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SC Court of Appeals

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Richland County
The Honorable Clifton Newman, Circuit Court Judge
Appellate Case No. 2023-000597

The State,

Respondent,

v.

Martin Dixon,

Appellant.

FINAL BRIEF OF RESPONDENT

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STATEMENT OF ISSUES ON APPEAL

I. Judge Newman properly engaged in a colloquy with Appellant's Co-Defendant to ensure the Co-Defendant, who had mental health and intellectual issues, and her family were aware of the consequences of deciding whether or not to invoke her Fifth Amendment right to remain silent and proceed to trial on her pending charges.

II. Judge Newman's statements to Appellant's Co-Defendant did not indicate a gender bias, or any other bias against Appellant, and Appellant does not contend the sentence Judge Newman imposed was improper because it was based on any alleged bias.

STATEMENT OF THE CASE

The State concurs with Appellant's procedural Statement of the Case except the assertion the arson indictment against Appellant was not called for trial "due to a defect in its language." The State elected not to proceed with the arson charge, and Judge Newman did not rule on the sufficiency of the indictment.

STATEMENT OF FACTS

In 2020, the Richland County Grand Jury indicted Appellant, Martin Dixon, on one count of attempted murder, one count of kidnapping, and one count of arson. The matter was called for a jury trial on April 3, 2023, before the Honorable Clifton B. Newman, Circuit Court Judge.[1]

Prior to selecting a jury, Judge Newman conducted a hearing to determine if Appellant was competent to stand trial. After a lengthy colloquy with Appellant and his counsel, Judge Newman found Appellant was competent. (TT, pp. 8-34; R., pp. 8-34).

During discussions regarding various pre-trial motions, Appellant advised Judge Newman that the Co-Defendant was present under subpoena, the Co-Defendant's attorney had indicated the Co-Defendant "fully intends to invoke her Fifth Amendment right," and the attorney wanted to know if the Co-Defendant, who "is extremely mentally ill," needed to stay for the entire trial, and "if that could be addressed ahead of time." The State indicated the Co-Defendant gave a statement to law enforcement implicating Appellant, the State intended to call her to testify at Appellant's trial, and the State was prepared to immediately set the Co-Defendant's case for trial if she did not testify as anticipated. Judge Newman indicated he was not going to deal with that issue pre-trial. The Co-Defendant was not in the courtroom at the time. (TT, pp. 41-43; R., pp. 41-43).

The Victim, who was intellectually challenged, testified he was friends with Appellant and the Co-Defendant, and in August 2019, the three of them drove from Charleston to Columbia in the Victim's car purportedly to get jobs and find a place to live in Columbia. When they arrived in Columbia, Appellant got a motel room and the Victim drove them around to several places, but they never looked for a place to live. (TT, p. 112; R., p. 112).

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[1] Before trial commenced, Appellant raised an issue regarding the sufficiency of the arson indictment, and the State elected not to proceed on that charge, which was subsequently *nolle prossed.* Judge Newman did not rule on the indictment sufficiency issue. (Trial Transcript [TT], pp. 6-8; Record on Appeal [R.], pp. 6-8).

After a few days, the Victim told Appellant he wanted to return to Charleston, but Appellant said the Victim he could not leave until he paid back $400 Appellant said the Victim owed him. Appellant got angry when the Victim told him he did not have the money, and the Victim called his brother because he "didn't feel safe." The Victim's brother spoke to Appellant on the phone, and after the call ended, Appellant told the Victim that the phone call with his brother "made this area hot now." (TT, pp. 112-120; R., pp. 112-120).

After driving around a while, Appellant drove the Victim's car behind an abandoned building in downtown Columbia and told the Victim to get out of the car. Appellant said no one would hear the Victim scream, and he then hit the Victim above the left eye with a crowbar. After hitting the Victim with the crowbar, Appellant ordered the Victim to get inside the trunk of the car and the Co-Defendant pushed him as he was climbing into the trunk. After the Victim was inside, Appellant broke the release latch inside the trunk and slammed the trunk closed with the Victim inside. (TT, pp. 120-124; R., pp. 120-124).

The Victim heard Appellant and the Co-Defendant talking while they drove the car around, and Appellant said he would slice the Victim's throat if he tried to get out of the trunk. Appellant said he was going to drive the car into the lake, but then said he was going to burn the car up with the Victim in the trunk. The car stopped and the Victim eventually lost consciousness. (TT, pp. 125-128; R., pp. 125-128).

