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

STATE OF FLORIDA,

v.

JOHN B. GOODMAN,

Defendant.
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CRIMINAL DIVISION "W"
CASE NO. 502010CF005829AXXXMB

ORDER GRANTING DEFENDANT'S MOTION FOR NEW TRIAL AND/OR TO VACATE HIS CONVICTION BASED ON JURY MISCONDUCT

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 9, 2013. The State submitted a Response to the Defendant's Motion for New Trial on April 19, 2013. On April 24, 2013, Defendant also submitted a Supplement to his Motion incorporating additional allegations of misconduct. The Court, having now carefully examined and considered the Defendant's Motion, the Supplemental Motion, the State's Response thereto, having reviewed the official court record, (in particular the transcript of the voir dire proceedings), having heard the testimony of the juror at issue, having reviewed the exhibits offered in evidence, having heard the trial of this cause, and being otherwise fully advised in the premises, the Court finds as follows:

PROCEDURAL AND FACTUAL BACKGROUND

On February 12, 2010, an automobile crash occurred wherein a black Bentley collided with a car driven by the victim, Scott Wilson. As a result of this crash, Mr. Wilson's car was pushed into a canal, and tragically, Mr. Wilson died as a result of drowning. When passersby and emergency personnel appeared at the scene of the crash, the driver of the black Bentley was

not present. It was later determined that John Goodman was the driver of the Bentley. The State charged Mr. Goodman with Count 1 - DUI Manslaughter and Failure to Render Aid and Count 2 - Vehicle Homicide –Failure to Render Aid/Information. After the discovery period, a trial commenced. Potential jurors were questioned at length on many issues. Juror Dennis DeMartin ("DeMartin") survived the jury selection process and was impaneled as a juror. At the close of the trial, Defendant was found guilty of both DUI Manslaughter and Failure to Render Aid.

Defendant filed a subsequent direct appeal to the Fourth District Court of Appeal and that appeal is currently pending. On April 2, 2013, the Fourth District Court of Appeal relinquished jurisdiction of Defendant's direct appeal based on allegations of newly discovered juror misconduct. On April 29, 2013, pursuant to the Fourth District Court of Appeal's relinquishment of jurisdiction, the undersigned conducted a hearing to interview juror DeMartin. DeMartin was present at this hearing. Mr. Goodman was also present, as were his attorneys, Roy Black, Guy Fronstein, Joshua Dubin, and Mark Shapiro. The State was represented by Assistant State Attorneys Sherri Collins and Al Johnson. The Court inquired of DeMartin, as did Mr. Black and Ms. Collins.

The heart of the issue is should the Defendant/Appellant, who was found guilty by a jury, receive a new trial and if so, why? The latest allegations of juror misconduct arose from information contained in DeMartin's self-published book titled, "*Will She Kiss Me or Kill Me?*" In Chapter One of DeMartin's book, which Defendant attaches to his first Motion as Exhibit 1, on page 3, DeMartin writes:

> One night my wife had been drinking and had an accident with her sports car. When the police called me to come to the accident site I saw the car just about totaled and thought she was dead. They told me she walked away from the

> accident and naturally was arrested for DUI. Sometime after that I had a stroke and my world came apart. As I laid in bed at the hospital, I prayed to God to help me become a better person and that if I recovered, I would change my lifestyle and would devote more time to helping people understand that God and family come first.
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> ***
>
> Unfortunately, my wife met another partner while attending the DUI program. He also drank a lot and they went out together often after the classes and after meetings in a local business club that they both belonged to. We got divorced during that period. I kept blaming myself, but our families felt that it was part her fault also.

(Ex. 1, pp. 3-4.) DeMartin failed to disclose during voir dire that his ex-wife had been convicted of a DUI.

LEGAL ANALYSIS

The most instructive case outlining the test to determine whether a juror's misconduct should result in a new trial is *De La Rosa v. Zequeira*, 659 So. 2d 239 (Fla. 1995). In *De La Rosa*, the Supreme Court sets forth a three prong test to determine if a juror's non-disclosure of information during voir dire warrants a new trial:

a. Was the undisclosed information relevant and material to jury service in the case?
b. Was the undisclosed information was concealed during voir dire? and
c. Was the failure to discover the undisclosed information attributable to the complaining party's lack of diligence, i.e. should the complaining party have discovered the undisclosed information?

