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IN THE  
APPELLATE COURT OF ILLINOIS  
SECOND DISTRICT

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THE PEOPLE OF THE STATE	)	Appeal from the Circuit Court
OF ILLINOIS,	)	of Lake County.
	)	
Plaintiff-Appellee,	)	
	)	
v.	)	No. 08—CF—3337
	)	
JOSEPH S. CRIEL,	)	Honorable
	)	George Bridges,
Defendant-Appellant.	)	Judge, Presiding.

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JUSTICE BURKE delivered the judgment of the court.  
Justices McLaren and Bowman concurred in the judgment.

**ORDER**

*Held:* The trial court did not err in refusing to excuse a juror for cause; although she initially indicated that she might struggle with bias, on the whole, her examination demonstrated that she would be fair.

Following a jury trial, defendant, Joseph S. Criel, was convicted of two counts of aggravated criminal sexual abuse (720 ILCS 5/12—16(f) (West 2008)). Defendant appeals, arguing that the trial court erred in denying his motion to excuse a potential juror for cause. For the reasons that follow, we affirm.

BACKGROUND

Defendant was charged with one count of criminal sexual assault (720 ILCS 5/12—13(a)(4) (West 2008)) and three counts of aggravated criminal sexual abuse. The charges arose from allegations that defendant had fondled the breasts and vagina of his daughter's 17-year-old friend. Following a three-day jury trial, the jury found defendant guilty of two counts of aggravated criminal sexual abuse and not guilty of one count of aggravated criminal sexual abuse and the count of criminal sexual assault. The trial court sentenced defendant to 30 months' probation, 18 months' periodic imprisonment, and 90 days in the county jail. Following an unsuccessful motion to reconsider the sentence, defendant filed this appeal.

#### ANALYSIS

On appeal, defendant contends that the trial court erred in denying his motion to excuse Juror 178 for cause, especially in light of the fact that it excused Juror 16 for cause. The determination of whether to excuse a potential juror for cause rests within the sound discretion of the trial judge. *People v. Williams*, 173 Ill. 2d 48, 67 (1996), citing *People v. Seuffer*, 144 Ill. 2d 482, 502 (1991); *People v. Hyche*, 77 Ill. 2d 229, 239 (1979). In conducting our review, we must examine the entire *voir dire* examination of the potential juror and not just selected responses. *Williams*, 173 Ill. 2d at 67.

A trial court should remove for cause a potential juror whose state of mind is such that the parties will not receive a fair and impartial trial with that person as a juror. *Williams*, 173 Ill. 2d at 67. The party challenging the potential juror bears the burden of demonstrating that the challenged potential juror actually possesses a disqualifying state of mind. *People v. Johnson*, 149 Ill. 2d 118, 138 (1992). A trial court is not required to remove a potential juror for cause simply because he or

she gives an equivocal response, especially where the potential juror later indicates that he or she will try to disregard any bias. *Williams*, 173 Ill. 2d at 67; *People v. Hopley*, 159 Ill. 2d 272, 297 (1994).

During *voir dire*, Juror 178 indicated that she might have a “difficult time” not using sympathy, bias, or prejudice in reaching a verdict, because her daughter had been sexually molested, and the matter had concluded only a year before. When asked by the trial court how the case would be difficult for her, Juror 178 responded, “If I felt that the person was guilty and others didn’t and this person got off I guess I would empathize too much with the family if there were still doubt.” She initially stated that she did not presume defendant innocent, but when asked the follow-up question of whether she believed defendant was guilty of something at that time, she clarified, “I don’t believe that, no. I believe that he is innocent until proven guilty but my emotion is still fresh.” Although she stated that she would not like it, she said that she would be able to vote not guilty if the State did not prove defendant guilty beyond a reasonable doubt. Her concern was that the evidence might not be conclusive and would leave her wondering if the correct decision had been made. She further stated that she would be able to follow the law, her daughter’s molestation would not affect her ability to be fair, she could separate what happened to her daughter from defendant’s case, and she would be able to base her decision on the evidence presented at trial.

Juror 16 indicated that she might not be able to be objective because she was sexually abused by her father when she was younger. She stated that, although she logically knew that defendant was presumed innocent, emotionally she had a problem with that principle. She testified that she could sign a guilty or not guilty verdict, but that simply listening to the case might become too traumatic for her. When asked if she would be able to separate what happened to her from this case, she responded, “I hope so, but I don’t know.” According to her, just listening to some of the evidence

could be difficult for her. When asked if she could guarantee that she would be fair, she answered, “No. I’d like to say yes but, again, depending upon how emotional this gets.”

