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2019 IL App (3d) 160553-U

Order filed May 7, 2019

IN THE
APPELLATE COURT OF ILLINOIS
THIRD DISTRICT

2019

THE PEOPLE OF THE STATE OF ILLINOIS,)	Appeal from the Circuit Court of the Knox Judicial Circuit, 9th County, Illinois,
Plaintiff-Appellee,)	
v.)	Appeal No. 3-16-0553
)	Circuit No. 14-CF-288
CHRISTOPHER L. CROOM,)	
Defendant-Appellant.)	Honorable Scott Shipplett, Judge, Presiding.

JUSTICE WRIGHT delivered the judgment of the court.
Justices Carter and Lytton concurred in the judgment.

ORDER

¶ 1 *Held:* Defendant knowingly waived his right to conflict-free counsel and the circuit court did not err when it refused to conduct an evidentiary hearing regarding a juror's alleged partiality.

¶ 2 Defendant, Christopher L. Croom, appeals his conviction and sentence. Defendant contends that he is entitled to a new trial because: (1) he did not knowingly waive a conflict of interest on the part of his counsel; and (2) the Knox County Circuit court failed to inquire into a juror's potential bias. We affirm.

¶ 3

I. BACKGROUND

¶ 4

The State charged defendant with four counts of first degree murder (720 ILCS 5/9-1(a)(1), (a)(2), (a)(3) (West 2014)) and one count of unlawful possession of a weapon by a felon (*id.* § 24-1.1(a)). The charges alleged that defendant stabbed the victim, Melvin Buckner, causing his death while unlawfully possessing a firearm.

¶ 5

Prior to trial, attorney David Hansen appeared on behalf of the State. Hansen appeared at a hearing in which the court presented defendant with a copy of the indictment. He also appeared at the next hearing, which the court continued. Hansen also appeared for the State when defendant was arraigned.

¶ 6

Subsequently, Hansen appeared on behalf of defendant as his appointed defense counsel. At the hearing, the following discussion occurred:

“[MR. HANSEN]: And then the only other issue, Judge, is as you know, I was a former Assistant State’s Attorney. I did appear for the State a couple of times at an arraignment and I—I think at another court date in this case, and I’ve spoken to [defendant] about that and explained, you know, potential conflict and such as far as me fully and—vigorously representing him now, and he is comfortable and okay with me being his public defender and would waive any potential conflict, but I just wanted you to admonish him the same on the record, Judge—

* * *

THE COURT: Okay. And, [defendant], do you understand that when somebody who was a prosecutor becomes the public defender—it—it’s happened before—the general rule is that if they were intimately involved in the case there

would be a conflict. If they were only tangentially involved in the case, there's a waivable conflict, and you could waive that and have him continue to represent you.

Is that what you wanted to have happen?

[DEFENDANT]: Yes, sir.”

¶ 7 At a subsequent hearing, the parties addressed Hansen's representation of defendant for the second time. The following discussion occurred:

“[THE COURT]: Mr. Hansen mentioned that while I have certainly tried to make it pretty clear about Mr. Hansen had some prior representation with the—or he was in the State's Attorney's Office at the time when your case was started, they wanted me, I think—I haven't seen it yet, but they wanted me to read off a—do you got something for me to read?

[THE STATE]: May I approach the bench?

THE COURT: Yes.

[THE STATE]: For the record, Your Honor, I would show the Court an acknowledgement and waiver of conflict that we hope [defendant] will review and acknowledge in open court.

THE COURT: Okay.

[THE STATE]: We felt like quite honestly at an earlier hearing, the issue was broached for consideration. The admonishments, we felt, were probably less than they should be, and that's why we're doing this.

THE COURT: Okay. All right.

[Defendant], just so that we don't have any misunderstandings later, and so that you're clearly aware of what was going on with Mr. Hansen when he was in the State's Attorney's Office, and so that you clearly understand your right to have an attorney who would have no prior conflict, they've asked me to admonish you so that you would understand and acknowledge that David Hansen, who's the public defender of Knox County, was previously employed by the Knox County State's Attorney's Office as an Assistant State's Attorney at the time the case was initiated.

