

**SUPREME COURT OF LOUISIANA**

**No. 98-K-2198**

**STATE OF LOUISIANA**

**Versus**

**OSCAR BALLARD**

**CALOGERO, C. J., Concurring**

I agree with the majority's disapproval of the overly-broad declaration in *State v. Simmons*, 390 So. 2d 1317, 1318 (La. 1980), that "an actively employed criminal deputy sheriff is not a competent criminal juror." The fitness of a prospective juror should rightly be determined on a case-by-case basis after consideration of the grounds to support a challenge for cause set forth in La. Code Crim. Proc. art. 797. However, given the accused's constitutional right to trial by a fair and impartial jury, as well as the important goal of maintaining "public confidence in the administration of justice," *Allen v. Hardy*, 478 U.S. 255, 259, 106 S.Ct. 2878, 2880, 92 L.Ed.2d 199 (1986), particular care should be taken in determining the ability of law enforcement agents to serve as fair and impartial jurors in a criminal trial.

La. Code Crim. Proc. art. 797(3) incorporates a rule of implied bias as old as the common law. *See United States v. Wood*, 299 U.S. 123, 138, 57 S.Ct. 177, 182, 81 L.Ed. 78 (1936) (At the common law, certain relationships carried with them "'prima facie evident marks of suspicion, either of malice or favour,'" among them, that the prospective juror "'is the party's master, servant, counsellor, steward or attorney, or of the same society or corporation with him.'")(quoting 3 W. Blackstone, Commentaries 480-81 (W. Hammond ed. 1890)). As we observed in *Simmons*, an investigator with the sheriff's office who works closely with the district attorney's

office “must be affected by that employment relationship.” 390 So. 2d at 1318. There, we reasoned that such a relationship would have influenced the prospective juror’s verdict, thereby justifying the deputy’s removal for cause under Article 797(3). *Id.* Here, there is no indication that Officer Schultz as a police officer employed by the City of Baton Rouge had a sufficiently close relationship either with the district attorney’s office in Livingston Parish or with law enforcement agents in that parish to suggest that the officer might not be fair and impartial.

In addition to the employment relationship, other possible causes of partiality arise in the context of law enforcement agents serving as petit jurors. As the majority here acknowledges, 98-2198, p. 4, the prospective juror’s duties or expertise in a particular criminal activity or investigatory method may warrant excusing the juror for cause under La. Code Crim. Proc. art. 797(2). The accused’s constitutional right to a fair trial would be compromised were the risk too great that the prospective juror’s occupation and experience would overwhelm not only his own judgment but also the judgment of the other jurors on the panel. While Officer Schultz’s expressed enthusiasm to “work” DWI cases may not justify his being excused for cause in this case, absent any indication that he possessed special or expert knowledge in DWI investigations, the defendant’s constitutional right to trial by a fair and impartial jury should remain the paramount consideration of the district court in ruling on such challenges for cause.

With these considerations in mind, I respectfully concur.