Missouri Court of Appeals
Southern District

In Division

STATE OF MISSOURI,

Plaintiff-Respondent,

v.

BOYD EUGENE WILSON,

Defendant-Appellant.

Filed: October 8, 2026

Case Number SD38952

Missouri Court of Appeals
Southern District

APPEAL FROM THE CIRCUIT COURT OF SHANNON COUNTY
Honorable Steven A. Privette

AFFIRMED

Boyd Eugene Wilson's ("Defendant") sole point on appeal contends the circuit court abused its discretion by denying Defendant's post-trial motion that sought the circuit court's recusal for Defendant's sentencing hearing (the "Motion for Recusal"). Defendant argues the circuit court evinced an appearance of impropriety by making certain remarks during Defendant's jury trial about and toward Defendant's trial counsel ("Defense Counsel"). Finding no abuse of discretion, we affirm.

Standard of Review

We review a circuit court's denial of a motion to recuse for abuse of discretion. ***State v. Harper***, 739 S.W.3d 185, 196 (Mo. App. S.D. 2026) (citing ***Anderson v. State***, 402 S.W.3d 86, 92 (Mo. banc 2013)). "The [trial] court abuses its discretion when the ruling is clearly against the logic of the circumstances and is so unreasonable and arbitrary that the ruling shocks the sense of justice and indicates a lack of careful, deliberate consideration." ***State v. Shultz***, 675 S.W.3d 680, 685 (Mo. App. S.D. 2023) (alteration in original) (quoting ***State v. Teter***, 665 S.W.3d 306, 318 (Mo. banc 2023)).

"We presume the trial judge 'acts with honesty and integrity and will not preside over a hearing in which the judge cannot be impartial.'" ***Harper***, 739 S.W.3d at 196 (quoting ***Anderson***, 402 S.W.3d at 92). The party challenging a judge's impartiality bears the burden to overcome that presumption by showing, given the entire record, "a reasonable person[1] would have factual grounds to find an appearance of impropriety and doubt the impartiality of the court." ***Anderson***, 402 S.W.3d at 91. Whether a judge should recuse is generally a "discretionary matter" best left to the judge. ***State v. Owens***, 759 S.W.2d 73, 74-75 (Mo. App. S.D. 1988); *see also* ***State v. Jones***, 979 S.W.2d 171, 178 (Mo. banc 1998) (the judge is in the "best position" to determine whether recusal is necessary).

[1] The terms "disinterested bystander," "objective onlooker," and "reasonable person" are interchangeable. ***Haynes v. State***, 937 S.W.2d 199, 203 (Mo. banc 1996).

Background

Defendant was convicted by a jury of one count of statutory sodomy in the first degree by having deviate sexual intercourse with an individual less than 14 years old (§ 566.062, an unclassified felony) and two counts of child molestation in the third degree (§ 566.069, a class C-felony).[2] The circuit court sentenced Defendant to 10 years' imprisonment on each count, to be served concurrently. Defense Counsel filed the Motion for Recusal after Defendant's jury trial, requesting only that the circuit court recuse for sentencing.[3] Defendant's Motion for Recusal asserted the following as the basis for recusal:

> [Defense Counsel] was contacted by a Juror who expressed concerns that the trial court conducted the trial in a way that demonstrated overt hostility and made disparaging comments directed at defense counsel in the presence of the jury which created an atmosphere of bias that undermined the integrity of the proceedings…. Further, the Juror expressed that the trial court's comments, demeanor, and admonitions to defense counsel threatening to hold defense counsel in contempt in front of the Jury suggested a predetermined conclusion of the Defendant's guilt by the Court, which impacted the Jury's decision-making process and resulted in significant prejudice against the Defendant. The Juror expressed concern that the Defendant did not receive a fair and impartial trial by jury due to the trial court's behavior during trial.

The circuit court took Defendant's Motion for Recusal up at the beginning of

[2] Unless otherwise indicated, all statutory references are to RSMo 2016, including, as applicable, statutory changes effective January 1, 2017, and all rule references are to Missouri Court Rules (2025).

[3] Defendant also filed a "Motion for New Trial," but he does not appeal the circuit court's denial of that motion.

