



FILED IN DISTRICT COURT
OKLAHOMA COUNTY

IN THE DISTRICT COURT OF OKLAHOMA COUNTY
STATE OF OKLAHOMA

DEC 20 2021

RICK WARREN
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THE STATE OF OKLAHOMA,)	
Plaintiff/Appellee,)	
)	District Court
v.)	Case No. CF-2017-1448
)	
ROBERT LEON HASHAGEN, III,)	Court of Criminal Appeals
Defendant/Appellant.)	Case No. F-2021-203

FINDINGS OF FACT AND CONCLUSIONS OF LAW

On November 15, 2021, this matter came on for an evidentiary hearing in accordance with the remand order issued by the Court of Criminal Appeals on October 11, 2021. First Assistant District Attorney Travis White appeared for the State and attorneys James Lockard and Alex Richard appeared with Defendant Robert Leon Hashagen, III. At the close of the evidence the Court requested the parties to submit proposed findings of fact and conclusions of law which have now been filed with the Court. After consideration of the evidence presented this hearing, the transcript of the motion hearing held on January 21, 2021, the transcripts of the jury trial, the written submissions of the parties, and the applicable law, the Court makes the following findings of fact and conclusions of law.

FINDINGS OF FACT

1. The Defendant, Robert Leon Hashagen, III, was charged on March 8, 2017, by information in Oklahoma County Case No. CF-2017-1448, with the felony offense of Murder in the Frist Degree.

2. The case was administratively reassigned to District Judge Timothy Henderson ("Henderson") on March 8, 2017, pursuant to Local District Court Rules and/or Administrative Orders.
3. Henderson first presided over the case at a pretrial conference on January 17, 2018, after the Defendant was ordered to stand trial by a special district judge. This conference was attended by the Defendant, his attorney- Clay Curtis, and Oklahoma County assistant district attorney Kelly Collins ("Collins").
4. Henderson and Collins were involved at that time in a years-long, secret sexual relationship. This relationship began in April 2016 and ended sometime during the summer of 2018.
5. Substantive motions were first heard by Henderson on January 21, 2021. This hearing was attended by the Defendant, his attorneys- Clay Curtis and Benjamin Munde, and Oklahoma County assistant district attorneys Laura McConnell, Jimmy Harmon, and Collins.
6. The purpose of the hearing, in part, was for Henderson to rule on the State's request to be allowed to introduce evidence of several other crimes allegedly committed by the Defendant and the Defendant's motion to exclude DNA evidence. Collins was substantially involved in both matters. Collins examined two witnesses concerning prior alleged crimes and the only witness concerning the DNA evidence.

7. Henderson presided over the jury trial which was held on January 25, 2021, through February 2, 2021.
8. The State was represented at the jury trial by Laura McConnell, Jimmy Harmon, and Collins. The trial responsibilities were fairly even among the prosecutors. Collins conducted the direct examination of several State witnesses, cross-examined two defense witnesses, and gave the State's first closing argument.
9. The Defendant was found guilty of murder in the first degree and the jury recommended that the Defendant serve a sentence of life.
10. The Defendant was sentenced by Henderson pursuant to the jury's recommendation on March 4, 2021. The sentencing hearing was attended by Laura McConnell, Jimmy Harmon, and Collins.
11. Henderson never disclosed to the Defendant or his attorneys that he had been in a sexual relationship with Collins.
12. Collins never disclosed to the Defendant or his attorneys that she had been in a sexual relationship with Henderson.
13. The Defendant and his attorneys had no knowledge of the sexual relationship between Henderson and Collins prior to the jury trial and sentencing hearing.
14. The Defendant and his attorneys were unable to request recusal or otherwise raise the issue of Henderson's bias during the proceedings prior to sentencing because it was unknown to them.

15. Attorneys Clay Curtis and Benjamin Munde both would have requested Henderson to recuse himself from the case had either one known of the sexual relationship between Henderson and Collins.

