

MISSOURI COURT OF APPEALS – WESTERN DISTRICT  
DIVISION 3 (ELLIS, P.J., WITT, J. AND FISCHER, SP. J.)  
OCTOBER 13, 2015  
MISSOURI WESTERN STATE UNIVERSITY  
ST. JOSEPH, MISSOURI

**WD 77622**

**State of Missouri, Respondent**

**vs.**

**Willis Jackson Hartman III, Appellant**

Appellant was charged with the Class C felony of use of a child in a sexual performance. It was alleged that Appellant knowingly induced K.J., a five-year-old girl, to place her mouth on the genitals of C.J., her seven-year-old brother. After a jury trial, Appellant was found guilty of the charge and sentenced to seven years of imprisonment.

During a pretrial hearing on April 16, 2014, Appellant’s counsel’s filed a motion to remove signs from the courthouse lawn. The motion stated that the Children’s Advocacy Center (CAC) had placed signs and pinwheels on the Buchanan County Courthouse lawn referring to victims of child abuse. The motion stated that it was fundamentally unfair for the court to expose members of the jury panel to the political message of a private interest group and requested removal of the signs until after Appellant’s trial. The Court stated that the signs would be removed by the time the jury trial started, but that it would allow defense counsel to voir dire on that subject if necessary.

During another pre-trial hearing on April 18, 2014, the State informed the Court that a group, “Bikers Against Child Abuse” (BACA) intended to be at the trial in support of the child victims. The Court directed the State to inform the BACA members that they were not allowed to wear their vests (bearing child abuse prevention messages) around the courtroom or the courthouse during the trial. The Court did allow K.J. and C.J. to wear the vests that said “BACA” on the back. The State agreed not to explain to the jury what BACA meant. On Tuesday, April 22, 2014, the Court released the venire panel for a lunch break. When they returned, defense counsel moved for a mistrial claiming that an attorney from her office saw BACA members outside the courthouse with the child witnesses. The trial court held a hearing on the matter and denied the motion.

Appellant’s points on appeal:

- I. The trial court abused its discretion when it denied the motion for mistrial in response to the Bikers against Child Abuse (BACA) visible presence outside the courthouse with K.J. and C.J. when the jurors were returning from lunch because that ruling denied Willis Hartman his rights to due process, a fair trial, and presumption of innocence, in that the court had already ruled that BACA members should not be around the courthouse wearing items identifying them with their child abuse message because of that message’s likelihood of adversely influencing the fairness of Willis’ trial.

- II. The trial court abused its discretion when it denied the request to preclude K.J. and C.J. from wearing their vests that say “BACA” on the back because that ruling denied Willis Hartman his rights to due process, a fair trial, and presumption of innocence, in that the court had already recognized the prejudicial impact of BACA members being around the courthouse wearing items that identified them as BACA members with their child abuse prevention message and had prohibited such attire which was then followed by the jurors seeing K.J. and C.J. with teddy bears and accompanied by people identifiable as BACA members, despite the court’s order, as the jury’s dual exposure to BACA members with K.J. and C.J. outside the courthouse (Point I) and the message on K.J.’s and C.J.’s vests conveyed that Willis was guilty of the charge here and denied Willis a fair trial.

**WD 77930**

**State of Missouri, Respondent**

**vs.**

**Christopher Pickering, Appellant**

Appellant was charged with driving while intoxicated for events occurring in November of 2013. Appellant was found guilty following a bench-trial in July of 2014. He was sentenced to ten days in jail. At trial, Trooper Gilliland testified for the State. Trooper Gilliland testified that based upon his observations and Appellant’s performance on certain field sobriety tests, he placed Appellant under arrest for driving while intoxicated. After Appellant was arrested, he was subjected to a breath test utilizing a Data Master machine. The Data Master records were admitted into evidence over the objection of the Appellant. Appellant claimed the State had failed to lay a sufficient foundation for admission of the breath result, including the argument that the device had not been maintained in compliance with 19 CSR 25-30.051(4).

