IN THE CIRCUIT COURT OF THE FIFTEENTH JUDICIAL CIRCUIT
IN AND FOR PALM BEACH COUNTY, FLORIDA.

STATE OF FLORIDA,

CRIMINAL DIVISION "W"
CASE NO. 502010CF005829AXXXMB

v.

JOHN B. GOODMAN,

Defendant.
_____________________________/

2012 APR 20 PM 3: 31

ORDER DENYING DEFENDANT'S MOTION FOR NEW TRIAL AND/OR TO VACATE HIS CONVICTION BASED ON JURY MISCONDUCT AND GRANTING, IN PART, A LIMITED JURY INTERVIEW

THIS CAUSE came before the Court on the Defendant, John B. Goodman's ("Defendant"), Motion for New Trial and/or to Vacate His Conviction Based on Jury Misconduct and Incorporated Memorandum of Law, filed on April 16, 2012. The State submitted an Objection to Defense Counsel Interviewing Jurors and Request for Juror Interviews Pursuant to F.R.C.P. 3.575 which was received in Chambers on April 17, 2012. After carefully examining and considering the Defendant's Motion, the Memorandum of Law in Support of the Motion, the State's Objection, and the argument of the parties at a hearing, it is hereby

ORDERED AND ADJUDGED as follows:

Defendant presents this Court with a Motion for New Trial and/or to Vacate His Conviction based on an affidavit attached thereto. The affidavit is a memorialized statement of one of the alternate jurors in Defendant's criminal trial, Ms. Ruby Delano. Ms. Delano relays that after she was released from her jury service, she wanted to expose certain things regarding jury conduct that she believed were wrong. In her affidavit, Ms. Delano attests that she attempted to reach the Court, by phone, on two occasions, once on March 27, 2012 and once on March 28, 2012. (Mot. 10.) Ms. Delano states that on April 4, 2012, when her calls to the Court

were not returned, she contacted Defendant's counsel and left a message indicating that she wished to speak with them. Ultimately, Ms. Delano met with defense counsel and executed the above-mentioned affidavit.

As a preliminary issue, this Court notes that although Defendant's Motion is styled as a Motion for New Trial and/or to Vacate his Conviction, the relief Defendant seeks, as he states in his Conclusion, is for the Court to "convene a hearing to interview the jurors under Rule 3.575 and, thereafter, order a new trial." In this respect, Defendant's Motion for New Trial is time-barred.[1] However, Fla. R. Crim. P. 3.575 permits a party to move the Court for an Order permitting interview of a juror or jurors within ten days after the rendition of the verdict, *unless good cause is shown for the failure to make motion within that time.*[2]

The verdict in this case was rendered on March 23, 2012. As Defendant states in his Motion, Defendant was unaware of the issue that comprises the basis for this Motion until April 4, 2012, outside the ten-day period contemplated by the rule and two days after Defendant had already submitted his first Motion for New Trial. Additionally, Defendant's lack of awareness of this issue was not a failure of due diligence on Defendant's part. This Court finds, therefore, good cause shown for Defendant's failure to Move for a Court Order to permit interviews of jurors within the ten day time period. This Court now considers Defendant's Motion pursuant to Rule

[1] *See* Fla. R. Crim. P. 3.590 ("A motion for new trial or in arrest of judgment, or both, in cases in which the state does not seek the death penalty, may be made within 10 days after the rendition of the verdict or the finding of the court.") This Court notes that Defendant previously filed a Motion for New Trial on April 2, 2012 which this Court denied on April 13, 2012.

[2] "A party who has reason to believe that the verdict may be subject to legal challenge may move the court for an order permitting an interview of a juror or jurors to so determine. The motion shall be filed within 10 days after the rendition of the verdict, unless good cause is shown for the failure to make the motion within that time. The motion shall state the name of any juror to be interviewed and the reasons that the party has to believe that the verdict may be subject to challenge. After notice and hearing, the trial judge, upon a finding that the verdict may be subject to challenge, shall enter an order permitting the interview, and setting therein a time and a place for the interview of the juror or jurors, which shall be conducted in the presence of the court and the parties. If no reason is found to believe that the verdict may be subject to challenge, the court shall enter its order denying permission to interview."

Fla. R. Crim. P. 3.575

3.575 as well as Defendant's Notice of Intent to Interview Jurors pursuant to R. Regulating Fla. Bar. 4-3.5(d)(4).

