

RENDERED: May 25, 2001; 10:00 a.m.
 NOT TO BE PUBLISHED

Commonwealth Of Kentucky

Court Of Appeals

NO. 1999-CA-001686-MR
and
NO. 1999-CA-002477-MR

JOHN NEIL WILLIAMS

APPELLANT

v. APPEAL FROM McCACKEN CIRCUIT COURT
HONORABLE R. JEFFREY HINES, JUDGE
ACTION NO. 98-CR-00040

COMMONWEALTH OF KENTUCKY

APPELLEE

OPINION
AFFIRMING
*** * * * *

BEFORE: BUCKINGHAM, EMBERTON AND TACKETT, JUDGES.

EMBERTON, JUDGE: John Neil Williams was convicted of criminal conspiracy to commit murder of his wife, Bobbi Holman Williams, and sentenced to twelve years' imprisonment.

Neil and Bobbi, high school sweethearts, married in July 1984. Two children were born of the marriage. After his graduation from Murray State University, where he played football, Neil became an employee of his brother's construction company and Bobbi operated the Holman House Restaurant, a well-known restaurant in Paducah, owned by Neil, Bobbi, and Bobbi's

father. Bobbi was also involved in the Chamber of Commerce and had become a well-known business woman.

In 1993, Neil became romantically involved with Kathy Sue Beach, an employee of the construction company. Neil paid Kathy sums of money on a monthly basis, and when needed, provided bail money to her following her arrests on various criminal charges. In January 1995, Dickie Beach, Kathy's husband, informed Neil that he knew of the affair and contrived to blackmail Neil to keep the affair secret from Bobbi. Although Neil paid Dickie \$2,500 for his silence, Dickie told Bobbi of the affair. Dickie Beach later committed suicide.

In the midst of this romantic turmoil, in the late fall of 1995, the construction business deteriorated and the bank having extended the company a \$6,000,000 line of credit determined there were not adequate assets to cover the credit line. A buyer subsequently purchased the assets of the company for \$1,800,000.

After Neil and Bobbi separated in March 1996, Neil lived with Kathy but frequently returned to the marital residence to visit the children. On July 16, 1996, when returning his son to the marital residence, Neil discovered Bobbi's body in her residence. At the time of trial no one had been charged with Bobbi's murder.

A key player in the Commonwealth's conspiracy theory is Valva Buford. Neil met Valva in October 1994, when he came to her tanning, tattoo, and hair salon looking for Dickie Beach. Dickie and Kathy were friends of Valva and her husband, Rocky.

Buford assisted Neil in getting Kathy from jail on various occasions and in return, Neil provided financial support for Valva.

In the fall of 1995, Neil and Valva had had a conversation in which Neil informed Valva that he was interested in having Bobbi killed and went so far as to suggest that there could appear to be a robbery at the restaurant she operated. Valva contacted Randall Yost, a friend of Rocky's, who agreed to murder Bobbi. Neil provided \$5,000, blueprints of the restaurant, and Bobbi's photo. Subsequently, in addition to cash, Neil provided information to Valva concerning Bobbi's vehicle and a further physical description with the instructions that she pass the cash and information to Yost. Neil further told Valva to inform Yost that he wanted the killing done by February 1996. However, it did not occur by that date. Valva testified that things then began to "settled down."

Yost testified that he received approximately \$46,000 in February 1996, through Valva, to carry out the murder. However, he stated that he had no intention of murdering Bobbi but simply took the money. When the murder did not occur, Yost received several calls from Valva inquiring about the scheme. He testified that by the end of March he had no further contact with Valva or Neil regarding the matter. However, when Yost learned that someone had murdered Bobbi, he contrived a complicated scheme to extort money from Neil.

Yost stole Chicago Police Department incident reports and evidence tape and falsified a report describing a raid on a

Hell's Angels Clubhouse in Chicago, which resulted in the restaurant blueprints and photograph of Bobbi being confiscated by Chicago police. He also prepared a report describing two fictitious offenders involved in the raid as having provided information to the Chicago police about a murder for hire scheme in Paducah, Kentucky. Posing as a Chicago policeman, Yost then met with Valva and Neil, who had not previously met Yost, and demanded \$300,000 to destroy the evidence and information.

The following day, on March 16, 1997, Neil and his brother, Greg Williams, met with Marshall County Sheriff Brian Roy and told him of the attempted extortion by Yost. At Sheriff Roy's request, Neil tape recorded a telephone conversation with Valva discussing Yost's proposal. Several days later, Valva and Yost met with Greg Williams and renegotiated a price of \$95,000. Yost and Valva were subsequently arrested by federal authorities and charged with extortion. Yost was convicted for his extortion activities and Valva pled guilty to criminal conspiracy to commit the murder of Bobbi and was sentenced to ten years' imprisonment. Both Valva and Yost implicated Neil in the murder conspiracy.

