

**SUPERIOR COURT
OF THE
STATE OF DELAWARE**

JOSEPH R. SLIGHTS, III
JUDGE

NEW CASTLE COUNTY COURTHOUSE
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January 16, 2009

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**Re: *State v. Deon Black*
Def. I.D.: 0711035471**

Dear Counsel:

As you know, this matter was tried to a jury on July 1, 2008, resulting in guilty verdicts against the defendant on the charges of Possession With Intent to Deliver Cocaine and Possession of Cocaine within 300 Feet of a Church. Shortly after the verdict was announced, a Superior Court bailiff advised the Court that he had been told by one of the jurors that another juror had discussed the case with her roommate during an overnight recess. Based on the description given by the reporting juror, the Court was able to ascertain the identity of the juror who allegedly had the extraneous

conversation about the case. The Court advised counsel that it would conduct an inquiry of both the reporting juror ("Juror No. 1") and, if appropriate, the juror who allegedly engaged in the extraneous discussion about the case ("Juror No. 2").

Juror No. 1 was questioned by the Court, on the record, and in the presence of counsel, on July 21, 2008.¹ She stated that Juror No. 2 told her that she had spoken to her roommate about the case on the night before the verdict was rendered. Although she could not recall exactly what was said, Juror No. 1 had a sense that the conversation with the roommate helped Juror No. 2 be "sure of [her] decision."² Juror No. 1 emphasized, however, that Juror No. 2 had strongly favored guilty verdicts when the jury recessed on July 2 and, as reflected by the unanimous jury verdicts, continued to favor guilty verdicts throughout the next day of deliberation.

Based on the discussion with Juror No. 1, the Court called Juror No. 2 in for an interview. During that interview, Juror No. 2 acknowledged that she spoke to her roommate briefly about the case, but only to the extent of telling him that the case was a criminal case. She did not disclose any of the details of the case. She was also adamant that any discussion that she may have had with her roommate did not affect her decision-making - - she had been convinced that guilty verdicts were appropriate on the first day of deliberations and continued to hold that view on the second day of deliberations.

When asked whether she was aware of any other jurors having extraneous discussions about the case, Juror No. 2 reported that a male juror ("Juror No. 3") had advised some members of the jury on the second day of deliberations that he had

¹This procedure was followed throughout the Court's inquiry into juror misconduct.

²D.I. 46, Juror No. 1, Interview Tr. at 10.

discussed the case with his spouse the night before because he was uncertain what to do. Juror No. 2 indicated that she *thought* the extraneous discussion may have helped Juror No. 3 make up his mind based on the fact that he was uncertain on the first day of deliberations but voted for guilty verdicts on the second day of deliberations. She then testified, however, that Juror No. 3 “didn’t say that [the extraneous conversation is] what changed his mind.”³

During the initial interview with Juror No. 2, she was unable to provide a clear description of Juror No. 3. Based on the limited information she did provide, however, the Court was able to conduct a further investigation into the identity of Juror No. 3. The Court then printed out a photograph of the juror who best matched Juror No. 3's description from the Division of Motor Vehicles DELJIS site. Juror No. 2 was then brought back into Court to confirm the identity of Juror No. 3, which she did without hesitation.

Juror No. 3 was interviewed on October 10, 2008.⁴ When asked whether he had engaged in any extraneous discussions about the case, Juror No. 3 denied discussing the case directly, but did state that he had inquired of his son (a recovering drug addict) whether the amount of drugs involved in this case was more consistent with simple possession or possession with intent to deliver. According to Juror No. 3, he did not advise his son of the quantity of drugs seized from the defendant, but rather asked him general questions about the amount of drugs typically consumed by addicts. Juror No. 3 stated that his son was not particularly helpful. He returned for

³D.I. 44, Juror No. 2, Interview, Tr. at 6.

