter, PA's removal from the jury would not have caused the tiniest ripple of delay or inconvenience because alternate jurors had been chosen, had heard all of the evidence that had already been presented, and one of the alternates had not heard anything about PA's incident; procedurally, substitution would have been wholly non-disruptive of the trial.

¶ 32 More importantly, I believe substitution was required on a substantive basis. PA gave a written account of the incident in question, which provided the following facts and their reasonable implications. She pulled up to a stop sign near the courthouse and noticed a car behind her being driven by a black person wearing a hoodie with the hood up. She never ascribed a gender to the person and it is a fair inference that she did not get a good look at the face. She did not assert and presumably did not know whether the person had been in the courtroom or even had come from the courthouse. And, of course, the Kankakee courthouse is open to the public and many people go in and out every weekday to take care of a wide variety of business or to carry out duties as courthouse employees. There is a substantial amount of non-court

vehicular traffic in that area. Nor did PA indicate that the person evidenced any interest in her by word or by gesture; she did not even claim any actual or attempted eye contact.

¶ 33 She turned onto Court Street and tried, for some reason known only to her, to ascertain the license plate number of the other car, but it was raining too hard for her to make it out. As she continued to drive down one of Kankakee's major thoroughfares, the person continued to drive behind her and in her same direction; she said the car was "following" her "closely." She pulled into a large parking lot; she reported numerous rows of cars so we can fairly infer this was a widely used parking area. The person entered the same lot but went right when PA turned left. Somehow in her written account, between the beginning of the "incident," through hiding herself by sandwiching her car between "some other cars," and its conclusion when the other car left the lot, the lone person became "they" and "them." "They" drove down two rows—possibly looking in vain for a desirable place to park in the heavy rain—but never got closer to her than three rows away from the place where she was hiding. "They" then left the lot. Apparently during this entire odyssey, the person never looked at her, spoke to her, or gestured at her.

¶ 34 Nonetheless, she was convinced, first, that she had been intentionally targeted and followed because she was a juror on this particular case and, second, that the other driver's purpose was intimidation. She could not say whether this intimidation was undertaken on behalf of the defendant or of the victim's family. Nor did she opine how, in the absence of such knowledge, the conduct could possibly have had its presumed desired intimidating effect. Undeterred by such considerations and with no discernible factual basis, PA found the incident sufficiently personally threatening to go immediately to the Bourbonnais police department to report it and sufficiently significant to the trial to recount the entire sequence of events to the

chief of courthouse security, to some of her fellow jurors (with the expressed exclusion of one person assembled with the others), and ultimately to the trial judge.

¶ 35 I find this incident extremely troubling on three levels. The first is my personal conviction that this was a classic exercise in racial stereotyping. I understand that this conclusion is not shared by the author of the special concurrence. He emphasizes that there was no contact and no communication by the other driver and that the trial court could have "reasonably concluded that no third party contact, communication, or tampering with PA occurred, much less that such contact was prejudicial to the defendant". He also asserts that he "do[es] not believe that the facts of this case support a presumption that PA harbored a racial bias against African-Americans." And yet on the basis of that absence of any contact—that nothing—PA not only assumed attempted tampering with her as a juror, she wanted the man *apprehended and punished for it.* She went immediately to the police department to report that she had been followed and felt threatened and then reported to court security that she, as a juror, had been the subject of attempted intimidation. There is virtually no likelihood PA would have reacted the same way if the defendant, the victims, and the driver had all been white. But, a black person wearing a hoodie—even paying absolutely *no* attention to her—is threatening and to be feared. My concern *vis-á-vis* the trial is that these facts do indeed support a reasonable assumption that PA not only harbors racial bias, she is animated by it. There is no indication in the record that the trial court either recognized PA's racial bias as a possible area of concern or explored it with PA before deciding not to dismiss her.