1. Was the undisclosed information relevant and material to jury service in the case?

Did DeMartin fail to disclosure relevant information during voir dire? Clearly, yes. The Defendant contends, and this Court finds, that DeMartin concealed highly relevant information, namely, that his ex-wife had been convicted of a DUI. At the hearing, DeMartin testified that he

has an ex-wife who was charged with and convicted of DUI. Although it seems that the DUI occurred after DeMartin was already divorced from his ex-wife, DeMartin highlighted the significance of this DUI in that he attributes her drinking and the DUI (in his perception) as part of the demise of his marriage. When asked, he stated that this incident was a "very important event" in his life. To DeMartin, this was not some forgettable event of the past but rather a cornerstone in the demise of his relationship with his first wife.

Having determined that this incident actually occurred, this Court must determine whether the information that DeMartin failed to disclose was not only relevant, but "material." There is no bright line test to determine what information is or is not material. This determination must be based upon the facts and circumstances of each case. Information may be material in one case and immaterial in another. In layman's terms, materiality is roughly translated to: is the information important; in other words, would knowledge of the undisclosed information make a difference? The Court finds the answer to this question is yes. This is a case involving a DUI Manslaughter and potential jurors experience with DUI charges would be paramount in the mind of any lawyer picking a jury.

"A juror's nondisclosure of information during voir dire is considered material if it is so substantial that, if the facts were known, the defense likely would peremptorily exclude the juror from the jury." *McCauslin v. O'Conner*, 985 So. 2d 558, 561 (Fla. 5th DCA 2008) (*citing James v. State*, 751 So. 2d 682 (Fla. 5th DCA 2000)). *McCauslin* explains "the complaining party must establish that the information is material to jury service in the case" and that the information "implies a bias or sympathy for the other side which in all likelihood would have resulted in the use of a peremptory challenge." 985 So. 2d at 561.

While it is true that:

> [n]o "bright line" test for materiality has been established and materiality must be based on the facts and circumstances of each case . . . [n]ondisclosure is considered material if it is substantial and important so that *if the facts were known, the defense may have been influenced to peremptorily challenge the juror* from the jury.

Garnett v. McClellan, 767 So. 2d 1229, 1230 (Fla. 5th DCA 2000) (emphasis added, citation omitted.)

The *Garnett* case does *not* find that materiality turns on an absolute determination that the defense would have challenged the juror, but instead that the defense *may* have challenged the juror.[1] While this Court does not find that the Defendant would have per se challenged an otherwise sympathetic juror whose ex-wife had been convicted of a DUI, it seems simply implausible to believe that Defendant *may* not have been influenced to challenge juror DeMartin.

Although this Court finds DeMartin's testimony to be reflective of his disordered memory, it is clear, even on the day of the hearing, having had time to reflect on his ex-wife's DUI, DeMartin remained under the impression that the DUI occurred during his marriage. Had the Defendant been on notice of this DUI, he could have, at the least, questioned DeMartin as to how and whether the DUI had affected him. DeMartin was at least so distraught over this DUI that he allowed himself to believe that the DUI played a part in the dissolution of his marriage. Even if the DUI had nothing to do with DeMartin's divorce, DeMartin may have believed it did, which leads to the nearly inescapable determination that, had Defendant had the opportunity to question DeMartin on this and had DeMartin relayed this belief, Defendant may have challenged DeMartin on the basis that DeMartin suffered an implied a bias against Defendant.[2] This Court

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[1] The Court notes that at the conclusion of jury selection, the defense still had at least one peremptory challenge.

[2] The Court acknowledges the as yet non-final recent opinion of the Fourth District in *Hoang Dinh Duong v. Ziadie*, --- So.3d ----, 2013WL614212 (Fla. 4th DCA 2013) simply to distinguish that indeed, while non-disclosure of

finds that as to this prong, the undisclosed information was relevant and material to jury service in this case.

2. Was the undisclosed information was concealed during voir dire?

It is clear that a juror's failure to disclose material information does not need to be intentional to constitute concealment. *Roberts*, 814 So. 2d at 343. "Information is considered concealed for purposes of the three part test where the information is squarely asked for and not provided." *Wiggins v. Sadow*, 925 So. 2d 1152, 1155 (Fla. 4th DCA 2006) (*citing Birch v. Albert*, 761 So. 2d 355, 358 (Fla. 3d DCA 2000)). In considering DeMartin's responses to questioning by both the State and the Defense, this Court must evaluate whether the questions were "squarely asked for and . . . not provided." *Bernal v. Lipp*, 580 So. 2d 315, 316 (Fla. 3d DCA 1991). During voir dire, the State asked the following question, "Has anyone in the panel themselves, close friend or family member or someone that affects you, ever been arrested, charged or convicted or accused of a crime?" (Ex. 2, pp. 915-916.) In response to that question, DeMartin answered as follows:

