

IN THE COURT OF COMMON PLEAS OF MONTGOMERY COUNTY, PENNSYLVANIA
CRIMINAL DIVISION

2017 JUN 21 PM 3: 33

COMMONWEALTH OF PENNSYLVANIA: NO. 3932-16

v.

WILLIAM H. COSBY, JR.

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**MEMORANDUM AND ORDER SUR PHILADELPHIA MEDIA NETWORK, PBC'S
MOTION TO INTERVENE TO SEEK ACCESS TO HEARING TRANSCRIPTS, PRE-
TRIAL MOTIONS AND JUROR NAMES**

1. Philadelphia Media Network, PBC (hereinafter "PMN") filed a "Motion to Intervene To Seek Access to Hearing Transcripts, Pre-Trial Motions, and Juror Names" in the above-captioned case on June 2, 2017. Attached to the Motion to Intervene was "Philadelphia Media Network, PBC's Motion for Access to Hearing Transcripts, Pre-Trial, Motions and Juror Names."
2. This Court held a brief argument on June 5, 2017 at the close of the first day of testimony in the above-captioned case.
3. On the record in open court that date, PMN was granted intervenor status.¹
4. Intervenors sought the following in their Motion for Access:
 - a. Transcripts from any non-public pre-trial hearings;
 - b. Any non-public pre-trial motions, responses thereto and Orders thereon;
 - c. The names of all jurors.
5. At the June 5th hearing, intervenors' requests for the transcripts from any non-public pre-trial motions, responses thereto and Orders thereon were granted. Intervenors' counsel was advised that access to any transcripts from any non-public pre-trial hearings would be subject to the ability of the Court Reporter to produce said transcripts while also acting as the official Court Reporter for the actual trial. Additionally, it is the Court's understanding that any "non-public pre-trial motions, responses thereto and Orders thereon" have been filed and are available for public access.
6. At the hearing on June 5th, the Court addressed intervenors' requests for "the names of all jurors." Intervenors' counsel was asked why intervenors wanted

¹ On June 5, 2017, the following organizations filed a notice of Joinder within intervention proceedings: PA Media Group, which publishes *The Patriot-News* and PennLive.com; PG Publishing Co., Inc., which publishes the *Pittsburgh Post-Gazette* and Post-Gazette.com; and WHYY, Inc., which broadcasts WHYY-TV and WHYY-FM and publishes NewsWorks.org.

the jurors' names. His response was, "We want to have them because we have a right to have them." He went on to further state "we want to be able to research who they are, and research into who these people are in preparation for contacting them afterwards." No other reasons were offered by intervenors.

7. The above-captioned case was the subject of extensive and unprecedented pre-trial publicity. By Order of February 27, 2017, this Court granted the Defendant's unopposed Motion for Change of Venire. On March 13, 2017, the Pennsylvania Supreme Court designated that a jury be impaneled from Allegheny County.
8. Jury selection commenced in Allegheny County, Pennsylvania on May 22, 2017. Upon being selected, each juror was given cautionary instructions and permitted to return home, subject to being transported to Montgomery County, Pennsylvania on June 4, 2017, in preparation for the commencement of trial on June 5, 2017.
9. From the time they were selected to the date trial commenced, these jurors were neither sequestered nor under oath. As such, release of the jurors' names during that period of time would have subjected them to inquiries and intrusions from the media before they became sworn jurors in the case.
10. During *voir dire* in Allegheny County, the jurors were advised by the Court that their names and identities would be kept private and confidential. By agreement of counsel, jurors were identified only by number during the selection process.
11. Commencing June 5, 2017, the selected jurors (twelve plus six alternates) were sworn in as jurors and sequestered for the entire length of trial.
12. During trial in this case, there continued to be extraordinary media and public attention and scrutiny of all aspects of the proceedings.²
13. At the close of the first day of trial, members of the press attempted to photograph the jurors as they were boarding the sheriff's department vehicles for transport to their hotel.
14. The Court was cognizant that the members of the jury were 300 miles from home. During sequestration, the jurors were permitted only limited phone contact with family members.
15. The Court had significant concerns, based on PMN counsel's assertions in paragraph 7 above, that the media would publicize the names of jurors or attempt to contact family and friends during the pendency of the trial.

