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Case Number 253,2022

IN THE SUPREME COURT OF THE STATE OF DELAWARE

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

ON APPEAL FROM THE SUPERIOR COURT OF THE STATE OF DELAWARE

STATE'S ANSWERING BRIEF

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DATE: February 15, 2023

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NATURE AND STAGE OF THE PROCEEDINGS

Appellee, the State of Delaware, generally adopts the Nature and Stage of the Proceedings as contained in Appellant Diandre Willis' January 28, 2023, Corrected Opening Brief.

This is the State's Answering Brief in opposition to Willis' direct appeal of his Kent County Superior Court jury convictions.

SUMMARY OF ARGUMENT

I. DENIED. Signing a search warrant over a year before the jury trial did not require judicial recusal. (A-76-78). The trial judge had no memory of signing the cellphone search warrant over sixteen months prior to trial. (A-57). An objective observer viewing all the circumstances in the prosecution would not conclude that a fair or impartial trial before a jury would be unlikely.

STATEMENT OF FACTS

In September 2018, Jailah Hall began a romantic relationship with Diandre Willis. (A-150-51). Hall worked at the E-Z Pass office in Dover with Donna Mascarenas. (A-365-66, 381). She lived at Heron Run Apartments No. 305 in Smyrna with her son. (A-152). On her birthday (September 17, 2019), Hall ended her relationship with Willis by sending him a telephone text message advising Willis to heave her alone. (A-151, 382). After the September 2019 breakup Hall never invited Willis into her apartment on the second floor of the Commerce Street apartment complex. (A-153, 160, 420-21, 435-36). Willis did not live at Hall's Smyrna apartment or have a door key. (A-152).

Although Hall was no longer dating Willis in December 2019, she received an Instagram from Skee, Willis' nickname. (A-149, 161). This Instagram message said Willis was at Hall's apartment and contained a picture of her front door. (A-161-62). In his text message, State's Exhibit # 15, Willis threatened suicide and forwarded a picture of himself cutting his wrist, State's Exhibit # 18. (A-163, 170, 173-74). On December 21, 2019, Hall contacted Smyrna Police Department Sergeant Michael Helton complaining about harassment by her ex-boyfriend Willis. (A-171, 174-75, 402-03). Sergeant Helton instructed Hall to forward to him a screen shot of the text messages received from Willis, State's Exhibits # 13-18. (A-403-05).

As part of the police investigation of the December complaint, Helton asked Hall to do a three way telephone call to Willis to allow Helton to listen to the exchange. (A-405-07). During this call Willis admitted taking a picture of Hall's second floor apartment door. (A-406). Following this admission, Helton secured a warrant from Justice of the Peace Court No. 7 to arrest Willis. (A-406). Willis was arrested for harassment (A-407), and the Court issued a no contact order, effective December 22, 2019. (A-407-11). Willis signed the no contact order on December 22, 2019. (A-407-09). Willis was ordered to have no direct or indirect contact, including any communication by telephone or other electronic medium with Hall. (A-410-11).

Despite this court ordered no contact (A-175-76), when Hall left for church on Sunday morning, January 5, 2020, Willis was waiting outside as Hall opened her apartment door. (A-178-79). Willis pushed his way into the apartment, pulled Hall's pants down, and raped her in the bedroom. (A-180-83). Hall did not immediately report the January 5 sexual assault to the police. (A-366-68). While Hall did not want to have sexual relations with Willis on January 5 (A-196-97), Hall testified that she did not report the attack "Because he was making threats, and I just didn't want to deal with this." (A-367).

The no contact order prohibited Willis from texting Hall (A-243); nonetheless, there were numerous text messages between Willis and Hall from

January 7 to 15, 2020. (A-268). During Willis' March 2022 Superior Court jury trial the State reviewed the text exchanges with the complaining witness Hall beginning on January 7, 2020. (A-193-268). With the continuing text messages from Willis, Hall was concerned that she might lose her job. (A-261).

Hall testified that Willis ". . . would make threats about coming to my job." (A-261). Fellow E-Z Pass employee Mascarenas confirmed that Hall was scared that Willis was watching her after the September 2019 breakup. (A-382-83). Mascarenas stated, ". . . I remember in the office she kept saying that, he won't quit texting me." (A-398). After Willis sent flowers to Hall at work, Mascarenas saw Hall throw the flowers in the trash. (A-399).

