IN THE COURT OF APPEALS OF THE STATE OF ALASKA

JOHN NICK MARVIN JR., Appellant, v. STATE OF ALASKA, Appellee.	Court of Appeals No. A-11565 Trial Court No. 1HN-10-051 CR MEMORANDUM OPINION No. 6555 — December 13, 2017

Appeal from the Superior Court, First Judicial District, Juneau, David V. George, Judge.

Appearances: John N. Page III, Assistant Public Defender, and Quinlan Steiner, Public Defender, Anchorage, for the Appellant. Ann B. Black, Assistant Attorney General, Office of Criminal Appeals, Anchorage, and Craig W. Richards, Attorney General, Juneau, for the Appellee.

Before: Mannheimer, Chief Judge, Allard, Judge, and Suddock, Superior Court Judge.[*]

Judge MANNHEIMER.

John Nick Marvin Jr. was convicted of two counts of first-degree murder for shooting and killing two Hoonah police officers, Anthony Wallace and Matthew

[*] Sitting by assignment made pursuant to Article IV, Section 16 of the Alaska Constitution and Administrative Rule 24(d).

Tokuoka. He challenges his convictions on two grounds. First, Marvin argues that he was not competent to stand trial. Second, Marvin argues that if he was competent to stand trial, his trial should have been moved out of Juneau because of adverse pre-trial publicity.

For the reasons explained in this opinion, we conclude that neither of Marvin's claims have merit, and we therefore affirm his convictions.

Underlying facts

Hoonah is a small community located on the northeast shore of Chichagof Island, 40 air miles west of Juneau. On the evening of August 28, 2010, Officer Matthew Tokuoka and his family stopped at a dumpster in Hoonah to dispose of some garbage. Officer Tokuoka was off-duty at the time; he was scheduled to return to duty later that night.

While Officer Tokuoka and his family were stopped, Officer Anthony Wallace arrived in his patrol car and pulled in behind the Tokuokas. Officer Wallace was with his mother, who was visiting from out of state and was accompanying her son on a ride-along. Wallace wanted to introduce his mother to the Tokuokas.

John Marvin lived across the street from the dumpster. While Officer Tokuoka and his wife were talking with Officer Wallace's mother, Officer Wallace went over to the Tokuokas' car to speak to their children. Wallace leaned through the window into the backseat of the Tokuokas' car, with his back to the houses across the street. Moments later, Officer Wallace was shot, and he fell to the ground. Officer Tokuoka immediately went to assist Wallace, while Tokuoka's wife drove their children to safety.

Officer Tokuoka managed to pull Officer Wallace to a position behind the driver's door of Wallace's car, but almost as soon as Tokuoka had accomplished this, he was shot twice in the chest.

Both Officer Wallace and Officer Tokuoka died from their wounds.

Marvin was quickly identified as the primary suspect in the case, but he refused to leave his house for the next two days. Marvin eventually surrendered after tear gas was fired into his house. When investigators entered Marvin's house, they found 25 firearms, including the weapon that was used to shoot Officers Wallace and Tokuoka.

Marvin's trial did not begin until two years later. Over those two years, Marvin's competency to stand trial was repeatedly evaluated. There was substantial media coverage of the facts of his case, and also of the ongoing competency proceedings.

Jury selection in Marvin's case began on October 22, 2012, after Marvin was finally found competent to stand trial. At the close of the trial, Marvin was found guilty of murdering Officers Wallace and Tokuoka.

Marvin's competency to stand trial

In their briefs to this Court, Marvin and the State disagree as to what standard of review an appellate court should employ when reviewing a trial judge's ruling regarding a criminal defendant's competency to stand trial.

Marvin concedes that an appellate court should defer to a trial judge's findings of historical fact relating to a defendant's competency (unless those findings are clearly erroneous). But Marvin argues that, once the underlying facts have been established, an appellate court should assess a defendant's competency *de novo* — *i.e.*, without any deference to the trial judge's assessment of the defendant's competency.

The State, however, points out that our supreme court has explicitly held that the "substantial evidence" standard of review applies to these situations. *See McKinney v. State*, 566 P.2d 653, 659 (Alaska 1977). Under the "substantial evidence" test, an appellate court must affirm the trial judge's decision as long as the evidence is sufficient to warrant a reasonable judge in reaching that same conclusion — even though the members of the appellate court might have reached a different conclusion. As the supreme court explained in *McKinney*, "If there is substantial evidence [supporting the trial court's competency decision], we will not substitute our opinion for that of the trial court." 566 P.3d at 659.

