This opinion is nonprecedential except as provided by
Minn. R. Civ. App. P. 136.01, subd. 1(c).

STATE OF MINNESOTA
IN COURT OF APPEALS
A21-0767

Jeffery John Huebner, petitioner,
Appellant,

vs.

State of Minnesota,
Respondent.

Filed December 13, 2021
Affirmed
Worke, Judge

Kanabec County District Court
File No. 33-CR-18-85

Cathryn Middlebrook, Chief Appellate Public Defender, Jenna Yauch-Erickson, Assistant Public Defender, St. Paul, Minnesota (for appellant)

Keith Ellison, Attorney General, St. Paul, Minnesota; and

Barbara McFadden, Kanabec County Attorney, Daniel S. Shub, Assistant County Attorney, Mora, Minnesota (for respondent)

Considered and decided by Worke, Presiding Judge; Florey, Judge; and Smith, John, Judge.*

* Retired judge of the Minnesota Court of Appeals, serving by appointment pursuant to Minn. Const. art. VI, § 10.

NONPRECEDENTIAL OPINION

WORKE, Judge

Appellant challenges the denial of his petition for postconviction relief, arguing that the district court erred by denying his motion to strike the jury panel for its exposure to prejudicial statements made during voir dire. We affirm.

FACTS

In September 2018, appellant Jeffery John Huebner went to trial on charges of assault with a dangerous weapon and reckless handling of a dangerous weapon. *See* Minn. Stat. §§ 609.222, subd. 1, .66, subd. 1(a)(1) (2016). During voir dire, prospective jurors were asked if they knew Huebner. One prospective juror stated that he knew Huebner from Sunday school. He stated that "15 years ago" he purchased scrap iron from Huebner's father. The prospective juror stated that he last saw Huebner "[i]n the grocery store four months ago, maybe." When asked if he considered Huebner a friend, the prospective juror answered "probably, yeah." The prospective juror expressed his concern about serving as a juror. When asked to elaborate on his concerns, the prospective juror stated, "I think if [Huebner] wanted to do someone harm, he probably would have." The prospective juror was excused from the panel.

After the jury was selected, the panel left the courtroom. Huebner moved to strike the jury panel because the prospective juror's statements exposed the panel to unfairly prejudicial material. Huebner argued that the statement "[i]f [Huebner] wanted to do some harm, he certainly would have," was both "very inflammatory" and "very prejudicial." The state argued that because the prospective juror never expressly stated that "I know

[Huebner] did this" or "he's capable of something like that," his statements could not be construed as prejudicial. The district court stated that it would review the voir dire transcript. The district court then stated "[t]he statement's a little bit different than I thought it was, but it's still kind of the same—it has, I guess, various meanings you could read into." After determining that the statements were not prejudicial, the district court denied Huebner's motion.

The jury found Huebner guilty as charged. In January 2019, the district court sentenced Huebner to 36 months in prison. In January 2021, Huebner petitioned for postconviction relief, arguing that he was entitled to a new trial because the prospective juror's statements were unfairly prejudicial, and the district court should have granted his motion to strike the jury. The district court denied Huebner's petition. This appeal followed.

DECISION

As the postconviction petitioner, Huebner carried the burden to prove "the facts alleged in the petition . . . by a fair preponderance of the evidence." Minn. Stat. § 590.04, subd. 3 (2020). In denying the petition, the district court analyzed the prospective juror's statements through the application of the four-factor test established in *State v. Cox*, 322 N.W.2d 555, 559 (Minn. 1982), and concluded that the statements were not unfairly prejudicial.

"We review the denial of a petition for postconviction relief for an abuse of discretion. A postconviction court abuses its discretion when it has exercised its discretion in an arbitrary or capricious manner, based its ruling on an erroneous view of the law, or

made clearly erroneous factual findings." *Pearson v. State*, 891 N.W.2d 590, 596 (Minn. 2017) (quotation and citation omitted). We review legal issues "de novo, but our review of factual issues is limited to whether there is sufficient evidence in the record to sustain the postconviction court's findings. Put differently, we do not reverse the postconviction court's findings unless they are clearly erroneous." *Id.* (quotations and alterations omitted).

