NON-PRECEDENTIAL DECISION - SEE SUPERIOR COURT I.O.P. 65.37

COMMONWEALTH OF PENNSYLVANIA,	:	IN THE SUPERIOR COURT OF PENNSYLVANIA
Appellee	:	
v.	:	
MICHAEL SAVARD,	:	
Appellant	:	No. 173 WDA 2012

Appeal from the Judgment of Sentence entered on August 26, 2011 in the Court of Common Pleas of Clarion County, Criminal Division, No. CP-16-CR-0000499-2007

BEFORE: STEVENS, P.J., MUSMANNO and ALLEN, JJ.

MEMORANDUM BY MUSMANNO, J.: Filed: January 25, 2013

Michael Savard ("Savard") appeals from the judgment of sentence entered after he was convicted of one count of first-degree murder and simple assault, and two counts of aggravated assault.[1] We affirm.

On July 4, 2007, Savard killed his paramour, Jennifer O'Neil ("the victim"), during an altercation inside their apartment in Knox, Pennsylvania. Savard stabbed the victim multiple times in the face, chest, and neck. Several hours after the attack, the police entered the residence, discovered the victim's body, and found Savard barricaded in the bathroom, covered in blood. The police transported Savard to the hospital, where he admitted to killing the victim. Subsequently, the Commonwealth charged Savard with the above-listed crimes, among other offenses. In the days and weeks following Savard's arrest, there were seven newspaper articles published in

[1] ***See*** 18 Pa.C.S.A. §§ 2502(a), 2701(a)(1), 2702(a)(1) and (a)(4).

two local newspapers servicing Clarion County regarding the murder and Savard's alleged involvement. In November 2008, Savard pled guilty to third-degree murder and aggravated assault, and was sentenced to serve twenty-five to fifty years in prison.

In October 2010, upon collateral review under the Post-Conviction Relief Act, the trial court vacated Savard's judgment of sentence and granted him a new trial based upon the court's finding that defense counsel was ineffective in allowing Savard to plead guilty. Thereafter, the trial court scheduled Savard's case for a jury trial.

The trial court set forth the relevant procedural history as follows:

> On November 8, 2010, [Savard] filed Omnibus Pretrial Motions[, which included] a [M]otion for change of venue and a [M]otion to impanel [a] jury from another county. Th[e trial] court held a hearing [o]n the matter on December 16, 2010. The court denied relief on the [M]otions … due to a lack of any evidence of prejudice.
>
> On April 13, 2011, [Savard] filed Supplemental Omnibus Pretrial Motions[, which included] a [M]otion for change of venue, [M]otion to impanel [a] jury from another county, and a [M]otion for individual *voir dire*. A hearing was held on the matter on June 15, 2011. [The trial] court granted [Savard's M]otion for individual *voir dire*, and denied [Savard's M]otion for change of venue and [his M]otion to impanel [a] jury from another county.
>
> On July 22, 2011, [Savard] filed an Emergency Motion for Change of Venue/Venire … due to [two] newly published newspaper articles concerning the case[,[2] which Motion the trial] court denied ….

[2] In these newspaper articles, the author mentioned Savard's previous plea of guilty in the case and his admission of guilt made at the hospital.

> [Savard's] jury trial began on August 1, 2011[,] with jury selection. Jury selection was conducted through individual *voir dire*. A twelve[-]member jury was selected, with four alternate jurors, for a total of sixteen jurors.
>
> * * *
>
> [T]he Commonwealth and [Savard] each were given seven peremptory challenges to use during the selection of the twelve[-]member jury, and an additional two peremptory challenges to use during the selection of the four alternate jurors.
>
> The Commonwealth only used six of its seven peremptory challenges for the twelve[-]member jury, and only one of its two alternate peremptory challenges.
>
> [Savard] used all seven of his peremptory challenges for the twelve[-]member jury. He used his last peremptory challenge after the eleventh juror was selected, but before the twelfth juror was chosen. [Savard] used both [of] his alternate peremptory challenges.
>
> During jury selection, [Savard] made a challenge for cause to excuse [potential] juror number 31. Juror number 31 was [] employe[d as a secretary for] the Clarion Borough Police Department[, and she] had heard about [Savard's] case at the time it occurred. [In response to questioning by the trial court, juror number 31 stated that nothing prevented her from being a fair and impartial juror.] Th[e trial] court denied [Savard's M]otion to strike for cause, and [Savard] used his fifth peremptory challenge to strike [juror number 31].
>
> Had [Savard] not used his fifth peremptory challenge to strike juror number 31, that juror would have been seated as juror number 10.
>
> [Savard] did not request a change of venue or venire during the jury selection process or at its conclusion.