Marvin acknowledges the supreme court's decision in *McKinney*, but he argues that it would be better policy to use a less deferential standard of review, so as to ensure more careful and meaningful appellate oversight of this important matter. But under the doctrine of *stare decisis*, this Court is not allowed to depart from supreme court precedent. Thus, Marvin must present his argument to the supreme court, not to us.

We now turn to the merits of Marvin's claim that the superior court erred when it found that he was competent to stand trial.

Over the course of a year, the superior court held four separate hearings to investigate Marvin's competency. During that time, the court heard testimony and received evaluations from four different mental health professionals: Dr. Lawrence Maile, Dr. Fred Wise, Dr. David Sperbeck, and Dr. Lois Michaud.

The superior court initially found that Marvin was *not* competent to stand trial, in that Marvin was incapable of assisting in his own defense. This initial ruling, issued in January 2012, was based on the competing assessments of Dr. Maile, Dr. Wise, and Dr. Sperbeck.

Dr. Maile observed Marvin during two of his admissions to the Alaska Psychiatric Institute, and he interviewed Marvin a number of times. During those

interviews, Marvin was able to describe his activities during the events in question, as well as the charges he faced and the consequences of entering a guilty plea to those charges. Marvin acknowledged that his attorney had doubts about his competence to stand trial, but Marvin told Dr. Maile that he had significant disagreements with his attorney about trial strategy, and he also declared that he did not wish to pursue a claim of diminished capacity. Instead, Marvin wanted to focus his defense on inconsistencies in the State's investigative reports and other materials.

Dr. Maile concluded that Marvin's approach to his case appeared to be "rational and not the product of mental illness", even though Marvin was apparently unwilling to listen to his defense attorney's competing views about how the case should be litigated. Dr. Maile diagnosed Marvin as having an antisocial personality disorder, but he saw no overt signs of psychiatric illness, and he concluded that Marvin was competent to stand trial.

Dr. Wise evaluated Marvin's competence to stand trial based on three interviews that he conducted with Marvin. Dr. Wise reached a different conclusion from Dr. Maile. He found that Marvin's thought processes were disorganized and delusional, and although he did not reach a conclusive diagnosis as to the cause of Marvin's mental difficulties, he concluded that Marvin was not capable of assisting in his own defense.

Dr. Sperbeck evaluated Marvin twice, once to evaluate whether Marvin might qualify for the defenses of insanity or diminished capacity, and later to evaluate Marvin's competence to stand trial. Dr. Sperbeck concluded that Marvin's thinking was "generally coherent", although he found that Marvin was "clearly grandiose, suspicious, controlling, ... evasive, ... arrogant, accusatory, gamey, and in general uncooperative". Marvin demonstrated a good knowledge of the statutory factors that a court had to consider when making a competency determination, and he also demonstrated a good understanding of the legal proceedings against him. However, Marvin was also

argumentative, accusatory, and controlling, and he was apparently unable to stop focusing on irrelevant details of his situation. Based on Marvin's interactions with his defense counsel, Dr. Sperbeck concluded that Marvin had only a "questionable capacity" to disclose relevant facts to his attorney, and "questionable capacity" to testify in a relevant manner.

On the other hand, Dr. Sperbeck also concluded that Marvin could likely be restored to competency if he received psychiatric treatment. For this reason, Dr. Sperbeck recommended that Marvin be sent to the Alaska Psychiatric Institute for treatment.

After hearing the evaluations of these three doctors, the superior court ruled that Marvin was *not* competent to stand trial, on the ground that Marvin was incapable of assisting in his own defense. However, the court followed Dr. Sperbeck's suggestion and committed Marvin to the Alaska Psychiatric Institute for treatment to see if he might regain competency.

Five months later, in June 2012, the superior court held another competency hearing. At that time, the court heard an updated evaluation from Dr. Sperbeck as well as an evaluation from Dr. Michaud.

Dr. Sperbeck concluded that Marvin was now competent to stand trial — that he had demonstrated the capacity to respond to inquiries coherently and relevantly. Although Marvin apparently believed that his best defense to the murder charges was to deny that he had been at the scene of the homicides, and to deny that he had done anything, Dr. Sperbeck concluded that Marvin had the *capacity* to respond coherently and relevantly to inquiries regarding the shootings; he simply chose not to.