That you understand and acknowledge that although the State's Attorneys of Knox County never designated Mr. Hansen to be the Assistant State's Attorney assigned to handle the case, as part of his duties, he nevertheless performed the following actions in that case: He did not present the evidence in the case to the Grand Jury of Knox County, but he did appear on behalf of the State when the Grand Jury reported its actions to the Court on September 12th, 2014, and he appeared on behalf of the State in court on September 22nd, 2014. At which time, the case was continued for arraignment to September 24th.

And he appeared on behalf of the State [on] September 24th, and the case was continued for arraignment on October—to October 1st.

And he appeared on behalf of the State on October 1st, 2014, when you were arraigned on the charge and pled not guilty.

And they'd like you to understand and acknowledge that because he was a former prosecutor who had some personal involvement with the prosecution of the case, a *per se* conflict of interest exists, and understand and acknowledge that

under the Sixth Amendment of the constitution, you have the right to an attorney who has no conflicts of interests; and understanding the situation and rights in this case, you may waive the right to be represented by an attorney who is not a former prosecutor and who had some personal involvement in this case and ask that Mr. Hansen continue to represent you in this case.

Now, having said that, you don't have to have Mr. Hansen if you are not 100 percent comfortable with what I've just said. There are a number of public defenders that I could find to represent you in this case.

Having heard what I just said, do you want Mr. Hansen to continue as your attorney?

THE DEFENDANT: Yes, sir.

THE COURT: Okay. Do you have any questions about that?

THE DEFENDANT: No, sir. I reviewed the terms.

THE COURT: I'm sorry?

THE DEFENDANT: No, sir. I—I reviewed it already.

THE COURT: Okay. Then I'll have you please sign at the bottom acknowledging that here in open court.

(Defendant complies)"

Defendant then signed a written waiver of the conflict of counsel which was consistent with the above discussion.

¶ 8 The cause eventually proceeded to a jury trial. During *voir dire*, the court asked the potential juror, Tammie Miller, if she knew LaToya Wright, a potential witness. Miller told the court that she attended the same church as Wright. According to Miller, she had seen Wright

approximately five times over the last year. Miller was not involved with Wright socially, and only knew her by casual conversation. The court asked Miller if knowing Wright would make her believe that Wright's testimony was more or less credible. Miller responded, "No." Miller also stated that she knew Wright's mother and brother. Miller's family also attended the same church and were friends with Wright's family. Even though Miller and her family knew Wright's family, Miller stated that she would still be able to be a fair and impartial juror. Ultimately, Miller was accepted as a juror.

¶ 9 At trial, Wright, Rashanda Starnes, and Jessica Anthony testified for the State. They provided the following testimony that is relevant to this appeal. All three were present at the time of the offense. Wright stated that after defendant stabbed the victim, he removed a firearm from his pants and told the women he would shoot them. Starnes, on the other hand, stated that defendant made a motion toward his waistband, but was prevented from drawing a firearm. Anthony testified that she had heard people yelling about a firearm, but did not observe defendant holding a firearm.

¶ 10 Following the trial, and the parties' closing arguments, the jury began deliberations. While the jury deliberated, the State informed the court that it had learned additional information about Miller. Miller's son, Blair Haynes, had been married to Rogeria Haynes. Rogeria had obtained an order of protection against Wright (the State's witness), and Rogeria was a defendant in an aggravated battery case in which Wright was the victim. The motive behind the aggravated battery was Wright's dating relationship with Blair. The State presented a police report regarding the aggravated battery charges, and noted for the court that juror Miller was not mentioned in the report. The State asked the court to replace Miller with an alternate juror. Defendant did not ask for an alternate juror, but instead, insisted the court to declare a mistrial. The State objected to

defendant's request, and asked the court to question Miller regarding her relationship with Wright.

¶ 11 When considering the parties arguments, the court stated that it did not know why Miller did not disclose the information, but noted that the new information by itself did not demonstrate that Miller had been untruthful during *voir dire*. The court also noted that Miller had sworn to be a fair and impartial juror. The court continued,

“Whether or not this case would reach a verdict is now moot because while you’re looking at me, the bailiff signaled me that a verdict has arrived.

So I would say that all of those objections have been noted. You can poll the jury at the end of the case, but I’m gonna receive this verdict, and that is gonna be that.”

¶ 12 Ultimately, the jury found defendant guilty of three counts of first degree murder. The jury found that the State failed to prove that defendant unlawfully possessed a firearm during the commission of the murder. Therefore, the jury found defendant not guilty of the murder charge involving a firearm and the charge of unlawful possession of a weapon by a felon.

