STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	FIFTH JUDICIAL CIRCUIT
COUNTY OF RICHLAND	)	
	)	
City of Columbia,	)	C/A no. 2019-CP-40-01374
	)	
v.	)	
	)	**Order affirming the magistrate's denial**
Marie-Thérèse Assa'd-Faltas,	)	**of appellant's motion to recuse himself**
	)	**and denial of her motion to reopen**
Defendant.	)	

THIS MATTER came before the circuit court on appeal from the Richland County Magistrates Court. A hearing was conducted on January 28, 2022 via WebEx. Appearing for the City of Columbia was Mr. Marshall James. Appellant was present, audio only, and represented by Mr. Dan Addison. The parties consented to conducting the hearing via WebEx.

At the beginning of the hearing, appellant made a Motion to Relieve Counsel. This Motion was denied pursuant to our Supreme Court's September 27, 2017 Order limiting appellant's ability to appear *pro se* in appellate matters in the courts of this state.[1] Appellant's request for leave to file an interlocutory appeal was denied pursuant to S.C. Code Ann. § 14-3-330 and Rule 72, SCRCP.

I. Procedural History

A. Underlying simple assault case.

The underlying case in this matter began on September 11, 2009, when appellant was issued City of Columbia courtesy summons L066971 for simple assault at her apartment complex on Byron Road in Richland County. Appellant was found guilty of simple assault at a bench trial held before the honorable Carl Solomon of the City of Columbia Municipal Court on

[1] "Respondent's ability to proceed *pro se* shall end with the service and filing of the notice of appeal, and she shall be represented by counsel in the appeal (including any subsequent appeal to a higher court and any discretionary review under Rule 242 of the South Carolina Appellate Court Rules)."

April 25, 2013. Appellant appealed to the Circuit Court, civil action number 2013-CP-40-3522. The Hon. Alison Renee Lee affirmed the municipal court in an order dated April 17, 2015. Appellant then appealed Judge Lee's order to the Supreme Court of South Carolina, appellate case number 2015-00941. Our Supreme Court affirmed the circuit court in a published opinion, City of Columbia v. Assa'ad-Faltas, 420 S.C. 28, 800 S.E.2d 782 (2017) (reh'g denied August 17, 2017) (cert. denied October 1, 2018).

B. Current Case

Following appellant's April 25, 2013 trial in city court, appellant made a timely Motion for a New Trial. This hearing was delayed, however, pending appeal. The Hon. Philip Newsom of the Richland County Magistrates Court held a hearing on appellant's motion on February 4, 2019.[2]

Appellant appeared *pro se*. The City of Columbia was represented by Jessica Magnum. Appellant raised three matters: 1) a motion to recuse the trial judge; 2) a motion to transfer the case to the circuit court; and 3) motion for a new trial based on allegations of after-discovered evidence and prosecutorial misconduct. In support of her motion for a new trial, appellant called four witnesses, including Teresa Knox, city attorney for the City of Columbia; Dinah Gail Steele, the victim in the simple assault case and appellant's former landlord; Charlene Crouch, a witness to the simple assault who testified at appellant's original trial; and appellant herself. All three motions were denied, and a written order denying appellant's motion to reconsider the rulings was issued February 27, 2019.

[2] The trial of this matter was held in city court, but due to conflicts appellant has with all of the city judges, this hearing was held in magistrate's court.

Appellant filed a notice of appeal on March 8, 2019. On December 12, 2019, an order was issued by the circuit court, The Hon. Courtney Clyburn Pope presiding, ordering that the magistrate issue a return. The magistrate filed his return on June 23, 2021.

II. Law

Circuit judges may hear appeals from the magistrates' court. S.C. Code Ann. § 14-5-340 (1976). An appeal from magistrate's court is to the circuit court of the county in which the judgment is rendered. S.C. Code Ann. § 18-7-10. A circuit court's jurisdiction over a magistrate court's judgment is appellant in nature. *DeWitt v. S.C. Dep't of Highways and Pub. Transp.*, 274 S.C. 184, 262 S.E.2d 28 (1980).

