

Buker v. King, No. 523-11-05 Wrcv (Eaton, J., Aug. 5, 2009)

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**STATE OF VERMONT
WINDSOR COUNTY**

ROBIN L. BUKER)	
)	
v.)	Windsor Superior Court
)	Docket No. 523-11-05 Wrcv
RICHARD JOHNSTON KING,)	
Special Administrator of the)	
Estate of Joseph Brouillard)	

**DECISION
Defendant’s Motion for Production of Juror Depalo’s Trial Notes**

The present post-trial matter before the court is Defendant Richard Johnston King’s motion for production of Juror Depalo’s trial notes.

The factual grounds supporting the motion are that the jurors were allowed to take notes during the October 2008 jury trial. Most of the notes were collected by the court at the conclusion of the jury trial, but Ms. Depalo was permitted to take her notes home. She later returned them at the request of the court. The notes are presently under seal per order of the trial judge.

Mr. King seeks production of the notes in order to determine whether they contain evidence of impermissible introduction of outside influences into the jury room.

Mr. King’s reason for production is speculative and not supported by any particularized evidence that the notes would actually contain such material. Use of the juror notes to impeach the verdict is therefore inconsistent with V.R.E. 606(b). Moreover, V.R.C.P. 39(e) does not contemplate any reason why juror notes should ever be produced after the trial. Rule 39(e) instead requires that after the jury has rendered its verdict, “the jurors’ notes shall be collected by the clerk or court officer and promptly destroyed.” The court therefore concludes that the motion must be denied, and that the notes must be promptly destroyed.

ORDER

For the foregoing reasons, Defendant’s Motion for Production of Juror Depalo’s Trial Notes (MPR #44) is *denied*. The Clerk of the Court shall promptly destroy the notes.

Dated at Woodstock, Vermont this ____ day of August, 2009.

Hon. Harold E. Eaton, Jr.
Presiding Judge