

IN THE CIRCUIT COURT OF THE 15<sup>TH</sup> JUDICIAL  
CIRCUIT OF FLORIDA, IN AND FOR PALM  
BEACH COUNTY

CASE NO. 2010CF005829AMB

STATE OF FLORIDA,

JUDGE JEFFREY COLBATH

Plaintiff,

v.

JOHN B. GOODMAN,

Defendant.

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**DEFENDANT'S MOTION FOR NEW TRIAL  
AND/OR TO VACATE HIS CONVICTION  
BASED ON JURY MISCONDUCT AND  
INCORPORATED MEMORANDUM OF LAW**

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**DEFENDANT’S MOTION FOR NEW TRIAL  
AND/OR TO VACATE HIS CONVICTION  
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INCORPORATED MEMORANDUM OF LAW**

The Defendant, JOHN B. GOODMAN, through undersigned counsel, respectfully moves this Court either for a new trial pursuant to Rule 3.575 of the Florida Rules of Criminal Procedure or to vacate his conviction pursuant to Rule 3.850 of the Florida Rules of Criminal Procedure and the due process and impartial jury clauses of Article I, Section 16 of the Florida Constitution and the Fifth and Sixth Amendments to the United States Constitution. As discussed in further detail below, Mr. Goodman bases this motion on newly discovered evidence revealed for the first time by former juror Dennis DeMartin in a “book” he self-published on Amazon.com in March 2013, entitled *Will she Kiss Me or Kill Me*, a copy of which is attached hereto as **Exhibit 1**. As discussed below, in this book, Mr. DeMartin disclosed the following new information:

- (1) Mr. DeMartin concealed during *voir dire* that his wife had been arrested for DUI and that, as a result of the incident, his wife began an extramarital affair with another drinker, causing their divorce;
- (2) Mr. DeMartin lied to the Court during the hearing on May 11, 2012, about his knowledge of hydrocodone and how that knowledge has affected him; and
- (3) Mr. DeMartin, prior to trial, had been “encouraged” by some unidentified third party to write a book about Mr. Goodman’s trial.

As a preliminary matter, Mr. Goodman moves this Court, pursuant to Rule 3.575 of the Florida Rules of Criminal Procedure and the Fourth District Court of Appeal’s recent order relinquishing jurisdiction to this Court, to convene an evidentiary hearing at which counsel for the parties will be allowed to question Mr. DeMartin about all three of these issues.<sup>1</sup> In support of these requests, Mr. Goodman submits the following Memorandum.

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<sup>1</sup> Rule 3.575 provides:

*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.

## MEMORANDUM

### **I. BACKGROUND**

As this Court is aware, the Defendant is currently appealing his conviction for DUI Manslaughter/Failure to Render Aid. The case has been fully briefed in the Fourth District Court of Appeal and the parties are awaiting the scheduling of oral argument.

On March 21, 2013, counsel learned for the first time that former juror Dennis DeMartin – the same juror who this Court already found committed misconduct by engaging in a “drinking experiment” in direct violation of repeated instructions from the Court<sup>2</sup> – has self-published a “book” on Amazon.com entitled *Will she Kiss Me or Kill Me*. See **Exhibit 1**.<sup>3</sup> In this new book, Mr. DeMartin disclosed for the first time that, while living in another state, his wife “had been drinking” and driving one night and was in a nearly-fatal accident that resulted in her arrest for DUI:

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.

*Id.* at p. 3. Mr. DeMartin did not disclose whether his wife was convicted but explained what how his “world came apart” as direct result of the incident:

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.

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<sup>2</sup> Among other issues, Mr. Goodman is arguing on appeal that this Court erred in not granting the Defendant a new trial based on Mr. DeMartin’s out-of-court experiment.

<sup>3</sup> After learning about the book, counsel purchased a copy from Amazon.com. The book arrived on March 21, 2013. According to Amazon.com, the book was published only one week earlier, on March 14, 2013.



*Id.* at p. 4. Mr. DeMartin then moved to Florida and joined a Church group where he met another woman he later married “who was divorced from her husband due to excessive alcohol.” *Id.* at pp. 5-6.

During *voir dire* in this case the jurors were specifically asked whether “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.” See **Exhibit 2**, Transcript Excerpt, Vol. 8, at pp. 915-16 (emphasis added). Other prospective jurors disclosed arrests of friends and family members, including DUI arrests of spouses and in-laws. See *id.* at p. 927, 936-45. One prospective juror even disclosed an incident involving her husband “when he was 17 before we met.” *Id.* at p. 927. Mr. DeMartin, however, not only sat mute in response to the question but affirmatively denied knowing about ***any*** similar arrests: “I’m even trying to think of any family. I don’t think any of my family had any problems.” *Id.*<sup>4</sup>

Although even unintentional non-disclosures of material information require a new trial under Florida law, *see infra*, we respectfully submit that the objective facts strongly support an inference that Mr. DeMartin’s misconduct was deliberate. Later during *voir dire* the prosecutor indicated that she had some kind of record showing that Mr. DeMartin had been a witness to a car

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<sup>4</sup> Mr. DeMartin also sat mute in response to a catch-all question from ASA Collins:

...[I]s there anything I haven’t asked of y’all but in your mind you think, well, gee, gosh, if she had asked me about this, I would have told her. But it didn’t come to mind, she didn’t specifically ask me. So here’s the broad question: Is there anything that any of you have from your job, from your life, from what you read in the paper, anything that you feel would affect your ability to sit as a juror.... Is there anything that you-all think that we need to know but I haven’t specifically asked it? Now I’m asking....

Trial Transcript, p. 950-951.

crash in 2001. *Id.* at p. 962. He claimed that he did not remember but returned after lunch to report that he had called his “ex-wife to see what I did in 2001” and that she reminded him that they had once been in a bank where they were “held up” and then later “saw a motor cyclist get killed.” See **Exhibit 3**, Transcript Excerpt, Vol. 9, at p. 983. He made these disclosures, while continuing to conceal his wife’s DUI arrest, which, as noted above, led to his divorce. Yet, he clearly *did* remember the divorce itself because, in response to a question from counsel about whether the jurors “or your close family members” had “ever hired a lawyer for anything” (*id.* at p. 973), Mr. DeMartin responded: “The only time I hired one was for my divorce.” *Id.* at p. 984. Mr. DeMartin also had no trouble remembering that he “didn’t get what I wanted” from the divorce settlement “but what can you do.” *Id.* He also remembered that the divorce lawyer later “helped me with a trust.” *Id.* Mr. DeMartin would apparently have the Court believe that he had no recollection of his wife’s DUI arrest, which led directly to their divorce, but *did* remember both hiring the divorce lawyer and being unsatisfied with the outcome of the divorce. He would also have the Court believe that his telephone conversation *with* the wife during *voir dire* did nothing to jog his memory of her DUI arrest.

In any event, if Mr. DeMartin had been truthful and disclosed that his wife’s arrest for DUI<sup>5</sup> had led to a divorce caused by the wife’s affair with another drinker, counsel would have moved to strike Mr. DeMartin for cause and, if that had failed, counsel would have used a peremptory challenge to keep him off the jury.

Mr. DeMartin’s new book also revealed the likely motivation for his serial misconduct: “When I became a juror and was encouraged to write a book on being involved in the trial, I rushed

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<sup>5</sup> Mr. DeMartin’s book does not reveal whether his wife received any additional charges for having “walked away from the accident.”

through the process after the trial was over” and published his first book concerning Mr. Goodman’s trial. *See Exhibit 1*, Prefix (emphasis added). During the limited inquiry this Court conducted concerning Mr. DeMartin’s book about his jury service, Mr. DeMartin never disclosed that his decision to write the book on Mr. Goodman’s trial was “encouraged” by an unidentified third party. As Mr. Goodman is arguing in his appeal, counsel also would have moved to strike or used a peremptory challenge to strike Mr. DeMartin had he disclosed his intention to write a book about the trial. Until now, however, neither counsel nor this Court had any knowledge about a *third party* “encouraging” Mr. DeMartin to do so.

Finally, the book reveals that DeMartin lied about at least one additional material fact. Prior to sentencing on May 11, 2012, this Court questioned Mr. DeMartin about his drinking experiment. Among other things, the Court asked whether he had “any hydrocodone in your system at the time that you had these drinks.” Transcript, May 11, 2012, at p. 30. Mr. DeMartin responded: “I don’t even know what hydrocodone is.” *Id.* In his new book, however, Mr. DeMartin disclosed that, in fact, he had been “bother[ed] ... throughout the trial” by the fact that Mr. Goodman was accused of abusing the “same drug” as his so-called “New Love Interest.” Thus, Mr. DeMartin explains at the outset in his new book:

I felt that since I was involved in the jury process and the trial referred to in my second book, I had to explain my life prior to the trial since so many people were calling my deeds wrong. I wanted people to know that by being with a Bi Polar person *and seeing what the medication could do to her was what was bothering me throughout the trial.*

I felt that when I learned about the actions My New Love Interest did and found out about her Bi Polar illness and drug problems, *that this man on trial might have similar problems since the same drug was mentioned that he and she both took.*

See **Exhibit 1**, at p. 1 (emphasis added). Later in the book, Mr. DeMartin goes into great detail about how he wanted to get his “New Love Interest” off the drugs, complaining that her doctor was giving them to her, instead of performing back surgery. *Id.* at p. 33. Mr. DeMartin then writes (underlining by Mr. DeMartin):

“**This is why I was so upset even during the trial** that I wrote about in my other book, “Believing in the Truth”. I know people are guilty for what they do, however, I do believe it is the doctors that keep giving the controlled drugs that cause the patients to sometimes do the wrong thing as they are not in control of their full senses or their actions.”

*Id.* at pp. 33-34 (bold added).

Later in the book, Mr. DeMartin goes on to confess how these strong feelings about his New Love Interest’s drug abuse influenced how he viewed the results of his improper drinking experiment:

*...So that is why I had the 3 drinks. I wanted to know if I would have all my faculties to act rationally after 3 drinks. As I wrote in that book, I found that I would have had problems doing the right things after 3 drinks. I felt that it was proven that he was drunk added with the medication that I knew he and My New Love Interest were taking, he would have problems remembering to do the right thing also.*

*Id.* at pp. 87-88 (emphasis added).

Thus, Mr. DeMartin testified under oath before this Court on May 11, 2012, that he did not “even know what hydrocodone [was]” and that the drinking experiment did not influence his verdict. In fact, as Mr. DeMartin has now confessed in his book, the alleged similarity between Mr. Goodman and his New Love Interest’s abuse of pain medication was “bothering [him] throughout the trial,” was “why [he] was so upset even during that trial” and combined with his drinking

experiment to cause him to conclude that Mr. Goodman also “would have had problems doing the right thing after 3 drinks.” In short, contrary to the Court’s credibility finding, Mr. DeMartin lied to the Court as to both his knowledge about hydrocodone and the impact of his experiment on his decision-making.

Based on these revelations, on March 25, 2013, Mr. Goodman moved the Fourth District Court of Appeal to relinquish jurisdiction to this Court to permit an interview with Mr. DeMartin and for the Court to then consider granting Mr. Goodman a new trial. The motion expressly requested questioning on *both* the wife’s arrest and his disclosure about being “encourage[d]” by an unidentified third party to write the previous book about the trial. On March 28, 2013, that motion was summarily granted over the State’s opposition.

