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State v. Pratt Respondent's Brief Dckt. 41603

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IN THE SUPREME COURT OF THE STATE OF IDAHO

COPY

STATE OF IDAHO,)
)
 Plaintiff-Respondent,)
)
 vs.)
)
 BRIAN N. PRATT,)
)
 Defendant-Appellant.)
)
 _____)

No. 41603

Nez Perce Co. Case No.
CR-2012-6201

BRIEF OF RESPONDENT

**APPEAL FROM THE DISTRICT COURT OF THE SECOND JUDICIAL
DISTRICT OF THE STATE OF IDAHO, IN AND FOR THE
COUNTY OF NEZ PERCE**

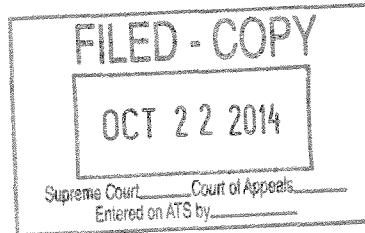
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STATEMENT OF THE CASE

Nature Of The Case

Brian N. Pratt appeals from the judgment entered upon the jury verdicts finding him guilty of two counts of delivery of a controlled substance and one count of trafficking in a controlled substance. Pratt contends the district court erred in denying his motion for mistrial based on a prospective juror's comment made during voir dire.

Statement Of The Facts And Course Of The Proceedings

The Lewiston Police Department received information that Pratt was involved in the distribution of methamphetamine. (PSI, p.3.) An officer then enlisted a confidential informant to purchase methamphetamine from Pratt on two occasions. (Id.) After receiving additional information that Pratt was still in possession of a large quantity of methamphetamine, the officer applied for and obtained a search warrant for a shop rented by Pratt. (Id.) The subsequent search of that shop revealed additional methamphetamine and items indicative of drug distribution. (PSI, pp.3-4.) The state charged Pratt with two counts of delivery of methamphetamine, one count of trafficking in methamphetamine, and the persistent violator sentencing enhancement. (R., pp.64-66.)

During the jury selection process prior to Pratt's jury trial, a prospective juror indicated that he knew Pratt. (See Tr., p.46, L.13 – p.47, L.4.) The prosecutor asked the prospective juror, "without telling me exactly the nature of your relationship with Mr. Pratt, would that relationship cause you concern about sitting in this case as –." (Tr., p.47, Ls.1-4.) The prospective juror responded, "I

don't know about this case, but I got in trouble awhile back and same thing [sic] that he's in trouble kind of for. That's how I know him." (Tr., p.47, Ls.5-8.) The prosecutor did not inquire further about Pratt's relationship with or knowledge of the defendant, and requested that the prospective juror be excused for cause. (Tr., p.47, Ls.9-18.) The district court granted this request, and voir dire continued. (Tr., p.47, L.21 – p.48, L.15.)

At some point later, Pratt moved for a mistrial on the ground that the prospective juror's comment tainted the jury pool. (See Supp Tr.) The court took the matter up outside the presence of the jury. (Id.) After directing the court clerk to read the prospective juror's comment into the record, and hearing argument from the parties, the district court denied Pratt's motion for a mistrial. (Id.)

The jury found Pratt guilty of all three charges. (R., pp.187-188.) The state later withdrew the persistent violator sentencing enhancement. (R., pp.234-237.) The district court imposed concurrent unified sentences of five years with two years fixed for each of the two delivery convictions, and a consecutive unified sentence of 20 years with 10 years fixed for the trafficking conviction. (R., pp.255-258.) Pratt timely appealed. (R., pp.263-266.)

ISSUE

Pratt states the issue on appeal as:

Was Mr. Pratt's constitutional right to a fair trial with an impartial jury violated when the district court failed to give a curative instruction and denied Mr. Pratt's motion for a mistrial following a potential juror's disclosure that he knew Mr. Pratt from a previous incident in which the prospective juror "got in trouble and [for the] same thing that [Mr. Pratt]'s in trouble for"?

(Appellant's Brief, p.4.)

The state rephrases the issue as:

Has Pratt failed to show error in the district court's denial of his motion for a mistrial?

ARGUMENT

Pratt Has Failed To Show Error In The District Court's Denial Of His Motion For A Mistrial

A. Introduction

Pratt contends that the district court abused its discretion by denying his motion for a mistrial. (See generally Appellant's brief.) Specifically, Pratt contends that a prospective juror's comment about the defendant tainted the jury pool and violated his right to an impartial jury. (Id.) Application of the correct legal standards shows that Pratt's claim fails.

