

In the
Indiana Supreme Court

Abram Lamar Glover,
Appellant(s),

v.

State Of Indiana,
Appellee(s).

Court of Appeals Case No.
21A-CR-01422

Trial Court Case No.
42D01-2006-F6-113



Order

This matter has come before the Indiana Supreme Court on a petition to transfer jurisdiction, filed pursuant to Indiana Appellate Rules 56(B) and 57, following the issuance of a decision by the Court of Appeals. The Court has reviewed the decision of the Court of Appeals, and the submitted record on appeal, all briefs filed in the Court of Appeals, and all materials filed in connection with the request to transfer jurisdiction have been made available to the Court for review. Each participating member has had the opportunity to voice that Justice's views on the case in conference with the other Justices, and each participating member of the Court has voted on the petition.

Being duly advised, the Court DENIES the petition to transfer.

Done at Indianapolis, Indiana, on 3/9/2022.

A handwritten signature in black ink that reads "Loretta H. Rush".

Loretta H. Rush
Chief Justice of Indiana

Rush, C.J., Massa, J., Slaughter, J., and Goff, J., vote to deny transfer.
David, J., dissents from the denial of transfer with separate opinion.

David, J., dissenting from the denial of transfer.

I respectfully dissent from the denial of transfer. I would grant transfer because I believe the State conducted an improper “mini trial” during voir dire in violation of Jury Rule 14(b). The purpose of voir dire is to determine whether prospective jurors can render an impartial verdict based on the law and the evidence, and to “weed out” those who show that they cannot be fair. *Gibson v. State*, 43 N.E.3d 231, 238 (Ind. 2015). Although trial courts “have broad discretionary power in regulating the form and substance” of jury selection, *id.* at 237, questions that “seek to shape a favorable jury by deliberate exposure to the substantive issues in the case” are not permitted. *Davis v. State*, 598 N.E.2d 1041, 1047 (Ind. 1992).

Here, the prosecutor informed prospective jurors that he would do a “mini opening” to tell them “a little bit about the case.” Tr. Vol. II, p. 53. Glover’s counsel objected, contending that the mini opening would expose the jury panel to possible evidence and could risk preconditioning the jury panel. In response, the prosecutor repeatedly told the trial court “the jury rules specifically allow me to do a mini opening.” *Id.* at 53, 55–58. The trial court overruled defense counsel’s objection and allowed the State to present the mini opening. It is my concern that the State might have represented that it was entitled to a mini opening, rather than as a discretionary function of the trial court under Jury Rule 14, and that it exposed too much to potential jurors about the underlying issues in the case.

I would grant transfer so this Court could provide clarity to our trial courts on how to permit and regulate “mini opening statements” under Indiana Jury Rule 14. Jury Rule 14(b) provides: “To facilitate the jury panel's understanding of the case, with the court's consent the parties may present brief statements of the facts and issues (mini opening statements) to be determined by the jury.” The plain language of the rule indicates that the ability to “present brief statements of the facts and issues” falls within the discretion of

the trial court. However, this Court has never addressed the proper procedure or scope for allowing such statements.

I would find that such discretionary determination would best be addressed in a pretrial conference so the parties can determine the breadth and scope of the mini opening in advance, and not do so for the first time when the prospective jurors are seated and the “traditional voir dire” is about to begin. And if the trial court, in its discretion, determines that it is appropriate to allow a mini opening, both sides should be afforded the opportunity, and the trial judge should endeavor to manage the parameters to reduce the potential for issues and abuses resulting from these mini openings before voir dire even begins. In addition, the parties and the trial court should also determine how to clearly delineate between the end of the mini opening and the start of the traditional voir dire to clear up potential confusion from the potential jurors.

Accordingly, I dissent from the denial of transfer.