COURT OF APPEALS
DECISION
DATED AND FILED

February 14, 2017

Diane M. Fremgen
Clerk of Court of Appeals

Appeal No. 2016AP1066-CR **Cir. Ct. No. 2014CF966**

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

STATE OF WISCONSIN,

PLAINTIFF-RESPONDENT,

V.

CHARLES J. HARTLEBEN,

DEFENDANT-APPELLANT.

APPEAL from a judgment and an order of the circuit court for Marathon County: LAMONT K. JACOBSON, Judge. *Affirmed*.

Before Stark, P.J., Hruz and Seidl, JJ.

¶1 STARK, P.J. Charles Hartleben appeals a judgment of conviction and an order denying his postconviction motion for resentencing. Hartleben argues his trial attorney was ineffective by failing to object to the presentence investigation report (PSI) on grounds that the probation agent who prepared the

PSI was impliedly biased against him. We conclude Hartleben has failed to establish implied bias on the part of the PSI author. Accordingly, his trial attorney was not ineffective by failing to object to the PSI. We therefore affirm the judgment of conviction and the order denying postconviction relief.

BACKGROUND

¶2 A Consolidated Information charged Hartleben with two counts of attempting to flee or elude a traffic officer, one count of obstructing an officer, and two counts of criminal damage to property, all counts as a repeater. The charges arose out of two high-speed vehicular chases. Pursuant to a plea agreement, Hartleben pled no contest to the fleeing/eluding counts and the obstructing count, with the repeater enhancers, and the criminal damage to property counts were dismissed and read in. Based on the parties' joint recommendation, the circuit court ordered a PSI.

¶3 When Hartleben returned to the circuit court for sentencing on May 26, 2015, the court noted the PSI author, probation agent James Darling, had neglected to include the repeater enhancers when determining the maximum available sentences for Hartleben's offenses. The court therefore adjourned the hearing and directed the parties to obtain a corrected PSI.

¶4 At the subsequent sentencing hearing on July 20, 2015, the defense recommended concurrent sentences on all three charges totaling five years' imprisonment, consisting of two years' initial confinement and three years' extended supervision. The State recommended concurrent and consecutive sentences totaling nine and one-half years' imprisonment, consisting of seven years' initial confinement and two and one-half years' extended supervision. In the corrected PSI, Darling recommended consecutive sentences totaling twelve to

thirteen years' imprisonment, consisting of seven to eight years' initial confinement and five years' extended supervision.

¶5 Consistent with the corrected PSI, the circuit court imposed consecutive sentences totaling thirteen years' imprisonment, consisting of eight years' initial confinement and five years' extended supervision. During its sentencing remarks, the court addressed Hartleben's character, including his lengthy criminal history and persistent drug use; the aggravated nature of the offenses; the read-in charges; Hartleben's failure to show genuine remorse; the need for treatment in a confined setting; and the need to protect the public. The court referred to the PSI multiple times during its remarks, including by expressly stating, "So I do consider the Presentence Investigation recommendation. It calls for what can best be described as a fairly lengthy period of imprisonment and confinement and extended supervision."

¶6 Hartleben moved for postconviction relief, seeking resentencing. He argued the circuit court's reliance on the PSI violated his right to due process because Darling, the PSI author, was impliedly biased against him due to Darling's "close working relationship[s]" with two other probation agents, A.D. and E.T., who were victims of one of Hartleben's prior offenses. Hartleben further argued his trial attorney was ineffective for failing to object to the PSI based on Darling's implied bias.

¶7 In support of his motion, Hartleben noted he had been convicted of disorderly conduct in 2012 in Shawano County case No. 2012CM431. The criminal complaint in that case, which was attached to Hartleben's motion, alleged that during an arrest, Hartleben made a threatening remark regarding A.D., his supervising agent, stating, "I'm gonna get that fucking cunt even if it sends me

back to prison." The complaint further alleged that, following the incident regarding A.D., E.T. was assigned to take a statement from Hartleben. When E.T. met with Hartleben at the jail, Hartleben slammed his fists on the table, repeatedly swore at E.T., and started coming toward E.T. with his arms raised. After E.T. assumed a fighting posture and repeatedly yelled at Hartleben to sit down, Hartleben retreated to his chair. However, he continued "taunting" and swearing at E.T. for several minutes, until jail staff arrived and led him away. In E.T.'s written statement regarding the incident, he indicated he had "never been threatened like this in [his] career."