On Monday morning, January 20, 2020, Willis confronted Hall at her apartment door as she left for work. (A-300-01). Willis forced his way inside the apartment, grabbed Hall's telephone, shut the front door, and told Hall she was not going to work. (A-302). Willis picked Hall up, threw her on the bed, ripped her shirt, pulled down her pants, and got on top of her. (A-303, 307). Hall testified: "I was crying, I was yelling, I was fighting him back." (A-311). She added, "I remember digging my nails into his face." (A-311). In spite of Hall's resistance (A-306), Willis put his penis in her vagina (A-304) and ejaculated. (A-312).

Hall thought Willis was holding her hostage during the January 20 assault (A-310), and she feared that he might kill her. (A-310). Hall ran into her

bathroom and, using her watch, texted her mother Shalissa Roach, her sister Jaionne, and a co-worker, Donna Mascarenas and asked them to call the police. (A-123-24, 310, 318-19, 321-22, 383-85). Hall's message to her sister at 7:57 A.M. on January 20 to contact the police was introduced at trial as State's Exhibit # 27. (A-322). Mascarenas called the Smyrna Police (A-385), and sent the authorities Hall's text messages. (A-390). In the text message to her mother, Hall disclosed that Willis raped her and had her phone. (A-124).

Willis began banging on the door and claiming, "Babe, I've got to use the bathroom." (A-326). After the bathroom door opened, Hall fled to her bedroom. (A-326). Willis followed and threw her on the bed. (A-326). Hall stated, "He had got on top of me and was like oh, you're contacting people, you want to die today. That's when he was strangling me, he was choking me." (A-326). After Willis let Hall go, she used her watch to dial 911. (A-327-28). The 911 call, State's Exhibit # 1, was played for the jury, and Hall can be heard screaming for help. (A-329).

Next, Hall heard the Smyrna Police knocking on her door. (A-329-30). Describing the reaction of Willis, Hall said, "He was scared. It seemed like they got there fast." (A-329). Willis threatened Hall and encouraged her not to tell the police about the second rape (A-331), but when Hall opened her door she told the police what happened and said that Willis was in the back of the apartment. (A-331, 591).

Three Smyrna Police Officers (Michael Kealty, Matthew Sarkissian, and Joshua Coulbourne) were dispatched on January 20, 2020, to a rape / home invasion complaint at Heron Run Apartments. (A-420, 435-36, 453). The three policemen arrived at 8:32 A.M. (A-596). The police knocked on Hall's apartment door for an extended period of time (A-435-36) before Hall finally opened her door. (A-331). Corporal Kealty was wearing his body-camera that morning, and the video recording of Willis' apprehension, State's Exhibit # 35, was played at the jury trial. (A-423).

The police officers located Willis in the back of Hall's apartment and the rape suspect was taken into custody. (A-422, 436). Officer Kealty noticed scratches on Willis' face (A-425), and a photograph of the suspect's injuries was admitted as State's Exhibit # 37. (A-427-28). Kealty took Willis to the Smyrna Police Department on January 20 (A-424-25), while Officer Sarkissian transported Hall to the Kent General Hospital for a Sexual Assault Nurse Examiner ("SANE") evaluation. (A-124-25, 332, 436, 454-55).

Smyrna Police Detective Joshua Coulbourne, who was present at Hall's apartment with Officers Kealty and Sarkissian (A-585, 589-90), said Hall was in disarray when she opened her door to admit the three police officers. (A-590-91). According to Coulbourne, Hall stated: "He raped me." (A-591). Coulbourne saw Willis come out of the bedroom. (A-591).

As part of the police investigation, Detective Coulbourne obtained the January 20 Heron Run Apartments surveillance camera footage, State's Exhibit # 56. (A-593-94). The video was played for the jury. (A-594-95). The video showed Willis lurking outside Hall's apartment for twenty-five minutes on January 20, from 7:23 A.M. until 7:48 A.M. (A-595).

