IN THE SUPREME COURT OF THE STATE OF DELAWARE

JEROME B. REED,	)	
	)	No. 641, 2001
Defendant Below,	)	
Appellant,	)	Court Below: Superior Court
	)	of the State of Delaware in
v.	)	and for Sussex County
	)	
STATE OF DELAWARE,	)	Cr. A. Nos. S01-02-0120 through 0574
	)	and Cr. ID No. 0101023931
Plaintiff Below,	)	
Appellee.	)	

Submitted: June 12, 2002
Decided: June 21, 2002

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

O R D E R

This 21st day of June 2002, upon consideration of the briefs of the parties, it appears to the Court that:

1) A Superior Court jury convicted Appellant Jerome B. Reed of Robbery in the First Degree, possession of a Deadly Weapon During the Commission of a Felony, Kidnapping in the Second Degree, Burglary in the Second Degree, Theft (Felony), Theft from a Senior, and Criminal Mischief (Misdemeanor). On the State's motion, the trial judge declared Reed an habitual offender.

2) Immediately before jury selection in Reed's trial, the trial prosecutor informed defense counsel and the trial judge that she had reported the previous

week as a member of the jury venire from which court was about to pick the panel for Reed's trial. She stated that she had duly reported for jury orientation and had briefly discussed non-legal matters with a few members of the venire. At no point did she mention any facts about Reed's upcoming trial. In addition to the standard *voir dire*, the trial judge also asked the members of the venire if the fact that trial counsel had been a member of the venire would in any way impair their ability to serve impartially. None of the members responded that it would. The trial judge then proceeded to draw and impanel a jury.

3) Reed contends in this appeal that the trial judge erred in refusing defense counsel's motion for a continuance in order that the panel might be selected from a new venire. This Court finds it difficult to imagine that either the State or the Superior Court could conclude that prudent public policy would envision empanelling a jury from a venire in which the actual trial prosecutor had been a member. Common sense would seem to dictate that even the possibility that the jury would be improperly influenced by trial counsel's presence at juror orientation and had interacted with venire members should have prompted the State to assign another prosecutor. Further, with a new venire scheduled to assemble within a week what compelling reason would cause the trial judge to deny a continuance to avoid any potential risk of tainting an empanelled jury? Although the chance of similar facts presenting themselves in the future is remote,

we fully expect that the Attorney General's Office and the trial courts will proceed differently should similar circumstances arise.

4) Notwithstanding the inadvisability of the trial prosecutor remaining in the case and the trial judge denying a continuance, the standard we look to in reviewing a claim of alleged jury bias is generally not one of *potential* prejudice as Reed argues. Only where the defendant can establish egregious circumstances that are inherently prejudicial do we assign a presumption of prejudice.[1] Without the establishment of egregious circumstances, a defendant is entitled to a new trial only upon the showing that he or she suffered actual prejudice.[2] As surprising as we find the facts in this case, they do not rise to the level of "egregious circumstances" required for us to presume prejudice. Indeed, the potential prejudice Reed cites in his appeal is similar to that alleged in *Bailey v. State*.[3] In that instance, police officers testifying in a criminal case were assigned to guard the sequestered jury that would assess the credibility of those same officers at trial. We found that mere speculation that this contact would enhance their credibility with the jurors was insufficient to presume prejudice and thus a showing of actual prejudice was required for a new trial.[4] In the instance case, Reed contends that the trial prosecutor's limited contact with panel members during juror orientation

[1] *Massey v. State*, 541 A.2d 1254, 1257-58 (Del. 1988).
[2] *Id.*; *Hughes v. State*, 490 A.2d 1034, 1043 (Del. 1985).
[3] 363 A.2d 312, 315-16 (Del. 1976).
[4] *Id.*

would similarly enhance her standing with the jury. Thus, we require actual knowledge that her standing rose as a result of her presence among the venire. The trial judge's *voir dire* question and the venire's response, or lack thereof, clearly establishes that Reed cannot meet his burden of establishing actual prejudice. Given this standard, we find nothing in the record to suggest the existence of actual prejudice.

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

BY THE COURT:

__/s/ Myron T. Steele_____
Justice