Trial Court Opinion and Order, 1/4/12, at 2, 4 (footnote added; numbering omitted).

At the close of trial, the jury found Savard guilty of first-degree murder, simple assault, and two counts of aggravated assault. The trial court subsequently sentenced Savard to life in prison. Savard timely filed post-sentence Motions, which the trial court denied. Savard then timely filed a Notice of appeal.

On appeal, Savard raises the following questions for our review:

> 1. Whether the lower court erred in denying [Savard's] Motion to Strike for Cause as to potential juror No. 31[?]
>
> 2. Whether the lower court erred in denying [Savard's] Motions for Change of Venue/Venire[?]
>
> 3. Whether the lower court erred in denying [Savard's] Motion to Recuse Trial Judge[?]

Brief for Appellant at 4.

Savard first argues that the trial court abused its discretion in denying the defense's Motion to strike for cause potential juror number 31. ***Id.*** at 10-11.

The Pennsylvania Supreme Court has held that "the decision to grant or deny a challenge for cause is within the sound discretion of the trial judge and will not be reversed absent a palpable abuse of that discretion." ***Commonwealth v. Chambers***, 685 A.2d 96, 107 (Pa. 1996) (citation omitted). In determining whether a motion to strike a prospective juror for cause was properly denied, this Court is guided by the following precepts:

> The test for determining whether a prospective juror should be disqualified is whether [s]he is willing and able to eliminate the influence of any scruples and render a verdict according to the evidence, and this is to be determined on the

> basis of answers to questions and demeanor. It must be determined whether any biases or prejudices can be put aside on proper instruction of the court. A challenge for cause should be granted when the prospective juror has such a close relationship, familial, financial, or situational, with the parties, counsel, victims, or witnesses that the court will presume a likelihood of prejudice or demonstrates a likelihood of prejudice by his or her conduct or answers to questions.

Commonwealth v. Briggs, 12 A.3d 291, 333 (Pa. 2011) (citation and ellipses omitted).

According to Savard, potential juror number 31 was biased against the defense, and the trial court should have thus stricken her for cause, because she (1) "had recollection of the events from the time when they happened and had read [a] recent newspaper article wherein [Savard] was quoted indicating his guilt[;]" (2) "was closely related professionally to one witness, while working with two others[;]" and (3) "indicated she has a positive relationship with the office of the District Attorney." Brief for Appellant at 10.

In its Opinion, the trial court addressed Savard's claim as follows:

> [Savard] claims that juror number 31 should have been dismissed by the court for cause due to her connection with the Clarion Borough Police Department. Th[e trial] court disagrees. The crime at issue in this case took place in the Borough of Knox. The Knox Borough Police Department responded to the scene. The Clarion Borough Police Department responded only as back up, and not as investigating officers. The only witness at trial from the Clarion Borough Police Department was Officer William Peck[,] IV ["Officer Peck"], who testified about the pictures he took of the scene. Officer Peck's testimony was not challenged by [Savard], and there is no indication that his credibility was at issue, or of importance, in the outcome of the case. The Pennsylvania Supreme Court has stated that "the sole purpose of examination of jurors under *voir dire* is to secure a