¶8 At the postconviction hearing, Darling testified he had worked as a probation agent for nine years, including seven years at the Shawano County probation and parole office, and he had received training on how to write PSIs. He stated about ten probation agents work in the Shawano County office. They communicate with each other about their cases and are "generally supportive" of each other. While Darling does not typically socialize with the other agents outside of work, they have developed "work bonds," and he "generally care[s]" about them.

¶9 When asked about his relationship with A.D., Darling testified he had known her since 2001 and had worked with her since about 2007. They were "cover agents" for each other and interacted at work on a daily basis. However, they had only socialized outside of work on one occasion, when everyone in their office went out to eat together. Darling stated he would call A.D. a friend.

¶10 Darling testified he first met E.T. in 2009, and E.T. left the Shawano County probation and parole office one to two years before the postconviction hearing. During the time Darling worked with E.T., they were friendly at the

office, but they never did anything together outside of work. When asked whether he would have called E.T. a friend, Darling responded, "I would call him more of an associate, coworker."

¶11 Darling testified he learned about Hartleben's threatening behavior toward A.D. and E.T. in 2012, shortly after the incidents occurred. He recalled that E.T. appeared to be upset when he returned to the office following the incident at the jail. After that incident, Darling was asked to meet with Hartleben at the jail to serve him with revocation papers. Darling was subsequently assigned to supervise Hartleben and did so for approximately six months. He testified he had no issues with Hartleben during that time and felt they "got along."

¶12 Darling confirmed he was aware of the 2012 incidents involving A.D. and E.T. when he drafted the PSI in the instant case, and he knew Hartleben had been convicted of disorderly conduct as a result of those incidents. He later clarified that the incidents and conviction "came up as part of the investigation" while he was preparing the PSI, and they were not "on [his] mind" before that. Darling did not feel that he was biased against Hartleben as a result of the incidents or that they created a conflict of interest for him in his preparation of the PSI. He testified the incidents involving A.D. and E.T. were not the first time someone in his office had been threatened by a person he or she was supervising, although he conceded it was "pretty rare" for such behavior to result in a criminal conviction.

¶13 Julie Krause, who was Darling's supervisor in 2012, testified that before she sent Darling to serve Hartleben with revocation papers following the incidents with A.D. and E.T., she would have "outlined the situation" for him, "outlined some very specific safety concerns," and discussed a plan to ensure his

safety. She confirmed that, as a result of the incidents with A.D. and E.T., she was concerned for the safety of the agents in her office. However, on cross-examination, Krause testified there have been "many instances" during her career in which she had concerns about her agents' safety.

¶14 Hartleben's trial attorney testified she was aware at the time of sentencing that two of Hartleben's past victims worked in the same office as the PSI writer. She had no strategic reason for not objecting to the PSI on that basis. On cross-examination, counsel clarified she did not object to the PSI because she did not feel that it was biased against Hartleben. However, on redirect examination, counsel conceded she had never considered a claim of implied bias, rather than actual bias, and she therefore had no strategic reason for failing to bring an implied bias claim. Counsel testified she reviewed the PSI with Hartleben prior to sentencing, and she did not believe he expressed any concern to her that it was biased. She could not recall whether Hartleben ever told her he felt uncomfortable having a probation agent from Shawano County prepare the PSI.

¶15 Hartleben testified the fact that Darling was preparing his PSI made him feel uncomfortable, anxious, and intimidated because he believed any agent from the Shawano County probation and parole office would be biased against him as a result of the incidents involving A.D. and E.T. Hartleben asserted he expressed these concerns to his trial attorney before his sentencing. Hartleben also testified he had previously raised concerns with the Department of Corrections that the agents in the Shawano County office were biased against him. He introduced a letter he had written in March 2014, in which he requested a transfer of his supervision to Marathon County, based in part on his concern that he had "absolutely no chance of making it off supervision where the 2 victims of my crime are employed as [probation] agents." On cross-examination, Hartleben

conceded he did not have "any issues" with Darling when Darling was supervising him. He further conceded there was nothing untrue or inaccurate in the PSI.

