

# The Supreme Court of Ohio

FILED

AUG 28 2023

CLERK OF COURT  
SUPREME COURT OF OHIO

In re Disqualification of Hon. Jody  
Luebbers

Supreme Court Case No. 23-AP-094

## JUDGMENT ENTRY AND DECISION

ON AFFIDAVIT OF DISQUALIFICATION in *State of Ohio v. Eddie Savage*,  
Hamilton County Court of Common Pleas, General Division, Case  
No. B1700608.

Defendant Eddie Savage has filed an affidavit of disqualification pursuant to R.C. 2701.03 seeking to disqualify Judge Jody M. Luebbers of the Hamilton County Court of Common Pleas, General Division, from presiding over Savage's motion for new trial and motion for leave to file a new-trial motion. The judge filed a response to the affidavit of disqualification.

As explained below, Savage has failed to show that Judge Luebbers should be disqualified from presiding over Savage's post-trial motions. Therefore, the affidavit of disqualification is denied.

### **Trial-Court and Appellate Proceedings**

In 2018, Savage was found guilty of aggravated robbery with a gun specification, and robbery. Judge Luebbers merged the aggravated robbery and robbery convictions and sentenced Savage to 11 years for aggravated robbery and

three years on the gun specification. Savage's convictions and sentence were affirmed on appeal. *State v. Savage*, 1st Dist. Hamilton No. C-180413, 2019-Ohio-4859, appeal not allowed by 158 Ohio St.3d 1424, 2020-Ohio-647, 140 N.E.3d 743.

Savage also filed a delayed petition for postconviction relief. Judge Luebbers dismissed Savage's petition, and that decision was affirmed on appeal. *State v. Savage*, 1st Dist. Hamilton No. C-220131, 2022-Ohio-4107.

On May 30, 2023, Savage filed a motion with the trial court for leave to file a new-trial motion. Six days later, Savage filed a motion for a new trial.

On July 3, Savage filed an affidavit seeking to disqualify Judge Luebbers from ruling on the new-trial motions. Judge Luebbers has filed a response opposing the affidavit of disqualification.

### **Affidavit-of-Disqualification Proceedings**

Savage argues that Judge Luebbers should be disqualified from ruling on the motions because the judge "exhibited a deep seated favoritism for the [prosecution], or ill will prejudicial bias" against Savage. In support of the allegations Savage claims that the judge demonstrated bias by admitting certain exhibits during trial without requiring the prosecutor to comply with the Ohio rules of evidence. *See* Affidavit at 1-2. Savage also asserts that the judge has a conflict of interest because the new-trial motions are predicated on the judge's failure to uphold the law during

Savage's trial. Savage's final claim is that Judge Luebbers cannot preside over the underlying matter because Savage intends to call the judge as a witness "to attest to the violations accruing at trial." *Id.* at 2.

In response, Judge Luebbers maintains that she has not demonstrated any bias or prejudice against Savage and has not engaged in any improprieties that would warrant disqualification. The judge avers that the court's rulings were made based on her understanding of applicable law and that an appeal is the proper remedy for a litigant who feels that the trial court erred. The judge also asserts that she harbors no ill will, hostility, or partiality toward Savage; nor does the judge possess a fixed anticipatory judgment about Savage's case. *See* Judge response at 1-2.

### **Merits of the Affidavit of Disqualification**

#### *Disqualification of a Common-Pleas-Court Judge*

R.C. 2701.03(A) provides that if a judge of a court of common pleas "allegedly is interested in a proceeding pending before the court, allegedly is related to or has a bias or prejudice for or against a party to a proceeding pending before the court or a party's counsel, or allegedly otherwise is disqualified to preside in a proceeding pending before the court," then that party or counsel may file an affidavit of disqualification with the clerk of this court. Granting or denying the affidavit of disqualification turns on whether the chief justice determines that the allegations of

interest, bias, prejudice, or disqualification alleged in the affidavit exist. R.C. 2701.03(E).

In affidavit-of-disqualification proceedings, the burden falls on the affiant to submit "specific allegations on which the claim of interest, bias, prejudice or disqualification is based and the facts to support each of those allegations." R.C. 2701.03(B)(1). Therefore, "[a]n affidavit must describe with specificity and particularity those facts alleged to support the claim of bias or prejudice." *In re Disqualification of Mitrovich*, 101 Ohio St.3d 1214, 2003-Ohio-7358, 803 N.E.2d 816, ¶ 4. Vague and unsubstantiated allegations "are insufficient on their face for a finding of bias or prejudice." *In re Disqualification of Walker*, 36 Ohio St.3d 606, 522 N.E.2d 460 (1988).

"The term 'bias or prejudice' 'implies a hostile feeling or spirit of ill-will or undue friendship or favoritism toward one of the litigants or his attorney, with the formation of a fixed anticipatory judgment on the part of the judge, as contradistinguished from an open state of mind which will be governed by the law and the facts.' " *In re Disqualification of O'Neill*, 100 Ohio St.3d 1232, 2002-Ohio-7479, 798 N.E.2d 17, ¶ 14, quoting *State ex rel. Pratt v. Weygandt*, 164 Ohio St. 463, 132 N.E.2d 191 (1956), paragraph four of the syllabus.

