

Juvenile Law Case Summaries

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Jurors in sexual assault on a child criminal trial not disqualified because they agreed to donate jury fees to a juvenile program [Farr v. State] (02-1-13).

On December 18, 2001, the Dallas Court of Appeals held that six members of a jury that served in an sexual assault on a child trial were not disqualified from service for implied bias because they checked off a form donating their daily jury fees to the juvenile department and to purchase Christmas gifts for foster children.

02-1-13. Farr v. State, UNPUBLISHED, No. 05-00-01846-CR, 2001 WL 1609407, 2001 Tex.App.Lexis ____ (Tex.App.-Dallas 12/18/01) [Texas Juvenile Law (5th Edition 2000)].

Facts: John Farr pleaded guilty to aggravated sexual assault of a child, and the jury sentenced him to ninety-nine years in prison. In three points of error, appellant complains (1) the trial court improperly admitted into evidence adult magazines and videotapes and (2) he was denied an impartial jury. We overrule all points of error and affirm.

Appellant's daughter, B.F., was snooping in her father's bedroom and found a popcorn tin containing two videotapes. B.F. watched the tapes. One showed her father performing oral sex on B.F.'s three-year-old half-sister, S.C., while S.C. was sleeping. S.C. is not the biological child of appellant. There was also video of B.F. sleeping in her bra and panties and of B.F., appellant's niece, and a neighbor girl either taking a shower or changing clothes. B.F. said she never knew she was being videotaped. B.F. said on a previous occasion, she found about twenty-five pencil sketches of "little girls performing sexual acts with older men" stored in her father's dresser drawer. B.F. said her father draws. According to B .F., the sketches were categorized by headings that labeled the various sex acts being performed.

After watching only a small portion of the videotapes, B.F. called her mother and told her what she had found. B.F. took the videotapes and went to a friend's house. That same day, B.F. and her mother took the videotapes to the Grand Prairie Police Department. The following day, B.F.'s mother returned to the police department, watched the tapes with a detective, and identified appellant and her daughter S.C. That evening, the police arrested appellant and charged him with the aggravated sexual assault of S.C. After searching his apartment, the police seized, among other things, 221 pornographic magazines and eight professionally produced X-rated movies. None of the material was illegal to possess. These materials were admitted during punishment over appellant's relevancy and rule 403 objections.

Held: Affirmed.

Opinion Text: In his third point of error, appellant complains he was denied his Sixth Amendment right to an impartial jury when six venirepersons who donated their daily jury fees to Dallas County juvenile programs were seated on the jury.

Prior to trial, appellant filed a motion to excuse for cause prospective jurors who contributed their fees to the Dallas County juvenile department or children in foster care. The trial court denied the motion. In an offer of proof, appellant presented the jury services coordinator, who testified that there is a block on the jury summons allowing prospective jurors to donate their juror fee to the juvenile department and for Christmas gifts for foster children. Nothing is said about the programs during juror orientation. At the conclusion of voir dire, appellant offered into evidence the master list showing who donated their jury fees. Appellant requested additional peremptory strikes to allow him to strike

objectionable jurors. The trial court denied appellant's request.

Appellant argues the trial court erred in not discharging the entire jury panel or, alternatively, in refusing him additional peremptory strikes. He complains the jurors' acts of donating their fees established an "implied bias" on their part and that it is "highly unlikely a juror who has donated his daily jury fees to programs involving juvenile victims could remain impartial during deliberations in a case involving aggravated sexual assault of a young child."

The Sixth Amendment to the United States Constitution guarantees the accused "the right to a speedy and public trial, by an impartial jury of the state and district wherein the crime shall have been committed...." U.S. Const. amend VI. An impartial trier of fact is a jury capable and willing to decide the case solely on the evidence before it. See *Smith v. Phillips*, 455 U.S. 209, 217 (1982).

Whether a juror's partiality may be presumed from the circumstances is a question of law. *Hunley v. Godinez*, 9754 F.2d 316, 318 (7th Cir.1992). Assuming the doctrine of "implied bias" remains viable after *Smith v. Phillips*, we conclude appellant has not shown it exists in this case. In Justice O'Connor's concurring opinion in *Smith*, she explained that each case must "turn on its own facts" and only "extreme situations" warrant a finding of implied bias. See *id.* at 222. As examples, she listed "a revelation that the juror is an actual employee of the prosecuting agency, that the juror is a close relative of one of the participants in the trial or the criminal transaction, or that the juror was a witness or somehow involved in the criminal transaction." *Id.* The doctrine is limited to those extreme situations where the relationship between a prospective juror and some aspect of the litigation is such that it is highly unlikely that the average person could be impartial in his deliberations under the circumstances. *Person v. Miller*, 854 F.2d 656, 664 (4th Cir.1988), cert. denied, 489 U.S. 1011 (1989).

Here, appellant asserts that because jurors donated their fees to a fund helping children, they are biased as a matter of law. We conclude this is not one of those extreme situations where an average person could not be impartial in his deliberations. Accordingly, we overrule the third point of error. See *Ruckman v. State*, No. 12-99-00388-CR, 2000 WL 1746542, at *9 (Tex.App.- Tyler Nov. 29, 2000, pet. ref'd) (holding trial court did not err in refusing to dismiss prospective jurors who donated jury fee to crime victim's compensation fund or child welfare fund in case where defendant charged with aggravated sexual assault of child).

We affirm the trial court's judgment.

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