

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

COMMONWEALTH	: No. CR-455-2023
	:
vs.	: Opinion and Order re
	: Motion to Disqualify
CHEMARI MAY TRUAX,	: Contained in Defendant's
Defendant	: Omnibus Pretrial Motion

OPINION AND ORDER

This matter came before the court on July 31, 2023 for a hearing and argument on Defendant's motion to disqualify contained in Count I of Defendant's Omnibus Pretrial Motion. Defendant's motion seeks disqualification of the undersigned because Defendant is challenging the six search warrants issued in this case, five of which were approved by the undersigned.

Defendant contends that the warrants and the affidavits in support of them were not based on probable cause, were overbroad, were used as investigative tools, contained numerous errors, and at least some of the warrants were executed after the expiration date contained on the warrants. Defendant contends that an objective, disinterested observer would have significant doubts whether the undersigned could be fair and impartial in deciding these issues based solely on the fact that the undersigned approved five of the warrants. Defendant relies on Rule 2.11 of the Code of Judicial Conduct.

The Commonwealth counters that the court need not recuse itself in this case if the court believes that it can be fair and impartial. The court has the ability to review its own work and does so on a fairly routine basis. The defense also has the ability to point out any errors or omissions and argue them to the judge, which may cast the allegations in the affidavits of probable cause in a different light.

DISCUSSION

Relying on Rule 2.11 of the Code of Judicial Conduct, Defendant argues that the undersigned must recuse because she approved five of the search warrants at issue in this case.

Rule 2.11 states:

(A) A judge shall disqualify himself or herself in any proceeding in which the judge's impartiality might reasonably be questioned, including but not limited to the following circumstances:

(1) The judge has a personal bias or prejudice concerning a party or a party's lawyer, or personal knowledge of facts that are in dispute in the proceeding.

(2) The judge knows that the judge, the judge's spouse or domestic partner, or a person within the third degree of relationship to either of them, or the spouse or domestic partner of such a person is:

(a) a party to the proceeding, or an officer, director, general partner, managing member, or trustee of a party;

(b) acting as a lawyer in the proceeding;

(c) a person who has more than a de minimis interest that could be substantially affected by the proceeding; or

(d) likely to be a material witness in the proceeding.

(3) The judge knows that he or she, individually or as a fiduciary, or the judge's spouse, domestic partner, parent, or child, or any other member of the judge's family residing in the judge's household, has an economic interest in the subject matter in controversy or is a party to the proceeding.

(4) The judge knows or learns that a party, a party's lawyer, or the law firm of a party's lawyer has made a direct or indirect contribution(s) to the judge's campaign in an amount that would raise a reasonable concern about the fairness or impartiality of the judge's consideration of a case involving the party, the party's lawyer, or the law firm of the party's lawyer. In doing so, the judge should consider the public perception regarding such contributions and their effect on the judge's ability to be fair and impartial. There shall be a rebuttable presumption that recusal or disqualification is not warranted when a contribution or reimbursement for transportation, lodging, hospitality or other expenses is equal to or less than the amount required to be reported as a gift on a judge's Statement of Financial Interest.

(5) The judge, while a judge or a judicial candidate, has made a public statement, other than in a court proceeding, judicial decision, or opinion, that commits the judge to reach a particular result or rule in a particular way in the proceeding or controversy.

(6) The judge:

(a) served as a lawyer in the matter in controversy, or was associated with a lawyer who participated substantially as a lawyer in the matter during such association;

(b) served in governmental employment, and in such capacity participated personally and substantially as a lawyer or public official concerning the proceeding, or has publicly expressed in such capacity an opinion concerning the merits of the particular matter in controversy; or

(c) was a material witness concerning the matter.

(B) A judge shall keep informed about the judge's personal and fiduciary economic interests, and make a reasonable effort to keep informed about the personal economic interests of the judge's spouse or domestic partner and minor children residing in the judge's household.

(C) A judge subject to disqualification under this Rule, other than for bias or prejudice under paragraph (A)(1), may disclose on the record the basis of the judge's disqualification and may ask the parties and their lawyers to consider, outside the presence of the judge and court personnel, whether to waive disqualification. If, following the disclosure, the parties and lawyers agree, without participation by the judge or court personnel, that the judge should not be disqualified, the judge may participate in the proceeding. The agreement shall be incorporated into the record of the proceeding.

