STATE OF MICHIGAN

COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN, Plaintiff-Appellee,	UNPUBLISHED May 8, 2007
v	No. 268339 Wayne Circuit Court
MARSHALL WRIGHT, Defendant-Appellant.	LC No. 05-006372-01

Before: Talbot, P.J., and Donofrio and Servitto, JJ.

PER CURIAM.

Defendant appeals as of right his jury trial conviction for accosting a minor, MCL 750.145a. Because MCL 750.145a is not unconstitutionally vague, there was sufficient evidence to support defendant's conviction, defendant was not denied his right to a fair trial, error did not occur during voir dire, and the trial court was not biased against defendant, we affirm.

I. Underlying Facts

Defendant, an elementary school teacher, was convicted after engaging in inappropriate correspondence with the ten-year-old victim, who was a student in defendant's fourth-grade science class. The victim indicated that defendant wrote her three or four notes. Three of the notes were admitted as exhibits at trial. Of the three notes, defendant had retained two, and the victim kept the last one, which she ultimately showed to Karen Benjamin, her aunt and guardian.

The victim testified that defendant first requested that she write him a note expressing how much she cared about him. In that note, the victim wrote the following:

> I care about Ms Write [sic] because I like him like him [sic] and I love working for him and and [sic] talking to him[.] I love when Ms Write plays with me and let me work for him and I will do eneything [sic] for Ms Write.

The next note was an ongoing correspondence in which defendant would ask the victim questions and, in turn, the victim would write her answers and return the note to defendant. That communication is as follows:

> [*Defendant*]: I like your note. It sounds like you might like me. [D]o you?

[*The victim*]: [Y]es[.]

[*Defendant*]: What do you mean when I play with you?

[*The victim*]: like when you tell me funny thing [sic].

[*Defendant*]: I don't know what you mean. When you say you would do anything for me what do you mean by you would do anything?

[*The victim*]: like what you say

[*Defendant*]: Give me some examples of what you think I would say. I didn't say I wanted you to hold my hand when you were by my desk telling me how much you liked being in my room and how much you really liked me.

[*The victim*]: What do you mean can I hold your hand. I would Do eneything [sic] you want me to Do.

[*Defendant*]: What do you mean? I love each and everyone [sic] of my students. All the same. When they are good each to me is a Prince or Princess and you are one of my princesses and I love you to.

[*The victim*]: I do to But what Do you mean when you said can I hold you hand

[*Defendant*]: I explained about holding hands. Do you want me to ask could we kiss?

[*The victim*]: NO

[*Defendant*]: Then I'm not sure what you want me to ask you to do for me. I think you are confused about Love. Maybe you're having problems or you're sad again. What do you think Love means?

The last correspondence written by defendant to the victim contained the following:

What did you think I meant when I asked you that question? Be honest - I won't Tell anyone.

If you will do anything I ask - Why can't we kiss? There was another girl that wanted to kiss me all the time but I told her I liked someone else - you.

Tell me some things that you would like to do for me or with me no matter what it is or Naughty. I won't tell.

Tell me some things that you would like me to do with you that we wouldn't tell anyone about. Write on back.

Would you like to Learn how to make Love? [W]hy?

Do you really Love me?

Are you Telling anyone about our notes[?]

Would you still do anything I asked you to do and why?

You are very beautiful[.]

I like the way you sit sometimes with your feet up on the seat - will you do it a lot more - when I see you do it, I'll know you still love me[.]

[W]rite me notes whenever you want[.] Please[.]

The victim testified that when defendant dropped the last note on her desk, she read a portion and then went into the bathroom, where she finished reading it. She balled it up, but then straightened it and put it in her binder with her schoolwork. When the victim returned to the classroom, defendant requested the return of the note, and the victim said she did not know where it was. Defendant searched the victim's binder "three times" and when he could not find the note, he warned the victim that they would both "get in trouble" if someone found the note.

When the victim went home, she told her 10- and 11-year-old cousins about the note. That night, defendant called the victim at home, but instead of the victim, one of the victim's young cousins gave the phone to Benjamin. Benjamin and the victim testified that defendant told Benjamin about how the victim was performing in his class. Benjamin indicated that defendant had never previously called with a progress report. When defendant asked to speak with the victim, Benjamin secretly listened in on an extension. Defendant told the victim that she was doing well, would receive a grade of B, and could get an A if she did a special assignment. The victim had previously received a D grade in defendant's class. Defendant then asked the victim if she found the note, and she told him that she had not found it yet. Defendant told the victim that she left a notebook in his class, and to come to his class to retrieve it as soon as she arrived at school the next morning. Defendant then asked to speak with Benjamin again, Benjamin feigned retrieving the phone, and defendant told her about the forgotten notebook.

