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A24-1451

STATE OF MINNESOTA

IN SUPREME COURT

State of Minnesota,

Respondent,

vs.

Mervel George Jones, III,

Petitioner.

PETITION FOR REVIEW OF THE DECISION OF THE COURT OF APPEALS

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PETITION FOR REVIEW OF COURT OF APPEALS' DECISION

Decision of court of appeals filed: October 13, 2025

TO: THE MINNESOTA SUPREME COURT

Petitioner Mervel Jones requests Supreme Court review of the above-entitled decision of the court of appeals.

I. Parties

The parties and their attorneys are identified on the cover of this petition.

II. Decision Appealed

Jones seeks review of the October 13, 2025 decision of the court of appeals holding, as a matter of first impression, that the rule prohibiting a judge from independently investigating facts, which this Court recognized in *Dorsey* and reaffirmed in *Duol*, did not bar the trial judge from independently investigating extra-record facts to find that Jones waived his right to be present at trial. *State v. Jones*, slip op., A24-1451 (Minn. App. October 13, 2025).

III. Legal Issues

Issue I: A judge violates their duty of impartiality by independently investigating or relying on extra-record facts. This Court has never recognized an exception to this "bright-line rule." Here, for the first time, the court of appeals recognized such an exception for a court's determination on whether a defendant who does not appear in court has waived their right to be present.

As a matter of first impression, is there an exception to the rule that prohibits a judge from independently investigating facts when a court is required to determine whether a defendant has waived their right to be present after failing to appear? If there is no exception, must this Court reverse and remand for a new trial on the ground Jones was denied his right to an impartial judge?

Rulings below: Following an evidentiary hearing regarding Jones's absence from court, the judge independently obtained and relied on extra-record information to find that Jones waived his right to be present. The court of appeals affirmed, reasoning the "specific, unique circumstances" of this case are excepted from the rule in *Dorsey* that prohibits a judge from independently investigating facts. *Jones*, slip op., at 11-13.

Issue II: A judge is disqualified for creating the appearance of bias when their impartiality can be reasonably questioned.

Is a judge disqualified where, as here, the judge presents multiple arguments to support the admissibility of the state's proffered evidence after the state failed to successfully argue admissibility? If so, must this Court reverse for a new trial due to the judge's appearance of bias?

Rulings below: The district court was not asked to rule on bias. The court of appeals affirmed, reasoning that the judge's remarks regarding alternate grounds for admissibility of the state's evidence was merely "the judge's effort to rule intelligently" on Jones's objection. *Jones*, slip op., at 20.

IV. Procedural History

In February 2022, respondent State of Minnesota charged petitioner Mervel Jones in Mille Lacs County District Court with first-degree assault, domestic assault, and fleeing on foot. The Honorable Matthew M. Quinn presided over the case. A jury trial was held before Judge Quinn, and the jury found Jones guilty on all counts. Jones appealed, raising two claims of judicial bias. The court of appeals affirmed. This petition for further review follows.

V. Statement of Facts

On January 8, 2022, Jones and his significant other (AM) resided with Jones's cousin in a Mille Lacs County home. After Jones left the house that morning, the cousin discovered that AM was injured and had blood on her face. AM went to her mother's house where tribal police responded. AM was distraught and largely non-responsive to questioning. The local hospital transferred AM to North Memorial Medical Center where she underwent facial surgery. On January 11, 2022, at North Memorial, AM told tribal police in a recorded interview that she could not remember what happened and only remembered waking up somewhere. She said that whatever happened was between her and Jones and not their business.

In February 2022, the state charged Jones with first-degree assault under Minn. Stat. § 609.221, subd. 1 (2020) and domestic assault under Minn. Stat. § 609.2242, subd. 4 (2020) for the assault of AM. The state also charged Jones with misdemeanor fleeing under Minn. Stat. § 609.487, subd. 6 (2020) in connection with his arrest. (*Id.*).

A. Judge Quinn's on-the-record inquiry into Jones's absence.

The matter proceeded to a jury trial before Judge Quinn. On the third day of trial, Jones did not appear. Judge Quinn explained, under *State v. Finnegan*, 784 N.W.2d 243 (Minn. 2010), he had to inquire into Jones's absence before continuing with trial. Judge Quinn noted that he was aware a sheriff's sergeant who works in the courthouse had relevant information regarding Jones's recent activities.

