IN THE SUPREME COURT OF THE STATE OF NEVADA

Electronically Filed
May 25 2023 10:19 AM
Elizabeth A. Brown
Clerk of Supreme Court

KIM BLANDINO,

Appellant,

v.

THE STATE OF NEVADA,

Respondent.

Case No. 84433

RESPONDENT'S ANSWERING BRIEF

Appeal From Judgment of Conviction (Jury Trial)
Eighth Judicial District Court, Clark County

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ROUTING STATEMENT

Pursuant to NRAP 17(b)(2)(A), this case is presumptively assigned to the Court of Appeals because it involves a judgment of conviction from a jury verdict that does not involve a category A or B felony.

STATEMENT OF THE ISSUE(S)

1. Whether the district erred in rescinding Appellant's ability to represent himself.

2. Whether the district court erred in denying Appellant's proposed jury instruction on a mistake of fact.

3. Whether the district court erred when in denied Appellant's motion to disqualify the district court from presiding over his case.

/ / /

STATEMENT OF THE CASE

On July 12, 2019, an Indictment was filed against Kim Dennis Blandino (hereinafter "Appellant") charging him with the crimes of Count 1 – Extortion and Count 2 – Impersonation of an Officer. 1 AA 0002.

Appellant was scheduled for an arraignment in district court on July 23, 2019 in Department 12 of the Eighth Judicial District Court. 1 AA 0115. Although the matter was on calendar for a mere arraignment, Appellant notified the court that he is a vexatious litigant and that he would like to disqualify the court. Id. Appellant also informed the court that he wished to represent himself in his case. Id. Thus, the district court continued the matter for Appellant to file any initial motions such as his motion seeking to disqualify the court.

Appellant returned to court on August 15, 2019. 1 AA 0117. The district court inquired as to whether he had completed his motion to disqualify and whether he needed more time to file his motion. 1 AA 0118-0120. Appellant indicated that two weeks additional time would be helpful to file his motion, so the court granted him an additional two weeks to file his motion seeking to disqualify her. 1 AA 0120.

At the next court date on August 29, 2019, Appellant still had not filed his motion to disqualify the court. 1 AA 0122. The district court indicated that this was the third time that it had placed the matter on calendar for him to file his motion. Id.

On the same day, the district court arraigned Appellant. Appellant again informed the district court that he was choosing to represent himself pro se. 1 AA 0136. The district court then conducted a Faretta canvas of Appellant asking if he understood the rights he was giving up by representing himself. Included in the district court's Faretta canvas of Appellant was that he understood he would be required to follow all of the legal rules of procedure even though he may be unfamiliar with them, and that he would be held to the same standard. 1 AA 0147. Appellant agreed and understood. Id. The district court then allowed Appellant to represent himself, and appointed standby counsel as he requested. However when the court asked Appellant to enter a plea, he filibustered the court until the court indicated that it was entering a plea of not guilty on his behalf. 1 AA 0152.

Appellant then began a string of filings related to disqualifying various courts from presiding over his case. His first Motion to Disqualify was filed on December 13, 2019 seeking to disqualify Judges Leavitt, Bell, Marquis and all other judges in the Eighth Judicial District Court from proceeding over his case. On January 23, 2020, the chief criminal presiding judge issued a Decision and Order denying the disqualifications on the grounds that Appellant had not shown that there was prejudice or bias that should remove either judge from hearing his case. 2 AA 0452.

On May 7, 2020, Appellant filed another Motion to Disqualify various judges that still included Judges Leavitt, Bell, and Marquis, but now he included Judge

Villani (who issued the Decision and Order denying his first disqualification motion), and various other judges. RA 000005.

On July 10, 2020, Appellant filed another Motion to Disqualify now seeking to disqualify Senior Judge Barker from his case. Id. On August 3, 2020, Chief Judge Bell issued a Decision and Order denying the disqualification of Judge Leavitt and Senior Judge Barker. Id.

On August, 11, 2020, Appellant then filed a Motion to Reconsider the Decision and Order from August, 3 2020. RA 000006. At the same time, Appellant also filed an Emergency Motion to Disqualify Judge Bell. On August 19, 2020, Chief Judge Bell issued a Decision and Order that denied both of Appellant's motions. Id.