After the phone call, the victim gave Benjamin the note. The next morning, Benjamin met with the school principal. The school principal testified that she summoned defendant. Defendant allegedly denied any knowledge of the note until the school principal indicated that she had proof, and began to read the note aloud. Defendant then admitted writing the note and calling the victim's home on the previous night. The school principal testified that defendant claimed that the victim had low self-esteem, and that he was trying to build her self-esteem by engaging in the dialogue with her. Defendant subsequently showed his union representative a copy of the note. The union representative testified that defendant was remorseful, and said that he might be "in trouble," that he was boosting the victim's low self-esteem, and had acted with "poor judgment."

II. Constitutional Challenge

Defendant first challenges the constitutionality of MCL 750.145a, asserting that the statute is unconstitutionally vague because it fails to provide fair notice of the proscribed conduct. MCL 750.145a states:

> "A person who accosts, entices, or solicits a child less than 16 years of age, regardless of whether the person knows the individual is a child or knows the actual age of the child, or an individual whom he or she believes is a child less than 16 years of age with the intent to induce or force that child or individual to commit an immoral act, to submit to an act of sexual intercourse or an act of gross indecency, or to any other act of depravity or delinquency, or who encourages a child less than 16 years of age . . . to engage in any of those acts is guilty of a felony . . . ."

However, following defendant's motion to quash in which he argued that the statute was unconstitutionally vague, the trial court struck the words "to commit an immoral act" and "or to any other act of depravity or delinquency" from the statutory language when it instructed the jury.[1]

Defendant now argues that the statute does not define the terms "accost," "entice," or "solicit,"[2] and that those terms are solely associated with prostitution and the exchange of money

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[1] As a result, the jury was instructed as follows:

> The defendant in this case is charged with one count of accosting a minor. In order to establish this charge, the prosecution must prove each of the following elements beyond a reasonable doubt:
>
> First, that [the victim] was less than sixteen years old at the time of the alleged offense.
>
> Second, the People have to establish that the defendant enticed, or solicited, or accosted [the victim] to submit to an act of sexual intercourse, or an act of gross indecency.
>
> Or that the defendant encouraged [the victim] to submit to an act of sexual intercourse, or an act of gross indecency.
>
> Third, the People have to establish that when the defendant acted, his intent was either to induce or to force [the victim] to submit to an act of sexual intercourse, or an act of gross indecency.
>
> It is not necessary that the defendant actually engage in or attempts to engage in sexual intercourse, or other act of gross indecency with [the victim.]

[2] Defendant also includes the term "immoral act," but as mentioned above, the trial court struck that term.

or something of pecuniary value for sexual services. Defendant therefore argues that the statutory prohibition against accosting, enticing, or soliciting a child with the intent to have the child engage in the proscribed acts would only warn a reasonable adult of ordinary intelligence against asking a child to engage in sex for money, with the sexual acts to occur at a stated time and place. Defendant claims that in the absence of a "temporal nexus" and the offer of something of pecuniary value, the statute does not provide notice that "merely asking a child if they are interested in learning about having sex is prohibited."

"A statute may be challenged for vagueness on three grounds: (1) it does not provide fair notice of the conduct proscribed; (2) it confers on the trier of fact unstructured and unlimited discretion to determine whether an offense has been committed; (3) its coverage is overbroad and impinges on First Amendment freedoms." *People v Nichols*, 262 Mich App 408, 409-410; 686 NW2d 502 (2004) (citations omitted). To determine whether a statute is unconstitutional, "the entire text of the statute should be examined and the words of the statute should be given their ordinary meanings." *People v Hill*, 269 Mich App 505, 524; 715 NW2d 301 (2006). Statutes are presumed to be constitutional, and a statute is to be construed in a constitutional manner unless the unconstitutionality of the statute is facially obvious. *Id.* at 525.