¶ 36 My second concern relates to PA's repeated insistence that she would "not be intimidated." Her declaration begs the question, how does she demonstrate that determination? The victim is dead. She could perhaps frustrate his family, if one of them had tried to intimidate

her, by voting and lobbying to exonerate his accused killer, but the more likely target of her resistance to perceived intimidation is the defendant and the most effective exercise of that resistance would be to ensure his conviction. In either event and despite her protestations to the contrary, her determination not to be intimidated strongly suggests that she has an overriding personal agenda and would not be a neutral, unfettered fact-finder.

¶ 37 The third concern is that PA has injected race and fear into the jury room. One juror, apparently forgotten by the majority, was sufficiently alarmed by PA's account of her harrowing experience to suggest that they should all park together for their mutual safety. It is true that a couple of the jurors discounted PA's concerns as exaggerated or unrelated, but the fact remains that an extraneous issue was introduced. I do not suggest there was error in retaining the other jurors, only that it was an unnecessary and unreasonable decision to allow PA to remain on the jury. Moreover, leaving her on the jury was a missed opportunity to convey to the other jurors the potential danger of PA's unfounded "concerns."

¶ 38 The issues raised by this incident required speculative assessment by the trial court and a fair review of its exercise of discretion requires it of us. In the exercise of discretion, all relevant facts and reasonable inferences should be factored into the court's assessment of the juror's ability to consider the defendant's guilt or innocence in a fair and unbiased manner. I find nothing in the record that indicates the trial court recognized racial bias or factored it into its discretionary decision to retain or dismiss PA.

¶ 39 And that omission matters enough to require a new trial even for a defendant who appears likely, based on the evidence at trial, to be guilty of the extremely serious charged offenses. There are four reasons. First, jury verdicts are very nearly sacrosanct in our courts. A jury's findings of fact can only be overcome using a standard that requires us to view the

evidence in the case in the light most favorable to the State, no matter how untenable that evidence might be, and then find that no reasonable person would agree with the finding. *People v. Brown*, 2013 IL 114196 ¶ 48. This virtual unassailability of the jury's findings *should* require trial courts to ensure, to the very best of their ability, that all jurors can view the evidence fairly and without bias or preconception. Again there is nothing in the record showing the court either specifically recognized or factored in possible racial bias.

¶ 40 Second, and more specifically in this case, there is a juror who has demonstrated a lamentable ability to take a button and sew a coat on it. In reviewing the alleged intimidating conduct, it seems clear that PA has drawn untenable, and arguably irrational, conclusions, unsupported by any apparent objective facts, which could significantly impact her own assessment of or conclusions drawn from the evidence in the case and could also taint the assessments of the other jurors. A person whose life, liberty, and future are at stake deserves better.

¶ 41 Third, the United States Constitution promises persons accused of crimes in our criminal courts "the right to a speedy and public trial, by an *impartial* jury of the State and district wherein the crime shall have been committed***." (Emphasis added.) U.S. Const., amend. VI. A similar guarantee is included in our Illinois Constitution: "In criminal prosecutions, the accused shall have the right *** to have a speedy public trial by an *impartial* jury of the county in which the offense is alleged to have been committed." (Emphasis added.) Ill. Const. 1970, art. 1, § 8. The denial of the right to be tried by an impartial jury and neutral fact-finder is classified as structural error—that is, an error which so impugns the integrity of our judicial process that it creates a presumption of prejudice and requires reversal. *People v. Thompson*, 238 Ill. 2d 598, 613-14 (2010).

¶ 42 And last, but certainly not least, our supreme court has committed itself and the Illinois court system as a whole to ensure equal access to justice in our courts. We cannot begin to achieve that equality if we are not equally committed to removing blinders that prevent us from seeing and addressing uncomfortable forms of bias that may impair impartial consideration and prevent just outcomes. We obviously cannot always know what is in every potential juror's heart and mind, but we can and should deal with bias when, as here, it slaps us in the face.