Turning to each of the allegations alleged in Ms. Delano's affidavit, the Court shall consider each individually in order to determine whether such allegations warrant interviews of the jurors. Ms. Delano attested to the following:

1. that although the jurors were told not to discuss the case between themselves until the end of the trial, the jury often discussed witness testimony and other evidence throughout the trial;

2. that specific issues were discussed openly prior to deliberations:

   --there were discussions about how anyone could have an accident and then go and drink;

   --there were discussions about why Mr. Goodman did not first call 911;

   --there were discussions about why Mr. Goodman did not stop at the stop sign;

   --there were also questions and comments about who took the videotape of the drive from the Player's Club and how Mr. Goodman could have passed his own driveway on 120th Avenue;

3. Ms. Delano states that "we all had things to say about the trial as it progressed each day," and on one occasion when Ms. Delano reminded the jury that they had been instructed by the Court not to discuss the case until the end, she was teased by being asked by another juror if she had a crush on the Defendant;

4. that on many occasions jurors would "make mention of" Defendant's wealth. Ms. Delano explained these comments as mention of the fact that Defendant had enough money to hire good lawyers. She further states that she cannot remember specifics about any other comments about wealth, simply that Defendant's money was mentioned. She also says that most of the conversations about money were in the context of the Defendant probably being guilty but getting away with it because he had a lot of money, clarifying that no one specifically used the word "guilty;"

5. Ms. Delano says that some of the jurors said they had to finish the case by Friday, March 23, because they did not want to return the following Monday and that they weren't going to "go into the next week." She says one juror mentioned a trip he had planned and stated that he had to be finished by Friday. Ms. Delano says that based on negative talk about Defendant's wealth and issues discussed about the case, it was "clear to me these jurors had already made up their minds before Thursday, March 22nd;"

6. Ms. Delano says that one of the other jurors, Mr. DeMartin, told the other jurors that he was asked by the Court about waiving his hand during the testimony of the State's Bentley expert and that he told the Court he was waiving his hand because he had found a button he had lost the day before. She then goes on to state, "Mr. DeMartin told juror number 5 what he told the judge prior to her coming in and reporting the same thing after the break." She goes on to say that Mr. DeMartin's statement to the Court about the button was untrue because he had already shown Ms. Delano the recovered button prior to the waving gesture. She says the waving gesture had nothing to do with the button and that she believes that Mr. DeMartin was instead expressing his disdain for the Defendant and the defense team;

7. Ms. Delano also states that Mr. DeMartin told the other jurors that he was writing a book about the trial and that he would frequently tell the other jurors that he wrote down what happened in Court each day;

8. Ms. Delano states that the jurors had an understanding that whatever they discussed in the jury room during the trial would remain between them and that although she believed pre-deliberation discussions were wrong, and she believed Mr. DeMartin had lied to the Court, she did not immediately come forward because the other jurors told her she was an alternate and she did not believe she had the same right to bring these issues to the Court's attention as an alternate juror.

As recently as 2011, the Florida Supreme Court, in denying a motion for post-conviction relief, expressed the following statement with regard to instances in which juror interviews are appropriate:

> "[w]e also note that 'juror interviews are not permissible unless the moving party has made sworn allegations that, if true, would *require the court to order a new trial* because the alleged error was *so fundamental and prejudicial as to vitiate the entire proceedings*,' *Green v. State*, 975 So. 2d 1090, 1108 (Fla. 2008) (quoting *Johnson v. State*, 804 So. 2d 1218, 1225 (Fla. 2001))."

Crain v. State, 78 So. 3d 1025, 1045 (Fla. 2011) (emphasis added). Previously, in 2007, in another Florida Supreme Court case denying a motion for post-conviction relief, the Court stated the standard in a similar fashion when discussing Rule 3.575:

> "the rule provides a mechanism for defendants to interview jurors when there are good faith grounds for a challenge. Before an attorney will be allowed to interview any member of the jury, the moving party must make sworn allegations that, if true, would require a new trial. *Johnson*, 804 So. 2d at 1225."

Kormondy v. State, 983 So. 2d 418, 440 (Fla. 2007). Further, in 2002,[3] ruling on another post-conviction motion, the Court found that juror interviews were not permissible where the defendant had not "sufficiently alleged any fact which involves an overt prejudicial act that would necessitate a new trial." *Reaves v. State*, 826 So. 2d 932, 943-944 (Fla. 2002).