In discussing what constitutes fair notice, this Court has stated:

> "To afford proper notice of the conduct proscribed, a statute must give a person of ordinary intelligence a reasonable opportunity to know what it prohibited. A statute cannot use terms that require persons of ordinary intelligence to speculate about its meaning and differ about its application. For a statute to be sufficiently definite, its meaning must be fairly ascertainable by reference to judicial interpretations, the common law, dictionaries, treatises, or the commonly accepted meanings of words." [*People v Sands*, 261 Mich App 158, 161; 680 NW2d 500 (2004) (citations omitted).]

The terms "accost," "entice," and "solicit" are not defined within the statute. But the ordinary and generally accepted meanings of the terms, which are neither unusual nor esoteric, are reasonably ascertainable. It is proper to use a dictionary definition to construe terms "in accordance with their ordinary and generally accepted meanings." *People v Morey*, 461 Mich 325, 330; 603 NW2d 250 (1999). The dictionary provides in relevant part that "accost" means "to approach with a greeting, question, or remark." *Random House Webster's College Dictionary* (1997), p 9. "Entice" means "to lead on by exciting hope or desire; allure; tempt." *Id.* at 436. "Solicit" means "to try to obtain by earnest plea or application," "to entreat; petition," "to make a petition or request something desired." *Id.* at 1228. Further, in the context of MCL 750.157c (soliciting or coercing a minor to commit a felony), this Court has recognized that the meaning of the word "solicit" is "fairly self-evident," and in "simple terms, to solicit means to ask." *People v Pfaffle*, 246 Mich App 282, 298; 632 NW2d 162 (2001).

On the basis of the generally accepted meanings of the challenged terms, MCL 750.145a is not unconstitutionally vague. Rather, the language used provides, in lucid and understandable terms, that asking or encouraging a child to submit to an act of sexual intercourse or an act of gross indecency is prohibited. Thus, the statute provides fair notice of the proscribed conduct, and is not so vague that persons of common intelligence must necessarily guess at its meaning.

Moreover, in *People v Newton*, 257 Mich App 61, 66; 665 NW2d 504 (2003) (citations omitted), this Court held:

> "When a defendant's vagueness challenge does not implicate First Amendment freedoms, the constitutionality of the statute in question must be examined in light of the particular facts at hand without concern for the hypothetical rights of others. The proper inquiry is not whether the statute may be susceptible to impermissible interpretations, but whether the statute is vague as applied to the conduct allegedly proscribed in this case."

Also, the statute is not vague as applied to defendant's conduct. Defendant, a schoolteacher, asked one of his fourth-grade students to write him a note expressing how much she cared about him. He thereafter engaged in a correspondence with the young victim in which he flattered her, told her how much he liked her and that he loved her, asked her if she wanted to kiss, and told her that he had rejected another girl's kisses because he preferred her. When the victim rejected the idea of kissing, defendant advised the child that she was "confused about love." Defendant told the victim to think of things they could do, even "Naughty" things that they would not tell anyone about. Defendant told the victim that he liked the way she sat "with [her] feet up on the seat," and requested that she do it "a lot more" so he would know that she loved him. Against this backdrop, defendant asked the victim if she wanted to "learn how to make love." From this evidence, the jury could reasonably conclude that defendant accosted, enticed, or solicited the victim with the intent to induce her to submit to making love, which encompassed an act of sexual intercourse, with an adult. This conduct is clearly prohibited by the terms of MCL 750.145a. Consequently, defendant's constitutional challenge fails.

III. Sufficiency of the Evidence

Defendant next argues that there was insufficient evidence to sustain his conviction. When ascertaining whether sufficient evidence was presented at trial to support a conviction, this Court must view the evidence in a light most favorable to the prosecution and determine whether a rational trier of fact could find that the essential elements of the crime were proven beyond a reasonable doubt. *People v Wolfe*, 440 Mich 508, 515; 489 NW2d 748 (1992), amended 441 Mich 1201 (1992). It is well established that this Court will not interfere with the trier of fact's role of determining the weight of evidence or the credibility of witnesses. *Id.* at 514. Rather, "a reviewing court is required to draw all reasonable inferences and make credibility choices in support of the jury verdict." *People v Nowack*, 462 Mich 392, 400; 614 NW2d 78 (2000). All conflicts in the evidence must be resolved in favor of the prosecution. *People v Terry*, 224 Mich App 447, 452; 569 NW2d 641 (1997).

