

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

JEROME EDWIN MONTGOMERY,

Defendant-Appellant.

UNPUBLISHED

November 22, 2005

No. 255641

Genesee Circuit Court

LC No. 03-12258-FC

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

REGINALD EUGENE MONTGOMERY,

Defendant-Appellant.

No. 255689

Genesee Circuit Court

LC No. 03-012257-FC

Before: Saad, P.J., and Jansen and Markey, JJ.

SAAD, P.J., (*concurring in part and dissenting in part*).

I concur with the majority opinion in these consolidated matters with the exception of the majority's ruling on Jerome Montgomery's motion for a mistrial because of the issue surrounding juror number 9. Because I conclude that the trial judge did not abuse his discretion, I respectfully dissent from this portion of the majority's opinion.

I dissent for several reasons. After being advised of the jury's decision in the companion case and of the alleged confession, juror number 9 appropriately reported this to the trial court and upon questioning by the trial judge, juror number 9 assured the court that she did not share this information with the other jurors and, importantly, she advised the court that this information did not affect her decision about the case. Juror number 9 further assured the court that she could set aside the outside information and base her decision solely on the evidence presented at trial. Moreover, the entire jury was properly instructed and the trial court properly reminded juror number 9 of her obligation to decide the case on the evidence presented at trial.

Because this is a very close judgment call, on the record before us, I would not conclude that the trial court abused its discretion had the court granted a new trial, as I conclude that the court did not abuse its discretion in refusing to grant a new trial. Though we may have decided this issue differently, because of the deference granted the trial court by the *abuse of discretion* standard of review, I cannot conclude that the trial court abused his discretion and therefore, I would affirm the trial court's decision not to grant a new trial.

/s/ Henry William Saad