> competent, fair, impartial and unprejudiced jury." ***Com[monwealth] v. Ellison***, 902 A.2d 419, 423 (Pa. 2006). Juror number 31 stated that she could be fair and impartial despite her association with a police department. She had no doubts that she could consider the evidence fairly.
>
> Juror number 31 was not prejudiced by her association with the Clarion Borough Police Department due to the nature of [Savard's] case. [Savard] did not claim he was innocent. Defense counsel admitted at trial that [Savard] killed his girlfriend, and that the murder was brutal. Defense counsel did not challenge the testimony of any officer as to the nature of the crime scene or [Savard's] location in the house at which the crime occurred. [Savard's] defense at trial was that he did not intend to kill his girlfriend. [Savard] attempted to convince the jury that he killed his girlfriend out of the heat of passion. The sole issue for the jury to determine was [Savard's] state of mind at the time of the killing. The fact that he killed the victim was not at issue. Therefore, juror number 31's knowledge of the crime and her association with the police department was of no matter. The fact that she knew that [Savard] was involved with the murder was irrelevant. Her task as a juror, if she were seated, would have been to determine [Savard's] state of mind when he killed his girlfriend. As to this issue, juror number 31 [was] qualified as a competent, fair, impartial, and unprejudiced juror. There was no error in failing to dismiss her for cause.

Trial Court Opinion and Order, 1/4/12, at 6-7. After review of the parties' briefs and the certified record, we agree with the sound reasoning of the trial court, and affirm on this basis as to Savard's first issue. ***See id.***

Savard next contends that the trial court abused its discretion in denying his Motions for change of venue/venire, and the court deprived him of a fair trial. Brief for Appellant at 12-13. Savard points out that he presented the trial court with a total of nine newspaper articles pertaining to his case, and "the most recent media coverage, from less than two weeks prior to trial, indicated [that Savard] had previously entered a guilty plea in

the case, and he was quoted as admitting to killing the victim." ***Id.*** at 13. According to Savard, this pretrial publicity, and, especially, the newspaper articles published just prior to his trial, was so pervasive and prejudicial that it was impossible to empanel an impartial jury in Clarion County. ***Id.***

Our standard of review is well established:

> An application for a change of venue is addressed to the sound discretion of the trial court, which is in the best position to assess the community atmosphere and judge the necessity for a venue change, and its exercise of discretion will not be disturbed in the absence of an abuse of discretion. The mere existence of pretrial publicity does not warrant a presumption of prejudice. If pretrial publicity occurred, its nature and effect on the community must be considered. Factors to consider are whether the publicity was sensational, inflammatory, and slanted toward conviction rather than factual and objective; whether the publicity revealed the accused's prior criminal record, if any; whether it referred to confessions, admissions, or reenactments of the crime by the accused; and whether such information is the product of reports by the police or prosecuting officers. If any of these factors exists, the publicity is deemed to be inherently prejudicial, and we must inquire whether the publicity has been so extensive, so sustained, and so pervasive that the community must be deemed to have been saturated with it. Finally, even if there has been inherently prejudicial publicity [that] has saturated the community, no change of venue is warranted if the passage of time has significantly dissipated the prejudicial effects of the publicity.

Chambers, 685 A.2d at 103 (citations omitted). Further, the Pennsylvania Supreme Court has stated that

> the pivotal question in determining whether an impartial jury may be selected is not whether prospective jurors have knowledge of the crime being tried, or have even formed an initial opinion based on the news coverage they had been exposed to, but, rather, whether it is possible for those jurors to set aside their impressions or preliminary opinions and render a verdict solely based on the evidence presented to them at trial.

* * *

> Although it is conceivable that pretrial publicity could be so extremely damaging that a court might order a change of venue no matter what the prospective jurors said about their ability to hear the case fairly and without bias [in response to questioning during *voir dire*], that would be a most unusual case. Normally, what prospective jurors tell [a court] about their ability to be impartial will be a reliable guide to whether the publicity is still so fresh in their minds that it has removed their ability to be objective. The discretion of the trial judge is given wide latitude in this area.

Briggs, 12 A.3d at 314 (citations omitted).

In the instant case, the trial court issued an Opinion setting forth the court's reasons for the denial of Savard's Motions for change of venue/venire. ***See*** Trial Court Opinion, 3/29/12, at 2-5. The trial court's sound rationale is supported by the record and we adopt it herein. ***See id.*** Additionally, in the trial court's Opinion and Order dated January 2, 2012, the trial court set forth the following rationale for its ruling:

> [A] fair and impartial jury was selected. Those jurors with extensive knowledge or bias were eliminated from the jury panel during jury selection. There remained enough jurors to select an impartial jury. Although some of the jurors seated on the jury did have knowledge of the case, their knowledge was not extensive or prejudicial as to cause defense counsel to object (except as to [potential] juror number 31, which is discussed [***supra***]). Therefore, [Savard] was not entitled to a change of venue or venire.

