



IN THE SUPREME COURT OF THE STATE OF DELAWARE

DIANDRE WILLIS,)
)
 Defendant Below,)
 Appellant,)
) **No. 253, 2022**
 v.)
)
 STATE OF DELAWARE,)
)
 Plaintiff Below,)
 Appellee.)

APPELLANT’S CORRECTED OPENING BRIEF

**ON APPEAL FROM THE SUPERIOR COURT IN AND OF KENT
COUNTY**

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DATE: January 28, 2023

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NATURE AND STAGE OF THE PROCEEDINGS

Diandre Willis (“Willis”) was charged as part of an 18 count indictment which included the following charges: two counts of rape first degree, one count of stalking, two counts of home invasion burglary first degree, two counts of kidnapping first degree, one count of strangulation, two counts of act of intimidation, one count of bribing a witness, two counts of breach of conditions or bond during commitment, one count of terroristic threat, one count of harassment, two counts of breach of release and one count of malicious interference of emergency communications. (A48).

A six-day jury trial commenced on March 14, 2022. Following a motion for acquittal on one count of kidnapping first degree, the State *nolle proseed* that charge. D.I. #58. Willis was convicted on all remaining counts D.I. #60. Willis was to sentenced 145 years at Level 5 followed by various levels of probation (*See* Sentence Order, attached as Ex. B).

Willis filed a timely notice of appeal. This is his opening brief in support of that appeal.

SUMMARY OF THE ARGUMENT

1. Willis was denied due process because the presiding judge did not recuse himself despite having approved and signed the warrant provided by the State seeking inculpatory evidence against him. These circumstances at a minimum create the appearance of impropriety and deprived Willis of his right to a fair trial. Thus, the convictions at bar should be reversed.

STATEMENT OF FACTS

Jailah Hall, the complainant, testified that she was in a romantic relationship with Willis for approximately one year starting in September 2018. (A150). The complainant testified she ended the relationship with Willis via text message around September 2019. (A151). At the time, the complainant was living at the Heron Run Apartments in Smyrna, Delaware, with her son. (A152). The complainant testified that in December of 2019 she heard from Willis again, when he sent her a picture of him cutting his wrist and threatened to end his life. The complainant told Willis that she was going to call the police and for him to stay away from her apartment. (A163).

The complainant testified that on January 5, 2020, Willis showed up at her apartment uninvited. According to the complainant, Willis arrived at her apartment at 9:00 a.m. and forced his way inside. (A180). The complainant testified that Willis pulled down her pants and engaged in sexual intercourse against her will. (A183). The complainant could not recall how the two of them made it to her bedroom or whether she told him to stop during the act. (A184). After the event in question, the complainant drove Willis to his grandparents in Dover. (A186).

The complainant did not call 911 or the authorities after the alleged incident. She testified that she “didn’t want to deal with having to talk to a

police officer or anything.” Instead, she put a note in her phone. (A187). Despite not contacting the police, the complainant and Willis continued to exchange thousands of messages for over three weeks in the days following. (A191). The complainant threatened to block Willis’ number, but never did. (A205). Additionally, in numerous messages she threatened to file a Protection From Abuse (PFA), but she never did. (A259).

In the plethora of messages back and forth between the complainant and Willis in the days following, Willis denied he had raped the complainant. The substance of the messages focused on the nature of their relationship and the recent sexual encounter. (A215). At one point, the complainant told Willis she wanted six months to herself. (A282). On one occasion, the complainant’s texts even included the acronym ‘LMAO’ (“Laughing My Ass Off”). (A283). There was no physical evidence linking Willis to the allegations stemming from January 5, 2020.

The complainant testified that on the morning of January 20, 2020, Willis arrived at her apartment unannounced. (A301). According to the complainant, Willis engaged in sexual intercourse against her will. (A310). After the alleged incident the complainant went into the bathroom and texted her mother, sister and co-worker. (A318). The complainant testified that when Willis discovered she had texted about the incident, he strangled her. Upon

letting go, the complainant called 911 herself. (A327). Police responded to the complainant's apartment and Willis, who was still there, stated that the two had been arguing and he would leave. (A330).

The complainant testified that she told the police where Willis was and she was transported to Kent General Hospital to be examined by a Sexual Assault Nurse Examiner. (“SANE”). (A332). After interviewing the complainant, Willis was taken into custody. (A425). As part of the investigation, police recovered Willis's keys, cell phone and charger, bus pass, and a bra with a blood stain. (A470-471). Willis was also swabbed for his DNA profile. (A489). Despite the presence of Willis's DNA on the complainant, the results of the SANE examination showed sperm from a male subject but his identify was inconclusive. (A564-565, A571). Additionally, a swab from the complainant's left finger and hand produced a single source DNA profile that did not match anyone in this case. (A572).