Pursuant to the Florida Supreme Court in these cases then, before this Court can permit juror interviews, the Court must establish that the sworn information presented in Ms. Delano's affidavit alleges fundamental and prejudicial error or, facts which involve overtly prejudicial acts such that they vitiate the entire proceedings and necessitate a new trial. This Court therefore, assumes that Ms. Delano's allegations are true, and explores whether any of these allegations contain such an overt prejudicial act and necessitate a new trial.

Issue One: Jury Often Discussed Witness Testimony and Other Evidence Throughout the Trial

Defendant argues that pre-deliberation discussions of witness testimony and other evidence took place during the trial, pursuant to Ms. Delano's affidavit. This pre-deliberation issue, as stated *supra*, includes discussions about how anyone could have an accident and then go and drink, discussions about why Defendant did not first call 911, why Defendant did not stop at the stop sign, who took the videotape of the drive from the Player's Club and finally, how Defendant could have passed his own driveway on 120th Avenue on the night of the crash.

This Court repeatedly instructed members of the jury not to discuss this case prior to their deliberations. "It is axiomatic that jurors should not discuss a case among themselves prior to deliberations." *Johnson v. State*, 696 So. 2d 317, 323 (Fla. 1997). The *Johnson* court went on to say that "[t]he fact that discussions did, in fact, take place clearly indicates an impropriety." *Johnson*, 696 So. 2d at 323. *Johnson* was decided in 1997, approximately seven years before

---

[3] Florida Rule of Criminal Procedure 3.575 was promulgated in 2004. *Amendments to the Florida Rules of Criminal Procedure*, 886 So. 2d 197 (Fla.2004).

Rule 3.575 was implemented. Therefore, while *Johnson* does not specifically invoke Rule 3.575, it provides a framework for this Court to determine what type of improper conduct rose to a level of prejudice that, in that case, would or would not have warranted reversal on direct appeal.

One area of pre-deliberation in *Johnson* was juror discussion of the nature of testimony from doctors in the case. *Id.* at 324. Jurors indicated that they discussed the traumatic nature of the wounds suffered by the victim and the explanation given by the doctors of those wounds. *Id.* One juror explained that he found the doctor's testimony to be impressive. *Id.* In the case at bar, all of the pre-deliberation discussion that is mentioned by Ms. Delano, is likewise discussion of the nature of the presented testimony—Defendant's explanation as to why he drank alcohol after the crash, the Defendant's explanation as to why his first call was not to 911, the reason why Defendant did not stop at the stop sign, and the reason why Defendant passed his own driveway on the night of the crash. This Court recognizes, as did the *Johnson* court, that jurors saw the witnesses testify and reacted to the testimony. *Id.* There were no claims in *Johnson*, nor are there any here, that extrinsic information was imparted to the jury. *Id.* The Florida Supreme Court determined that:

> "[i]t is simply unrealistic to imagine that this limited conversation between [two jurors] indicates that either had formed a premature opinion about the case. While we must recognize that the jurors' conduct in this case was improper, we must stop short of finding all human errors to be prejudicial to the defendant."

Id. Additionally, juror discussion of who took the videotape of the drive from the Player's Club is almost precisely the type of conduct discussed in *Johnson* when one juror asked another to clarify multiple witness nicknames:

> "[The juror] was not even commenting or asking for comment on evidence. She was simply asking for the information provided by [a police officer's] clarification. While still improper, it is incredible to assert that such a question could influence the outcome of the trial . . . . The appropriate nickname for [the defendant], from among the many heard by the jury, was not contested and did

not directly affect any decision the jury was faced with."

Id. at 323-24. Likewise the identity of the person who videotaped the drive from the Player's Club was not a comment on evidence nor did it directly affect any decision with which the jury was faced.

Ms. Delano gives no indication that the jury made any predeterminations as to Defendant's guilt in discussing these issues. Instead, most of these issues involve off-hand comments of jurors or questions about interpreting evidence. In *Estate of Stuckey v. Brown*, 688 So. 2d 438, 440 (Fla. 1st DCA 1997), the District Court of Appeal noted that:

> "[t]he court stated during the hearing on the motion for new trial that the testimony of the jurors did not raise the court's concern that there were any substantial violations of the court's instructions. The only misconduct found by the trial court concerned predeliberation discussion of the case; however, the evidence does not demonstrate extensive discussion or that the jury actually had begun to deliberate. There is no evidence that the few off-hand comments which were made materially affected the verdict."

