

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee/Cross-Appellant,

v

WARREN EDWARD ENGLISH, III,

Defendant-Appellant/Cross-
Appellee.

UNPUBLISHED
December 4, 2007

No. 269887
St. Joseph Circuit Court
LC No. 05-013020-FH

Before: Sawyer, P.J., and White and Talbot, JJ.

WHITE, J. (*concurring in part and dissenting in part*).

I agree that the trial court erred in granting a new trial on the basis that had the juror disclosed the information during voir dire, she automatically would have been excused, and join in the statement that a victim of sexual assault is not automatically excusable for cause. Nevertheless, I do not agree that the remedy for the trial court's erroneous analysis is to reinstate the verdict. Rather, I would remand for reconsideration under the proper legal standard.

As the majority observes, defendant is entitled to a new trial only if he was actually prejudiced by the juror's presence on the jury, or the juror was excusable for cause. Only the latter inquiry is implicated here. While the trial court erred in finding that the juror was excusable for cause simply because the juror had been sexually abused, it does not follow that the juror was not, in fact, excusable for cause. A trial court is not obliged to accept a juror's declaration that the juror is not biased if there is reason to doubt the assertion. Rather, a trial court must make its own determination, taking into account all the circumstances, including the juror's statements and demeanor, whether the juror can be fair and impartial. Here, the trial court should make a determination on remand, considering the circumstances of the voir dire, the later disclosure, the credibility of the juror's explanation and declaration of impartiality, and any other relevant factors.

I agree that defendant's other claims of trial and sentencing error lack merit.

/s/ Helene N. White