Elmwood Cemetery workers found the car abandoned in the cemetery and called law enforcement and emergency services. There was a charred piece of cloth hanging from the gas tank opening and charred pieces of paper inside the car. (TT, pp. 56-62, 68-70, 209-211; R., pp. 56-62, 68-70, 210-212).

Emergency personnel pried the trunk open to get the Victim out and he was transported to the hospital. After the Victim regained consciousness at the hospital, he gave a statement to law enforcement identifying Appellant and the Co-Defendant as the assailants. (TT, pp. 72-76, 89-92; R., pp. 72-76, 89-92).

Appellant cross-examined the Victim extensively about his statement to law enforcement and his version of events. (TT, pp. 133-172; R., pp. 133-173). On re-direct, the Victim testified the Co-Defendant also told him to get in the trunk and then kicked him while he was getting into the trunk. (TT, p. 181; R., p. 182).

During a morning break, the State asked Judge Newman to have the Co-Defendant, who was not present in the courtroom, invoke her Fifth Amendment right to remain silent on the record if she intended to invoke it. Appellant did not object to the inquiry, but the Co-Defendant's attorney stated he objected because "she is mentally ill, low IQ and I think would struggle with some of the questions." Judge Newman stated he knew how to handle "that kind of person," the Co-Defendant "sounds about the same as everyone," and he instructed the parties to bring the Co-Defendant to the courtroom so he could make the inquiry. (TT, p. 230; R., p. 231).

When the Co-Defendant was before him, Judge Newman asked her where she was from, who was with her, where she currently resided, what was her birthday, how old she was, and whether she had any children and where they lived, where she lived and who was with her in the courtroom. After the Co-Defendant responded to all those questions, Judge Newman asked her about the criminal charges against her and who her attorney was. Judge Newman then told her "the solicitor wanted me to ask you whether or not you plan to testify in this case," and the Co-Defendant stated, "I plead the Fifth. No answer." (TT, pp. 232-236; R., pp. 233-237).

Judge Newman repeated the Co-Defendant's statement, and asked her, "[h]ow did you figure that out?". The Co-Defendant responded, "that's what God want (sic) me to do." Judge Newman than asked the Co-Defendant about the medications she was taking and her mental health history, and stated, "[s]o you plan to plead the Fifth and - - and not testify in this case. You're going to have your own trial; is that right? The Co-Defendant responded "[y]es." (TT, pp. 236-237; R., pp. 237-238).

Judge Newman then asked the Co-Defendant's attorney if he had requested a competency evaluation, and the attorney stated he did and she was found competent in 2020, but he did not "agree with those findings," and wanted to have her evaluated again. When Judge Newman asked if there had been a judicial finding regarding competency, the attorney stated a judge had not made a competency determination because the report was never submitted to the court, and he wanted "to have her privately evaluated" before the report was submitted.[2] (TT, pp. 237-240; R., pp. 238-241).

Judge Newman stated "it sounds like she's gotten better," he asked if the Co-Defendant if she had gotten better or worse, and the Co-Defendant stated "I've got (sic) better." Her attorney agreed the Co-Defendant was better, but stated she has a low IQ and "needs a lot of explaining to understand basic legal concepts." (TT, p. 240; R., p. 241).

Judge Newman inquired about the Co-Defendant's case status, and the solicitor indicated the Co-Defendant gave a recorded statement to law enforcement implicating herself and Appellant, the State had understood the Co-Defendant would be testifying for the State, and if she did not, the State would move to put her case on the trial docket as soon as possible. Judge Newman then

[2] There is no indication in the record to suggest the Co-Defendant's attorney ever submitted her 2020 competency report to Judge Newman. Judge Newman noted his frustration with the lack of availability of this report. (TT, pp. 381-383; R., pp. 382-384).

explained to the Co-Defendant that the charges against her were serious and she could get up to sixty years[3] in prison if she was convicted. He encouraged her and her family members, who were present in the courtroom, to "do some hard thinking," stated he was "just giving [her] something to think about" "because it sounds like you're in a lot of trouble too," and told her and her family to "figure out the right thing to do in consultation with your lawyer." Judge Newman stated he would probably not be the judge if the Co-Defendant went to trial, and it did not matter to him whether she testified against Appellant or not, or whether she had a jury trial or not, but he did not want her to "get the short end of this stick unless she deserves to get it." (TT, pp. 241-252; R., pp. 242-253).