² Court administration reports that over 130 press credentials were issued for the trial. That does not include the media and photographers that were stationed throughout the courthouse and surrounding area. There were over 40 media trucks on location.

16. Such attempts to contact friends and family would likely be reported to the jurors, thereby causing consternation and distraction from their sworn duty as jurors.
17. On Monday, June 12, 2017 at 5:30 p.m., the jury began deliberations, which lasted approximately 52 hours before indicating they were hopelessly deadlocked. This Court declared a mistrial for manifest necessity on June 17, 2017.
18. After mistrial was declared, the Court read the jurors and the alternates the standard jury instruction regarding post-trial media interviews. Pa. SSJI (Crim), §7.10 (2016), attached hereto and incorporated herein.
19. The Commonwealth immediately indicated, on the record, that it intends to retry the Defendant.
20. At that time, the Commonwealth was granted time to research the issue of releasing the jurors' names and file a response to PMN's Motion.
21. On June 19, 2017, ABC, Inc., The Associated Press, Cable News Network, Inc., CBS Corporation, Hearst Stations, Inc., Hearst Properties, Inc., NBC Universal Media, LLC, The New York Times Company, and WP Company ("Proposed Media Intervenors") filed a "Motion to Intervene and For Access to Discharged Jurors' Names." Additionally, BuzzFeed, Inc. and Time, Inc. filed a Notice of Joinder on this date.
22. Margaret Gibbons, "Intelligencer Staff Writer," filed a similar request as a representative of Calkins Media.
23. The same date, the Commonwealth filed a "Memorandum of Law To Respect the Privacy of Those that Have Served on a Jury by Not Releasing the Jurors' Names," arguing that releasing the jurors' names could have a chilling effect on future jurors and could impair the both parties' right to a fair and impartial trial.
24. By letter of June 19, 2017, Defense counsel, with the express approval of the Defendant, joined in the Commonwealth's request to deny the press motion for access to juror names. This letter was marked "Court-1" and made an exhibit at the June 20th argument.
25. This Court heard argument on June 20, 2017, at which time it granted the Proposed Media Intervenors' and Ms. Gibbons' Motions to Intervene.
26. The press has a qualified First Amendment right to the names of the jurors in this case. Commonwealth v. Long, 922 A.2d 892, 904 (Pa. 2007).

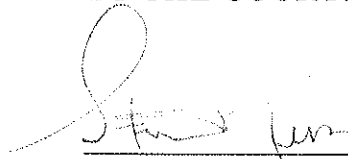
27. Based on the national and often sensationalized media coverage this case has attracted, this Court finds, for the reasons set forth above, that withholding the names of the jurors in this case until the declaration of mistrial was necessary to protect the privacy and confidentiality of the jurors with the ends of ensuring a fair and impartial trial.
28. With regard to post-mistrial release of the names, this Court carefully balanced the rights of the parties to a fair and impartial trial, preservation of the confidentiality of the deliberation process, the privacy concerns of the discharged jurors and the press's First Amendment rights and finds that, on balance, this Court is bound by the our Supreme Court's decision in Long. The names of the jurors must be released.
29. However, the Court, in keeping with the instruction set forth in Pa. SSJI (Crim), §7.10 (2016), finds that the jury deliberations in this case are confidential. The Commonwealth intends to retry this case. As such, any disclosure of what was said and done during deliberations in this case would have a chilling effect upon the future jurors in this case and their ability to deliberate freely and to feel secure in the protection of their privacy during their sworn jury service. Further, future jurors will be reluctant to speak up or to say what they think when deliberating if they fear that what they say during deliberations will not be kept secret.
30. Accordingly, the names of the jurors shall be released conditioned upon the following:
 - a. Jurors shall not disclose anything said or done in the jury room by any of their fellow jurors that may indicate his or her thoughts or opinions;
 - b. Jurors shall not disclose arguments or comments made, or votes cast, by fellow jurors during deliberations
31. The names shall be released by Court Administration after the jurors are contacted by the Court and given the above directives.

