

**Commonwealth of Kentucky**

**Court of Appeals**

NO. 2009-CA-000651-MR

WANDA BROWN

APPELLANT

v. APPEAL FROM FAYETTE CIRCUIT COURT  
HONORABLE PAMELA R. GOODWINE, JUDGE  
ACTION NO. 05-CI-02068

OFFICE OF THE FAYETTE  
COUNTY ATTORNEY AND  
MARGARET KANNENSOHN

APPELLEES

OPINION  
AFFIRMING

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BEFORE: CAPERTON AND STUMBO, JUDGES; KNOPF,<sup>1</sup> SENIOR JUDGE.

STUMBO, JUDGE: Wanda Brown, *pro se*, appeals a jury verdict in favor of the

Office of the Fayette County Attorney and Margaret Kannensohn (hereinafter

collectively referred to as Appellees). Brown brought suit against Appellees for

wrongful termination. Brown argues that the trial court committed reversible error

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<sup>1</sup> Senior Judge William L. Knopf sitting as Special Judge by assignment of the Chief Justice pursuant to Section 110(5)(b) of the Kentucky Constitution and Kentucky Revised Statutes (KRS) 21.580.

when it mistakenly excused potential jurors without reason and that the Appellees' use of criminal databases to screen potential jurors prevented a fair trial. Brown requests a new trial. We find a new trial is not warranted and affirm.

Brown was an employee of the Office of the Fayette County Attorney. In 2005, she was the chief administrative assistant to the then Fayette County Attorney, Margaret Kannensohn. She reported alleged misconduct of Kannensohn to the Kentucky Attorney General, Kentucky Auditor of Public Accounts, Kentucky Justice Department and the Federal Bureau of Investigation. Brown claimed that because of her disclosures, she was subjected to reprisal and eventually fired. Brown then brought the underlying action for wrongful termination.

At trial, before *voir dire*, defense counsel notified the court that they had concerns with a number of prospective jurors who may have had conflicts with the Fayette County Attorney's Office. Sixteen potential jurors had been prosecuted in some way by the Fayette County Attorney's Office. Defense counsel described each of the potential conflicts to Plaintiff's counsel and the trial judge. Plaintiff's counsel agreed that nine of the potential jurors had conflicts and should be excused. The remaining seven were to be individually *voir dired* in order to determine if an actual conflict existed.

After a brief recess, a roll call was made. The parties agreed to release the nine jurors who had conflicts. The court then dismissed these jurors.

Inadvertently, the court also released three of the seven potential jurors who were to be individually *voir dire*.

When the court was ready to individually *voir dire* the seven jurors, the judge called for one of the jurors to approach the bench. The clerk stated that the juror had been released. Counsel for both parties approached the bench and the mistake was discovered. Brown now argues that it was reversible error for the trial court to dismiss these three jurors. We disagree.

We note that when it was discovered that the three jurors had erroneously been released, Appellant did not raise an objection to proceeding with the trial or request that the court attempt to recall the jurors. Additionally, once the jury panel was determined and the jury finally selected, no objection was raised by Appellant at either point. Plaintiff's counsel did not give the trial court the opportunity to correct its mistake; therefore, any error was waived. *See Little v. Whitehouse*, 384 S.W.2d 503 (Ky. 1964).

Brown next argues that she was prevented from receiving a fair trial when the defense ran the potential jury members' names through the criminal databases available to the County Attorney's Office. Brown claims this gave the defense an unfair advantage. This issue was not preserved at trial, but Brown requests we review it for palpable error.

A palpable error which affects the substantial rights of a party may be considered by the court on motion for a new trial or by an appellate court on appeal, even though insufficiently raised or preserved for review, and

appropriate relief may be granted upon a determination that manifest injustice has resulted from the error.

RCr 10.26. “[I]f upon consideration of the whole case the reviewing court does not conclude that a substantial possibility exists that the result would have been any different, the error complained of will be held to be nonprejudicial.” *Jackson v. Commonwealth*, 717 S.W.2d 511, 513 (Ky. App. 1986) (citation omitted).

After reviewing the case as a whole, we cannot say this was an instance of manifest injustice.

For the foregoing reasons, we affirm the jury verdict in favor of the Appellees.

ALL CONCUR.

BRIEFS FOR APPELLANT:

Wanda Brown, *Pro Se*  
Richmond, Kentucky

BRIEF FOR APPELLEES:

Larry S. Roberts  
Fayette County Attorney

Richard E. Vimont  
Jason Rothrock  
Assistant Fayette County Attorneys  
Lexington, Kentucky