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Case Name: [Asel Abdygapparova v. The State of Texas](#)


TIBA's Case of the Week

- OFFENSE: Capital Murder - Life Sentence
- COUNTY: Bexar
- C/A CASE No. 04-05-0321-CR
- DATE OF OPINION: July 25, 2007
- DISPOSITION: Conviction Reversed OPINION: [Justice Simmons](#)
- TRIAL COURT: 175th D/C; Hon. Mary Román
- LAWYERS: [Lori Rodriguez](#) (Defense); [Daniel Thornberry](#) (State)

Ed Note: (Background Facts) Appellant was involved in the abduction and murder of the deceased, and, several days later, Appellant gave the police a detailed account of the offense. Appellant claimed that she was in a vehicle with two other individuals, when one of those individuals grabbed the victim at a bus stop and pulled her into the vehicle. At the instruction of one of the co-defendants, Appellant used some of the victim's money to pay for a hotel room, and she went to her residence in order to retrieve some bleach and a douche. When Appellant returned to the motel room, the victim was half-naked, but she was alive. One of the co-defendants raped the victim, and he demanded that Appellant leave the room again in order to purchase a shovel. When Appellant returned to the motel room, the victim was naked, and she was dead. The victim's body was dumped in a clearing, and the victim's personal items were destroyed. Appellant later traded the vehicle that she had been driving in for another vehicle. After the two co-defendants were tried and convicted, Appellant's case was set for trial, and the State filed a notice to seek the death penalty.

 **202.01 Trial Courts / Judicial Disqualification / Recusal:** Appellant filed a motion to recuse the trial judge alleging that the trial judge's actions and comments exhibited a strong bias against her. At a subsequent hearing, Appellant presented evidence of the trial judge's comments during a pre-trial hearing, and she noted that the trial judge had previously presided over the trials of her two co-defendants. Appellant claimed that the administrative judge abused his discretion in denying her motion to recuse the trial judge.

Holding: A trial court enjoys a presumption of judicial impartiality which is not defeated by the mere assertion of bias based on a trial judge's previous judicial relationship with a defendant. And information that a trial judge gained about a defendant's case from previously trying a co-defendant is not information gained from an extrajudicial source. The high standard for recusal set forth by the Court of Criminal Appeals gives a trial court broad discretion to express itself and its opinions. Statements may well show the trial judge was critical, disapproving and even hostile toward Appellant and her counsel, but "[e]xpressions of impatience, dissatisfaction, annoyance, and even anger" in the ordinary conduct of courtroom administration do not establish bias.

 **206 Trial Courts / Appointment of Interpreter:** Appellant filed a motion for an interpreter, claiming that Appellant was from another country and that she only understood some English. The State offered Appellant's testimony from a previous bond reduction hearing, and also called several other witnesses who testified to Appellant's ability to speak and understand English. Appellant re-urged a motion for an

interpreter just prior to voir dire, claiming that Appellant's limited understanding of the English language prevented her from fully communicating with counsel and from understanding the entire process. Defense counsel explained that Appellant's difficulties in translating and communicating required additional time on the part of counsel to explain concepts, and that extra time would not be available during trial. The trial court denied the motion finding that, although Appellant may not understand all the words used at trial, she understood enough to know "what is going on."

Holding: There was evidence that Appellant was capable of communicating in English. Despite our tremendous concern that the expense for an interpreter was given more weight than Appellant's constitutional right to confrontation, we remain mindful that the trial judge was in a position to observe Appellant, and we cannot disturb the decision of the trial court absent a demonstrated abuse of discretion. Based on the arguments of counsel and her personal observations of Appellant, the trial judge determined that Appellant maintained a sufficient understanding of the English language and understood "what was going on." Because the trial court's decision was based on facts identified in the record, we cannot say her findings were arbitrary or capricious.

§ 373 Reputation & Character Evidence / Defendant: The State introduced into evidence a letter that a man wrote to Appellant, which described the man's very graphic fantasy of Appellant and the man engaged in sexual activities with a second female. The State offered the letter as impeachment evidence of Appellant's sexual interest in women. Appellant was charged with the sexual assault of the victim, and the letter was offered as evidence that Appellant liked having sex with other females and that she had "lived the fantasy" expressed in the letter.

