

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

TYRONE CALVIN GRAHAM-JONES,

Defendant-Appellant.

UNPUBLISHED

October 26, 2010

No. 292872

Isabella Circuit Court

LC No. 08-001535-FH

Before: HOEKSTRA, P.J., and FITZGERALD and STEPHENS, JJ.

PER CURIAM.

Defendant appeals as of right his jury convictions of resisting and obstructing a police officer, MCL 750.81(d)(1), and disturbing the peace, MCL 750.170, and challenges the trial court's denial of his motion to disqualify the entire circuit court bench. We affirm. This appeal has been decided without oral argument pursuant to MCR 7.214(E).

The events surrounding the conviction offenses occurred at a football tailgate party. Defendant was in a vehicle with friends when a crowd of people surrounded the vehicle; beer and beer cans were thrown at the car. Defendant exited the vehicle with his friends, and the events that followed resulted in his conviction.

Prior to trial, defendant moved to disqualify all Isabella Circuit Court judges because a confidential informant told police that defendant possessed a firearm and had threatened to kill Judge Rush.¹ Judge Rush disqualified himself from hearing the instant case, as did Judge Duthie.² The case was assigned to Judge Chamberlain. Judge Chamberlain denied the motion to disqualify the bench, holding that he did not have any personal bias or prejudice against defendant. He noted that because of his wife's health issues, he was on vacation during much of the pertinent time period and was largely unaware of the alleged threats against Judge Rush,

¹ Defendant was charged with felon in possession of a firearm, MCL 750.224f, and possession of a firearm during the commission of a felony, MCL 750.227b, as a result of the incident.

² Judge Duthie disqualified himself because he had spoken to the police about the threat defendant made against Judge Rush.

except for viewing a bulletin in the break room that warned judges about the alleged threats and provided a picture of defendant.

Visiting Judge Jonathan E. Lauderbach reviewed Judge Chamberlain's decision. Judge Lauderbach held that there was no violation of MCR 2.003 that would require Judge Chamberlain to disqualify himself because Judge Chamberlain was not personally familiar with the specific facts of the case, he was unlikely to be called as a witness in defendant's case, and threats are "part of the job that Judges do." Judge Lauderbach also found that there were no due process grounds that required disqualification because Judge Chamberlain had no financial interest in the outcome, was not the target of abuse or criticism, was not enmeshed in other matters involving defendant, and had not prejudged the case due to having been an accuser, investigator, fact finder, or decisionmaker.

We review the trial court's findings of fact in connection with a motion to disqualify for an abuse of discretion, and review the trial court's application of the law de novo. *People v Wells*, 238 Mich App 383, 391; 605 NW2d 374 (1999). The abuse of discretion standard recognizes that in certain circumstances there are multiple reasonable and principled outcomes and, so long as the trial court selects one of these outcomes, its ruling will not be disturbed. *People v Babcock*, 469 Mich 247, 269; 666 NW2d 231 (2003).

MCR 2.003 governs disqualification of judges and provides a non-exhaustive list of situations where "disqualification of a judge is warranted . . .[.]" The prior version of that rule was in effect at all relevant times in this case, and provided, in part, that a judge was disqualified from hearing a case if he or she was personally biased in favor of or prejudiced against a party, had personal knowledge of disputed facts, had "more than a de minimus interest that could be substantially affected" by the matter, or likely would be a material witness in the matter.

A judge is presumed to be impartial and the moving party has the burden of overcoming this presumption. *Cain v Dep't of Corrections*, 451 Mich 470, 497; 548 NW2d 210 (1996). However, "[e]ven when a judge is personally convinced that he is impartial, disqualification is warranted 'where there are circumstances of such a nature to cause doubt as to [the judge's] partiality, bias or prejudice.'" *Ireland v Smith*, 214 Mich App 235, 250; 542 NW2d 344 (1995), quoting *People v Lowenstein*, 118 Mich App 475, 482; 325 NW2d 462 (1982).

The right to due process under the Fourteenth Amendment can require disqualification when there is only an *appearance* of bias. "The United States Supreme Court has disqualified judges and decisionmakers without a showing of actual bias in situations where 'experience teaches that the probability of actual bias on the part of the judge or decisionmaker is too high to be constitutionally tolerable[.]'" *Crampton v Mich Dep't of State*, 395 Mich 347, 351; 235 NW2d 352 (1975), quoting *Withrow v Larkin*, 421 US 35, 47; 95 S Ct 1456; 43 L Ed 2d 712 (1975). Two applicable instances are when a judge "might have prejudged the case because of prior participation as an accuser, investigator, fact finder or initial decisionmaker[.]" or is "enmeshed in [other] matters involving petitioner . . ." *Crampton*, 395 Mich at 351, quoting *Johnson v Miss*, 403 US 212, 215; 91 S Ct 1778; 29 L Ed 2d 423 (1971).

In deciding disqualification motions, the trial court must "balance the logistical problems . . . and the court time lost against the defendant's diligence in bringing forward his motion for

disqualification and the merits for that motion.” *People v Martin*, 99 Mich App 570, 580; 297 NW2d 718 (1980).

Defendant has supported his claim that the denial of his motion for disqualification violated MCR 2.003 only by claiming that because Judge Chamberlain works with Judge Rush, the alleged threats made against Judge Rush would make Judge Chamberlain incapable of being impartial. However, the extent of Judge Chamberlain’s knowledge of the alleged threat consisted of the contents of a common bulletin. Judge Chamberlain’s knowledge being so limited negates any legitimate concern that Judge Chamberlain was actually biased or had sufficient outside information about the facts to make him incapable of being impartial. Moreover, given Judge Chamberlain’s lack of knowledge of the threats, it is unlikely that he would be a material witness. The circumstances in this case do not raise doubt as to whether Judge Chamberlain was capable of being unbiased or impartial. *Ireland*, 214 Mich App at 250.

While due process can require recusal for the mere appearance of bias, the probability that bias will occur in this situation is not so high as to make denial of disqualification constitutionally intolerable. *Crampton*, 395 Mich at 351. Judge Chamberlain was on vacation during the time the threat was investigated in the circuit, and he was largely unaware of the situation, aside from the bulletin. The bulletin alone is not enough to show that Judge Chamberlain’s out of court knowledge created bias toward defendant or that there is a high probability that such information would create bias. Defendant has not met the burden of establishing that Judge Chamberlain was incapable of acting in an impartial manner.

Judge Chamberlain did not misapply the law or abuse his discretion by denying defendant’s motion to disqualify all the judges on the Isabella Circuit Court. Defendant is not entitled to reversal of his convictions.

Affirmed.

/s/ Joel P. Hoekstra
/s/ E. Thomas Fitzgerald
/s/ Cynthia Diane Stephens