Defendant claims that the evidence was insufficient because there was no evidence that he had any actual intent to induce the victim to submit to an act of sexual intercourse or an act of gross indecency with anyone. "An actor's intent may be inferred from all of the facts and circumstances, and because of the difficulty of proving an actor's state of mind, minimal circumstantial evidence is sufficient." *People v Fetterley*, 229 Mich App 511, 517-518; 583 NW2d 199 (1998) (internal citation omitted).

The evidence, viewed in a light most favorable to the prosecution, was sufficient to enable a rational trier of fact to find that defendant had the requisite intent. As stated in part II,

defendant, a schoolteacher, solicited a letter from the ten-year old victim expressing her feeling about him. He thereafter engaged in correspondence with the child victim in which he told her that he loved her, that she was beautiful, and asked if she wanted to kiss. When the victim rejected the idea of kissing, defendant told the victim that she was "confused about love," and questioned why they could not kiss after she indicated that she would do anything for him. Defendant also told the victim to "tell [him] some things that [she] would like to do for [him] or with [him] no matter what it is or Naughty." Defendant then directed the victim to "[t]ell [him] some things that [she] would like [him] to do with [her] that [they] wouldn't tell anyone about." Immediately thereafter, defendant asked the young victim, "Would you like to Learn how to make Love?"

Throughout their communication, defendant assured the victim that he would not tell anyone about the notes, and wanted assurance from the victim that she was not telling anyone about the notes. Also, when defendant could not find the last note, he warned the victim that they both would be "in trouble" if anyone found the note. He also acted out of character by calling the victim's home in the evening, and again questioned the victim about the whereabouts of the note.

From this evidence, the jury could reasonably conclude that defendant accosted, enticed, or solicited the victim with the intent to induce her to submit to an act of sexual intercourse or an act of gross indecency with him. Although defendant presented a different account of the incident, specifically that his notes were meant to enhance the victim's self-esteem, it was up to the jury to determine whether that account was credible. *Nowack*, *supra*. The evidence was sufficient to sustain defendant's conviction.

IV. Post-Arrest Silence

Defendant further argues that the admission of evidence regarding his post-arrest silence denied him his right to a fair trial, and the trial court erred in denying his motion for a mistrial on this ground. This Court reviews a trial court's decision regarding the admission of evidence and its ruling on a motion for a mistrial for an abuse of discretion. *People v Aldrich*, 246 Mich App 101, 113; 631 NW2d 67 (2001); *People v Griffin*, 235 Mich App 27, 36; 597 NW2d 176 (1998). "A mistrial should be granted only for an irregularity that is prejudicial to the rights of the defendant and impairs his ability to get a fair trial." *Id*. (citation omitted).

Generally, testimony concerning a defendant's post-arrest, post-*Miranda*[3] warning silence is inadmissible. *People v Crump*, 216 Mich App 210, 214; 549 NW2d 36 (1996). But testimony regarding a defendant's silence may be properly admitted for a reason other than to contradict a defendant's assertion of innocence. *Id.* Evidence of a defendant's silence may be used to rebut an inference raised by the defense that the defendant was treated unfairly by the police, such as where it is suggested that the police did not afford the defendant an opportunity to present his side of the story. *Id.* at 214-215 ("door was opened to the prosecutor").

[3] *Miranda v Arizona*, 384 US 436; 86 S Ct 1602; 16 L Ed 2d 694 (1966).

In this case, in opening statement, defense counsel did not dispute that defendant wrote the notes to the victim, but maintained that defendant never intended the sexual meaning attributed to those notes. During defense counsel's cross-examination of an investigating officer, he elicited from him the importance of a thorough investigation and obtaining the "whole picture" so that no one is mistaken or misled. Defense counsel thereafter questioned the officer about things he did not do. The following exchange then occurred:

> *Q*. When you read the note, did you consider the possibility of whether or not there was a misunderstanding?
>
> *A*. Did I investigate the possibility of whether it was a misunderstanding?
>
> *Q*. Well, for example, did you attempt to, yourself, contact [defendant] at his home and interview him?
>
> *A*. No, I didn't.
>
> *Q*. Did you attempt to offer [defendant] an opportunity to explain or to see if he had an explanation for the words he used or the things he said?
>
> *A*. Well he was brought in, when he was arrested, he had that - -

Defense counsel interrupted the officer in an attempt to ask him a different question. Following a bench conference and over defense counsel's objection, the trial court allowed the officer to complete his answer in light of defense counsel's questioning that "opened the door." The officer then stated:

> When [defendant] was arrested on May 30th, he had an opportunity to give his version of the story when one of the officers assigned to the 10th precinct conducted an interrogation of [defendant]. [Defendant] refused to make any statements in regards to this incident that occurred.

