

**COURT OF APPEALS
DECISION
DATED AND FILED**

December 26, 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. 02-0646-CR

Cir. Ct. No. 00-CF-117

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT IV**

STATE OF WISCONSIN,

PLAINTIFF-RESPONDENT,

V.

DANIEL R. LUDWIG,

DEFENDANT-APPELLANT.

APPEAL from judgments and an order of the circuit court for Vernon County: MICHAEL J. ROSBOROUGH, Judge. *Affirmed.*

Before Vergeront, P.J., Deininger and Lundsten, JJ.

¶1 PER CURIAM. Daniel Ludwig appeals a judgment convicting him of homicide by intoxicated use of a vehicle, a judgment convicting him of causing injury by operating a motor vehicle while intoxicated, and an order denying his postconviction motions. Ludwig claims the trial court erroneously exercised its discretion when it denied his request to individually voir dire prospective jurors

regarding a newspaper editorial about the case. We are satisfied that the trial court acted within its discretion and therefore affirm.

¶2 Ludwig was the driver of a car which went off of the road and flipped down a steep embankment. Both of Ludwig's passengers were ejected from the vehicle; one died on the scene and the other suffered a broken neck. Ludwig was charged with several counts arising out of the incident after testing indicated that his blood alcohol concentration was 0.174.

¶3 About a week before trial, a local newspaper published a letter to the editor regarding the case.¹ At voir dire, one prospective juror indicated that she had read the letter, and that she did not believe that she would be able to set it aside when considering the case. She was excused for cause. Three other jurors stated that they had read the same letter, but were allowed to remain on the panel after they indicated that they could disregard it and decide the case based on the evidence. Defense counsel sought permission to further examine the panel members who had read the letter to the editor in order to inquire whether they had formed opinions about Ludwig's level of remorse or certain other factual matters based upon the letter. The trial court denied the request, and subsequently denied a postconviction motion based on the same issue.

¶4 The trial court has broad discretion to determine the form and number of questions it asks on voir dire, to supervise the questions asked by counsel, and to decide whether prospective jurors should be questioned out of the presence of other jurors. *State v. Koch*, 144 Wis. 2d 838, 847, 426 N.W.2d 586

¹ Although the letter itself has not been included in the appellate record, there are sufficient references to it in the transcripts to enable this court to review the issue.

(1988). The trial court properly exercises its discretion when it makes a reasonable decision in accordance with accepted legal standards and the facts of record. *State v. Hereford*, 195 Wis. 2d 1054, 1065, 537 N.W.2d 62 (Ct. App. 1995).

¶5 We are satisfied that the trial court reasonably applied the proper legal standard to the facts of record here. The judge found the panel members to be sincere in their claims of objectivity and ability to decide the case based on the evidence, and concluded that any further questioning regarding the letter would only be repetitious and could plant in the panel members' minds things that they hadn't even remembered. The trial court was in the best position to observe the panel members and evaluate their responses, and we will not disturb its credibility determination. In sum, we see no misuse of discretion.

By the Court.—Judgments and order affirmed.

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