In response to the publicity surrounding the filing of the motion, on April 1, 2013, former prosecutor Ellen Roberts was interviewed live by a reporter from WPTV News Channel 5. She also obviously believed Mr. DeMartin’s concealment was deliberate and strongly urged that he be held in contempt:

I think Mr. DeMartin needs to be held in contempt of court. I think he needs to spend five months and twenty-nine days in jail and God forbid, if the court grants a new trial, I think he needs to have a judgment entered against him for about a quarter of a million dollars for the cost of the trial.

*See* Transcript Excerpt, **Exhibit 4**.<sup>6</sup> No doubt fearing retribution for his misconduct,<sup>7</sup> Mr. DeMartin also granted a televised interview to WPTV News and professed to having forgotten about his wife’s accident and affair due to a “stroke.”

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<sup>6</sup> Counsel have a copy of the actual film clip, which will be filed separately with the Court.

<sup>7</sup> Counsel do not know whether Mr. DeMartin heard or was informed about Ms. Roberts’ comments before his interview.

DeMartin: No, I didn't know about it at that time because of a stroke I had. I forgot all about it. I blocked out when she left me for another man and everything. ***I didn't talk to her until December*** when her mother died and they went visiting, and then, a whole bunch of things happened at that time.

See Transcript Excerpt, **Exhibit 5** (emphasis added).<sup>8</sup> This explanation was patently false because, as noted above, Mr. DeMartin “talk[ed] to her” during the *voir dire* process itself.

On April 1, 2013, Mr. DeMartin wrote the Court a letter in which he floated a similar story, claiming that he had “blocked out of my memory” his “ex-wife’s DUI and the details of how she ended up with another alcoholic man.” See Letter of April 1, 2013, **Exhibit 6**. However, Mr. DeMartin could not keep his various stories straight, telling the Court that during *voir dire*, when he initially did not remember having been a witness before, he “had to call ***family and friends*** to remind me of this” and that he did not remember his wife’s accident until much later. *Id.* (emphasis added). That is ***not*** what he told the Court and the parties about the phone call while under oath during *voir dire*. As previously discussed, Mr. DeMartin stated, not that he called “family and friends,” but that “I went and called ***my ex-wife*** to see what I did in 2001.” See **Exhibit 3**, Transcript Excerpt, Vol. 9, at p. 983 (emphasis added). For obvious reasons, Mr. DeMartin did not want to remind the Court that he had spoken directly with his “ex-wife” during *voir dire* in the same letter that he was trying to convince the Court that he had “blocked” her “out” of his memory.

As demonstrated below, whether deliberate or completely unintended, the effect of Mr. DeMartin’s conduct was the same. He concealed the extremely prejudicial impact of his wife’s

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<sup>8</sup> Counsel have a copy of the actual film clip, which will be filed separately with the Court. The Court will note that Mr. DeMartin’s explanation is contradictory. Memory problems allegedly caused by a stroke would presumably not be selective. However, Mr. DeMartin claimed that he also forgot because he deliberately “‘block[] out” the memory because, as a result of the incident, “she left me for another man and everything.””

arrest for DUI and possibly “walk[ing] away from the accident” in a criminal case where the defendant was charged with DUI and leaving the scene – information that, if revealed, would obviously have led to his elimination from the jury. Under well established Florida precedents, such conduct violated Mr. Goodman’s rights and requires a new trial without any additional showing of “prejudice” or deliberate deceit by Mr. DeMartin. *See Davis v. State*, 778 So.2d 1096, 1097 (Fla. 4<sup>th</sup> DCA 2001) (per curiam) (holding that if “the conditions of the [*De La Rosa*] test are met, the trial court **must** grant the appellant a new trial”) (emphasis added); *Royal Caribbean Cruises, Ltd. v. Pavone*, 92 So.3d 243 (Fla. 3d DCA 2012) (since the record established that the juror lied about his litigation history, “we find no basis for the trial court’s failure to grant a new trial based on that juror’s misconduct”) (citations omitted); *Chester v. State*, 737 So.2d 557 (Fla. 3d DCA 1999) (per curiam) (“A juror’s false response during voir dire, albeit unintentional, which results in the nondisclosure of material information relevant to jury service in that case justifies a new trial as a matter of law.”); *Mobile Chemical Co. v. Hawkins*, 440 So.2d 378, 381 (Fla. 1<sup>st</sup> DCA 1983) (rejecting the argument that the appellant had “to prove that the juror was biased” in favor of the appellee when she failed to disclose that she was the second cousin of appellee’s wife). Since a new trial is required regardless of Mr. DeMartin’s intent or the veracity of his explanation for the non-disclosure, we leave it to the Court’s discretion whether to open the inquiry into Mr. DeMartin’s motivations. If the Court does so, however, Mr. Goodman requests that the Court permit counsel to cross-examine Mr. DeMartin about the numerous inconsistencies in his stories.

Finally, the Fourth District Court of Appeal did not limit its remand to questions about his concealment of the DUI arrest. Accordingly, Mr. DeMartin should also be questioned about his disclosure that an unidentified third party “encouraged” him to write his other book about the trial,

as well as his blatant lie to the Court about having no knowledge about Hydrocodone. The latter issue is particularly important, because this Court, in denying Mr. Goodman relief on Mr. DeMartin's misconduct for conducting his drinking experiment, found Mr. DeMartin's testimony on May 11, 2012, to be credible.

**II. MR. DEMARTIN'S FAILURE TO DISCLOSE HIS WIFE'S DUI ARREST, WHEN CORROBORATED AT A HEARING, WILL REQUIRE A NEW TRIAL REGARDLESS OF MR. DEMARTIN'S INTENT**

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The purpose of voir dire is “to ascertain whether a cause for challenge exists, and to ascertain whether it is wise and expedient to exercise the right of peremptory challenge.” *Loftin v. Wilson*, 67 So. 2d 185, 192 (Fla. 1953) (citation omitted). *Accord State Farm Mutual Auto. Ins. Co. v. Lawrence*, 65 So.3d 52, 55 (Fla. 2d DCA 2011). For this reason, lawyers “are entitled to ask, and receive truthful and complete responses to, the relevant questions which they pose to prospective jurors.” *Roberts ex rel. Estate of Roberts v. Tejada*, 814 So. 2d 334, 342 (Fla. 2002).

A juror who “conceals a material fact relevant to the controversy [] is guilty of misconduct, and such misconduct [] is prejudicial to the party, for it impairs his right to challenge.” *Loftin*, 67 So. 2d at 192 (citation omitted). Despite the use of the term misconduct, “the concealment at issue does not have to be intentional because the verdict may be impaired **regardless of the juror's motives.**” *State Farm Mut. Auto. Ins. Co. v. Lawrence*, 65 So.3d 52, 55 (Fla. 2d DCA 2011) (emphasis added), citing *Roberts*, 814 So. 2d at 343-44. “Therefore, when a party discovers posttrial that a juror may have concealed a material fact— whether actively, **passively, or unintentionally** — confidence in the integrity of the jury process and in a fair verdict is called into doubt.” *State Farm Mutual*, 65 So.3d at 55 (emphasis added). *Accord Smiley v. McCallister*, 451 So. 2d 977, 978 (Fla. 4<sup>th</sup> DCA 1984) (“**[The juror's] motives in not disclosing such information**, if in fact the allegation



that she did not is true, *is of no consequence.*”) (emphasis added). A juror’s motives are irrelevant “because the impact remains the same, counsel is prevented from making an informed judgment regarding the composition of the jury and the utilization of his or her peremptory challenges.” *Taylor v. Magana*, 911 So.2d 1263, 1268 (Fla. 4<sup>th</sup> DCA 2005), citing *Roberts*, 814 So.2d at 343-44.

In determining whether a juror’s nondisclosure of information during *voir dire* warrants a new trial, Florida courts employ a three-part test. The aggrieved party must establish that: (1) the undisclosed information was relevant and material to jury service; (2) the juror concealed the information during questioning, and (3) the concealment was not due to a lack of the moving party’s diligence. *State Farm Fire and Cas. Co. v. Levine*, 837 So. 2d 363, 364 (Fla. 2002), citing *De La Rosa v. Zequeira*, 659 So. 2d 239, 241 (Fla. 1995). Once the Court confirms – through Mr. DeMartin or otherwise – the existence of the undisclosed arrests, all three requirements for a new trial will be established.

**A.     The Undisclosed Arrest of Mr. DeMartin’s Wife For DUI, Her Subsequent Affair and Their Subsequent Divorce Were Plainly “Relevant” and “Material”**

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“It is well-established that there are no bright-line rules with respect to the materiality prong of the *De La Rosa* test, and that the materiality of concealed information must be determined on a case-by-case basis. *Levine*, 837 So. 2d at 366. The prior experience withheld does not have to be exactly like the current case. *See Roberts*, 814 So. 2d at 341 (quashing district court order that had reversed a trial court’s granting of a new trial). However, in the instant case, the charges and the concealed information were extremely similar. Mr. Goodman was charged with DUI Manslaughter/Failure to Render Aid. Mr. DeMartin’s wife was apparently arrested for DUI and she

had left allegedly left the scene, as well. Although Mr. DeMartin did not reveal whether his wife's accident resulted in any injuries or deaths, the accidents were otherwise virtually identical.

As the Fourth District Court of Appeal recognized in *Smiley*, in a trial involving a traffic accident, "similar accidents and injuries in which other relatives and family members of prospective jurors have been involved are of utmost interest to the parties for it can have a strong influence on a juror's approach to the resolution of litigation arising out of such accidents." *Smiley*, 451 So. 2d at 978. *See also Hicks v. Wiperfurth*, 73 So.3d 297 (Fla. 5<sup>th</sup> DCA 2011) (granting new trial in automobile accident negligence case where a juror failed to disclose, among other things, that he had been involved in several accidents in the past).

Had Mr. Goodman's counsel known of Mr. DeMartin's wife's arrest, they certainly would have followed up with additional questions which would have revealed how the DUI arrest led to his wife's affair with another drinker and ultimately to the couple's divorce. As Mr. DeMartin's recent comments to the media underscore ("I blocked out when she left me for another man and everything"), he was greatly affected by his wife's conduct. The disclosures, had they been made, would have warranted Mr. DeMartin's removal for cause. And, if this Court would have denied such a request, counsel would have used an peremptory challenge to remove him. But this opportunity was denied to Mr. Goodman. Nondisclosure is considered to be 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." *Roberts*, 814 So. 2d at 341.<sup>9</sup> This standard can be

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<sup>9</sup> The Sixth Amendment standard is more stringent. To obtain a new trial under the Sixth Amendment, the defendant must show that the juror's correct answer to a question "would have provided a valid basis for a challenge for cause." *McDonough Power Equipment, Inc. v. Greenwood*, 464 U.S. 548, 556 (1984). Additionally, the defendant must show that the fairness of the trial was affected either by the juror's "motives for concealing [the] information" or the "reasons (continued...)"

applied if the jurors' prejudice or bias is revealed. But here, the prejudice to Mr. Goodman was even more fundamental. His legal right to inquire and uncover bias or prejudice, and to exercise its peremptory challenge, was compromised by Mr. DeMartin's nondisclosure.