The circuit court may affirm or reverse, in whole or in part, the judgment of the magistrate court, as to any of the parties and for errors of law or fact. S.C. Code Ann. § 18-7-170; Parks v. Characters Night Club, 345 S.C. 484, 548 S.E.2d 605 (Ct. App. 2001). However, the circuit court cannot consider questions that have not been presented to the magistrate. Indigo Assocs. v. Ryan Inv. Co., 314 S.C. 519, 431 S.E.2d 271 (Ct. App. 1993). Likewise, the parties to an appeal from the magistrate's court are restricted to the arguments raised in the magistrate's-court. *Id.*

If the appealed issue is one at law, the circuit court must render judgment according to the law of the case. S.C. Code Ann. § 18-7-190. Generally, where the testimony is sufficient to sustain the magistrate's judgment, and no facts show the affirmance was influenced by an error of law, the appellate court will presume the affirmance by the circuit court was made upon the merits. Bowers v. Thomas, 373 S.C. 240, 644 S.E.2d 751 (Ct. App. 2007); Burns v. Wannamaker, 281 S.C. 352, 315 S.E.2d 179 (Ct. App. 1984).

Based upon the argument of counsel at the January 28, 2022 hearing, and upon review of the magistrate's return, I affirm the magistrate court's rulings denying appellant's motion to recuse and denying her motion to reopen the trial.

III. Recusal

Appellant moved for Judge Newsom to recuse himself. She argued it would be impossible for him to give her a fair hearing as he was under investigation by the Office of Disciplinary Counsel based on a complaint she filed against him. (Tr. p. 2 lns. 6-8, 21-22). She argued that Judge Newsom had the appearance of partiality and was presumptively vindictive towards her. (Tr. pp. 2-3, lns. 24-2). She also claimed that Judge Newsom ordered her to be "stripped naked" at a prior hearing. (Tr. p. 4 ln. 10). Judge Newsom denied appellant's motion, stating that he had conferred with the office of disciplinary counsel and that they told him that so long as he could give appellant a fair trial he could preside over the hearing. (Tr. p. 3 lns 12-15).

Throughout the three-hour hearing, Judge Newsom allowed appellant to take breaks as necessary to catch her breath. (Tr. p. 11 lns 22-24, p. 12 lns 8-9, 17-21; p. 22 ln 3; p. 25, 22-23; p. 28, lns 5-6; p. 37 lns 12-13; p. 47 lns 11-12; p. 66 lns 16-17; p. 73 lns 13-15; The court: "and just for the record I've given you breaks every time that you've asked." Dr. Faltas "And I thank you for it." p. 37 lns 15-17). He told appellant he would allow her to go to her car to retrieve documents. (Tr. p. 16 ln. 12). Judge Newsom did cut appellant off multiple times, and said he would not allow her to go on a "fishing expedition." (Tr. p. 2 lns 4-7, p. 53 ln. 23, p. 57 ln. 23). He allowed her to put her concerns on the record when he ruled against her and gave her great leeway both in advocating *pro se* and testifying. (See, e.g., tr. pp. 61-62 and 68-70). Judge

Newsom characterized appellant's examination of Ms. Knox as harassing (tr. p. 57 ln. 21) and also admonished her not to interrupt him (tr. p. 6 lns. 23-24).

A judge should disqualify himself in a proceeding in which his impartiality might reasonably be questioned. Canon 3(E)(1) of the Code of Judicial Conduct, Rule 501, SCACR. It is not enough for a party to allege bias; a party seeking disqualification of a judge must show some evidence of bias or prejudice. Lyvers v. Lyvers, 280 S.C. 361, 312 S.E.2d 590 (Ct. App. 1984). To compel recusal, the alleged bias of the judge must be personal, as distinguished from judicial, in nature. Christensen v. Mikell, 324 S.C. 70, 74, 476 S.E.2d 692, 694 (1996). When the moving party has failed to demonstrate some evidence of judicial bias or prejudice, an appellate court will not reverse a judge's decision not to recuse. Davis v. Parkview Apartments, 409 S.C. 266, 284, 762 S.E.2d 535, 545 (2014). If there is no evidence of judicial prejudice, a judge's failure to disqualify himself will be affirmed. Ellis v. Procter & Gamble Dist. Co., 315 S.C. 283, 433 S.E.2d 856 (1993).

This court finds that appellant has failed to demonstrate evidence of judicial prejudice, and therefore, affirms the magistrate's decision not to recuse himself. Contrary to appellant's argument before this court that the transcript is full of examples of personal bias against her, this court finds that the magistrate judge showed no bias and was, in fact, professional throughout the hearing. He allowed appellant's hearing to go on for three hours, allowed her to call four witnesses (including herself) and made sure all of her concerns were put on the record. He made sure appellant had time to fully develop her arguments, patiently explained his reasons for making decisions, and was detailed in his ruling. He accommodated her shortness of breath and gave her leave to retrieve documents from her car.

