COURT OF APPEALS
DECISION
DATED AND FILED

January 11, 2005

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.

Appeal No. 04-2035-CR **Cir. Ct. No. 01CT008142**

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

STATE OF WISCONSIN,

PLAINTIFF-RESPONDENT,

V.

DALE L. SMITH,

DEFENDANT-APPELLANT.

APPEAL from a judgment and an order of the circuit court for Milwaukee County: RUSSELL W. STAMPER, Reserve Judge. *Affirmed*.

¶1 WEDEMEYER, P.J.[1] Dale L. Smith appeals from a judgment entered after a jury found him guilty of operating a motor vehicle while intoxicated, second offense. He also appeals from an order denying his postconviction motion. Smith contends that the trial court erred in refusing to

[1] This appeal is decided by one judge pursuant to WIS. STAT. § 752.31(2) (2001-02).

strike for cause a juror, Charlotte T., who works as an administrative assistant at the Children's Court Center. Smith argues that Charlotte was objectively biased because she is employed by the same entity as the prosecuting attorney. Because the trial court did not err in determining that Charlotte was not objectively biased, this court affirms.

BACKGROUND

¶2 During the *voir dire* of Smith's case, it was discovered that Charlotte worked at the Children's Court Center in Wauwatosa. The following exchanges occurred:

> [PROSECUTOR]: Okay. Juror No. 9., who do you know in the D.A.'s office?
>
> [JUROR NO. 9]: I work in the D.A.'s office?
>
> [PROSECUTOR]: You do? You know plenty of people who work in the D.A.'s office?
>
> [JUROR NO. 9]: Yes, I do.
>
> [PROSECUTOR]: Because our office is prosecuting this case, do you think you'd have a problem being an impartial juror on this case?
>
> [JUROR NO. 9]: No.

Defense counsel then examined Charlotte:

> [COUNSEL]: Okay, and Miss T[.] you work for the D.A.'s office?
>
> [JUROR NO. 9]: Yes.
>
> [COUNSEL]: You are around the courthouse a lot?
>
> [JUROR NO. 9]: I work at the Children's Court Center.
>
> [COUNSEL]: What is your capacity out there?
>
> [JUROR NO. 9]: Administrative assistant.

> [COUNSEL]: Do you work on investigations?
>
> [JUROR NO. 9]: No.
>
> [COUNSEL]: Even though you work in the district attorney's office and the district attorney's office is prosecuting this action, do you feel you can be totally impartial, or impartial and fair about this case?
>
> [JUROR NO. 9]: Yes.

¶3 The trial court determined that Charlotte was not biased and would not be struck for cause. Smith used his four peremptory challenges to remove four other prospective jurors that concerned him. As a result, Charlotte was left on the jury and heard the drunk driving case against Smith. The jury ultimately returned a unanimous guilty verdict. Smith was sentenced to ninety days in the House of Correction. He filed a postconviction motion seeking a new trial on the grounds that he was denied his right to an impartial jury. The trial court denied the motion. Smith now appeals.

DISCUSSION

¶4 There are three categories of juror bias: statutory bias, subjective bias and objective bias. ***State v. Fauchner***, 227 Wis. 2d 700, 596 N.W.2d 770 (1999). Here, it is undisputed that there is no statutory exclusion for Charlotte based on her employment at the Children's Court Center. Likewise, her answers indicated that she would not have subjective bias against Smith. Both sides agree that this case is solely about objective bias and whether Charlotte should have been removed from the panel simply because she was employed by the same entity as the prosecuting attorney.

¶5 Relying on ***State v. Louis***, 156 Wis. 2d 470, 457 N.W.2d 484 (1990), the trial court determined that objective bias did not apply here. In ***Louis***,

our supreme court held that two members of the Milwaukee Police Department were not objectively biased merely because they were employed as law enforcement officers and worked in the same department with the state's witness. ***Id.*** at 474. "A prospective juror's knowledge of or acquaintance with a participant in the trial, without more, is insufficient grounds for disqualification." ***Id.*** The supreme court reaffirmed this determination in ***Faulkner***, 227 Wis. 2d at 722.

¶6 The facts of record here suggest that this case is akin to ***Louis***. Charlotte, although employed by the Milwaukee County District Attorney's Office, did not know the prosecutor in this case and the prosecutor did not know Charlotte. Charlotte herself is not a prosecutor, but an administrative assistant. Her work does not involve investigations. She does not work at the District Attorney's Office located at the courthouse complex in downtown Milwaukee. Rather, she works in a separate facility—the Children's Court Center located in Wauwatosa. There is no evidence that Charlotte had any contact with the prosecutor in this case or had any familiarity with the prosecution of this case. Under these circumstances, this court agrees with the trial court's conclusion that "the mere fact that a juror works for the prosecuting office, without more, does not in and of itself disqualify the juror from service."

¶7 Accordingly, Charlotte was not objectively biased. She was a fair and impartial juror and, therefore, the trial court did not err in denying Smith's postconviction motion alleging otherwise.

By the Court.—Judgment and order affirmed.

This opinion will not be published. *See* WIS. STAT. RULE 809.23(1)(b)4.