At the hospital Hall was examined by a SANE nurse who took swabbings for the rape kit. (A-125, 454-56). Smyrna Police Corporal William Davis obtained Hall's clothing and the SANE exam kit from the hospital. (A-453-56). Next, Davis took a DNA swab from Willis (A-489), and then delivered the hospital materials collected and Willis' DNA sample to the Delaware Division of Forensic Science in Wilmington for analysis. (A-491). Willis' DNA was found on some of the materials submitted for forensic analysis. (A-569-74). The DNA examination report, State's Exhibit # 54, showing the presence of Willis' DNA (A-569-75) on swabbings from Hall's body, was admitted into evidence. (A-553-55).

In addition to the DNA evidence (A-553-55, 569-75), the State also introduced two prison letters from Willis to Hall dated January 30, 2020, State's Exhibit # 32, and February 19, 2020, State's Exhibit # 33, respectively. (A-497-98). Hall testified that she received the two letters after Willis was arrested and turned the correspondence over to Smyrna Police Detective Davis. (A-333-39). Hall was able to identify Willis' handwriting in the second letter (A-337-39) which

contained an affidavit requesting that the charges be dropped. (A-359-63). Both letters from Willis asked Hall to drop the charges in this case. (A-353-65). The two letters from the Sussex Correctional Institute were introduced as evidence that Willis failed to comply with his bond conditions. (A-341-43, 349-53).

I. SIGNING A SEARCH WARRANT DOES NOT REQUIRE JUDICIAL RECUSAL

QUESTION PRESENTED

Whether the Superior Court Judge's signing a search warrant for the defendant's cellphone and text message records required judicial recusal at the subsequent jury trial.

STANDARD AND SCOPE OF REVIEW

"When faced with a claim of personal bias or prejudice and a request for recusal, a judge must engage in a two-part analysis as set forth in *Los* [*v. Los*]."[1] First, the trial judge must, subjectively, believe they can preside without bias or prejudice. Second, the judge must assess "whether there is an appearance of bias sufficient to cause doubt as to the judge's impartiality."[2] "On appeal, we review the judge's subjective analysis for an abuse of discretion, but we review the merits of the objective analysis *de novo*."[3]

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[1] *Goodman v. State*, 2020 WL 1061691, at *2 (Del. Mar. 4, 2020) (citing *Los v. Los*, 595 A.2d 381, 383 (Del. 1991)).

[2] *Id.*

[3] *Fritzinger v. State*, 10 A.3d 603, 611 (Del. 2010). *See Madison v. State*, 2016 WL 363734, at * 2 (Del. Feb. 29, 2016); *Gattis v. State*, 955 A.2d 1276, 1281 (Del. 2008).

MERITS OF THE ARGUMENT

At a March 7, 2022, Superior Court pretrial office conference (A-55-63), the trial judge addressed an E-mail from the prosecutor advising the judge that the judge had "signed a warrant back in 2020 in a case for Verizon." (A-57). The warrant prompted the production of records detailing text message times and dates, no actual call or text content was revealed. (A-57). The warrant was returned on October 29, 2020, and at the March 7, 2022, conference the prosecutor said, ". . . I don't think the State intends on using any of the records from the search warrant." (A-60). The trial judge noted that no recusal application had been filed at that point. (A-59).

A second pretrial office conference occurred on March 10, 2022. (A-64-85). After an extended discussion of cellphone text messages to be presented as trial evidence (A-68-75), the trial judge *sua sponte* returned to the question of whether his 2020 signing of a cellphone search warrant in the case required judicial recusal and ruled:

> THE COURT: All right. The one thing I do want to go through, and there's not a formal motion for disqualification, but I did go back through and review the transcript, and I actually did see where Mr. Towne, prior to bringing the issue, essentially told me that I was disqualified, but the Court certainly made no ruling on that. And I did go back, and I did some research and reviewed the issue, and it's quite clear. I mean I'll do – I mean independently, I'm going to choose to do a Los analysis here – that's L-O-S versus L-O-S, just so that there's not any question.

First of all, based on having reviewed a warrant in the case back in 2020, I think, that subjectively, I have no bias, and that adds – provides no bias in this case for me. I'm able to be an impartial judicial officer that presides over this case and is fair to both parties, so I have no subjective issue.

