

**IN THE SUPERIOR COURT OF THE STATE OF DELAWARE
IN AND FOR NEW CASTLE COUNTY**

STATE OF DELAWARE,

v.

ERNEST CARLETTI,

Defendant.

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ID# 0609010043

Date Submitted: September 29, 2011

Date Decided: December 9, 2011

*Upon Motion for Reconsideration of Commissioner's
Order Denying Motion for Recusal - **DENIED***

OPINION

Martin B. O'Connor, Esq., Deputy Attorney General, Department of Justice, 820 N. French Street, Wilmington, Delaware 19801, Attorney for the State of Delaware.

Joe Hurley, Esq., 1215 King Street, Wilmington, Delaware 19801, Attorney for Defendant.

Jurden, J.

I. INTRODUCTION

Before the Court is a Motion for Reconsideration of Commissioner's Order filed by trial counsel ("Trial Counsel") for defendant Ernest Carletti. At issue is the Commissioner's September 9, 2011 Order denying Trial Counsel's Motion for Recusal. Trial Counsel filed this recusal motion after the Commissioner issued a decision recommending denial of Carletti's post-conviction relief motion.¹ Trial Counsel argues that the Commissioner made "several unflattering accusations" which "squarely alleged unethical and unprofessional conduct" on the part of Trial Counsel.² According to Trial Counsel, these accusations³ would lead a "reasonable observer to believe that [the] Commissioner...has expressed her opinion that the movant lied to the Court in the aberrant discharge of his professional duties and, furthermore, that he has acted unprofessionally and unethically."⁴ And, because "a reasonable observer would harbor the opinion that holding such a negative view of the movant might well 'spill over' such that a litigant he represents might suffer...",⁵ recusal is required.⁵ Trial Counsel seeks not only recusal in this case,⁶ but in any matter where Trial Counsel is counsel of

¹ *State v. Carletti*, 2011 WL 809462 (Del. Super.) (Commissioner's Report and Recommendation that Defendant's Motion for Post-conviction Relief should be denied).

² Trial Counsel's Motion for Recusal ("Mot. for Recusal") (DI 106) at ¶ 1.

³ Trial Counsel notes that after issuing her decision on the post-conviction motion, the Commissioner "reaffirmed her previous opinion of movant's dishonesty in a letter...." Mot. for Recusal (DI 106) at ¶ 3.

⁴ Mot. for Recusal (DI 106) at ¶ 5.

⁵ *Id.*

⁶ The Court notes that this case is concluded. Carletti's convictions and sentences were affirmed by the Delaware Supreme Court on December 3, 2008 and this Court's denial of his post-conviction motion was affirmed by the Delaware Supreme Court on August 30, 2011.

record. The Commissioner denied the Motion for Recusal and Trial Counsel now seeks reconsideration of that Order.

II. BACKGROUND

The underlying facts of this case are fully set forth in the Delaware Supreme Court's opinion on direct appeal⁷ and will not be recounted again here.

III. DISCUSSION

The Court applies a two-step analysis when considering a motion for recusal.⁸ The first step requires the judge to be *subjectively* satisfied that she can proceed to hear the cause free of bias or prejudice concerning that party.⁹ The second step requires the judge to examine *objectively* whether the circumstances require recusal because there is an appearance of bias sufficient to cause doubt as to the judge's impartiality.¹⁰ Because a claim of appearance of impropriety implicates a view of how others perceive the conduct of the Commissioner, the Court will review the merits of the objective test *de novo*.¹¹ Under the objective prong of the analysis, for the Commissioner to be disqualified, the alleged bias or prejudice "must stem from an *extrajudicial source* and result in an opinion on the

⁷ See *Carletti v. State*, 2008 WL 5077746, at *1-2 (Del.). A summary of the salient facts is provided in the Commissioner's Report as well. See *Carletti*, 2011 WL 809462, at *1-2.

⁸ *Gattis v. State*, 955 A.2d 1276, 1281 (Del. 2008).

⁹ *Id.*; *Jones v. State*, 940 A.2d 1, 18 (Del. 2007). Trial Counsel's Motion for Reconsideration ("Mot. for Reconsideration") does not challenge the Commissioner's analysis of the *subjective* analysis. See Mot. for Reconsideration (DI 109), objection 3 at p. 3.