Defendant's sentencing hearing. Defense Counsel called the juror as a witness in support of Defendant's Motion for Recusal, but the State objected on the grounds that the "jury speaks through its verdict[.]" Defense Counsel made an "[o]ffer of [p]roof" of the juror's testimony. After proffering the juror's testimony, Defense Counsel stated that she had "[n]o further evidence on the Motion for Recusal." The circuit court then announced "the proffer is denied. Motion for Recusal is overruled."[4]

The specific remarks that Defendant contends evinced an appearance of impropriety began during *voir dire*, when the following exchanges occurred:

> [Defense Counsel]: At the end of the case, if—if you're selected to be on this jury, and you're sitting in that jury box, and you look at the end of all of the evidence, the State's rested, the defense has rested, and you're about to go deliberate, and you're looking at [Defendant], and you're thinking, well, I wonder if this guy did it. I think he might have. I—I feel like he might have. I speculate that he did. Probably, he did. You know, it—I—I very much believe that he did, but it's not beyond a reasonable doubt. Anyone in here going to vote guilty?
>
> [the State]: Judge, may we approach?
>
> THE COURT: You may.
>
> (Counsel approached the bench, and the following proceedings were had outside the hearing of venire.)

[4] After this ruling, Defense Counsel stated, "in my prayer for relief I asked that the Court recuse on its own, but I would ask that the Court refer this case to a different judge for decision on the Motion for Recusal, but … this Court retaining jurisdiction, but referring that motion to a different judge." The circuit court denied that request and Defendant has not challenged that denial on appeal. However, our Supreme Court has opined in these circumstances, it is "best practice … for a circuit judge to have another judge preside over any hearing in which a motion for that judge's recusal or disqualification is to be decided." ***Anderson***, 402 S.W.3d at 91 n.1.

THE COURT: Yeah, that's a little close.

[the State]: Right there on the line.

THE COURT: That one's a little too close, [Defense Counsel]. You're trying to get them to commit to vote not guilty on—based on a different standard of proof[.]

A few moments later, still during *voir dire*, the following exchanges occurred:

[Defense Counsel]: Anyone in here that would side with [the victim ("Victim")] if there's a doubt?

….

[the State]: Can we approach, real quick?

(The Court indicated.)

(Counsel approached the bench, and the following proceedings were had outside the hearing of venire.)

THE COURT: You know as well as I do that's an improper question. You cannot ask them to commit to who they're going to find to be credible. Don't do that. You're … getting pretty close to contempt and a mistrial when you start that. Don't do it.

[Defense Counsel]: I'm just making sure that these people—

THE COURT: I don't want to argue about it[.]

[Defense Counsel]:—get all the instructions.

THE COURT: You know good and well, you're not to ask, is there anybody who won't vote with this person or that person, period. Don't do it anymore.

The next remarks occurred during Defense Counsel's opening statement:

[Defense Counsel]: [A]nd this is the first time I've heard it throughout this two-year-long case … that [Victim]'s making lunch, when it's always been, they were about to have dinner, but if you take the State at its word in its opening statement ….

[the State requested to approach]

….

(Counsel approached the bench, and the following proceedings were had outside the hearing of the jury.)

….

THE COURT: Don't argue your case…. [O]pening statements are what the evidence is going to be, not whether it wasn't or what it's not, and your comment about this is the first time I've heard that is totally inappropriate. If … a mistrial was declared—if you keep it up, that's what I'm going to do.

[Defense Counsel]: Well, this is the first time that I didn't expect that evidence, and I'm hearing[—]

THE COURT: Lower your voice[.]

[Defense Counsel]:—it for the first time from the State.

THE COURT: Lower your voice. You're emphasizing that deliberately to the jury right now, but I'm not going to tolerate that. I don't care whether it was the first time, the last time, or the hundredth time, it's not an appropriate comment for opening statement, and you know that.…

….

THE COURT: … [T]hat's still an inappropriate statement, and you know that. I understand that you push the boundaries, which is fair, that's what lawyers do, but you crossed the boundary with that one, and don't do it anymore, okay?

[Defense Counsel]: All right. Just for the record, I wasn't raising my voice. We're sitting pretty closely to the jury, and—and I'm trying to[—]

THE COURT: You raised your voice …. and I heard it….

A few moments later, again during Defense Counsel's opening statement, the following exchanges occurred:

[Defense Counsel]: [Defendant] wasn't under arrest, and he voluntarily chose to go[.]

[the State]: Judge, I'm going to object to that…. Could we approach?

