MCOA
IN THE MICHIGAN COURT OF APPEALS

ORDER

Re: **People of MI v Antoine Dekyle Bailey**
Docket No. **291840**
L.C. No. **08-016055-FC**

Judge Stephen L. Borrello, acting under MCR 2.003(C)(3), orders:

In this motion, defendant cites my participation in the decision of the related appeal in *People v Maxey*, unpublished opinion per curiam of the Court of Appeals, issued May 6, 2010 (Docket No. 289023), a case that also stemmed from the fatal shooting of Brian McClendon and the nonfatal shooting of Amir Taylor as a basis for disqualification under MCR 2.003(C)(1). That appeal involved different issues and required review of the sufficiency of the evidence presented at Maxey's jury trial to convict him as an aider and abettor. This Court determined that sufficient evidence was presented to establish a plan among Maxey and his companions to commit a robbery. In contrast, the instant appeal stems from defendant's bench trial, in which, notably, the trial court found insufficient evidence to establish that defendant and his friends intended to commit a robbery. The instant appeal challenges the sufficiency of the evidence identifying defendant as Taylor's shooter, and raises issues of ineffective assistance of counsel and prosecutorial misconduct.

MCR 2.003(C)(1) requires a showing of actual personal bias or prejudice against a party in order to warrant judicial disqualification. See *Cain v Dep't of Corrections*, 451 Mich 470, 495; 548 NW2d 210 (1996); *People v Chesbro*, 300 Mich 720, 724; 2 NW2d 895 (1942). "Bias" and "prejudice" "connote a favorable or unfavorable disposition or opinion that is somehow *wrongful* or *inappropriate*, either because it is undeserved, or because it rests upon knowledge that the subject ought not to possess . . . , or because it is excessive in degree[.]" *Cain*, 451 Mich at 496, quoting *Liteky v United States*, 510 US 540, 550; 114 S Ct 1147; 127 L Ed 2d 424 (1994) (emphasis in original). "[W]here prejudice or bias is the reason alleged for disqualifying a judge, there must be prejudice or bias in fact, and it can never be based solely upon a decision in the due course of judicial proceedings." *People v Rider*, 93 Mich App 383, 388; 286 NW2d 881 (1979), citing

Chesbro, 300 Mich at 724. Consequently, defendant has provided no legitimate basis for my disqualification as all of his allegations of prejudice or bias are tethered to a decision I participated in which was made in the due course of a judicial proceeding. Additionally, there is nothing in this Court's reasoning in *Maxey* which evinces bias or prejudice on my part, and none exists.

Accordingly, the motion to recuse is DENIED.

A true copy entered and certified by Sandra Schultz Mengel, Chief Clerk, on

September 29, 2010
Date

Sandra Schultz Mengel
Chief Clerk