Objectively, there is also not an issue. And the Judicial Code of Conduct does not provide for this to be a reason for disqualification. As I go through – it's interesting, there's an academic issue here that's interesting academically – more cases than not say that, which seems surprising to me that it's not even a disqualification issue, to preside over a suppression hearing in a motion that you've heard. And I'm not so sure – I'm not going to provide an advisory opinion on that because I would want to think some more about that. But I mean, just to run through some cases in the Supreme Court of Arkansas decision in David v. State, the Supreme Court of Kentucky in Minks versus Commonwealth, are the two decisions where they look at either the Code of Conduct or the predecessor to it, the Cannons of Judicial Ethics, and note that there is no conflict and no disqualification based on signing a warrant to preside over the trial. Judges are charged with understanding that, just for purposes of a warrant, the facts are assumed to be true, and there's a Four Corners Analysis. And there has been no motion to suppress in this case filed. There is no – the State's represented that that evidence isn't even – there wasn't even any evidence netted from that that's going to be used at trial. So I'm, quite simply, not conflicted out. And some of these cases such as the Minks versus Commonwealth said that there was no need to disqualify someone, a judge from deciding the actual suppression issue on the motion on the warrant that they signed.

Amjur, I'll just cite also, Heidt, H-E-I-D-T, versus State, a 2013 Georgia Supreme Court case that says the same. And, really, one needs go no farther than Amjur 2nd, A-M-J-U-R 2nd, "participation in prior proceedings in same case is grounds for disqualification of judge" – that's 46 Amjur 2nd, Judges section 148 – noting that it doesn't require a judge to recuse himself or herself from trying a new case. In fact, Amjur goes farther and says, "Moreover, a judge is not disqualified from actually ruling on a defendants's motion to suppress if they have previously signed a search warrant." And again, I don't hold that that's appropriate, but at this stage, I'll certainly – if there's

> some other fourth that any – either party wants to raise, I'll certainly evaluate that, and we'll fairly and independently evaluate it, and if I get a formal motion to disqualify – but based the nature of how the issue was raised, I just wanted to put this on the record.

(A-76-78).

Following this *sua sponte* pretrial ruling, the prosecutor, after reviewing "a lot of similar case law," stated that ". . . the State would change its initial comments, and the State agrees that this isn't an appropriate case for disqualification." (A-79). The Superior Court did not err in its assessment.

On appeal, Willis argues: "The presiding Judge should have recused himself because he had approved and signed the warrant provided by State seeking inculpatory evidence against the defendant."[4] He claims that ". . . the appearance of impropriety deprived Willis of his right to a fair trial."[5] Finally, Willis adds, "Defendant does not need to prove actual bias or that he was, in fact, harmed by the judge's possible bias."[6]

To decide a motion to recuse, a judge must utilize a two-step analysis to determine whether disqualification is warranted.[7] "First, the judge must be satisfied as a subjective matter that the judge can proceed to hear the case without

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[4] Corrected Opening Brief at 7.

[5] *Id.*, at 9.

[6] *Id.*, at 8.

[7] *Dickens v. State*, 2012 WL 3104942, at * 2 (Del. July 31, 2012) (citing *Jones v. State*, 940 A.2d 1, 18 (Del. 2007)).

bias. Next, the judge must determine as an objective matter whether recusal is appropriate because of an appearance of bias sufficient to cast doubt on the judge's impartiality."[8] Here, the trial judge properly conducted both the subjective and objective analyses. (A-76-77).

"In general, a trial judge satisfies the first prong of the *Los* test if he makes that determination on the record."[9] As to the subjective prong, the Superior Court Judge, who had "no memory of the warrant" (A-57), ruled: ". . . based on having reviewed a warrant in the case back in 2020, I think, that subjectively, I have no bias, and that adds – provides no bias in this case for me. I'm able to be an impartial judicial officer that presides over this case and is fair to both parties, so I have no subjective issue." (A-76). Because the trial judge had no recollection of issuing the warrant and believed that he could hear the case free of bias or prejudice, the subjective prong of *Los* was satisfied.[10] This decision was not an abuse of discretion.[11]

The second prong of the two part *Los* judicial recusal analysis is whether there is, objectively, "an appearance of bias sufficient to cause doubt about judicial

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[8] *Dickens, supra*, at * 2 (citing *Los v. Los*, 595 A.2d 381, 384-85 (Del. 1991).