On March 8, 2021, Appellant filed another Motion to Disqualify Judge Leavitt. Then on March 15, 2021, he filed another motion seeking to disqualify Judge Bell. RA000007. On April 14, 2021, Appellant filed another Motion to Disqualify Judges Leavitt and Bell. The matter was then sent to Presiding Criminal Judge Tierra Jones for a decision on the matter. Id.

On April 22, 2021, Appellant filed a Motion to Disqualify Judge Tierra Jones. Id. Judge Jones then removed herself from the matter and the matter was moved to Judge Allf for a decision on his various motions to have the judge disqualified. True to form, on May 6, 2021, Appellant then filed a Motion to Disqualify Judge Allf. RA000008.

Eventually, Judge Wilson from the First Judicial District Court was assigned to handle the various motions seeking to disqualify. On August 10, 2021, Judge Wilson issued an Order Denying Motion to Disqualify Judge Leavitt and had the matter re-assigned to her department. RA000009.

Just eight days later on August 18, 2021, Appellant filed another Motion to Disqualify Judge Leavitt as well as the other judges in the Eighth Judicial District Court. This time his motion was denied by a minute order by Judge Leavitt on August 23, 2021. RA000010.

Then on September 20, 2021, Appellant filed another Motion to Disqualify Judge Leavitt. This time Appellant also sought to have Judge Leavitt mentally and psychologically evaluated and temporarily suspended from her duties. On October 14, 2021 and October 15, 2021, orders were filed denying Appellant's motions to have judges disqualified. This did not deter Appellant from filing another Motion to Disqualify Judge Leavitt on November 22, 2021. He then filed another same motion on December 2, 2021. RA000010-000011.

During Appellant's numerous filings seeking to disqualify various judges, the State filed a motion to revoke Appellant's right to self-representation. At the hearing held on April 29, 2021, the district court did not ultimately revoke his ability to represent himself, but it did admonish him that he would be required to comply with the rules. 3 AA 0530. The district court once again informed him that failure to

comply with the rules would result in revocation of his self-representation and an appointed attorney would litigate his case. Id.

When asked what rules he was not following, the district court indicated that his filings were not made in good faith and that the timing of the motions indicated that he was merely trying to delay or interfere with the proceedings. 3 AA 0531. The district court found that Appellant was engaging in obstructionist behavior and was trying to make a mockery of the court. 3 AA 0534-0535. The district court added that Appellant's continued insistence that the court lacked jurisdiction to proceed would also be a basis to revoke his self-representation. 3 AA 0538.

Finally after Appellant's conduct, the district court had enough on December 2, 2021 and decided that Appellant would not longer be able to represent himself. This ruling was memorialized in an Order Granting State's Motion to Revoke Defendant's Self-Representation filed on December 27, 2021. RA000013. In it, the court noted in its findings that Appellant had filed a total of nineteen separate motions seeking to disqualify the courts. RA000028. Upon the revocation of self-representation, his standby counsel Bennair Bateman, Esq. was appointed to represent Appellant at trial.

Trial with his counsel commenced on March 1, 2022. Upon conclusion of the trial, Appellant was convicted of Extortion and Impersonation of an Officer. Sentencing was held on July 7, 2022. Appellant was sentenced to twelve to one

hundred twenty months on the Extortion count and a concurrent three hundred sixty-four days in the Clark County Detention Center on the Impersonation of an Officer count. Both sentences were suspended and Appellant was placed on probation with conditions. A Judgment of Conviction was filed on July 12, 2022.

STATEMENT OF THE FACTS

The State provided the following evidence at trial: Ashley Williams, a file clerk/receptionist at the law firm Olson, Cannon, Gormley, Angulo, and Stoberski, identified Kim Blandino, hereinafter "Appellant" as the individual that entered the offices on 9950 W. Cheyenne on April 8, 2019. 1 AA 1242-1243. Appellant requested to speak with victim #1, but because he was unavailable, Williams observed Appellant write a letter addressed to victim #1. 1 AA 1243-1245. This letter was entered into evidence as State's Exhibit 2A and identified by Williams as the letter she had time stamped dated April 8, 2019, 10:31 AM. 1 AA 1246-1248.