¶16 The last witness to testify at the postconviction hearing was Nathan Nelson, the field supervisor for the Shawano County probation agents. Nelson testified he assigned Darling to write Hartleben's PSI because Darling had been the supervising agent for Hartleben's most recent term of supervision. Nelson reviewed and approved Hartleben's PSI before it was submitted to the court and did not believe it was biased. Nelson testified he had encountered situations while working as a field supervisor in which agents working for him were threatened by offenders. He stated such incidents had led to criminal convictions "several times in the last five years."

¶17 The circuit court denied Hartleben's postconviction motion. The court observed a defendant may obtain resentencing by showing either actual bias on the part of the PSI author or that, under the circumstances, bias should be implied as a matter of law. The court noted Hartleben had "clearly indicate[d]" he was not pursuing a claim based on actual bias.

¶18 Turning to implied bias, the circuit court began by considering the nature of Darling's relationships with A.D. and E.T., noting they were coworkers, which was not akin to the type of close relationship that had been found to give rise to implied bias in previous cases. The court then considered several factors that it believed lessened the risk of implied bias. First, it observed that Darling was "a corrections officer who ha[d] received training in writing PSIs and what is expected when writing [PSIs]." Second, the court observed that Hartleben had been convicted of disorderly conduct, a Class B misdemeanor with relatively minor penalties, as a result of the incidents involving A.D. and E.T. Third, the

court noted that while Hartleben's conduct toward A.D. and E.T. "is the sort of thing that does not happen frequently in probation offices," it "certainly happens from time to time." Fourth, the court observed the incidents were "not that close in time" to the preparation of Hartleben's PSI. Fifth, the court noted the PSI had been reviewed and approved by Nelson, who served "as a so-called safety net." Based on these factors, the court concluded there was no "concern for implied bias in this [PSI]."

¶19 The circuit court also rejected Hartleben's ineffective assistance claim, concluding that, because Hartleben had failed to show implied bias, trial counsel's failure to object to the PSI on that basis did not prejudice Hartleben. Hartleben now appeals his judgment of conviction and the order denying postconviction relief.

DISCUSSION

¶20 On appeal, Hartleben renews his argument that the circuit court's reliance on the PSI violated his right to due process because Darling was impliedly biased against him. The State correctly points out that, because Hartleben's trial attorney failed to object to the PSI on implied bias grounds, he has forfeited his right to direct appellate review of that issue. *See* ***State v. Haywood***, 2009 WI App 178, ¶15, 322 Wis. 2d 691, 777 N.W.2d 921. Under these circumstances, our normal practice is to limit our analysis to whether Hartleben's attorney was ineffective by failing to object to the PSI. *See* ***State v. Carprue***, 2004 WI 111, ¶47, 274 Wis. 2d 656, 683 N.W.2d 31. That is, we consider whether counsel performed deficiently by failing to object to the PSI, and whether that deficiency prejudiced Hartleben's defense. *See* ***Strickland v. Washington***, 466 U.S. 668, 687 (1984). Here, however, we conclude Hartleben has failed to prove either deficient

performance or prejudice *precisely because* he has failed to show any implied bias in connection with the PSI, and an objection on that basis therefore would have been properly denied. *See* ***State v. Berggren***, 2009 WI App 82, ¶21, 320 Wis. 2d 209, 769 N.W.2d 110 (counsel does not perform deficiently by failing to raise a legal challenge that would have been properly denied); ***State v. Simpson***, 185 Wis. 2d 772, 784, 519 N.W.2d 662 (Ct. App. 1994) (defendant is not prejudiced by counsel's failure to make a motion that would have been denied). Thus, even though Hartleben has forfeited his right to direct appellate review of his implied bias claim, under the circumstances, our ineffective assistance analysis amounts to a direct review of that claim.

I. General principles regarding bias

¶21 A defendant has a due process right to a fair sentencing hearing. *See* ***State v. Suchocki***, 208 Wis. 2d 509, 516, 561 N.W.2d 332 (Ct. App. 1997), *abrogated on other grounds by* ***State v. Tiepelman***, 2006 WI 66, ¶31, 291 Wis. 2d 179, 717 N.W.2d 1. When a PSI is ordered, it serves as an important source of information for the sentencing court. *See* ***State v. Perez***, 170 Wis. 2d 130, 140, 487 N.W.2d 630 (Ct. App. 1992). Consequently, "[t]he integrity of the sentencing process demands that the report be accurate, reliable and, above all, objective." ***Suchocki***, 208 Wis. 2d at 518. It is therefore "of vital importance that the author of the report be neutral and independent from either the prosecution or the defense." ***Id.*** The sentencing process "is not fair if the sentencing court relied upon a PSI from a biased writer." ***Id.*** at 521.

