IN THE CIRCUIT COURT OF THE 15TH JUDICIAL CIRCUIT OF FLORIDA, IN AND FOR PALM BEACH COUNTY

CRIMINAL DIVISION "W"

CASE NO.: 2010CF005829A MB

JUDGE JEFFREY COLBATH

STATE OF FLORIDA,

Plaintiff,

v.

JOHN B. GOODMAN,

Defendant.

_____/

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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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 described more fully below, the Defendant bases these requests on several strains of jury misconduct that were recently reported to counsel, unsolicited, by an alternate juror, including allegations that:

(1) The jurors repeatedly disobeyed their oaths and instructions from the Court to not discuss the evidence until the end of the case;

(2) The jurors made derogatory comments throughout the trial about Mr. Goodman's wealth which showed that they were not being impartial;

(3) The jurors disobeyed the Court's instructions not to read or view the media reports about the case;

(4) Two jurors, Nos. 5 and 6, made false statements to the Court in order to cover up the fact that Juror No. 6, Dennis DeMartin, had made a prejudicial gesture during counsels' cross-examination of the State's rebuttal expert and then conversed with Juror No. 5 about it; and

(5) Mr. DeMartin improperly began writing a book about the case during the trial, told the other jurors that he was doing so and then misrepresented what he was going to the Court in an attempt to conceal his misconduct.

In addition, and as a preliminary matter, the Defendant moves this Court, pursuant to Rule 3.575, for the Court to preside over interviews with the jurors in order to ascertain the full scope of the jury misconduct.[1] In support of these requests, the Defendant states the following:

1. As described more fully below, on March 27 and 28, 2012, an alternate jury, Juror No. 8, telephoned the Court's chambers, wishing to report the various forms of misconduct she had witnessed during the trial. When the Court did not respond to Juror No. 8's inquiries, on the morning of April 4, 2012, she telephoned undersigned counsels' law office and left a message indicating that she wished to talk to counsel for the same purpose. After seeking and obtaining

[1] Mr. Goodman is separately filing a "Notice of Intention To Conduct Jury Interviews," pursuant to Rule 4-3.5(d)(4) of the Rules Regulating the Florida Bar. That rule permits lawyers to interview jurors themselves based only on "reasonable grounds to believe" that jury misconduct may have occurred. As discussed in *DeFrancisco v. State*, 830 So.2d 131 (Fla. 2d DCA 2002), once such a notice is filed and served, if the State does not object within a "reasonable time," the interviews may be conducted. If an objection is filed, the Court would be required to hear the objection to determine whether Mr. Goodman has additional reasons to believe that grounds exist for a legal challenge to the verdict.

advice from the Florida Bar through the Florida Bar's Ethics Line that it was permissible to return the call, counsel did so.[2]

2. After interviewing Juror No. 8 by telephone, counsel memorialized her statements in a draft affidavit which, after making some changes, she signed on March 11, 2012. *See* **Exhibit 1**. After explaining her prior attempts to contact the Court, Juror No. 8 indicated in the affidavit that, contrary to the Court's repeated instructions, the jurors often discussed witness testimony and other evidence throughout the trial.[3] As examples, she indicated that there were discussions about how anyone could have an accident and then go and drink, about why Mr. Goodman did not call 911 immediately, about why he did not stop at the stop sign, about who took the videotape of the drive from the Players' Club and how Mr. Goodman could have passed his own driveway on 120th

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[2] Rule 4-3.5(d)(4) of the Rules Regulating the Florida Bar provides that after dismissal of the jury lawyers may not "*initiate* communication with ... any juror regarding the trial except to determine whether the verdict may be subject to legal challenge...." (Emphasis added.) Counsel were advised that since Juror No. 8 "initiated" the contact, counsel could return the call.

[3] When the jury was sworn in, the Court specifically instructed:

> ... You can't talk about, as the case unfolds, what did you think about this witness or what did you think about that witness? As tempted as you might be, you're not permitted to do that. Even if all six of you are in the jury room at the same time, until everybody rests, it's inappropriate to talk about what you think about the evidence or the witnesses, that type of stuff.