Likewise in the case at bar, these comments by jurors are not pre-deliberation discussions of Defendant's guilt or innocence. Nor are they allegations that, if true, would warrant a new trial. *Kormondy*, 938 So. 2d at 440. None of these comments by jurors are overt prejudicial acts that vitiate the entire proceedings. This Court does not find that any of these comments warrant further juror inquiry.

Issue Two: *Ms. Delano's Statement That "we all had things to say about the trial as it progressed each day" and Being Teased*

For the same reasons as explained in *Issue One*, Ms. Delano's statement that jurors had "things to say about the trial" does not make out a prima facie allegation of juror misconduct. Further, jurors teasing Ms. Delano about possibly having a crush on Defendant, while certainly offensive, is not an overt prejudicial act.

Issue Three: *Ms. Delano's Statement that Jurors Discussed Defendant's Wealth*

Ms. Delano explains that on many occasions, jurors would "make mention of" Defendant's wealth. Ms. Delano explained these comments as mention of the fact that Defendant had enough money to hire good lawyers. Ms. Delano further states that she cannot remember specifics about any other comments about wealth, simply that Defendant's money was mentioned. She also says that most of the conversations about money were in the context of the Defendant probably being guilty but getting away with it because he had a lot of money, and then she clarifies that no one specifically used the word "guilty."

In *Ramirez v. State*, 922 So. 2d 386, 387-88 (Fla. 1st DCA 2006), allegations arose of premature deliberations. One alternate juror informed a bailiff that "the jury was split as to the defendant's guilt until after they heard his testimony." *Ramirez*, 922 So. 2d at 388. Defendant's request to interview jurors was denied by the trial court. The First District Court of Appeal, in reversing the trial court, determined that a prima facie showing of juror misconduct *had* been alleged, and ordered the trial court to conduct juror interviews. *Id.* at 390.

Ms. Delano is clear that no one used the word guilty in their conversations. And she does not allege that jurors took a preliminary poll of their opinions or that any juror or jurors articulated an agreement to disregard their oaths and ignore the law. In *Reaves v. State*, 826 So. 2d 932, 943-44 (Fla. 2002), an allegation arose that one juror attempted to discuss guilt prematurely. The Florida Supreme Court, agreeing with the trial court that juror interviews were properly denied, explained the following:

> [t]his contention does not involve any agreement among the other jurors to disregard their oaths and ignore the law, nor does it imply that the jury was influenced by external sources or improper material. Reaves' assertion, which involves a lone juror's understanding of the jury instructions, is a matter which essentially inheres in the verdict itself; hence, juror interviews are not permissible.

Reaves, 826 So. 2d at 943.

It is unclear to this Court, however, to what extent, if any, members of the jury may have considered Defendant's guilt or innocence in their discussions. Following the rationale of *Williams v. State*, 739 So. 2d 1104, 1106-07 (Fla. 1st DCA 2001) (interviews warranted when affidavits alleged that jurors expressed an opinion as to guilt before the close of the evidence) and *Gray v. State*, 72 So. 3d 336, 338 (Fla. 4th DCA 2011) (interviews warranted when allegations that multiple jurors improperly discussed the case during trial and were expressing opinions as to the defendant's guilt before the close of the evidence), this Court will conduct limited jury interviews on this issue. After jury interviews, the initial burden will be on the defense to either show that prejudice resulted or that the premature deliberations or conversations were of such character as to raise a presumption of prejudice. *Ramirez v. State*, 922 So. 2d 386, 390 (Fla. 1st DCA 2006).

Issue Four: *__Ms. Delano's Comments as to Jurors Wanting to Finish the Trial__*

Ms. Delano states that some of jurors commented that they had to finish the case by Friday, March 23, 2012, because they did not want to return the following Monday and that they weren't planning on going "into the next week." She says one juror mentioned a trip he had planned and stated that he had to be finished by Friday. Ms. Delano asserts, presumably based on these comments, as well as negative talk about Defendant's wealth and issues discussed about the case, it was "clear to me these jurors had already made up their minds before Thursday, March 22nd."

Ms. Delano does not say that any juror told her they had already made up their mind about Defendant's guilt. She does not say she overheard anyone make a claim about Defendant's guilt, she simply *assumes* that the jurors had already made up their minds. Clearly, Ms. Delano was not in the jury room when the jurors conducted their deliberations and cannot

portend to know what the jurors discussed and how they reached their verdict.