A district court's denial of a new trial because of a juror's exposure to improper material is reviewed for an abuse of discretion. *Cox*, 322 N.W.2d at 558. A "district court is in the best position to evaluate the prejudicial impact, if any, of an event occurring during the trial." *State v. Bahtuoh*, 840 N.W.2d 804, 819 (Minn. 2013). "The exposure of a jury to potentially prejudicial material creates a problem of constitutional magnitude, because it deprives a defendant of the right to an impartial jury and the right to confront and cross-examine the source of the material." *Cox*, 322 N.W.2d at 558. When a jury is inadvertently exposed to potentially prejudicial material, we, as the district court did, apply the *Cox* factors to determine whether a new trial is warranted. *See id.* at 559. These factors include, "the nature and source of the prejudicial matter, the number of jurors exposed to the influence, the weight of evidence properly before the jury, and the likelihood that curative measures were effective in reducing the prejudice." *Id.* We consider each of the *Cox* factors independently. *See id.*

Nature and source of the prejudicial matter

Huebner argues that because the prospective juror was a friend, his statements about Huebner would be deemed credible by the panel. Huebner's facts are distinguishable from *Cox* because in *Cox* it was a court official who made the prejudicial comments. *Id.* at 558

(stating that, given their position, statements made by court officials in the presence of jurors raise a rebuttable presumption of prejudice). The district court considered the nature of the relationship between Huebner and the prospective juror and determined that they were acquaintances rather than friends. The district court noted that the prospective juror "had minimal interaction with [Huebner] over the past 15 years." The district court concluded that given the prospective juror's level of contact with Huebner and the fact that the prospective juror did not participate in "trying or investigating" Huebner's case, his comments were less likely to cause prejudice. We agree with the district court's analysis and conclusion.

Number of jurors exposed to the influence

Huebner argues that the entire 21-person jury panel was exposed to the prospective juror's statements. The record is unclear as to the actual number of jurors exposed to the statements. The district court determined that because the statements were made early in the voir dire process, "many, if not all" of the prospective jurors were exposed to the statements. However, the number of jurors exposed is not determinative when the other factors show little likelihood that the statements tainted the verdict. *See id.* at 559. That is the case here.

Weight of evidence properly before the jury

Huebner argues that the evidence against him could not support the verdict and that an alternative explanation justified his conduct. The district court found that substantial evidence supported the verdicts.

The jury found Huebner guilty of second-degree assault with a dangerous weapon (a shotgun) and reckless handling of a dangerous weapon. To be found guilty of second-degree assault with a dangerous weapon, the state must prove beyond a reasonable doubt that Huebner "assault[ed] another with a dangerous weapon." *See* Minn. Stat. § 609.222, subd. 1. Assault is "an act done with intent to cause fear in another of immediate bodily harm or death." Minn. Stat. § 609.02, subd. 10(1) (2016). The requisite intent is present when a defendant "either has a purpose to do the thing or cause the result specified or believes that the act, if successful, will cause that result." *Id.*, subd. 9(4) (2016). To be guilty of reckless handling of a dangerous weapon, the state had to prove that Huebner "recklessly handle[d] or use[d] a gun . . . so as to endanger the safety of another." Minn. Stat. § 609.66, subd. 1 (a)(1).

At trial, the state called two witnesses to testify that Huebner fired his shotgun over the pickup truck they were in. During trial, Huebner never denied firing his shotgun that day. Instead, Huebner claimed that he was firing his shotgun at a backstop on his property to train his dog. A spent cartridge matching Huebner's shotgun was recovered by law enforcement from Huebner's driveway. Witnesses testified that when Huebner fired his shotgun toward them, he was standing in that same general area. In addition to the weight of the evidence presented, the district court addressed the length of deliberation by the jury, stating that "[t]he jury deliberated for approximately five hours" which was "enough time to fully review and discuss the testimony and evidence and come to a reasoned verdict." Because substantial evidence supports the verdicts, this factor weighs in favor of a finding of no prejudice.

Likelihood that curative measures were effective in reducing the prejudice

Huebner argues that the district court took no curative measures following the prospective juror's statements. The district court determined that curative measures were taken. We agree.

Prior to voir dire, the district court told the prospective jurors that if called upon to serve as a juror, they would be required to remain fair and impartial. Additionally, the preliminary jury instructions reminded the jurors that Huebner was presumed innocent, and that presumption remained until the state proved him guilty beyond a reasonable doubt. During trial, the statements were never referenced again in the presence of the jury. Prior to deliberations, the district court gave the final jury instructions. These instructions were agreed to by both parties prior to being read to the jury. Huebner's presumed innocence was again addressed in the final jury instructions. During the final instructions the district court told the jury that "you must consider all the evidence you have heard and seen in this trial, and you must disregard anything you may have heard or seen elsewhere about the case." The district court therefore took affirmative steps to mitigate any prejudicial effect of the juror's statements.

The district court's application of the *Cox* factors was neither arbitrary nor capricious, and thus it did not abuse its discretion when it denied Huebner's petition for postconviction relief.

Affirmed.