[9] *State v. Wright*, 2014 WL 7465795, at * 3 (Del. Super. Dec. 16, 2014).

[10] *Watson v. State*, 934 A.2d 901, 906 (Del. 2007).

[11] *See Swan v. State*, 248 A.3d 839, 885 (Del. 2021); *Layton v. Layton*, 2019 WL 2078346, at * 3 (Del. May 10, 2019; *Madison v. State*, 2016 WL 363734, at * 2 (Del. Feb. 29, 2016).

impartiality."[12] "Under settled Delaware law, a judicial officer must recuse herself if 'there is any reasonable basis to question [her] impartiality.'"[13] For the objective prong of the *Los* paradigm, the question is whether an objective observer viewing all the circumstances would conclude that a fair or impartial hearing is unlikely.[14] Here, the trial judge found no objective bias. The trial judge, after thoroughly researching the issue, drew from authorities from Delaware and other jurisdictions and correctly applied the objective test. (A-76-78).

The trial judge had no memory of signing the Verizon cellphone search warrant over sixteen months prior to the jury trial. (A-57). Willis identifies no ruling, comment or action by the judge once the trial commenced on March 15, 2022, that demonstrates any bias or prejudice against him. Rather, Willis argues that the judge's signing of an investigative warrant should operate, without more, to taint a judge's involvement in the proceedings. He contends that he need not prove actual bias or show any harm, and that signing the search warrant creates a situation where the judge's impartiality trial "might be questioned."[15]

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[12] *Fritzinger v. State*, 10 A.3d 603, 613 (Del. 2010) (citing *Los v. Los*, 595 A.2d 381, 385 (Del. 1991)).

[13] *Home Paramount Pest Control v. Gibbs*, 953 A.2d 219, 221 (Del. 2008) (quoting *Beck v. Beck*, 766 A.2d 482, 485 (Del. 2001)).

[14] *Fritzinger*, 10 A.3d at 613 (citing *Gattis v. State*, 955 A.2d 1276, 1285 (Del. 2008)). *See Go4Play, Inc. v. Kent County Board of Adjustment*, 2021 WL 2495149, at * 4 (Del. Super. June 15, 2021).

[15] Opening Brief at 8-9.

Accordingly, Willis claims that all his convictions must be reversed and he is entitled to a second trial presumably before a different judge.[16] He is wrong.

"Canon 3C of the Delaware Code of Judicial Conduct . . . 'places upon the judge the direct responsibility to avoid participation in proceedings through the exercise of disqualification whenever the judge's impartiality might reasonably be questioned.'"[17] "Any inquiry into the question of whether a judge's impartiality might reasonably be questioned is case specific."[18]

"[A] judge has a 'duty to sit' unless the judge is genuinely convinced of the need for recusal or disqualification."[19] The "duty to sit" is an antidote to judge shopping. As this Court recognized in 1991, "In the absence of genuine bias, a litigant should not be permitted to 'judge shop' through the disqualification process."[20]

Signing a search warrant merely authorizes the collection of information or physical material that may or may not ultimately incriminate a suspect. If the

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[16] Opening Brief at 9.

[17] *Jones v. State*, 940 A.2d 1, 17 (Del. 2007) (quoting *Stevenson v. State*, 782 A.2d 249, 255 (Del. 2001)).

[18] *Stevenson v*, 782 A.2d at 258.

[19] *Pazuniak Law Office, LLC v. Pi-Net International, Inc.*, 2017 WL 656766, at * 2 (Del. Super. Feb. 17, 2017). *See also State v. Williams*, 2021 WL 5028365, at * 3 (Del. Super. Oct. 29, 2021); *State v. Desmond*, 2011 WL 91984, at * 8-12 (Del. Super. Jan. 5, 2011).