Dr. Michaud likewise concluded that Marvin was competent to stand trial. Dr. Michaud told the court that Marvin was not delusional, that Marvin understood (but disagreed with) the allegations against him, and that Marvin's rejection of those

allegations "[did] not appear to flow from a psychiatric condition, so much as [from] his own personality features". Dr. Michaud stated that Marvin was *capable* of cooperating, but that he "seemed to have his own idea of how much he needs to cooperate".

At the conclusion of this June 2012 hearing, the superior court re-assessed Marvin's competency based on this new information, and the court concluded that Marvin was competent to stand trial. Specifically, the superior court concluded that Marvin was *capable* of assisting in his own defense — and that, to the extent Marvin was not discussing his case with his defense attorney, this was the result of Marvin's choice rather than the result of mental illness.

Marvin's trial was set for October 2012. Ten days before the scheduled trial, Marvin's defense attorney again asked the superior court to assess Marvin's competence to stand trial. In response, the court ordered Dr. Sperbeck and Dr. Michaud to re-evaluate Marvin.

Both doctors submitted new written evaluations, and both of them testified at a renewed competency hearing.

For his re-evaluation, Dr. Sperbeck listened to audio recordings of conferences that Marvin had had with his defense attorney. Based on his review of these attorney-client interviews, Dr. Sperbeck found Marvin to be purposefully evasive and uncooperative. Marvin gave his attorney "elaborate descriptions" of confrontations Marvin allegedly had with the Hoonah police approximately one year before the homicides in this case — but when Marvin was asked about the killing of the police officers, Marvin denied any involvement. He insisted that the officers were not near his house, and that he had nothing to do with the shootings. The more Marvin's attorney pressed him for information, the more Marvin became "hostile, controlling, gamey, and extremely evasive".

Dr. Sperbeck again concluded that Marvin was competent to stand trial because he had the capacity — although not the willingness — to assist his attorney. Dr. Sperbeck concluded that Marvin "had no difficulty understanding and processing information" — but that Marvin was "simply determined not to talk about his activities, behaviors, or [the] circumstances that led to the crimes charged."

Dr. Michaud likewise re-affirmed her earlier opinion that Marvin was competent to stand trial — that Marvin was not psychotic, and that he was able to communicate with his attorney. Dr. Michaud believed that Marvin suffered from antisocial personality disorder, but he was not delusional, and he remained *capable* of communicating with his attorney, even if he chose not to.

Based on this evidence, the superior court again found that Marvin was competent to stand trial. Specifically, the court found that Marvin was capable of assisting his defense counsel — and that, to the extent Marvin was unwilling to do so, this unwillingness did not stem from mental illness.

On appeal, Marvin challenges the superior court's conclusion, but his claim on appeal is extremely narrow: Marvin argues that the superior court's ruling was incorrect because the court failed to properly analyze Dr. Sperbeck's testimony at the final competency hearing.

In particular, Marvin argues that Dr. Sperbeck engaged in unfounded speculation when he concluded that Marvin's unwillingness to discuss the circumstances of the shootings with his defense attorney was the result of Marvin's free volition, rather than the result of psychiatric illness. Marvin asserts that Dr. Sperbeck had no reasoned basis for drawing this conclusion, and he further asserts that the superior court should have realized this.

During Dr. Sperbeck's testimony, he described Marvin as suffering from a "delusional disorder" of a "persecutory and grandiose type". Dr. Sperbeck told the

court that Marvin's delusional sense of grandiosity was probably the reason why Marvin believed he could "defend himself better than his attorney" — and that Marvin's belief in his own superior abilities was partially responsible for Marvin's *choice* not to cooperate with his attorney. But Dr. Sperbeck repeatedly and consistently told the superior court that Marvin was *capable* of cooperating with his attorney — capable of understanding his attorney's questions, and capable of responding coherently to those questions. He just did not wish to do so.

When the superior court issued its ruling on Marvin's competency, the court discussed Dr. Sperbeck's testimony at some length. Contrary to Marvin's contention on appeal, the court's remarks show a good understanding of the nuances of Dr. Sperbeck's testimony — in particular, the reasons why the doctor concluded that Marvin's delusional grandiosity may have led Marvin to decide not to assist his attorney, but that it did not affect Marvin's *capacity* to assist his attorney.

We therefore uphold the superior court's decision that Marvin was competent to stand trial.

Whether Marvin's trial should have been moved out of Juneau because of pre-trial publicity

Under Alaska Criminal Rule 18(b)(1), Juneau is the presumptive trial site for felony charges originating in Hoonah. Thus, Marvin's trial was set to be held in Juneau.