The complainant received two letters from Willis after the incident on January 20, 2020. (A333). In the letters, Willis urged the complainant to drop the charges against him and the two could go their separate ways as he would cease contacting her. (A357).

I. WILLIS WAS DEPRIVED OF HIS CONSTITUTIONAL RIGHT TO DUE PROCESS WHEN THE TRIAL JUDGE FAILED TO RECUSE HIMSELF AFTER SIGNING AND APPROVING THE WARRANT FILED BY THE STATE SEEKING INCULPATORY EVIDENCE.

Question Presented

Does it create at least an appearance of impropriety when a trial judge refuses to recuse him or herself from a case in which he or she approved and signed the warrant provided by the State seeking inculpatory evidence against the defendant? This question was preserved by the Court below sua sponte raising and ruling on the issue. (A76).

Standard and Scope of Review

The standard and scope of review is for an abuse of discretion when reviewing the judge's objective analysis and by a de novo review of the objective analysis. *Fritzing v. State*, 10 A.3d 603, 611 (Del. 2010).

Argument

On March 7, 2022, the State, at an emergency office conference, brought to the Court's attention that the sitting trial judge had signed the search warrants in this case and this presented the potential for conflict. (A57). The warrants were signed by the sitting judge in October 2020 when the detective in the case at bar was seeking to obtain call and text message records between Willis and the complainant. (A57). The trial judge sua sponte raised the issue whether this

warranted his disqualification from presiding over the trial. (A59). Defense counsel expressed that the issue was not the issuance of the search warrant by the trial judge but rather that he became familiar with the State's position in this matter and this presents the potential for bias or prejudice to Willis. (A61). On March 10, 2022, the Court issued a verbal ruling finding that there was no reason for disqualification and thus he would continue presiding over the trial. (*See Oral Ruling, attached as Ex. A*). (A77-78).

The presiding Judge should have recused himself because he had approved and signed the warrant provided by State seeking inculpatory evidence against the defendant. The United States and Delaware constitutions ensure that every person charged with a crime has a right to a fair and impartial trial. Essential to that protection is the requirement that the presiding judge maintain complete neutrality in the case. The integrity and impartiality of judges are an essential element of due process of the law. *Aetna Life Insurance Co. v. Lavoie*, 475 U.S. 813, 822 (1986). Along these lines, a judge should recuse him/herself when an objective, disinterested lay person would entertain a significant doubt about the judge's impartiality. *Liteky v. United States*, 510 U.S. 540 (1993). A trial judge is not a mere moderator, but governs the trial for the purpose of ensuring that the proceedings are properly conducted and that justice is administered fairly and impartially. The judge's duty to

remain impartial requires that the judge be fair to both parties and avoid not only actual prejudice, but also the *appearance of prejudice* by either language or conduct.

The Court undertakes a two-step process when reviewing whether a Judge should have recused himself from a situation such as that in the case at bar. The Court first looks at whether the Judge was satisfied that he could hear the case free of bias or prejudice. The second is even if the Judge believed that whether there is an appearance of bias sufficient to cause doubt as to the partiality of the Court. *Watson v. State*, 934 A.2d 901 (Del. 2007). The Judge's Code of Judicial Conduct directly addresses this issue. “A Judge should disqualify himself or herself in a proceeding in which the Judge's impartiality might reasonably be questioned...” (Judge's Code of Judicial Conduct, Canon 2 Rule 2.11(A)).

Defendant does not need to prove actual bias or that he was, in fact, harmed by the judge's possible bias. “Every procedure which would offer a possible temptation to the average man as a judge ... not to hold the balance nice, clear, and true between the State and the accused denies the latter due process of law.” ... Such a stringent rule may sometimes bar trial by judges who have no actual bias and who would do their very best to weigh the scales of justice equally between contending parties. But to perform its high function in the best way “justice must satisfy the appearance of justice.” *In re Murchison*, 349 U.S. 133, 136 (1955).

It is respectfully submitted that the case at bar clearly presents a situation where the Judge's impartiality might be questioned. The Judge in this matter made a determination in signing and approving the warrant that believed there was sufficient probable cause to search the Defendant's cellular phone and text message records. The Judges advance information couldn't help but provide some bias in presiding over the trial or at the very least the appearance of bias. Any objective observer of this situation would have at least have cause to question the impartiality of the Judge. *Fritzingler v. State*, 10 A.3D 603 (Del. 2010). The circumstances which, at a minimum create the appearance of impropriety deprived Willis of his right to a fair trial. Therefore, Defendant respectfully submits that the convictions at bar should be reversed.

CONCLUSION

For the foregoing reasons and upon the authority cited herein, the undersigned respectfully submits that Diandre Willis' convictions should be reversed.

\s\ Santino Ceccotti
Santino Ceccotti, Esquire

DATE: January 28, 2022