It would absolutely be error for this Court to now allow interviews of Ms. Delano or any member of the jury wherein jurors would be questioned as to how they reached their verdict on the day they did indeed reach it. Defendant argues that because deliberations were completed in only a few hours, the Court should interpret this to mean the jurors had predetermined Defendant's guilt, purposefully overlooking the opposite conclusion that can be drawn—that the jurors simply did not find Defendant's account of the events to be credible. The Court is not permitted to interrogate the jurors as to how they arrived at their verdict. *Short v. Abukhdeir*, 738 So. 2d 408, 410 (Fla. 2d DCA 1999). Indeed, the Court declines the invitation to do so.

It should come as no surprise to Defendant, nor to the public generally, that jurors often look wistfully to the day when their service ends and they can return to their jobs, families and day-to-day lives. If the Court began admonishing jurors who expressed their antipathy toward returning for a second, third or fourth week of trial, it would have time for little else. Jurors expressing their desire to finish a trial by a certain day or, that they do not want to return the following week, is not a discussion of evidence, guilt, testimony, or the substance of the trial itself. *See Johnson v. State*, 696 So. 2d 317 (Fla. 1997).

Issue Five: *Ms. Delano's Belief that Mr. DeMartin Lied to Obscure His Disdainful Gesture Toward the Defense Team's Witness Examination*

Ms. Delano explains that one of the other jurors, Mr. DeMartin, told the jury panel that he was asked by the Court about waiving his hand during the testimony of the State's expert and that he told the Court he was waiving his hand because he had found a button he lost the day before. Ms. Delano goes on to say that Mr. DeMartin's statement to the Court about the button must have been untrue because he had already shown Ms. Delano the recovered button prior to the waving gesture. She says his waving gesture had nothing to do with the button and that she

believes Mr. DeMartin was instead expressing his disdain for the Defendant and the defense team.

Ms. Delano assumes that Mr. DeMartin was making a disdainful gesture. She offers no allegations that he said anything to this effect, to either herself or any other juror. She makes absolutely no allegation that Mr. DeMartin ever made any negative or pejorative comment about defense counsel. Further, even if Mr. DeMartin's waving gesture was a disdainful indication as to the defense team, such a gesture is not the type of overtly prejudicial act that would warrant a new trial. There is no reason to believe that Mr. DeMartin's hand gesture would subject the verdict in this case to challenge. *See Israel v. State*, 985 So. 2d 510, 522 (Fla. 2008). Allowing attorneys to begin questioning jurors as to physical gestures they make throughout the trial and what they intend to communicate by those gestures is unworkable, unwarranted and would create an unnecessarily antagonistic atmosphere toward citizens who are unfamiliar with a courtroom environment and whose only failing is in their attempt to perform their civic duty. It is inappropriate for this Court to question jurors as to the veracity of this incident because the gesture, if it was a showing of disdain, does not subject the verdict in this case to challenge.

Issue Six: Ms. Delano's Statement that Mr. DeMartin Was Writing a Book about the Trial

Defendant also refers to Ms. Delano's statement that Mr. DeMartin told the other jurors that he was writing a book about the trial and would share with the other jurors that he was writing down what had happened in Court each day.[4] Defendant presents no authority for the proposition that this allegation, taken as true, is in any way grounds to interview Mr. DeMartin, or any of the other jurors, to further inquire as to this matter. Defendant seems to concede that Mr. DeMartin's literary exploits, in and of themselves, are not improper. Likewise, the Court

[4] Clearly, Defendant is aware that jurors are provided notebooks and writing implements to take notes throughout the trial should they chose to do so.

mentioned to jurors that at the close of trial that jurors were free to discuss the trial as they saw fit, speak to media, or, if for some reason they should be so inclined, write a book about the trial.