**B. Mr. DeMartin Concealed the Information**

The "concealment" prong of the *De La Rosa* test is met when a juror fails to respond truthfully to a specific question, even during collective questioning. *De Rosa*, 659 So.2d at 241. *See also Royal Caribbean Cruises, Ltd. v. Pavone*, 92 So.3d 243 (Fla. 3d DCA 2012). Mr. DeMartin was asked, in pertinent part, whether he had any "*close friend or family member or someone that affects you*" who had "ever been arrested, charged or convicted or accused of crime." This question was patently "straight forward and not reasonably susceptible to misinterpretation." *Gamsen v. State Farm Fire & Cas. Co.*, 68 So.3d 290, 294 (Fla. 4<sup>th</sup> DCA 2011) (citation omitted). Indeed, DeMartin heard other jurors' disclose DUI arrests of spouses and in-laws in response to this question. Moreover, in neither his televised interview nor his letter to the Court did Mr. DeMartin claim that he was confused by an ambiguous question.

Before the Fourth District Court of Appeal, the State nonetheless argued – without citing any authority – that the terms "family member" and "someone that affects you" in the prosecutor's question to the jurors were ambiguous. However, Mr. Goodman demonstrated to the Fourth District that both dictionaries and courts have routinely found that the terms "family member" and "relative" (1) are not ambiguous and (2) include spouses and other in-laws. *See Prock v. Southern Farm Bureau Cas. Ins. Co.*, 99 Ark. App. 381, 260 S.W.3d 737 (2007) (term "family member" is

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<sup>9</sup>(...continued)

that affect [the] juror's impartiality." *Id.* Although not necessary for the Court's determination under Florida law, we believe Mr. DeMartin's conduct also violated Mr. Goodman's Sixth Amendment rights under this standard.

“unambiguous” and includes “kin, by blood, marriage, or adoption”) (citations omitted); *Slokus v. Utica First Ins. Co.*, No.UWYCV085011071S (Conn. Super. July 14, 2001), 2011 Conn. Super. LEXIS 1759, at \*\*17-19 (collecting dictionary definitions and holding that “[t]he court ... finds only one plausible interpretation of the term ‘relative’ and that the term ‘relative’ clearly means a ‘connection by blood, marriage, or adoption.’”).<sup>10</sup>

An analogous situation occurred in *Forbes v. State*, 933 So. 2d 706 (Fla. 4<sup>th</sup> DCA 2006). In *Forbes*, a 19-year-old prospective juror denied that “he had any criminal charges pending against him” or that he or any member of his family had ever been arrested. 933 So. 2d at 708-09. Shortly thereafter, the State learned that the juror had pending charges for possession of more than 20 grams of marijuana and that the juror’s father had been arrested twice. The trial court found the juror in direct criminal contempt and sentenced him to four months in prison for lying during voir dire in a criminal case regarding his and his family members’ criminal histories. *Id.* at 710. The Fourth District Court of Appeal subsequently affirmed, emphasizing:

Truth and candor during voir dire are critical to a trial judge’s task of administering justice and preserving every litigant’s right to a fair and impartial jury. In maintaining the integrity and efficacy of the jury selection process, trial judges are dependent upon a prospective juror’s honest and candid responses, particularly on matters that bear directly on his or her qualifications and fitness to serve.

*Id.* at 713.

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<sup>10</sup> See, e.g., *Aji v. Allstate Ins. Co.*, 416 So.2d 1225 (Fla. 3d DCA 1982) (brother-in-law); *Vernatter v. Allstate Ins. Co.*, 362 F.2d 403 (4<sup>th</sup> Cir. 1966) (uncle-in-law); *Fidelity & Ca. Co. Of New York v. Jackson*, 297 F.2d 230 (4<sup>th</sup> Cir. 1961) (mother-in-law”); *Groves v. State Farm Life & Cas. Co.*, 171 Ariz 191, 829 P.2d 1237 (Ariz App. 19992) (former son-in-law); *Mickelson v. Am. Family Mut. Ins. Co.*, 329 N.W.2d 814 (Minn. 1983) (domestic partner); *Hayes v. Am. Standard Ins. Co.*, 847 S.W.2d 150 (Mo. Ap. 1993) (daughter of policy holders’s deceased paramour); *Sjogren v. Metro. Prop. & Cas. Ins. Co.*, 703 A.2d 608, 612 (R.I. 1997) (former step-son).

As previously discussed, at least under Florida law, the relevant issue is *whether* relevant and material evidence was not disclosed and not *why* the juror failed to disclose it. This point was made clear by the Fourth District Court of Appeal in *Tripp v. State*, 874 So.2d 732 (Fla. 4<sup>th</sup> DCA 2004). In that case, during voir dire, a juror stated that he did not know the defendant or any members of his family. 874 So.2d at 733. After trial, however, the defendant learned from his brother that the juror “did in fact know him” and filed a motion for new trial. *Id.* The Circuit Court denied the motion without a hearing but the Fourth District reversed. Several of the Court’s holdings are relevant here.

First, the Fourth District held that the question, framed in terms of “family members” was “not reasonably susceptible to mistake or misinterpretation.” *Id.*

Second, the Fourth District found that the information was both relevant and “reasonably material to the exercise of a peremptory or cause challenge.” *Id.*

Third, the Fourth District found, at least implicitly, that any explanation for the non-disclosure from the jury – presumably the most obvious one, an alleged lack of memory – was irrelevant because the court remanded for an evidentiary hearing. *Id.* at 734. *See also Taylor*, 911 So.2d at 1268-69 (reversing the trial court for denying new trial based on juror’s claim that the non-disclosure was based on a misunderstanding about the question asked, holding that “[w]hether juror Hill purposely concealed this information is irrelevant” and therefore that “the trial judge mistakenly concluded that the concealment must be purposeful and the application of this incorrect standard played a significant role in her conclusion not to grant a new trial”); *Smiley*, 451 So.2d at 978 (holding that a juror’s “motives” in failing to disclose material information “is of no consequence”); *Mobile Chemical Co.*, 440 So.2d at 380 (juror’s failure to disclose that she was the

second cousin of appellee's wife required a new trial, even if the juror did not "kn[o]w of her relationship" to the appellee). Whether to avenge his broken marriage, to write a book about the trial after being "encouraged" to do so by a third party<sup>11</sup> or, indeed, because he simply "forgot," Mr. DeMartin failed to disclose material information. That is enough to require a new trial, even if the Court were to believe DeMartin's memory lapse defense. *See Pereda v. Parajon*, 957 So.2d 1194, 1197 (Fla. 3d DCA 2007) (expressly declining to "make a credibility determination" about juror's explanation for non-disclosure "because whether or not her concealment was intentional is of no import"); *Bernal v. Lipp*, 580 So.2d 315, 316 (Fla. 3d DCA 1991) (new trial required even if trial court believed that juror's innocent explanation for not disclosing information "was truthful and that there had been no intentional withholding of information").

Moreover, Mr. DeMartin does not come before the Court with clean hands. Indeed, this is not the first time Mr. DeMartin has feigned a lack of memory to get out of trouble with the Court. After the jury was selected, the Court issued a lengthy cautionary instruction, explicitly telling the jurors to not conduct their own "investigat[ions] ... outside of the courtroom." Trial Transcript, pp. 1133-34. Before opening statements, the Court again instructed the jurors to "not conduct any investigation on their own." *Id.* at pp. 1156-59. After publishing his book about the trial and revealing his drinking experiment, on May 4, 2012, Mr. DeMartin was confronted by a reporter from WPTV news. Asked about the experiment, Mr. DeMartin claimed that "[t]he judge never told me don't do any experiments." R23:4548, 4604, 4606 4610. Perhaps he simply "forgot" then too.

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<sup>11</sup> *See generally* Note, *Satisfying the Appearance of Justice When a Juror's Intentional Nondisclosure of Material Information Comes to Light*, 35 U. MEM. L REV. 315, 339 (Winter 2005) ("A potential juror might lie during voir dire for the purpose of gaining a seat on the jury so as to influence the disposition of the case. Such a person might harbor a selfish desire to send a message of some kind, or to gratify an excessive sense of civic duty, *or to avenge past wrongs, or even to gather material for a novel or a memoir.*") (emphasis added).

In addition to falsely claiming a lack of memory as an excuse to coverup his lies, Mr. DeMartin has a well-documented history of misconduct and mendacity in these proceedings which this Court should ignore no longer. This history includes:

- The Court's own finding that Mr. DeMartin had committed "misconduct" by conducting his drinking experiment;
- Mr. DeMartin's violation of the Court's instructions to not engage in out-of-court investigations and subsequent false statement to the media that the Court had never given any such instruction;
- Mr. DeMartin's false or deliberately misleading statements in his letter to the Court on March 20, 2012, in which he claimed that the only book he was currently writing was about "The Trials and Tribulations of a Senior Citizen getting a Date without a Car" when, in fact, he had already begun writing a book about the trial;<sup>12</sup>
- Mr. DeMartin's misrepresentations to the Court on March 22, 2012, when he falsely told the Court that the dismissive gesture he made during counsel's cross-examination of Mr. Livernois and comment to Juror No. 5 were about a missing button and not the cross-examination;<sup>13</sup>

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<sup>12</sup> Although the Court later changed its mind, the Court's initial reaction to the idea that a juror would be writing a book about a case in which he was participating, *while the trial was still ongoing*, was that it would be "inappropriate on a juror's part." Transcripts, Vol. 25, March 22, 2012, at p. 3537. We continue to believe that the Court's initial reaction was the correct one but, in any event, Mr. DeMartin's inconsistent statements about the issue undermine his credibility.

<sup>13</sup> *Id.* at pp. 3534, 3540. When the Court asked Mr. DeMartin directly whether the gesture had anything to do with the testimony, Mr. DeMartin stated: "No way. That's the big joke back there because they said I ate too many of those  
(continued...)"

- Mr. DeMartin’s inconsistent statements about whether he showed and/or discussed his book-writing “notes” with the jurors during the trial – boasting to the media that he had told “them about notes I was making every night,” while telling the Court that “[t]he contents of these work sheets WERE NOT DISCUSSED with any juror” (emphasis by Mr. DeMartin);<sup>14</sup>
- Mr. DeMartin’s inconsistent statements about purpose and impact of his drinking experiment – telling the Court that “didn’t take the drinks to find out if [Mr. Goodman] was guilty or not,” while writing in his book that “I surely decided that [Mr. Goodman was impaired] the night before” based on the experiment. (Emphasis by Mr. DeMartin.)
- Mr. DeMartin’s testimony on May 11, 2012, that he had not told any other juror about his drinking experiment was belied by the message juror Michael St. John left at counsels’ office on May 16, 2012, that Mr. DeMartin had, in fact, told the other jurors about his plan to conduct the drinking experiment *the night before he did it*

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<sup>13</sup>(...continued)

donuts and that’s why the button popped.” *Id.* According to former alternate Ruby Mei Delano, Mr. DeMartin had already recovered the button and the gesture and comment were about counsels’ cross-examination.

