

COMMONWEALTH OF KENTUCKY
NELSON CIRCUIT COURT
10TH JUDICIAL CIRCUIT
DIVISION I
CASE NO. 23-CR-0309

Electronically Filed

COMMONWEALTH OF KENTUCKY

PLAINTIFF

V.

COMMONWEALTH' RESPONSE TO
DEFENDANT'S MOTION TO DISQAULIFY HON. CHARLES SIMMS

BROOKS HOUCK

DEFENDANT

** ** ** ** **

Comes the Commonwealth of Kentucky, by counsel, Teresa Young, Special Prosecutor for the purpose of this action, and in response to the defendant's motion to disqualify Hon. Judge Simms, states as follows:

The defendant has requested the judge disqualify himself on the grounds that the judge is biased against the defendant. The defendant cites two examples which the defendant claims demonstrate bias or prejudice on the part of the judge: first, the defendant argues that bias is evidenced by a remark regarding Houck in an unrelated proceeding; second, the defendant argues that bias is shown in the bond set in the present proceeding. Neither of the defendant's arguments support the request to disqualify Judge Simms.

Pursuant to KRS 26A.015(2)(a) a judge shall disqualify himself from any proceeding in which he has a personal bias or prejudice concerning a party.¹ In the present case, the defendant has argued the judge demonstrated personal bias against the defendant when six years ago in

¹ . This same language is utilized in SCR 4.300, Canon 2 (Rule 2.11).

Crystal Maupin's² custody proceeding the court stated: "this Court is simply astonished that Crystal would want a relationship with a man who is the prime suspect in the disappearance and presumed death of his previous girlfriend." The quote is a single line in a nine-page opinion and order. The defendant fails to discuss the context of the quote, or that the child's contact with Brooks Houck was the primary point of contention between the parties to the litigation.

In August 2016, Mark Maupin and Crystal Maupin agreed that the child they shared in common would have no contact with her significant other, Brooks Houck. (See Defendant's Exhibit One for a complete copy of the court's order regarding the custody proceeding). The parties made this part of a written formal agreement. In that writing, Crystal Maupin agreed that if the child had contact with Houck, Ms. Maupin would relinquish all parenting with the child and that the child's father would be named sole custodian. Ms. Maupin did not litigate this issue, but rather chose to enter into this agreement.

In February of 2017, Crystal Maupin filed a motion requesting to set aside the agreement as it related to the child's contact with Brooks Houck and to set a specific time-sharing schedule. Mark Maupin had no objection to Crystal Maupin having substantial contact with the child, however, he continued to object to the child having any contact with Houck. Thus, this was the primary point of contention in the litigation.

In considering whether to set aside that agreement, the court looked at both parties' living situation. Crystal Maupin informed the court that she had lost her job, because her employer was receiving threats due to her relationship with Houck. As part of the litigation, there was evidence that Houck was considered the primary suspect in the Crystal Rogers disappearance. Mark Maupin's objection about his child's contact with Houck grew out of Maupin's concern that

² Crystal Maupin appears to be Brooks Houck's paramour. The order in question acknowledges that their relationship dates back to at least August 2016.

someone might try to harm Houck. (Defendant's Exhibit One, page 4). Based upon the evidence in that case, the court found many members of the community believed Houck was involved in Ms. Rogers's disappearance, as well as the murder of Tommy Ballard. Crystal Maupin acknowledged in the proceeding that her agreement to keep her child away from Houck was due to harassment she had received as a result of her relationship with Houck. She recognized that at the time of the agreement it was not in the child's best interest to be around Houck.

The statement quoted by the defense is not a comment upon Houck, but rather some of Ms. Maupin's parenting decisions. This included Ms. Maupin's decisions to voluntarily limit contact with her son and lose employment in order to begin a fledgling relationship with someone who had been named a prime suspect in a crime. Obviously, Ms. Maupin placed her new relationship above all else in her life. This was the reason for the limited comment in the order. However, after hearing all the evidence in the case, the court determined the child would be able to have contact with Houck.

In doing so, the court reasoned that Ms. Maupin was now living with Houck and if the child continued to be restricted from contact with Houck, it would be difficult for her to exercise time-sharing with the child. Additionally, the court found no evidence that Houck had ever harmed a child or that there was reason to believe that anyone would harm a child simply because the child was with Houck. Thus, the court's opinion demonstrates no bias against Houck. Had the court been biased against Houck, the court would obviously not have allowed the child to have contact with him.

To support their argument that Judge Simms cannot preside in the present case, the defense has cited Marchese v. Aebersold, 530 S.W.3d 441 (Ky. 2017). Marchese, however,

does not stand for the proposition that a judge must recuse himself from any proceeding in which the judge has any previous information regarding one of the litigants. Certainly, in many small counties in this Commonwealth, such a decision would make it impossible for judges to preside in many cases.³ Rather Marchese, requires disqualification when a judge has sought extrajudicial information about the matter before the court. In that case, the judge chose to conduct her own investigation of disputed facts which were in front of the court. She used that information as reasoning for her holding in the case and did not allow the parties to refute that evidence. The court found that a judge must recuse herself when she gathers information about the pending case from extrajudicial sources. Id.

There is no allegation that Judge Simms's comments in the family court proceedings were derived from any extrajudicial sources, or that Judge Simms undertook his own investigation in that case. Rather, that information came from the litigants and the evidence presented before that court. Further, there is no allegation that Judge Simms has utilized any information obtained from family court in the present matter.

