

**IN THE SUPERIOR COURT OF THE STATE OF DELAWARE**  
**IN AND FOR KENT COUNTY**

|                            |   |                   |
|----------------------------|---|-------------------|
| <b>STATE OF DELAWARE</b>   | ) |                   |
|                            | ) |                   |
| v.                         | ) | ID No. 0201015314 |
|                            | ) |                   |
| <b>ANTONIO L. JACKSON,</b> | ) |                   |
|                            | ) |                   |
| Defendant.                 | ) |                   |

Submitted: April 9, 2003  
Decided: June 27, 2003

James Kriner, Esq. and Kim E. Ayvazian, Esq., Deputy Attorneys General, for the State of Delaware.

Thomas D. Donovan, Esq., Dover, Delaware, for the defendant.

**OPINION**

**Upon Defendant's Motion for New Trial**  
***GRANTED***

RIDGELY, President Judge

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Defendant Antonio L. Jackson was indicted by the Grand Jury on charges of Trafficking in Cocaine, 16 *Del. C.* § 4753A, Possession With Intent to Deliver Cocaine, 16 *Del. C.* § 4751, Conspiracy in the Second Degree, 11 *Del. C.* § 512, Possession of Drug Paraphernalia, 16 *Del. C.* § 4771, and Possession of Marijuana, 16 *Del. C.* § 4754. After a two-day trial by jury, Jackson was convicted of Possession with Intent to Deliver Cocaine, Conspiracy in the Second Degree, and Possession of Drug Paraphernalia. The same jury acquitted Jackson of the Trafficking in Cocaine and Possession of Marijuana charges. Jackson has moved for a new trial on the charges he was convicted based upon the discovery after that verdict that one of the jurors had been convicted of rape and other offenses in a general court martial proceeding in 1992, violations of Articles 120, 125 and 134 of the Uniform Code of Military Justice, 10 *U.S.C.* §§ 920, 925 and 934. The parties agree that the conviction disqualified the juror from jury service. Because a new trial is warranted in the interest of justice, Jackson's motion is granted.

**I. FACTS**

Juror #11 answered "no" on his Juror Questionnaire to the following question: "Have you ever pled guilty or been found guilty of a felony in any state or federal court?" After the verdict was returned in this case, the Court learned that the juror may have been court martialed and sentenced to 10 years imprisonment for rape while he was a member of the U.S. Air Force. In response to questions from the Court the juror acknowledged the conviction in 1992 and sentence of 10 years for rape. The parties have stipulated that Juror #11 was convicted of an offense which would

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constitute a felony under Delaware law and that he was not qualified to serve on a jury in Delaware. The juror explained his negative answer on the questionnaire by saying he thought the rape conviction for which he was sentenced to 10 years in prison was a misdemeanor. His explanation that he believed rape was a misdemeanor when he served 10 years imprisonment for it is incredible. On the facts before me, the conclusion is compelled that his answer about his prior record was purposefully untrue.

## **II. DISCUSSION**

Delaware law expressly provides that convicted felons who have not had their civil rights restored are disqualified from jury service.<sup>1</sup> The disqualification of felons from the judicial process can be traced back to ancient Greece as a measure to protect the system from corruption.<sup>2</sup> Without doubt a juror's answer to a question about whether he had been convicted of a felony is material information in the jury selection process. It is also without doubt that a response from the juror that he had been convicted of a felony would have provided either Jackson or the State a valid basis for a challenge for cause. It is well established that the deliberate nondisclosure of material information from a juror severely compromises the impartial administration of justice.<sup>3</sup> Because Jackson has demonstrated that a) the juror failed to honestly

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<sup>1</sup> 10 *Del. C.* § 4509(b).

<sup>2</sup> *Barkley v. State*, 724 A.2d 558, 559 (Del. 1999).

<sup>3</sup> *Jackson v. State*, 374 A.2d 1, 2 (Del. 1977).

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answer a material question on his disqualification for jury service and b) that a correct response by Jackson would have provided a valid basis for a challenge for cause, a new trial is warranted in the interests of justice.<sup>4</sup>

### **III. CONCLUSION**

A new trial is ordered in the interests of justice on the charges of Possession with Intent to Deliver Cocaine, Conspiracy in the Second Degree, and Possession of Drug Paraphernalia.<sup>5</sup>

**IT IS SO ORDERED.**

/s/ Henry duPont Ridgely  
President Judge

cmh

oc: Prothonotary

xc: Order distribution

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<sup>4</sup> *McDonough Power Equip., Inc. v. Greenwood*, 464 U.S. 548, 555-56 (1984); *Banther v. State*, 823 A.2d 467 (Del. 2003); *Smallwood v. State*, 813 A.2d 1141 (Del. 2002).

<sup>5</sup> The State has conceded that Jackson should not be subject to retrial on the charges for which he has been acquitted. *See Bradshaw v. State*, 806 A.2d 131, 140 n.52 (Del. 2002).