Holding: The letter sent to Appellant by a man, living in another state and whom she had never met, outlining his sexual desires and fantasies with Appellant and other women, does not tend to make anything as to Appellant, much less her sexual orientation or whether she committed sexual assault, any more or less probable and is therefore not relevant. Furthermore, because the statement was not her own, the trial court erred in admitting the purported impeachment evidence under Rule 613.

§ 48 Confessions & Self-Incrimination / Oral Statements (Statements Made During Plea Negotiations): During the direct examination of Appellant, defense counsel asked whether her written statement was her complete recollection of the events. Appellant testified that some details were left out and that she had mentioned this to her previous attorney and the prosecutor. The State then argued that Appellant "opened the door" and proceeded to ask questions about statements, not included in the written statement, but made during plea negotiations. Over defense objection, the State asked several impeachment questions of Appellant, including several "Did you tell me . . ." questions.

Holding: We cannot see how Appellant's responses, during cross-examination by the State, left a false impression with the jury. Appellant acknowledged that she told the officer "the truth," that some details may have been left out of her written statement, and that she had previously told the prosecutor "the exact same story." The State's cross-examination questions were simply attempting to prompt and maneuver Appellant to "open the door." The State fails to point to any testimony by Appellant regarding a statement made during the plea bargain discussions that opened the door to the cross-examination by leaving a false impression. Accordingly, Appellant's statements made during plea negotiations were not admissible to negate a false impression. Only when Appellant offers statements made during plea bargain discussions may the State, in the interest of fairness, offer other statements made during the same plea bargain discussions. Thus, the trial court erred in allowing the State to proceed with questions relating to statements made during plea negotiations.

§ 205 Trial Courts / Improper Comments by Trial Judge: During voir dire examination, the prosecutor and the trial court exchanged numerous "notes." These notes discussed Appellant's ability to communicate with her counsel, defense counsel's voir dire of at least two of the venire members, the hairstyle of one of the venire members, the State's presentation of the law to the venire, the prosecutor's line of questioning of one of the venire members, time limits on voir dire, and an update on unrelated proceedings in the courthouse. After the voir dire examination of one of the prospective jurors and outside the presence of any potential jurors, defense counsel inquired about notes being written between the trial court and the prosecutor during the voir dire of potential jurors. The trial court proceeded to ask the State to read any notes that were not work

product into the record. Appellant claimed that these notes reflected such bias that they compromised her right to a fair and impartial tribunal.

Holding: The State acknowledged that the communications were between the prosecutor and the trial court and made with the expectation that the notes would remain private between the two of them. They, therefore, constitute ex parte communications. These ex parte communications were examples of the trial court providing guidance to the prosecutor on the presentation of his case and discussions regarding the trial court's initial ruling regarding Appellant's ongoing request for an interpreter. As such, they extended beyond the realm of courtroom administration and etiquette, for which the trial court has control, and became strong evidence of bias and partiality. Here, the trial judge knew or should have known that engaging in written communications with the State regarding potential jurors, defense counsel's voir dire questions and presentation of argument, all in the presence of the potential jurors, was improper. The secretive nature and content of the ex parte notes show a bias on the part of the trial court to favor the prosecution, even going so far as to make recommendations on the presentation of its case. As such, the trial judge became an advocate for the State, and an opponent of the defense, in direct conflict with her judicial requirement of absolute impartiality, precluding Appellant from receiving a fair and impartial trial. (Harm Analysis) Out of the hundreds of objections lodged during trial, with very few exceptions, each of the State's objections were sustained while each of the defense objections were overruled. This is clearly a case in which the absence of an impartial trial judge on the bench infected the entire trial process, robbing Appellant of her basic protections and undermining the ability of the criminal trial to reliably serve its function as a vehicle for the determination of guilt or innocence. Because the absence of an impartial judge on the bench infected the integrity of the trial process, the trial court's judgment is reversed, and the cause is remanded for a new trial.