During jury selection, Marvin's attorney asked the court to move the trial to another venue. The defense attorney asserted that, because of the pre-trial publicity in Marvin's case, it was impossible to select a fair jury in Juneau. The superior court

denied this motion for a change of venue. On appeal, Marvin contends that the superior court's ruling was error.

(a) A description of the pre-trial publicity

Marvin's case received significant media coverage. In support of the defense motion for a change of venue, Marvin's attorney submitted over three dozen articles that covered some aspect of the case. When the trial judge analyzed this media coverage, he divided it into three categories: (1) news reports made at or near the time of the events; (2) news reports relating to the litigation of Marvin's competency to stand trial; and (3) publicity relating to the memorial services held in Hoonah for the slain officers.

There were a number of articles within the first category of news coverage — *i.e.*, the coverage of the shooting, Marvin's ensuing standoff with the police, his arrest, and the initiation of criminal proceedings. But Marvin does not allege that these articles contained any significant information about these events that was later suppressed or was otherwise inadmissible at his trial.

Rather, Marvin points to the fact that two of these articles revealed prejudicial pieces of information regarding his past. An article in the Juneau Empire published less than 48 hours after the shooting stated that Marvin had previously carried an unloaded rifle through Hoonah, "threatening the community", and that Officers Tokuoka and Wallace had to use a stun gun to subdue and arrest Marvin. A second article stated that Marvin had "a lengthy arrest record".

About a year before Marvin's trial (*i.e.*, in the fall of 2011), articles began appearing that described the litigation of Marvin's competency to stand trial (the trial

judge's second category of pre-trial publicity). These articles contained substantially more prejudicial information about Marvin.

On September 7, 2011, the Juneau Empire reported on Dr. Lawrence Maile's evaluation of Marvin. According to this article, Dr. Maile said that Marvin was angry at the Hoonah police department, and that Marvin was antisocial. That same article reported Dr. Fred Wise's comments that Marvin was angry and combative. Finally, this article reported that Dr. David Sperbeck had found Marvin to be "gamey" and "evasive". According to this article, Dr. Sperbeck reported that Marvin was "not answering questions" and was "keeping a smile on his face", "just telling me what he wanted me to know". Similar information appeared on the web site of KTOO.org.

On June 11 and 12, 2012, both the Juneau Empire and KTOO.org again reported on Marvin's competency proceedings. These articles reported that Dr. Sperbeck and Dr. Lois Michaud had described Marvin as "malingering", "guarded", "oppositional", "controlling", and "very gamey". These articles also reported that the doctors had described Marvin as "obviously not a normal person" — that he was "bizarre, aggressive[,] and unpredictable", and that he was someone who "can quickly turn hostile, especially if he's pressed on the specifics of the ... [charges]." Another article on the KTOO web site also described how Marvin was guarded by two court security officers instead of the typical one.

On October 17, 2012 (*i.e.*, just days before jury selection), the Juneau Empire reported on Marvin's renewed competency proceedings. The article reported that, during Marvin's last meeting with his defense attorney, the things that Marvin wanted to discuss with his attorney were "irrelevant and incoherent". The article also reported Dr. Sperbeck's description of Marvin as "controlling, insistent[,] and overly focused upon irrelevant minutia". And the article asserted that Marvin spent all day doing nothing but staring out the window of the jail.

Finally, on October 21, 2012 (the day before jury selection), the Juneau Empire published a final article on Marvin's competency to stand trial. This article reported that Dr. Sperbeck had evaluated Marvin three times, and that Dr. Sperbeck described Marvin as an "eccentric hermit with a probable delusional disorder". Dr. Sperbeck was then quoted as having given the following testimony:

> *Dr. Sperbeck*: [Marvin is] in total denial ... And it's also a form of controlling the system by refusing to cooperate. It's his way of controlling the proceedings. A person who has no control left in his life, this is the last thing he has control over. ...
>
> He is a desperate, eccentric person in a situation that he's sort of sliding down a tunnel from which there's really not going to be much of an escape. And I think the closer we get to his trial, the more likely he is to become increasingly hostile or outspoken, because it will start dawning on him what's really happening, [and that] denial and defensiveness [are] just not working.

In support of his motion for a change of venue, Marvin also submitted reader comments that had been appended to the online versions of three Juneau Empire articles. All of these comments were posted in the week before Marvin's trial. These reader comments included assertions that Marvin deserved the death penalty, and that Marvin was a convicted child molester. But only one prospective juror testified to having read these comments, and Marvin's attorney did not challenge the prospective juror on this basis — nor was this prospective juror seated on Marvin's jury. We therefore find it unnecessary to discuss these reader comments in any further detail.

