

No. 98-0275-CR

STATE OF WISCONSIN

IN COURT OF APPEALS
DISTRICT III

STATE OF WISCONSIN,

FILED

PLAINTIFF-RESPONDENT,

October 7, 1998

v.

CLERK OF
COURT OF APPEALS
OF WISCONSIN

RICHARD O. MATTINGLY,

DEFENDANT-APPELLANT.

ERRATA SHEET

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Hon. Peter C. Diltz
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PLEASE TAKE NOTICE that the attached page 2 is to be substituted for page 2 in the above-captioned opinion which was released on October 6, 1998.

used a peremptory strike to remove the juror from the petit panel thereby denying Mattingly his full complement of peremptory strikes. Because Mattingly has not proven that the juror was biased, we conclude that Mattingly was not prejudiced by his counsel's failure to move to strike the juror. Accordingly, we conclude that Mattingly received effective assistance of counsel and affirm the judgment and order.

Richard Mattingly was charged with first-degree reckless homicide in connection with the death of his three- and one-half-month-old son. During voir dire, prospective juror Joseph Maggle acknowledged that he had read an article about the case in the Door County Advocate and that he had heard customers who were law enforcement officers talking about the case in his barber shop. He denied that any specific facts in this case were discussed. Maggle affirmed, however, that he could set aside these matters and reach his determination as to Mattingly's guilt or innocence based solely on the evidence received during the trial.

Because Mattingly alleges that Maggle was not an impartial juror, we set forth the full colloquy between Mattingly's attorney and Maggle during the voir dire:

MR. SOSNAY: And he also asked about if anyone had made any decisions about guilt or innocence. And I notice that you had kind of smiled when he asked that question.

[MR. MAGGLE]: Um, in my shop there is a quite a few people that are, maybe myself even included, is quite opinionated on what should be done if I [sic] person is involved with the death of a child.

MR. SOSNAY: Okay.