

Justice Is Everyone's Business

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Seeking to Restore Integrity and Public Trust in Our Justice System

Judge Tracy A. Prall
Marion County Circuit Court Presiding Judge
Marion County Courthouse
100 High St NE
Salem, OR

July 27, 2020

Dear Judge Prall:

We live in the neighborhood where an incident involving the police took place on January 22, 2019. We had never before met and did not know any of the people involved. Our interest was purely as citizens.

Because the event did not look right, we have investigated and published our findings at (<http://everyones-business.org/SummerStreet/index.html>). We have been involved in matters of justice and publishing our research for more than 25 years, and the various issues were familiar to us. In addition, Carol has worked several years as a paralegal.

Consequent to that event, the criminal case 19CR05609, *State of Oregon vs Kenneth Ketchem*, is going to trial on July 30, with Judge Thomas Hart presiding.

This is a matter of some concern for us, and it should be for the Marion County District of judges. It does not meet the standards of justice established in America.

Please consider this: On November 26, 2019, Judge Hart announced in open court that he knows the "facts of the case" and that he believes Mr. Ketchem is guilty. The hearing was held on a motion for bail reduction. When the prosecutor began to brief Judge Hart, Hart interrupted him and said:

"I kind of know the facts of the case."

How could Judge Hart know the "facts of the case" before the trial? Apparently, Judge Hart recalled the allegations of probable cause presented to him on January 22, 2019 when he signed two search warrants. To Judge Hart, those allegations had become "the facts of the case." Convinced that he already has the "facts," Judge Hart cannot be an impartial judge.

That hearing has not been transcribed, but you listen to an expurgated court recording on our website, <http://everyones-business.org/SummerStreet/wheels-of-justice.html>.

But it gets worse. Toward the end of the same hearing on November 26, Judge Hart indulged in a bench rant at the accused:

"The worst thing you can do is violate somebody's home. And you did that over and over for an extended period of time. And in fact, destroyed the house that they finally—as far as I understand—I don't know whether they've rebuilt the inside of that or not?"

Those are statements of personal belief. Judge Hart has stated on the record, in open court, that he is personally convinced that Mr. Ketchem:

- invaded more than two homes
- destroyed 1050 Summer Street (by fire).

Ketchem has pleaded not guilty to those charges, but Judge Hart is already convinced in his own mind that Ketchem is guilty. To Judge Hart, Ketchem's guilt is a matter of fact that can and should be preached from the bench.

Please allow us to call to your attention a precedent so old, it has become a principle of jurisprudence throughout the English speaking world. That precedent is the British case, *R v Sussex Justices, ex parte McCarthy*:

"... justice should not only be done, but should manifestly and undoubtedly be seen to be done."

That case refers in particular to courts that have lost the appearance fairness, courts that are burdened with a judgment prior to hearing the evidence. Ketchem should be innocent until proven guilty, but to Judge Hart, Ketchem is guilty before the trial starts.

With Judge Hart presiding, having announced in open court his personal verdict on the case, no one will believe Kenneth Ketchem had a fair trial. Even though this is a 12 member jury trial, Judge Hart's thumb on the scales is much heavier than that of the personally interested clerk in the original *McCarthy* case of 1924.

Permitting Judge Hart to preside will provide an excellent ground for reversal on appeal. And perhaps even more to your direct interest, it will be a black mark on the Circuit Court of Marion County.

Judge Hart should know that he is no longer qualified to preside over this case and should recuse. What does it say about him that he persists? Is he still operating in the role of a prosecutor, which he held for 11 years before being elected to the Bench in 1999?

Please consider these matters carefully and do the right thing, whatever is within your circle of authority and according to your professional codes.

Sincerely,

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