

**COURT OF APPEALS
DECISION
DATED AND FILED**

February 19, 2002

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. 01-2459
STATE OF WISCONSIN**

Cir. Ct. No. 00 TR 45276

**IN COURT OF APPEALS
DISTRICT I**

COUNTY OF MILWAUKEE,

PLAINTIFF-RESPONDENT,

v.

GALILA TELELE,

DEFENDANT-APPELLANT.

APPEAL from a judgment of the circuit court for Milwaukee County: WILLIAM SOSNAY, Judge. *Affirmed.*

¶1 SCHUDSON, J.¹ Galila Telele appeals from the judgment, following a jury trial, convicting her of driving a motor vehicle with a prohibited alcohol concentration of 0.1% or more. She argues that the trial court erred in

¹ This appeal is decided by one judge pursuant to WIS. STAT. § 752.31(2)(g), (3) (1999-2000). All references to the Wisconsin Statutes are to the 1999-2000 version unless otherwise indicated.

denying her motion to sequester the arresting officer during the jury trial and, as a result, that she was denied a fair trial. This court disagrees and, therefore, affirms.

¶2 On appeal, Telele challenges only the trial court's denial of her motion to sequester the arresting officer, Milwaukee County Deputy Sheriff Michael Pauley. The entire proceedings on that issue, contained in the appellate record, are:

THE COURT: All right. Now, as to the sequestration order, I'll allow you to make a record on it.

Is there a motion for sequestration?

[DEFENSE COUNSEL]: Yes, Your Honor. There would be a motion for sequestration.

THE COURT: All right.

....

[PROSECUTOR]: Judge, again my response is just that I do feel that Deputy Pauley is essential to my case. He will be the first officer testifying and subject to me calling him on rebuttal, which I can't say for sure I wouldn't do, but wouldn't be recalled up there anyway. [sic]

So I would just ask that I could have him as my in-court officer.

THE COURT: All right. Do you feel that based upon his experience and expertise that you would need him to prosecute this case?

[PROSECUTOR]: Yes, I do. I feel that he would be very helpful to my case. And, in fact, I do consider him essential. That would be based on his training and experience.

THE COURT: All right. The Court is aware of the statute and the recent case law. However, based upon the statement of the assistant district attorney, including the fact that she's going to call Deputy Pauley first, the Court feels that the defendant would not be unduly prejudiced by allowing him to remain in the courtroom after he has testified to assist the prosecution.

The record has been made, and the Court will allow him.

¶3 Sequestration of witnesses is governed by WIS. STAT. § 906.15.² As this court recently explained:

The statute governing exclusion of witnesses, WIS. STAT. § 906.15, authorizes a judge to exclude witnesses from the courtroom so that they cannot hear the testimony of other witnesses. The purpose of sequestration is to assure a fair trial—specifically, to prevent a witness from “shaping his [or her] testimony” based on the testimony of other witnesses. The statute does not, however, permit exclusion of “a person whose presence is shown by a party to be essential to the presentation of the party’s case.”

Sequestration of witnesses is within the discretion of the trial court. And, as we have often said, our review of discretionary determinations is deferential: we do no more than examine the record to gauge whether the circuit court reached a reasonable conclusion based on proper legal standards and a logical interpretation of the facts.

State v. Evans, 2000 WI App 178, ¶¶6-8, 238 Wis. 2d 411, 617 N.W.2d 220 (citations omitted), *review denied*, 2001 WI 1, 239 Wis. 2d 773, 621 N.W.2d 629.

¶4 This court concludes that Telele has failed to establish that the trial court erroneously exercised discretion in determining that Deputy Pauley should

² WISCONSIN STAT. § 906.15, in relevant part, provides:

Exclusion of witnesses. (1) At the request of a party, the judge ... shall order witnesses excluded so that they cannot hear the testimony of other witnesses....

(2) Subsection (1) does not authorize exclusion of any of the following:

....

(b) An officer or employee of a party which is not a natural person designated as its representative by its attorney.

(c) A person whose presence is shown by a party to be essential to the presentation of the party’s cause.

....

(3) The judge ... may direct that all excluded and non-excluded witnesses be kept separate until called and may prevent them from communicating with one another until they have been examined or the hearing is ended.

be exempted from the sequestration order. The record reflects no defense argument countering the prosecutor's assertion that Deputy Pauley's presence was essential to assist in the presentation of the case. Given that Deputy Pauley was the arresting officer, his essential status, absent any suggestion to the contrary, was apparent. Moreover, even if this court were to conclude that the prosecutor's assertions were insufficient to satisfy the County's burden to establish that Deputy Pauley's presence was "essential," Telele has failed to show how she was prejudiced.³

By the Court.—Judgment affirmed.

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

³ A transcript of the trial, other than an excerpt regarding the sequestration motion, is not included in the appellate record. The trial court commented, however, that Deputy Pauley was going to be the first officer to testify at the trial, and a docket entry suggests that Deputy Pauley was the first witness to testify at the trial.

Additionally, this court notes that the prosecutor had requested Deputy Pauley as the County's "in-court officer"—the County's representative under WIS. STAT. § 906.15(2)(b).