<sup>14</sup> In his lengthy televised interview on April 16, 2012, Mr. DeMartin admitted that he had been taking daily notes on the trial that he intended to use for the book and that “I told them about the notes that I was making every night.” However, in his April 18<sup>th</sup> letter to the Court, Mr. DeMartin emphatically denied discussing his daily notes with other jurors: “The contents of these work sheets WERE NOT DISCUSSED with any juror.” (Emphasis in original.)



and that he wanted to conduct the test in order to reach his final decision on the verdict.

That Mr. DeMartin committed yet another form of misconduct should not be surprising. “A juror ... who lies materially and repeatedly in response to legitimate inquiries about [his] background introduces destructive uncertainties into the process.” *Dyer v. Caledron*, 151 F.3d 970, 982 (9<sup>th</sup> Cir. 1998). As Judge Kozinski explained in *Dyer*:

Jury service is a civic duty that citizens are expected to perform willingly when called upon to do so. But there is a fine line between being willing to serve and being anxious, between accepting the grave responsibility for passing judgment on a human life and being so eager to serve that you court perjury to avoid being struck. The individual who lies in order to improve his chances of serving has too much of a stake in the matter to be considered indifferent. Whether the desire to serve is motivated by an overactive sense of civic duty, by a desire to avenge past wrongs, by the hope of writing a memoir or by some other unknown motive, this excess of zeal introduces the kind of unpredictable factor into the jury room that the doctrine of implied bias is meant to keep out.

If a juror treats with contempt the court’s admonition to answer voir dire questions truthfully, [he] can be expected to treat [his] responsibilities as a juror—to listen to the evidence, not to consider extrinsic facts, to follow the judge’s instructions—with equal scorn. Moreover, a juror who tells major lies creates a serious conundrum for the fact-finding process. How can someone who [himself] does not comply with the duty to tell the truth stand in judgment of other people’s veracity? Having committed perjury, [he] may believe that the witnesses also feel no obligation to tell the truth and decide the case based on her prejudices rather than the testimony.

*Dyer*, 151 F.3d at 983.

It is now clear, if indeed it wasn’t already, that Mr. DeMartin never took his oath as a juror seriously and that he viewed his jury service as an opportunity to make money by “writing a memoir” and garner publicity. With those twin goals in mind, he deliberately concealed anything that might

have prevented him from being chosen as a juror (*i.e.*, both his profit motive and his wife's DUI arrest) and then lied to the Court when he had to along the way.

**C. Mr. Goodman Acted Diligently**

"The 'due diligence' test requires that counsel provide a sufficient explanation of the type of information which potential jurors are being asked to disclose." *Kelly v. Community Hosp. of Palm Beaches, Inc.*, 818 So. 2d 469, 475 (Fla. 2002). The other jurors in this case obviously had no problem understanding that the question would apply to a spouse and were not too intimidated or shy to speak up. The failure of Mr. DeMartin to answer a direct, plain-spoken question about the prior arrests of "family members" or even just "someone that affects you" was not due to lack of diligence by Mr. Goodman. It was juror misconduct. With Mr. DeMartin affirmatively stating "I don't think any of my family had any problems," there was no reason for the parties to dig deeper, especially since Mr. DeMartin later stated that he had spoken directly to the ex-wife during a break to fact check his answers.

Nor could counsel be expected to independently investigate each juror during the trial – much less each juror's family members and friends. In a desperate effort to persuade the Fourth District Court of Appeal to deny Mr. Goodman's motion to relinquish jurisdiction, the State argued – without citing any authority – that defense counsel had a legal duty to run background checks not only on the jurors themselves but on *all* their relatives and friends. *See State's Response*, at p. 6. The State then criticized Mr. Goodman for not appending the wife's arrest record to his motion.

The State's first claim – that criminal defense lawyers have a the duty to run background checks on all the relatives and friends of every juror – was without citation for a reason. It is absurd and totally without legal support from any jurisdiction. One can only imagine the incredible cost

such a duty would impose on the State's budget if public defenders and appointed counsel were required by the Sixth Amendment to conduct such expansive investigations.

The State's second criticism was also without merit for the simple reason that counsel have not yet found the records of the ex-wife's arrest. While counsel have retained a private investigator to try to do so, the search has been hindered by counsel's lack of knowledge concerning (1) the wife's name, (2) the city and state where the arrest occurred<sup>15</sup> and (3) the date of the arrest. And, counsel, of course, were not free to approach Mr. DeMartin directly without permission from the Court. Finally, counsel brought this matter to the Court's attention as soon as was practicable after learning about the book, which itself was apparently only published a few weeks ago.

### **III. THE COURT SHOULD PERMIT COUNSEL TO CONDUCT THE QUESTIONING**

When allegations of Mr. DeMartin's misconduct arose before in this case, the Court refused to allow counsel to conduct any questioning. We now know that he lied, at least about his knowledge of and beliefs about Hydrocodone and how those beliefs "bothered" him throughout the trial. Therefore, any remaining concerns the Court might have about protecting Mr. DeMartin from unjustified pressure from counsel are misplaced. Mr. DeMartin has hardly been reticent or intimidated by these proceedings, has given numerous televised interviews, written numerous letters to the Court and has now self-published two books discussing his participation in the trial. It is time for the Court to allow counsel the right to cross-examine him. *See generally United States v. Brantley*, 733 F.2d 1429, 1439-40 (11<sup>th</sup> Cir. 1984) (holding that the trial court erred in preventing defense counsel from questioning jurors about possible misconduct). *Cf. Figueroa v. State*, 952 So.2d 1238, 1239 (Fla. 3d DCA 2007) (cautioning the trial court "that precluding defense counsel

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<sup>15</sup> Mr. DeMartin's book strongly suggests that the arrest occurred in another state before he moved to Florida.

from individually questioning prospective jurors on critical issues may result in reversal”). Moreover, “[i]t is well established that in the course of *voir dire* examination that prospective jurors give more forthright answers to counsel than to the Court as the position of authority that characterizes the Court prompts jurors to provide answers that they believe the Court wants to hear rather than their actual beliefs and feelings.” *Berryhill v. Zant*, 858 F.2d 633, 642 (11<sup>th</sup> Cir. 1988).

### **CONCLUSION**

Once a defendant shows that a juror has concealed relevant, material information, the unfair prejudice is established. *Loftin*, 67 So. 2d at 192. New trials have repeatedly been granted in similar circumstances. Mr. Goodman need hardly state that the integrity of the jury-selection process is critical to the proper functioning of the court system. Accordingly, Mr. Goodman respectfully requests that he be granted a new trial once the facts concerning the DUI arrest of Mr. DeMartin’s ex-wife are established.

Respectfully submitted,

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**CERTIFICATE OF SERVICE**

**I HEREBY CERTIFY** that on April 9, 2013, my office e-mailed and mailed a true copy of  
the foregoing to:

Sheri Collins  
Assistant State Attorney  
West Palm Beach State Attorney's Office  
Traffic Homicide Unit  
401 North Dixie Hwy.  
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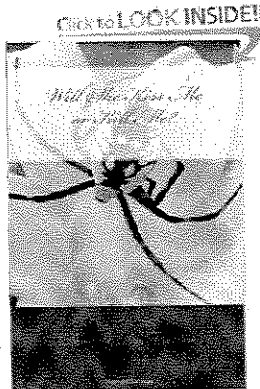
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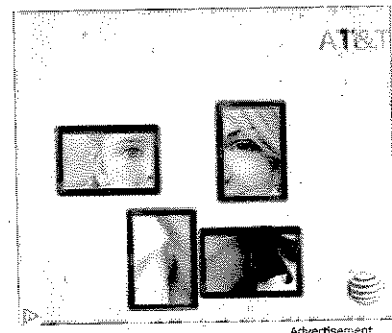
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*Dennis De Martin*



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Dennis Charles DeMartin

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

CASE NO. 2010 CF 005829 AMB DIV "W"

STATE OF FLORIDA,

-VS-

JOHN GOODMAN,

Defendant.

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**COPY**

JURY TRIAL BEFORE THE HONORABLE JEFFREY COLBATH  
Volume 8 of 27  
(Pages 871 through 963)

Thursday, March 8, 2012  
10:17 a.m. - 12:05 p.m.

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ROBIN L. MERKER, RPR, FPR

SUSAN SHELLING, RPR, CSR(NY), FPR

1           how do I know?

2                   Let me tell you right off, being a juror, it's  
3           work. It's duty. It's not like television where we  
4           can wrap it all up in an hour, and every single  
5           question you have will be answered by instant replay.  
6           It's work.

7                   Ms. Nosworthy, are you willing to work?

8                   MS. NOSWORTHY: I've been working all my life,  
9           so why not.

10                  MS. COLLINS: Are you able to resolve the  
11           conflict?

12                  MS. NOSWORTHY: Yes.

13                  MS. COLLINS: Mr. James, what about you? Are  
14           you willing to put the time in?

15                  MR. JAMES: Yes, ma'am.

16                  MS. COLLINS: Let me tell you, there was no  
17           camera out there that night. There was no push-play,  
18           answer all the questions.

19                  Does everyone understand it's going to be work?

20                  Now, I asked anyone if anyone's ever been a  
21           victim of a crime. Now I'm going to ask the same  
22           question from a different point of view.

23                  Has anyone in the panel themselves, close  
24           friend or family member or someone that affects you,  
25           ever been arrested, charged or convicted or accused

1 of a crime?

2 All right. So let's go through that.

3 Let me start over here, so it doesn't get real  
4 boring.

5 Mr. Viellot, have you ever had anyone that was  
6 arrested or convicted of a crime, close friend,  
7 family member, yourself?

8 MR. VIELLOT: No.

9 MS. COLLINS: Ms. Zuloaga?

10 MS. ZULOAGA: Yes, I have, a family member. My  
11 boss.

12 MS. COLLINS: Do you mind sharing what it was?

13 MS. ZULOAGA: Trafficking cocaine.

14 MS. COLLINS: Trafficking cocaine?

15 MS. ZULOAGA: Um-hmm.

16 MS. COLLINS: Was that something that was  
17 recent?

18 MS. ZULOAGA: Yes. But I can't say it was  
19 actually trafficking in cocaine. He had it on him.

20 Possession, I guess it was.

21 MS. COLLINS: Well, it's really interesting.

22 People say trafficking. Really, trafficking cocaine  
23 is just possession of a lot of it.

24 MS. ZULOAGA: Oh. Okay.

25 MS. COLLINS: Yeah.

1 MS. ZULOAGA: He did have it in his possession.

2 MS. COLLINS: It's possession of over a certain  
3 amount.

4 Do you feel he was treated fairly?

5 MS. ZULOAGA: I do.

6 MS. COLLINS: Do you have any feelings about  
7 that prosecution that you think would affect your  
8 ability to sit as a juror?