Draft Transcript, Vol. 16, March 8, 2012, p. 22. Prior to opening statements, the Court reiterated:

> ... After these instructions are given, you will then retire to consider your verdict. Until that time, you should not form any fixed or definite opinions on the merits of the case until you have heard all the evidence, the arguments of the attorneys, and the instructions on the law from me. Until that time, you should not discuss this case among yourselves.... During these recesses, you will not discuss this case with anyone, nor permit anyone to say anything to you or in your presence about this case.

Draft Transcript, Vol. 17, March 13, 2012, at pp. 12-13. The Court gave similar reminders throughout the course of the trial. *See, e.g.,* Draft Transcripts, Vol. 19, March 13, 2012, p. 78; Vol 37, March 16, 2012, p. 45; Vol. 63, March 22, p. 43.

Avenue. "We all had things to say about the trial as it progressed each day." Affidavit, p. 2, ¶ 8. When Juror No. 8 reminded the other jurors that the Court had instructed them not to discuss the case, she was "teased" by another juror that she must have a crush on Mr. Goodman. *Id.*

3. Not surprisingly, in light of the pretrial publicity, Juror No. 8 disclosed that "[o]n many occasions" the jurors talked about Mr. Goodman's wealth. *Id.* at p. 3, ¶ 9. "Most of the conversations about money [were] in the context of Mr. Goodman probably being guilty but getting away with it because he has a lot of money. Although no one specifically used the word 'guilty.'" *Id.*

4. Juror No. 8 also stated that before the end of the trial, it was clear that many of the jurors had already decided how they were going to vote, vowing to finish the case by Friday, March 23. "Based on the negative talk about Mr. Goodman's wealth and the issues discussed about the case, it was clear to me that these jurors had already made up their minds before Thursday, March 22nd." *Id.* at p. 3, ¶ 10.

5. Juror No. 8 further reported how Juror No. 6, Dennis DeMartin, lied to the Court about his conduct on March 22. As the Court will recall, and as is set forth in greater detail below, Mr. DeMartin was spotted making a dismissive-appearing hand gesture during counsels' cross-examination of the State's rebuttal expert (Thomas Livernois). He then immediately turned and spoke to Juror No. 5. When questioned by the Court about his conduct, Mr. DeMartin claimed that the gesture was about a lost button that had allegedly just been found by Juror No. 5. Juror No. 5 later agreed with that story. According to Juror No. 8, Mr. DeMartin's explanation "was not true" since, in fact, Mr. DeMartin had lost and found the button earlier. *Id.* at pp. 3-4, ¶¶ 11-12. "I believe that Mr. DeMartin's gesture was an expression of his disdain for Mr. Goodman and the defense

team." *Id.* Juror No. 8 also reported that Mr. DeMartin was already writing a book about the trial and "would frequently tell us that he wrote down what happened in court each day, and all the jurors knew about it." *Id.* at p. 4, ¶ 13.[4]

6. Juror No. 8 believed that the "pre-deliberation discussions" about the case "were wrong" and wanted to inform the Court but did not come forward immediately because "everyone on the jury was telling me that I was an alternate. As an alternate, I did not believe I had as much a right as the other jurors to bring this to the Court's attention." *Id.* at p. 4, ¶¶ 14-15. The only way the jurors could have known that Juror No. 8 was an alternate before the end of the case was by disobeying the Court's instructions not to view the media about the case. *See* **Composite Exhibit 2**, *The Palm Beach Post*, March 8, 2012, *Jurors seated in Goodman trial; possible defense strategy* (reporting that the two alternates were two women, one of whom "directs field trips for a preschool for low-income families and another woman who spends her time volunteering").[5]

7. In the following Memorandum, Mr. Goodman demonstrates that based on Juror No. 8's allegations, the Court is required by Rule 3.575 to conduct interviews of all the jurors. If the interviews confirm the jury misconduct reported by Juror No. 8, the Court "***must*** order a new trial, unless the State proves that the defendant was not prejudiced by the jurors' misconduct." *Gray v. State*, 72 So.3d 336 (Fla. 4th DCA 2011) (emphasis added).[6]

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[4] As discussed *infra*, during the trial, Mr. DeMartin wrote the Court a letter claiming that he was writing a book but *not* about the trial. Rather, he claimed the book was about dating as a senior citizen.