Pa.C.J.C. Rule 2.11. None of the specific circumstances listed in paragraph (A) are present here, but the Rule is not limited only to those specific circumstances.

See Pa. C.J.C. Rule 2.11 cmt (“Under this Rule, a judge is disqualified whenever the judge’s impartiality might reasonably be questioned, regardless of whether any of the specific provisions of paragraphs (A)(1) through (6) apply.”).

The standard for determining recusal, as established by the Pennsylvania Supreme Court, is as follows:

It is the burden of the party requesting recusal to produce evidence establishing bias, prejudice or unfairness which raises a substantial doubt as to the jurist's ability to preside impartially. As a general rule, a motion for recusal is initially directed to and decided by the jurist whose impartiality is being challenged. In considering a recusal request, the jurist must first make a conscientious determination of his or her ability to assess the case in an impartial manner, free of personal bias or interest in the outcome. The jurist must then consider whether his or her continued involvement in the case creates an appearance of impropriety and/or would tend to undermine

public confidence in the judiciary. This is a personal and unreviewable decision that only the jurist can make. Where a jurist rules that he or she can hear and dispose of a case fairly and without prejudice, that decision will not be overruled on appeal but for an abuse of discretion. In reviewing a denial of a disqualification motion, we recognize that our judges are honorable, fair and competent.

Commonwealth v. Flor, 998 A.2d 606, 641–42 (Pa.2010), quoting *Commonwealth v. Abu-Jamal*, 720 A.2d 79, 89 (Pa.1998) (internal citations omitted); see also *Commonwealth v. Travaglia*, 541 Pa. 108, 661 A.2d 352, 370 (1995). “The mere fact that the judge has participated in pretrial stages of the proceedings does not establish sufficient grounds for recusal; instead, appellant must demonstrate that the trial judge could not rule impartially.” *Commonwealth v. Puksar*, 740 A.2d 219, 228 n. 10 (Pa.1999). A mere adverse ruling, without more, does not demonstrate the bias required for recusal to be granted. *Commonwealth v. Miller*, 664 A.2d 1310, 1321 (Pa.1995).

After reviewing this matter, the court concludes that it can hear and dispose of the case fairly and without prejudice. The court does not have any bias or prejudice in favor or against either party in this case. The court has no personal knowledge of Defendant or the facts of this case. The court will review the search warrants just as it would if the warrants had been issued by a Magisterial District Judge (MDJ) or another Judge of the Court of Common Pleas. At the time the court approved the warrants, the court only received and reviewed the affidavits submitted by the Commonwealth. At an omnibus hearing, the court will hear evidence and argument from both sides. If the defense makes a persuasive argument grounded in the law of the Commonwealth, the court will have the opportunity to correct any error.

The court does not believe that reviewing warrants that it previously approved will

create an appearance of impropriety or undermine confidence in the judiciary. Judges are routinely tasked with reviewing their own decisions –whether through motions to withdraw guilty pleas, post-sentence motions, motions for reconsideration, or petitions for post-conviction relief, to name just a few instances. *See Commonwealth v. Powell*, Montgomery County 46CR00076212009, 2011 WL 13199113, *15 (Smyth, J., Aug. 10, 2011), *affirmed* 69 A.3d 1302 (Table)(Pa. Super. Mar. 28, 2013), *reargument denied* (Pa. Super. May 16, 2013), *appeal denied* 78 A.3d 1090 (Table)(Pa. Oct. 29, 2013).

Accordingly, the court will deny Defendant’s motion to disqualify the undersigned.

ORDER

AND NOW, this 3rd day of August 2023, the court DENIES Defendant Motion for Disqualify contained in Count I of her Omnibus Pretrial Motion. A hearing and argument on the remainder of Defendant’s Omnibus Pretrial Motion is scheduled for **October 24, 2023 at 1:30 p.m. in Courtroom #1 of the Lycoming County Courthouse.**

By The Court,

Nancy L. Butts, President Judge