

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

RODERICK ANDRE MCGUIRE,

Defendant-Appellant.

UNPUBLISHED
December 2, 2003

No. 241428
Wexford Circuit Court
LC No. 01-006381-FH

Before: Murray, P.J. and Gage and Kelly, JJ.

PER CURIAM.

Defendant appeals as of right from a jury conviction of possession of less than twenty-five grams of methadone, MCL 333.7403(2)(a)(v), for which he was sentenced as an habitual offender, fourth offense, MCL 769.12, to 30 to 120 months in prison. We affirm. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

Defendant argues the trial court erred in denying his motion for a new trial. We disagree. The trial court's ruling on a new trial is reviewed for an abuse of discretion, but its factual findings are reviewed for clear error. *People v Crear*, 242 Mich App 158, 167; 618 NW2d 91 (2000).

Defendant's sole claim on appeal is that he is entitled to a new trial because a juror, Linda Sherman, failed to disclose during voir dire that she had a relationship with Patrick Helmbolt, an alleged racist. During voir dire, jurors were asked if they believed defendant was guilty simply because he was of a different ethnic background. Sherman, along with all other jurors, said no. After defendant was convicted, counsel learned of the relationship between Sherman and Helmbolt, who was in jail at the time of trial. Defendant, a jail trustee, received information that Helmbolt was a member of the Northern Michigan Skinheads, an alleged white supremacy group. Defendant contended that because Helmbolt was a "racist skinhead" and because Sherman was involved in a romantic relationship with him, she must share his views or at least have been influenced by them.

A criminal defendant has a constitutional right to a fair and impartial jury. *People v Washington*, 251 Mich App 520, 530; 650 NW2d 708 (2002). "[A] defendant is denied his right to an impartial jury when a juror removable for cause is allowed to serve on the jury. In some circumstances, this is true even when the information justifying the juror's removal is not

discovered until after the trial.” *People v Daoust*, 228 Mich App 1, 8-9; 577 NW2d 179 (1998). To warrant relief on the basis of information potentially affecting a juror’s ability to act impartially, the defendant must show “(1) that he was actually prejudiced by the presence of the juror in question or (2) that the juror was properly excusable for cause.” *Id.* at 9 (footnote omitted). A juror is excusable for cause if she is biased against a party, has a state of mind that prevents her from rendering a just verdict, or has opinions that would improperly influence her verdict. MCR 2.511(D)(3), (4), (5); MCR 6.412(D)(1).

During the evidentiary hearing on defendant’s motion for a new trial, Sherman testified that she was not prejudiced against blacks. Her fiancé, Helmbolt, testified likewise. Defendant presented some circumstantial evidence linking Helmbolt to the white supremacy movement and argued that if he were affiliated with that movement, it would be reasonable to infer that he was prejudiced against blacks. However, there was no evidence to show that Sherman shared those beliefs or was influenced by them. Although Helmbolt spoke to Sherman the day before defendant’s trial and knew she had been called for jury duty, there was no evidence that he counseled Sherman to vote for conviction should she be seated on defendant’s jury. In addition, there was no evidence to show that Helmbolt spoke to Sherman during the trial, and Sherman testified that she never heard of defendant before she arrived in the courtroom.

On this record, defendant failed to show that Sherman was excusable for cause or that he was prejudiced by her presence on the jury due to racism. Therefore, the trial court did not abuse its discretion in denying defendant’s motion for a new trial.

Affirmed.

/s/ Christopher M. Murray

/s/ Hilda R. Gage

/s/ Kirsten Frank Kelly