Instead, Defendant argues that jurors who intend to memorialize their experiences for profit might a) be less candid during voir dire in an attempt to maximize their chances of being seated; b) consciously or subconsciously distort testimony not for its weight in determining defendant's guilt but for its dramatic value; c) consciously or subconsciously attempt to manipulate deliberations and the verdict to ensure an outcome conducive to the salability of the story;[5] d) taint other members of the jury pool by inhibiting their open and candid deliberations. Defendant bases these conclusions on what Ms. Delano relayed to Defendant's counsel about Mr. DeMartin informing the jurors that he wanted to write or had begun to write a book about the trial. Indeed, Defendant states:

> "[i]t now appears that Mr. DeMartin's conduct was not motivated by his civic duty but to secure the outcome he desired for his book—a vision he apparently shared with other jurors during trial itself. *In Mr. DeMartin's view*, a vote for acquittal would have meant a vote for the 'unpopular view' that Mr. Goodman might escape or buy his way out of trouble. Of course, no juror would have wanted such a view exposed in Mr. DeMartin's book. Accordingly, even if Mr. DeMartin never wins a publisher for his book, his conflict of interest distorted the truth seeking process."

(Mot. 31.) (emphasis added). This Court finds Defendant's conclusions as to the inner thought process and personal motivations of a juror imprudent and inappropriately speculative. Defendant concludes his argument by stating that Mr. DeMartin's alleged conflict of interest is an independent basis for granting a new trial.

Juror interviews are not permitted based upon allegations that one juror influenced another juror. *Laflipe v. State*, 888 So. 2d 104, 106 (Fla. 3d DCA 2004). Defendant cites to no

---

[5] Defendant argues that he believes the evidence suggests Mr. DeMartin engaged in "similarly cynical reasoning in this case." (Mot. 30.)

controlling caselaw on this subject nor does he offer any support for his belief about Mr. DeMartin's purported frame of mind other than mere speculation of bias. This Court declines to allow the Defendant to invade the province of the jury based on this speculation. The Florida Supreme Court is clear:

> "Florida's Evidence Code, like that of many other jurisdictions, absolutely forbids any judicial inquiry into emotions, mental processes, or mistaken beliefs of jurors. § 90.607(2)(b), Fla.Stat.Ann. (1987) (Law Revision Council Note-1976). Jurors may not even testify that they misunderstood the applicable law. *Id.*; *Songer v. State*, 463 So. 2d 229, 231 (Fla.), *cert. denied*, 472 U.S. 1012, 105 S.Ct. 2713, 86 L.Ed.2d 728 (1985). *This rule rests on a fundamental policy that litigation will be extended needlessly if the motives of jurors are subject to challenge. Branch v. State*, 212 So. 2d 29, 32 (Fla. 2d DCA 1968). The rule also rests on a policy 'of preventing litigants or the public from invading the privacy of the jury room.' *Velsor v. Allstate Ins. Co.*, 329 So. 2d 391, 393 (Fla. 2d DCA), *cert. dismissed*, 336 So. 2d 1179 (Fla. 1976).

Baptist Hosp. of Miami, Inc. v. Maler, 579 So. 2d 97, 99 (Fla. 1991). The *Baptist* case further distinguishes between overt prejudicial acts and the subjective impressions or opinions of jurors, finding the latter to be outside the scope of permissible post-verdict inquiry:

> "[i]n the present case, Baptist Hospital alleges that the affidavits disclose a possibility of juror misconduct consisting of (a) an agreement by jurors to return a verdict out of sympathy for the brain-damaged child no matter what the evidence showed, and (b) the improper reliance on nonrecord evidence that Baptist Hospital had insurance covering the present liability.
>
> The affidavits, quoted in pertinent part above, do not support these conclusory statements. The factual matters in the affidavits allege nothing more than the *purported opinions of two jurors about the reason the verdict was reached*, not statements by jurors that any type of agreement was reached to disregard their oaths and ignore the law. Both sympathy for a child and the reasons why jurors reached a particular verdict clearly are subjective impressions or opinions that are not subject to judicial inquiry."

Baptist, 579 So. 2d at 99-100. (emphasis added.)

In the case at bar, this Court is not presented with the purported opinion of any jurors as to why the verdict was reached. We are presented with the purported opinion of the *Defendant*

as to why the verdict was reached—Mr. DeMartin's alleged conflict of interest. Such speculation is not a colorable demonstration of prejudice such that this Court must permit jury interviews.