9 MS. ZULOAGA: Not at all.

10 MS. COLLINS: Was it here in Palm Beach County?

11 MS. ZULOAGA: It was.

12 MS. COLLINS: And you feel he was treated  
13 fairly?

14 MS. ZULOAGA: Yes.

15 MS. COLLINS: By the police?

16 MS. ZULOAGA: I do.

17 MS. COLLINS: And by the prosecution?

18 MS. ZULOAGA: Not necessarily the media so  
19 much, but...

20 MS. COLLINS: So but in terms of the  
21 prosecution, do you feel he was treated fairly?

22 MS. ZULOAGA: I do.

23 MS. COLLINS: And the judges in the court  
24 system?

25 MS. ZULOAGA: Yeah.

1 MS. COLLINS: Mr. Harris, what about you,  
2 anyone?

3 MR. HARRIS: Friends and acquaintances. I  
4 can't really recall all of them, but drug related.

5 MS. COLLINS: Do you feel that anyone in that  
6 situation was treated unfairly?

7 MR. HARRIS: Not at all.

8 MS. COLLINS: Not at all? Okay.

9 Mr. Arguelles?

10 MR. ARGUELLES: Yes.

11 MS. COLLINS: Was that here in Palm Beach  
12 County?

13 MR. ARGUELLES: In Kentucky, when I lived in  
14 Kentucky.

15 MS. COLLINS: Recently?

16 MR. ARGUELLES: Years ago.

17 MS. COLLINS: Do you feel he was treated  
18 fairly?

19 MR. ARGUELLES: Yes.

20 MS. COLLINS: Do you mind sharing with us what  
21 kind of case it was?

22 MR. ARGUELLES: Trafficking in cocaine.

23 MS. COLLINS: Where are you from originally --

24 MR. ARGUELLES: It was like five years in  
25 prison.

1 MS. COLLINS: Was it federal or state?

2 MR. ARGUELLES: Federal.

3 MS. COLLINS: Do you mind if I ask where you're  
4 from?

5 MR. ARGUELLES: Cuba.

6 MS. COLLINS: Your accent is melodious, and I  
7 wasn't sure where you were from.

8 Mr. Guncheon, what about you?

9 MR. GUNCHEON: As I told you yesterday, three  
10 DUIs.

11 MS. COLLINS: And you've also been a victim of  
12 a DUI crash?

13 MR. GUNCHEON: Correct.

14 MS. COLLINS: Has anyone or a close family  
15 member ever been accused of a crime?

16 MR. GUNCHEON: Yeah. Accused, molestation.

17 MS. COLLINS: Now, so someone in your family  
18 was accused -- were they treated fairly by the  
19 police?

20 MR. GUNCHEON: I would say so, yes.

21 MS. COLLINS: Were they treated fairly by the  
22 system?

23 MR. GUNCHEON: Wasn't enough evidence. The way  
24 I feel about it, he was guilty, and got away with it.

25 MS. COLLINS: Well, did you -- did that leave



1           any feelings with you -- so now you've had two  
2           situations: one for yourself and one for a close  
3           friend on pretty serious charges; people walked free.  
4           That hasn't affected you at all?

5           MR. GUNCHEON: Not really. I mean, it's the  
6           job of the lawyers and the State to do a case. But,  
7           you know, they mess it up --

8           MS. COLLINS: How recently was that molestation  
9           charge?

10          MR. GUNCHEON: Oh, shoot. She was  
11          18 -- 16 years old, and I was 18. So I'm in my  
12          forties. So 20 years, 25 years.

13          MS. COLLINS: Ms. Culmer, how about you?

14          MS. CULMER: Myself, I actually used my  
15          sister's name driving. I think I was 20. I didn't  
16          have a driver's license.

17          MS. COLLINS: Like Mr. Harris described?

18          MS. CULMER: Yes. I think I was either 20 or  
19          19. I used her name. Don't quote me on the age. I  
20          used her name and got away with it.

21          Actually, I forgot about it. And I didn't get  
22          a ticket, didn't think anything of it. You're young,  
23          you don't know anything of it.

24          She actually got pulled over in a rental car  
25          one day and she called me and she goes, "I need you

1 to come pick me up." And I said, "I'll pick you up,  
2 why?" She said, "Oh, the police pulled me over and  
3 they're saying I've got a warrant out." It was in  
4 Fort Lauderdale. She was like, "They're going to  
5 take me to jail." She was crying.

6 And they were like, "We obviously know it's not  
7 you, but you need to get this taken care of." She  
8 had to do an affidavit.

9 And she goes down. It's like the picture's  
10 actually of you, but I don't want to tell them that I  
11 know you, so you need to call a lawyer and get this  
12 fixed. Like what?

13 Everything was actually taken care of by  
14 getting a lawyer in Fort Lauderdale and paying for my  
15 ticket, my license, and I had to pay him. And he  
16 took care of the whole thing without me doing any  
17 time or anything like that.

18 MS. COLLINS: When your sister got the  
19 warrant -- did you remember it was you or you didn't  
20 make a connection?

21 MS. CULMER: No, I didn't. I still didn't make  
22 any connection.

23 I didn't know it until actually she went down  
24 to Fort Lauderdale and she called me, when she was  
25 leaving out of there, she does -- she filled out this

1           thing saying that she didn't know me. But she saw a  
2           picture of me. And she was like, "It was you, you  
3           actually used my name that day," or whatever.

4           And I was like, I didn't remember anything  
5           about remembering using her name because it had been  
6           a while ago.

7           But that was taken care of with no problem.

8           And then, like my family, my family's always  
9           been in trouble throughout the course of the years:  
10          my dad, my brothers, all of them were in trouble,  
11          whether it be drugs or --

12          MS. COLLINS: Just like we said earlier, you  
13          can't pick your family.

14          So it was mostly drug stuff with your dad and  
15          your brothers.

16          MS. CULMER: Yes. Mainly drugs. All of them  
17          are actually drug related, either drugs or driving.  
18          Driving while the license was suspended or whatever.

19          MS. COLLINS: Did either your father or your  
20          brother ever have drug addictions that actually led  
21          to them committing other unrelated crimes?

22          MS. CULMER: Yes. All of them.

23          MS. COLLINS: Like breaking into cars and  
24          stuff?

25          MS. CULMER: No breaking into cars. Just

1           mainly, I think they have a low tolerance level for  
2           drugs and alcohol, and it just plays a big part in  
3           the decisions that they made.

4           MS. COLLINS: Got it. Got it.

5           Do you feel any of those situations with your  
6           brothers or your dad, that any of them were treated  
7           unfairly by either the system or the police?

8           MS. CULMER: Sometimes, and sometimes no. I  
9           figure, you know, you're weighing what you do. And  
10          at the end of the day, if you're found guilty for it,  
11          then you have to, you know, suffer the consequences;  
12          but no.

13          Sometimes they are and sometimes they aren't,  
14          you know. It just depends on the situation at hand.

15          Like my brother running from the police one  
16          day. And then he ended up passing out behind -- at  
17          the bus terminal, like, wall or whatever; he jumped  
18          over a wall and ended up passing out after a car  
19          accident that he caused. You caused it. Ultimately  
20          you have to pay the price.

21          MS. COLLINS: When that case went through the  
22          court system, was he treated fairly by the police?

23          MS. CULMER: Yeah. Um-hmm.

24          Actually, they took some time off. You know,  
25          they worked with him, you know, because they noticed

1           that he had a problem. And that I do appreciate, you  
2           know, because, you know, at times people, they need  
3           help.

4           MS. COLLINS: Sure. Now, has there ever been a  
5           situation with your family members that have been  
6           involved with law enforcement or with the system  
7           where you feel they weren't treated fairly?

8           MS. CULMER: No, not really.

9           MS. COLLINS: Anything about those situations  
10          that you think would affect your ability to sit as a  
11          juror?

12          MS. CULMER: No.

13          MS. COLLINS: Ms. Lopez, what about you?

14          MS. LOPEZ: My brother, yeah, dealing in drugs.

15          MS. COLLINS: Recently?

16          MS. LOPEZ: No, that was many years ago. Maybe  
17          ten years ago, maybe.

18          MS. COLLINS: How's he doing now?

19          MS. LOPEZ: He's doing better.

20          MS. COLLINS: Doing better?

21          How do you feel he was treated by the police  
22          and by the system?

23          MS. LOPEZ: Fair.

24          MS. COLLINS: Anything about that situation  
25          that you think would affect your ability to sit as a

1 juror?

2 MS. LOPEZ: No.

3 MS. COLLINS: Ms. Hallison-Mischler?

4 MS. HALLISON-MISCHLER: It would be my brother.  
5 I believe drugs; I'm not sure. I don't really know a  
6 lot of the details. But I know there was court time  
7 and I don't think he ever served time.

8 MR. COLLINS: Older brother?

9 MS. HALLISON-MISCHLER: Younger brother.

10 MS. COLLINS: Younger brother. So you were  
11 already out of the house.

12 MS. HALLISON-MISCHLER: I was out of the house.  
13 It's gone on after I moved, so we're not really in  
14 contact about it.

15 MS. COLLINS: So you are picking who your  
16 family can be. You're just, Whoa. Stepping away.

17 MS. HALLISON-MISCHLER: Yeah, so.

18 MS. COLLINS: Any belief from what you know  
19 that he was treated unfairly by the system or by the  
20 law enforcement?

21 MS. HALLISON-MISCHLER: None that I understand.  
22 It was him, and he had to go in and do his thing and  
23 do his community service and whatever it is he had to  
24 do.

25 MS. COLLINS: Ms. Stanley?

1 MS. STANLEY: DUI, when I was 18.

2 MS. COLLINS: I think the statute of  
3 limitations has run on that. I don't think anything  
4 you do at 18 should really count.

5 MS. STANLEY: I was only one point over the  
6 legal limit.

7 MS. COLLINS: And I'm really glad you mentioned  
8 that. Because what's interesting is, a lot of people  
9 don't understand that DUI is a crime.

10 MS. STANLEY: Yeah.

11 MS. COLLINS: So you were 18?

12 MS. STANLEY: I was 18.

13 MS. COLLINS: Were you treated fairly by law  
14 enforcement?

15 MS. STANLEY: Yes, I was.

16 MS. COLLINS: What about by the system?

17 MS. STANLEY: Yes, I was.

18 MS. COLLINS: Now, as someone who was charged  
19 with DUI, at the time that you were driving, did you  
20 feel like you were okay, or did you feel like you  
21 shouldn't have been driving?

22 MS. STANLEY: I was 18. Well, my roommate was  
23 too drunk to drive and I knew I only had a couple of  
24 drinks and I thought I was more sober than he was and  
25 I thought he can't get us home.

1                   And the police officer followed us from the  
2                   bar. And of course I was yelling at my roommate who  
3                   was too drunk to drive. And we were swerving on the  
4                   road, and that's how I got pulled over.

5                   MS. COLLINS: Do you think you were treated  
6                   unfairly at all?

7                   MS. STANLEY: No, I don't.

8                   MS. COLLINS: Let me see. Thank you.

9                   Ms. Kingham, what about you? Nothing?

10                  MS. KINGHAM: I know my husband had an incident  
11                  when he was 17 before we met, but --

12                  MS. COLLINS: All right. Nothing that has  
13                  affected you?

14                  MS. KINGHAM: No.

15                  MS. COLLINS: Ms. Nosworthy?

16                  MS. NOSWORTHY: No.

17                  MS. COLLINS: No friends or family members?

18                  MS. NOSWORTHY: My husband's brother. But that  
19                  was like over 20 years ago. When I got married with  
20                  him, I didn't know about it. It's just a story that  
21                  was told to me. So...