Finally, while the defendant claims the statement from family court demonstrates bias, the Defendant failed to raise that issue at the first opportunity the defendant had to do so. It is well established law in this state that a party must present a motion for recusal immediately when the party becomes aware of the facts warranting recusal. (See Adkins v. Wrightway Readymix, LLC, 499 S.W.3d 286 (Ky. App. 2016); Bussell v. Commonwealth, 882 S.W.111 (Ky. 1994), Taylor v. Carter, 333 S.W.3d 437 (Ky.App. 2010), Bailey v. Bailey, 474 S.W.2d 389, 391 (Ky. 1971). The purpose of the rule seems obvious, when a party is aware of grounds for recusal, the

³ See Dunlap v. Commonwealth, 435 S.W.3d 537, 591 (Ky. 2014), in which the appellate court recognized that in rural circuits a judge cannot be expected to recuse himself whenever he has "previously presided over the past dispute of a present party, victim, complaining witness, testifying witness, or accused. Without some appearance of impartiality, recusal is unnecessary."

party should not hold this in its pocket awaiting to see if the court makes an adverse ruling. In doing so, any adverse ruling then would be claimed to be born out of bias. In the present case, the Defendant was aware of the family court ruling prior to his arraignment. Courtnet shows that defense counsel requested the family court order on September 29, 2023, prior to arraignment. Yet at the arraignment, the Defendant did not seek to recuse the judge, but instead filed a motion to reduce his bond. Upon the denial of the motion to reduce the bond, the defendant then filed an affidavit with the clerk seeking to recuse the court.

Having been denied the bond relief he requested, the defendant now claims his bond is an example of bias in this case. The majority of this argument is an attempt to relitigate the issues raised in the defendant's motion to reduce bond. Those issues were fully litigated by this court. This court considered both parties' evidence and arguments in reaching a decision that the bond was appropriate. That decision is currently subject to an appeal.⁴

The defendant's claim of bias derives from his bond being higher than bonds previously set for others charged with murder. A court's decision on bond is a discretionary ruling. Jeter v. Commonwealth, 554 S.W.3d 850 (Ky. 2018). In order to properly apply its discretion, a court must exercise independent judgment and consider the unique circumstances of the case. [See Dawahare v. Cabinet for Health and Family Services, 662 S.W.3d 745, 748 (Ky. App. 2023)]. To have set amounts solely dependent on the crime committed without any examination of the circumstances of the individual defendant would be an abuse of discretion. [See Abraham v. Commonwealth, 565 S.W.2d 152, 158 (Ky. App. 1977)]. In this case, the court's decision to set a higher bond took into consideration the nature of the offense, the substantial financial means of

⁴ A trial court's adverse ruling, even if later found to be erroneous, does not provide a basis for finding bias. Bissell v. Baumgardner, 236 S.W.3d 24, 29 (Ky. App. 2007).

the defendant, as well as the defendant's prior history of noncompliance with rules of the court. These factors considered by the court support the court's amount of bond. The burden of proof required to disqualify a trial judge is an onerous one. Stopher v. Commonwealth, 57 S.W.3d 787, 794 (Ky. 2001). The defendant's conclusory statement regarding bond does not meet this burden.

The defendant argues that the bond decision is also evidence that the court is being swayed by public outcry. The defendant accurately states he has been the prime suspect since the case first began, and that local law enforcement publicly named him as the prime suspect. In spite of what he claims is public outcry, he has continued to live in this community and to have a thriving business. Given his multitude of interactions in the community which occur without incident, Houck does not appear to be the social pariah that he claims to be. Regardless, the defendant has offered nothing to support his claim that the court's bond decision is the result of any unpopularity of the defendant.

Finally, the defendant argues that during the hearing on the motion to reduce bond, the court in part relied upon information regarding the investigation of the murder of Tommy Ballard. The defendant argues that if there is evidence that Nick Houck is the perpetrator, there is no evidence that Brooks Houck is dangerous or that Nick Houck acted at Brooks's direction. However, other evidence provided by the Commonwealth during the hearing shows that the brothers have previously acted in concert by secretly bringing recorders into the Nelson County Grand Jury. Certainly, anyone would assume that the secret recordings which the two intended to share with each other, was for the purpose of ensuring that everyone told a consistent story and that the two Houck brothers could craft their own statements to fit the testimony of others. It is reasonable to believe that two people who had worked together to shape the narrative of

witnesses, would not hesitate to try to influence other witnesses regarding their testimony. Given the history of the brothers in this case, it is not improper for the court to take possible future actions into consideration when setting the bond.

CONCLUSION

The defendant has not demonstrated the court has any bias toward the defendant. A single statement in the prior family court proceeding was not directed at Houck, but rather Crystal Maupin. Further, the court's order in that case shows the court was impartial and considered only the evidence presented in reaching the conclusion that Maupin's child could have contact with Houck.

The bond as set in the present case was the result of the court's consideration of relevant factors for bond. The court considered the nature of the offense, the substantial resources of the defendant, as well as the prior interaction with witnesses in determining the amount of bond. The defendant has offered nothing but conclusory statements to support his motion to disqualify Judge Simms.

Wherefore, as the defendant has failed to meet his burden for disqualification of Judge Simms, the Commonwealth requests this court deny the defendant's motion.

Respectfully submitted,

/s/Teresa Young
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CERTIFICATE OF SERVICE

This is to certify that a copy of the foregoing response was electronically filed this 14th day of November 2023, and was served on all registered users of the courts e-filing system, as well as served via mail on counsel for the defendant, Hon. Brian Butler and Hon. Michael M. Denbow, Stites & Harbison, PLLC, 400 West Market Street, Suite 1800, Louisville, Kentucky 40202.

/s/Teresa Young
Teresa Young