Trial Court Opinion and Order, 2/2/12, at 5. Since the trial court's rationale is supported by the record and the applicable law, we affirm on this basis. ***See id.***; Trial Court Opinion, 3/29/12, at 2-5; ***see also Briggs***, 12 A.3d at 316-17 (holding that, although the pretrial media coverage of appellant's

case was presumptively prejudicial, the trial court did not abuse its discretion in denying appellant's motion for change of venue, where "none of the[] 8 trial jurors who were exposed to media coverage indicated their exposure had caused them to form fixed, unchanging opinions of the [a]ppellant's guilt, or that it would interfere in any way with their ability to render a verdict based solely on the evidence presented in court.").

Finally, Savard argues that the trial court erred in denying his Motion requesting the trial judge to recuse himself from the case. Brief for Appellant at 14-15.

> Our standard of review of a trial court's determination not to recuse from hearing a case is exceptionally deferential. We recognize that our trial judges are "honorable, fair and competent," and although we employ an abuse of discretion standard, we do so recognizing that the judge himself is best qualified to gauge his ability to preside impartially. The party who asserts that a trial judge should recuse bears the burden of setting forth specific evidence of bias, prejudice, or unfairness. Furthermore, a decision by the trial court against whom the plea of prejudice is made will not be disturbed absent an abuse of discretion.

Commonwealth v. Harris, 979 A.2d 387, 391-92 (Pa. Super. 2009) (citations and quotation marks omitted).

Savard advances scant argument in support of his instant claim, asserting only that "the lower court's continued denial of [Savard's Motions for] change of venue/venire, coupled with the lower court's denial of [Savard's] Motion to Strike for Cause, clearly indicate the lower court's abuse of discretion in denying [Savard's] Motion to Recuse." Brief for Appellant 15. Since we have already determined that the trial court properly

denied Savard's Motion to strike potential juror number 31 for cause and Motions for change of venue/venire, we could find that Savard's final issue lacks merit on this basis. Nevertheless, the trial court has concisely addressed this issue in its Opinion, and we affirm on this basis. ***See*** Trial Court Opinion, 3/29/12, at 6.

Accordingly, we discern no abuse of discretion by the trial court regarding any of the rulings challenged by Savard on appeal, and we thus affirm the judgment of sentence.

Judgment of sentence affirmed.

J.S63020/12

IN THE COURT OF COMMON PLEAS
OF CLARION COUNTY, PENNSYLVANIA

COMMONWEALTH OF PENNSYLVANIA	:	
	:	CRIMINAL DIVISION
vs.	:	
	:	NO. 499 CR 2007
MICHAEL A. SAVARD	:	

OPINION PURSUANT TO Pa.R.A.P. 1925(a)

Arner, J. **March 28, 2012**

Background

The police charged Michael A. Savard on July 7, 2007 in the stabbing death of his girlfriend Jennifer O'Neil. Savard was represented by the public defender and on November 26, 2008 he entered a negotiated guilty plea to third degree murder and to aggravated assault. The plea was contingent on Savard receiving a sentence of incarceration of 20 to 40 years on the murder charge and 5 to 10 years on the aggravated assault charge, to run consecutively for an aggregate period of 25 to 50 years. I imposed that sentence on December 18, 2008.

Savard then filed a pro se PCRA petition alleging that the public defender was ineffective in allowing him to enter such a plea because the aggravated assault charge merged for sentencing purposes with the murder charge and the consecutive 5 to 10 year sentence was illegal. I agreed. I then vacated the plea and sentence and assigned new defense counsel.

During the course of further proceedings, Savard filed various pre-trial motions, including three motions for change of venue and venire, a motion asking me to recuse because of my handling of the previous guilty plea, a motion asking me to remove the

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district attorney because of the previous plea, and a motion to suppress statements. I denied all those motions. Savard decided he wanted a jury trial.