Appellant’s points on appeal:

- I. The trial court erred in admitting into evidence over Defendant’s objections the results of a chemical analysis of Defendant’s breath in that the State failed to show that the evidential breath testing device utilized to determine the alcohol concentration of Defendant’s breath had been maintained in accordance with the requirements of 19 C.S.R. 25-30.051(4) because there was no evidence that the simulator used in the verification of the Data Master device had been certified against a national institute of standards and technology traceable reference thermometer or thermocouple between January 1, 2013 and December 31, 2013.
- II. The trial court prejudicially erred in finding Defendant Christopher Pickering guilty of driving while intoxicated in that there was insufficient evidence to support the element of intoxication because the trial court expressly relied upon the results of a chemical analysis of Defendant’s breath performed on a device

which had not been maintained in accordance with the requirements of 19 C.S.R. 25-30.051(4).

**WD 78450**

**City of St. Joseph, Missouri, Respondent**

**vs.**

**DeWayne A. Leer, Appellant**

Appellant is one of the owners of Uncle D's Sports Bar & Grill, located in St. Joseph, Missouri. In August of 2014, Appellant received citations for allowing smoking and maintaining ashtrays inside the bar. The citations alleged both acts violated the St. Joseph Smoke-Free Indoor Air Ordinance of 2014. At the municipal court hearing on the citations, Appellant admitted that he did allow smoking inside Uncle D's on August 21, 2014, and said he "could have" on August 29, 2014. Appellant filed a motion to dismiss the charges alleging that Section 17-163(5), a provision of the 1993 City Code, expressly authorized Appellant's conduct, and that the casino exemption in the 2014 ordinance violates the Missouri Constitution. The municipal court denied the motion to dismiss and fined Appellant \$300.

Appellant's point on appeal:

- I. The trial court erred in not dismissing the charges against Mr. Leer for allowing smoking inside a "public place" because the law of Missouri disfavors implied repeal, laws that appear to conflict will be harmonized if at all possible, and later general laws do not implicitly repeal earlier specific laws that appear to conflict, especially where the later general law is a criminal prohibition and the earlier law carves a specific exemption from the prohibited conduct in that the 2014 Ordinance did not repeal the 1993 Provisions, after enactment of the 2014 Ordinance the Council affirmatively decided not to repeal the 1993 Provisions, and, under 1993 Provisions, Uncle D's, a billiard parlor at which conspicuous signs were posted stating "non-smoking areas are not unavailable," specifically is "not considered a public place" for the purposes of indoor smoking regulation.
- II. The trial court erred in not dismissing the charges against Mr. Leer for violating the 2014 Ordinance because the 2014 Ordinance's exemption of "casino gaming areas" from its prohibition on allowing smoking inside enclosed public places and workplaces violates the prohibition on special laws that grant special privileges and immunities in Mo. Const. Art. III, §40(28) and is not severable in that the 2014 Ordinance does not bear equally on all persons coming naturally within its class of "public places" and "places of employment," but instead grants a special right and privilege to a special subclass of those places that does not have a special relationship to smoking indoors.
- III. The trial court erred in not dismissing the charges against Mr. Leer for violating the 2014 Ordinance because the 2014 Ordinance's exemption of "casino gaming

areas” from its prohibition on allowing smoking inside enclosed public places and workplaces violates the prohibition on enacting any “special law...where a general law can be made applicable” in Mo. Const. Art. III, §40(30) and is not severable in that by exempting “casino gaming areas” and their attached bars from its prohibition, the 2014 Ordinance includes less than all who are similarly situated as enclosed public places and workplaces, omitting a part of those that the reason for the law includes.

- IV. The trial court erred in not dismissing the charges against Mr. Leer for violating the 2014 Ordinance because the 2014 Ordinance delegates St. Joseph’s legislative power to other bodies without oversight, in excess of St. Joseph’s powers granted by Mo. Const. Art. VI, §19(a), and the delegation is not severable in that the 2014 Ordinance delegates the decision over whether to prohibit smoking in casino gaming areas and attached bars in St. Joseph entirely to the State of Kansas, the State of Missouri, one Kansas county, four Missouri counties, and three other Missouri cities over none of which St. Joseph has any oversight.