(The Court indicated.)

(Counsel approached the bench, and the following proceedings were had outside the hearing of the jury.)

THE COURT: I just warned you about arguing the case, and that's what you're doing. You know better. The next time—this is it.

[Defense Counsel]: All I'm doing is … what I believe the evidence is going to be. The officer is going to testify[—]

THE COURT: No[.]

[Defense Counsel]:[—]to that.

THE COURT: ... [Y]ou can testify on what the evidence is, but you're not doing it in that fashion. You're telling what the evidence doesn't show, and you're arguing the case. [Defense Counsel], I'm not going to keep arguing with you. You know [sic] to make an opening statement. You know how to do it right. This is your last warning. The next time you're back up here, it's a mistrial on your tab.

Next, the following exchanges occurred when Defense Counsel cross-examined Victim:

[Defense Counsel:] So you'll agree with me that, initially, you had alleged at the Child Advocacy Center interview that this had occurred at, approximately, 5 p.m.?

[Victim:] Yes.

[Defense Counsel:] Around dinnertime?

[Victim:] Yes.

[Defense Counsel:] Okay. Not lunchtime?

[Victim:] Yes.

[the State]: Judge, I'm going to object. Opening statements are not evidence. [Defense Counsel]'s trying to characterize that my statement is evidence and that there's a contradiction, so I'm going to[—]

THE COURT: That's sustained[—]

[the State]:—object—

THE COURT:—we had that discussion earlier.

[Defense Counsel]: Well, Judge … the State outlined what it believed its evidence would be, and I'm just establishing what the evidence[—]

THE COURT: It's not appropriate[—]

[Defense Counsel]:[—]in the case is[.]

THE COURT:[—]for you to question him. You know, … I read to the jury that the opening statements were not evidence. You're an attorney. You're aware of that. The objection is sustained. Do not continue to violate this order, understood?

Finally, the following exchange occurred during cross-examination of one of the State's witnesses:

[Defense Counsel:] And so in a situation where a child makes an allegation to Person A, and then later speaks to a different person, Person B, and knows that Person A is there present at the location, can that create a situation that would put a child—make a child feel like she can't change her story, or … admit that she lied or fabricated events?

[the State]: Judge, I'm going to object to that. That calls for speculation.

THE COURT: I think it does.

[Defense Counsel]: Well, I … think the State had asked that she be—

THE COURT: I didn't ask you to argue with me. I said, I think it does, and I'm not going to permit argument in front of the jury.

Discussion

The circuit court did not abuse its discretion by refusing to recuse for Defendant's sentencing hearing. The circuit court's remarks were made during trial in response to Defense Counsel's conduct and did not stem from a personal bias or prejudice nor did

they evince an appearance of impropriety.

"Rule 2–2.11(A) sets the standard for when a judge should recuse in a proceeding." ***Harper***, 739 S.W.3d at 196 (quoting ***Anderson***, 402 S.W.3d at 91). "Rule 2–2.11(A) provides, 'A judge shall recuse himself or herself in any proceeding in which the judge's impartiality might reasonably be questioned[.]'" ***Id.*** (alteration in original) (quoting ***Anderson***, 402 S.W.3d at 91). A "judge's impartiality might reasonably be questioned" when "[t]he judge has a personal bias or prejudice concerning a party or a party's lawyer[.]" Rule 2-2.11(A)(1). "The rule is not limited to actual prejudice" but rather requires a finding of "an appearance of impropriety" sufficient to "doubt the impartiality of the court." ***Anderson***, 402 S.W.3d at 91 (quoting ***State v. Smulls***, 935 S.W.2d 9, 17 (Mo. banc 1996)); *see also* ***State v. Nunley***, 923 S.W.2d 911, 918 (Mo. banc 1996) ("If the record demonstrates a reasonable person would find an appearance of impropriety, the canon compels recusal.").