On August 1 and 2, 2011, I conducted individual voir dire of prospective jurors and a jury of Clarion County residents was selected. The trial commenced on August 2 and on August 4, the jury found Savard guilty of first degree murder, aggravated assault and simple assault. The assault charges merged with the homicide charge. On August 26, 2011, I sentenced Savard on the first degree murder charge to life in prison.

Defense counsel filed a Post Sentence Motion on September 6, 2011. He asserted that I erred in denying the motions for change of venue and also, in denying his challenge for cause as to one prospective juror. I denied the Post Sentence Motion by an Opinion and Order dated January 2, 2012. The Defendant has now appealed my Sentence.

In a Statement of Matters Complained of on Appeal, Savard alleges that I erred in denying his following motions: 1. Motions for Change of Venue/Venire, 2. Motion to Strike Potential Juror No. 31 for Cause, 3. Pre-trial Motion to Recuse, 4. Pre-trial Motion for Recusal of District Attorney, and 5. Pre-trial Motions for Suppression of Statements.

First Error Complained Of – Change of Venue/Venire

Defendant Savard filed three separate motions for change of venue/venire; the first in an Omnibus Motion filed on November 8, 2010, the second in a Supplemental Omnibus Motion filed on April 13, 2012, and the third in an Emergency Motion for Change of Venue filed on July 22, 2011.

With regard to the November 2010 Omnibus Motion, I held an evidentiary

hearing on December 16, 2010. Savard's attorney made an oral argument, but did not present any evidence. I considered the factors set forth in appellate decisions, particularly *Commonwealth v. Dupree,* 866 A.2d 1089, 1107 and 1108 (Pa. Super. 2005), and denied the Omnibus Motion. A transcript of the hearing of December 16, 2010 has been prepared. My explanation of the reasons for my decision is found on pages 8 through 10 of the transcript.

The Defendant made a second request for change of venue/venire in the Supplemental Omnibus Motion of April 13, 2011. I held a hearing on June 15, 2011 and a transcript of that proceeding has been prepared. The hearing dealing with venue and venire is reported on pages 25 through 32 of the transcript. The original exhibits are included in the record. I issued an Opinion and Order dated June 20, 2011, denying the change of venue/venire motion and stating the reasons for the denial.

The third and final motion was presented in a separate Emergency Motion for Change of Venue filed on July 22, 2011. A hearing was held on July 22, 2011. The attorneys stipulated to the admission in evidence of the two newspaper articles referenced in the Motion, as Defendant's Exhibits A and B. The original articles are part of the record. No additional evidence was presented. I then issued an Order on July 22, 2011 denying the Emergency Motion, finding that the publicity had not been so extensive, sustained and pervasive that the community had been saturated with it.

I respectfully request your court to consider the reasons I stated for my rulings during the hearings and in my Orders and Opinions, including my Opinion of January 2, 2012 on the Post Sentence Motions.

By way of further explanation of my decision on the third Motion, I did carefully

consider the evidence that was presented at the July 22 hearing. The evidence consisted of a newspaper article written by Rodney L. Sherman, Clarion News Editor, published once in the July 19 edition of The Clarion News and a second time in the July 20 edition of The Oil City Derrick. The Clarion News and The Derrick are newspapers of general circulation in Clarion County.

The article appeared on the front pages of both papers and included a photograph of Michael Savard's face. The title of The Clarion News article is "Savard granted new trial, faces original murder charges." The title of The Derrick article is "Knox man granted new trial, faces original murder charges" and there is a subtitle, "Tony Savard pleaded guilty to the 2007 killing of Jennifer Mae O'Neil, with whom he shared a home." The author explained that Savard had been successful in obtaining the right to a new trial on the basis that his public defender was ineffective in allowing him to plead guilty. The author quoted the district attorney as saying he was prepared to go to trial, he felt the original plea bargain would have helped the victim's family move on with their lives, and the family and the police officers had been in agreement with the plea bargain. The author then stated what the police saw and found during their investigation and quoted the Defendant as saying, "I killed (Jennifer O'Neil) ... I killed her last night ... I tried to kill myself."

