

IN THE COURT OF APPEALS OF IOWA

No. 9-038 / 07-1704
Filed February 19, 2009

**IN RE THE DETENTION OF
ADAM MAURO,**
Respondent-Appellant.

Appeal from the Iowa District Court for Warren County, Paul R. Huscher,
Judge.

Respondent appeals a jury verdict finding he should be adjudicated a
sexually violent predator. **AFFIRMED.**

Mark C. Smith, State Appellate Defender, Matthew S. Sheeley and Rachel
E. Seymour, Assistant State Public Defenders, for appellant.

Thomas J. Miller, Attorney General, Elisabeth S. Reynoldson and Virginia
Barchman, Assistant Attorneys General, for appellee State.

Considered by Sackett, C.J., and Potterfield, J. and Huitink, S.J.*

*Senior judge assigned by order pursuant to Iowa Code section 602.9206 (2009).

PER CURIAM

On December 26, 2006, the State filed a petition alleging Adam Mauro was a sexually violent predator, as defined in Iowa Code chapter 229A (2005). Mauro was then in prison based on convictions of assault with intent to inflict sexual abuse and two counts of third-degree sexual abuse. He was expected to be released in January 2007. The State claimed Mauro had been diagnosed with pedophilia and antisocial personality disorder, and was likely to engage in predatory acts constituting sexually violent offenses if not confined in a secure facility.

Mauro requested a jury trial, under section 229.7(4). A record was made during voir dire concerning questioning by Mauro's counsel of a prospective juror, Tracy, as follows:

Q. According to the — And your answer to Ms. Seymour's question was yes, you have formed an opinion — A. Yes.

Q. — that he should be confined? A. Yes.

Q. And that's without the benefit — A. Yes.

Q. — of having heard any evidence or any testimony? A. Yes.

Q. Would you say that that's an unqualified opinion that you have — A. Yes.

Q. — that — regardless of whether you hear evidence to the contrary? A. Uh-huh.

Q. If I have an expert come in and our expert says that the risk assessment procedures used by the State's expert are not reliable, does that mean you're still going to vote to have Mr. Mauro committed? A. No.

Q. Is your unqualified opinion at this point — You do have an unqualified opinion at this point — A. Yes.

Q. — that he should be confined? A. Yes.

Q. So you're starting with the presumption based on the fact that he's been convicted of this crime before, you're presuming that he — that commitment or confinement should continue? A. Based on what I know as of right now, as of today, yes.

Q. Are you going to require the respondent and his attorneys to present evidence that would sway you in the other direction? A. Not necessarily.

Q. But the bottom line is that starting off it is your opinion that his commitment should continue? A. Yes.

Mauro then moved to have the juror struck for cause under Iowa Rule of Civil Procedure 1.915(6)(j). The court questioned Tracy further:

Court: [Y]our opinion that Mr. Mauro should be incarcerated, is that an opinion based upon the fact that he has been convicted of sexual abuse offenses? A. Yes.

Court: All right. His sentence or his punishment for sex abuse offenses is not the matter before this court. A. Right.

Court: The issue that will be before the jury is whether or not Mr. Mauro continues at the conclusion of his confinement to pose such risk that he should be continued to be confined or should be confined in a secure facility.

Even though you have an opinion that he should be confined today, based on what you know, are you willing to listen to the evidence in this case and apply the law that the court gives you — A. Yes.

Court: — and reach a just verdict, regardless of whether that verdict may square with what now is your opinion? A. Yes.

Court: And there is only one commitment that any of us are entitled to ask of you, and that is: Will you weigh the evidence that you hear and that you see in the courtroom and apply the law that the court gives you and base your verdict solely upon that evidence and that law? A. Yes.

Court: And do you believe that you can do that? A. I believe so.

The court then denied the challenge for cause.

Mauro moved for a mistrial, pointing out that they had started with a jury pool of twenty-eight jurors, and after challenges for cause, they were left with sixteen jurors, and each side was entitled to strike four jurors under rule 1.915(7). Mauro stated he was forced to use one of his strikes under rule 1.915(7) to remove Tracy, when she should have been removed for cause. He asserted he

had been denied his right to a fair trial. The court denied the motion for mistrial, finding Mauro's right to a fair trial had not been compromised.

The jury returned a verdict finding Mauro was a sexually violent predator. The court committed him for treatment, pursuant to section 229A.7(5).

On appeal, Mauro contends the district court abused its discretion by denying his challenge for cause against Tracy, and his subsequent motion for mistrial. The district court has broad discretion in ruling on a challenge for cause. *State v. Tillman*, 514 N.W.2d 105, 107 (Iowa 1994). A court's ruling on a motion for mistrial is also reviewed for an abuse of discretion. *State v. Newell*, 710 N.W.2d 6, 32 (Iowa 2006).

A juror may be challenged for cause under rule 1.915(6)(j) "[w]hen it appears the juror has formed or expressed an unqualified opinion on the merits of the controversy, or shows a state of mind which will prevent the juror from rendering a just verdict." The court should consider "whether the juror holds such a fixed opinion on the merits of the case that he or she cannot judge impartially the guilt or innocence of the defendant." *State v. Neuendorf*, 509 N.W.2d 743, 746 (Iowa 1993) (quoting *State v. Gavin*, 360 N.W.2d 817, 819 (Iowa 1985)).

While Tracy initially stated she had an unqualified opinion that Mauro should be confined, under questioning by the court she agreed that she would listen to the evidence and apply the law in order to reach a just verdict, regardless of whether that verdict would square with her present opinion. Tracy answered affirmatively to the question, "Will you weigh the evidence that you hear and that you see in the courtroom and apply the law the court gives you and

base your verdict solely upon that evidence and that law?” We determine the district court did not abuse its discretion in denying the challenge for cause against Tracy on the basis that she had formed an unqualified opinion about the case.

Furthermore, even if the district court had abused its discretion by denying the challenge for cause against Tracy, Mauro has not shown he was prejudiced. A party must show “(1) an error in the court’s ruling on the challenge for cause; and (2) either (a) the challenged juror served on the jury, or (b) the remaining jury was biased as a result of the defendant’s use of all of the peremptory challenges.” *Tillman*, 514 N.W.2d at 108 (citing *Neuendorf*, 509 N.W.2d at 747).

Tracy did not serve on the jury because she was removed by a peremptory strike under rule 1.915(7). In considering prejudice, we focus on those jurors who actually served on the case. *State v. Wilkins*, 693 N.W.2d 348, 351 (Iowa 2005). Mauro must show present evidence to show that the jury that served was not impartial. See *State v. Escobedo*, 573 N.W.2d 271, 276 (Iowa Ct. App. 1997) (“Claims that the jury that did serve was not impartial must be grounded on evidence appearing of record.”). In the absence of a factual showing that the court’s ruling on a challenge for cause “resulted in a juror being seated who was not impartial, the existence of prejudice is entirely speculative.” *Neuendorf*, 509 N.W.2d at 746. Such speculation is not sufficient to justify overturning a jury’s verdict. *Id.*

Mauro has not presented any evidence to show the jury that heard his case was not impartial. We do not presume prejudice merely because a party

used a peremptory challenge against a juror who should have been removed for cause. *Id.* at 747. We conclude the district court did not abuse its discretion in denying Mauro's challenge for cause, or his motion for mistrial.

We affirm the decision of the district court.

AFFIRMED.