¶22 To obtain relief based on a claim the PSI author was biased, a defendant must demonstrate either: (1) actual bias on the part of the author; or (2) that, under the circumstances, bias should be implied as a matter of law. *See*

id. at 518-20. In either case, the defendant must also demonstrate that the circuit court actually relied on the biased PSI. *See* ***id.*** at 516 (stating defendant must demonstrate both bias in the PSI writer and that the sentencing process was prejudiced by such bias); ***Tiepelman***, 291 Wis. 2d 179, ¶2 (holding the correct standard is whether the sentencing court "actually relied" on the disputed information, and withdrawing contrary language from ***Suchocki***). Here, Hartleben does not cite any evidence supporting a claim of actual bias. In addition, the record clearly shows—and the State does not dispute—that the circuit court actually relied on the PSI. Thus, the only disputed issue is whether bias should be implied as a matter of law under the circumstances of this case. This presents a question of law that we review independently. ***Suchocki***, 208 Wis. 2d at 514.[1]

[1] Citing ***State v. Faucher***, 227 Wis. 2d 700, 596 N.W.2d 770 (1999), the State argues that "what used to be called implied or inferred bias has now been incorporated in the concept of objective bias." In ***Faucher***, our supreme court abandoned the use of the terms "implied," "actual," and "inferred" to describe a juror's bias, and in their place it adopted the terms "statutory bias," "subjective bias," and "objective bias." ***Id.*** at 706. The court did not, however, indicate that the new terminology and the associated legal standards also applied to other types of cases, such as those alleging bias on the part of a PSI writer. The State cites no other authority supporting the proposition that the "objective bias" standard set forth in ***Faucher*** applies in a case alleging a biased PSI. Under these circumstances, we adhere to the standards and terminology set forth in ***State v. Suchocki***, 208 Wis. 2d 509, 561 N.W.2d 332 (Ct. App. 1997).

The State also asserts that, because a PSI author acts as an agent of the court, *see* ***Suchocki***, 208 Wis. 2d at 518, "a claim that the author of the PSI is biased should be reviewed under the same standards that apply to claims of bias against a judge." The State therefore argues we should apply a rebuttable presumption that a PSI author acts fairly, impartially, and without bias. *See* ***State v. Goodson***, 2009 WI App 107, ¶8, 320 Wis. 2d 166, 771 N.W.2d 385. Again, however, the State cites no authority supporting its novel argument that the standards used to assess judicial bias are also applicable to claims of bias regarding a PSI author. Regardless, we need not decide whether the standards for judicial bias should be applied in this case because, even applying the standard set forth in ***Suchocki***, we conclude Hartleben has failed to meet his burden to demonstrate implied bias. *See* ***Suchocki***, 208 Wis. 2d at 518 (placing burden on defendant to establish bias).

¶23 Both parties rely on the same two cases in support of their arguments regarding implied bias: ***Suchocki***, and ***State v. Stafford***, 2003 WI App 138, 265 Wis. 2d 886, 667 N.W.2d 370, *abrogated on other grounds by* ***State v. Harbor***, 2011 WI 28, ¶52, 333 Wis. 2d 53, 797 N.W.2d 828. In ***Suchocki***, the probation agent who wrote the defendant's PSI was married to the prosecuting attorney. ***Suchocki***, 208 Wis. 2d at 513. The defendant moved to strike the PSI, arguing the marital relationship between its author and the prosecutor "created a conflict of interest that compromised the PSI because of the lack of objectivity in the author." ***Id.*** at 514. In response, the State argued the defendant was required to prove that any bias on the part of the PSI author "actually influenced the PSI." ***Id.*** at 519.

¶24 We rejected the State's argument, holding that bias in a PSI writer "will be implied as a matter of law by the existence of" a marital relationship with the prosecuting attorney. ***Id.*** at 520. We explained:

> Requiring any defendant to demonstrate that the marital relationship actually influenced the writer's impressions and recommendations would present an insurmountable hurdle to any defendant attempting to challenge a PSI. The reasons for an agent's impression may operate at a subjective level of which the report's author is unaware. The information, attitude and impressions received from an author's spouse may influence the author's impressions at either a conscious or subconscious level. Because the author's impressions could be subconsciously influenced, the writer may not even be aware of the relationship's influence. It would be difficult, if not impossible, for a defendant to challenge a PSI when the writer is not even conscious of the influence the marital relationship had on the preparation of the PSI. Further, the marital relationship draws the PSI's objectivity into question and, at the least, raises serious questions as to the fairness of the sentencing process to the defendant.