¶ 13 II. ANALYSIS

¶ 14 On appeal, defendant contends he did not validly waive the conflict of interest created by his counsel's prior involvement in this case as an assistant state's attorney. Alternatively, defendant contends the circuit court erred by failing to inquire into juror Miller's impartiality. We discuss each argument in turn.

¶ 15 A. Conflict of Interest

¶ 16 Defendant contends his counsel labored under a conflict of interest and he never validly waived this conflict. Both parties agree counsel labored under a conflict of interest in that

Hansen acted as a former assistant state's attorney and represented the State during the pretrial proceedings prior to representing defendant during his jury trial. However, the parties dispute whether defendant validly waived this conflict. Because the circuit court adequately admonished defendant regarding the conflict, we find that he knowingly waived the conflict.

¶ 17 “The fundamental right to effective assistance of counsel requires that defendants be afforded counsel who is free of conflicting interests.” *People v. Olinger*, 112 Ill. 2d 324, 339 (1986). “The right to conflict-free counsel may be waived [citations], but such a waiver must be knowing [citation]. A defendant will not be deemed to have waived a conflict unless he is admonished as to the existence of the conflict and its significance.” *Id.*

¶ 18 Here, the circuit court properly admonished defendant as to the conflict and its significance. The court admonished defendant twice regarding the conflict. The first time, Hansen informed the court that he had explained the potential conflict “as far as me fully and—and vigorously representing him now, and he is comfortable and okay with me being his public defender.” The court then explained to defendant that he had the right to obtain the assistance of another attorney that did not have a conflict. Defendant chose to continue with Hansen’s representation. The second time the court admonished defendant regarding the conflict, it informed defendant that Hansen had previously worked as a prosecutor during the preliminary proceedings in this case. The court carefully reviewed Hansen’s actions in the case. The court also repeatedly reminded defendant that he had the right to counsel that did not previously work on his case for the state’s attorney’s office. Defendant did not have any questions, and told the court he wanted Hansen to continue representing him in the case. The court’s admonishment that a conflict existed and its detailed explanation of Hansen’s participation as a former assistant

state's attorney are sufficient to inform defendant of the nature and significance of the conflict. See *People v. Jackson*, 2018 IL App (3d) 170125, ¶ 30.

¶ 19 In reaching this conclusion, we reject defendant's contention that the court failed to adequately explain the significance of the conflict and did not determine that defendant understood its potential effect. In support of his position, defendant cites *People v. Stoval*, 40 Ill. 2d 109 (1968), *People v. Kester*, 66 Ill. 2d 162 (1977), *People v. Lawson*, 163 Ill. 2d 187 (1994), *People v. Acevedo*, 2018 IL App (2d) 160562, *People v. Poole*, 2015 IL App (4th) 130847, and *People v. Coleman*, 301 Ill. App. 3d 290 (1998).

¶ 20 Of the authority cited by defendant, the only cases that share a similar factual scenario with this case are *Lawson* and *Kester*. In both cases, the appointed defense attorney had previously worked as an assistant state's attorney, and had appeared on behalf of the State during the preliminary proceedings. *Kester*, 66 Ill. 2d at 167; *Lawson*, 163 Ill. 2d at 208. In both cases, defendant was never informed of the possibility of a conflict due to defense counsel's prior representation on behalf of the State. While these cases share a similar factual background with this case, they are legally distinct in that the issue before the court in both *Lawson* and *Kester* was whether an actual conflict existed. Here, the question is not whether a conflict existed, but whether the court properly admonished defendant regarding the significance of the conflict. We acknowledge that the court in *Kester* and *Lawson* opined as to the significance of the conflict. For example, the court explained that counsel's conflict may create a subliminal reluctance to attack the pleadings or actions of the prosecution and a subconscious desire to avoid an adversarial confrontation with the prosecution. *Kester*, 66 Ill. 2d at 167-68; *Lawson*, 163 Ill. 2d at 213-14. However, the court did not hold that these concerns were required admonishments. Unlike the defendants in *Kester* and *Lawson*, defendant was made aware of the conflict and

informed in great detail regarding Hansen’s prior role as an assistant state’s attorney.

Consequently, both cases are legally distinguishable from the instant case.

