

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

SALVADOR JONATHAN RIDLEY,

Defendant-Appellant.

UNPUBLISHED

January 14, 2010

No. 287921

Oakland Circuit Court

LC No. 2008-220581-FC

Before: K. F. Kelly, P.J., and Hoekstra and Whitbeck, JJ.

PER CURIAM.

A jury convicted defendant Salvador Ridley of armed robbery.¹ The trial court sentenced Ridley to 68 to 120 months' imprisonment. Before sentencing, Ridley filed a motion for a new trial based on alleged juror misconduct. The trial court ordered an evidentiary hearing after which it denied Ridley's motion for a new trial. Ridley now appeals as of right. We affirm. We have decided this appeal without oral argument.²

I. Basic Facts And Procedural History

This case arises out of a robbery at the Fun and Fantasy store in Royal Oak in November 2007. During jury selection, prospective jurors were asked whether they had any family or friends who were current or past law enforcement personnel. Throughout the course of jury selection, nine prospective jurors indicated that they had some form of connection to law enforcement officers. Ridley's counsel and the prosecutor excused several of these prospective jurors. However, the jury did include four jurors that had some relationship to law enforcement personnel. Juror #61 had familial ties that included her husband as a reserve officer for Keego Harbor and a son that was a former White Lake Township police officer. Jurors #5 and #18 had friends who served on the Monroe Police Department and as a Michigan State Trooper, respectively. The fourth seated juror with ties to law enforcement personnel was Juror #181. When the trial court initially questioned her, Juror #181 stated that her cousin was the undersheriff for Oakland County and that she had several cousins who were sheriffs, including

¹ MCL 750.529.

² MCR 7.214(E).

some who were retired. Nevertheless, she felt that she “absolutely” could set aside her relationships with them and make her decision based on what was presented in court.

The prosecutor later inquired further into Juror #181’s relationship with the undersheriff:

Q. Okay. [Juror #181], have you had any kind of contact with the undersheriff, the former undersheriff recently at all?

A. I think we had a family event a couple months ago.

Q. Okay.

A. A graduation.

Q. Ever talk to him about cases at all?

A. (Inaudible response)

Q. Okay. That’s a no?

A. (Inaudible response)

Q. All right. You can be fair and impartial in this case?

A. Yes.

When provided an opportunity to question the prospective jurors, defense counsel’s questioning of Juror #181 consisted of whether she had ever mistaken someone for someone else. No other in-depth probing of any of the jurors was made with respect to their relationships with law enforcement personnel. Once the jury was empanelled, the jurors took an oath to render a verdict only on the evidence introduced and in accordance with the instructions of the court.

Sometime after the verdict, defense counsel learned that Juror #181 realized on the second day of trial that her first cousin was the Chief of Police of the Royal Oak Police Department but had failed to notify any court personnel. Ridley moved for a new trial, and the trial court ordered an evidentiary hearing.

At the evidentiary hearing, Juror #181 recalled being asked during jury selection about her affiliation with any law enforcement personnel. She acknowledged that she had revealed that she was related to the former undersheriff of Oakland County and that she had several other cousins that were in law enforcement, but had unintentionally failed to disclose that she was also related specifically to the Royal Oak Police Chief. She explained that she had six or seven cousins that are police officers and that her uncle was a police chief, but that she did not know where they all worked. Consequently, she did not know exactly where her first cousin, who was then the Royal Oak Police Chief, was working at the time.

However, on about the second day of trial, Juror #181 realized from a conversation with family that her cousin was the Royal Oak police chief. Juror #181 admitted that at no time did

she disclose this to a court clerk or anyone involved in the trial. She explained that she did not think it was important because she had already revealed that she was related to several law enforcement officers. Juror #181 said that she was not trying to hide her relationship with the Royal Oak police chief and would have informed the trial judge during jury selection, but noted that she specifically indicated that her affiliation with law enforcement officers would have no bearing on her ability to be fair and impartial.

Juror #181 stated that she was 10 years younger than her cousin and would only see him once or twice a year at family functions. According to Juror #181, before the trial, it had been at least a year since the last time she had seen her police chief cousin. Juror #181 stated that she did not reveal to the other jurors her relationship with the police chief and that she did not let her relationship with law enforcement officers influence her verdict. She said that the video played at trial along with other the evidence led her to her verdict and not her relationship to the Royal Oak police chief.

