MISSOURI COURT OF APPEALS
WESTERN DISTRICT

STATE OF MISSOURI, **Respondent**,
v.
FRANCIS HENRY KEMPKER, **Appellant**.

DOCKET NUMBER WD87593

DATE: September 22, 2026

Appeal From:

Cole County Circuit Court
The Honorable Heather Miller, Judge

Appellate Judges:

Division Two: W. Douglas Thomson, Presiding Judge, Lisa White Hardwick, Judge, and Mark D. Pfeiffer, Judge

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Attorneys:

Christian Lehmberg, Columbia, MO, for Appellant
Kristen Shively Johnson, Jefferson City, MO, for Respondent

MISSOURI APPELLATE COURT OPINION SUMMARY

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FRANCIS HENRY KEMPKER, **Appellant**.

WD87593 Cole County

Before Division Two Judges: W. Douglas Thomson, Presiding Judge, Lisa White Hardwick, Judge, and Mark D. Pfeiffer, Judge

Francis Henry Kempker ("Kempker") appeals from his convictions and sentence entered by the trial court after a jury found Kempker guilty of two counts of rape in the first degree. Kempker raises three points on appeal. First, he argues the trial court abused its discretion in overruling his request for disqualification of the Cole County Prosecutor's Office. Next, Kempker claims the trial court abused its discretion in denying his request to hold an evidentiary hearing to prove the Cole County Prosecutor's Office should be disqualified. Finally, Kempker contends the trial court abused its discretion in excluding the testimony of a lay witness.

AFFIRMED

Division Two holds:

1. In Point I, Kempker argues he established an appearance of impropriety requiring the disqualification of the entire Cole County Prosecuting Attorney's Office ("CCPO") based on an assistant prosecuting attorney's conflict of interest ("APA 1"). APA 1 previously worked at a private law firm which represented Kempker in a 2017 case allegedly related to the present case. APA 1's involvement in the 2017 case was limited to a single appearance in which APA 1 obtained a continuance on Kempker's behalf. APA 1 did not recall this prior, brief appearance, but withdrew from the present case to avoid even the possible appearance of impropriety as soon as it was brought to her attention. APA 1's actions in the present case were limited to completing the initial charging documents and signing a search warrant for the State. Based on these facts, the trial court did not err in refusing to disqualify the entire CCPO. APA 1 did not have a conflict of interest as the record makes clear that she did not acquire any confidential information from Kempker while in private practice (the only alleged conflict presented to the trial court and on appeal). And based on the limited involvement of APA 1 in both cases at issue, we cannot say that a reasonable person with knowledge of same would find an appearance of impropriety and doubt the fairness of Kempker's trial.

2. In Point II, Kempker alleges the trial court erred in denying his request for an evidentiary hearing to prove his allegations that the CCPO should have been disqualified. The trial court did not err because at no point during the trial court proceedings did Kempker request an evidentiary hearing. Kempker only requested the opportunity to present argument and never mentioned a desire to put forth evidence. We will not convict a trial court of error for reasons not presented to it.

3. In Point III, Kempker argues the trial court erred in excluding a lay witness's ("Witness") testimony because the excluded evidence was logically and regally relevant to his defense that he did not rape or confine one of the alleged victims. Witness would have testified that she was familiar with Victim, that she spent time at the location of the rape during the charged period ("the Shop"), and that during this time, Victim was there willingly. The State moved to exclude Witness's testimony, arguing it was cumulative, irrelevant, and would tend to confuse the jury. The trial excluded Witness's testimony. This was not in err as Witness's testimony would have done little to prove or disprove that Kempker raped Victim during the charged period—April 2016. While Witness testified in her offer of proof that she was at the Shop in April 2016, she could not place Victim at the Shop in April 2016. Further, the defense had already presented four witnesses that testified Victim was at the Shop in the spring of 2016 (or April specifically), but they never saw Kempker restrain or assault Victim. Witness's testimony was cumulative and any error in its exclusion was harmless.

Opinion by: W. Douglas Thomson, Judge September 22, 2026

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