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## Could Goodman juror's latest disclosure warrant a new trial?



Palm Beach County Circuit Judge Jeffrey Colbath  
Photo: Lannis Walters



John Goodman  
Photo: Lannis Walters

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Even before last month's release of Dennis DeMartin's latest self-published book, the former juror in John Goodman's DUI manslaughter trial had already become arguably the most notorious local panelist in recent memory.

Now, with allegations from Goodman's defense team that DeMartin's book exposes lies during jury selection and later under oath to the judge, the juror behind the drinking experiment that was previously Goodman's best chance at a new trial has unearthed a host of new legal questions.

Chief among them: Is the fact that the 69-year-old former accountant from Delray Beach failed to bring up his ex-wife's prior DUI arrest during jury selection – whether intentionally or not – enough to earn Goodman a new trial?

It's a question that's dividing legal experts, both locally and across the country. Even though DeMartin's litany of missives and mistakes in judgment would likely constitute some form of juror misconduct, legal observers on both sides are reluctant to bet on a new trial.

"We know that this happens, and it happens a lot more than people think," said Pace University law professor Bennett Gershman, who in 2005 touched on the issue of jurors providing false information during jury selection in a lengthy analysis of jury misconduct. "But when it comes to getting a new trial in cases like these, the defendant is going to have a high burden."

In the first pages of his chronicle of a relationship with a bipolar woman, — "Will She Kiss Me or Kill Me?" — DeMartin discloses that his ex-wife had crashed her car, been arrested for DUI and began an affair with another alcoholic in a court-ordered treatment program.

Goodman's high-powered attorneys, during jury selection in his trial last year, asked all the prospective jurors about any brushes they or their relatives had with the law. DeMartin never mentioned his now ex-wife's DUI arrest, and Goodman's lawyers argue that they would never have allowed DeMartin to serve on the jury had he disclosed it.

Further, Goodman defense attorney Roy Black said the omission was intentional. But DeMartin denies that in an April 1 letter to Circuit Judge Jeffrey Colbath. In the letter, DeMartin said the incident was "blocked out" of his memory because of a stroke he suffered in 1988.

Colbath has scheduled an April 29 court hearing to once again question DeMartin before the judge decides whether or not to throw out Goodman's March 2012 conviction in connection with the February 2010 alcohol-fueled crash that claimed the life of 23-year-old Scott Wilson.

Some, like Gershman, believe Goodman's conviction and 16-year prison sentence will survive DeMartin's omission. But others, like Art Patterson, a social psychologist and jury expert for more than 30 years, believe Goodman, founder of Wellington's International Polo Club Palm Beach, ought to get a new trial.

Patterson, vice president of DecisionQuest, one of the country's largest trial consulting firms, says the system is best served when courts err on the side of caution when there's a possibility that a juror could have been biased.

"Parties have a right to strike jurors. That requires the jurors to tell the truth," Patterson said, adding that DeMartin's omission "took away the defendant's right" to challenge him as a juror.

Whether DeMartin intentionally failed to reveal the DUI or not, everyone agrees that the issue of jurors being less than truthful is nothing new.

In Florida, attorneys Donald Blackwell and Stephanie Martinez wrote about the issues in a 2007 article for the Florida Bar Review. In it, they chronicled the Florida case a few years earlier of a man who sued a rental car company and the driver of the rental car that pinned him to another car in a parking lot, causing severe back injuries.

As part of jury selection, attorneys grilled prospective jurors about any criminal or civil cases they or their relatives may have been involved in. The attorneys also asked whether they'd had experience with car accident injuries or back injuries, in general. Though each of the six jurors ultimately chosen said they had no experience with any of those issues, defense investigators after the trial discovered that wasn't the case for four out of the six – including the jury foreman.

In fact, the foreman had been a defendant in an accident injury claim before the same judge presiding over the case where he sat as a juror. He'd also had four work-related back injuries. At least one other juror had been a plaintiff in an accident injury case, another juror failed to mention he'd been arrested five times and convicted twice for DUI, and yet another juror and his relatives had been involved in no less than five accidents involving injury.

Based on those facts, the trial judge overturned the jury verdict in the case.

Blackwell and Martinez used the case in their argument encouraging judges to be more aggressive in pursuing contempt of court and perjury charges against jurors in similar cases — a notion that Goodman prosecutor Ellen Roberts has also suggested for DeMartin.

Last week, Blackwell pointed to a 2011 case that now sets a three-pronged test established for Florida courts that Colbath will use in determining whether Goodman should get a new trial. Goodman's team will have to prove that the omission was material to the case, whether DeMartin left it out during questioning and whether the omission was due to a lack of questioning on the defense's part.

Both Gershman and Patterson say that it's possible that the omission during voir dire, coupled with the drinking experiment DeMartin conducted on the eve of jury deliberations last year, can have a cumulative effect, leading Colbath or an appellate court to conclude that DeMartin's behaviors as a whole robbed Goodman of a shot at a fair trial.

But even Patterson, who believes Goodman deserves a new trial, says his chances aren't particularly strong.

“Courts, first of all, really don't like to overturn jury verdicts,” he said. “There's also the cost of trying the case again.”

In Goodman's case, according to prosecutors, that price tag is well over a quarter of a million dollars.

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## **Juror misconduct or mistakes**

The cumulative effect of juror Dennis DeMartin's actions could lead Circuit Court Judge Jeffrey Colbath or an appellate court to conclude John Goodman deserves a new trial.

**April 27, 2012:** DeMartin self-published his book "Believing in the Truth" on Amazon.com. In it, he revealed that he conducted his own drinking experiment the night before jurors in Goodman's case began deliberating.

**May 11, 2012:** Colbath denied Goodman's request for a new trial. He said although DeMartin's actions constituted misconduct, it had no effect on the jury's verdict. Colbath then sentenced Goodman to 16 years in prison.

**March 14, 2013:** DeMartin publishes his third book, "Will She Kiss Me or Kill Me?" chronicling his relationship with a bi-polar woman. In it, he claims his ex-wife's DUI arrest and subsequent affair with a fellow alcoholic unraveled his marriage. But Goodman's defense team quickly noted that DeMartin never mentioned his ex-wife's arrest during jury selection despite questions about family members' prior legal troubles. Goodman's team won an appeal to bring the case back to Colbath and argue for a new trial.

**April 1:** DeMartin writes a letter to Colbath, saying he did not deliberately fail to disclose his ex-wife's DUI. He said the memory had been blocked out of his mind because of a stroke he suffered in 1988, and he only remembered in December after an encounter with one of his former in-laws.

**April 9:** Goodman's defense team made more claims of dishonesty against DeMartin based on his latest book, saying he lied when he told a judge that he wasn't familiar with the drug hydrocodone during post-trial questioning.

**April 29:** Colbath is scheduled to question DeMartin in court.