22                  MS. COLLINS: And what was the story?

23                  MS. NOSWORTHY: Well, he's from Jamaica, so he  
24                  tries to bring some marijuana inside an oxygen tank.  
25                  So I guess he got arrested and did his time. But at



1 the time I met him, I didn't even know about it.

2 MS. COLLINS: It was probably in the '80s, and  
3 marijuana in the '80s --

4 MS. NOSWORTHY: He thought he could get away  
5 with it.

6 MS. COLLINS: It was like a dive tank? Like  
7 for scuba diving tank?

8 MS. NOSWORTHY: No. He's a mechanic, so he  
9 brings oxygen tanks for welding.

10 MS. COLLINS: Got it. Got it.

11 Mr. James, what about you?

12 MR. JAMES: I had a coworker go to federal  
13 prison for conspiracy.

14 MS. COLLINS: I remember that. That was about  
15 two years ago?

16 MR. JAMES: Two years ago.

17 MS. COLLINS: And you luckily weren't involved  
18 in that group.

19 MR. JAMES: I wasn't involved in that group.

20 MS. COLLINS: They were bringing in stuff for  
21 the prisoners.

22 MR. JAMES: They weren't actually bringing it  
23 in, but they were just taking it from Point a to  
24 Point be and getting money for it. But it wasn't  
25 actually drugs.

1 MS. COLLINS: They were giving stuff to the  
2 prisoners the prisoners shouldn't have.

3 MR. JAMES: The prisoners shouldn't have.

4 MS. COLLINS: Do you feel that they were  
5 treated unfairly?

6 MR. JAMES: No.

7 MS. COLLINS: Think they got what they  
8 deserved?

9 MR. JAMES: Yes.

10 MS. COLLINS: Anything about the way that was  
11 investigated that bothered you?

12 MR. JAMES: No, ma'am.

13 MS. COLLINS: Ms. Marotta, what about you?

14 MS. MAROTTA: I had a sister that had a little  
15 run-in with a DUI about ten years ago.

16 MS. COLLINS: Now, by a little run-in with a  
17 DUI, did she have a crash?

18 MS. MAROTTA: No.

19 MS. COLLINS: And how was she treated?

20 MS. MAROTTA: Correctly.

21 MS. COLLINS: She got caught fair and square?

22 MS. MAROTTA: Yes.

23 MS. COLLINS: What's interesting is,

24 Ms. Stanley, Ms. Marotta, you've indicated you've had  
25 family members or yourselves with the DUI.

1 Do you know the difference between a DUI and a  
2 DUI manslaughter?

3 MS. STANLEY: Someone dies in a manslaughter  
4 case.

5 MS. COLLINS: Really, it's luck.

6 MS. MAROTTA: Yeah, it is.

7 MS. COLLINS: Let's go over here and start with  
8 Mr. Copeland.

9 MR. COPELAND: My brother, younger brother. He  
10 pled to child endangerment, oh, say, ten years ago,  
11 in Missouri.

12 MS. COLLINS: Child endangerment can mean just  
13 about anything.

14 MR. COPELAND: He was given three years'  
15 probation. Probation officer recommended that he  
16 stay in probation. The judge actually said I'm not  
17 going to follow a recommendation from the probation  
18 officer, I'm going to give you a chance to serve six  
19 months and then your rights are restored, you're free  
20 to go.

21 He did his six months, and he's free and clear.

22 MS. COLLINS: Do you think he was treated  
23 fairly?

24 MR. COPELAND: Yes.

25 MS. COLLINS: Anything about that that would

1 affect your ability in this case to sit as a juror?

2 MR. COPELAND: No.

3 MS. COLLINS: Ms. Perez?

4 MS. PEREZ: Younger sister.

5 MS. COLLINS: Okay.

6 MS. PEREZ: She got caught with marijuana, and  
7 she did, like, community service.

8 MS. COLLINS: Was she a juvenile?

9 MS. PEREZ: Yeah.

10 MS. COLLINS: Anything about that experience  
11 that you felt she wasn't treated fairly?

12 MS. PEREZ: No.

13 MS. COLLINS: Anything about that do you think  
14 would affect your ability to sit as a juror?

15 MS. PEREZ: No.

16 MS. COLLINS: Ms. Sweeney.

17 MS. SWEENEY: I have two older brothers. Both  
18 had DUIs.

19 MS. COLLINS: How long ago was that?

20 MS. SWEENEY: Maybe like four years ago. One  
21 of them was about eight years ago, and about four  
22 years ago for the other brother.

23 MS. COLLINS: How do you feel they were  
24 treated?

25 MS. SWEENEY: They were treated based on their

1           actions.

2           MS. COLLINS: Now, were they -- in your  
3           opinion, were they guilty or did they get caught fair  
4           and square?

5           MS. SWEENEY: They were guilty.

6           MS. COLLINS: How are they doing now?  
7           Obviously alcohol is an issue now.

8           MS. SWEENEY: They've stopped and they've moved  
9           on. They haven't gotten a DUI or anything with  
10          alcohol.

11          MS. COLLINS: Anything about that situation  
12          that you think would affect your ability to sit as a  
13          juror?

14          MS. SWEENEY: No.

15          MS. COLLINS: Mr. Morse?

16          MR. MORSE: Two occasions. On one occasion I  
17          had a friend who was charged with possession of  
18          narcotics. A little bit unfairly treated, according  
19          to him. During the arrest, the officer -- the pills  
20          were his roommate's, who wasn't present at the time  
21          of the arrest.

22                 The officer, according to my friend, told him  
23          that somebody was going to be charged with possession  
24          for it. So my friend took the blame for possession  
25          of the pills and served a year in jail in Palm Beach

1 County.

2 MS. COLLINS: He spent a year in jail for  
3 possession?

4 MR. MORSE: For possession of the pills.

5 MS. COLLINS: What was the other one?

6 MR. MORSE: The other one was a friend who was  
7 involved in involuntary manslaughter while under the  
8 influence of narcotics, just a few pills.

9 MS. COLLINS: So I guess he or she provided  
10 pills to another person, and they died?

11 MR. MORSE: No. He was under the influence.  
12 He was behind the wheel. He rear-ended a car which  
13 went out into traffic and hit an oncoming car and  
14 killed a person in that oncoming car.

15 MS. COLLINS: How long ago was that?

16 MR. MORSE: Six or seven years ago.

17 MS. COLLINS: Was that here in Palm Beach  
18 County?

19 MR. MORSE: Yes.

20 MS. COLLINS: Was Ms. Roberts the prosecutor?

21 MR. MORSE: I really don't know. I didn't  
22 follow the case that closely. I found out a little  
23 bit from a friend, but not that much.

24 MS. COLLINS: How do you feel that that friend  
25 was treated by the system, if you know?

1 MR. MORSE: From what I understand and what I  
2 heard, it seemed like he unfortunately got -- he was  
3 treated fairly and was given -- he was sentenced  
4 accordingly, according to the law.

5 MS. COLLINS: It seems like -- was this friend,  
6 like, a nice person?

7 MR. MORSE: Yes. He was a very nice person.  
8 Someone I knew from high school. This happened years  
9 after. He was -- kind of started running around with  
10 a different group of people. I still kept in touch  
11 with him, but --

12 MS. COLLINS: Do you feel that either the  
13 story, someone you feel was treated unfairly  
14 according to them or treated fairly, do you think  
15 those situations would affect your ability to sit as  
16 a juror in this case?

17 MR. MORSE: No. I don't know whether or  
18 not -- I have a friend who was presumably charged  
19 with possession. Quite honestly, I couldn't tell you  
20 if he was telling me the truth.

21 MS. COLLINS: No?

22 MR. MORSE: So, I mean, he is still a friend of  
23 mine; probably one of my best friends at this time.  
24 So I can only trust what he said.

25 MS. COLLINS: Do you think that would affect

1           your ability -- thinking about law enforcement, that  
2           maybe law enforcement said that to him, so maybe  
3           they're doing something wrong in this case, or can  
4           you wait and listen to what law enforcement has to  
5           say and judge the credibility?

6           MR. MORSE: I can listen to the evidence.

7           MS. COLLINS: Great.

8           Ms. Mohan?

9           MS. MOHAN: A friend now recently doing jail  
10          time for burglary and possession of marijuana.

11          MS. COLLINS: Do you feel they were treated  
12          fairly?

13          MS. MOHAN: Yeah.

14          MS. COLLINS: Anything about that experience  
15          that you think would affect you?

16          MS. MOHAN: No.

17          MS. COLLINS: Mr. Clifton?

18          MR. CLIFTON: Myself, about seven years ago, I  
19          was arrested for battery.

20          MS. COLLINS: And you completed the pretrial  
21          intervention program, the charges were dropped?

22          MR. CLIFTON: Yeah.

23          MS. COLLINS: How do you feel that the system  
24          treated you?

25          MR. CLIFTON: Very well.



1 MS. COLLINS: No problems with it at all?

2 MR. CLIFTON: No. Professional and efficient.

3 MS. COLLINS: Do you feel that anything about  
4 that situation in terms of the way the law  
5 enforcement handled it or the way the State  
6 Attorney's Office handled it was inappropriate?

7 MR. CLIFTON: No.

8 MS. COLLINS: All right. Thank you for sharing  
9 that.

10 And Mr. St. John?

11 MR. ST. JOHN: No.

12 MS. COLLINS: Nothing?

13 Mr. Cuffe?

14 MR. CUFFE: When my son was a teenager, he got  
15 caught with a joint, and he had to do intervention  
16 for about six months.

17 MS. COLLINS: And do you feel he was treated  
18 fairly?

19 MR. CUFFE: Yes.

20 MS. COLLINS: Was that a good thing,  
21 intervention for him?

22 MR. CUFFE: Sure was. An eye opener for him.

23 MS. COLLINS: Good.

24 Ms. Lewis, what about you?

25 MS. LEWIS: DUI, myself and friends.

1 MS. COLLINS: And how do you feel about that  
2 case in terms of yourself first: Do you feel you  
3 were treated fairly?

4 MS. LEWIS: Yes, I do.

5 MS. COLLINS: Got caught fair and square?

6 MS. LEWIS: Yeah.

7 MS. COLLINS: Did you change your actions at  
8 all after you got one or two?

9 MS. LEWIS: Yeah.

10 MS. COLLINS: What changed in your life?

11 MS. LEWIS: Well, I have a CDL license. Back  
12 then, you could do hardship. It was down the road  
13 they changed the rules at work, too. So we get drug  
14 and Breathalyzer random at work.

15 MS. COLLINS: At work?

16 MS. LEWIS: Yes.

17 MS. COLLINS: And what about your friends, do  
18 you have any friends that you feel were treated  
19 unfairly?

20 MS. LEWIS: Overly fairly. Some got out; some  
21 did time.

22 MS. COLLINS: So anything about those  
23 experiences that you think would affect your ability  
24 to sit as a juror?