Victim #1 is a full-time attorney and often serves as Judge Pro Tem. He testified that on August 28, 2018 he was working in his capacity as Judge Pro Tem and heard a traffic case in which the Appellant was the Defendant. 1 AA 1262. Victim #1 identified Appellant as the defendant that he found guilty of several traffic citations, as well as finding him in contempt of court. Appellant was sentenced to a fine that could be converted into community service and the contempt time was suspended. 1 AA 1292. Because of this previous interaction, victim #1 was able to

identify Appellant as the individual that came to his law office on April 8, 2019. 1 AA 1297-1298. Victim #1 witnessed Appellant write a letter that has been identified as Exhibit 2A, and has testified that the letter was addressed to him in his capacity as Pro Tem Judge. 1 AA 1302.

Exhibit 2 says in part," I am ready to begin filing my complaint against you for your "activities", on the bench in Courtroom 1C last year. Giving me ten seconds to get a drink of water, risking the safety of others, numerous violations of the code, I am required, by my religious beliefs and practices, to give you an opportunity to negotiate a settlement. Please let me know within the next ten days. My last two complaints resulted in letters of caution to the judges. Please don't take this matter lightly." 1 AA 1303. This letter was signed by the Appellant.

April 25, 2019, Appellant once again comes to the victim #1's law office and leaves more documents that have been time stamped as April 23, 2019, 4:10 PM and are marked as Exhibits 1, 1A, and 1B. 1 AA 1322. These documents are also addressed to victim #1 in his capacity as Judge Pro Tem and reads in part" I am an investigative reporter and an unpaid volunteer investigator for the NCJD to investigate judicial misconduct and corruption. I was there today until these joint capacities. As you have already committed misconduct, you have already at least one strike against you. It was in this regard that I came to you" -- "to your publicly listed offices to see if I could meet you man to man and see if we could resolve my

complaint with you without having to use, scare, skittish, or resources and NCJD resources as I have attempted to do with other misbehaving judges. And, in fact, I do with whomever I have a complaint with." 1 AA 1329-1330.

Peter Marwitz, a Court Marshall for the Las Vegas Municipal Court, and Kenneth Mead, a detective with the Las Vegas Metropolitan Police Department were investigating this case on behalf of victim #1. Marwitz testified to a phone call with Appellant on April 29, 2019. This call was placed by victim #1 from his private law office at the request of Marwitz and Mead. 1 AA 1511. Marwitz testified that the Appellant stated he would go ahead and file his judicial complaints unless victim #1 agreed to meet him in person, and at a minimum, offer an apology. 1 AA 1515-1516.

May 2, 2019, victim #1 received an email, marked as State's Exhibit 5, from the Appellant entitled" Settlement Agreement and Release." 1 AA 1364. Victim #1 testified that this email contained in attachment of the Appellant's" proposed draft of settlement agreement." The Appellant had signed the document as Kim Blandino, "Pro se litigant and investigative journalist and volunteer unpaid investigator for the Commission on Judicial Discipline." 1 AA 1369.

Victim #1 did not reply to Appellant in the following email, State's Exhibit 7 was received on May 9, 2019.It was entitled" Follow-up to proposed settlement offer sent May 2 and 3." The email states in part" I have not received any word back from you regarding the proposed settlement offer. I will need an answer or for you to

otherwise respond to this proposed settlement on or before May 23rd, 2019. You, under threat of contempt of jail, ordered me out of a public courtroom because I came to your office to offer settlement. By doing so you violated important civil rights. In fact, you can be criminally prosecuted for a misdemeanor violation of federal civil rights under 18 USC Sec. 242 for your action on April 25th, 2019. If we cannot settle this matter, I will file a complaint with the NCJD. However, know that I did file a complaint against Judge Herndon, and he was issued a letter of caution by the NCJD."1 AA 1409-1411. Appellant concludes the email by saying," if we cannot come to a settlement, I believe it would be proper to go to the FBI with a criminal complaint against you for stopping me from observing you on the bench on April 25th, 2019. Granted this would only be a misdemeanor, however, it may help others that come after me should you not agree to the apology and settlement." 1 AA 1413.

Appellant ends the email with one final warning, "I have come to realize that since you work within a partnership titled Olson Cannon Gormley Angulo & Stoberski (OCGAS) that I should give some notice to these individuals of the matters involved prior to filing with the NCJD or the FBI." 1 AA 1414. Appellate writes, " Because the issues involved could affect how OCGAS might be perceived by the public, I believe I must give OCGAS a right to review prior to taking this matter forward. Therefore, consistent with my beliefs, I will send a copy of all the relevant

documents to OCGAS unless I hear from you by Monday, May 15, 2019." 1 AA 1416-1417.