In denying Ridley's motion for a new trial, the trial court made the following findings:

The Court has taken into consideration her testimony and based on the Court's assessment of her voracity [sic], honesty, integrity, demeanor, vocal tones and other indicia of reliability, I find that her testimony is extremely credible and I give it enormous weight in light of—in connection with this motion before the Court.

In light of that, I find that during voir dire she did disclose all the relationships with the officers that she remembered at the time. She unfortunately did not—actually, she did not know at that time that the chief of Royal Oak was . . . her cousin, her first cousin. She had basically known that he was an officer and she had disclosed that she had relatives that were officers and disclosed the undersheriff . . . because she thought that was important.

Counsel certainly had the ability to inquire further in connection with the other officers that she had disclosed generically had been involved (ph.). The Court specifically asked her whether or not she would be able to evaluate the credibility of—give the same scrutiny and the same consideration to the testimony of lay witnesses as she would the testimony of police officers, she affirmatively stated she could.

* * *

When she discovered on the second day of trial at night, because of a [sic] unrelated conversation . . . that she was indeed related to the chief of the Royal Oak Police Department, she registered that in her mind but did not disclose that to any of the other jurors, nor did it affect her deliberations in connection with the case.

Though able defense counsel has tried to raise issues with regard to her credibility and her failure to disclose, I reject those contentions. She was a very credible witness for the reasons I've already articulated.

In light of that, her deliberations were not affected by the non-disclosure—the non-disclosed information, nor did she mislead the Court or defense counsel or the prosecutor purposefully, it was simply an omission because she didn't honestly know, but an omission of ignorance not of malice and she did not harbor any intention of attempting to steer the jury's verdict in one manner or another because of the relationship she had with the first cousin.

Ridley now appeals.

II. Motion For New Trial

A. Standard Of Review

Ridley argues that the trial court deprived him of his right to a fair and impartial jury when it denied his motion for a new trial. We review the trial court's decision on a motion for a new trial for an abuse of discretion and its findings of fact for clear error.³

B. Legal Standards

A criminal defendant has a right to be tried by a fair and impartial jury.⁴ A juror's failure to reveal relevant information is prejudicial if the defendant was denied an impartial jury.⁵ Jurors are presumed to be impartial, and the burden is on the defendant to establish that a juror was not impartial or at least impartiality is in reasonable doubt.⁶

C. Applying The Standards

Ridley has failed to establish that Juror #181 in question was partial. The trial court heard Juror #181's testimony, assessed her credibility, and found no evidence that her relationship to the Royal Oak Police Chief in any way affected her impartiality or that of the other jurors. Even if Juror #181's failure to notify the trial court in mid-trial of the newly realized relationship could be deemed "misconduct," Ridley failed to present any evidence that the "misconduct" affected the impartiality of the jury.⁷ The trial court's finding that Ridley was

³ *People v Miller*, 482 Mich 540, 544; 759 NW2d 850 (2008).

⁴ US Const, Am VI; Const 1963, art 1, § 20; *Miller*, 482 Mich at 547.

⁵ *Miller*, 482 Mich at 548-549, 561, overruling *People v Daoust*, 228 Mich App 1; 577 NW2d 179 (1998) (*Miller* overruled *Daoust* to the extent that *Daoust* held that a defendant is always entitled to a new trial when the juror could have been properly excusable for cause had defense counsel known of information potentially affecting a juror's ability to act impartially). See *Miller*, 482 Mich at 561 ("The proper inquiry is whether the defendant was denied his right to an impartial jury.").

⁶ *Id.* at 550.

⁷ See also *People v Nick*, 360 Mich 219; 103 NW2d 435 (1960) (juror failed to disclose that her father was an attorney to whom defense counsel had referenced during trial).

not denied an impartial jury is not clearly erroneous. Accordingly, the trial court did not abuse its discretion in denying Ridley's motion for a new trial.

III. Shifting Of The Burden Of Proof

A. Standard Of Review

Ridley claims that the prosecutor impermissibly shifted the burden of proof by asking Royal Oak Police Detective Keith Spencer questions regarding Ridley's "alibi" and inability to produce documentary evidence of such "alibi." However, Ridley did not object at trial to the prosecutor's line of questioning or to Detective Spencer's testimony. Our appellate review is limited, therefore, to whether the alleged error was plain, whether it affected the outcome, and whether it resulted in the conviction of an actually innocent person or seriously affected the fairness, integrity, or public reputation of the judicial proceedings.⁸

B. Underlying Facts

More specifically, Ridley claims for the first time on appeal that Detective Spencer's testimony regarding a conversation that he had with Ridley, in which Ridley hypothetically referred to an alibi and supporting documents, effectively shifted the burden of proof to Ridley to present evidence.