¶ 21 The remaining authority relied upon by defendant is factually distinguishable from the instant case. In *Acevedo*, *Poole*, and *Coleman*, and *Stoval*, the conflict arose because defense counsel either represented one of the State’s witnesses or the victim. *Acevedo*, 2018 IL App (2d) 160562, ¶ 4; *Poole*, 2015 IL App (4th) 130847, ¶ 14; *Coleman*, 301 Ill. App. 3d at 291-92; *Stoval*, 40 Ill. 2d at 112. In all four cases, the court’s conflict admonishments were insufficient because the court failed to explain how counsel’s representation of the witnesses or victim may affect counsel’s ability to question the witnesses or present evidence at trial. In other words, counsel’s representation of the witnesses or victim may cause counsel to question the witnesses in a way that is beneficial to the witness, but adverse to defendant. By contrast, the conflict in this case arose due to Hansen’s minor participation as an assistant state’s attorney during the pretrial proceedings. The court, therefore, did not need to explain how Hansen’s ability to question specific witnesses may have been affected by the conflict.

¶ 22 B. Juror Impartiality

¶ 23 Next, defendant contends he is entitled to a new trial because the circuit court failed to conduct an evidentiary hearing into juror Miller’s impartiality. Defendant maintains that Miller failed to disclose the dating relationship between Blair (her son) and Wright (the State’s witness). Defendant also claims that Miller failed to disclose the aggravated battery charges that resulted from an altercation between Blair’s wife, Rogeria, and Wright—an altercation apparently caused by relationships between the women and Blair. Although defendant never asked the circuit court to hold such an evidentiary hearing, he now claims the court was required

to hold the hearing. Because the only evidence of Miller’s alleged bias was speculative, we find the court was not required to hold an evidentiary hearing regarding Miller’s purported partiality.

¶ 24 A defendant’s fundamental right to a jury trial guarantees a trial by a panel of impartial jurors. *People v. Kuntu*, 188 Ill. 2d 157, 161 (1999). When a defendant learns of facts that might support a finding of partiality by a juror after a verdict, an evidentiary hearing may be necessary. *People v. Towns*, 157 Ill. 2d 90, 102 (1993). In seeking an evidentiary hearing, defendant bears the burden of introducing and offering “specific, detailed and nonconjectural evidence in support of his position.” *Id.* When defendant fails to provide such evidence, an evidentiary hearing is not warranted. *Id.* “[A]ny doubt should be resolved in favor of granting the evidentiary hearing.” *People v. Witte*, 115 Ill. App. 3d 20, 30 (1983). We review a circuit court’s decision to inquire into a juror’s partiality for an abuse of discretion. *People v. Mitchell*, 121 Ill. App. 3d 193, 194-96 (1984).

¶ 25 Here, defendant has failed to show specific, detailed and nonconjectural evidence supporting his contention that Miller was partial. The circuit court specifically found that the new information alone did not show that Miller failed to disclose or intentionally withheld any information requested of her during *voir dire*. This is consistent with Miller’s answers to the questions posed during *voir dire*. At that time, Miller did indicate she knew Wright and that her family was friendly with Wright’s family. Defendant never asked Miller to provide any further detail regarding these relationships. Miller was not required to volunteer additional information she was never asked to provide. Therefore, the new information by itself does not demonstrate that Miller failed to disclose or intentionally withheld any information during *voir dire*.

¶ 26 Moreover, the only evidence of potential bias presented to the court involved Miller’s son’s dating relationship with Wright and a feud between Wright and Rogeria. Defendant now

speculates this relationship demonstrates that Miller may have been a biased juror. However, defendant must present more than speculative evidence to warrant an evidentiary hearing. *Towns*, 157 Ill. 2d at 102. This evidence alone does not tend to show that Miller was partial. Miller was not mentioned in the police report and defendant made no allegation that Miller had any involvement or knowledge of the incident. Defendant also never presented any evidence that suggested Miller had any knowledge of her son's connection to Wright. Consequently, we find the circuit court did not abuse its discretion when it declined to question Miller.

¶ 27 Even assuming Miller had knowledge of the dating relationship between her son and Wright, the record shows the jury did view Wright's testimony critically. Wright was the only witness to claim that she observed defendant carrying a firearm in full view during the crime. Despite this testimony, the jury found defendant not guilty of the charges based on defendant's alleged possession of a firearm.

¶ 28 III. CONCLUSION

¶ 29 The judgment of the circuit court of Knox County is affirmed.

¶ 30 Affirmed.