Under these circumstances, the trial court did not abuse its discretion by permitting the officer's testimony in response to the defense implication that defendant was not afforded an opportunity to explain his version of the events. *Id*. For the same reason, the trial court did not abuse its discretion in denying defendant's motion for a mistrial.

V. Voir Dire

Defendant also argues that he is entitled to a new trial because the trial court conducted the voir dire itself, and refused to use the voir dire questions prepared by former trial counsel as defendant requested.[4] It is within the trial court's discretion to conduct voir dire itself, and, thus,

[4] Defendant was initially represented by a different attorney. Shortly before trial, defendant discharged his former counsel alleging that the attorney was ineffective and incompetent, and retained new counsel.

this Court reviews challenges concerning voir dire for an abuse of discretion. MCR 6.412(C)(1); *People v Tyburski*, 445 Mich 606, 619; 518 NW2d 441 (1994).

A defendant tried by a jury has a right to a fair and impartial jury. "The purpose of voir dire is to elicit enough information for development of a rational basis for excluding those who are not impartial from the jury." *Tyburski*, *supra* at 618; see also *People v Sawyer*, 215 Mich App 183, 186; 545 NW2d 6 (1996). There are no "hard and fast rules" regarding what constitutes acceptable voir dire; rather, the trial court is granted wide discretion in the manner employed to achieve an impartial jury. *Id.* at 186-187. A defendant does not have the right to have counsel conduct voir dire or to any other specific procedure for voir dire. *Tyburski*, *supra* at 619; *Sawyer*, *supra* at 191. "[W]here the trial court, rather than the attorneys, conducts voir dire, the court abuses its discretion if it does not adequately question jurors regarding potential bias so that challenges for cause, or even peremptory challenges, can be intelligently exercised." *Tyburski*, *supra* at 619. The trial court is required "to conduct a thorough and conscientious voir dire . . . ." *Id*. at 623.

The record discloses that the trial court's voir dire provided defense counsel with a reasonable opportunity to ascertain whether any of the potential jurors were subject to peremptory challenge or challenge for cause, and also provided sufficient information to make an independent assessment of bias and to guard against potential bias. The court covered the salient concepts, including the presumption of innocence, burden of proof, and reasonable doubt, and elicited relevant information regarding the prospective jurors' backgrounds.

Additionally, although the trial court denied defense counsel's request that the court use the voir dire questions prepared by defendant's former attorney, defendant was not entitled to have questions tailored precisely as he would have liked. Defendant was entitled only to a thorough and conscientious voir dire that would allow him to intelligently exercise his challenges to the prospective jurors. *Tyburski*, *supra* at 623. The record discloses that this was done. As a result of the court's voir dire, defense counsel used five peremptory challenges, and made challenges for cause. Furthermore, the substance of most of the proposed voir dire questions was covered by the court's voir dire. In fact, the trial court excused nine potential jurors for potential bias based on their relationship with children, the age of the victim, or the nature of the charges. Moreover, defendant has not identified any specific question he believes that the trial court should have asked.

In sum, the manner in which the trial court conducted voir dire elicited sufficient information to provide defendant with a reasonable opportunity to ascertain whether any of the prospective jurors were not impartial. Consequently, reversal is not warranted on this basis.

VI. Disqualification

Defendant lastly argues that the trial judge abused her discretion by denying his motion to disqualify her on the ground that she was personally biased against defense counsel because she favored defendant's former counsel.

A. Background

Defendant claims that defense counsel's "relationship" with the trial judge "got off to a contentious start" when on the day scheduled for the start of trial, counsel moved to adjourn trial to have defendant evaluated for competency. However, although the judge criticized defense counsel for coming late to court, she granted an adjournment. When trial started two months later, the judge again criticized defense counsel for coming late to court, and for waiting until the day of trial to attempt to negotiate a plea agreement. Nevertheless, the judge allowed the parties to discuss a plea. The judge thereafter denied defense counsel's request to use the voir dire questions prepared by defendant's former counsel. In refusing to do so, the judge explained that an attorney who defendant had indicated was incompetent prepared the questions.

