

**COURT OF APPEALS
DECISION
DATED AND FILED**

August 30, 2001

Cornelia G. Clark
Clerk of Court of Appeals

NOTICE

This opinion is subject to further editing. If published, the official version will appear in the bound volume of the Official Reports.

A party may file with the Supreme Court a petition to review an adverse decision by the Court of Appeals. See WIS. STAT. § 808.10 and RULE 809.62.

No. 00-2558-CR

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT IV**

STATE OF WISCONSIN,

PLAINTIFF-RESPONDENT,

V.

ANDREW M. OBRIECHT,

DEFENDANT-APPELLANT.

APPEAL from a judgment of the circuit court for Dane County:
ROBERT DeCHAMBEAU, Judge. *Affirmed.*

Before Dykman, Roggensack and Deininger, JJ.

¶1 PER CURIAM. Andrew Obrieht appeals a judgment convicting him of one count of attempted second-degree sexual assault of a child, five counts of fourth-degree sexual assault and one count of disorderly conduct, all as a repeat offender. The issue is whether the trial court properly exercised its discretion in

limiting questioning by Obrieht's counsel during jury selection. We conclude that the trial court properly exercised its discretion. Therefore, we affirm.

¶2 During jury selection, Obrieht's counsel attempted to explain to the jury the presumption of innocence in a criminal prosecution.

MR. JENSEN [defense counsel]: The presumption of innocence gives you a vantage point from which to evaluate the evidence that you hear. My question is do any of you have a problem with that, the way it is set up in a criminal case where the defense is given this great advantage at the beginning of the case? Do any of you think that is unfair to the State? Do any of you think it should be otherwise, that the defendant in a criminal case should walk into a courtroom, just as the defendant in the civil case on an equal basis with the plaintiff?

THE COURT: Well, that presumes, counsel, that the jury knows the different burdens and the responsibility of a plaintiff to prove their claim as opposed to the State proving it beyond a reasonable doubt, and, quite frankly, it gets into a whole area that is not relevant, the difference between criminal and -- criminal and civil cases, and it's an area that we are not going to get into. Next question.

¶3 Obrieht's counsel then began to question the jurors about another matter. Shortly thereafter, he returned to questions about the presumption of innocence and burden of proof:

MR. JENSEN: Along with the presumption of innocence we have this concept of the burden of proof in a criminal case which is beyond a reasonable doubt, and you will be told in quite specific detail exactly what that instruction means, what that law is that you are required to apply to this case. Do any of you think that that is unfair to the government, to require the State to meet this high level of proof before it can win, before it can gain a conviction against another citizen in a criminal case?

The trial court allowed this question.

¶4 Obrieht argues that the trial court erroneously exercised its discretion in limiting his questioning. The trial court has broad discretion to control the questions permitted during jury selection. *State v. Migliorino*, 150 Wis. 2d 513, 537, 442 N.W.2d 36 (1989). The court’s discretion, however, “is subject to ‘the essential demands of fairness.’” *Id.* (citation omitted). “An exercise of such discretion will not be disturbed unless the circuit court abuses its discretion or violates some rule of law.” *Id.* Obrieht’s counsel’s question was not well worded and confusing. It assumed that the jury understood what the burdens of proof are in a civil case. Therefore, the trial court acted within its discretion in disallowing the question.¹

By the Court.—Judgment affirmed.

This opinion will not be published. WIS. STAT. RULE 809.23(1)(b)5.

¹ We note that the trial court later allowed counsel to address the burdens of proof and presumption of innocence issues when counsel’s question was more appropriately phrased.