Based on the foregoing, the Court issues the following:

ORDER

And now, this 21st day of June, 2017, upon consideration of "Philadelphia Media Network, PBC's Motion for Access to Hearing Transcripts, Pre-Trial, Motions and Juror Names," filed June 2, 2017, it is hereby **ORDERED** and **DECREED** that the insofar as the Motion requests transcripts and pre-trial motions as outlined in paragraph 5 above, the Motion is **DISMISSED** as **MOOT**. The request for names of the jurors is **GRANTED** and a list of the same shall be provided to the Court Administrator for distribution, following contact by the Court. **Jurors shall not disclose anything said or done in the jury room by any of their fellow jurors that may indicate his or her thoughts or opinions. Jurors shall not disclose arguments or comments made, or votes cast, by fellow jurors during deliberations.**

BY THE COURT:



STEVEN T. O'NEILL, J.

Copy of the above Order
mailed on 6/21/17 to the following:

Eli Segal, Esq.
Paul J. Safier, Esq.
Margaret Gibbons
Kevin R. Steele, Esq. (District Attorney's Office)
Brian J. McMonagle, Esq.
Court Administration

Secretary

PA-JICRIM 7.10, Pa. SSJI (Crim), §7.10 (2016)

Pennsylvania Suggested Standard Criminal Jury Instructions
3rd Edition, 2016
Volume I

PART ONE--General Instructions
CHAPTER VII--Concluding and Post-trial Instructions
Date of Last Revision - May 2016

7.10 (Crim) Post-Trial Interviews of Jurors by Media

1. Now that you have rendered your verdict in this case, it is possible that reporters for the press and other media will want to interview you. There are some things that you should not discuss with reporters. I'll tell you about them shortly.
2. I'm not going to direct you to refuse to talk to news reporters. There is no law forbidding them to question discharged jurors. The Constitution guarantees freedom of the press. I will remind you of something that ex-jurors sometimes forget when confronted by reporters with note pads, cameras, or microphones. You have no legal obligation to answer any of their questions. You can decline to be interviewed or you can terminate an interview at any time.
- [3. As private Americans, you were called on by this court to perform one of the great duties of citizenship--to decide whether an accused individual committed the crime with which he or she has been charged. It is not part of your responsibilities to be a spokesperson for the criminal justice system. I assume that when you became jurors you were not looking for celebrity or financial gain. You have all performed your duty as jurors and are now free to return to the privacy of your own lives.]
4. I anticipate that the reporters who are covering the trial will do their jobs in a professional manner and will respect your right to privacy. If, however, some reporter should harass you after you make it clear that you don't want to be interviewed, you can come and tell me about that reporter's conduct and I'll consider what can be done to help you.
5. Now, getting back to the things that you should not discuss with reporters even if you are willing to be interviewed, keep in mind that jury deliberations are confidential. You should not disclose anything said or done in the jury room by any of your fellow jurors that may indicate his or her thoughts or opinions. For instance, you should not disclose arguments and comments made, or votes cast, by your fellow

jurors during deliberations. An important reason for not disclosing what is said and done during jury deliberations is to encourage jurors now and in the future to deliberate freely in every case and to protect their privacy. Some people might be reluctant to speak up or say what they think while deliberating as jurors if they fear that what they say during deliberations will not be kept secret.

SUBCOMMITTEE NOTE

This instruction, or something like it, is appropriate when a jury is being discharged and the court anticipates that media representatives will want to interview the discharged jurors.

The instruction is meant to reconcile the confidentiality of jury deliberations with freedom of the press--a delicate balancing act. See, generally, *United States v. Antar*, 38 F.3d 1348, 1363-64, 1366-67 (3d Cir. 1994); A.S. Goldstein, *Jury Secrecy and the Media: The Problem of Post Verdict Interviews*, 1993 U. Ill. L. Rev. 295 (1993). Compare *Boring v. LaMarca*, 646 A.2d 1199 (Pa.Super. 1994) (impeachment of verdict).

For a more detailed instruction including language that may be used where the court decides to allow reporters to interview willing jurors in the courthouse, see Arthur Murphy and Christine Kellett, *Meet the Press: How the Court Can Prepare Jurors*, 10 ABA Criminal Justice 8 (Winter 1996).

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