While appellant may not have liked everything that the magistrate did during the hearing, there was no personal bias in his actions. Instances where the magistrate cut appellant off, prevented her from going on fishing expeditions, and admonished her for harassing witnesses are part of that magistrate's job of keeping order in his courtroom. Even if these actions did show bias, such bias was not personal in nature. See Christensen, supra. Although the length of time it took the magistrate to produce a return is concerning, this delay occurred after the hearing and cannot be a basis for showing bias at the hearing. Even if it were, appellant has not demonstrated that any bias in this delay is personal rather than judicial in nature. See Id.

IV. Motion for a new trial based on Rule 5/Brady and after-discovered evidence

To support her motion for a new trial, appellant argued that the City of Columbia withheld evidence from her in violation of Rule 5, SCRCP and Brady v. Maryland, 373 U.S. 83 (1963,) and that she had after-discovered evidence.

A. Rule 5/Brady argument regarding evidence the city failed to produce

Appellant questioned Teresa Knox, City Attorney for the City of Columbia, to support her claims of a Rule 5/Brady violation. Appellant asked Ms. Knox who in her office is responsible for turning over discovery in a criminal case prosecuted by the city; who becomes custodian over records when a prosecutor leaves the city attorney's office; and whether Ms. Knox's office ever had the transcript for a hearing that took place on November 17th, 2009. (Tr. p. 55 ln. 5 – 56 ln. 22). Ms. Knox testified that she had no direct knowledge of any evidence in applicant's file. (Tr. p. 56 lns. 23-24). Ms. Knox also testified that the city's chief prosecutor was present, and that "She would be your best person to answer any questions about the evidence in your file." (Tr. p. 56 lns. 24-25). Applicant never called the city's chief prosecutor.

Appellant also testified herself regarding evidence the city failed to turn over. Appellant testified that the city had failed to turn over a document which stated that the victim in her assault case "has no psychological effects and no need for a doctor." (Tr. p. 124 lns. 9-10). When the court asked whether that issue was raised at trial and if appellant saw that document before the trial was over, appellant replied, "Remember I was not allowed—I tried to raise it but Mr. Lupton cut me off." (Tr. p. 124 lns. 16-17).

The magistrate denied appellant's motion to reopen based upon her Rule 5/Brady argument. Judge Newsom stated that, although he had concerns that not everything that was discoverable was given to appellant before trial, he did not have proof that the alleged document existed or not, and that appellant failed to meet her burden of proof. (Tr. p. 133 lns. 4-8). The judge also addressed Mr. Lupton and the records he allegedly failed to get at trial, saying "If he didn't get records ... he could have made that motion at that time. Ther's (sic) a different forum. I understand there's a P.C.R. filed. That can be heard at that time." (Tr. p. 133 lns. 11-14).

B. After-Discovered Evidence

Appellant alleged she had four pieces of after-discovered evidence that support her motion to reopen: 1) Dinah Gail Steele's use of prescription drugs for anxiety arising from the assault; 2) Charlene Crouch's criminal record; 3) A statement by Charles White promising favorable testimony in return for dropping a subpoena; and, 4) Testimony of Teresa Ingraham.

i. Dinah Gail Steele's prescription drug use.

To support the argument that evidence of Steele's prescription drug use was after-discovered, appellant testified that "in the middle of the trial my false accuser masquerading as my victim says that she has been on medication since January 25 and she used the word still so

she was on medication for three and a half [years]." (Tr. p. 9 lns. 22-24). Appellant continued, saying "Either she was on medication that day and that would also have affected her competence to testify or she wasn't and she lied." (Tr. p. 10 lns. 15-17). Appellant also stated she wanted Steele's medical records (tr. p. 10 lns. 18-19, 24), but the magistrate said he did not have the power to compel those records (tr. p. 11 lns. 1-3). In the course of appellant's argument, the court asked appellant whether she knew what Steele's medicine was. Appellant replied, "I don't because I wasn't allowed to control the defense and the incompetent Lupton did not ask." (Tr. p. 51 lns. 17-19). The magistrate noted that Dr. Faltas was allowed to conduct cross-examinations at her own trial, and that the issue of Steele's medication was addressed in a previous circuit court order. (Tr. p. 64 ln. 25-p. 65 ln. 7).