A judge is accorded a “presumption of impartiality” in an affidavit-of-disqualification proceeding. *In re Disqualification of Celebrezze*, 101 Ohio St.3d 1224, 2003-Ohio-7352, 803 N.E.2d 823, ¶ 7. “The proper test for determining whether a judge’s participation in a case presents an appearance of impropriety is \* \* \* an objective one. A judge should step aside or be removed if a reasonable and objective observer would harbor serious doubts about the judge’s impartiality.” *In re Disqualification of Lewis*, 117 Ohio St.3d 1227, 2004-Ohio-7359, 884 N.E.2d 1082, ¶ 8.

Savage alleges that Judge Luebbers is biased in favor of the prosecution and prejudiced against him. In support of the allegations Savage points to the judge’s rulings during the trial proceedings and the potential of the judge becoming a witness.

Savage’s primary claim is that Judge Luebbers demonstrated “prejudicial bias” against him when the judge admitted certain exhibits into evidence during trial without requiring the state to comply with the rules of evidence in submitting these exhibits. *See* Affidavit at 1-2. It is well settled, however, that a party’s disagreement or dissatisfaction with a judge’s legal rulings is not grounds for disqualification. *In re Disqualification of Fuerst*, 134 Ohio St.3d 1267, 2012-Ohio-6344, 984 N.E.2d 1079, ¶ 14. “Procedures exist by which appellate courts may review – and, if

necessary, correct, – rulings made by trial courts.” *In re Disqualification of Russo*, 110 Ohio St.3d 1208, 2005-Ohio-7146, 850 N.E.2d 713, ¶ 6. But reviewing alleged legal errors is not the chief justice’s role in deciding an affidavit of disqualification. *In re Disqualification of D’Apolito*, 139 Ohio St.3d 1230, 2014-Ohio-2153, 11 N.E.3d 279, ¶ 5.

Savage also argues in support of the allegations that it is a conflict of interest for Judge Luebbbers to adjudicate the merits of his pending motions because the request for a new trial is predicated on the judge’s failure to uphold the law during Savage’s trial. *See* Affidavit at 2. A “conflict of interest” means “[a] real or seeming incompatibility between one’s private interests and one’s public or fiduciary duties.” *Black’s Law Dictionary* 475 (11th Ed.2019). Savage fails to demonstrate that Judge Luebbbers has a conflict of interest.

A judge is not automatically disqualified from deciding a motion for a new trial based on a claim that the judge’s rulings at trial were erroneous. Rather, a judge is presumed to be fair, impartial, and objective, and is able to rule on matters where the judge’s own decisions are at issue. *In re Disqualification of Mascio*, 74 Ohio St.3d 1218, 1219, 674 N.E.2d 1332 (1990). *See also In re Disqualification of Aubry*, 117 Ohio St.3d 1245, 2006-Ohio-7231, 884 N.E.2d 1095, ¶ 7 (state and federal courts are virtually unanimous in holding that a judge who presided over prior

proceedings involving a party currently before the court will not be disqualified from presiding over later proceedings involving that same party absent a showing of actual bias). Savage has provided no factual or legal basis for why it would be a conflict of interest for Judge Luebbers to rule on the new-trial motions.

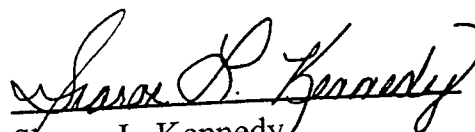
Lastly, Savage claims that he intends to call Judge Luebbers as a witness to attest to the violations of law accruing at Savage's trial. *See* Affidavit at 2. There is no "rule requiring disqualification of a judge based solely on suppositions that the judge may be called as a witness or allegations that the judge possesses evidence material to the case at bar." *In re Disqualification of Gorman*, 74 Ohio St.3d 1251, 657 N.E.2d 1354 (1993). Moreover, a judge is not under any duty to take the witness stand and explain his or her mental processes. *In re Disqualification of Schweikert*, 110 Ohio St.3d 1209, 2005-Ohio-7149, 850 N.E.2d 714, ¶ 7. Whether the judge's actions were right or wrong, Judge Luebbers is now presumed to be capable of weighing additional evidence in a post-trial proceeding and resolving any remaining factual and legal disputes without stepping aside. Were it otherwise, no judge could rule on post-trial motions claiming error in the conduct of the trial. And Judge Luebbers is entitled to resolve those issues without having to take the witness stand to explain what the court experienced in earlier stages of the proceedings. *Id.*

In an affidavit-of-disqualification proceeding, the burden falls on the affiant to submit sufficient argument and evidence showing that disqualification is warranted. R.C. 2701.03(B)(1). Savage has not carried that burden.

### **Conclusion**

For the reasons stated above, Savage's affidavit of disqualification is denied. Judge Luebbers may proceed in Savage's case.

Dated this 28th day of August, 2023.

  
Sharon L. Kennedy  
Chief Justice

Copies to: Clerk of the Supreme Court  
Hon. Jody M. Luebbers  
Pavan Parikh, Clerk  
Eddie Savage  
Harold Sauter



**Additional material  
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