

THE STATE OF NEW HAMPSHIRE

SUPREME COURT

In Case No. 2006-0547, State of New Hampshire v. Keith Ingraham, the court on April 30, 2007, issued the following order:

Having considered the briefs and record submitted on appeal, we conclude that oral argument is unnecessary for the disposition of this appeal and affirm the decision of the trial court.

The defendant, Keith Ingraham, appeals his convictions on ten counts of felonious sexual assault and two counts of possession of child pornography. He contends that the trial court erred in failing to recuse itself after referring to him as a predator during a bail hearing.

The Code of Judicial Conduct requires disqualification of a judge in a proceeding in which the judge's impartiality might reasonably be questioned and to avoid even the appearance of impropriety. *State v. Bader*, 148 N.H. 265, 268 (2002). Whether an appearance of impropriety exists is determined under an objective standard; that is, would a reasonable person, not the judge herself, question the impartiality of the court. *Id.* We have recognized that judges are able to put aside information gained at prior hearings and to decide a case solely on evidence presented at subsequent hearings. *Id.* at 270. "Also not subject to deprecatory characterization as 'bias' or 'prejudice' are opinions held by judges as a result of what they learned in earlier proceedings." *Id.*

In this case, the trial court's use of the term "predator" derived from extensive evidence about the defendant's inappropriate sexual conduct with female juveniles contained in pleadings submitted by the State at a bail reduction hearing. This included: (1) he ran a Tae Kwon Do program at Newmarket High School for troubled teens; (2) he engaged in inappropriate contact with female participants including kissing, requiring them to sit in his lap during discussions and hugging that involved touching their breasts or buttocks; (3) explicit text messages that he sent to the victim; (4) a history of grooming that he began when the victim was 14; and (5) naked, explicit photos of the victim which he took when she was under 16. The conduct took place while he was in a position of authority as a volunteer in a program for troubled teens.

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The term “predator” is used in current parlance to describe the type of actions ascribed to the defendant; it was cited as part of the court’s rationale to deny the defendant’s requested bail reduction. Based upon the record before us, we conclude that the remark did not evidence “a deep-seated favoritism or antagonism that would make fair judgment impossible.” *Id.* at 270-71. We therefore find no error in the trial court’s ruling.

Affirmed.

Broderick, C.J., and Dalianis, Duggan, Galway and Hicks, JJ., concurred.

**Eileen Fox,
Clerk**

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Rockingham County Superior Court 05-S-2224 through 2235

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