



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 REPLY BRIEF

ON APPEAL FROM THE SUPERIOR COURT
IN AND OF KENT COUNTY

Santino Ceccotti, Esquire [#4993]
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DATE: March 6, 2023

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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.

The issue squarely before this Court is one of first impression. The State has distorted the question before the Court. The proper question is whether a trial judge who refuses to recuse themselves from a case in which they personally approved and signed the warrant provided by the State seeking inculpatory evidence against the defendant creates at a minimum an appearance of impropriety? The answer is yes.

Despite the State's contention, a ruling, comment or action by the judge that demonstrates any bias or prejudice against Willis is not the litmus test. 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). That is the situation here. Moreover, whether "[t]he trial judge had no memory of signing the [] search warrant" is of no consequence. Ans. Br. at 15. Similarly, the evidence presented at Willis' trial and the evidence confiscated as a result of warrant approved by the judge are irrelevant to the issue at bar. Ans. Br. at 17.

Properly, the State acknowledges that 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." Ans. Br. at 16. Judge's Code of Judicial Conduct, Canon 2 Rule 2.11(A). Here, best practice would have been for the trial judge to have avoided participation from the outset. *McKnight v. State*, 187 So. 3d 635, 646–47 (Miss. Ct. App. 2015).

Out of necessity, the State attempts to trivialize the judge's signing of an investigative warrant as "merely authoriz[ing] the collection of information or physical material that may or may not ultimately incriminate a suspect." Ans. Br. at 16. Not so. The warrant is a tool utilized by the State to target a defendant in an effort to obtain inculpatory evidence used to prosecute. The fact that the presiding trial Judge approved and signed off on the warrant 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 the aforementioned situation would have at least have cause to question the impartiality of the Judge. *Fritzing v. State*, 10 A.3D 603 (Del. 2010).

The guarantee of a trial before a neutral and detached judge ensures a defendant's right to a fair trial and protects the integrity of the judicial process by ensuring that trials are untainted by an appearance of unfairness. In the instant case, the circumstances, at a minimum, created the appearance of impropriety and deprived

Willis of his right to a fair trial. Therefore, Willis 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' conviction should be reversed.

\s\ Santino Ceccotti
Santino Ceccotti, Esquire

DATE: March 6, 2023