[5] As part of its initial instructions, the Court instructed the jury not to read the newspaper, not to watch the television and not to use the internet or electronic devices to learn about the case. *See* Draft Transcript, Vol. 16, March 8, 2012, at p. 21. These instructions were also repeated prior to opening statements. *See, e.g.,* Draft Transcript Vol. 17, March 13, 2012, p. 13.

[6] Alternatively, Mr. Goodman would be entitled to the same relief pursuant to Rule 3.850(a)(1). "The standard for (continued...)

MEMORANDUM

I. PRELIMINARY STATEMENT OF THE FACTS

A. Jury Selection and the Jurors' Conduct During the Trial

Before trial, Mr. Goodman filed a motion for a change of venue, arguing that the community had been so saturated with prejudicial pretrial publicity that neither *voir dire* nor instructions from the Court would be adequate to safeguard his constitutional rights. *See generally Mu'Min v. Virginia,* 500 U.S. 415, 429-30, 111 S.Ct. 1899, 114 L.Ed. 2d 493 (1991) (recognizing that when pretrial publicity is pervasive within a community, a "juror's claims that they can be impartial should not be believed" and *voir dire* is an inadequate curative). *See also Serrano v. State*, 64 So.3d 93, 112 (Fla. 2011) (per curiam); *Manning v. State,* 378 So.2d 274, 276 (Fla. 1979). A "juror may have an interest in concealing his own bias" or "may be unaware of it." *Smith v. Phillips,* 455 U.S. 209, 221-22, 102 S.Ct. 940, 71 L.Ed.2d 78 (1982) (O'Connor, J., concurring).[7] Mr. Goodman warned about the potential for one or more "stealth" jurors who, in addition to simply wishing to punish a notorious defendant, may believe they could achieve notoriety based on their jury service and purposefully contrive to get seated. *See Miller-El v. Dretke,* 545 U.S. 231, 267-68, 125 S.Ct. 2317,

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[6](...continued)
granting a new trial under rule 3.600 and rule 3.850 is the same." *Showers v. State*, 778 So.2d 424, 425 (Fla. 1st DCA 2001), citing *Totta v. State*, 740 So.2d 57 (Fla. 4th DCA 1999).

[7] Mr. Goodman's fear that he could not trust *voir dire* was corroborated by the media itself. For example, the *Palmbeachpost.com* published the following comment from one blogger: "It will be a jury trial.... John...if your [sic] smart you'll demand trial by judge. You don't want a trial by jury.... WE consist of the jury. I listen very carefully and stay very quiet during 'Voir Dire'... I know exactly what it takes to get on a jury... So do a lot of bored people just like me... Pray I don't get a summons John ... PRAY...." On-line comment to *Palmbeachpost.com*, July 24, 2010, "Friends of Scott Wilson cleaning crash site: 'We just want Wellington to remember,'" by "Halliburton STILL owns the rig"at 9:04 a.m., 7/25/2010.

162 L.Ed.2d 196 (2005) (Breyer, J., concurring); *Pennekamp v. Florida,* 328 U.S. 331, 359, 66 S.Ct. 1029, 90 L.Ed. 1295 (1946) (Frankfurter, J., concurring).[8]

The Court denied the venue motion and proceeded to select a six member jury and two alternates. *None of the eight jurors chosen where informed about which two were the alternates.* The media, however, disclosed that the alternates were two women, one of whom "directs field trips for a preschool for low-income families and another woman who spends her time volunteering." *See* **Composite Exhibit 2**. Although, as previously noted, the Court had instructed the jurors to scrupulously avoid the media and the jurors repeatedly assured the Court that they were following its instructions, in fact, they did not do so. As indicated in Juror No. 8's affidavit, the jurors knew she was an alternate throughout the proceedings.

In addition to disregarding the Court's instructions about the media, it is now clear that there was at least one "stealth" juror – Juror No. 6, Dennis DeMartin. During *voir dire*, Mr. DeMartin admitted to having followed the media's version of the case pretrial. *See* Draft Transcript, Vol. 4, March 6, 2012, p. 12 (admitting that "I've read the paper and I saw it on television...."); *id.* at p. 18 (admitting that he read the paper, including the Palm Beach Post, "mostly every day and I do watch the news at night"). However, he claimed in elaborate detail how he could be an honest and fair juror. *Id.* at pp. 13-19.