B. Standard Of Review

On appeal, the standard for review of a motion for mistrial is well-established:

[T]he question on appeal is not whether the trial judge reasonably exercised his discretion in light of the circumstances existing when the mistrial motion was made. Rather, the question must be whether the event which precipitated the motion for mistrial represented reversible error when viewed in the context of the full record. Thus, where a motion for mistrial has been denied in a criminal case, the "abuse of discretion" standard is a misnomer. The standard, more accurately stated, is one of reversible error. [The appellate court's] focus is upon the continuing impact on the trial of the incident that triggered the mistrial motion. The trial judge's refusal to declare a mistrial will be disturbed only if that incident, viewed retrospectively, constituted reversible error.

State v. Shepherd, 124 Idaho 54, 57, 855 P.2d 891, 894 (Ct. App. 1993) (citations omitted). Pratt bears the burden of showing that the trial court committed reversible error when it denied his motion for a mistrial. State v. Rodriguez, 106 Idaho 30, 674 P.2d 1029 (Ct. App. 1983). The appellate court reviews the full record to determine if the event that triggered the motion for mistrial "represented

reversible error when viewed in the context of the full record.” Rodriguez, 106 Idaho at 33, 674 P.2d at 1032.

When evaluating a claim that the trial court has abused its discretion, the sequence of the appellate court's inquiry is first, whether the trial court correctly perceived the issue as one of discretion; second, whether the trial court acted within the outer boundaries of its discretion and consistently with the legal standards applicable to the specific choices availability to it; and finally, whether the trial court reached its discretion by an exercise of reason. Sun Valley Shopping Ctr., Inc. v. Idaho Power Co., 119 Idaho 87, 94, 803 P.2d 993, 1000 (1991).

C. The District Court Did Not Abuse Its Discretion By Denying Pratt's Motion For A Mistrial

A mistrial is appropriate where there has been conduct, inside or outside of the courtroom, that is “prejudicial to the defendant and deprives the defendant of a fair trial.” I.C.R. 29.1(a). Thus, the event triggering the mistrial motion must be both prejudicial and deprive the defendant of a fair trial in order to warrant a mistrial.

Although a criminal defendant is entitled to a fair jury panel, it is sufficient that the jurors may render a verdict based on the evidence presented in court instead of information gathered outside of that evidence. Murphy v. Florida, 421 U.S. 794, 795 (1975) (quoting Irwin v. Dowd, 366 U.S. 717 (1961)). The purpose of voir dire is to discover if potential jurors are not qualified to sit as jurors, and a defendant is not entitled to a mistrial based on statements by potential jurors in

voir dire unless there is a “continuing impact on the trial.” State v. Laymon, 140 Idaho 768, 771, 101 P.3d 712, 715 (Ct. App. 2004) (no continuing impact due to curative instruction). Jurors are presumed to be impartial. State v. Ellington, 151 Idaho 53, 69, 253 P.3d 727, 743 (2011) (citing Ross v. Oklahoma, 487 U.S. 81, 86 (1988)).

Pratt has failed to demonstrate that the prospective juror’s vague comments about the prospective juror’s own criminal history and knowledge of the defendant had a continuing impact on the trial. Pratt has therefore failed to show that the district court abused its discretion in denying his motion for a mistrial.

Pratt moved for a mistrial after the prospective juror stated that he “got in trouble awhile back and same thing [sic] that [Pratt] was in trouble kind of for” and that that was how he knew Pratt. (Tr., p.47, Ls.5-8; Supp. Tr., p.7, L.2 – p.8, L.19.) After instructing the court clerk to read the prospective juror’s comment into the record, and after hearing argument from the parties outside of the presence of the jury, the district court denied the motion, concluding:

I think at this point in time there has not been sufficient information brought before the jury panel that I think we would -- is something that could not be dealt with by way of a limiting instruction if necessary. I don’t believe there have been adequate grounds shown at this time for the granting of a mistrial. [The prospective juror] did go far in his answer and if we could have perhaps controlled a little bit, but he indicated that he had been charged and that he knew Mr. Pratt through his prior action, but he doesn’t really make direct accusations against Mr. Pratt for having been involved with delivery of controlled substance or anything of that nature.

So I think we can deal with it adequately through the limiting instructions that I’m going to be providing to the jury once sworn,

and so I'm going to deny the motion for mistrial and we can proceed with the jury selection back in Courtroom 1.

(Supp Tr., p.7, L.16 – p.9, L.24.)

