

SUPERIOR COURT
OF THE
STATE OF DELAWARE

WILLIAM C. CARPENTER, JR.
JUDGE

NEW CASTLE COUNTY COURTHOUSE
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September 25, 2003

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RE: State v. Curtis Collins
Criminal ID No. 0206019341

Submitted: August 26, 2003
Decided: September 25, 2003

On Defendant Curtis Collins' Motion for New Trial. Denied.

Dear Counsel:

The Court has before it Defendant's Motion for New Trial pursuant to Superior Court Criminal Rule 33. This is the Court's decision regarding said Motion.

During the course of the trial, Juror #10 advised the bailiff that she believed she recognized a witness that was testifying. The Court, outside the presence of the other jurors, questioned the juror concerning her recollection of the interaction she may have had with this witness. The following colloquy on the subject occurred:

The Court: If my recollection is right, is that you have some -- perhaps now that you saw Mr. Corbin, you have some recollection of him?

Juror #10: It's a possibility.

The Court: Can you tell me what you think you know or remember seeing Mr. Corbin and when you would have seen him, what circumstances you would have seen him?

Juror #10: Well, if by any chance, he is possibly living in Seaford, Delaware, and has a son by the name of Wayne Jones, and if he used to own or do, like, medical transportation, there was a gentleman that my company worked with and he was - - his face just looks familiar to me.

The Court: Okay. Let's assume, and I'm not sure it is the person, but let's assume for a moment it is. Is there anything about your interaction with Mr. Corbin that you believe would interfere with your ability to fairly consider the evidence in this case?

Juror #10: I don't think so.

The Court: Okay. Did you have interactions with him there were negative in any way?

Juror #10: No, not at all.

The Court: Did you have interactions that could have particularly made him a friend? Was he a friend?

Juror #10: I can't honestly say that, that he was a friend. Just by chance, we just happened to meet through, you know, his employment, as well as my employer.

The Court: Okay.

Juror #10: And I maybe socialized with him briefly, but not anything extensive.

The Court: Socialize in the sense of when he came into the office, you would say "hi" to him or something?

Juror #10: "Hi," right.

The Court: Okay. Now, can you give me a time frame about how long that would have been?

Juror #10: Well, I left that place of employment about six to eight months ago.

The juror further indicated that if the witness was the same individual she also had further contact with the witness' son. Subsequently, after excusing the juror, the Court questioned the witness concerning his employment and the name of his son and it became apparent that the individual described by the juror was in fact this witness. Thereafter, Juror #10 was again brought into the courtroom and questioned further about her interaction with the witness and also her relationship with the witness' son. The juror appeared to have known the son while in high school and was aware from conversations with other classmates since graduating that the witness's son had gotten into trouble. After thoroughly reviewing these matters with the juror, the following colloquy occurred.

The Court: Okay. Now, do you believe that your knowledge of Mr. Jones and the knowledge that that is Mr. Corbin's son, do you think that incident - - those facts would influence your decisions in regards to this particular case or your assessment of the credibility of Mr. Corbin?

Juror #10: No, not at all.

The Court: Okay. Would you be willing to listen to all of the evidence in the case and render a fair and impartial verdict based solely upon what you hear in the courtroom?

Juror #10: Yes.

The Court: Okay. Anything else you need that you think is - - need to tell me that you think is relevant to your familiarity with Mr. Corbin?

Juror #10: No, nothing I can think of at this time.

The Court: Okay. And I'm - - what I'm hearing is that you know him to see him, because you recognized him, you were introduced to him as a driver who would take some of your clients from the company you were working for at the time, and that you may have, although you don't particularly recall, on a few occasions may have talked to him in relation to that client transportation?

Juror #10: Yes.

The Court: Okay. I take it, however, he is not someone who came in the office and kind of leaned on the desk and kind of chatted with you for a half hour about what was happening in his life?

Juror #10: No, not at all.

The Court: All right. Thank you, ma'am.

The defendant subsequently requested that the juror be excused. After considering the matter, the Court ruled:

The Court: Okay. I admit it's a relatively unusual circumstance. And but she doesn't know Mr. Collins, doesn't appear to recognize him, doesn't appear to recognize anyone, doesn't make a connection between Mr. Collins, anyone in Mr. Collins' family, and that - - and her recollection of Mr. Corbin is - - appears to be isolated to either, one, his son, who was in trouble, or two, the little bit of contact she may have had with him when she was employed, and Mr. Corbin did some transportation of patients for that company.

I find her to be very candid, very honest.

I don't believe that the circumstances, as she highlighted to the Court, would justify excusing her, at least at this juncture of the case.

Now, things may change as the trial progresses. And - - but I'm going to bring her back in and tell her that I'm going to not excuse her at this time, and I will allow her to continue, but if, as the trial proceeds, there are other things that come to light that causes her to refresh additional information, she needs to let us know so that we can address them.

At the conclusion of closing arguments and jury instructions, the Court decided that in fairness to the defendant, and in spite of the Court's continued belief that the juror would be fair, it would excuse Juror #10 and substituted an alternate that was available in her place. The Court advised counsel at sidebar of its intent and then proceeded to excuse the juror in open court while the other jurors were present. The Court stated:

The Court: I am going to substitute - - Ms. Stancell, you talked to us yesterday, and I have given some more thought about the discussion we had. And since we still have an alternate who has remained with us today, that I thought it would be - - having thought about it some more, it would be best perhaps that you not deliberate in regards to the guilt or innocence of

Mr. Collins. I believe you could be a fair and impartial juror, but having had some contact with Mr. Corbin, perhaps it would be best, giving it further thought, that you not deliberate any further in regards to it, so I'm going to substitute the alternate.

And thank you very much for your service, but you are free to go.

It is this innocuous reference to "some contact" with Mr. Corbin (the witness) that the defendant now asserts justifies a new trial. It is truly an ironic twist when the Court takes action in an attempt to be fair to the defendant and to remove any potential appellate issue concerning the service of a juror and grants the request that has been made by the defendant, that that action now forms the basis of the defendant's argument for a new trial. The Court finds that the comments set forth above made to the jurors were appropriate; provided a non-prejudicial justification for a juror's excusal; and was a polite and courteous action taken by the Court when a citizen had given her time and effort in the performance of her jury duty responsibility. Nothing said by the Court could in any way have influenced the decision of the remaining jurors, and the comments specifically indicated that any contact by the juror had no relationship to the defendant.

Further, the Court finds that the factual situation of the *Banther*¹ case is so different to the incident at issue here that it is not applicable. To argue that the defendant's right to a fair trial has been placed in jeopardy by the Court's action is simply ridiculous. If anything, the action taken insured the guilt or innocence of the defendant was decided by a jury, not influence by any extraneous influences.

As a result, the Defendant's Motion for New Trial is hereby DENIED, and sentencing will occur on September 26, 2003 at 9:30 a.m.

Sincerely yours,

Judge William C. Carpenter, Jr.

WCCjr:twp
cc: Prothonotary

¹ *Banther v. State*, 823 A.2d 467 (Del. 2003).