

IN THE SUPERIOR COURT OF THE STATE OF DELAWARE  
IN AND FOR NEW CASTLE COUNTY

TYRONE A. REDDEN, )  
Defendant Below/Petitioner, )  
v. ) ID No.: 0701015161  
STATE OF DELAWARE )

**ORDER**

AND NOW, TO WIT, this 12th day of January, 2010, **IT IS HEREBY ORDERED** as follows:

**Background**

Tyrone A. Redden (“Redden”) was convicted on three counts of Burglary Second, three counts of Theft over \$1000, three counts of Conspiracy Second, Possession of Burglary Tools, Theft of a Firearm, and Possession of a Deadly Weapon by a Person Prohibited. Redden appealed and the Delaware Supreme Court affirmed his convictions.<sup>1</sup>

On or about June 3, 2009, Redden filed a motion for a new trial pursuant to Superior Court Criminal Rule 33 and sought postconviction relief under Superior Court Criminal Rule 61. In his motion, Redden claimed a new trial was warranted

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<sup>1</sup> *Redden v. State*, 2009 WL 189868 (Del. Jan. 14, 2009).

due to judicial bias and jury misconduct. In its Order dated June 29, 2009, this Court denied Redden's motion. Redden appealed to the Delaware Supreme Court and on December 8, 2009, the Delaware Supreme Court reversed and remanded the case to address the issue of juror misconduct.

Before the trial began on the third day it came to the attention of the Court that there was a potential issue with one of the jurors. Juror number 14 ("Juror No. 14") had been driving to and from court with his aunt, Joanne Argeo ("Ms. Argeo"), who sat in the courtroom during the trial proceedings. Although the court is open to the public, Ms. Argeo was privy to discussions between attorneys and the Court even when the jury was not present. Potentially, this could raise an issue if any discussions about the trial took place between Juror No. 14 and Ms. Argeo. In the presence of all attorneys, the Court spoke with Juror No. 14 and Ms. Argeo separately. Both individuals stated that they never spoke about the trial at any time.<sup>2</sup> Neither party appeared to have an issue with Juror No. 14 remaining on the panel and, therefore, the trial continued.

Redden claims that the possibility of juror misconduct taints the verdict. He argues that the juror was required to disclose to the court that his driver was listening to the court proceedings. Because such a report was not made, Redden argues that the juror likely received outside information and, therefore, the verdict was tainted. The Court does not agree.

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<sup>2</sup> Trial Tr. Day 3, 10-13, Oct. 18, 2007.

## Discussion

An accused has a fundamental right to a fair trial and an impartial jury.<sup>3</sup> Among other things, this right requires that jury verdicts be based solely on the evidence presented at trial.<sup>4</sup> The Delaware Supreme Court has stated that a “defendant is entitled to a new trial only if the error complained of resulted in actual prejudice or so infringed upon defendant’s fundamental right to a fair trial as to raise a presumption of prejudice.”<sup>5</sup>

The moving party generally carries the burden of showing misconduct and proving that he was “identifiably prejudiced by the juror misconduct, unless the defendant can establish the existence of ‘egregious circumstances,’ i.e., circumstances that, if true, would be deemed inherently prejudicial so as to raise a presumption of prejudice in favor of defendant.”<sup>6</sup> Conduct that is presumptively prejudicial includes: (1) a bailiff’s comment to jurors that relates to the content or procedure of the deliberations;<sup>7</sup> (2) a bailiff’s comments to the jurors that expresses his view of the evidence;<sup>8</sup> and (3) when jurors are made aware of

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<sup>3</sup> *Flonnelly v. State*, 778 A.2d 1044, 1051-52 (Del. 2001).

<sup>4</sup> *Id.* at 1052.

<sup>5</sup> *Hughes v. State*, 490 A.2d 1034, 1044 (Del. 1985).

<sup>6</sup> *Massey v. State*, 541 A.2d 1254, 1257 (Del. 1988) (citations omitted).

<sup>7</sup> *McLain v. Gen. Motors Corp.*, 586 A.2d 647, 654 (Del. Super. 1988).

<sup>8</sup> *Parker v. Gladden*, 385 U.S. 363, 363-64 (1966) (holding that bailiff’s comments to jurors that defendant was a “wicked fellow,” that he was guilty, and that “if there is anything wrong (in finding [defendant] guilty) the Supreme Court will correct it” was prejudicial and the judgment was reversed).

information, not introduced at trial, that relates to the facts of the case or the character of the defendant.<sup>9</sup>

In the current case, not only has Defendant failed to show that the circumstances were so egregious as to be inherently prejudicial or that the misconduct caused actual prejudice to Defendant, but he has failed to show that any misconduct occurred at all. There is no dispute that Juror No. 14's driver was present in the courtroom during portions of the trial proceedings. However, the Court thoroughly addressed the issue by talking to both Ms. Argeo and Juror No. 14 individually and in the presence of the attorneys. All attorneys were present during these discussions and no objections were made to Juror No. 14 remaining on the jury panel. Therefore, this issue was not raised at trial. The record is clear that neither the juror nor the aunt ever communicated with each other about the trial. Without some showing that improper communication took place, there is no argument that the jury was tainted and, therefore, Defendant's motion must be denied.

**IT IS SO ORDERED.**

/S/ CALVIN L. SCOTT  
Judge Calvin L. Scott, Jr.

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<sup>9</sup> *Miller v. State*, 2005 WL 16653713, at \*2 (Del. July 12, 2005).