IN THE SUPERIOR COURT OF THE STATE OF DELAWARE

IN AND FOR KENT COUNTY

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| STATE OF DELAWARE, | ) |
| | ) |
| 5. | ) |
| | ) |
| COREY WASHINGTON, | ) |
| (ID. No. 0004018575A) | ) |
| | ) |
| Defendant. | ) |

*Submitted: February 13, 2001*
*Decided: April 10, 2001*

Martin B. O'Connor, Esq., Dover, Delaware. Attorney for the State

Deborah Carey, Esq., Dover, Delaware. Attorney for the Defendant.

*Upon Consideration of Defendant's*
*Motion For a New Trial*
**DENIED**

**VAUGHN, Resident Judge**

**ORDER**

***State v. Corey Washington***
ID. No. 0004018575A
April 10, 2001

Upon consideration of the defendant's motion for a new trial, the State's response, and the record of this case, it appears that:

1. The defendant, Corey Washington, was convicted by a jury of four Title 16 offenses, one charge of resisting arrest, and one motor vehicle offense. During jury *voir dire* on another, unrelated criminal case the next week, the person who had served as juror number three in Mr. Washington's case made statements which Mr. Washington contends "are fundamentally at odds with the presumption of innocence." He contends that juror number three's post-trial statements are grounds for a new trial in his case. For the reasons which follow, however, I conclude that under Rule 606 of the Rules of Evidence, the juror's comments are inadmissible on the issue of a new trial, and that the motion must, therefore, be denied.

2. The defendant's trial took place during the week of January 29, 2001. The jurors at that time were in their first week of a two-week jury term. Mr. Washington's trial concluded on Thursday of that week. On February 5th of the next week, a jury was selected in the case of State v. Jerome Wheeler. Defense counsel for Mr. Wheeler was the same attorney who had represented Mr. Washington the week before. Prior to jury selection in the Wheeler case, defense counsel stated to the Court that the charges in Wheeler were very similar to the charges in Washington, that factually the cases were similar, and that she anticipated that the contentions and arguments of counsel would also be very similar to the ones in the Washington trial. She expressed concern about whether a juror's service on the jury in the Washington case might affect the juror's ability to be fair and impartial in the Wheeler case. She requested

that the Court individually *voir dire* the jurors who had served on the Washington case to verify their ability to be fair and impartial. The Court acceded to this request and asked all jurors who had served on any criminal case trial the previous week (there was one other) to come forward for individual *voir dire*. When the person who served as juror number three in the Washington case came forward, the following colloquy took place:

> The Court: Good morning, Ms. Wintjen.
>
> Ms. Wintjen: Hi.
>
> The Court: You served last week on the jury, Corey Washington case?
>
> Ms. Wintjen: Yes, I did.
>
> The Court: Was there anything about your experience that would impede your ability to fairly and impartially hear another case?
>
> Ms. Wintjen: I don't think so. No, I don't think so.
>
> The Court: What was that again?
>
> Ms. Wintjen: No, I didn't – we did him, he was an individual. This would be another, he is another individual.
>
> The Court: Okay. Do you know of any reason why you can't be as fair and impartial in this case as you were in that case?
>
> Ms. Wintjen: No, I don't.
>
> The Court: Did it leave you with any impressions or

opinions that would affect the way you hear this case?

Ms. Wintjen: No. I just wish they would behave when they come in here.

The Court: All right. Do you want to step back to the clerk for a minute?

(Whereupon the prospective juror returned to the clerk.)

Ms. Carey: That last comment tripped me a little bit because it leads to the implication or the influence that they already did something wrong and they have to prove that they didn't do something wrong, which is not the burden.
Mr. Kelleher: I don't think that is really fair. I don't think it would – I don't think we – that she can't follow the Court's instructions, and the State has the burden of proof. I think that would be fair. The State has the burden of proof.

The Court: I will ask her what she meant by that last comment.

Could you come forward again, Ms. Wintjen?
(Whereupon the prospective jury returned to the sidebar.)

The Court: Ms. Wintjen, what did you mean by that last comment that you made?

Ms. Wintjen: I just wish everybody would behave themselves so they wouldn't have to go to court.

> The Court: Does that mean that you think that the defendant has probably done something wrong?
>
> Ms. Wintjen: Well, I don't know if he has done anything wrong. I know that I feel that if he hasn't done something he has got a chance to prove he didn't do it, that is all. If he did something wrong, okay. If he didn't, if he didn't do it –
>
> The Court: Okay. I think in this particular case I think I will go ahead and excuse you.

3. Based upon the foregoing, the defendant contends that juror number three did not afford him the presumption of innocence in his case, and that his conviction under these circumstances violated his right to be tried before an impartial jury. In response, the State contends that the burden of proof and presumption of innocence were properly explained to the jury in the opening statements and in the Court's instructions, that each juror is presumed to have followed those instructions, that under Rule 606(b) a juror's mental processes cannot be used to challenge the validity of a verdict, that the juror's comments related to the Wheeler case, not the Washington case or her jury service or the deliberative process in that case, and that the juror's statements are ambiguous.

4. Evidential Rule 606(b) provides that juror testimony may be considered on the issue of the validity of a verdict where the testimony relates to "whether extraneous prejudicial information was improperly brought to the jury's attention or

whether any outside influence was improperly brought to bear upon a juror."[1] The comments made by juror number three obviously do not fall into either of those categories. Rule 606(b) further specifically provides that testimony which relates to a juror's mental processes in connection with a verdict should not be taken into consideration in judging the validity of a verdict. Juror number three's comments at most are of that type. They cannot, in and of themselves, therefore, serve as a basis for setting aside the verdict.

[1] Delaware Uniform Rules of Evidence, Rule 606(b).

5. In *McCane v. State*[2] the defendant was convicted of two counts of unlawful sexual intercourse in the first degree. After trial two jurors approached the chief investigating officer and indicated that they had an unfavorable view of the defendant "because he, among other things, had not testified at trial."[3] The Supreme Court upheld a Superior Court judgment refusing to grant a new trial because the jurors' "testimony" did not relate to alleged "extraneous prejudicial information" or "outside influence." The same is true here. Where a jury is properly instructed, post-trial statements of a juror which allegedly throw some doubt or question on the juror's faithfulness in fully adhering to the instructions will, nonetheless, generally be inadmissible under 606(b). Such statements relate to the juror's "mental processes."

6. I have considered whether the juror's statements reflect any bias on the juror's part, and I am satisfied that they do not.[4]

7. Therefore, the defendant's motion for a new trial is ***denied***.

**IT IS SO ORDERED.**

_____
**Resident Judge**

[2] Del. Supr., 734 A.2d 159 (1999).

[3] *Id*.

[4] *Styler v. State*, Del. Supr., 417 A.2d 948 (1980).

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