⁴Several attempts to reach Juror No. 3 failed. When he was finally reached, he failed to appear for his first scheduled interview. He reluctantly appeared after it was suggested that a subpoena would be issued to compel his appearance if he did not appear voluntarily.

the second day of deliberations “still undecided” on the question of possession versus possession with intent to deliver. Juror No. 3 then went on to state that comments made during deliberations on the second day convinced him to find the defendant guilty of possession with intent to deliver.⁵

After the interviews of the three jurors were completed, defendant moved for mistrial on the ground that the jury’s verdict was tainted by extraneous jury contact. The State opposed the motion. At oral argument on the motion, it became clear that both parties, and the Court, had differing recollections of the content of the jury interviews. Accordingly, the Court directed defense counsel to order transcripts of the jury interviews and supply them to the Court. The Court received these transcripts on December 22, 2008. The matter is now ripe for decision.

Delaware Rule of Evidence 606(b) allows the Court to receive juror testimony regarding a jury verdict in two limited circumstances: (1) when “extraneous prejudicial information [is] improperly brought to the jury’s attention;” or (2) when “outside influence [is] improperly brought to bear upon any juror.” The Court may not, however, inquire into the juror’s mental processes during deliberations.⁶ When juror misconduct is brought to the Court’s attention, the Court maintains “broad

⁵Specifically, Juror No. 3 stated” “I mean, it [the extraneous conversation] didn’t - - it didn’t affect me as far as my decision the next day, of course, because probably 70, 80 percent of the jurors were already leaning towards guilt with intent to deliver, and there was 2 or 3 of us that were holding it up, but after we had talked and deliberated, pretty much made it, you know, convinced us.” D.I. 45, Juror No. 3, Interview Tr. at 8. Later in the interview, Juror No. 3 stated: “Like I said, I was leaning towards away from the jurors [sic], where they were going. So, anything that my son had told me didn’t - - because he was found guilty, I was leaning towards only possession. . . There was 2 or 3 of us leaning towards that and the rest of the jurors talked us into the intent to deliver charge.” (*Id.* at 13).

⁶*Burke v. State*, 484 A.2d 490, 500 (Del. 1984).

discretion to determine the appropriate remedy.”⁷ “In cases of juror misconduct, a defendant is entitled to a new trial only where the circumstances are so egregious as to be inherently prejudicial, or where the defendant can show that the misconduct caused actual prejudice.”⁸ In determining whether a new trial is required, the Court must be mindful of “the interests in the finality of judgments and insulation of the decision making process from scrutiny by either the government or the public.”⁹

In this case, Juror No. 1's initial report of juror misconduct was never substantiated. Juror No. 2 unequivocally denied having any substantive conversation about the case outside of the jury room, and Juror No. 1's vague report to the contrary did not rise to the level of a “particularized showing” of extraneous influence as required under Delaware law.¹⁰ Moreover, there is absolutely no indication that any extraneous discussion Juror No. 2 may have had about the case significantly affected her deliberation of the evidence.

Juror No. 3's conduct is more troubling. He acknowledged that he sought out substantive information outside out of the courtroom to assist him in his deliberations. Based on his candid revelations, however, it is clear to the Court that he received little, if any, actual guidance from these efforts. He stated that he had questions about the appropriate outcome when he went home after the first day of deliberations, and that he returned to the jury room on the second day with those same questions. As is intended by the deliberative process, he discussed the case vigorously with his

⁷*Lovett v. State*, 516 A.2d 455, 475 (Del. 1986).

⁸*Miller v. State*, 884 A.2d 512, 513 (Del. 2005) (citations omitted).

⁹*Durham v. State*, 867 A.2d 176, 181 (Del. 2005).

¹⁰*Id.* at 181.

fellow jurors on the second day and, ultimately, was able to join in the jury's unanimous verdicts.

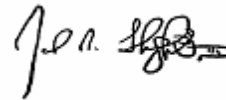
Needless to say, the Court is not pleased that members of this jury did not follow the Courts admonitions not to engage in extraneous discussions about the case. On this record, however, the Court cannot conclude that the extraneous contacts with this jury were so egregious as to be inherently prejudicial, or that they actually prejudiced the jury's deliberations.¹¹

Based on the foregoing, defendant's motion for mistrial must be **DENIED.**

IT IS SO ORDERED.

Sentencing of the defendant shall be scheduled forthwith.

Very truly yours,

A handwritten signature in black ink, appearing to read "J. R. Slights, III", with a stylized flourish at the end.

Joseph R. Slights, III

Original to Prothonotary

¹¹See *Miller*, 884 A.2d at 513.