Defendant requested that both Juror 178 and Juror 16 be removed for cause. The State objected to the removal of Juror 178, but did not offer an objection to the removal of Juror 16. The trial court granted defendant’s motion as to Juror 16, but denied it as to Juror 178, stating:

“Court has had an opportunity to hear both of those jurors [Juror 178 and Juror 16] testify. As to Juror 178 she made it very clear to the parties here that she would do the right thing, that she would follow the law that the Court would give him [*sic*]. It probably would be difficult because of the circumstance surrounding her daughter. She would be able to separate the two and decide this case.”

We conclude that the trial court did not err in denying defendant’s request that Juror 178 be excused for cause. Although she initially indicated that she “may have a difficult time” not using sympathy, bias, or prejudice in reaching a verdict, during the rest of her *voir dire* examination she affirmatively stated that she would follow the law as it was given to her by the trial court, her daughter’s molestation would not affect her ability to be fair, she could separate what happened to her daughter from defendant’s case, and she would be able to base her decision on the evidence presented at trial. See *Williams*, 173 Ill. 2d at 66-68 (potential juror’s statement that he could not be fair and impartial because he was “ ‘totally against guns’ ” did not require his excusal where he later stated that he would listen to all of the evidence, do his best to be fair and impartial, follow the law as given by the trial court, and hold the State to its burden of proving the defendant guilty beyond a reasonable doubt); *People v. Bowman*, 325 Ill. App. 3d 411, 423 (2001) (although two potential jurors indicated that they or close family members had been victims of sexual assault and

the defendant was charged with aggravated criminal sexual assault, the trial court did not err in failing to excuse them for cause because their answers to other *voir dire* questions indicated that they could keep a fair and open mind when evaluating the evidence); *People v. Tipton*, 222 Ill. App. 3d 657, 665 (1991) (trial court did not err in failing to excuse potential juror who stated that she “ ‘might’ ” have difficulty being impartial because her sister was raped five years prior where she also affirmatively indicated that she would do her best to abide by her oath as a juror). Juror 178's concern seemed to be simply that the evidence would not be conclusive and that questions might remain regarding whether the correct decision had been made; she did not, however, demonstrate that she would not view defendant in an objective, fair, and impartial manner. See *Johnson*, 149 Ill. 2d at 137-38 (trial court did not err in denying the defendant's motion to excuse a potential juror for cause where the potential juror did not give any indication that he would not view the defendant in an objective, fair, and impartial manner); *People v. Reid*, 272 Ill. App. 3d 301, 308 (1995) (excusal of potential juror not required where the potential juror did not “express any fixed opinion as to the defendant's guilt”). Accordingly, the trial court did not err in denying defendant's request that Juror 178 be excused for cause.

Defendant argues that the trial court's error is more apparent when one considers that the trial court excused Juror 16 for cause. According to defendant, both Juror 178 and Juror 16 experienced sexual victimization in some form and expressed emotional pain as a result and, thus, the trial court's decision not to excuse Juror 178 cannot be reconciled with its decision to excuse Juror 16. We do not believe that these varying decisions are irreconcilable. Whereas Juror 178 was confused when asked about defendant's presumption of innocence and clarified that she did not believe him to be guilty even before the trial had started, Juror 16 stated that, emotionally, she had a problem with the

principle that defendant was presumed to be innocent until proven guilty. Further, unlike Juror 178's definitive statements that she could separate her daughter's molestation from defendant's case and be fair and impartial to defendant, Juror 16 stated that she merely "hoped" she could do the same but could not make any guarantees. Her ability to be fair and impartial depended on how emotional the case became, as she felt that simply listening to the evidence could be difficult for her and could become too traumatic. From this, the trial court had a legitimate basis on which to make different decisions regarding the two potential jurors.

We also note that defendant's contention that Juror 178 was biased is undercut by the fact that the jury, which included Juror 178, acquitted defendant of the most serious charge of criminal sexual assault and one count of aggravated criminal sexual abuse. See *People v. Foules*, 258 Ill. App. 3d 645, 659 (1993) (the fact that the jury acquitted the defendant of some charges indicated a lack of bias or prejudice).

#### CONCLUSION

For the reasons stated, the judgment of the circuit court of Lake County is affirmed.

Affirmed.