¹⁰ *Gattis*, 955 A.2d at 1281; *Jones*, 940 A.2d at 18.

¹¹ See *Gattis*, 955 A.2d at 1281. Trial Counsel points out that in the order denying the recusal motion, the Commissioner did not engage in much of an analysis on the objective prong. See Mot. for Reconsideration at p. 5 ("The second step 'analysis' conducted by the Commissioner is found in one sentence...."). Thus, *de novo* review by this Court is all the more important.

merits of some basis other than what the...[Commissioner] learned from his participation in the case.”¹² “[J]udicial rulings alone are an insufficient basis for recusal motions....”¹³ Additionally, hostile, critical or disapproving comments made by a Commissioner or judge made during the course of a trial “ordinarily do not support a bias or partiality challenge.”¹⁴ Opinions expressed by a Commissioner which are formed on the basis of facts introduced or events occurring in the course of the proceedings “do not constitute a basis for a bias or partiality motion unless they display a deep-seated favoritism or antagonism that would make fair judgment impossible.”¹⁵ The Delaware Supreme Court has noted that “the mere fact that a Judge has made some pretrial rulings against a given defendant is not in itself sufficient to require [] disqualification.”¹⁶ Trial Counsel argues the following comments made by the Commissioner would lead an objective observer to conclude that a fair and impartial hearing is unlikely:

- “Defense Counsel’s representation that Defendant was willing to accept a conviction of the kidnapping charge to somehow avoid a conviction on the rape charges **appears somewhat disingenuous.**”¹⁷

¹² *Gattis*, 955 A.2d at 1282 (emphasis in original).

¹³ *Id.*

¹⁴ *Id.* (quoting *Liteky v. United States*, 510 U.S. 540, 555 (1994)).

¹⁵ *Id.* (emphasis removed).

¹⁶ *Gattis*, 955 A.2d at 1284 (citing *Steigler v. State*, 277 A.2d 662, 668 (Del. 1971), *judgment vacated in part on other grounds*, 408 U.S. 939 (1972)).

¹⁷ *Carletti*, 2011 WL 809462, at * 6. (emphasis added).

- “To suggest that Defendant was willing to accept a conviction of up to 25 years to avoid a 30 year conviction **stretches the realm of believability**....”¹⁸
- “To suggest that Defendant was seriously willing to concede these convictions facing up to 75 years imprisonment to avoid a 30 year mandatory conviction...calls into question the sincerity of that representation.”¹⁹
- “Me thinks thou dost protest too much.”²⁰

After carefully reviewing the record and the applicable case law, the Court is satisfied the alleged bias and prejudice of the Commissioner does not stem from an extrajudicial source, nor does it result in an opinion on the merits on some basis other than what the Commissioner learned from her participation in the case.²¹ The remarks at issue and the circumstances in which they were made, do not support a bias or partiality challenge.²² Clearly, the Commissioner formed (strong) opinions based on the facts introduced and events occurring in the course of the proceedings, but the Court does not find that her opinions “display a deep-seated favoritism or antagonism that would make fair judgment impossible.”²³ After

¹⁸ *Id.*

¹⁹ *Id.*

²⁰ Commissioner’s June 23, 2011 letter to Trial Counsel in response to Trial Counsel’s letter voicing his opposition to the Commissioner’s comments. (DI 105)

²¹ *See Gattis*, 955 A.2d at 1282.

²² *Id.*

²³ *Id.* (quoting *Litesky*, 510 U.S. at 555).

carefully assessing the circumstances objectively, the Court determines that there is not an appearance of bias sufficient to cause doubt about judicial impartiality.²⁴

IV. CONCLUSION

Upon *de novo* review, the Court does not find an appearance of bias sufficient to cause doubt as to the Commissioner's impartiality. The circumstances presented would not lead an observer to conclude that a fair and impartial hearing is unlikely. Consequently, Trial Counsel's Motion for Reconsideration of the Commissioner's Order denying her recusal motion is **DENIED**.

IT IS SO ORDERED.

Jan R. Jurden, Judge

²⁴ See *Los v. Los*, 595 A.2d 381, 385 (Del. 1991).