Id. For these reasons, we concluded the marital relationship was "sufficient in itself to draw into question the objectivity of the PSI without a demonstration of actual bias by the report's author." ***Id.***

¶25 In ***Stafford***, the defendant was convicted of second-degree sexual assault of a child. ***Stafford***, 265 Wis. 2d 886, ¶1. The PSI author required the defendant to submit to a psychological assessment, the results of which were incorporated into the PSI and submitted into evidence at the sentencing hearing. ***Id.***, ¶2. The assessment was performed by Marikathryn Nooe, who was "the Sexual Abuse Treatment Program coordinator at Reach Counseling Services." ***Id.*** Unbeknownst to the parties and the court, Nooe had treated the victim "for the emotional issues caused by the sexual abuse perpetrated by [the defendant]" for approximately six months prior to the assessment. ***Id.***, ¶¶5-6, 15.

¶26 On appeal, the defendant argued Nooe's treatment relationship with the victim was a new factor warranting sentence modification. ***Id.***, ¶6. We agreed, explaining that the principles set forth in ***Suchocki*** were equally applicable in the defendant's case:

> Here, the purpose of Nooe's assessment, like the purpose of the PSI, was to provide the trial court with information it could use at sentencing. As ***Suchocki*** teaches, in order to protect the integrity of the sentencing process, the court must have a reliable and accurate information base. The hallmark of accuracy is objectivity. Hence, it is not merely the existence of contact between Nooe and the victim that concerns us. It is that Nooe could have been influenced by her extensive treatment relationship with the victim in forming her impressions regarding Stafford and in making her recommendations to the court that we find so troublesome. The information, attitude and impressions Nooe received from the victim could have impacted her assessment at either a conscious or a subconscious level. Because Nooe's impressions and recommendations could have been subjectively influenced, we conclude that her dual service calls into question her own objectivity, the

> accuracy of her assessment and the overall fairness of Stafford's sentencing process.

Stafford, 265 Wis. 2d 886, ¶11. We further noted that Nooe was not a licensed independent family counselor, social worker, psychologist, or psychiatrist, and, had she been licensed, "she would have been subject to a code of ethics or conduct that would have prohibited her from engaging in the dual relationship." ***Id.***, ¶11 n.2.

II. Application to this case

¶27 After comparing the facts of this case to those of ***Suchocki*** and ***Stafford***, we agree with the State and the circuit court that, under the circumstances at issue here, bias on the part of the PSI author should not be implied as a matter of law. Most importantly, we observe the nature of the relationship that is alleged to give rise to implied bias in this case is materially different from the relationships that were at issue in ***Suchocki*** and ***Stafford***. In ***Suchocki***, the PSI author was married to the prosecuting attorney. This was a close emotional relationship that clearly aligned the PSI author with the State. In ***Stafford***, the author of the defendant's psychological assessment had provided mental health treatment to the defendant's victim for issues caused by the defendant's crime for six months prior to the assessment. As such, the treatment provider would have had intimate knowledge of the victim's opinions, impressions, and memories of the defendant, as well as significant insights into how the defendant's conduct had affected the victim. Under these circumstances, it is almost inconceivable the treatment provider could have provided an unbiased assessment of the defendant.

¶28 Here, in contrast, A.D. and E.T. were merely Darling's coworkers. With one exception, Darling did not socialize with either A.D. or E.T. outside the office. Although Darling testified he would call A.D. a friend, his testimony as a whole demonstrates that he did not have close emotional relationships with either A.D. or E.T. These work relationships are simply not tantamount to a marital relationship or a mental health treatment relationship, in terms of the risk they pose of improper influence on the PSI author.[2]

¶29 Several other factors further support our conclusion that bias should not be implied in this case as a matter of law. First, we observe that Darling's testimony at the postconviction hearing indicated he had a positive relationship with Hartleben, and Darling noted in the PSI that Hartleben "kept appointments and was respectful with his agent during his last term of supervision as well as when writing this document." Hartleben confirmed during his postconviction hearing testimony that he did not have "any issues" with Darling when Darling was supervising him. We agree with the State that Darling's positive relationship with Hartleben diminished the risk that Darling's work relationships with A.D. and E.T. would have caused him to be impliedly biased against Hartleben in his preparation of the PSI.