With regard to the third category of news coverage identified by the trial judge (*i.e.*, publicity relating to the memorial services held in Hoonah for the slain

officers), there were at least three articles published on this topic. But those articles hardly mentioned Marvin, other than to say that Marvin had been charged with the homicides. Marvin's brief to this Court fails to explain how those articles were in any way prejudicial to him.

(b) The jury selection at Marvin's trial, and Marvin's two motions for a change of venue

At the beginning of Marvin's trial, 91 people reported for jury service. Jury selection lasted three days, and it was divided into two parts.

During the first two days, the trial judge allowed the attorneys to question each juror individually on three topics: (1) the juror's exposure to pre-trial publicity, (2) the juror's familiarity with the people involved in the case, and (3) any private reasons the juror might have for believing that they should not serve on Marvin's case.

During this individual *voir dire* of the 91 prospective jurors, Marvin's attorney challenged only eight jurors for cause based on their exposure to pre-trial publicity. Of these eight challenges, the trial judge granted five and denied three. With respect to the three challenges for cause that were denied, Marvin's attorney later exercised peremptory challenges against these three prospective jurors.

During this two-day round of individual *voir dire*, a total of 22 prospective jurors were excused for one reason or another — leaving 69 prospective jurors.

At the conclusion of this individual *voir dire*, Marvin's attorney moved for a change of venue, arguing that the pre-trial publicity had made it impossible to obtain a fair jury in Juneau. The defense attorney acknowledged that the two days of individual *voir dire* had not elicited affirmative proof of widespread prejudice engendered by the pre-trial publicity. But, citing *Mallott v. State*, 608 P.2d 737, 748 (Alaska 1980), the

defense attorney argued that there was nevertheless a substantial likelihood of hidden widespread prejudice among the prospective jurors — prejudice that the *voir dire* had failed to reveal.

Marvin's attorney noted that 83 out of the 91 prospective jurors knew that Marvin had been charged, and were familiar with some of the facts of the case. The defense attorney also noted that the Juneau Empire had published a number of articles about Marvin's competency hearings. The defense attorney expressed particular concern that, if a juror was aware that Marvin's competency had been in doubt, this might lead the juror to infer that Marvin had mental health issues, that he was unstable, and that he was the type of person who would shoot police officers.

The trial judge denied the motion for change of venue. The judge found that the pre-trial publicity concerning the shooting itself was not particularly "intensive or inflammatory". And the judge disagreed with the defense attorney's assertion that jurors would be prejudiced merely by the knowledge that Marvin's competency had been litigated. However, the judge told the defense attorney that if any of the prospective jurors had information about the *content* of the competency proceedings beyond "just [the] ultimate conclusion of competency", those jurors would be excused.

Of the 69 prospective jurors who remained after the two days of individual *voir dire*, 50 were selected at random to return to court for a third day of normal *voir dire* as a group. (The other 19 prospective jurors were excused, with the caution that they might be needed the following day.)

The State conducted its group *voir dire* first. Following the State's group *voir dire*, the parties again conducted individual *voir dire* of several prospective jurors on the basis of their answers during the group *voir dire*. As a result of this questioning, 10 more jurors were excused for cause — but of these 10, only one prospective juror was excused for reasons relating to pre-trial publicity.

Marvin's attorney then conducted his own group *voir dire* of the remaining 40 prospective jurors. During the defense attorney's *voir dire*, the issue of pre-trial publicity arose twice. At one point, the defense attorney asked the group of prospective jurors if any of them could "think of any challenges that a person might run into in terms of the presumption of innocence". An unidentified juror responded that "the media [had] already given quite a bit of information about the case", and thus the juror was "not sure there's a presumption of innocence in the telling of [Marvin's] story." Marvin's attorney did not challenge this juror for cause.

Another prospective juror declared that she was "surprised" that Marvin's trial had not been moved out of Juneau. Marvin's attorney challenged this prospective juror for cause, but the trial judge denied the challenge, finding that the juror's comment was simply an observation, and noting that this juror had previously said that she personally could be fair. (This ruling is not challenged on appeal.)

Near the conclusion of the challenges for cause, the trial judge announced that he would give each party 13 peremptory challenges. Marvin's attorney flippantly responded that he "would like an infinite number" of peremptory challenges. The defense attorney then asked the judge to give him a total of 46 peremptory challenges — a number which, according to the defense attorney, would be sufficient to remove "all those ... who were exposed to pre-trial coverage".

