

IN THE SUPREME COURT OF THE STATE OF DELAWARE

LUIS SIERRA,	§	
	§	No. 602, 2012
Defendant Below,	§	
Appellant,	§	
	§	Court Below: Superior Court
v.	§	of the State of Delaware,
	§	in and for New Castle County
STATE OF DELAWARE,	§	
	§	Cr. I.D. No. 1006013865A
Plaintiff Below,	§	
Appellee.	§	

Submitted: January 15, 2014

Decided: March 7, 2014

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

ORDER

This 7th day of March 2014, on consideration of the briefs and arguments of the parties, it appears to the Court that:

1) Luis Sierra appeals from his convictions, following a jury trial, of two counts of first degree murder, one count of first degree robbery, and related offenses. His sole argument on appeal is that certain communications between the bailiff and the jury were presumptively prejudicial and violated his Sixth Amendment right to a fair trial. We find no merit to this claim, and affirm.

2) On June 10, 2010, Anthony Bing, Jr. was shot three times and killed. The police arrested Sierra, Gregory Napier, and Tywaan Johnson. Napier pled guilty to manslaughter and other felonies. Johnson went to trial in 2011, and was found guilty on all counts. Sierra, who was the only defendant charged with capital murder, went to trial in January 2012. The jury found him guilty of all charges, but voted 11-1 in favor of a life sentence after the penalty hearing. The trial court sentenced Sierra to two life terms plus a term of years. This appeal followed.

3) Napier testified as a State's witness at Sierra's trial. Before he testified, the trial court expressed some concern about the witness's safety. Apparently in response to the court's comment, the prosecutor instructed the State's Chief Investigating Officer, Detective Michael Gifford, to turn around in his seat at counsel table and watch the spectators in the courtroom. Gifford stared at the gallery of spectators for about ½ hour, while Napier was testifying.

4) Court recessed after Napier's testimony, and a juror asked the bailiff why Gifford had turned his chair around, and whether what Gifford did was related to court procedures. According to that juror, the bailiff said something to the effect that Gifford was just turned that way and that there was no procedure involved. The bailiff then reported to the trial court that jurors had "expressed their curiosity" about Gifford's conduct, and that "[t]hey were all kind of, like, talking, yes, pretty much

amongst each other” about “why the detective turned like that.”¹ The trial court decided to conduct an individual *voir dire* with each juror. The bailiff reportedly returned to the jury room and asked the group “if any of [them] had noticed something weird or different during the trial.”² The bailiff informed the jurors “that they were coming in as an individual [sic] and they were going to be *voir dired*” about any questions or concerns they may have had for the trial judge.³

5) The trial court questioned all the jurors and found the following:

Thirteen of the sixteen jurors responded they had noticed [Gifford] facing toward the courtroom’s rear gallery. However, no juror reported that it affected that juror’s ability to remain fair and impartial, and no juror stated any inference directly adverse to [Sierra] from the detective’s conduct. Rather, the jurors only found the detective’s conduct “awkward,” “odd,” “different,” “curious,” “weird,” or “strange.”⁴

6) After the *voir dire*, the trial court instructed the jurors that they were not allowed to discuss any aspect of the case before deliberations. In addition, the trial court told Sierra that he did not have to make an application related to the bailiff issue immediately. Sierra did not ask for or a curative instruction or a mistrial. After the

¹ Appellant’s Appendix, A-43-44.

² *Id.* at A-54.

³ *Id.* at A-51.

⁴ *State v. Sierra*, 2012 WL 3893532, at *2 (Del. Super).

verdict, Sierra did move for a new trial, but his motion was denied.

7) The Sixth Amendment of the United States Constitution and Article I, § 7 of the Delaware Constitution provide defendants with a fundamental right to a fair trial and an impartial jury.⁵ One aspect of that right requires that jury verdicts be based solely on the evidence presented at trial, not from outside sources.⁶ Generally, a “defendant is entitled to a new trial only if the error complained of resulted in actual prejudice or so infringed upon defendant’s fundamental right to a fair trial as to raise a presumption of prejudice.”⁷

8) Because actual prejudice is difficult to prove in the juror misconduct context, this Court has adopted an “egregious circumstances” test.⁸ Egregious circumstances are “circumstances that, if true, would be deemed inherently prejudicial so as to raise a presumption of prejudice in favor of defendant.”⁹ In sum, “[i]f a defendant can prove a reasonable probability of juror taint, due to egregious circumstances, that are inherently prejudicial, it will give rise to a presumption of

⁵ *Flonnory v. State*, 778 A.2d 1044, 1052 (Del. 2001).

⁶ *Ibid.*

⁷ *Massey v. State*, 541 A.2d 1254, 1257 (Del. 1988) (quoting *Hughes v. State*, 490 A.2d 1034, 1043 (Del. 1985)).

⁸ *Ibid.*

⁹ *Ibid.*

prejudice and the defendant will not have to prove actual prejudice.”¹⁰

9) In *McLain v. General Motors Corp.*,¹¹ the Superior Court discussed situations where communication between a bailiff and jurors would be presumptively prejudicial.¹² Generally “[a] bailiff’s comment to a juror which relates to the content or procedure of the jury’s deliberations falls into the class of conduct that is presumptively prejudicial.”¹³ But, “statements by court personnel of a ministerial nature are generally considered to be non-prejudicial.”¹⁴

10) Sierra argues that the bailiff’s actions were presumptively prejudicial because they “impugned the character of the defendant” by bringing attention to Gifford’s actions, and they “could also have been construed as a comment on the proceedings.”¹⁵ Sierra’s argument that these actions amounted to egregious circumstances, giving rise to a presumption of prejudice, fails for two reasons.

¹⁰ *Flonnory*, 778 A.2d at 1054.

¹¹ 586 A.2d 647 (Del. Super. 1988).

¹² *Id.* at 654–55.

¹³ *Id.* at 654.

¹⁴ *Ibid.*

¹⁵ Op. Br. at 20.

11) First, the bailiff immediately told the court when he was first asked a question by a juror about Gifford's conduct.¹⁶ The Superior Court then conducted a *voir dire* with each juror, and "no juror reported that it affected that juror's ability to remain fair and impartial."¹⁷ Similarly, "no juror stated any inference directly adverse to [Sierra] from the detective's conduct."¹⁸ Thus, Sierra's argument that the bailiff's communications prejudiced him by bringing attention to Gifford's actions is without merit.

12) Second, the facts do not support a "reasonable probability" of juror taint due to egregious circumstances. The bailiff's statements to the jurors did not introduce facts outside of the record or comment on the evidence. And there is no evidence that the bailiff deliberately attempted to influence the jury's verdict. The bailiff's communications with the jury were ministerial in nature, and did not constitute egregious circumstances that were inherently prejudicial.

¹⁶ App. to Op. Br. at A-43 to 44.

¹⁷ *State v. Sierra*, 2012 WL 3893532, at *2 (Del. Super. Sept. 6, 2012).

¹⁸ *Ibid.*

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

BY THE COURT:

/s/ Carolyn Berger
Justice