COURT OF APPEALS
DECISION
DATED AND FILED

April 21, 1998

Marilyn L. Graves
Clerk, Court of Appeals
of Wisconsin

No. 97-3026-CR

STATE OF WISCONSIN **IN COURT OF APPEALS**
DISTRICT III

STATE OF WISCONSIN,

PLAINTIFF-RESPONDENT,

V.

JAMES L. THOMPSON,

DEFENDANT-APPELLANT.

APPEAL from a judgment of the circuit court for Outagamie County: DEE R. DYER, Judge. *Affirmed.*

Before Cane, P.J., Myse and Hoover, JJ.

PER CURIAM. James Thompson appeals a judgment convicting him of first-degree intentional homicide by use of a dangerous weapon and concealing a corpse as a habitual criminal. He argues that the trial court improperly exercised its discretion when it denied his motions for individual voir dire based on pretrial publicity and for a change of venire. He also argues that the

court erred when it denied his motion to suppress statements he made to the police. We reject these arguments and affirm the judgment.

The trial court properly exercised its discretion when it denied Thompson's request for a sequestered voir dire. Thompson argues that most of the prospective jurors had been exposed to media coverage of the crimes and that the collective voir dire forced the trial court to limit defense counsel's inquiry into the nature of the publicity. Because the only prejudice identified by Thompson that arose from the collective voir dire was his inability to ask prospective jurors about the content of pretrial publicity, and he has no right to inquire about the content of the publicity, we conclude that Thompson has not established any prejudice that arose from the collective voir dire.

A defendant does not have a constitutional right to inquire into the content of pretrial publicity on voir dire. ***Mu'Min v. Virginia***, 500 U.S. 415, 431 -32 (1991). Rather, the circuit court has broad discretion over the form and number of questions to be asked and whether prospective jurors should be questioned collectively or individually. *See* ***State v. Koch***, 144 Wis.2d 838, 847, 426 N.W.2d 586, 590 (1988). The trial court adequately questioned the venire regarding any bias they formed as a result of pretrial publicity and struck six jurors for cause based on that questioning. It was not necessary to inquire into the content of the publicity to which the prospective jurors were exposed because jurors need not be totally ignorant of the facts and issues involved in order to serve on a case. ***Irvin v. Dowd***, 366 U.S. 717, 722 (1961). The court did not restrict inquiry into the effect pretrial publicity may have had on any juror's ability to decide this case on the evidence presented at trial. It did not bar counsel from asking prospective jurors how often or when they had heard something about the case and indicated a willingness to conduct individual voir dire if something

"particularly sensitive" arose. Because the trial court appropriately questioned the venire regarding the effect pretrial publicity may have had on their ability to serve as jurors, it was not necessary to inquire into the content of the publicity or to sequester the venire in order to facilitate questioning regarding content.

The trial court properly exercised its discretion when it denied Thompson's motion for a change of venire based on pretrial publicity. The news coverage regarding this case was not inflammatory and was approximately three months old at the time of trial. Because mere familiarity with the case does not constitute grounds for striking a potential juror and most of the members of the venire indicated a lack of bias resulting from the publicity, Thompson has established no basis for requiring a change of venire.

The trial court properly denied Thompson's motion to suppress two statements he made to the police. He argues that his waiver of ***Miranda***[1] rights and his initial statement resulted from police misconduct. Thompson was arrested shortly after midnight as he and an accomplice were preparing to leave in a vehicle. After Thompson was taken to the police station, he was placed in an interview room and handcuffed to a desk while the officers interrogated his accomplice. The record does not suggest that Thompson was unable to rest his head or was otherwise left in an awkward position as he waited for his interrogation to begin. Thompson was monitored by a video camera and by an officer outside the interview room door. The record does not disclose that he made any requests or expressed any discomfort during that time.

[1] ***Miranda v. Arizona***, 384 U.S. 436 (1966).

Thompson was left alone until approximately 3:30 a.m. when the officers began his interrogation. The officers provided Thompson with soda, doughnuts and cigarettes during the interview. He had access to a bathroom. The officers interviewed him for approximately one hour and fifteen minutes without taking notes and then moved to another room that had a computer terminal that the officers used to type out a statement while Thompson watched over their shoulders. The officers gave Thompson "full control" of the written statement, allowing him to change or remove any part of the statement. None of this behavior by the police constitutes improper coercive means or pressure such as would render a statement involuntary. *See* ***State v. Clappes***, 136 Wis.2d 222, 235-37, 401 N.W.2d 759, 765-66 (1987). The record does not disclose any special circumstances that would render Thompson's initial statement involuntary based on the conduct of the police.

Another officer testified that Thompson made another statement approximately one week later. That interview was conducted in the presence of Thompson's attorney and was restricted to events that occurred after the victim's death. Thompson does not raise any specific issue on appeal relating to that statement.

By the Court.—Judgment affirmed.

This opinion will not be published. *See* RULE 809.23(1)(b)5, STATS.