At the beginning of day three of the trial, Appellant moved for a mistrial, alleging Judge Newman was biased and prejudiced based on statements he made during the previous day's colloquy with the Co-Defendant regarding her involvement in the offenses as alleged, the possible sentence she could face if she went to trial, and that he would sentence a man more harshly than a woman with three children. After reviewing the actual transcript of that colloquy, Judge Newman stated Appellant's "spin" on the statements did not exist, and that he told both the Appellant and the Co-Defendant their ultimate sentences would be up to the judge who heard the cases, not the State or the defense counsel. (TT, pp. 359-368; R., pp. 360-369).

After extensive discussion, Judge Newman denied the motion for a mistrial, stating that everything occurred outside the presence of the jury, and he did what he thought was appropriate when questioning the Co-Defendant regarding her decision to testify or not. He further stated:

> I can make my own determination as to her competency and her understanding of everything, including her right to testify or not testify and her understanding of or her trying to get through to her an understanding of what might apply with regard

[3] Appellant interjected and stated the Co-Defendant could get an additional fifteen years on the arson charge pending against her.

to her own case. And I have to speak to people at the level that they're at. And hopefully, I gave them something seriously to consider.

(TT, pp. 359-378; R., pp. 360-379).

Appellant then asked Judge Newman to recuse himself on the ground that if the Co-Defendant testified Appellant would cross-examine her about the effect of Judge Newman's statements the previous day because "it would go to the bias of her testimony," and "her motives for testifying one way or the other." Appellant asserted that if the Co-Defendant denied the statements had any effect, Appellant would have to call Judge Newman as a witness. Judge Newman denied the motion. (TT, pp. 378-379; R., pp. 379-380).

At Appellant's request, Judge Newman then held a hearing regarding the Co-Defendant's competency to testify. Judge Newman stated that he was satisfied she was competent to testify based on his discussion with her the day before, but allowed Appellant to ask the Co-Defendant under oath about whether she understood the difference between the truth and a lie, and if she knew what happened if she did not tell the truth while under oath. The Co-Defendant testified she did understand the difference between the truth and a lie, and that you go to jail if you do not tell the truth under oath. (TT, pp. 379-390; R., pp. 380-391).

Before the jury, the Co-Defendant testified about coming from Charleston to Columbia with the Victim and Appellant, the Victim wanted to go back to Charleston, Appellant hit the Victim on the head with a crowbar behind a building, and she and Appellant forced the Victim to get into the car's trunk. She further testified Appellant drove the car to a graveyard, and tried to light the car on fire with the Victim still inside the trunk. (TT, pp. 392-410; R., pp. 393-411).

Appellant extensively cross-examined the Co-Defendant about her statements to law enforcement regarding the kidnapping and attempted murder of the Victim, using portions of her videotaped statements as impeachment evidence. He also specifically questioned the Co-

Defendant about her original decision not to testify at Appellant's trial, which the Co-Defendant stated was because she wanted Appellant "to go home and be free." Appellant asked why she changed her mind about testifying, and the Co-Defendant stated she changed her mind because God said she had to tell the truth. Appellant then asked if the judge telling her she could get sixty years changed her mind, and the Co-Defendant stated: "I didn't want to testify because the fact that he might kill me." (TT, pp. 411-468; R., pp. 412-469).

The jury convicted Appellant of kidnapping and attempted murder. Judge Newman sentenced him to concurrent terms of twenty-three years' incarceration on each charge, with credit for 1268 days' time served. This appeal followed.

STANDARD OF REVIEW

The decision to grant or deny a mistrial is within the sound discretion of the trial court, and the trial court's decision will not be overturned on appeal absent an abuse of discretion resulting in prejudice to the defendant. Granting a mistrial is a serious and extreme measure which should only be taken when the prejudice can be removed no other way. State v. Makins, 433 S.C. 494, 860 S.E.2d 666, 670 (2021) (internal citations omitted).