Detective Spencer testified that he met with Ridley and asked him about the robbery at the Fun and Fantasy Store. Detective Spencer also showed Ridley a photographic still from a store surveillance video, and Ridley commented that, although it did look like him, it was not him. In response to the prosecutor's questioning, Detective Spencer testified as follows:

Q. When you spoke to [Ridley] in March, what did you say to him when you met up with him?

A. I informed him of what I was investigating. I made sure that Mr. Ridley knew he was not under arrest, and he was free to leave . . . I informed him that I was investigating an armed robbery at the Fun and Fantasy Store. Part of that conversation with Mr. Ridley I asked him if he lived in the area. I asked him if he had stayed in the area recently, to which he said no, but he does have a sister that lives in the area. He informed me that he has not shopped at any of the stores—stores in Royal Oak along Eleven Mile Road within the last year, which is a question I had asked him. I also asked him what he thought—I eventually took these photographs right here from—that I got from the surveillance video, and I asked him is this you? And he said, "Well, that looks like me, but it's not me."

* * *

⁸ *Miller*, 482 Mich at 559; *People v Carines*, 460 Mich 750, 763-764; 597 NW2d 130 (1999).

A. Um, as we continued to speak, Mr. Ridley started presenting me with well what if—what if I did take that stuff? What if—what—what if I did? What—what would happen to me? What would—what could be—the possible charges be? And I would explain to him. Um, this is an armed robbery. The person that was involved in this thought you had a gun. When I presented that to Mr. Ridley, Mr. Ridley said, “Well, I don’t own a gun.” I said, “So you—are you telling me you didn’t—you didn’t mean to threaten her with a gun?” “Well, I’m not saying anything.” Um, that was his response.

* * *

A. Um, one of the things—I told him that it was—it was an armed robbery charge, and during the course of that conversation, one of the things that he was concerned about was whether or not he could be charged with selling those items. When I asked—when I asked him if that’s what had occurred in this case, he said, “I’m just saying what if,” in—in response to whether or not he had sold these items. So there was no definite answer there.

* * *

A. Yes. He—he asked me, “What if I had an alibi?” And I asked him, “If you do have an alibi, I’d like to hear about it, but I want to know what that is.” He said, that—“No, I’m just saying what if I had an alibi.” I said, “Okay.”

As the conversation progressed, he said, “Well, what if I have five witnesses that can say that I was in a particular location the day of this incident.” I said, “I’d love to have their names. Let me have their names, and I’ll investigate it.” And he said, “Well I’m just saying what if.” Okay.

* * *

Q. Let me ask you a quick different question. Did he indicate to you whether or not he had a schedule or a calendar that he followed?

A. Yes. He—he had men—during the course of our interview, he said that, “Well, I think I was somewhere else.” Something to the effect of, “I think I was somewhere else the night of that incident.” And I said, “Well, how do you know that?” “Well, I have a schedule.” “Well, can I see that schedule,” is what I asked him. And he said, “Well, I just have one. I don’t have”—he—he indicated to me that he had nothing physical he could present to me that would say on Monday, lunch with mom or whatever. So . . .

C. Analysis

Ridley’s argument is based on the assumption that Detective Spencer and the prosecutor impermissibly commented on Ridley’s failure to present an alibi. However, because Ridley did not file a notice of alibi pursuant to MCL 768.20, he is therefore not entitled to the judicial

protection that precludes the prosecution from commenting on a statutory alibi notice prior to the defendant testifying.⁹

Moreover, as set out above, Detective Spencer simply testified regarding a series of hypothetical questions Ridley posed during their interview in which Ridley was seeking to discern how the possible existence of an alibi might affect the case. Detective Ridley was not testifying regarding any claim that Ridley did in fact have an alibi. Detective Spencer's testimony did not have the effect of shifting the burden of proof on Ridley because at no time did Ridley ever actually claim to have any such evidence. Accordingly, we conclude that Ridley has failed to demonstrate that plain error occurred, and he is not entitled to a reversal of his conviction on this unpreserved allegation of error.

Affirmed.

/s/ Kirsten Frank Kelly
/s/ Joel P. Hoekstra
/s/ William C. Whitbeck

⁹ See, e.g., *People v Holland*, 179 Mich App 184; 445 NW2d 206 (1989); *People v Dean*, 103 Mich App 1; 302 NW2d 317 (1981); *People v Shannon*, 88 Mich App 138; 276 NW2d 546 (1979).