[20] *Los v. Los*, 595 A.2d 381, 385 (Del. 1991).

material collected by use of the search warrant does not establish any wrongdoing by the accused, there is no manifest prejudice. Similarly, the trial judge's prior adverse ruling in a case "simply form[s] no valid basis for the judge's disqualification in the case."[21] "[A] trial judge's rulings alone almost never constitute a valid *per se* basis for disqualification on the ground of bias."[22]

Overwhelming and unrebutted evidence of Willis' guilt was presented at trial. The Court's finding in 2020 that probable cause exists to grant a search warrant to recover cellphone records was a small piece of the overall investigation. Willis was arrested on January 20, 2020, by the Smyrna Police inside the rape victim's apartment immediately after attacking her. (A-422-25, 436, 590-91). The facts surrounding Willis' January 2020 arrest supported a search warrant for his cellphone to determine if he also violated the December 22, 2019, no contact order issued by J.P. Court 7 was appropriate. (A-405-11). The court expressed its subjective satisfaction with its impartiality, and the court correctly concluded that nothing about the issuance of the warrant prompted objective concerns.

Some bias must be demonstrated to require recusal.[23] Important in the objective recusal analysis is the extrajudicial source rule recognized by this Court

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[21] *Dickens, supra*, at * 2 (citing *In re Wittrock*, 649 A.2d 1053, 1054 (Del. 1994)).

[22] *Wittrock*, 649 A.2d at 1053.

[23] *State v. Charbonneau*, 2006 WL 2588151, at * 13-14 (Del. Super. Sept. 8, 2006).

in *Los*.[24] For judicial disqualification, ". . . the alleged bias or prejudice of the judge 'must stem from an extrajudicial source and result in an opinion on the merits on some basis other than what the judge learned from his participation in the case.'"[25] "The existence of an extrajudicial source has generally been thought by Delaware courts to be a *sine qua non* to a request for recusal."[26]

Willis has identified no extrajudicial source for his allegation of judicial bias. When a court's decision on defense motions are based solely on the record and applicable law, there is no basis to argue that any decision on the merits of a defense contention or request is the product of extrajudicial influence.[27] No objective basis existed for the Superior Court Judge's disqualification to preside at trial in 2022 because that judicial officer signed a search warrant authorization in 2020 to attempt to gather additional cellphone evidence involving Willis.

"A trial judge's prior issuance of a search warrant in a case does not automatically require the judge to recuse himself – or herself from trying the case."[28] Likewise, "absent a showing of prejudice, an issuing magistrate may

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[24] 595 A.2d at 384.

[25] *Los*, 595 A.2d at 384 (quoting *United States v. Grinnell Corp.*, 384 U.S. 563, 583 (1966)).

[26] *State v. Wright*, 2014 WL 7465795, at * 9 (Del. Super. Dec. 16, 2014).

[27] *See State v. Desmond*, 2011 WL 91984, at * 13 (Del. Super. Jan. 5, 2011).

[28] 46 Am. Jur.2d Judges § 148 (2023). *See David v. State*, 748 S.W.2d 117, 119 (Ark. 1988).

properly serve as the trial judge on the same cause."[29] Willis asserts no prejudice and argues that he is not required to do so. His position is at odds with extant precedent. The court, when called upon to do so, assessed its continued participation under the two-part *Los* test and did not abuse its discretion in declining to grant the request for recusal.

Faced with a recusal claim similar to Willis', the Maryland Court of Special Appeals rejected the contention that a judge who issued a search warrant abandoned her neutral role. That court observed: "The case law, however, indicates that a loss of judicial neutrality occurs only when the issuing magistrate acts as an adjunct law enforcement officer or otherwise directly participates in the police investigation. Whether the warrant application supports a probable cause finding has no bearing on judicial neutrality and, therefore, appellant's contention fails."[30] So too here. The trial judge in approving the 2020 search warrant for Willis' cellphone records did not abandon his neutral judicial role or act as an adjunct law enforcement officer.[31]

Similarly, the Kentucky Supreme Court ruled: ". . . we decline to adopt a

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[29] *Heard v. State*, 574 So. 2d 873, 875 (Ala. Crim. App. 1990).

[30] *Ferguson v. State*, 853 A.2d 784, 795 (Md. Sp. App. 2004).

[31] *Vandegrift v. State*, 573 A.2d 56, 61-62 (Md. Sp. App. 1990) (". . . we find no merit to the contention that Judge Rollins, having earlier issued the order authorizing electronic surveillance, somehow was no longer a neutral and detached magistrate.").

rule that any judge must automatically recuse from hearing a challenge to a search warrant which he or she issued."[32] Willis' proffered, equally expansive, *per se* automatic recusal rule, based on the premise that there has been a disqualifying abandonment of traditional judicial neutrality simply by issuing a warrant, rejects well-established case-by-case assessment of judicial bias required in Delaware and elsewhere.