25 MS. LEWIS: No.

1 MS. COLLINS: Ms. Radaci?

2 MS. RADACI: No one.

3 MS. COLLINS: Nothing?

4 Mr. Whittaker?

5 MR. WHITTAKER: I had a cousin that was  
6 arrested for DUI, an open container, on South Beach.  
7 Spent the night in jail and then hired a lawyer. And  
8 he lived in San Francisco, so the charges were  
9 dropped.

10 MS. COLLINS: Do you feel he got away with it  
11 or do you think that he should have come back? Do  
12 you have any feelings about the way his DUI was  
13 handled?

14 MR. WHITTAKER: No, not really.

15 MS. COLLINS: Okay. Do you think he was  
16 treated fairly?

17 MR. WHITTAKER: Yeah.

18 MS. COLLINS: Ms. Rollings?

19 MS. ROLLINGS: Nothing.

20 MS. COLLINS: Ms. Janock?

21 MS. JANOCK: No.

22 MS. COLLINS: Mr. DeMartin?

23 MR. DeMARTIN: In 50-years-plus driving, I had  
24 maybe three speeding tickets. Listening to all this,  
25 I must have had a very boring life.

1 MS. COLLINS: It's really interesting -- a lot  
2 of people find jury selection a little tedious, but  
3 it's so interesting to see what different members of  
4 the same community you lived with have had such  
5 different experiences. So I really appreciate all of  
6 you just speaking up and sharing it with us.

7 MR. DeMARTIN: I know. I'm even trying to  
8 think of my family. I don't think any of my family  
9 had any problems.

10 MS. COLLINS: Thanksgiving must be boring at  
11 your house.

12 MR. DeMARTIN: I never heard so much.

13 MS. COLLINS: Ms. Delano, what about you?

14 MS. DELANO: I join his club.

15 MS. COLLINS: Thanksgiving's boring at your  
16 house?

17 MS. DELANO: Boring.

18 MS. COLLINS: Ms. Phillips?

19 MS. PHILLIPS: Speeding tickets.

20 MS. COLLINS: Those aren't criminal, thank  
21 goodness; otherwise, more of us would be answering  
22 this question.

23 MS. PHILLIPS: And I had a coworker last year  
24 was arrested overnight for domestic violence.

25 MS. COLLINS: Was that person treated fairly by

1 the system?

2 MS. PHILLIPS: Yes, she was.

3 MS. COLLINS: So it was a she who was arrested  
4 for domestic violence.

5 MS. PHILLIPS: (Shakes head up and down.)

6 MS. COLLINS: That's very interesting. A  
7 minority, but it happens.

8 Mr. Harris can tell you, it happens. Once in a  
9 while the man is the victim and the female is the  
10 aggressor.

11 Any other incidents with someone?

12 MS. PHILLIPS: No.

13 MS. COLLINS: Ms. Dubeau?

14 MS. DUBEAU: A lot of work that I do, we arrest  
15 a lot of people for shoplifting.

16 MS. COLLINS: From Publix, you think?

17 MS. DUBEAU: Yeah.

18 Anyway, every person that is arrested, even  
19 though they've done something incorrectly, has always  
20 been treated very fairly.

21 MS. COLLINS: Now, as the manager -- are you  
22 the manager of the Royal Palm Publix?

23 MS. DUBEAU: I was, but I'm in Boynton Beach  
24 now.

25 MS. COLLINS: Every time that somebody is

1 arrested from Publix for shoplifting or passing a bad  
2 check or using a fraudulent credit card, as the  
3 manager, are you listed actually as the victim?

4 MS. DUBEAU: I have been, yes.

5 MS. COLLINS: Have you ever testified in a  
6 criminal case because of that?

7 MS. DUBEAU: I was called once, but we didn't  
8 have enough evidence on our side, so it was dropped.

9 MS. COLLINS: Anything about any of those  
10 experiences that you think would affect your ability  
11 to sit as a juror?

12 MS. DUBEAU: No, not at all.

13 MS. COLLINS: Mr. Greene?

14 MR. GREENE: Nothing.

15 MS. COLLINS: Ms. Ryan-Cardenas?

16 MS. RYAN-CARDENAS: Just arrested a few times  
17 for drugs.

18 MS. COLLINS: The one who stole your identity?

19 MS. RYAN-CARDENAS: Yes.

20 MS. COLLINS: Do you feel he was treated  
21 fairly?

22 MS. RYAN-CARDENAS: He got away with a lot of  
23 it and got stuck on the rest.

24 MS. COLLINS: He should have been treated  
25 harsher?

1 MS. RYAN-CARDENAS: Yes.

2 MS. COLLINS: You think he should have been  
3 treated more fairly?

4 MS. RYAN-CARDENAS: Yes.

5 MS. COLLINS: Anything about that situation  
6 that you think would affect your ability to sit as a  
7 juror?

8 MS. RYAN-CARDENAS: No.

9 MS. COLLINS: Dr. Popper?

10 DR. POPPER: My youngest son.

11 MS. COLLINS: Okay. The one who wants to go  
12 into nursing?

13 DR. POPPER: Yes.

14 MS. COLLINS: Do you mind sharing with us?

15 DR. POPPER: When he was a minor, we had an  
16 incident of marijuana possession, and recently we  
17 had, I guess, theft.

18 MS. COLLINS: Do you feel that the system  
19 treated him fairly?

20 DR. POPPER: Yes.

21 MS. COLLINS: Maybe like Ms. Ryan-Cardenas  
22 says, maybe they should have treated him a little  
23 more fairly?

24 Sometimes when you get someone young, like  
25 Mr. Cuffe was saying, hit them hard, it kind of

1 changes their attitude.

2 Was that the way it hit your son?

3 DR. POPPER: It's working.

4 MS. COLLINS: Anything about that incident that  
5 you think would affect your ability -- when someone's  
6 a juvenile and they get arrested, it's almost like  
7 you have to go and be involved and go to court every  
8 time.

9 Anything about that that would affect your  
10 ability?

11 DR. POPPER: Wouldn't affect it at all. The  
12 last incident, he was not a minor.

13 MS. COLLINS: The last one.

14 And Ms. Finch?

15 MS. FINCH: Nothing.

16 MS. COLLINS: Mr. Scroggs?

17 MR. SCROGGS: Yeah, two incidents about  
18 25 years ago, personal DUI.

19 MS. COLLINS: All right.

20 MR. SCROGGS: And about ten years ago, my  
21 nephew is a substance abuser, got into a standoff  
22 with police and ended up taking his own life.

23 MS. COLLINS: My goodness, I'm so sorry.

24 In that situation and the situation where you  
25 were arrested for DUI, do you feel in either of those



1 situations that the police acted inappropriately?

2 MR. SCROGGS: In my personal situation, no.

3 In the standoff, there was just a lot of  
4 confusion about the chain of events. But at the end  
5 of the day, he had made some bad choices and put  
6 himself in bad situations.

7 MS. COLLINS: That's horrible. And a lot of  
8 times it's easy to look back and say maybe they could  
9 have done this or that.

10 But your view is, it played out the way it  
11 played out and no one's to blame?

12 MR. SCROGGS: Yeah.

13 MS. COLLINS: Thanks for sharing that.

14 Mr. Ellsworth?

15 MR. ELLSWORTH: My wife.

16 MS. COLLINS: Which one?

17 MR. ELLSWORTH: This one.

18 MR. COLLINS: I'm sorry. I had to say it.

19 MR. ELLSWORTH: DUI.

20 MS. COLLINS: Okay. Was that recently?

21 MR. ELLSWORTH: About nine, maybe ten years  
22 ago.

23 MS. COLLINS: And how do you feel she was  
24 treated? She got caught fair and square?

25 MR. ELLSWORTH: Big pain in the neck. I had to

1 take her to driving school, take her to probation.  
2 She's crazy. She's 15 years younger than me. She's  
3 nuts.

4 MS. COLLINS: But you love her.

5 MR. ELLSWORTH: Yeah, I do. I really do.

6 MS. COLLINS: But do you feel she was treated  
7 fairly? I'm sure it was a huge inconvenience for  
8 you, but do you feel she was treated fairly by the  
9 system?

10 MR. ELLSWORTH: Yes.

11 MS. COLLINS: What about by law enforcement  
12 officers?

13 MR. ELLSWORTH: Well, she met them more than I  
14 did.

15 MS. COLLINS: Well, yes.

16 MR. ELLSWORTH: I wasn't there when she was --

17 MS. COLLINS: But I'm sure, as you told  
18 her -- have you told us what she does for a living;  
19 stay home and aggravate you, I'm sure she told you  
20 about it.

21 So what she shared with you, did she share with  
22 you that was there any problems with how law  
23 enforcement handled it?

24 MR. ELLSWORTH: No, she just didn't like being  
25 handcuffed.

1 MS. COLLINS: I don't know anyone who does.  
2 I'm sure there are some people that like being  
3 handcuffed. I used to live in Key West, so...

4 There are some people that like that.

5 All right. Now, I've just asked the whole  
6 panel has anyone ever been a victim of a crime, has  
7 anyone ever been charged or themselves, a close  
8 family member been a victim or charged with a crime.  
9 And many of you were very candid. And I appreciate  
10 that.

11 Is there anyone that was uncomfortable  
12 answering in a group, maybe who fits in one of those  
13 categories and would like to approach to talk about  
14 it? Anyone? No.

15 Great. Thank you so much.

16 Who watches "CSI"? "CSI New York," "CSI  
17 Miami," "CSI Las Vegas," "Law & Order," "Law & Order  
18 SVU," "Cold Case," "Forensic Files," "Numbers"? Any  
19 of those shows that involve -- law shows. Law shows.

20 They're like the top six shows out of the top  
21 ten, and have been for the last what, 15 years. I  
22 can date myself and say "Perry Mason," "LA Law."

23 Everyone watches those shows; otherwise they  
24 wouldn't be in the top ten.

25 Can we all agree that those shows are written

# EXHIBIT 3

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

CASE NO. 2010 CF 005829 AMB DIV "W"

STATE OF FLORIDA,

-VS-

JOHN GOODMAN,

Defendant.

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**COPY**

JURY TRIAL BEFORE THE HONORABLE JEFFREY COLBATH  
Volume 9 of 27  
(Pages 964 through 1141)

JURY SELECTION

Thursday, March 8, 2012  
1:23 p.m. - 5:30 p.m.

PALM BEACH COUNTY COURTHOUSE, COURTROOM 11F  
205 North Dixie Highway  
West Palm Beach, Florida

Stenographically Reported By:

MELINDA COLCHICO, RDR, CSR(CA), FPR

ROBIN L. MERKER, RPR, FPR

SUSAN SHELLING, RPR, CSR(NY), FPR

1 straight.