During the trial, Mr. Goodman and counsel began to question whether Mr. DeMartin had been candid. On March 20, 2012, he presented the Court with a letter stating that the had been writing a book for over a year about "The Trials and Tribulations of a Senior Citizen getting a Date without a Car." *See* **Exhibit 3**. In the letter, Mr. DeMartin claimed he was informing the Court

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[8] *See generally* Jerry Markon, *Jurors with Hidden Agendas,* Wall St. J., July 31, 2001.

about his book plan because he had been in contact with "a few publishing companies for my dating book" and had also told the other jurors "that I am writing my book on dating without a car..." *Id.* The only hint that Mr. DeMartin was even thinking about writing something about being a juror in this case was a vague statement that *if* he was successful with his dating book, "I would consider using the process to writing about the experience being a juror." *Id.* Since Mr. DeMartin's letter falsely disclaimed any connection between his *current* writing and Mr. Goodman's case, neither counsel nor the Court had any reason to question him further about the book. This Court acknowledged that if he was writing about this case while it was going on it would be "inappropriate on a juror's part." Draft Transcript, Vol. 60, p. 34.

Two days later, a second incident involving Mr. DeMartin occurred. During Mr. Shapiro's cross-examination of the State's rebuttal expert, Mr. Livernois, another member of the defense team, Mr. Dubin, saw Mr. DeMartin wave his hand dismissively and then turn and speak to Juror No. 5, suggesting Mr. DeMartin was making a derogatory comment to Juror No. 5 about counsel's cross-examination in violation of the Court's daily instructions not to discuss the case. *See* Draft Transcript, Vol. 60, March 22, 2012, at pp. 30-33. After a break and at counsels' request, the Court summoned Mr. DeMartin for questioning about the incident. Mr. DeMartin falsely claimed that the hand gesture had nothing to do with the testimony:

> JUROR NO. 6: I lost the button off my shirt yesterday. She found it on the floor today, and I said, this place don't even clean up at night. (Laughter) .... The button was still here from yesterday when I lost it off my shirt.

Id. at p. 37. When the Court asked him 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 donuts and that's why the button popped." *Id.*

After Mr. DeMartin returned to the jury room, the Court decided to question Juror No. 5, who was then summoned.[9] Juror No. 5 corroborated Mr. DeMartin's account: "I found his button he lost the other day ... Because I didn't know he lost one. So I just said, did anybody lose a button? He said, that's my button from yesterday." *Id.* at p. 40. With that testimony, the issue seemed resolved.

Later that day, following closing arguments, the Court dismissed the two alternates and informed them that they were free to talk to the press about the case if they wished to do so. The Court then added: "The lawyers aren't allowed to approach you and initiate conversation, *but you can approach* ***anybody*** *you want to* ***to initiate*** *conversation*...." *See* Draft Transcript, Vol. 63, March 22, 2012, at p. 36 (emphasis added).

On March 23, 2012, the jury returned its guilty verdicts after only a few hours of deliberation. That same day, Mr. DeMartin gave live interviews to ABC news and apparently other news outlets. *See* **Composite Exhibit 4**. Among other things, Mr. DeMartin stated that the jury had little trouble convicting Mr. Goodman.

[9] Before the Court summoned Juror No. 5, Mr. DeMartin would have had plenty of time to inform her about the explanation he gave for the incident.

B. Juror No. 8's Attempts To Report the Misconduct To the Court

At 8:19 a.m. on March 27, 2012, Juror No. 8 telephoned the Court's chambers, wishing to report the aforementioned jury misconduct. She left a message but did not receive a return telephone call. The next day, March 28, 2012, she called again. This time, she left a message with a secretary or clerk but, again, did not receive a return call from the Court. If the Court had returned the calls – or, at the very least, reported Juror No. 8's complaints to Mr. Goodman – Mr. Goodman would have had time to include a jury misconduct claim in his motion for new trial under Fla. R. Crim. P. 3.600(b)(4) before the 10 day period in Rule 3.590(a) expired.