State's Exhibit 8 is an e-mail dated May 16, 2019, that was sent to all of the named partners at the firm and Victim #1 from Appellant entitled "follow-up to letter of May 9, 2019, requesting settlement with Victim #1." 1 AA 1426. Appellant wrote, "I have asked an attorney for your firm, Victim #1, to settle issues in regard to his misbehavior in a Las Vegas Municipal Court in his role as alternate judge. The very last letter that was sent on May 9th, 2019, to Victim #1, notified him that if I did not hear anything in response I would notify the firm." 1 AA 1426. Appellant continued, "Since I gave Victim #1 till May 23rd to settle before filing a complaint, I gave a deadline of May 15th to at least begin good faith negotiations, or I would notify the firm so the firm has a 'heads up' if Victim #1 has failed to inform the firm of this situation when he might be required to do so." 1 AA 1426-1429. He warns that, "My last two complaints to the NCJD resulted in letters of caution due to two District Court Judges. So I do not make frivolous complaints. What Victim #1 did in open court on April 25th to order me out of court within ten seconds under threat of jailing for coming to the firm's office and leave a letter asking for settlement of issues is blatantly wrong." 1 AA 1426-1429. He concludes requesting a response within one week. 1 AA 1429

Paul Deyhle, works as General Counsel and Executive Director of the Nevada Judicial Discipline Commission. 1 AA 1484-1485. He testified that Appellant has never been an investigator for the Commission or been authorized by the Commission to hold himself out in the public or to judges that he is investigator for the Commission. 1 AA 1496.

SUMMARY OF THE ARGUMENT

While a defendant generally has the right to represent himself in a criminal proceeding, that right is not absolute when the defendant demonstrates that he will be disruptive to the court proceedings. In this case, the district court had a plethora of evidence that Appellant was going to improperly obstruct the court proceedings. It was based upon this supported belief that the district court revoked his right of self-representation.

At trial, Appellant proposed a jury instruction regarding a mistake of fact. The district court properly denied this instruction because Appellant was not mistaken about a fact, instead he was mistaken about the law and a mistake of law is not a defense.

Finally, the district court appropriately presided over this case despite the multiple attempts that Appellant made to disqualify the court. The court not only followed the procedures on potential disqualification, but Appellant has never been able to identify any actual conflict that required disqualification.

ARGUMENT

I. THE DISTRICT COURT DID NOT ERR IN REQUIRING THAT COUNSEL BE APPOINTED TO REPRESENT APPELLANT

Appellant argues that the district court erred when it revoked his ability to represent himself. However, the right to represent oneself is not absolute and such a ruling can be changed, especially when one acts as Appellant did in this case.

"A criminal defendant has the right to self-representation under the Sixth Amendment of the United States Constitution and Nevada Constitution. However, an accused who chooses self-representation must satisfy the court that his waiver of the right to counsel is knowing and voluntary. Such a choice can be competent and intelligent even though the accused lacks the skill and experience of a lawyer, but the record should establish that the accused was 'made aware of the dangers and disadvantages of self-representation.'" Vanisi v. State, 117 Nev. 330, 337-38, 22 P.3d 1164, 1169-70 (2001) (quoting Faretta v. California, 422 U.S. 806, 835, 95 S.Ct. 2525 (1975)).

An accused may insist upon representing himself, "however counterproductive that course may be." Faretta, 422 U.S. at 835, 95 S.Ct. at 2525. The United States Supreme Court has further explained, "'[t]he right to defend is personal,' and a defendant's choice in exercising that right 'must be honored out of that respect for the individual which is the lifeblood of the law." McCoy v. Louisiana, 138 S.Ct. 1500, 1507, 200 L.Ed.2d 821 (2018) (quoting Illinois v. Allen,

397 U.S. 337, 350-51, 90 S.Ct. 1057 (1970) (Brennan, J., concurring)). Indeed, the test is not whether a defendant is *capable* to defend themselves – it is error for the district court to deny an accused the opportunity to represent themselves as long as the waiver is knowing and voluntary. Vanisi, 117 Nev. at 337-38, 22 P.3d at 1169-70.