Issue Seven: *Ms. Delano's Belief That She Was an Alternate Juror During the Trial*

Ms. Delano states in her affidavit that she was told by other jurors that she was an alternate juror. Defendant extrapolates from this statement that the jury panel was "reading about the case in *The Palm Beach Post* and/or other media outlets." (Mot. 24.) The reason for Defendant's belief stems from the fact that the jurors were not told, prior to the alternates being dismissed, which jurors were the alternate jurors and which jurors would actually deliberate. Defendant argues that the only way jurors could have known this information was due to the media's coverage of the fact after it was disclosed in open court (outside the jury's presence). In support of Defendant's argument, he cites to *Marshall v. State*, 854 So. 2d 1235, 1241-42 (Fla. 2003) wherein a juror indicated to an attorney that:

> "despite the trial judge's orders, [jurors] read and discussed outside articles concerning the trial. In *Sentinel Communications Co. v. Watson*, 615 So. 2d 768 (Fla. 5th DCA 1993), the court recognized that an allegation that jurors read newspapers contrary to court orders did not inhere in the verdict. *See id.* at 772. Indeed, this Court has stated that any receipt by jurors of prejudicial nonrecord information constitutes an overt act subject to judicial inquiry. *See Baptist Hospital*, 579 So. 2d at 100-01."

This Court finds Defendant's authority distinguishable. In *Marshall*, the Court discussed an *allegation from a juror herself* stating that jurors had read and discussed media during the trial. The Florida Supreme Court recognized an allegation in *Marshall*, by a juror, that the panel had received prejudicial, nonrecord information. There is no such allegation by Ms. Delano in this case. Ms. Delano simply states that other jurors told her she was an alternate. She does not give any accounts of jurors relaying stories from print, television, or any other media outlet.

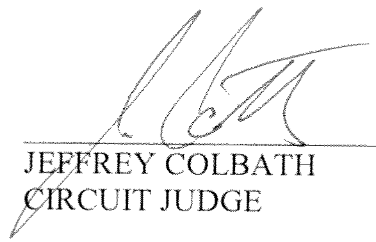
Defendant's claim amounts to speculation, at best. Permitting interviews of one or all of the jurors to inquire as to whether they had been exposed to media throughout the trial when they had repeatedly been asked this question during the trial, and instructed not to do so throughout the trial, is improper:

> [e]ven though juror misconduct may be a proper basis for a juror interview, there is a strong public policy against jury interviews. The policy is essential to the jury system and to protect jurors from undue harassment. We held in *Cummings v. Sine*, 404 So. 2d 147 (Fla. 2d DCA 1981), that courts have traditionally been reluctant to allow jurors to be questioned concerning jury verdicts. An interview of jurors is proper only in those limited situations involving matters extrinsic to the verdict, such as arrival at the verdict by lot or quotient, improper contact with a juror, or misconduct of a juror. *See also Phares v. Froehlich*, 582 So. 2d 683 (Fla. 2d DCA 1991); *Velsor v. Allstate Insurance Co.*, 329 So. 2d 391 (Fla. 2d DCA 1976), *cert. dismissed*, 336 So. 2d 1179 (Fla. 1976). Furthermore, interviews which inquire into the individual thought processes, calculations, motives, or influences of a juror are prohibited. *This is true even where there is some evidence on the face of the verdict that the jury failed to follow the court's instructions. See Velsor*, 329 So. 2d at 392.

Nationwide Mut. Fire Ins. Co. v. Tucker, 608 So. 2d 85, 87 (Fla. 2d DCA 1992) (emphasis added). Accordingly, Defendant's Motion for New Trial and/or to Vacate His Conviction Based on Jury Misconduct and Incorporated Memorandum of Law is hereby **DENIED IN PART AND GRANTED IN PART**. Pursuant to Fla. R. Crim. P. 3.575, this Court finds that the verdict in this case may be subject to challenge. This Court will conduct jury interviews on the limited issue as it is presented in paragraph 9 of Ms. Delano's affidavit.[6] Prior to interviews being conducted, the State and counsel for the Defendant may provide, for the Court's consideration, written questions to be posed to jurors.

[6] *See Marshall v. State*, 976 So. 2d 1071, 1080 (Fla. 2007).

DONE AND ORDERED, in Chambers at West Palm Beach, Palm Beach County, Florida this 20 day of April 2012.



JEFFREY COLBATH
CIRCUIT JUDGE

Copy provided to:

Roy Black, Esq. & Mark A.J. Shapiro, Esq., Black, Srebnick, Kornspan, & Stumpf, P.A., 201 South Biscayne Boulevard, Suite 1300, Miami, Florida 33131

Ellen Roberts, Esq., Assistant State Attorney, West Palm Beach State Attorney's Office, Traffic Homicide Unit, 401 North Dixie Highway, West Palm Beach, Florida 33401

J. Dubin, Dubin Consulting