CONCLUSIONS OF LAW

The Court makes the following conclusions of law based upon the above findings of fact.

1. "The Oklahoma Constitution guarantees a defendant a right to a fair, impartial trial not tainted by the personal bias or prejudice of the trial court." *Welch v. State*, 2000 OK CR 8, ¶ 37, 2 P.3d 356, 372 (quoting *Fitzgerald v. State*, 1998 OK CR 68, 972 P.2d 1157, 1163), See *Okla. Const. Art. 2, § 6*.
2. In order to maintain and foster proper respect and confidence of the people in the courts, the courts must be presided over by unprejudiced, unbiased, impartial, and disinterested judges and all doubt and suspicion to the contrary must be jealously guarded against. *Castleberry v. Jones*, 68 Okla. Cr. 414, 99 P.2d 174, 179.
3. A fair trial in a fair tribunal is a basic requirement of due process. *In re Murchison*, 349 U.S. 133, 136, 75 S.Ct. 623, 625 (1955).
4. Due process is denied by circumstances that create the likelihood or the appearance bias. *Peters v. Kiff*, 407 U.S. 493, 502, 92 S.Ct. 2163, 2168 (1972). A showing of actual subjective bias is not required to establish a due process violation. *Williams v. Pennsylvania*, 579 U.S. 1, 8, 136 S.Ct. 1899, 1905 (2016).

5. There are certain circumstances as an objective manner that require recusal of a judge when "the probability of actual bias on the part of the judge or decisionmaker is too high to be constitutionally tolerable. *Caperton v. A.T. Massey Coal Co.*, 556 U.S. 868, 872, 129 S.Ct. 2252, 2257 (quoting *Withrow v. Larkin*, 421 U.S. 35, 47, 95 S.Ct. 1456, 1464 (1975)). A past or current sexual relationship between a prosecutor and a judge is one of those circumstances. The existence of such an intimate relationship casts grave doubt on the impartiality of the judge and severely taints the rulings by the judge.

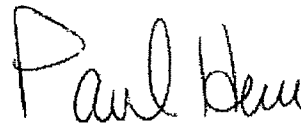
6. It is immaterial in this case that the sexual relationship between Henderson and Collins ended prior to Henderson's rulings on the pretrial motions and trial. An unconstitutional potential for bias existed because Henderson could not have been neutral if he still had romantic feelings for Collins or if he feared that Collins might disclose their relationship out of frustration if she was dissatisfied with a ruling. The facts of this case are sufficient to raise an "unconstitutional potential for bias." *Caperton*, 556 U.S. 868, 881.

7. A new trial is the only adequate remedy to redress the Defendant's denial of due process of law. Also, a new trial is necessary in order to preserve the integrity and reputation of our criminal justice system.

RECOMMENDATION

WHEREFORE, based on the foregoing findings of fact and conclusions of law, this Court concludes that the Defendant was denied due process and recommends that he be granted a new trial by the Court of Criminal Appeals.

Dated this 20th day of December, 2021.

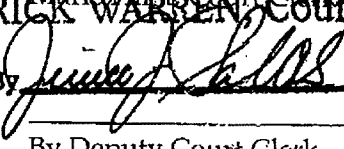
A handwritten signature in cursive script that reads "Paul Hesse". The signature is written in black ink and is positioned above a horizontal line.

**PAUL HESSE
DISTRICT COURT JUDGE**

CERTIFICATE OF MAILING

I, Rick Warren, Court Clerk for Oklahoma County, hereby certify that on the 20th day of December, 2021, a true and correct copy of the foregoing was mailed to the following:

Clerk of the Court of Criminal Appeals, 2100 N. Lincoln Blvd., Oklahoma City, OK
James Lockard, P.O. Box 926, Norman, OK 73070
Travis White, 201 S. Jones, Suite 300, Norman, OK 73069

~~Marie Hunt, Court Clerk~~
RICK WARREN, Court Clerk
By  Deputy
By Deputy Court Clerk