

IN RE DISQUALIFICATION OF HOLBROOK.

THE STATE OF OHIO v. HUSEL.

**[Cite as *In re Disqualification of Holbrook*, 167 Ohio St.3d 1244,
2022-Ohio-2141.]**

Judges—Affidavits of disqualification—R.C. 2701.03—Affiant failed to demonstrate bias, prejudice, or appearance of impropriety—Disqualification denied.

(No. 22-AP-038—Decided April 7, 2022.)

ON AFFIDAVIT OF DISQUALIFICATION in Franklin County Court of Common Pleas,
General Division, Case No. 19 CR 02735.

O’CONNOR, C.J.

{¶ 1} Jose A. Baez, counsel for defendant Dr. William Husel, has filed an affidavit pursuant to R.C. 2701.03 and Article IV, Section 5(C) of the Ohio Constitution seeking to disqualify Judge Michael J. Holbrook from the above-referenced case.

{¶ 2} Mr. Baez alleges that disqualification is necessary to avoid the appearance of partiality due to repeated statements made by Judge Holbrook throughout trial. According to Mr. Baez, Judge Holbrook has made comments that indicate his belief that defendant Husel is guilty as charged of murder. Mr. Baez maintains that these statements cast doubt on the judge’s ability to be neutral and would leave any reasonable and objective observer with serious doubts about his impartiality.

{¶ 3} Judge Holbrook has responded in writing to the affidavit, denying any bias or prejudice against the defendant. The judge avers that Mr. Baez has failed to present any evidence of bias or prejudice and that his disqualification,

particularly at this point in the proceedings, is unwarranted. The judge states that he has adjudicated, and will continue to adjudicate, matters fairly and impartially, and he requests that the affidavit be denied.

{¶ 4} For the reasons explained below, Mr. Baez has failed to establish any basis for ordering the disqualification of Judge Holbrook.

Affiant has not met the heightened standard to disqualify a judge during trial

{¶ 5} It is well settled that “absent extraordinary circumstances, a judge will not be subject to disqualification after having presided over lengthy proceedings in a pending case.” *In re Disqualification of Celebrezze*, 94 Ohio St.3d 1228, 1229, 763 N.E.2d 598 (2001). Moreover, when an affidavit of disqualification is filed after the commencement of trial and after the presentation of evidence has begun, a judge will be disqualified only when the record clearly and unquestionably demonstrates a fixed anticipatory judgment that undermines all confidence of the public in the fairness and integrity of the proceedings. *In re Disqualification of Kate*, 88 Ohio St.3d 1208, 1209, 723 N.E.2d 1098 (1999). The trial in this matter commenced on February 2, 2022, the prosecution and the defense have both rested their cases, and all that remains are closing arguments and jury deliberations. Given Mr. Baez’s assertions against Judge Holbrook and considering Judge Holbrook’s lengthy and significant involvement in the underlying proceedings, Mr. Baez has failed to demonstrate that the judge’s disqualification is necessary, especially at this late stage of the litigation.

Disqualification is not warranted even under a lesser standard

{¶ 6} Even if Mr. Baez were not held to this heightened standard, none of the judge’s comments is grounds for disqualification. Mr. Baez alleges that certain comments that Judge Holbrook made during trial suggest that the judge believes that defendant Husel is guilty of the murder charges he faces. According to Mr. Baez, Judge Holbrook (1) referred to Dr. Husel’s patients as “victims” in the jury’s presence, (2) commented in the jury’s presence that certain matters needed to be

preserved for review on appeal, (3) referred to Dr. Husel's actions as "murder," and (4) referred to Dr. Husel as "the killer." For his part, Judge Holbrook states that his references to the court of appeals were not made for a nefarious purpose and that his use of the terms "victims" and "murder" was "purely innocent" and not reflective of bias, prejudice, or ill will.

