

RENDERED: September 10, 2004; 2:00 p.m.
NOT TO BE PUBLISHED

Commonwealth Of Kentucky

Court of Appeals

NO. 2003-CA-002010-MR

RODERICK WHITE

APPELLANT

v. APPEAL FROM JESSAMINE CIRCUIT COURT
HONORABLE C. HUNTER DAUGHERTY, JUDGE
ACTION NO. 03-CR-00097

COMMONWEALTH OF KENTUCKY

APPELLEE

OPINION
AFFIRMING

** ** * * * * *

BEFORE: BARBER, SCHRODER, AND VANMETER, JUDGES.

SCHRODER, JUDGE: This is an appeal from a judgment convicting appellant of flagrant nonsupport and being a persistent felony offender in the second degree ("PFO II"). Appellant argues that a juror who was a third cousin of the Commonwealth Attorney should have been stricken for cause and that there was insufficient evidence of his reasonable ability to pay child

support. We adjudge that both arguments are without merit. Hence, we affirm.

Appellant, Roderick White, and Miriam Segar, who were never married, had one child together, Katelin Segar, born July 7, 1992. Miriam has had custody of Katelin since her birth. In 1994, Miriam brought a paternity action against White. On December 7, 1994, the Jessamine Circuit Court entered a judgment of paternity against White and ordered him to pay \$225 a month in child support retroactive to Katelin's date of birth.

In 1997, White was charged with and incarcerated for flagrant nonsupport as a result of his failure to pay child support for Katelin. From December 9, 1998 to April 16, 2003, excluding a five-month period in 2001 during which White was incarcerated, White paid only \$282 in child support and accumulated an arrearage totaling \$10,067.52. Consequently, White was again charged with flagrant nonsupport. A trial on the matter was held on August 19, 2003.

The evidence established that White was physically capable of working during the period in question and that he had, in fact, held multiple jobs during that time. There was also evidence that White had two and a half years of college education.

White testified that he was a framing carpenter by trade and that he had had a hard time finding framing work because jobs in his area were scarce and the work was seasonal. According to White, he had trouble keeping any job because of his periodic incarceration. He testified that at one point, he had a job at a dry cleaners for minimum wage. White stated that he had six other children that he was obligated to support.

The jury convicted White of felony flagrant nonsupport and PFO II. White was sentenced to two years' imprisonment on the non-support charge, enhanced to seven years on the PFO II. White now appeals.

White's first argument is that the trial court erred in refusing to strike a particular juror for cause. During voir dire, the juror in question revealed that he was the Commonwealth Attorney's third cousin and stated that he had a friendly relationship with his cousin. Upon further examination during a bench conference, the juror admitted that he and his third cousin did not regularly socialize and that it had been several years since they had last seen each other. The trial court adjudged that, based on what it had heard, there was not a close enough relationship between the juror and the Commonwealth Attorney to strike the juror for cause. White's counsel ultimately used a peremptory challenge to strike the juror.

The determination of whether a juror should be excluded for cause is within sound discretion of the trial court, and unless the trial court abuses that discretion, a reviewing court will not overturn this decision. Commonwealth v. Lewis, Ky., 903 S.W.2d 524 (1995). Once a close relationship, either financial, familial or situational, with any of the parties, counsel, victims or witness is established, the trial court should sustain a challenge for cause and excuse the juror notwithstanding any claims of lack of bias. Ward v. Commonwealth, Ky., 695 S.W.2d 404 (1985). In Sanborn v. Commonwealth, Ky., 754 S.W.2d 534 (1988), it was held that a juror whose wife was a first cousin of a prosecution witness should have been excused for cause. See also Pennington v. Commonwealth, Ky., 316 S.W.2d 221 (1958) (first cousin of prosecution's key witness should have been excused for cause) and Thomas v. Commonwealth, Ky., 864 S.W.2d 252 (1993), cert. denied, 510 U.S. 1177, 114 S. Ct. 1218, 127 L. Ed. 2d 564 (1994) (juror whose spouse was first cousin of prosecutor should have been excused for cause). However, in Ward v. Commonwealth, 695 S.W.2d at 407, our Supreme Court upheld the trial court's refusal to excuse for cause an ex-brother-in-law and a distant cousin of the Commonwealth Attorney.

In the instant case, we cannot say that the trial court abused its discretion in finding there was no implied bias

on the part of the juror at issue. The juror and the Commonwealth Attorney were only third cousins and clearly did not have a close relationship as evidenced by the fact that they had not seen each other in several years.

White's remaining argument is that the trial court should have granted his motion for a directed verdict because there was insufficient evidence of his reasonable ability to pay child support. Under KRS 530.050(2), an element of the offense of flagrant nonsupport is that the parent can "reasonably provide" the child support ordered by the court. "On appellate review, the test of a directed verdict is, if under the evidence as a whole, it would be clearly unreasonable for a jury to find guilt, only then the defendant is entitled to a directed verdict of acquittal." Commonwealth v. Benham, Ky., 816 S.W.2d 186, 187 (1991). On a motion for a directed verdict, the trial court must draw all reasonable inferences from the evidence in favor of the Commonwealth. Id.

The evidence from all three witnesses established that White was physically capable of performing work. In fact, there was no evidence to the contrary. White himself testified that he had two and a half years of college and that he had no mental problems that prevented him from working. There was also evidence that White had, in fact, had various jobs during the period in question. Finally, the trial court took judicial

notice of the fact that the unemployment rate in Jessamine County was traditionally low. Accordingly, we do not believe it would have been clearly unreasonable for the jury to find that White was capable of providing the court-ordered support for his daughter.

For the reasons stated above, the judgment of the Jessamine Circuit Court is affirmed.

ALL CONCUR.

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