As would be expected this tragically bizarre case received more than the usual amount of publicity for a murder in McCracken County, where it was tried. Neil contends that the trial court erred when, based on that publicity, it refused his motion for a change of venue. Decisions regarding proper trial venue are left to the discretion of the trial court.¹ The venue for a criminal trial is presumptively the county in which the

¹ Nickell v. Commonwealth, Ky., 371 S.W.2d 849 (1963).

crime is committed.² Publicity alone regarding a case does not necessarily require a change of venue. "It is not the amount of publicity which determines that venue should be changed; it is whether public opinion is so aroused as to preclude a fair trial."³

The trial court found that Neil failed to demonstrate that the publicity prejudiced his right to a fair trial. It noted that a survey conducted by the Commonwealth revealed that of the 140 people surveyed, 123 refused to answer the question as to Neil's guilt.⁴ From thirty-nine responses, seventeen stated they believed Neil to be guilty. Neil countered with affidavits from 203 residents of McCracken County stating that Neil could not get a fair trial in that county. It is not clear, however, if these affidavits were part of a random survey or if the affiants were selected by Neil. In either event, this court has reviewed the affidavits, the Commonwealth's survey, and most important, the news coverage regarding this case. While the articles expressed sympathy for the Holman family, none was inflammatory toward Neil. In fact, several of the articles were written after Neil contacted the media and made statements

² KRS 452.510.

³ Kordenbrock v. Commonwealth, Ky., 700 S.W.2d 384, 387 (1985) cert. denied, 476 U.S. 1153, 106 S.Ct. 2260, 90 L.Ed.2d 704 (1986) habeas granted, in part, on other grounds, Kordenbrock v. Scroggy, 919 F.2d 1091 (6th Cir. 1990), cert. denied, 499 U.S. 970, 111 S.Ct. 1608, 113 L.Ed.3d 669 (1991).

⁴ The number who refused to respond should be 101, not 129, as stated by the trial court.

regarding his innocence. We find no abuse of the trial court's discretion in refusing to change the venue of Neil's trial.

Neil did not object to the sufficiency of the indictment until he filed a post-conviction motion to dismiss, arguing that the indictment failed to allege an overt act in furtherance of the conspiracy as required by KRS 506.040.

Kentucky Rules of Criminal Procedure (RCr) 8.18 provides:

Defenses and objections based on defects in the institution of the prosecution or in the indictment or information other than that it fails to show jurisdiction in the court or to charge an offense may be raised only by motion before trial. The motion shall include all such defenses and objections then available to the defendant. Failure to present any such defense or objection as herein provided constitutes a waiver thereof, but the court for cause shown may grant relief from the waiver. Lack of jurisdiction or the failure of the indictment or information to charge an offense shall be noticed by the court at any time during the proceedings.

And, RCr 6.12 provides:

An indictment, information, complaint or citation shall not be deemed invalid, nor shall the trial, judgment or other proceedings thereon be stayed, arrested or in any manner affected by reason of a defect or imperfection that does not tend to prejudice the substantial rights of the defendant on the merits.

Realizing that his claim of error is unpreserved for review, Neil contends that this court should review this issue pursuant to Kentucky Rules of Civil Procedure (CR) 60.02, citing counsel's negligence in failing to object to the indictment. Quite simply, counsel did not object to the indictment because it was not defective. If the language of the indictment, coupled

with the applicable statute, gives notice to the defendant of the nature of the charged crime it is not necessary to detail the specific facts.⁵ The indictment set forth the offense in both the caption and the body. There is no error in the trial court's denial of Neil's post-trial motion to dismiss.

We find no merit in Neil's final contention that he is entitled to a new trial because the trial court did not permit him to introduce evidence concerning Bobbi's death. Specifically, Neil sought to introduce evidence of the details of Bobbi's murder and that Bobbi was having a romantic relationship with an old high school boyfriend, identified only as John Doe. Essentially, Neil sought to implicate John Doe in Bobbi's murder.

The actual death of Bobbi was collateral to the conspiracy trial. The jury was informed that Neil was not charged with murder nor did the Commonwealth allege that he was involved in her death. Under KRS 506.040, it is not relevant who killed Bobbi or even whether the victim of the conspiracy was actually murdered. The trial court did not abuse its discretion in refusing to permit evidence surrounding Bobbi's murder.

The judgment of the McCracken Circuit Court is affirmed.

⁵ Thomas v. Commonwealth, Ky., 931 S.W.2d 446 (1996).

ALL CONCUR.

BRIEF AND ORAL ARGUMENT FOR
APPELLANT:

Samuel Manly
Louisville, Kentucky

BRIEF FOR APPELLEE:

Albert B. Chandler III
Attorney General

David A. Sexton
Assistant Attorney General
Frankfort, Kentucky

ORAL ARGUMENT FOR APPELLEE;

David Sexton
Frankfort, Kentucky