"[T]he appearance of judicial prejudice does not follow from every negative or hostile comment made by a trial judge against a party." ***State v. Jenkins***, 675 S.W.3d 704, 709 (Mo. App. W.D. 2023); *see also* ***Haynes v. State***, 937 S.W.2d 199, 204 (Mo. banc 1996) (a judge's remarks during trial, even those that are "critical" or "hostile" to a party, do not support a claim of bias and partiality) (citing ***Liteky v. United States***, 510 U.S. 540, 555 (1994)). Instead, a disqualifying prejudice results from an "attitude of personal enmity towards the party or in favor of the adverse party to the other's

detriment." ***Jenkins***, 675 S.W.3d at 709 (quotation omitted). "It is not the mere possession of views regarding the law or the conduct of a party or of his counsel. Prejudice is in the personal sense rather than in the judicial sense." ***Id.*** (quotation omitted); *see also* ***Haynes***, 937 S.W.2d at 202 ("Our cases have held that a disqualifying bias or prejudice must be one emanating from an extrajudicial source and result in an opinion on the merits on some basis other than what the judge learns from participation in the case."). Furthermore, a trial judge does not have to recuse for sentencing—even if "exceedingly ill disposed towards the defendant"—when the judge's opinion of the defendant was "properly and necessarily acquired in the course of the proceeding[.]" ***Haynes***, 937 S.W.2d at 204 (quoting ***Liteky***, 510 U.S. at 550-51).

Here, Defendant raises no concern that the circuit court had a personal bias or prejudice against him or Defense Counsel. Defendant's concern is grounded in the circuit court's remarks during his jury trial.[5] Defendant describes the remarks as a "repeated[] chastise[ment]" of Defense Counsel. The referenced remarks included such

[5] We have considered the entire record on appeal from the perspective of a reasonable person. ***Anderson***, 402 S.W.3d at 91. Some of the circuit court's remarks that Defendant presents on appeal were made outside the presence of jury and were not the basis for his recusal argument to the circuit court. *See* ***id.*** at 92 ("Though generally the trial court's judgment as to recusal is reviewed for an abuse of discretion, in cases in which a trial court may not have considered certain facts relevant to disqualification, an appellate court should determine whether those facts are sufficient to require recusal or, at a minimum, a hearing on the record."); ***Smulls v. State***, 10 S.W.3d 497, 503-04 (Mo. banc 2000) (considering deposition testimony on appeal that was not considered by the circuit court because it was taken after the hearing on a motion to recuse).

instances as Defense Counsel's opening statement when the circuit court stated that Defense Counsel was being "totally inappropriate" during her opening statement and threatened Defense Counsel with declaring a "mistrial on your tab[.]" Other instances also included the circuit court admonishing Defense Counsel to "[l]ower your voice" and disputing with Defense Counsel whether or not she had actually raised her voice. The circuit court also remarked to Defense Counsel that "I didn't ask you to argue with me." Assuming for the sake of argument that these remarks were repeated chastisements that were "critical" of or "hostile" toward Defendant or Defense Counsel, they do not evince an appearance of impropriety because they were made during Defendant's trial based on Defense Counsel's conduct. *See* ***Jenkins***, 675 S.W.3d at 709; ***Haynes***, 937 S.W.2d at 204. The remarks evinced no personal bias or prejudice. *See* ***Jenkins***, 675 S.W.3d at 711 ("[e]xpressions of annoyance that are within the bounds of what imperfect men and women sometimes display do not create bias.") (alteration in original) (citation omitted).

In any event, the circuit court's supposedly "critical" and "hostile" remarks were not solely aimed at Defense Counsel, admonishing both parties that "[i]f the word polygraph pops up during the trial, there will be a mistrial declared, and somebody will be paying some costs and dealing with that." Further, we note the sentence imposed by the circuit court reveals no personal bias or prejudice. The State adamantly requested the circuit court sentence Defendant to *consecutive* sentences. But the circuit court

rejected that request, sentencing Defendant to concurrent 10-year sentences. That sentence was significantly less than what was available to the circuit court. The circuit court could have imposed consecutive sentences, and the maximum penalty for the § 566.062 first-degree statutory sodomy conviction was life imprisonment.

Conclusion

After a thorough review of the record presented by Defendant, we conclude Defendant has not overcome the presumption in favor of judicial impartiality. *See* ***Harper***, 739 S.W.3d at 196. The circuit court did not abuse its discretion in denying Defendant's Motion for Recusal and refusing to recuse for Defendant's sentencing hearing. Defendant's point is denied, and the circuit court's judgment is affirmed.

JOSEPH L. HENSLEY, J. – OPINION AUTHOR

JACK A. L. GOODMAN, J. – CONCURS

JENNIFER R. GROWCOCK, J. – CONCURS