During voir dire, at a bench conference, the judge sua sponte questioned whether defense counsel intended to exercise peremptory challenges to remove all of the few black jurors.[5] After the jury was excused, the judge placed the contents of the bench conference on the record. She stated that she put defense counsel on notice that if he removed all of the black jurors, he would need to justify his exercise of peremptory challenges, that it is her duty to insure that both sides have a fair and impartial jury, and that defense counsel responded that he was "offended" by the trial court's statements. Defense counsel then explained that he was offended because the judge did not "know anything about him personally." The judge responded that she knew that he had caused the trial to be adjourned for several months for a competency evaluation that was later shown to be without basis, and that she was "duped." The judge noted that the letter that defendant wrote to discharge former counsel showed that he was competent. The judge also noted defense counsel's tardiness, and untimely request for plea negotiations. The judge indicated that she has a duty to conduct trial in a fair and efficient manner. Defense counsel indicated that the judge's opinion of him put him at a disadvantage, and asked that she disqualify herself. In denying defendant's motion, the judge found that "there is no basis for disqualification" "based on what has happened in this courtroom, in this trial." On appeal, defendant also relies on the judge's ruling allowing the testimony of an investigating officer regarding defendant's post-arrest silence, as discussed in part IV.

B. Analysis

In order to preserve a judicial disqualification issue for appellate review, the defendant must first move for disqualification before the challenged judge and, if the motion is denied, request referral to the chief judge for review of the motion de novo. MCR 2.003(C)(3)(a); *Welch v Dist Court*, 215 Mich App 253, 258; 545 NW2d 15 (1996). Because defendant did not seek review of the denial of his motion for disqualification by the chief judge, defendant has not preserved this issue for review. *Id.* Therefore, we review this claim for plain error affecting substantial rights. *People v Carines*, 460 Mich 750, 752-753, 763-764; 597 NW2d 130 (1999).

Absent actual personal bias or prejudice against either a party or a party's attorney, a judge will not be disqualified. MCR 2.003(B)(1); *Cain v Dep't of Corrections*, 451 Mich 470, 495; 548 NW2d 210 (1996). Bias or prejudice is defined as "'an attitude or state of mind that belies an aversion or hostility of a kind or degree that a fair-minded person could not entirely set

[5] Defendant is white, and the victim is black.

aside when judging certain persons or causes.'" *Id.* at 495 n 29 (quotation omitted). This bias must be both "personal and extrajudicial," such that "the challenged bias must have its origin in events or sources of information gleaned outside the judicial proceeding." *Id.* at 495. A judge's opinions that are formed on the basis of facts introduced or events that occur during the course of the current proceedings do not constitute a basis for a bias or partiality motion unless they display a deep-seated favoritism or antagonism that would make fair judgment impossible. *Id.* at 496. "'[J]udicial remarks during the course of a trial that are critical or disapproving of, or even hostile to, counsel, the parties, or their cases, ordinarily do not support a bias or partiality challenge.'" *Id.* at 497 n 30 (citation omitted). A party who challenges a judge for bias must overcome a heavy presumption of judicial impartiality. *Id.* at 497.

Although some of the judge's comments display a critical attitude toward the defense, there is no evidence that the judge's opinions compromised judicial impartiality or deprived defendant of a fair trial. Based on the record, it was not unreasonable for the judge to believe and indicate to defense counsel that the defense had displayed a pattern of behavior during the proceedings that evidenced an attempt to deliberately manipulate the proceedings. Further, the record supports defense counsel's tardiness, and untimely request for a plea negotiation. Also, there is no support for defendant's claim that the judge's evidentiary ruling discussed in part IV, and the manner in which the court conducted voir dire as discussed in part V, were based on her antipathy toward defense counsel. The judge's remarks supporting her rulings do not reveal bias or prejudice, and the rulings did not deprive defendant of a fair trial. Moreover, adverse decisions alone do not indicate bias, even if the decisions are erroneous. See *Cain, supra* at 496, and *Band v Livonia Assoc*, 176 Mich App 95, 118; 439 NW2d 285 (1989).

Because defendant has failed to demonstrate that any bias that was either extrajudicial or personal in origin, defendant is not entitled to appellate relief.

Affirmed.

/s/ Michael J. Talbot
/s/ Pat M. Donofrio
/s/ Deborah A. Servitto