

IN THE SUPREME COURT OF THE STATE OF DELAWARE

CURTIS COLLINS,	§
	§ No. 505, 2003
Defendant Below,	§
Appellant,	§ Court Below – Superior Court
	§ of the State of Delaware,
v.	§ in and for New Castle County
	§ Cr. I.D. No. 0206019341
STATE OF DELAWARE,	§
	§
Plaintiff Below,	§
Appellee.	§

Submitted: March 16, 2004

Decided: May 25, 2004

Before **HOLLAND, BERGER** and **JACOBS**, Justices.

ORDER

This 25th day of May, 2004, having considered the briefs of the parties and the respective arguments set forth therein, it appears to the Court that:

(1) The defendant-appellant Curtis Collins was charged with two counts of Robbery in the First Degree, one count each of Assault in the Second Degree and Terroristic Threatening, and related weapons charges.

(2) On July 7, 2002—the day before trial—the State offered to dismiss the balance of charges if Collins entered a guilty plea to one count of Robbery in the First Degree, a related weapons charge, and Assault in the

Second Degree. The State also offered to recommend a sentence of five years imprisonment.

(3) Collins' attorney communicated the offer to his client. Defense counsel then reported to the trial judge that Collins refused to accept the plea agreement offered by the State. Defense counsel suggested that the trial judge bring his client into the courtroom and read Collins "the riot act." Because of Collins' actions at the previous trial,¹ the trial judge declined this request. Instead, the trial judge stated, "Well, we'll deal with him tomorrow. If you want me to talk to him tomorrow, I will."

(4) On July 8, 2003, before Collins' trial began, defense counsel indicated that Collins would like to accept the plea offered the day before by the State. The State told defense counsel that the plea offer had been withdrawn and was no longer on the table. Defense counsel then requested the trial judge to require the State to allow Collins to accept the earlier agreement. The trial judge denied the request.

(5) Collins' trial commenced that same day. During the course of the trial, Juror #10 informed the trial judge that she believed she recognized a witness who was testifying. That witness was Wayne Corbin, the victim. Outside the presence of the other juror members, the trial judge questioned

¹ At the first trial, Collins had exchanged words with the victim's son, who was a spectator. This exchange led to the trial judge declaring a mistrial.

the juror to determine if she did, in fact, know Corbin. The judge also questioned Corbin, and then questioned the juror again, all outside the presence of the jury.

(6) Through this inquiry, the trial judge was able to determine that the juror knew that Corbin's son had been involved with the criminal justice system. It was also determined that the juror had encountered Corbin through her employment when he made deliveries there. The juror had no social interactions with Collins outside of passing greetings at work.

(7) Following these revelations, Collins moved to excuse Juror #10 for cause. Collins argued that, had he known of this juror's contacts with the victim during *voir dire*, he would have challenged her for cause. The trial judge denied Collins' motion at that time.

(8) Later, after the trial judge had instructed the jury on the law following closing arguments, the trial judge granted Collins' motion to excuse Juror #10 because an alternate was still available. In the presence of the jury, the trial judge excused Juror #10 and explained to the jury his reasons for doing so by stating that Juror #10 had had "some contact" with Corbin. Juror #10 was replaced with the alternate.

(9) The jury, now with the alternate, found Collins guilty on all counts.

(10) On August 26, 2003, Collins filed a motion for a new trial based on the trial judge's statement to the jury explaining his reasons for excusing Juror #10. The trial judge denied that motion on September 25, 2003. Sentencing occurred on September 28, 2003. Collins filed a timely appeal with this Court.

(11) On appeal, Collins contends that the trial judge committed two errors. First, he argues that the trial judge abused his discretion in allowing the State to withdraw a plea offer that had been tendered to the defendant the day before his trial was scheduled to commence. Collins second claim of error is that, as a matter of law, the trial judge's decision to deny a new trial based on an allegation of juror impartiality was erroneous.

(12) The Superior Court's refusal to enforce an alleged plea agreement is reviewed on appeal for abuse of discretion.² While Collins concedes that he did not actually enter into a plea agreement, he argues that the record clearly indicates that the plea offer had not been withdrawn.

(13) The record reflects that after the State indicated the plea offer had been withdrawn, the trial judge noted: "I also recall [the prosecutor] indicating yesterday in court, when I inquired whether or not the plea was going to be available until tomorrow, he indicated it wasn't." The record

² *Shields v. State*, 374 A.2d 816, 819 (Del. 1977).

also reflects that, after being informed that the defendant was rejecting the proffered agreement, the prosecutor told defense counsel, “I’ll see you at trial.”

(14) In *Shields v. State*, we held that “the State may withdraw from a plea agreement at any time prior to, but not after, the actual entry of the guilty plea by the defendant or any other action by him constituting detrimental reliance.”³ The record indicates that the trial judge properly exercised his discretion in permitting the case to proceed to trial and denying Collins’ request for specific performance of the withdrawn plea offer.⁴

(15) The second issue on appeal is the denial of a motion for a new trial based on juror impartiality. That issue is reviewed *de novo* because it involves mixed questions of law and fact.⁵ Collins does not contend that Juror #10 was improperly excused.⁶ Rather, he argues that the trial judge’s mention of “some contact” between Juror #10 and the victim constituted an “extraneous influence” which prejudiced the remaining jurors. This Court has defined “extraneous influence” as actions such as exposure to news reports, consideration by the jury of facts outside the record of the case,

³ *Id.* at 820.

⁴ *Id.*

⁵ *Banther v. State*, 823 A.2d 467, 486 (Del. 2003).

⁶ *See Id.* at 484.

communications between jurors and third parties, and pressure or bias on the part of the court.⁷

(16) In other cases with similar facts, this Court has concluded there was no juror bias necessitating the reversal of a criminal conviction. For example, in *Evans v. State*,⁸ a juror discovered after commencement of trial, but prior to deliberations, that she was related to the victim.⁹ This Court concluded that the trial judge's instruction that the jury not discuss the case amongst themselves, coupled with the dismissal of the juror did not result in jury bias and did not deprive the defendant of a fair trial.¹⁰ More recently, in *Caldwell v. State*,¹¹ we stated, "since deliberations had not begun at the time that the juror's friendship with [a prosecutor who was not trying the case] was discovered, the trial court could properly grant a motion to excuse the juror while denying the motion for mistrial."¹²

(17) The record reflects that the trial judge's neutral reference to "some contact" between Juror #10 and the victim did not prejudice the jury or deprive Collins of a fair trial. The trial judge's statement to the jury made no mention of the defendant, and did not indicate whether the contact

⁷ See *Sheeran v. State*, 526 A.2d 886, 895 (Del. 1987).

⁸ *Evans v. State*, 1999 WL 1090558 (Del. Oct. 7, 1999).

⁹ *Id.* at *3. The juror had not seen the victim in seven years. *Id.*

¹⁰ *Id.*

¹¹ *Caldwell v. State*, 780 A.2d 1037 (Del. 2001).

¹² *Id.* at 1059 n.80.

between the juror and the victim was positive or negative. In fact, in excusing the juror, the trial judge noted that he still believed that this juror could be fair and impartial. There is no merit in Collins' contention that the trial judge's reference to "some contact" between the excused juror and the victim constitutes reversible error.

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

BY THE COURT:

/s/ Randy J. Holland
Justice