The New Hampshire Supreme Court has pointed out, "it is widely accepted that a judge who issues a search warrant is not precluded from presiding over a suppression hearing at which the warrant's validity is determined."[33] This lack of a basis for judicial disqualification is derived from a broader principle that a judge's adverse rulings against a defendant in prior court proceedings are not in themselves evidence of bias or prejudice.[34]

In a Georgia murder prosecution the defendant moved to recuse the trial judge who twice issued search warrants and ten times signed orders for records in the case.[35] No recusal was required because there was no extra-judicial source for the information in the case.[36] The Georgia Supreme Court ruled: "Here, the

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[32] *Minks v. Commonwealth*, 427 S.W.3d 802, 807 (Ky. 2014).

[33] *In re C.M. & a.*, 103 A.3d 1192, 1202 (N.H. 2014).

[34] *Id.*

[35] *Heidt v. State*, 736 S.E.2d 384, 389 (Ga. 2013).

[36] *Heidt*, 736 S.E.2d at 389-90.

involvement of the trial judge with the issuance of search warrants and orders for records was directly related to Heidt's case and was not 'extra-judicial.'"[37] Willis also fails to identify any extra-judicial source for bias or prejudice of his trial judge. This is similar to Delaware's recognition of the distinction between personal and judicial bias allegations.[38]

To merit recusal, something more than a speculative belief that a judge will be biased or prejudiced against a defendant and will not act impartially at trial must be offered.[39] There is no evidence of extra-judicial bias in Willis' case, and the trial judge had no recollection of signing the cellphone records search warrant sixteen months prior to trial. (A-57). An objective review of these circumstances fails to demonstrate an appearance of impropriety. Rather, the record reveals a judge acting as an impartial and neutral decisionmaker in a preliminary matter long before any trial commenced. Willis' argument that judicial recusal was necessary in his case should be rejected.

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[37] *Id.*, at 390. *See also Odion v. Avesia, Inc.*, 759 S.E.2d 538, 544 (Ga. App. 2014).

[38] *State v. Charbonneau*, 2006 WL 2588151, at * 13-14 (Del. Super. Sept. 8, 2006).

[39] *Abbot, Inc. v. Guirguis*, 626 S.W.3d 475, 480 (Ky. 2021) (citing *Minks v. Commonwealth*, 427 S.W.3d 802, 808 (Ky. 2014)).

CONCLUSION

The judgment of the Superior Court should be affirmed.

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Dated: February 15, 2023

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	)	
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Appellee.	)	

AFFIDAVIT OF SERVICE

BE IT REMEMBERED that on this 15th day of February 2023, personally appeared before me, a Notary Public, in and for the County and State aforesaid, Mary T. Corkell, known to me personally to be such, who after being duly sworn did depose and state:

(1) That she is employed as a legal secretary in the Department of Justice, 102 West Water Street, Dover, Delaware.

(2) That on February 15, 2023, she did serve electronically the attached State's Answering Brief properly addressed to:

Santino Ceccotti, Esquire
Office of the Public Defender
Carvel State Building
820 North French Street
Wilmington, DE 19801

Mary T. Corkell

Mary T. Corkell

SWORN TO and subscribed
Before me the day aforesaid.

John Williams
Notary Public

JOHN WILLIAMS
Delaware Attorney at Law with
Power to act as Notary Public
per 29 Del. C. § 4323 (a) (3)

IN THE SUPREME COURT OF THE STATE OF DELAWARE

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	)	
Plaintiff Below-	)	
Appellee.	)	

CERTIFICATE OF COMPLIANCE WITH TYPEFACE REQUIREMENT AND TYPE-VOLUME LIMITATION

1. This Brief complies with the typeface requirement of Rule 13(a)(i) because it has been prepared in Times Roman 14-point typeface using Micrsoft Word.

2. This brief complies with the type-volume limitation of Rule 14(d)(i) because it contains 4147 words, which were counted by Microsoft Word.

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