> MS. COLLINS: Mr. DeMartin?
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> MR. DEMARTIN: In 50-years-plus driving, I had maybe three speeding tickets. Listening to all this, I must have had a very boring life.
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> MS. COLLINS: It's really interesting – a lot of people find jury selection a little tedious, but it's so interesting to see what different members of the same community you lived with have had such different experiences. So I really appreciate all of you just speaking up and sharing it with us.
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> MR. DEMARTIN: I know. I'm even trying to think of my family. I don't think any of my family had any problems.
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> MS. COLLINS: Thanksgiving must be boring at your house.

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certain types of unrelated litigation would not present a materiality problem, the DUI at issue in the case at bar is unquestionably related to the Defendant's DUI manslaughter charge.

MR. DEMARTIN: I never heard so much.

(Ex. 2, pp. 938-939.) Even if DeMartin did not consider his ex-wife a "family member," she would certainly be at least a person who "affects" him. The Florida Supreme Court explained that:

> as with the concept of materiality, analysis of a single question or series of questions may or may not provide an answer. *The information disclosed by other prospective jurors may be as important in any particular inquiry by counsel, because the dynamics and context of the entire process may define the parameters of that which should be disclosed.*

Roberts, 814 So. 2d at 346 (emphasis added). When this Court considers DeMartin's answer in the context of the voir dire process surrounding that question, the Court finds it incredible that DeMartin would not have considered his ex-wife's DUI to be responsive to the State's inquiry. The jurors who responded to the State's question prior to DeMartin being called upon responded as follows: one woman answered that her boss was accused of trafficking in cocaine, one man that "friends and acquaintances" had drug-related issues, someone knew someone who had trafficked in cocaine, a juror himself had three DUIs and had been the victim of a DUI crash and someone in his family had been accused of molestation, one juror used her sister's name when she was stopped by police and had a father and brothers who had all been in drug-related trouble, one juror had a brother accused of dealing drugs, one had a brother with drug crimes, a juror herself had a DUI, a juror's husband had an "incident," a juror's brother-in-law was charged with a drug crime that happened over twenty years prior, one juror had a co-worker convicted of conspiracy, one had a sister with a ten-year-old DUI, a juror had a brother accused of child endangerment, one had a younger sister charged with marijuana possession, one juror had two brothers with DUIs and a friend charged with possession of narcotics and a friend charged with

involuntary manslaughter while under the influence of pills, one juror's friend was convicted of burglary and possession of marijuana, a juror themselves was arrested for battery, one had a son caught with marijuana, one juror herself and her friend had DUIs and one juror had a cousin with a DUI. *See* Tr. p. 915:20- 938:25. The State questioned some twenty-six jurors prior to inquiring of DeMartin. At least five of jurors raised DUI charges as a potential issue they believed responsive to the State's question. And the people whom they felt fit the category of close friends or family member, or someone that "affects you," ran the gamut from people as close as a spouse or sibling to friend, co-workers, a boss, and a brother-in-law. Clearly DeMartin did not provide information that his ex-wife had been convicted of a DUI. Based upon both the State's question and the responses of the other members of the jury panel, the Court finds that the question was indeed squarely asked for and not answered. As to this prong of the *De La Rosa* test, the Court finds DeMartin in fact concealed material information.

3. Was the failure to discover the undisclosed information attributable to the complaining party's lack of diligence, i.e. should the complaining party have discovered the undisclosed information?

As for the third prong of the *De La Rosa* test, did the Defense fail to exercise due diligence to discover the undisclosed information, this Court finds that regarding DeMartin's failure to disclose his ex-wife's DUI, no. However, as to the allegation of DeMartin's concealment of his daughter being the victim of a crime, the answer is yes. This Court notes that while Defendant advocated relief based on the additional fact that juror DeMartin failed to disclose that his daughter was the victim of a violent crime, neither the State, nor the Defense, nor the Court ever asked the jury panel whether they had friends, family member, loved ones, etc., who had been the victims of crime. Although a few members of the jury panel volunteered this information on their own, this question was never directly asked. It seems to this Court,

that the State may have believed it asked the question (*see* p. 946 of the trial transcript) when in fact, it only inquired of the jurors themselves whether they had been the victims of crime. The due diligence prong of *De La Rosa* requires that this question, at the least, be posed to jurors if Defendant wishes to later complain that a juror failed to disclose the information. This request for relief is denied as it is without merit or basis.