The trial judge rejected the defense attorney's request. However, the trial judge added that he remained flexible on the matter of peremptory challenges: "If, for whatever reason, ... 13 [challenges] turns out to be insufficient, and you can convince me [of that], we have more people that we can draw on." (The judge was referring to the 19 prospective jurors who had been excused for the day.)

The parties then exercised their peremptory challenges. The prosecutor exercised 11 of his challenges. Marvin's attorney exercised all 13 of his challenges, but he did not ask for additional peremptory challenges.

After the parties exercised their peremptory challenges, 16 prospective jurors remained. Of these, 14 were seated on the jury (12 regular jurors and two alternates to be designated at the close of the trial). This concluded the jury selection. Of the 14 jurors seated in the jury box, none of them had been challenged for cause by either party.

In the middle of Marvin's trial, the defense attorney filed a renewed motion for a change of venue. The defense attorney argued that the trial judge had failed to appreciate the nature and the extent of the pre-trial publicity, had failed to properly analyze the results of the jury *voir dire*, and had misapplied or had failed to understand Alaska law — in particular, the supreme court's decision in *Mallott v. State*.

The trial judge again denied the defense motion for a change of venue.

(c) Why we uphold the trial judge's ruling

As we explained when we described the pre-trial publicity in this case, the early media accounts were mostly confined to the facts surrounding the homicides and Marvin's ensuing arrest — matters that would be covered by the evidence at Marvin's trial. The two exceptions were one article that mentioned Marvin's "lengthy arrest record", and another article that spoke of an earlier incident where Marvin apparently walked through Hoonah carrying an unloaded rifle in a threatening manner. But there is no indication that the people who sat on Marvin's jury knew about these two brief references to his history with the justice system.

Similarly, the media accounts of the memorial services for the two slain officers simply mentioned that Marvin was charged in connection with their deaths.

The troubling aspect of the pre-trial publicity was the detailed coverage of the litigation relating to Marvin's competency to stand trial. We agree with the trial judge that there was little reason to think that jurors would be prejudiced simply by the knowledge that Marvin's competency had been litigated, and that he had been found competent to stand trial. Indeed, during the trial, Marvin's attorney raised the issue of Marvin's mental health problems himself, during his cross-examination of various state witnesses.

But as we have explained, several of the news articles pertaining to the competency litigation mentioned prejudicial details of what the various mental health professionals had told the superior court about Marvin's mental state.

These details included assertions that Marvin was antisocial, that he was combative, that he was "gamey" and "evasive", that he was "obviously not a normal person", that he was "bizarre, aggressive[,] and unpredictable", and that he was an "eccentric hermit with a probable delusional disorder". Because the litigation over Marvin's competency continued until only a few days before jury selection, there was a significant possibility that if any of the prospective jurors had been exposed to this prejudicial information, they might not be able to put it aside.

But the record shows that Marvin's trial judge recognized this problem. As we have already noted, the judge expressly told the defense attorney that if any of the prospective jurors had information about the *content* of the competency proceedings beyond "just [the] ultimate conclusion of competency", those jurors would be excused. And Marvin does not claim that the trial judge failed to enforce this rule.

Rather, Marvin argues that the pre-trial publicity as a whole was so extensive that it was not reasonable to trust the *voir dire* process to reveal juror

prejudices. We disagree. Because of the pre-trial publicity in this case (and also because the community of Hoonah is small and close-knit), Marvin's trial judge was scrupulous in his jury selection methods. The judge began the jury selection process by devoting two days to the individual questioning of each prospective juror. Of the 91 prospective jurors who were individually questioned, Marvin's attorney challenged only eight jurors for cause based on their exposure to pre-trial publicity. Of these eight challenges, the trial judge granted five and denied three — and Marvin does not argue on appeal that the judge's rulings were wrong. (As we pointed out earlier, Marvin's attorney later exercised peremptory challenges against those three prospective jurors.)

Given these circumstances, the judge could reasonably trust the results of the jury *voir dire*, and the judge did not abuse his discretion when he denied the defense attorney's two requests for a change of venue. [1]

Conclusion

The judgement of the superior court is AFFIRMED.

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[1] *See Stavenjord v. State*, 66 P.3d 762, 770 (Alaska App. 2003) (a trial judge's ruling on a motion to change the trial venue is reviewed for abuse of discretion).