Mr. Goodman filed his motion for new trial on the 10th day permitted by the rule, April 2, 2012. With no knowledge of the information described below or of Juror No. 8's attempt to contact the Court, his motion did not include any jury misconduct claim.

C. Juror No. 8 Initiates Contact With Counsel

At approximately 9:30 a.m. on the morning of Wednesday, April 4, 2012, Juror No. 8 telephoned undersigned counsel's office and left a message that she wanted to discuss what went on with the jury during Mr. Goodman's trial. Upon learning of the message, counsel double checked the trial transcript concerning the Court's comments to the alternates when they were dismissed and researched whether it was permissible to return the call. Consistent with what the Court told the alternates, Rule 4-3.5(d)(4) of the Rules Regulating the Florida Bar only prohibits lawyers from "initiating" post-verdict communications with jurors. *See* p. 3, n. 2 *supra*. Since Juror No. 8 had "initiated" the contact, counsel believed it was probably permissible to return the call. However, before doing so, counsel checked to see whether there were any reported court decisions or

professional ethics opinions from the Florida Bar. Finding nothing on point,[10] counsel (Mr. Dubin) called the Florida Bar's Ethics Line and spoke with Bar Attorney Jeff Hazen. Mr. Hazen advised that counsel could return the call to Juror No. 8 and provided counsel with a call Record Number 302437 as proof that the Bar had been consulted.

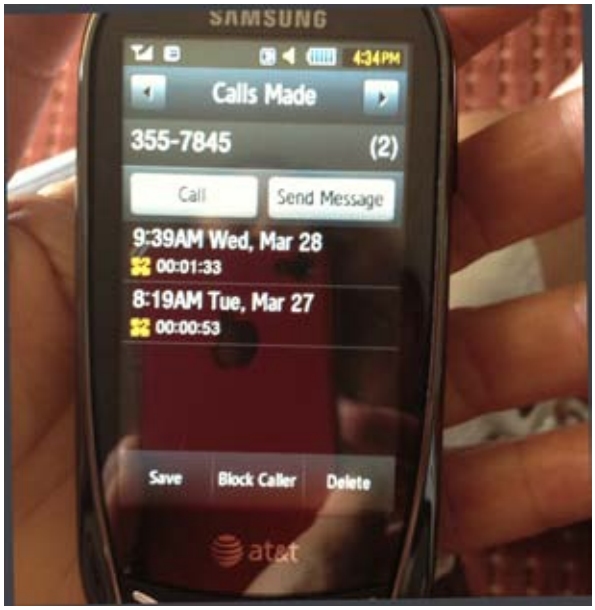
At approximately 11:30 a.m., Mr. Dubin returned the call and spoke with Juror No. 8. She began by indicating that she wanted to discuss some things that had happened during the trial that had bothered her. After disclosing various types of jury misconduct to Mr. Dubin, Juror No. 8 indicated that Mr. Black could call her himself that evening.

In an abundance of caution, at 2:32 p.m., Mr. Dubin again contacted the Florida Bar Ethics Line and this time spoke with Florida Bar ethics attorney Yen Cam who advised that it would be permissible to call Juror 8 back a second time, since she had initiated the call. For identification purposes, Ms. Cam recorded the solicitation of advice as call Record Number 302513. At approximately 8:00 p.m. that evening, Messrs. Black and Shapiro called Juror No. 8. Juror No. 8 then further elaborated on the statements previously made to Mr. Dubin. At the end of the call, Juror No. 8 again indicated that counsel were free to contact her in the future with any additional questions.