Decisions regarding recusal rest in the sound discretion of the circuit court judge. Ness v. Eckerd Corp., 350 S.C. 399, 404, 566 S.E.2d 193, 196 (Ct. App. 2002); *see* State v. Howard, 384 S.C. 212, 218, 682 S.E.2d 42, 45 (Ct. App. 2009) (a circuit court judge should exercise sound discretion in determining whether the judge's partiality might reasonably be questioned under the circumstances involved). In reviewing a circuit court judge's denial of recusal, an appellate court will not reverse the judge's failure to recuse absent evidence of judicial bias or prejudice. State v. Jackson, 353 S.C. 625, 627, 578 S.E.2d 744, 745 (Ct. App. 2003); *see* Simpson v. Simpson, 377 S.C. 519, 522, 660 S.E.2d 274, 276 (Ct. App. 2008) ("Under South Carolina law, if there is no evidence of judicial prejudice, a judge's failure to disqualify [herself] will not be reversed on appeal." [citation and internal quotations omitted]).[4]

[4] Appellant contends the case should be reviewed *de novo*, citing Patel v. Patel, 359 S.C. 515, 599 S.E.2d 114 (2004). In Patel, the Supreme Court expressly **declined** to adopt a *de novo* standard of review for allegations of judicial bias or prejudice, and Appellant cites no subsequent case adopting the *de novo* standard of review on such allegations. Notably, Patel was a family court case with a broad overall standard of review allowing the appellate court to find facts based on its own view of the evidence. *Id.* at 118 ("When a family court order is appealed, we have jurisdiction to find facts based on our own view of the preponderance of the evidence.").

ARGUMENT

I. Judge Newman properly engaged in a colloquy with Appellant's Co-Defendant to ensure the Co-Defendant, who had mental health and intellectual issues, and her family were aware of the consequences of deciding whether or not to invoke her Fifth Amendment right to remain silent and proceed to trial on her pending charges.

Appellant contends Judge Newman improperly advocated for the prosecution by placing "unusual pressure" on Appellant's Co-Defendant to testify for the State. Contrary to Appellant's characterization of Judge Newman's statements to the Co-Defendant and her family, when that entire colloquy is considered in context there is no evidence of judicial prejudice, undue influence, or advocating for one party.[5] Rather, Judge Newman was properly trying to ensure the Co-Defendant, who had mental health and intellectual issues, understood the circumstances and consequences when deciding whether to testify in Appellant's on-going trial or go to trial in her own case.[6]

"[I]t is the duty of the court to make such examination [regarding the competency of a person offered as a witness] as will satisfy it to the competency or incompetency of the person to testify...." State v. Pitts, 256 S.C. 420, 430, 182 S.E.2d 738, 743 (1971). The trial judge has the duty to make an independent judicial determination of witness competency, and in making that determination the judge must rely on his personal observation of the [witness'] demeanor and responses to inquiry on *voir dire* examination. S.C. Dep't of Soc. Servs. v. Doe, 292 S.C. 211, 355 S.E.2d 543, 547–48 (Ct. App. 1987). There can be no informed exercise of judicial discretion if the judge merely accepts the representation of counsel that a witness is not competent, without

[5] Co-Defendant's family members who were in the courtroom included her aunt, who was also identified as Co-Defendant's primary caregiver, uncle, and nephew.

[6] Notably, Appellant requested the inquiry regarding the Co-Defendant's competency to testify. (TT, pp. 41-43; R., pp. 41-43).

personally examining and observing the witness on *voir dire*. *Id.*; *see also* State v. Camele, 293 S.C. 302, 360 S.E.2d 307, 308 (1987) ("Surely, statements from advocates for either party in a judicial proceeding evaluating a witness' competency cannot substitute for a trial judge's personal observations of a person's capacity to be a competent witness.").

Judge Newman had before him a criminal defendant who, according to her own attorney, had mental issues and a "low IQ," and "would struggle with some of the questions." (TT, p. 230; R., p. 231). In light of that information, Judge Newman ultimately had to determine whether the Co-Defendant was competent to understand the legal process enough to invoke her Fifth Amendment right to remain silent, as well as the potential consequences of doing so. He thoroughly examined the competency of the Co-Defendant, asking her where she was from, who was with her, where she currently resided, what was her birthday, how old she was, whether she had any children and where they lived, and who she lived with. After she responded to those questions appropriately, Judge Newman asked the Co-Defendant about the criminal charges she was facing, who her attorney was, and whether she would be testifying at trial.[7]

Appellant contends that in the course of this examination, Judge Newman acted as an "advocate" on behalf of the Co-Defendant in an elaborate scheme to "convince [the Co-Defendant] to change her mind and help the prosecution." All the quotes Appellant uses to evidence Judge Newman's "advocacy" occurred after it became clear to Judge Newman that the Co-Defendant's attorney had not fully discussed the matter of testifying with her, and they are taken out of the context in which he made them. Rather than advocate for the Co-Defendant to testify, Judge Newman stressed the importance of the Co-Defendant and her family talking with her attorney

[7] The jury was not present during any part of Judge Newman's colloquy with the Co-Defendant.

about what she wanted to do. Judge Newman expressly stated "[I]t doesn't matter to me whether this lady testifies or not. It doesn't matter to me whether she has a jury trial or not. But my interest is that...I don't want this lady here...to get the short end of this stick unless she deserves it." (TT, pp. 243-252; R., pp. 244-253).

