

**MISSOURI COURT OF APPEALS
WESTERN DISTRICT**

COMPLETE TITLE OF CASE:

STATE OF MISSOURI

Respondent

v.

DERRON A. WHITE

Appellant

DOCKET NUMBER WD76723

DATE: June 9, 2015

Appeal From:

Circuit Court of Cass County, MO
The Honorable William B. Collins, Judge

Appellate Judges:

Division One
James Edward Welsh, P.J., Thomas H. Newton, and Karen King Mitchell, JJ.

Attorneys:

Emmett Queener, Columbia, MO

Counsel for Appellant

Attorneys:

Mary Moore, Jefferson City, MO

Counsel for Respondent

MISSOURI APPELLATE COURT OPINION SUMMARY
MISSOURI COURT OF APPEALS, WESTERN DISTRICT

STATE OF MISSOURI, Respondent, v.
DERRON A. WHITE, Appellant

WD76723

Cass County

Before Division One Judges: Welsh, P.J., Newton, and Mitchell, JJ.

White was charged with first degree robbery and armed criminal action for a robbery at a Sonic Drive-in Restaurant. Before trial, White challenged the trial judge's impartiality because a heated judicial campaign had pitted White's attorney against the judge some months earlier. A specially appointed judge conducted an evidentiary hearing and concluded that despite defense counsel's public accusations regarding the trial judge's alleged demeanor and ethics, an appearance of impropriety had not been shown. During voir dire, a venire member stated that he knew the county prosecutor and defense counsel because he had been charged with child endangerment ten years earlier and defense counsel had represented him. The State moved to strike him for cause, despite his assurances that he could be fair and impartial, and the court granted the motion over White's objection. During closing argument, the State questioned the veracity of the witness who had provided an alibi for White. The Defendant objected to the State's characterization, and the court overruled the objection. The jury convicted White, and the trial court denied his motion for new trial. White was sentenced to concurrent terms of twenty-five years for first degree robbery and ten years for armed criminal action. White appeals.

AFFIRMED.

Division One holds:

In his first point, White argues that the trial court erred in failing to grant his motion for change of judge for cause. Pointing to the particularly aggressive election campaign that counsel waged against the trial judge, White claims that an objective bystander would have reason to question the judge's impartiality. We disagree.

No evidence supported an appearance of impartiality. The trial judge made no statement before or during trial to indicate that he was biased and had prejudged White's case on the basis of any alleged animosity toward defense counsel resulting from the election campaign. Such conduct is readily distinguished from those cases where disqualification was required due to either express statements of bias or other indicia that the court had a fixed opinion on the case merits.

In his second point, White claims that the trial court erred in granting the State's strike of a venire member for cause over objection. He argues that the venire member's responses during voir dire demonstrated that he could be fair and impartial and that striking him deprived White of his right to a fully-qualified panel. We disagree.

Defendants are not entitled as a matter of right to the seating of any particular person on a jury panel. Because White did not argue that the empaneled jury was not competent, qualified, and unbiased, he failed to show that the court abused its discretion in striking the juror.

In his third point, White argues that the court erred in overruling his objection that the State misstated the law on alibi during closing. We disagree.

White's objection went to the State's "characterization" and not to a misstatement of law. Nor did he raise the latter complaint in his post-trial motion. Analyzing the issue as a matter of plain error, we find that the alleged error did not cause manifest injustice or a miscarriage of justice because the court properly instructed the jury about White's alibi defense, and juries are presumed to follow instructions. Even under an abuse of discretion standard, we find no error when viewing the comment on the alibi witness's veracity in the full context of the State's closing argument.

Therefore, we affirm.

Opinion by Thomas H. Newton, Judge

June 9, 2015

THIS SUMMARY IS UNOFFICIAL AND SHOULD NOT BE QUOTED OR CITED.