2 MR. BLACK: Yeah. So how -- did you hire the  
3 lawyer personally or did the union?

4 MS. ROLLINGS: It was a union representative  
5 lawyer, yes.

6 MR. BLACK: Okay. Was there an administrative  
7 hearing or something like that?

8 MS. ROLLINGS: I guess you could call it that.

9 MR. BLACK: All right. And how was the  
10 relationship with the lawyer?

11 MS. ROLLINGS: Good.

12 MR. BLACK: Okay. Thank you. And yes, sir,  
13 Mr. DeMartin.

14 MR. DeMARTIN: First I want to apologize.  
15 Before our lunch, I went and called my ex-wife to see  
16 what I did in 2001. That's the only time I hired a  
17 lawyer. She recalls that we were in a bank once when  
18 we got held-up, and once we saw a motorcyclist get  
19 killed. Those are the only two things, and I'm sorry  
20 I didn't even remember. The only time I hired one  
21 was for my divorce.

22 MR. BLACK: All right. Well, Mr. DeMartin, you  
23 do not have to apologize to us, number one. But how  
24 was the relationship with the lawyer? How did that  
25 work out?

1 MR. DeMARTIN: Well, I didn't get what I  
2 wanted, but what can you do.

3 MR. BLACK: Right. But despite that, how  
4 was -- at the end of it, how did you look back on how  
5 you dealt with the lawyer? Did you feel --

6 MR. DeMARTIN: It was good because afterward he  
7 helped me with a trust.

8 MR. BLACK: Okay. All right, sir.

9 MR. DeMARTIN: We are okay.

10 MR. BLACK: Thank you very much. Anybody in  
11 the third row who has hired a lawyer? Mr. Ellsworth?

12 MR. ELLSWORTH: Yes. Three times. Three  
13 divorces.

14 MR. BLACK: Yes.

15 MR. ELLSWORTH: Two in New York and one down  
16 here.

17 MR. BLACK: You know, divorce lawyers are like  
18 a different part of the profession. But how did --  
19 how was your relationship with just your lawyers?

20 MR. ELLSWORTH: I loved the first one; loved  
21 the third one; the second one I lost the house. So  
22 we didn't do too good.

23 MR. BLACK: All right. But what's your --  
24 after having gone through three different lawyers,  
25 what's your general impression about lawyers? You

## EXHIBIT 4



## WPTV 4-1-13 Interview of Roberts

Williams: Says the latest revelations will or should lead to a retrial for Goodman. The prosecutor in this case, not so sure but she does have strong words for DeMartin and says she'll get back in to the case, if need be.

Ellen Roberts is direct and no-nonsense. The former prosecutor won the DUI manslaughter conviction of John Goodman. Now, juror, Dennis DeMartin's conduct threatens to upend that case, if it should do so...

Roberts: I think Mr. DeMartin needs to be held in contempt of court. I think he needs to spend five months and twenty-nine days in jail and God forbid, if the court grants a new trial, I think he needs to have a judgment entered against him for about a quarter of a million dollars for the cost of the trial.

Williams: Goodman's lawyers argue questions about DeMartin's credibility and impartiality go to the heart of faith in the jury process.

Suskauer: Whether he's a rich guy or a poor guy, the fact that is that everyone deserves to have a fair trial, everyone. Whether your name is John Goodman or whether your name is John Doe. Everyone deserves a fair trial.

## WPTV 4-1-13 Interview of Roberts

Williams: Suskauer believes all of this screams for a retrial but Roberts is quick to say, one jurors conduct does not change the facts of the case against Goodman in the DUI manslaughter death of Scott Wilson.

Roberts: The evidence against John Goodman was absolutely overwhelming. This has never been a better case for the state.

Williams: Roberts said if, if there was ever a retrial order, the Scott Wilson family signals they'd want her to come off the sidelines and handle it and, she says she would. John Goodman's attorney, Guy Frontstin issued this statement tonight saying, "All we have ever sought is a fair and just trial for Mr. Goodman just like everyone else is entitled to. The court appeals recognizes that jury misconduct prevents a fair trial and, as a result has returned Mr. Goodman's case to the trial court to determine if jury misconduct occurred.

dch  
4/3/12  
1:50

## EXHIBIT 5

Williams: An appeals court rules that John Goodman's, DUI manslaughter conviction will be sent back to a Palm Beach County judge for a review. Judge Jeffrey Colbath will interview juror, Dennis DeMartin to determine if he was able to impartially judge the polo mogul.

Dunn: Goodman's defense team says they have uncovered information that DeMartin's ex-wife was once arrested for DUI. Channel 5's, Dan Corcoran spoke with DeMartin in an interview, you'll see only on 5. Dan.

Corcoran: And Kelley, I spoke with Dennis DeMartin outside his Del Rey Beach home tonight. He'll be back here at this courthouse to answer new questions about alleged juror misconduct. Attorneys for John Goodman say that DeMartin intentionally withheld information during jury selection failing to disclose that DeMartin's own ex-wife was once arrested for DUI. Now, Goodman's attorneys say that is grounds for a new trial. Here's how DeMartin tells me that he'll explain himself to a judge.

Are you surprised that it's come to this again that you're back in the headlines?

DeMartin: Yes, I can't...I can't get away from anything. I told them that there was parts of my life before I can't recall since my stroke. That's all I told them.

Corcoran: You're going to have to go back and answer these questions. Are you nervous about that? Are you worked?

DeMartin: No because I told them to check my first book and, it's in the first chapter of my first book, "*Believing in the Truth*." It's all right there what the attorney asked me and everything.

Corcoran: Did you not disclose that your ex-wife had a DUI? Should you have done that?

DeMartin: No, I didn't know about it at that time because of a stroke I had. I forgot all about it. I blocked out when she left me for another man and everything. I didn't talk to her until December when her mother died and they went visiting, and then, a whole bunch of things happened at that time.

Corcoran: So, you're saying that you actually...it was a lapse of your memory?

DeMartin: That's correct and it's in the book.

Corcoran: Do you think any of this will have an impact on whether this case gets a retrial?

DeMartin: I said, no, it won't. Go read it.

Corcoran: But, does it talk about your memory or does it talk about the fact that you....?

DeMartin: It said that I'm worried of things that happened in the past that I can't recall and he knew that.

Corcoran: Did you deliberately mislead anybody at any time?

DeMartin: Never, never, at all. I said everything when I was being picked for a juror.

Corcoran: And it was all truthful.

DeMartin: It was all truthful.

Corcoran: And, you didn't withhold.

DeMartin: No.

Corcoran: Now, DeMartin has questioned...been questioned about allegations of juror misconduct before, after he revealed in his own book, right here that he conducted his own drinking experiment with three vodka tonics to see

how impaired Goodman may have been the night Goodman's vehicle collided with that of Scott Wilson's, killing Wilson. DeMartin says he will once again be answering questions about misconduct, alleged misconduct, back here at this courthouse sometime tomorrow. Reporting live at the Palm Beach County Courthouse tonight, I'm, Dan Corcoran, WPTV News Channel 5.

dch  
4/2/12  
3:10

## EXHIBIT 6





THE CIRCUIT COURT OF THE  
FIFTEENTH JUDICIAL CIRCUIT  
OF FLORIDA

CHAMBERS OF  
JEFFREY J. COLBATH  
CIRCUIT JUDGE

PALM BEACH COUNTY COURTHOUSE  
205 NORTH DIXIE HIGHWAY  
WEST PALM BEACH, FLORIDA 33401  
561/355-7845

April 2, 2013

Dennis DeMartin  
1101 Cactus Terrace, Apt. 102  
Delray Beach, FL 33445

Re: State v. John Goodman  
Case No. 50 2010 CF 005829 AXX

Dear Mr. DeMartin:

I am in receipt of your letter dated April 1, 2013, addressed to Judge Jeffrey Colbath and received on the same date.

The Code of Judicial Conduct prohibits a judicial officer from considering any *ex parte* communication and also prohibits a judicial officer from giving legal advice to a litigant/party. As a result, your *ex parte* communication cannot be considered by the Court because one of the fundamental rules of fairness in Court proceedings is that neither side should attempt to talk to or correspond with the judicial officer outside of the presence of the opposing party. This rule requires that a copy of all correspondence or motions must be provided to the opposing side, specifying on the correspondence or motion the name and address to which it was sent, the manner in which it was sent, and the date it was mailed.

At the Judge's direction and without further action by the Court, I am forwarding a copy of your letter to the State Attorney's office and the Defense Attorney's office, for whatever action, if any, they deem appropriate, and placing the original in the official court file.

Sincerely,

Diana Grant, Judicial Assistant to  
Judge Jeffrey Colbath

Copies furnished: (w/enclosure), via email

Sheri Collins, State Attorney's Office – Division W  
Black, Srebnick, Kornspan & Stumpf, Att: Roy Black, 201 S. Biscayne Blvd., Ste. 1300, Miami, FL 33131  
Douglas Duncan, Esquire, 515 N. Flagler Dr., Ste. 325, West Palm Beach, FL 33402

**Dennis DeMartin**  
1101 Cactus Terrace #102  
Delray Beach, FL 33445  
Cell: 561-248-0873 Email: DEND3114@Yahoo.com

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April 1, 2013

Judge Jeffrey J. Colbath  
Circuit Court Judge, Palm Beach County Courthouse  
205 North Dixie Highway  
West Palm Beach, FL 33401

RECEIVED  
APR 8 1 2013  
CHAMBERS OF JUDGE  
JEFFREY J. COLBATH

Dear Judge Jeffrey Colbath,

It has been a year since I last wrote to you and I am not sure this is where to send this letter this year, but I will continue with the reply to Friday's newspaper article.

I did not lie regarding my ex wife's DUI and the details of how she ended up with another alcoholic man. It was blocked out of my memory since a stroke I had around 1988.

If you check the trial transcript, I answered the question when asked, I said I had not had any experiences that I recall. I then was asked if I recollected an accident in 2001 which I also could not recall. The prosecutor said I was a witness to an accident in Highland Beach which I did not recall and had to call family and friends to remind me of this.

I made up my mind at that time to write down all important information of both the trial and anything important in my life since then right through the present time as my memory loses information of the past a lot lately.

The defense attorney then asked me and others if we ever had a concussion. I answered yes, when I was about 5 years old and hit by a car. The defense attorney then said that it did not count as I could not remember the details. I answered him, yes it did as I was worried if I couldn't remember that accident, I was worried what else I could not remember from years past that accident.

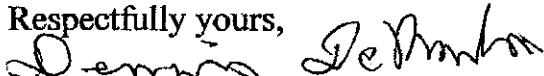
If I may return to how that incident ended up in my current book.-- While I was writing about my Bi Polar lady friend last year, my ex wife's mother died in Pompano and my son asked me to go to the funeral. I was re united

with my ex wife and many of my in laws. One of the in laws laced into me about all the woman that I wrote about in the Trials and Tribulations book. He said at least my ex wife stayed with one man, even though they did both drink, while I was out with many woman. He said it was my fault that she ended up drinking as I put so much pressure in our marriage while we owned the liquor store that she ran.

After realizing what I had done those many year's ago, I thought I would go back and add chapters in both of my marriages about how I acted and learned how to change after the second heart attack. I even went further in trying to mend fences with my ex wife not to rekindle our marriage, but to have a family relationship again. I had since had her and my son over for Christmas dinner and again for her birthday just about a week ago on March 18<sup>th</sup>, which I hope I haven't ruined with this last episode of the defense still trying to get a new trial.

Your comments will be greatly appreciated.

Respectfully yours,

  
Dennis DeMartin