Judge Quinn held an evidentiary hearing with the parties' attorneys regarding Jones's absence and whether he waived his right to be present. First, Judge Quinn inquired of the attorneys. Defense counsel said that he called Jones that morning but could not reach him and had not received any indication that Jones would not be there. The state had nothing to introduce into the record. Pursuant to Rule 614(a) of the rules of evidence, which permits a district court to call its own witnesses, Judge Quinn called the sheriff's sergeant to testify. The sergeant testified that as a "transport court security sergeant" his responsibilities include determining if "any[one] [who] shows up for court or might show up for court" has an active warrant for their arrest. That morning the sergeant learned from a computer entry that the Department of Corrections (DOC) had just put out a warrant for Jones based on an alleged release violation for cutting off his DOC ankle monitor and leaving the treatment facility where he resided around 10:30 p.m. the previous night. The deputy further testified that when individuals come to local jail wearing DOC-installed

ankle monitors, the jail staff leave those monitors in place. He saw that Jones was wearing his ankle monitor in court during the previous two days of trial.[1]

After the evidentiary hearing concluded, the court and parties addressed other trial business and took a break.

B. Judge Quinn's private investigation after the hearing.

While on recess, unbeknownst to the parties, Judge Quinn sought and reviewed myriad records from other district court files, including juvenile and other confidential records dating back to 2000, that involved Jones.[2]

After recess, Judge Quinn ruled on Jones's absence from court. Judge Quinn first discussed various *record* facts relevant to Jones's "knowledge of the system," including that the state filed an aggravated sentence notice in this case, that there had been discussions regarding a potentially lengthy sentence, and that Jones had been released from prison just a month and a half earlier and was currently on intensive supervised release. Judge Quinn then disclosed *extra-record* information he obtained, including facts he gathered from confidential documents. The judge explained:

> There is an order from Chief of our District Judge, Sarah Hennesy, in a 2015 file that finds [Jones] a danger to public safety, so he would be on notice of, you know, knowledge of that order -- that finding. MNCIS has records that go back a fair bit. The first one dated for Mr. Jones is the year 2000. He was still a juvenile, but since then 33 warrants have been issued against him, as an approximate number. There could be more, because MNCIS is a party-based system. If his name wasn't linked to those incidents properly, there could be more than that. But, it's at least 33.

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[1] On appeal, Jones did not challenge this on-the-record inquiry.

[2] It is this independent gathering of extra-record information that Jones challenged on appeal.

> And then according to the 2015 Presentence Investigation that produced Chief Hennesy's danger to public safety order, it's noted that he's a former member of the Native Mob street gang and has "Native Mob" tattooed on his forearm.
>
> So, it's clear to me [Jones has] absented himself intentionally, it's voluntary, and defendant has intentionally abandoned a known right to be present at trial.

Trial continued without Jones.

C. The evidentiary portion of trial and AM's out of court statements.

AM testified at trial. In pretrial proceedings, however, the state believed AM would not appear to testify and moved for an order of forfeiture by wrongdoing. Judge Quinn ruled that, subject to AM's unavailability at trial, the state could introduce AM's out-of-court statements. But a witness warrant for AM was executed and AM testified.

After AM testified, the state "renewed" its motion to admit (1) the January 8 body-camera recording of the officer's encounter with AM at her mother's house and (2) AM's January 11 interview at the hospital. The defense objected on hearsay grounds The state argued for admissibility under a forfeiture-by-wrongdoing theory and, alternatively, Rule 807, the residual exception to the rule against hearsay.

Judge Quinn ruled that the January 11 interview could be introduced under Rule 807. When the prosecutor asked if the court's ruling also applied to the January 8 body-camera video, Judge Quinn said "no, it would have to come in under something else if it was going to." The state conceded the video was inadmissible by forfeiture by wrongdoing and asserted that the video would show AM's mental state. Judge Quinn prompted the followed exchange with the prosecutor:

Judge: I think it would probably fall under present sense impression.

Prosecutor: Right.

> Judge: It could be an excited utterance because I watched the whole thing and she's awfully upset. She's flailing about. She's in pain, among other things. Probably also some effects of illicit drug use that start to -- seem to come out more at the end, but she does get more agitated as time goes by, when she's trying to find her phone, for instance, right? Running around screaming and carrying on until her mom tells her to, you know, shut up and calm down. Pretty much in those words, I think.

