

IN THE SUPREME COURT OF THE STATE OF DELAWARE

ALEXANDER PAPANTINAS, ) No. 527, 2002  
 )  
 Defendant Below, ) Court Below: Superior Court  
 Appellant, ) of the State of Delaware in  
 ) and for Sussex County  
 v. )  
 ) Cr. I.D. No. 0204009518  
 STATE OF DELAWARE, )  
 )  
 Plaintiff Below, )  
 Appellee. )

Submitted: March 4, 2003

Decided: April 8, 2003

Before **VEASEY**, Chief Justice, **HOLLAND** and **STEELE**, Justices.

***ORDER***

This 8<sup>th</sup> day of April 2003, upon consideration of the briefs of the parties, it appears to the Court as follows:

1. A Grand Jury indicted Alexander Papantinas for Delivery of Schedule II Controlled Substance (Oxycontin/Oxycodone)<sup>1</sup> and for Maintaining a Dwelling for Keeping Controlled Substances.<sup>2</sup> On September 13, 2002, a Superior Court jury convicted Papantinas on both charges. In this appeal, Papantinas claims the trial judge abused his discretion by giving an “Allen”<sup>3</sup> charge.

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<sup>1</sup> 16 Del. C. 4751(a).

<sup>2</sup> 16 Del. C. 4755(a)(5).

<sup>3</sup> *Allen v. U.S.*, 164 U.S. 492 (1896).

2. On February 13, 2002, a Delaware State Police Detective made an undercover purchase of Oxycontin at a residence in Sea Air Mobile Home City near Rehoboth Beach, Delaware. Before and after making the drug purchase, the Detective viewed a photo of Papantinas. At trial, the detective identified Papantinas as the seller of the Oxycontin. Papantinas testified that the photo was of him, but denied that he, or anyone else at his residence, sold Oxycontin to the detective.

3. The jury retired to deliberate at 2:22 p.m. on September 12, 2002. The court reconvened at 4:07 p.m. and the trial judge read counsel the following jury note: “We do not currently have a consensus. No one appears ready to change their standing without further evidence. We request guidance.”<sup>4</sup> The trial judge then suggested giving the standard “Allen” charge. Over the objection of defense counsel, the trial judge gave an “Allen” charge and instructed the jury to resume deliberations. The trial judge instructed the jury as follows:

Ladies and gentlemen of the jury, I have a note indicating that you have not been able to reach a consensus or a unanimous verdict. You all have been deliberating over an hour and a half. While that may seem like a long time to you when you are all cooped up on that room, it is really a relatively short period of time for jury deliberations in view of the nature of this case.

This trial has consumed the time, energy, and resources of the State and the defendant. If you should fail to agree upon a verdict, this case will remain open and undecided and must be disposed of at some later

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<sup>4</sup> Appellant’s Op. Br. at 4.

date. There appears to be no reason to believe that another trial would not be equally taxing upon the resources of all of those involved, nor does it appear there would be any reason to believe that another jury viewing the same evidence, would face a less difficult decision.

Since it is your duty to reach a unanimous verdict if you are able to do so without violating your independent judgment and conscience, I ask that you resume deliberations and, in addition to the instructions previously given, to consider the following principles during your renewed deliberations:

Every juror, as part of the deliberation process, should consider and weigh the recollections and opinions of every other juror in reaching his or her conclusions. The collective memory, experience, judgment, and common sense of the entire jury panel should provide the basis of each juror's individual decision.

In the course of the deliberations, a juror should not hesitate to reexamine his or her own views and change an opinion if the juror is convinced by a review of the evidence, the law, and the logic of other jurors that such opinion is erroneous; and,

Three, no juror should surrender his or her honest conviction as to the weight or effect of the evidence solely because of the opinions of the other jurors or for the mere purpose of returning a verdict.

I wish to emphasize that, by making these remarks, the Court is not intending, in any way, to suggest what your verdict should be. You may conduct your deliberations as you choose, but I suggest that you now retire again to carefully reconsider all the evidence bearing upon the questions before the jury at this time and the opinions of the other jurors relating to the evidence in determining whether or not you are able to fulfill your duty to reach a unanimous verdict without violating your individual judgment and conscience.

Again, there will be no further evidence. The case is at a close. So I ask that you retire to the jury room to continue deliberations.<sup>5</sup>

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<sup>5</sup> Appendix to Appellant's Op. Br. at 31-33.

4. At the end of the day, the jury still had not rendered a verdict. The trial judge asked whether further deliberations the following day would be helpful. One juror expressed concern about the deliberations occurring the next day, but the other eleven did not oppose continuing the deliberations. The next morning the jury deliberated for 50 minutes and returned a guilty verdict.

5. Papantinas argues that the trial judge's actions constituted an abuse of discretion because the "Allen" charge coerced the jury into finding him guilty and denied him due process. In analyzing whether an "Allen" charge was coercive, this Court examines four factors: 1) the timing of the instruction; 2) the words used in the instruction; 3) the length of the deliberations both before and after the instruction; and, 4) the complexity of the case.<sup>6</sup>

7. There was no coercion in the timing because the trial judge dismissed the jurors for the night only after asking them if they would be willing to return the next morning. They agreed and did continue to deliberate the next day.<sup>7</sup>

8. The words used in the instruction were not coercive because they contained three separate admonitions that no individual juror should surrender his

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<sup>6</sup> *Desmond v. State*, 654 A.2d 821, 826 (Del. 1994) (citing *Streitfeld v. State*, 369 A.2d 674 (Del. 1977)).

<sup>7</sup> *Maxion v. State*, 1992 WL 183093 (Del. Supr.).

or her individual judgment or honest convictions. Further, this type of charge is “generally proper in order to encourage a jury to reach a verdict.”<sup>8</sup>

9. The length of the deliberations was not coercive. The jury deliberated for about an hour and a half before its “deadlock” and another hour and a half after the “Allen” charge was given. The jury deliberated for approximately the same length of time after the “Allen” charge was given as it did before the charge was given.<sup>9</sup> Three hours total hardly constitutes an oppressive amount of time, especially when an evening breaks up the total time into two almost equal segments.

10. Finally, the factual issues were not complex. The only disputed factual issue was the identity of the individual who sold the narcotics to the undercover detective.

11. The four factors, applied to Papantinas’ circumstances, support only one conclusion. The jury “Allen” charge did not coerce the jury into reaching a verdict. Therefore, the trial judge did not abuse his discretion by giving an “Allen” charge under the circumstances of this case.

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<sup>8</sup> *Brown v. State*, 369 A.2d 682, 684 (Del. 1976).

<sup>9</sup> *See, e.g., Davis v. State*, 1999 WL 86055 \*3 (Del. Supr.).

NOW, THEREFORE, IT IS ORDERED that the judgment of the Superior Court be, and the same hereby is, AFFIRMED.

BY THE COURT:

/s/ Myron T. Steele  
Justice