The next day, Appellant moved for a mistrial and recusal based on allegations of judicial bias and prejudice.[8] After denying Appellant's motions, Judge Newman stated he was satisfied the Co-Defendant was competent to testify based on his examination of her the previous day, but he allowed Appellant to question the Co-Defendant under oath about whether she understood the difference between the truth and a lie, and if she understood the consequences of lying under oath. The Co-Defendant testified she did understand the difference between a truth and a lie, and you go to jail if you lie under oath. (TT, pp. 384-388; R., pp. 385-389).

While under oath and in front of the jury, the Co-Defendant testified about what happened in August 2019, and her testimony was essentially consistent with the Victim's testimony about Appellant's actions. Then Appellant thoroughly cross-examined the Co-Defendant, using the difference between her trial testimony and her videotaped statement to law enforcement after her arrest to impeach her credibility.[9] Appellant also established that the Co-Defendant originally did not want to testify against him, and when he asked her why she changed her mind about testifying, the Co-Defendant stated she changed her mind because God said she had to tell the truth. Appellant subsequently asked the Co-Defendant if she changed her mind about testifying because

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[8] Appellant originally moved for a mistrial but failed to discuss the mistrial issue or the standard of review on appeal.

[9] While the Co-Defendant did testify she "watched" as Appellant beat the Victim and put him in the car, Appellant established the Co-Defendant admitted her involvement in her statement to law enforcement. The extent of the Co-Defendant's culpability is irrelevant to this case. Further, to assume Judge Newman would have imposed a lesser sentence on the Co-Defendant is pure speculation especially, as Judge Newman stated, he was unlikely to preside over her trial.

the judge told her she could get sixty years, and the Co-Defendant stated: "I didn't want to testify because the fact that he might kill me." (TT, pp. 392-432; R., pp. 393-433).

As he did at trial, Appellant again attempts to put a "spin" on Judge Newman's statements that, as Judge Newman found, "doesn't exist." (TT, p. 368; R., p. 369). It appears from the record that the Co-Defendant's attorney, who had been appointed counsel for at least three years, had not consulted with her before Appellant's case was called for trial. Judge Newman was understandably, and justifiably, frustrated by that circumstance when he was being asked to make important rulings regarding the Co-Defendant, and he had to get enough information to make those rulings.

Further, other than Appellant's self-serving testimony, the evidence of Appellant's participating in the kidnapping and attempted murder of the Victim was overwhelming. Appellant's incredibly self-serving testimony was simply unbelievable as evidenced by his reliance on a mystery "friend" he called "T" as an alibi. However, appellant could not provide any contact information for this mystery friend. Appellant's contention that "T" drove two and a half hours from Hickory, North Carolina, to Columbia and two and a half hours back, all in the middle of the night, is further evidence of the absurdity of Appellant's testimony. (TT, pp. 541-552; R., pp. 542-553).

Other than conclusory assertions, there is nothing in the record, or in the argument presented by Appellant, establishing that Judge Newman advocated for or pressured the Co-Defendant to testify for the State, or that Appellant was unfairly prejudiced by anything Judge Newman said during his colloquy with the Co-Defendant. Indeed, the Co-Defendant expressly refuted any allegation Judge Newman caused her to change her mind about testifying. Rather, given the circumstances, Judge Newman acted well within his discretion to converse with the Co-

Defendant, determined her ability to make an informed decision regarding whether or not to invoke her right to remain silent and go to trial on the charges pending against her, and then assess her competency to testify. Accordingly, there was no error and Appellant's convictions should be affirmed.

II. Judge Newman's statements to Appellant's Co-Defendant did not indicate a gender bias, or any other bias against Appellant, and Appellant does not contend the sentence Judge Newman imposed was improper because it was based on any alleged bias.