However, the right to represent oneself is not absolute. A defendant's right to self-representation is contingent on him being "able and willing to abide by rules of procedure and courtroom protocol." Id., at 340, 22 P.3d at 1171. "The right of self-representation is not a license to abuse the dignity of the courtroom. Neither is it a license not to comply with relevant rules of procedural and substantive law." Id., *quoting* Faretta, 422 U.S. at 835, 95 S.Ct. 2525.

A court may rely upon a defendant's pretrial activity and conduct to determine that the individual will be disruptive in the courtroom. Id., *see also* Tanksley v. State, 113 Nev. 997, 946 P.2d 148 (1997). In both Vanisi and Tanksley, the lower courts made records about the disruptive nature of the defendants that were being denied self-representation.

Here, the district court only revoked Appellant's ability to represent himself after Appellant demonstrated his continuous disregard for any decision of the court. This was not a hasty decision made by the district court. The district court repeatedly admonished Appellant that he needed to begin following the rules and that he needed

to not interrupt others as it was disruptive. It was only after Appellant's constant failure to follow simple rules, and his successful bids to delay the proceedings by filing frivolous motions, did the district court disallowed him from representing himself.

For instance, during the court proceedings in which the district court entertained argument on the State's motion to revoke his self-representation, Appellant continued to argue that the court was prohibited from ruling on anything based on his filing of another motion to disqualify. To support his argument, he told the court "What you have is your incompetence, corruption and I think there is some mental illness or something going on in your head." 3 AA 0635.

Appellant filed nineteen separate motions to disqualify the courts that were intended to disrupt the proceedings. 3 AA 644. The district court found that each time one motion was denied, he would file another one. Id. The district court found that his multiple motions to disqualify were meant to "obstruct, impede, and manipulate the court procedures and prevent the Court from proceeding forward against the defendant and setting the matter for trial." Id.

The district court further found that there was no question in its mind that Appellant was trying to manipulate the court proceedings. 3 AA 645. It found that he refused to follow not only the procedural rules of court, but Appellant had evidenced his noncompliance with even basic rules that were set in place for the

pandemic and entry into the courthouse. Id. The district court further held that Appellant filed a false application for a temporary protective order against the district court alleging that the court had committed aggravated stalking against him. 3 AA 646.

Finally, the district court found that Appellant's conduct was so disruptive and manipulative that it had no confidence that the matter could proceed if he was permitted to continue representing himself. Id.

The district court also memorialized its findings in its Order Granting State's Motion to Revoke Defendant's Self-Representation filed on December 27, 2021. The district court explained the lengthy history of Appellant trying to disqualify every court that even remotely was connected to his case. It explained the numerous opportunities that it gave Appellant to correct his behavior or lose his right to self-representation.

The district court's order specifically found that "[D]efendant's self-representation has proved extremely disruptive, deliberately obstructionist and provided the strongest indication that Defendant will continue to intentionally disrupt and delay these proceedings should he be allowed to represent himself. Defendant filed twenty frivolous motions to disqualify in order to tactically delay pretrial proceedings and trail in this case." RA000030. The district court went to explain "[T]he totality of Defendant's conduct evidences his ulterior purpose of

improperly seeking delay and tactical advantage." Id. The district court concluded its order by explaining "[I]t is clear to this Court that revocation of Defendant's right to self-representation is necessary in order to meet that obligation and ensure the fair, efficient and dignified administration of justice. Furthermore, given Defendant's refusal to conform his conduct to the rules of the Court when given the opportunity to do so, this Court finds that no less restrictive means will suffice." RA 000031.

Based upon the several enumerated factors and the record which consistently demonstrated Appellant's unreasonable behavior, the district court did not abuse its discretion when it revoked his ability to represent himself. Not only did the district court not abuse its discretion, but this court would set a dangerous precedence if defendants were to allowed to ignore all rules in hopes of eventually benefiting from a court being later reversed for revoking one's right to self-representation or in order to try and get the court disqualified. The record here is clear that the district court attempted to work with Appellant and to allow him to represent himself, but eventually the district court rightly determined that the matter could not proceed with Appellant having the right to self-representation.