Defense counsel interjected that the video should also be excluded under Rule 403. Judge Quinn continued, "I think it would be admitted for the purpose, in part, of proving the injury element." Judge Quinn ruled that the state could introduce body-camera video under Rule 803(3) and under Rule 801(d)(1)(D) as a "present sense impression."

D. The appeal

On appeal, Jones raised two claims of judicial bias. First, he raised a claim of emergent bias in violation of *State v. Dorsey*, 701 N.W.2d 238 (Minn. 2005). There, he argued that Judge Quinn created a structural error when he independently investigated other court files involving Jones after concluding the evidentiary hearing with the parties about Jones's absence. He also argued Judge Quinn further erred by relying upon extra-record facts to find that Jones waived his right to be present at trial. Jones argued that this conduct contravenes the clear and uniformly applied rule against independent fact investigation. Second, Jones raised a claim of perceived bias. There, he argued that Judge Quinn violated the judicial code of conduct, and was disqualified, because his impartiality could reasonably be questioned when he presented evidentiary arguments to defeat Jones's

hearsay objection after the state failed to successfully argue admissibility. He argued that this perceived bias too warranted reversal for a new trial.

As to Jones's claimed *Dorsey* violation, the court of appeals acknowledged that Judge Quinn independently sought and "gathered" extra-record facts on the waiver issue by reviewing other court files. *Jones*, slip op., at 12. The court of appeals further acknowledged that *Dorsey* established a "bright-line rule" that prohibits a judge from investigating facts. *Id.* at 9-10. But the court of appeals held that the independent investigation and reliance on extra-record facts in this case is excepted from the rule in *Dorsey* because Judge Quinn was required to inquire into Jones's absence. *Id.* at 11-13. The court of appeals recognized that this issue is one of first impression with no decision from the Minnesota Supreme Court. *Id.* at 11.

V. Reasons for Granting Review

As to Issue I, this court should grant review in order to address the important question of constitutional law this case presents: whether there is an exception to the uniform rule that prohibits a district court from independently investigating facts and relying on extra-record information when the court is tasked with finding whether a defendant has waived their right to be present at trial after they fail to appear.

The Sixth Amendment to the United States Constitution entitles defendants to the "'basic protection' of an impartial judge." *Dorsey*, 701 N.W.2d at 250 (quoting *Rose v. Clark*, 478 U.S. 570, 577-78 (1986)). The right to an impartial judge is also grounded in the Due Process Clause of the Fourteenth Amendment to the United States Constitution. *See Tumey v. Ohio*, 273 U.S. 510, 514-15, 47 S.Ct. 437, 438 (1927)); *Payne v. Lee*, 24

N.W.2d 259, 263-64 (Minn. 1946); *see also Greer v. State*, 673 N.W.2d 151, 155 (Minn. 2004) ("[I]mpartiality is the very foundation of the American judicial system."). That right exists "at all stages of the proceedings." *State v. Schlienz*, 774 N.W.2d 361, 367 (Minn. 2009). There are three types of bias that could taint a proceeding. *State v. Lopez*, 988 N.W.2d 107, 117-20 (Minn. 2023). This issue concerns "emergent bias." *Id.* at 117-19.

A judge demonstrates emergent bias when they conduct an "independent" investigation into other "court records" that relate to the current proceedings. *Lopez*, 988 N.W.2d 107, 118 (citing *Dorsey*, 701 N.W.2d at 244). This type of investigation necessarily deprives the defendant of his right to an impartial proceeding, which "requires that the conclusions reached by the trier of fact be based upon the facts [admitted] in evidence . . . and prohibits the trier of fact from reaching conclusions based on evidence sought or obtained *beyond that adduced in court*." *Dorsey*, 701 N.W.2d at 249-50 (citations omitted) (emphasis added).

In 2005, this Court recognized the rule prohibiting a judge from conducting his own fact investigation as one without exception—that is, as a "bright-line rule." *Dorsey*, 701 N.W.2d at 250. "In adopting this bright-line rule, [the Court] rejected the dissent's position" that judges ought to be allowed to independently investigate certain types of extra-record facts or in certain circumstances. *Lopez*, 988 N.W.2d at 119 n.5 (citing *Dorsey*, 701 N.W.2d at 251). The purpose of recognizing this rule as one uniformly applied was to avoid opening a "judicial Pandora's box regarding if, when and how" a judge may independently investigate facts. *Dorsey*, 701 N.W.2d at 251.