Appellant asserts Judge Newman erred in denying Appellant's recusal motion, citing Judge Newman's statement to the Co-Defendant that he would sentence a man to prison faster than a woman with three children indicated "an admitted bias in favor of a co-defendant charged with the same offenses based solely upon gender." Appellant contends Judge Newman's statement violated Appellant's due process rights by "explicitly" telling Appellant he would face a longer sentence based solely on his gender. Appellant's argument fails when Judge Newman's statement is considered within the situation and context of what Judge Newman was addressing at time, and the absence of any alleged bias in the sentence Judge Newman imposed after the jury convicted Appellant.

A judge should disqualify himself in a proceeding when his impartiality might reasonably be questioned, including instances where he has a personal bias or prejudice against a party, and the judge must exercise sound judicial discretion in determining whether his impartiality might reasonably be questioned. *See* Canon 3(D) of the Code of Judicial Conduct, Rule 501, SCACR; Koon v. Fares, 379 S.C. 150, 666 S.E.2d 230, 234 (2008). A party seeking disqualification must do more than simply allege the judge's bias, but must show some evidence of bias or prejudice to warrant disqualification, without which the judge's failure to disqualify himself will not be reversed on appeal. Davis v. Parkview Apartments, 409 S.C. 266, 762 S.E.2d 535, 545 (2014) (appellate courts give great weight to the trial judge's assurance of his own impartiality, and it is the movant's responsibility to provide some evidence of the existence of the judge's impartiality); Koon, at 234; State v. Cheatham, 349 S.C. 101, 561 S.E.2d 618, 623–24 (Ct. App. 2002) (same).

Appellant contends State v. Shaw, 276 S.C. 190, 277 S.E.2d 140 (1981) is "particularly instructive" when contrasted with this case. Shaw is instructive to the extent it held that the "fair meaning of any remark must be interpreted in the light of the context in which it is uttered in determining whether the remarks show personal bias or prejudice on the part of the judge" to warrant disqualification. Appellant quotes this part of the Shaw opinion, then ignores the situation before Judge Newman and mischaracterizes the totality and context of his statement by using language such as Judge Newman "acknowledged his heated tone" and "emphasized his opinion."[10]

Appellant attempts to bolster his argument by references to statements during the motion hearing that are completely unrelated to whether there was a reasonable basis to question Judge Newman's impartiality toward Appellant. Rather, the cited statements occurred during Judge Newman's colloquy with the Co-Defendant and had little to do with Appellant. As to the statement related to Judge Newman's view of sentencing between a man and a woman with three children, Judge Newman stated during the mistrial motion hearing that Appellant's "spin" regarding his statements to the Co-Defendant "doesn't exist." He also noted that he made it clear to both Appellant and the Co-Defendant that the sentence was up to the presiding judge, and he was telling the Co-Defendant "she needs to seriously consider her own interests with regard to this case." (TT, pp. 367-376; R., pp. 368-377).

Further, Appellant does not allege Judge Newman made any improper evidentiary rulings during the trial that indicated a bias against Appellant. More significantly, Appellant does not

[10]Appellant continues to mischaracterize Judge Newman's discussion with the Co-Defendant as "pressuring" her to testify for the State. As discussed above, Judge Newman neither advocated in favor of the Co-Defendant testifying nor pressured her to do so, and the Co-Defendant expressly stated his statements to her did not cause her to change her mind about testifying. Judge Newman simply encouraged her and her family to seriously consider what was in the Co-Defendant's best interest after consulting with the Co-Defendant's attorney. (TT, pp. 244-248; R., pp. 245-249).

allege the sentences Judge Newman imposed evidenced bias against Appellant. The sentences imposed – twenty-three years' incarceration on each count to be served concurrently – were less than the thirty years he could have imposed on each count, and Judge Newman could have ordered that the sentences be served consecutively.

In short, Appellant merely makes a conclusory allegation of gender bias based on one statement made to the Co-Defendant, but Appellant presented no evidence Judge Newman had any bias, gender or otherwise, against Appellant. Indeed, the record belies Appellant's allegation of gender bias. Accordingly, there was no error and Appellant's convictions should be affirmed.

CONCLUSION

For the foregoing reasons, the State respectfully submits Appellant's convictions and sentences should be affirmed.

Respectfully submitted,

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PROOF OF SERVICE

I, Grace Sommer, certify I served the Final Brief of Respondent on Appellant via email at the email reflected for Appellant's counsel of record in the AIS system:

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I further certify that all parties required by Rule to be served have been served.

This 21st day of October, 2024

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