

COURT OF APPEALS OF VIRGINIA

Present: Judges Benton, Elder and Overton
Argued at Richmond, Virginia

JOHN PATRICK HANLEY

v. Record No. 0188-96-4

COMMONWEALTH OF VIRGINIA

MEMORANDUM OPINION* BY
JUDGE NELSON T. OVERTON
JUNE 24, 1997

FROM THE CIRCUIT COURT OF WARREN COUNTY
Dennis L. Hupp, Judge

Thomas D. Logie for appellant.

Kathleen B. Martin, Assistant Attorney
General (James S. Gilmore, III, Attorney
General; H. Elizabeth Shaffer, Assistant
Attorney General, on brief), for appellee.

John Patrick Hanley appeals his convictions of driving under the influence and driving on a suspended license. He contends that the trial judge erred by refusing to strike a juror from the panel. We disagree and affirm his convictions.

The parties are fully conversant with the record in the cause, and because this memorandum opinion carries no precedential value, no recitation of the facts is necessary.

Hanley claims that venireman David Bratton should have been removed from the jury because he wrote on his jury questionnaire that he presumed defendants to be guilty and that they had to prove their innocence. Although Bratton did respond in that

*Pursuant to Code § 17-116.010 this opinion is not designated for publication.

manner on his questionnaire, he did not persist in this belief at voir dire. In fact, Bratton told the judge that he had only put that on his questionnaire to avoid jury duty.

On appeal, we give great deference to the trial judge's decision to exclude or retain a juror because the trial judge observes and evaluates the juror. See Griffin v. Commonwealth, 19 Va. App. 619, 625, 454 S.E.2d 363, 366 (1995). The trial judge's decision will not be overturned unless the error is manifest. See id. at 622, 454 S.E.2d at 365. The trial judge heard Bratton's answers and tone of voice and observed his demeanor. The judge found Bratton to be impartial and competent to serve on the jury. We cannot say that the trial court abused its discretion or that there has been a showing of manifest error in this determination.

Accordingly, the convictions are affirmed.

Affirmed.