COURT OF APPEALS
DECISION
DATED AND RELEASED

March 5, 1996

A party may file with the Supreme Court a petition to review an adverse decision by the Court of Appeals. *See* § 808.10 and RULE 809.62, STATS.

NOTICE

This opinion is subject to further editing. If published, the official version will appear in the bound volume of the Official Reports.

No. 95-0157-CR

STATE OF WISCONSIN **IN COURT OF APPEALS**
DISTRICT I

STATE OF WISCONSIN,

Plaintiff-Respondent,

v.

DARRELL CAGE,

Defendant-Appellant.

APPEAL from a judgment of the circuit court for Milwaukee County: JOHN A. FRANKE, Judge. *Affirmed*.

Before Wedemeyer, P.J., Sullivan and Fine, JJ.

PER CURIAM. Darrell Cage appeals from a judgment of conviction, after a jury trial, for first-degree intentional homicide and armed robbery. He raises three issues for our review: (1) whether his constitutional rights were violated when the trial court failed to strike for cause the judge's mother from the jury panel; (2) whether the trial court erroneously exercised its

discretion by admitting photographs of the victim into evidence; and (3) whether his sentence was excessive. We reject his arguments and affirm.[1]

I. BACKGROUND.

A jury convicted Cage of killing his seventy-year-old neighbor by stabbing him twenty-seven times in the chest, fifteen times in the face, and then kicking the victim in the head and body while wearing hiking boots. The jury also convicted him of the armed robbery of the victim's television and microwave. The trial court sentenced him to life imprisonment for the homicide, with twenty years of imprisonment for the armed robbery to be served concurrently. Further relevant facts will be discussed with the relevant analysis.

[1] Cage raises four other issues in his brief but fails to sufficiently development any of them. We need only address those issues that Cage has adequately briefed. *See* ***State v. Flynn,*** 190 Wis.2d 31, 39 n.2, 527 N.W.2d 343, 346 n.2 (Ct. App. 1994) (stating reviewing court need not decide issues that are inadequately briefed), *cert. denied*, 115 S. Ct. 1389 (1995); ***State v. Waste Management, Inc.,*** 81 Wis.2d 555, 564, 261 N.W.2d 147, 151 ("An appellate court is not a performing bear, required to dance to each and every tune played on an appeal."), *cert. denied*, 439 U.S. 865 (1978).

II. ANALYSIS.

Cage first argues that his constitutional rights were violated when the trial judge failed to strike for cause the trial judge's mother from the panel. Cage exercised a peremptory challenge to remove the juror.

Article I, Section 7 of the Wisconsin Constitution, the Sixth Amendment to the United States Constitution, and § 805.08(1), STATS., guarantee a criminal defendant a right to trial before an impartial jury. Prospective jurors are *presumed* to be impartial. ***State v. Louis,*** 156 Wis.2d 470, 478, 457 N.W.2d 484, 487 (1990), *cert. denied*, 498 U.S. 1122 (1991). The determination, however, of whether a prospective juror should be dismissed from the jury panel with cause is a matter within the trial court's discretion. ***State v. Gesch,*** 167 Wis.2d 660, 666, 482 N.W.2d 99, 102 (1992). Absent an erroneous exercise of discretion, a trial court's decision concerning voir dire should not be disturbed on appeal. ***State v. Koch,*** 144 Wis.2d 838, 847, 426 N.W.2d 586, 590 (1988). This broad discretion, however, is subject to the essential elements of fairness. ***Id***. When the partiality of an individual juror is placed at issue, the question is one of historical fact. *See* ***Patton v. Yount,*** 467 U.S. 1025, 1036 (1984). The defendant bears the burden of proving the juror's bias—that is, "it is more probable than not that the juror was biased." ***Louis,*** 156 Wis.2d at 478, 457 N.W.2d at 487. On appeal, the defendant must show that bias is "manifest." ***Id***. at 478-79, 457 N.W.2d at 488.

Cage argues that the trial judge *per se* should have dismissed his mother from the jury panel for cause, citing § 805.08(1), STATS. This section requires the trial court to examine the prospective jurors "to discover whether the juror is related by blood or marriage *to any party or to any attorney* appearing in the case .... If a juror is not indifferent in the case, the juror shall be excused." Section 805.08(1), STATS. A trial judge is neither a party or attorney appearing in the case; § 805.08(1), STATS., does not apply to the facts in this case. Nor does the supreme court's conclusion in ***Gesch*** apply—that prospective jurors should be removed for cause if they are related by blood or marriage to a state's witness. ***Gesch,*** 167 Wis.2d at 671, 482 N.W.2d at 103. A trial judge is not a witness in a trial.

We further note that Cage has failed to show that the prospective juror was biased. ***Louis,*** 156 Wis.2d at 478, 457 N.W.2d at 488. During voir dire, the prospective juror stated repeatedly that she could be fair and open-minded. Further, the trial court discussed with her the fact that nothing the trial court said or did should impact her decision in the case. In short, Cage has failed to show this court how his constitutional and statutory right to a impartial jury was violated.

Cage next challenges the trial court's admission of crime scene photographs of the victim. He argues the probative value of the photographs was outweighed by the prejudicial impact they had on the jury.

"A trial court possesses great discretion in determining whether to admit or exclude evidence. We will reverse such a determination only if the trial court erroneously exercises its discretion." ***State v. Morgan,*** 195 Wis.2d 388, 416, 536 N.W.2d 425, 435 (Ct. App. 1995).

The trial judge ruled that the photographs showing multiple stab wounds were relevant to show the way in which the victim was killed and the condition the body was left in by the assailant. The trial court acknowledged that the photographs had some potential for prejudice, but that their probative value outweighed this potentiality. The trial court did not erroneously exercise its discretion under RULE 904.03, STATS. *See generally* ***State v. Sarinske,*** 91 Wis.2d 14, 280 N.W.2d 725 (1979) (stating court did not erroneously exercise discretion in admitting photograph of victim of shotgun killing).

Finally, Cage argues that his sentence was excessive. We completely reject this argument. The trial court sentenced him to life imprisonment for the homicide with a parole eligibility date of May 17, 2044, and a twenty-year concurrent sentence on the armed robbery.

Our standard of review when reviewing a criminal sentencing is whether or not the trial court erroneously exercised its discretion. *See* ***State v. Plymesser,*** 172 Wis.2d 583, 585-86 n.1, 493 N.W.2d 367, 369 n.1 (1992). Indeed, there is a strong policy against an appellate court interfering with a trial court's sentencing determination and, indeed, an appellate court must presume that the

trial court acted reasonably. ***State v. Thompson,*** 146 Wis.2d 554, 565, 431 N.W.2d 716, 720 (Ct. App. 1988). When a defendant argues that his or her sentence is unduly harsh or excessive, we will find an erroneous exercise of discretion "only where the sentence is so excessive and unusual and so disproportionate to the offense committed as to shock public sentiment and violate the judgment of reasonable people concerning what is right and proper under the circumstances." ***Ocanas v. State,*** 70 Wis.2d 179, 185, 233 N.W.2d 457, 461 (1975).

The trial court considered the necessary factors before sentencing Cage. Indeed, given the violent crime of which Cage was found guilty, his lengthy sentence was entirely appropriate and was not so "excessive to shock public sentiment." ***Id.***

III. SUMMARY.

We reject all of Cage's arguments. Accordingly, the judgment is affirmed.

By the Court.—Judgment affirmed.

This opinion will not be published. *See* RULE 809.23(1)(b)5, STATS.