When I made my ruling on the third change of venue motion, I was not too concerned that prospective jurors would have learned that the Defendant confessed to the killing because I knew he would not deny it at trial. His primary defense would be that he acted in the heat of passion and was guilty of manslaughter, but not murder. However, I was concerned about the reference to the prior guilty plea. I decided that

despite the reference, probably there were a number of prospective jurors who had not seen the articles. I felt that through individual voir dire, I could determine whether each individual could be fair and impartial.

As I stated in my Opinion of January 2, 2012 on the Post Sentence Motion, we were successful in obtaining jurors and alternates who had not read or heard about the articles and could set aside any opinions and base their decision on the evidence as presented at trial. I believe my rulings on the change of venue motions were correct and are further supported by the recent Pennsylvania Supreme Court holdings in *Commonwealth v. Chmiel,* 30 A.3d 1111, 1152 - 1154 (Pa. 2011), and *Commonwealth v. Briggs,* 12 A.3d 291, 307 - 319 (Pa. 2011).

Second Error Complained Of – Juror No. 31

Defendant Savard next argues that I erred in denying a challenge for cause as to juror No. 31. He raised this same argument in his Post Sentence Motion and I addressed it on pages 5 through 7 of my Opinion and Order of January 2, 2012. On page 6, I referenced the pertinent pages of the transcript from the individual voir dire.

In addition, I believe I followed the law as set forth recently in *Briggs,* supra at 333. There, the Supreme Court stated:

> In determining if a motion to strike a prospective juror for cause was properly denied our Court is guided by the following precepts:
>
> The test for determining whether a prospective juror should be disqualified is whether he is willing and able to eliminate the influence of any scruples and render a verdict according to the evidence, and this is to be determined on the basis of answers to questions and demeanor.... It must be determined whether any biases or prejudices can be put aside on proper instruction of the court.... A challenge for cause should be granted when the prospective juror has such a close relationship, familial, financial, or situational, with the parties, counsel,

> victims, or witnesses that the court will presume a likelihood of prejudice or demonstrates a likelihood of prejudice by his or her conduct or answers to questions. *Commonwealth v. Cox,* 603 Pa. 223, 249, 983 A.2d 666, 682 (2009) (quoting *Commonwealth v. Wilson,* 543 Pa. 429, 442, 672 A.2d 293, 299 (1996)).

I determined on the basis of Juror No. 31's answers to questions and her demeanor that she was willing and able to set aside any opinions and render a verdict according to the evidence. She did not have such a close relationship to the situation or to one potential Commonwealth witness that there was a likelihood of prejudice.

Third Error Complained Of – Motion to Recuse

Savard asked me to recuse in his Supplemental Omnibus Motion of April 13, 2011, as set forth in paragraphs 31 through 36 of that Motion. He argued that he could not receive a fair trial because I was aware that he had previously entered a guilty plea and I had accepted an illegal plea and imposed an illegal sentence.

A separate hearing on this Motion was held on May 2, 2011. A transcript has been prepared. I denied the Motion by Order of May 5, 2011. In an Opinion of the same date, I summarized the Defendant's testimony and explained my decision.

Now on appeal, and in accordance with *Reilly v. S.E.P.T.A.,* 489 A.2d 1291 (Pa. 1985), the record shows that Savard received "a fair and impartial trial." My decision to not recuse is not a valid basis for a new trial. The Defendant has not alleged in any of his Matters Complained of on Appeal that my decisions were influenced by the fact that I knew he had previously entered a guilty plea or that the plea bargain called for an illegal sentence.

Fourth Error Complained Of – Removal of District Attorney

Savard also moved in paragraphs 31 through 36 of his Supplemental Omnibus Motion of April 13, 2011 for the removal of the district attorney, for the same reasons he was seeking my recusal. I denied this motion and explained my decision on the last page of my Opinion of May 5, 2011. I have nothing further to offer.

Fifth Error Complained Of – Suppression Motions

The Defendant moved to suppress evidence in his Supplemental Omnibus Motion of April 13, 2011. I held a hearing on June 15, 2011. A transcript of that proceeding has been prepared. I issued an Opinion and Order on June 20, 2011, denying this Motion. I provided my analysis of evidence and the law on pages 7 through 9 on the Opinion. The Defendant did not raise this issue in his Post Sentence Motion. I have nothing further to add.

BY THE COURT:

JAMES G. ARNER, P.J.