COURT OF APPEALS
DECISION
DATED AND FILED

June 1, 2000

Cornelia G. Clark
Clerk, Court of Appeals
of Wisconsin

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. 99-3023-CR

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

STATE OF WISCONSIN,

PLAINTIFF-RESPONDENT,

V.

STEVEN S. MILLER,

DEFENDANT-APPELLANT.

APPEAL from a judgment of the circuit court for Vernon County: MICHAEL J. ROSBOROUGH, Judge. *Affirmed.*

¶1 EICH, J.[1] Steven Miller appeals from a judgment convicting him of driving while intoxicated. He argues that the trial court's refusal to strike a prospective juror for cause when it became known that the prosecutor had

[1] This appeal is decided by a single judge pursuant to WIS. STAT. § 752.31(2)(f) (1997-98).

represented the juror in the past and continued to prepare her family's income tax returns each year warrants reversal of his conviction. As we discuss below, whether to excuse a prospective juror for cause is a highly discretionary act, and we pay great deference to the circuit court's discretionary rulings. We will reverse only where we can say that no judge, acting reasonably under the facts and applicable law, could reach the same decision. We cannot say that here and we therefore affirm the judgment.

¶2 During *voir dire*, the court asked all prospective jurors whether any of them knew or had personal or professional contact with (among other people) the assistant district attorney prosecuting the case, Philip Stittleburg. One of the jurors, a Ms. Haugrud, replied: "Yes, he's my attorney …." She also stated that she knew Stittleburg through her job at a local bank. In her answers to several follow-up questions by the court, Haugrud stated that Stittleburg prepared her family's annual income tax returns, and that he had also represented them several years earlier in a case involving property damage to her sheep. She noted, however, that it had been three or four years since she or her family had had any business with him (other than tax preparation). Finally, in response to the court's final question, Haugrud stated that she would be able to decide Miller's case on the evidence and without regard to the fact of her acquaintance with Stittleburg or that he prepared her family's tax return.

¶3 Miller's counsel requested that Haugrud be removed for cause on grounds of bias. The court denied the request, citing her answers during *voir dire* and her statement that she could act impartially in the case, and concluding that when a potential juror indicates that their acquaintance with a particular attorney will not be an influence on his or her role as a juror, the court "ought to be able to

take that person at that person's word." Counsel then used a peremptory strike to remove Haugrud from the panel.[2]

¶4 As indicated, the jury found Miller guilty of operating while intoxicated. His sole argument on appeal is that his conviction should be reversed because of the court's refusal to strike Haugrud for cause. He claims that Haugrud was plainly biased.

¶5 ***State v. Faucher***, 227 Wis. 2d 700, 717, 596 N.W.2d 770 (1999), outlines three types of potential juror bias. The first, "statutory bias," refers to those relationships declared by the legislature to disqualify the juror—either being related "by blood or marriage to any party or to any attorney appearing in the case" or having a "financial interest in the case." *See **id.*** at 717; *see also* WIS. STAT. § 805.08(1) (1997-98).[3] Such a juror is deemed to be biased and may not serve on a jury regardless of his or her ability to be impartial. *See **id.*** A second category, "subjective bias," is bias that is revealed through the words and demeanor of the prospective juror. It refers to the prospective juror's state of mind. *See **id.*** There is no real claim in this case that Haugrud was either statutorily or subjectively biased.[4] Finally, a prospective juror is "objective[ly]

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[2] Under ***State v. Ramos***, 211 Wis. 2d 12, 564 N.W.2d 328 (1997), a defendant forced to use a peremptory strike to correct a trial court's error in *voir dire* is impermissibly deprived of an important statutory right, and is thus entitled to have his or her conviction reversed—even though the jury ultimately heard the trial and was impartial. ***Id.*** at 14.

[3] All references to the Wisconsin Statutes are to the 1997-98 version unless otherwise noted.

[4] Miller does argue at one point in his brief that statutory bias may exist because Stittleburg prepares Haugrud's family taxes and once handled a property-damage case for her. The only case he cites in support of his argument is one involving a juror who was a brother of the State's primary witness in a criminal case. No such filial relationship exists here. In essence, Miller's argument is based on his assertion that because an attorney-client relationship is one involving trust, and because Haugrud and Stittleburg have an "ongoing" relationship (*e.g.*, the annual tax return preparation), there is a risk of "unconscious bias" on Haugrud's part. As the

(continued)

bias[ed]" when, in light of all the circumstances surrounding the *voir dire* and the facts of the case, a reasonable person in his or her position could not be impartial. ***State v. Kiernan***, 227 Wis. 2d 736, 745, 596 N.W.2d 760 (1999). This is Miller's primary argument.

¶6 As indicated above, we review the circuit court's determination of the presence or absence of objective bias under a discretionary standard, ***Faucher***, 227 Wis. 2d at 719, and will reverse its ruling only if, as a matter of law, no reasonable judge could have reached such a conclusion. ***Id.*** at 721; ***Kiernan***, 227 Wis. 2d at 745. The court's discretionary determinations are not tested by some subjective standard, or even by our own sense of what might be a "right" or "wrong" decision in the case, but rather will stand unless it can be said that no reasonable judge, acting on the same facts and underlying law, could reach the same conclusion. ***State v. Jeske***, 197 Wis. 2d 905, 914, 541 N.W.2d 225 (Ct. App. 1995). And "[b]ecause the exercise of discretion is so essential to the trial court's functioning, we generally look for reasons to sustain discretionary decisions." (Citations omitted.) ***Burkes v. Hales***, 165 Wis. 2d 585, 591, 478 N.W.2d 37 (Ct. App. 1991).

¶7 The deferential standard of review we apply to discretionary decisions of the circuit courts is particularly relevant in juror disqualification cases. Indeed, the supreme court has said that, in such cases, the juror's bias—"or [the] circuit court error"—must be "manifest" before it may be overturned. ***State v. Ferron***, 219 Wis. 2d 481, 496-97, 579 N.W.2d 654 (1998). "[This] is appropriate," said the court,

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State points out, however, Haugrud had no financial interest in the case—she stood to make no money or to gain in any way from Miller's conviction—and we agree that Miller's attempt to apply the statutory "blood relative" prohibition to the relationship of taxpayer and tax preparer and one-time lawyer is unavailing.

> because the circuit court has the opportunity to observe the prospective juror's attitude and disposition during the voir dire examination. To the contrary, the appellate courts which attempt to make their own assessments of a prospective juror's impartiality must do so from the cold, typewritten words of an appellate record. [And] the manner of the juror while testifying is oftentimes more indicative of the real character of his [or her] opinion than his [or her] words. That is seen below, but cannot always be spread upon the record.

Id. at 497 (quotation marks and quoted sources omitted).

¶8 In this case, the circuit court spent considerable time inquiring into Haugrud's (and her husband's) acquaintance with Stittleburg and, in the end, determined that she could live up to her promise to decide the case fairly and impartially and denied Miller's request to disqualify her for cause. We have discussed much of that colloquy above. On this record—and in light of the law we have discussed above—we cannot say that no reasonable judge could make that same determination.

By the Court.—Judgment affirmed.

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