With regard to the DUI, however, neither the Defense, the State, nor the Court, had any means to determine that the undisclosed information was known, or should have been known. In *Roberts*, the Florida Supreme Court described due diligence in the following way:

> [t]he "due diligence" test requires that counsel provide a sufficient explanation of the type of information which potential jurors are being asked to disclose, particularly if it pertains to an area about which an average lay juror might not otherwise have a working understanding. Thus, resolution of this "diligence" issue requires a factual determination regarding whether the explanations provided by the judge and counsel regarding the kinds of responses which were sought would reasonably have been understood by the subject jurors to encompass the undisclosed information.

Roberts, 814 So. 2d at 343. In light of DeMartin's answer to the State, that in his fifty plus years of driving he had only had three speeding tickets, that he lived a boring life, and that he acknowledged that he was searching his mind for any family members who may have had problems with the law, this Court finds no reason as to why Defendant should have interpreted DeMartin's answer as ambiguous or untruthful. The State did not suggest a question that could have been asked of DeMartin to elicit a responsive answer, nor does this Court find that any further questioning of this juror would have extracted a responsive answer. The Defendant simply had no reason to continue to pry where there appeared to be a conclusive answer.[3]

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[3] The Court acknowledges the language from *Roberts* which stated that:

> [u]nder present circumstances, the burden of imposing such a prerequisite [a public record's search] to a later valid challenge to juror nondisclosure would be onerous, most particularly to sole

Our Constitution guarantees that in America, people charged with a crime are entitled to a fair trial. The Courts are obligated to make good on that promise. After the guilty verdict, the Defendant moved for a new trial due to other misconduct by DeMartin (a drinking experiment). The Court then ruled that although DeMartin's behavior was inappropriate it did not deprive the Defendant of a fair trial. A defendant is entitled to a fair trial, not a perfect one. Up to that point, Mr. Goodman received a fair, albeit imperfect trial--a verdict the Court and the Constitution would uphold. The cumulative effects of DeMartin's antics, however, have transformed an imperfect but fair trial into a constitutionally impermissible proceeding.

As to DeMartin, the Court finds he is a marginally credible witness. He has been recklessly indifferent to the truth in answering questions. He lacks candor, sincerity, and an appreciation of the sacred role a juror plays in the judicial system. His cavalier and offensive demeanor during the interview of April 29, 2013 brings this Court to the inescapable conclusion that DeMartin denied the State, the Defense and the citizens of this Circuit a fair trial. To allow this conviction to stand, in light of the strength of Dennis DeMartin's participation, would erode the integrity of the judicial system. Every person charged with a crime deserves a fair trial

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> practitioners representing clients in litigation . . . . We must . . . recognize that conditions should not be imposed that would require additional teams of investigative lawyers to become involved as a necessary ancillary activity to the trial process.

Roberts, 814 So. 2d at 345. However, the Court notes for the record that Mr. Dubin, an attorney for the Defendant, testified about what extraordinary measures the defense took in selecting this jury in checking potential jurors backgrounds. During the jury selection process, the defense team, in an Orwellian fashion, had real-time background checks on the potential jurors. Investigators checked private subscription websites for credit ratings, criminal records, and other databases to reveal very personal information. The defense also employed assistants to cull through social websites such as Twitter and Facebook to get more insight on potential jurors. Nothing in these background checks revealed or could have revealed the prior DUI conviction of DeMartin's ex wife (she was not arrested under the name DeMartin). Additionally, the types of searches the Fourth District considered in *Hillsboro Management, LLC v. Pagono*, --- So. 3d ----, 2013WL1748615 (Fla. 4th DCA 2013), would obviously not have uncovered what Mr. Dubin's process did not.

without the likes of Dennis DeMartin.

This Court finds that juror DeMartin failed to disclose information during voir dire that was both relevant and material to his jury service in this case. The Court finds that the information was concealed and that the failure to learn of this information was not attributable to the Defendant's lack of diligence. Based on the foregoing, it is

ORDERED that Defendant's Motion for New Trial and/or to Vacate His Conviction Based on Jury Misconduct, is hereby **GRANTED**.

DONE AND ORDERED, in Chambers at West Palm Beach, Palm Beach County, Florida this 3rd day of May 2013.

JEFFREY COLBATH
CIRCUIT JUDGE

Copies furnished: via email (w/enc.)

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