II. THE DISTRICT COURT DID NOT ERR IN DENYING A MISTAKE OF FACT JURY INSTRUCTION

Appellant argues that the district court erred when it denied a proposed jury instruction on Appellant's mistake of fact. The district court has "broad discretion

to settle jury instructions, and this court reviews the district court's decision for an abuse of that discretion or judicial error." Crawford v. State, 121 Nev. 744, 748, 121 P.3d 582, 585 (2005). "An abuse of discretion occurs if the district court's decision is arbitrary or capricious or if it exceeds the bounds of law or reason." Id. Although the decision to refuse a jury instruction is subject to abuse of discretion review, whether a jury instruction contains a correct statement of law is subject to de novo review. Cortinas v. State, 124 Nev. 1013, 1019, 195 P.3d 315, 319 (2008).

While Appellant correctly states that he has the right to be instructed on his theory of the case (pursuant to Crawford), the district court must still only give jury instructions that are a correct statement of the law as it relates to a case. Jury instructions that confuse or mislead the jury are erroneous. Zelavin v. Tonopah Belmont, 39 Nev. 1, 7-11, 149 P. 188, 189-191 (1915).

Where a specific intent is required to constitute an offense, a person who acts under "ignorance or mistake of fact, which disproves any criminal intent," is not liable for punishment. NRS 194.010(5). However, mistake or ignorance of the law is not a defense to a criminal action. Whiterock v. State, 112 Nev. 775, 782, 918 P.2d 1309, 1314 (1996). Appellant argues that he was entitled to his proposed jury instruction because his theory of the defense was that Appellant thought he was involved with a legitimate negotiation in trying to get the victim to change his prior court rulings. AA 1933-1934. However, his proposed mistake of fact instruction

would not apply to his situation because Appellant knew what he was doing, it was just that he did not realize that his acts were criminal in nature.

Appellant argued that his proposed instruction was relevant to defend against the charge of extortion pursuant to NRS 205.320. NRS 205.320, entitled "Threats," reads as follows:

> A person who, with the intent to extort or gain any money or other property or induce another to make, subscribe, execute, alter or destroy any valuable security or instrument or writing affecting or intended to affect any cause of action or defense, or any property, or to influence the action of any public officer, or to do or abet or procure any illegal or wrongful act, whether or not the purpose is accomplished, threatens directly or indirectly:
>
> 1. To accuse any person of a crime;
> 2. To injure a person or property;
> 3. To publish or connive at publishing any libel;
> 4. To expose or impute to any person any deformity or disgrace; or
> 5. To expose any secret,
>
> is guilty of a category B felony and shall be punished by imprisonment in the state prison for a minimum term of not less than 1 year and a maximum term of not more than 10 years, or by a fine of not more than $10,000, or by both fine and imprisonment.

Appellant's mistaken belief that he was involved in a lawful negotiation does not negate his mens rea because his belief this was an actual negotiation is not an element of the crime. The statute only requires that the person have the intent to

extort, gain money, or to influence the action of a public officer. Thus, Appellant's mistaken belief that he could contact the victim and force the victim into a negotiation regarding his traffic conviction does not go to a mistake of fact, it instead goes towards his mistake of what the law prohibits. The law prohibits his conduct, and his belief that he was allowed to engage in his acts does not negate him of criminal liability. As such the district court did not err in ruling that his proposed instruction was incorrect as a matter of law and could not go towards his theory of defense.

III. THE DISTRICT COURT DID NOT ERR IN REFUSING TO RECUSE ITSELF FROM APPELLANT'S CASE

Appellant argues that it was error for the district court to deny his motions to disqualify Judge Leavitt, the randomly assigned judge of his case, from being the presiding judge. As mentioned, Appellant filed multiple motions throughout the case seeking to disqualify Judge Leavitt from presiding over his case.

In Nevada, a judge is presumed to be not biased. Goldman v. Bryan, 104 Nev. 644, 764 P.2d 1296 (1988) (overturned on other grounds, see Halverson v. Hardcastle, 123 Nev. 29, 163 P.3d 428 (2007)). The burden is on the party asserting bias "to establish sufficient factual grounds warranting disqualification." Goldman, 104 Nev. at 644, 764 P.2d at 1296. A motion to disqualify will be insufficient where there are no facts that support a reasonable inference that a judge entertained bias against the defendant. Id. at 650, at 1300. Therefore, a defendant's bare allegation

of bias is not sufficient to overcome the presumption that the court is not biased. Id. at 644, at 1296; Sonner v. State, 112 Nev. 1328, 1335, 930 P.2d 707, 712 (1996). "[R]emarks of a judge made in the context of a court proceeding are not considered indicative of improper bias or prejudice unless they show that the judge has closed his or her mind to the presentation of all the evidence." Cameron v. State, 114 Nev. 1281, 1283, 968 P.2d 1170, 1171 (1998).