[2] The State cites a third case, ***State v. Thexton***, 2007 WI App 11, 298 Wis. 2d 263, 727 N.W.2d 560 (2006), for the proposition that "a relationship between corrections agents who work together does not create an inherent conflict of interest sufficient to show a great risk of actual bias." Contrary to the State's suggestion, ***Thexton*** did not hold that the existence of a relationship between two probation agents will never be sufficient to establish implied bias. Instead, the court held that the same inherent bias that was present in ***Suchocki*** did not exist merely because the agent who wrote the PSI in ***Thexton*** was married to another agent, given that there was no information suggesting either agent could not be neutral. ***Id.***, ¶5.

¶30 Second, we note that the mental health provider in ***Stafford*** had an ongoing treatment relationship with the victim of the offense *for which the defendant was being sentenced*. Here, in contrast, Darling had work relationships with victims of one of Hartleben's *previous* offenses, which was wholly unrelated to the conduct underlying Hartleben's conviction in the instant case.

¶31 Third, approximately three years elapsed between the incidents involving A.D. and E.T. and Darling's preparation of the PSI. This is a significant temporal gap. While Darling testified the incidents "came up as part of the investigation" when he was preparing the PSI, he clarified they were not "on [his] mind" before that.

¶32 Fourth, the nature of the previous offense against A.D. and E.T. weighs against a conclusion that Darling was impliedly biased against Hartleben. As a result of the incidents with A.D. and E.T., Hartleben was convicted of disorderly conduct, a misdemeanor with relatively minor potential penalties. *See* WIS. STAT. §§ 939.51(3)(b), 947.01 (2015-16). In addition, the conduct underlying that offense was not particularly heinous. Hartleben made a single threatening remark about A.D. While his actions toward E.T. were more aggressive, Hartleben never physically touched or harmed either agent or otherwise followed through with his threats. None of the concerning behavior occurred in Darling's presence. Furthermore, the postconviction hearing testimony shows that the type of behavior Hartleben exhibited toward A.D. and E.T., while not trivial or commonplace, is certainly not unexpected or unprecedented in their line of work. Moreover, there is no evidence Hartleben ever made any other threats against A.D., E.T., or any other agent, and Darling testified he had never seen Hartleben "lash out or anything like that." We agree with the State that Hartleben's isolated outbursts toward A.D. and E.T. are not the

sort of behavior that would give rise to implied bias, as a matter of law, "on the part of someone who was work friends with a corrections agent whose job involved a potential for such threats."

¶33 Fifth and finally, we observe that Darling was an experienced probation agent and was specifically trained in writing PSIs. In addition, the PSI Darling prepared was reviewed and approved by Nelson, who did not believe it contained any bias.[3] These factors were not present in ***Stafford***, where the disputed psychological assessment was prepared by an unlicensed mental health treatment provider and does not appear to have been reviewed by an objective third party.

¶34 In short, this case involves a PSI authored by a probation agent who had work relationships with two victims of a misdemeanor Hartleben committed three years prior to the preparation of the PSI. That misdemeanor was unrelated to the conduct for which Hartleben was being sentenced, and the acts underlying it were not particularly heinous. The PSI was prepared by an experienced agent and reviewed by that agent's supervisor, who specifically testified he did not believe it was biased. Under these circumstances, which are a far cry from those presented in ***Suchocki*** and ***Stafford***, we cannot conclude bias on the part of the PSI author should be implied as a matter of law. Because Hartleben has failed to establish implied bias, he cannot show that his trial attorney performed deficiently by failing to object to the PSI on that basis, or that counsel's failure to object prejudiced his defense. *See* ***Berggren***, 320 Wis. 2d 209, ¶21; ***Simpson***, 185

[3] Hartleben does not claim that Nelson was biased against him, despite the fact that Nelson worked in the Shawano County probation and parole office with A.D. at the time the PSI was prepared.

Wis. 2d at 784. We therefore affirm Hartleben's judgment of conviction and the order denying his postconviction motion for resentencing.

By the Court.—Judgment and order affirmed.

Not recommended for publication in the official reports.