Steele was present and called to the stand. Appellant asked her a number of questions that the magistrate court ruled irrelevant because they were not tailored to the time frame of when Steele started taking medication in relation to the assault and the trial (Tr. pp. 78-87).

ii. Charlene Crouch's criminal record

Appellant called Charlene Crouch to testify. Crouch testified that she remembered being arrested for drunkenness in April, 2012, and pleading guilty to the same in May, 2012. (Tr. p. 92 lns. 8-17). She also testified that she was trespassed from the Byron Road property by tenant Charles White, but that he called and lifted the trespass notice after only one day. (Tr. p. 92 lns 21-25). Crouch's testimony involved questions by appellant about her drunkenness charge and an assault, second charge. (Tr. pp. 97-102). Appellant also questioned Crouch over whether it was her or some other person who called the police at the time of the assault (tr. p. 107 lns. 10-22) and whether she had ever sold White a car (tr. p. 108 ln. 12).

iii. Teresa Ingram

Teresa Ingram was subpoenaed but did not appear at the hearing. (Tr. p. 27 lns. 21-23). Appellant argued that Ingram was paid in the form of free rent to testify falsely against her at her 2010 harassment trial in circuit court. (Tr. p. 28 lns 2-3). Ingram did not testify at the 2013 simple assault trial, the underlying case in this matter, although she was listed on the prosecutions' witness list (Tr. p. 31 lns. 23-24; p. 33, lns. 8-24). Appellant alleged that if Ingram were present at the hearing and told the truth, she would testify that Steele bribed her and other witnesses to testify against appellant. (Tr. p. 32 lns. 23-25).

iv. Charles White

Charles White was not subpoenaed and did not appear at the hearing. (Tr. p. 22 lns. 10-11). Appellant argued that White called her during the appeal of her simple assault conviction and told her that he would testify he was paying Crouch for sex if she lifted the subpoena against him. (Tr. p. 19 lns. 16-20). Appellant also stated she had a letter from 2009 from Charles White. (Tr. p. 19 ln. 25- p. 20 ln 8). Appellant argued that if Charles White were to testify truthfully, it would reveal that Crouch was motivated to lie at the simple assault trial so that Steele would allow her back onto the Byron Road property and Crouch could continue rendering services to White. (Tr. p. 21 lns. 5-9, p. 22 lns. 1-17).

A motion for a new trial based on after-discovered evidence is addressed to the sound discretion of the trial judge. State v. Irvin, 270 S.C. 539, 545, 243 S.E.2d 195, 197–98 (1978). The granting of a new trial because of after-discovered evidence is not favored, and this Court will sustain the lower court's denial of such a motion unless there appears to be an abuse of discretion. Id. In order to obtain a new trial based on after-discovered evidence the movant must show that the evidence 1) is such as would probably change the result if a new trial is had; 2) has

been discovered since the trial; 3) could not by the exercise of due diligence have been discovered before trial; 4) is material to the issue; and 5) is not merely cumulative or impeaching. Id.

This court affirms magistrate's ruling denying appellant's motion to reopen. As to appellant's allegations of prosecutorial conduct and Rule 5/Brady violations, the magistrate court found that the records that were allegedly withheld could have been discovered before trial and thus failed to meet one of the elements required in order to grant a motion for a new trial. The magistrate stated that if appellant's attorney failed to request or act diligently in acquiring certain documents, then those matters could be dealt with in the pending P.C.R. action. (Tr. p. 133 lns. 10-13). As to the testimony of Dinah Steele and Charlene Crouch and appellant's testimony as to what Teresa Ingram and Charles White would say if they appeared, the magistrate found that all of that evidence "would be merely impeaching rather than a direct on the fact lie." (Tr. p. 135 lns. 9-12). Because the standard to reopen requires that after-discovered evidence be more than impeaching, the magistrate did not err in denying appellant's motion to reopen based on the testimony of Steele and Crouch or the evidence presented regarding Ingram, and White.

V. Conclusion

I find that the appellant failed to demonstrate bias on the part of the magistrate, and therefore affirm Judge Newsom's denial of appellant's request that he recuse himself. Additionally, I find that the magistrate was correct in denying appellant's motion to reopen, as the evidence appellant presented was either not after discovered or was merely impeaching. The magistrate court is AFFIRMED.

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Richland Common Pleas

Case Caption: City Of Columbia , defendant, et al VS Marie Assaad Faltas

Case Number: 2019CP4001374

Type: Order/Other

IT IS SO ORDERED

s/D. Craig Brown (2160)