The court was aware of its discretion and reasonably considered the arguments of the parties. The prospective juror's vague comment did not specifically implicate Pratt in any prior criminal activity, or express any knowledge or belief that Pratt was guilty in the present case. The prospective juror was not questioned further about his relationship with and knowledge of the defendant, and was excused for cause. (Tr., p.47, L.9 - p.48, L.15.) The brief vague comment was not so inflammatory or potentially prejudicial that Pratt can now show that it had a continuing impact on his trial. The prospective juror may have known Pratt in some collateral capacity that was based upon the prospective juror's own previous drug history, but not Pratt's. This Court should not assume that the jury took the most damaging and most prejudicial possible inference from the comment – that Pratt had actually engaged in previous drug trafficking or delivery.

After the court denied the motion for mistrial, it appears that Pratt did not request, and the district court did not provide, a specific curative instruction regarding the prospective juror's comment. Thus, any distinct claim that the district court failed to give a more specific curative instruction is not preserved and may not be considered on appeal. State v. Miller, 130 Idaho 550, 553, 944 P.2d 147, 150 (Ct. App. 1997) ("A request for a limiting instruction should be specific and timely" (citations omitted)); State v. Fodge, 121 Idaho 192, 195, 824

P.2d 123, 126 (1992) (Generally, issues not raised below may not be considered for the first time on appeal).

While Pratt did not request a specific a curative instruction, the court did provide standard general limiting instructions after the jury was sworn. (Tr., p.98, L.12 – p.108, L.10.) These instructions included admonishments for the jury to consider only the evidence presented to it during the trial, and to not allow sympathy or prejudice to influence its deliberations. (Tr., p.101, Ls.16-23.) The court defined evidence as consisting of “the testimony of the witnesses, exhibits offered and received, and any stipulated or admitted facts.” (Tr., p.101, L.23 – p.102, L.1.) It is presumed the jury followed these instructions. State v. Thumm, 153 Idaho 533, 544, 285 P.3d 348, 359 (Ct. App. 2012).

The prospective juror’s vague comment in this case was not as inflammatory or as potentially prejudicial as comments in other cases where Idaho appellate courts have considered similar issues and found no reversible error. See Ellington, 151 Idaho at 68-69, 253 P.3d at 742-743 (three prospective jurors - including one who had talked with a member of the victims' family about the charged crimes - expressed their belief that Ellington was guilty); Laymon, 140 Idaho 768, 101 P.3d 712 (Ct. App. 2004); (prospective juror referred to defendant's prior drug charge and previously scheduled trial and stated, “If he's guilty last week, he'll be guilty next week”); State v. Kilby, 130 Idaho 747, 751, 947 P.2d 420, 424 (Ct. App. 1997) (prospective juror referred to defendant as a pedophile in “outburst”).

Several courts in other jurisdictions have similarly declined to find any basis for reversal where prospective jurors have made vague statements about a defendant's past. See U.S. v. Trujillo, 146 F.3d 838, 842-843 (10th Cir. 1998) (affirming denial of motion for mistrial and court's refusal to strike entire jury panel where prospective juror who was a corrections officer stated that he occasionally entered jail cells and that the defendants' faces looked "slightly familiar" to him); Mitchell v. Georgia, 644 S.E.2d 147, 148-149 (Ga. App. 2007) (affirming denial of motion for mistrial where prospective juror stated she worked in the jail and "had seen papers" on the defendant); Missouri v. Lacy, 851 S.W.2d 623, 630-631 (Mo. App. 1993) (affirming denial of motion to quash the jury panel where prospective juror stated that "he knew [defendant] from dealings with him and his family in an apartment complex about two miles from where the crime had been committed, and that he had predetermined ideas about the case"); Miller v. Florida, 847 So.2d 1093, 1096-1097 (Fla. App. 2003) (affirming denial of motion for mistrial where prospective juror stated, "I think I know [the defendant]. I think I waited on him in a business that I had at one time. I was watching him. I would think he was guilty.").

Because Pratt has failed to show the prospective juror's comment had any continuing impact on his trial, he has failed to establish error in the district court's denial of his motion for mistrial.

CONCLUSION

The state respectfully requests that this Court affirm Pratt's convictions for two counts of delivery of a controlled substance and one count of trafficking in a controlled substance.

DATED this 22nd day of October, 2014.



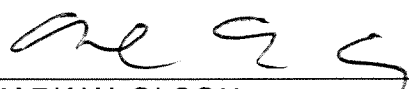
MARK W. OLSON
Deputy Attorney General

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I have this 22nd day of October, 2014, served a true and correct copy of the attached BRIEF OF RESPONDENT by causing a copy addressed to:

ERIC D. FREDERICKSEN
DEPUTY STATE APPELLATE PUBLIC DEFENDER

to be placed in The State Appellate Public Defender's basket located in the Idaho Supreme Court Clerk's office.



MARK W. OLSON
Deputy Attorney General

MWO/pm