Recently, in *State v. Duol*, this Court was presented with the question of whether an exception to *Dorsey* applies in the postconviction context. 25 N.W.3d 135 (Minn. 2025). There, after an evidentiary hearing on Duol's postconviction claim of a newly discovered favorable witness (Bell), the postconviction court relied on facts about Bell's criminal history that were not presented in court to discredit Bell's testimony and deny relief. *Id.* at 137, 139. Applying *Dorsey*, this Court concluded that the postconviction court's investigation into and use of extra-record facts violated Duol's constitutional rights. *Id.* at 142. This Court emphasized that it has never recognized an exception to *Dorsey* and declined to do so again. *Id.* at 141-43. This Court reasoned that a "failure to apply this rule uniformly 'would permanently compromise the bedrock principle in our criminal justice that judges may not investigate or rely upon extra-record knowledge when sitting as the finder of fact.'" *Id.* at 141 (quoting *Dorsey*, 701 N.W.2d at 251).

Here, for the first time, the court of appeals recognized an exception to the bedrock principle that a judge may not independently investigate facts or rely on information outside of what is adduced in court when sitting as finder of fact. The court of appeals held that the special "circumstances" at bar—the court was required to inquire into Jones's absence—fall outside the ambit of *Dorsey* and *Duol*. *Jones*, slip op. at 11. The court of appeals found no error in either the judge's independent investigation or the judge's reliance on information he obtained outside of the court process to find that Jones waived his right to be present. *Id.* at 11-13. The court of appeal acknowledged that this case presents a novel issue. *Jones*, slip op. at 11.

The court of appeals' decision to identify and apply an exception to the rule against independent judicial fact investigation warrants supreme court review. First, review is warranted because the question in this case implicates an important constitutional right: the right to an impartial judge. Thus, a decision from this Court is necessary to settle whether there is a constitutionally permitted exception to *Dorsey* for the limited and "unique circumstance" the court of appeals identified here.

Second, review is necessary because the law in Minnesota has been that the principle that a judge may not independently investigate or rely on extra-record facts is one of "uniform," not "flexible," application. *See Duol*, 25 N.W.3d at 141; *Dorsey*, 701 N.W.2d at 251. Thus, the decision below represents a significant departure from this Court's precedent. This departure merits this Court's attention.

Third, review is further merited because the lower court's reliance on *State v. Finnegan*, 784 N.W.2d 243 (Minn. 2010) to support its flexible application of *Dorsey* is misplaced. *Finnegan* stands for the proposition that when a defendant does not appear for a trial that is already in process the district court must inquire and "efficiently" determine whether their absence is voluntary before continuing with trial. 784 N.W.2d at 250. This Court said nothing in *Finnegan* about a judge independently obtaining or relying on information beyond what is adduced in court in its waiver decision, and certainly *Finnegan* does not endorse such conduct. The decision in *Finnegan* simply does not address *Dorsey* or the constitutional issue presented here, and the court of appeals' reliance on that prior decision to find a constitutional exception in this case is wholly doubtful.

Finally, review is warranted because the court of appeals' decision and rationale opens the door to lower courts finding additional *Dorsey* exceptions based on other "unique circumstances." But the court of appeals did so without providing any guidance on how a court should determine what circumstances permit a judge to obtain extra-record information without running afoul of the defendant's constitutional rights. This creates the floodgates-problem—the "Pandora's box"—that *Dorsey* attempted to shut. And this is precisely the type of flexible standard this Court condemned in *Dorsey* and again in *Duol*. A decision from this court with clear guidance on the parameters of *Dorsey* is necessary to regain clarity in the law. For this reason, this Court should grant review because, without a decision from this court, the question of what "unique" exceptions to the *Dorsey* rule should be recognized will appear and recur unless resolved by the supreme court.

* * *

As to Issue II, after the state failed to successfully argue for admission of the body-camera video over the defense's objection, Judge Quinn presented several evidentiary arguments favorable to the state that the state did not make. By doing this, Judge Quinn lost the appearance of neutrality, which disqualified him from presiding. This issue implicates fundamental fairness and public perception of fairness in our state's courts, and this Court should grant review.