Appellant cites to Nevada Code of Judicial Conduct (NCJC) Rule 2.11(A)(1) which requires a judge to recuse herself "in any proceeding in which the judge's impartiality might reasonably be questioned, including by not limited to the following circumstances: (1) The judge has a personal bias or prejudice concerning a party or a party's lawyer, or has personal knowledge of facts that are in dispute in the proceeding." Generally, what a judge learns in her official capacity does not result in disqualification. Kirksey v. State, 112 Nev. 980, 1007, 923 P.2d 1102, 1119 (1996).

The Nevada Supreme Court recently held that it would be problematic if NCJC Rule 2.11(A) required disqualification for every situation where a judge is exposed to prejudicial evidence while ruling on evidentiary disputes. Canarelli v. Eighth Judicial District Court, 138 Nev. Adv. Op. 12, 506 P.3d 334, 338 (2022). "To do so would encroach on a judge's duty to preside over his or her assigned cases." Id.

Appellant filed multiple motions to disqualify the district court. He not only filed motions to disqualify the district court that oversaw his criminal case, he filed additional motions to disqualify every court that heard his case from the trial court to the competency court to the chief judge reviewing his disqualification motion. His argument is that the numerous motions he filed essentially cause the district court to be biased against him.

First, there was no indication that the district court had any bias towards Appellant. The district court initially allowed Appellant to represent himself. It was only based upon Appellant's conduct that the district court eventually ruled that he would no longer be able to represent himself at trial because he was already demonstrating a refusal to comply with any rules from Covid protocols to the rules of criminal procedure and general court decorum.

Second, it would be counter-productive to allow a defendant to create his own conflict by trying to force the district court to disqualify itself. To allow such a conflict would encourage defendants to insult any court in hopes of having the court recuse itself. Although that did not happen here, the entire basis for Appellant claiming a conflict was that the district court ruled against his motions to disqualify her.

Appellant still does not identify any actual bias or conflict that the district court had against him. The record shows that the district court was respectful to

Appellant and made appropriate legal rulings against him. These rulings were based upon the law, and there was no evidence that the district court harbored any bias against Appellant.

CONCLUSION

The district court correctly ruled on each of the matters raised by Appellant. As such, the judgment should be affirmed.

Dated this 25th day of May, 2023.

Respectfully submitted,

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CERTIFICATE OF COMPLIANCE

1. **I hereby certify** that this brief complies with the formatting requirements of NRAP 32(a)(4), the typeface requirements of NRAP 32(a)(5) and the type style requirements of NRAP 32(a)(6) because this brief has been prepared in a proportionally spaced typeface using Microsoft Word 2003 in 14 point font of the Times New Roman style.
2. **I further certify** that this brief complies with the page or type-volume limitations of NRAP 32(a)(7) because, excluding the parts of the brief exempted by NRAP 32(a)(7)(C), it is either proportionately spaced, has a typeface of 14 points of more, contains 5,324 words and 23 pages.
3. **Finally, I hereby certify** that I have read this appellate brief, and to the best of my knowledge, information, and belief, it is not frivolous or interposed for any improper purpose. I further certify that this brief complies with all applicable Nevada Rules of Appellate Procedure, in particular NRAP 28(e)(1), which requires every assertion in the brief regarding matters in the record to be supported by a reference to the page and volume number, if any, of the transcript or appendix where the matter relied on is to be found. I understand that I may be subject to sanctions in the event that the accompanying brief is not in conformity with the requirements of the Nevada Rules of Appellate Procedure.

Dated this 25th day of May, 2023.

Respectfully submitted

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CERTIFICATE OF SERVICE

I hereby certify and affirm that this document was filed electronically with the Nevada Supreme Court on 25th day of May, 2023. Electronic Service of the foregoing document shall be made in accordance with the Master Service List as follows:

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AC//jh