{¶ 7} A judge's isolated comments made during or at the end of a lengthy trial are generally insufficient to prove that the judge is biased or prejudiced. A trial judge will often conduct proceedings with an eye toward preserving a complete record for appeal, and nothing here suggests that Judge Holbrook's comments in this regard demonstrate bias or prejudice or give the appearance thereof. Likewise, the judge's use of the terms "victims" and "murder," while unfortunate, does not warrant his disqualification. Judge Holbrook says that these terms were spoken in error, and nothing in the record undermines that assertion or the judge's ability to ensure that the parties receive a fair trial. *See In re Disqualification of Ambrose*, 110 Ohio St.3d 1220, 2005-Ohio-7154, 850 N.E.2d 722, ¶ 5.

{¶ 8} There is, however, the allegation that Judge Holbrook referred to the defendant as "the killer." Judge Holbrook admits that during an in-chambers meeting with counsel, he "sarcastically" referred to the defendant as "The killer, Dr. Husel." The judge maintains that he immediately regretted the comment and advised those present of his regret. Before this court, Judge Holbrook states that he recognizes that his comment was in poor taste and incredibly insensitive, but he assures the court that notwithstanding that comment, his words and conduct do not reflect a manifestation of a preconceived notion of the defendant's guilt or innocence, which, as he notes, are within the jury's purview.

{¶ 9} Judge Holbrook's attempt at humor was ill-advised, and his comment was undignified and improper. The Ohio Code of Judicial Conduct requires that a judge be dignified and courteous to litigants and others whom the judge deals with in an official capacity. Jud.Cond.R. 2.8(B). That said, improper comments alone

do not always reflect judicial bias or preclude a judge from fairly and impartially presiding over a case. See *In re Disqualification of Corrigan*, 105 Ohio St.3d 1243, 2004-Ohio-7354, 826 N.E.2d 302; *In re Disqualification of Tyack*, 150 Ohio St.3d 1255, 2017-Ohio-5719, 80 N.E.3d 500, ¶ 10. Judge Holbrook recognizes that his comment was egregious, and he regrets his choice of words. Both the tone and content of the judge's response to this allegation shows that he is neither hostile toward nor biased against the defendant, and he affirms that he can be fair and impartial. See *In re Disqualification of Martin*, 149 Ohio St.3d 1233, 2016-Ohio-8590, 75 N.E.3d 225, ¶ 6. And Mr. Baez has not proved otherwise.

The judge's alleged daily press briefings

{¶ 10} Mr. Baez alleges that Judge Holbrook should be disqualified because he has been holding daily briefings with the press during the trial and has been quoted regarding pending decisions in the case, as well as his own opinions about the defense's trial strategy. Judge Holbrook denies holding daily meetings with the press, but he admits that he has entertained reporters' questions. The judge, however, maintains that he has been cautious to avoid offering any responses other than those that relate to procedural or logistical matters.

{¶ 11} Jud.Cond.R. 2.10 prohibits judges from making any public statement that might reasonably be expected to affect the outcome or impair the fairness of a pending or impending matter. The rule, however, expressly permits judges to make public statements explaining "court procedures." Jud.Cond.R. 2.10(D). Whether a judge will be disqualified on the basis of public comments to the media ordinarily depends on the nature and content of the complained-of comments. *In re Disqualification of Gilligan*, 145 Ohio St.3d 1209, 2015-Ohio-5663, 47 N.E.3d 860, ¶ 4, citing Flamm, *Judicial Disqualification*, Section 16.10, at 478 (2d Ed.2007). Mr. Baez has submitted several newspaper articles that include statements made by Judge Holbrook about the trial. But Mr. Baez fails to cite any specific comments or explain how those comments prejudiced his client or deprived

him of a fair trial. In any event, none of the comments commits the judge to reach a particular result or rule a particular way at trial. Therefore, this allegation is rejected.

{¶ 12} The affidavit of disqualification is denied. The case may proceed before Judge Holbrook.

Motions to seal the affidavit-of-disqualification case file

{¶ 13} As a final matter, Mr. Baez and Judge Holbrook have filed separate motions to seal “all pleadings” in this disqualification matter. However, neither Mr. Baez nor Judge Holbrook has offered any reason for sealing the documents in this matter. All filings relating to an affidavit of disqualification are public records, and in the absence of any justification from the movants that would warrant sealing the pleadings, the motions to seal are denied.