Under Minn. Code Jud. Conduct Rule 2.11(A), "[a] judge *shall* disqualify [themself] in any proceeding in which the judge's impartiality might reasonably be questioned." (Emphasis added). A judge's impartiality is reasonably questioned when a "reasonable examiner, with full knowledge of the facts and circumstances, would question the judge's

impartiality." *State v. Finch*, 865 N.W.2d 696, 703 (Minn. 2015) (quotation omitted). Furthermore, "[a] judge must maintain the integrity of the adversary system at all stages of the proceedings." *State v. Schlienz*, 774 N.W.2d 361, 367. This means a judge "must . . . refrain from remarks which might injure either of the parties to the litigation." *Id.* (quoting *Hansen v. St. Paul Ry. Co.*, 43 N.W.2d 260, 264 (Minn. 1950)). Judge Quinn presented several arguments—ones the state did not make—favorable to the state's position. A reasonable layperson who heard Judge Quinn's exchange with the prosecutor regarding the *court's* own arguments favoring admissibility of the state's proffered exhibit would question whether he could remain neutral. The court simply lost the appearance of neutrality.

In *State v. Schlienz*, the judge anticipated a defense motion, brought that to the attention of the prosecutor, and suggested ways the prosecutor could respond to that motion. 774 N.W.2d 361, 367 (Minn. 2009). This Court held that the judge created the appearance of bias because he "identified specific arguments for the State to make that were helpful to the State and that the State had not yet made." *Id.* In *State v. Malone*, the judge suggested that the prosecutor consider introducing additional evidence to ensure every offense element would be proven. 963 N.W.2d 453, 459, 465 (Minn. 2021). This case represents yet an example of a judge appearing to advocate for the state. Yet the court of appeals decided that a reasonable observer of this case would not even *question* whether the judge was partial. *Jones*, slip op., at 21.

Consistent with common sense, precedents like *Schlienz* and *Malone* instruct that a reasonable layperson would question whether a judge is partial when the judge points out

evidentiary arguments helpful to one side, harmful to the other. Review is needed to ensure clear guardrails are working to protect our courts from judicial acts that, in the very least, appear to favor one party. Allowing the judicial conduct that took place at Jones's trial to stand unaddressed by the appellate courts would fail to ensure the fundamental fairness for a functional judicial system, as "[t]here can be no fair proceeding, nor can the proceeding have any integrity, when the decision maker's impartiality has been reasonably called into question." *Schlienz*, 774 N.W.2d at 369. Public confidence in the integrity of our judicial system would also be compromised as the administration of justice must "reasonably appear to be disinterested as well as to be so in fact." *Malone*, 963 N.W.2d at 470 (quoting *Liljeberg v. Health Servs. Acquisition Corp.*, 486 U.S. 847, 869-70 (1988)). The "citizens of Minnesota rely on [this Court] to be vigilant in making sure that all cases will be decided in accordance with the highest traditions of the judiciary." *Id.* "[T]he risk of undermining the public's confidence in the judiciary" by allowing the judge's disqualifying conduct here to go unaddressed by this Court should be a "predominating factor in determining" that review is "warranted here." *Id.* at 471.

Furthermore, review of the court of appeals' reasoning is warranted to clarify the law and provide guidance to the lower courts. First, the court reasoned that there was no appearance of bias because, unlike in *Schlienz*, the judge's communication with the prosecutor was on the record, not ex parte. *Id.* at 20. But it is unclear why Judge Quinn's assisting the state did not create the perception of bias simply because it happened in front of the defendant. Second, the court of appeals reasoned that because Jones's objection was a "general hearsay objection," the court engaged in its discussion to "rule intelligently" on

Jones's objection. *Jones*, slip op., at 20. But it does not follow that to rule on a defendant's hearsay objection a judge should enumerate all the ways the state could establish admissibility of the evidence to defeat that objection.

In sum, review will develop and clarify the law and help ensure that criminal proceedings in Minnesota are presided over by impartial judges who do not appear to favor one party.

VII. Conclusion

Jones respectfully requests that this Court grant his petition for review.

Dated: November 12, 2025

Respectfully submitted,

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CERTIFICATION OF DOCUMENT LENGTH

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I hereby certify that this document conforms to the requirement of the applicable rules, is produced with a 13 pt., Times New Roman font, and the length of this document is 3,899 words. This document is prepared using Word Microsoft 365.

Dated: November 12, 2025

Respectfully submitted,

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