By Monday, April 9, 2012, counsel had compared their notes of their conversations with Juror No. 8 and prepared a draft affidavit. At approximately 8:00 that evening, Mr. Black telephoned Juror No. 8 and asked if she would agree to a meeting. She did so and met with counsel two days later, on April 11, 2012. At the meeting, she reiterated that she had wanted and tried to present this

[10] The few opinions issued by the Florida Bar concerning contacts with jurors all pre-date Rule. 4-3.5(d)(4). *See* Opinion 66-47 (Aug. 15, 1966); Opinion 69-17 (May 23, 1969); Opinion 70-45 (Dec. 3, 1970).

information to the Court and had left two messages with the Court's chambers. With her permission, counsel took a photograph of her cell phone record, showing the two calls to the Court: (1) a 53 second call at 8:19 a.m. on March 27 and (2) a 1:33 minute call at 9:39 a.m. on March 28. *See* **Exhibit 5** (the adjacent photograph). Juror No. 8 indicated that she felt it was her "duty as a juror" to bring these matters to the Court's attention and believed that what took place "was wrong."



Counsel then presented Juror No. 8 with the draft affidavit and asked her to review it carefully. Counsel explained that since the affidavit would be going to the Court, it was very important to be accurate. Juror No. 8 agreed and understood. After reading the draft, she requested a few changes and gave some additional details that were then added to the draft. Counsel made the changes (through a staff member who attended the meeting with a computer and portable printer) and, after Juror No. 8 reviewed the revised draft, she signed it. *See* **Exhibit 1**.

II. THE MULTIPLE FORMS OF JURY MISCONDUCT REQUIRE A NEW TRIAL

A. Jurisdiction and the Governing Legal Standards

Under Rule 3.600(b)(4) of the Florida Rules of Criminal Procedure, a trial court "shall" grant a new trial if "[a]ny juror was guilty of misconduct" and the defendant's "substantial rights ... were prejudiced thereby." However, motions for new trial under Rule 3.600 must be filed within 10 days of the verdict under Rule 3.590(a). This time limit is considered jurisdictional. *See Showers v. State*, 778 So.2d 424 (Fla. 1st DCA 2001). As noted above, the Court's failure to disclose Juror No. 8's calls effectively prevented Mr. Goodman from being able to file a timely Rule 3.600 motion on this issue. However, Rule 3.575 provides an alternative vehicle for obtaining a new trial based on jury misconduct that is not, or at least not always, confined to the 10 day time frame. Rule 3.575 provides that "[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." Such a motion must be made within 10 days of the verdict "***unless good cause is shown*** *for the failure to make the motion within that time*." Fla. R. Crim. P. 3.575 (emphasis added). Upon "a finding that the verdict may be subject to challenge," the trial judge "*shall* enter an order permitting the interview . . . ." *Id.* (emphasis added). If the interviews establish jury misconduct, the Court "***must*** order a new trial, unless the State proves that the defendant was not prejudiced by the jurors' misconduct." *Gray v. State*, 72 So.3d 336 (Fla. 4th DCA 2011) (emphasis added).[11]

In *Gray*, the Fourth District Court of Appeal clarified the standards governing the granting of jury interviews under Rule 3.575, as well as when new trials must be granted thereafter. After

[11] Alternatively, Mr. Goodman would be entitled to the same relief under Rule 3.850(a)(1), since "[t]he standard for granting a new trial under rule 3.600 and rule 3.850 is the same." *Showers*, 778 So.2d at 425 (citation omitted).

reviewing the synthesizing the holdings in *Williams v. State of Florida*, 793 So.2d 1104, 1107 (Fla. 1st DCA 2001)*, Ramirez v. State of Florida*, 922 So.2d 386, 390 (Fla. 1st DCA 2006), and *Reaves v. State*, 826 So.2d 932 (Fla. 2002), the Fourth District in *Gray* held as follows:

First, in order to *require* the trial court to conduct jury interviews under Rule 3.575, the defendant has a limited threshold burden to present allegations that "rise to a *prima facie* case" of jury misconduct, which in *Gray* was premature deliberations. *See Gray*, 72 So.3d at 338. This initial burden includes a requirement that the defendant show *either* "prejudice" *or* that the misconduct was "of such character as to raise a presumption of prejudice." *Id*. at 338, citing *Ramirez*, 922 So.2d at 390. While this minimal showing is frequently met through the submission of one or more affidavits, *see Ramirez*, 922 So.2d at 389 & n. 1 (citations omitted), *Gray* and *Ramirez* both held "Rule 3.575 does not require the filing of sworn affidavits in order to interview a juror." *Gray*, 72 So.3d at 337. *Accord Ramirez*, 922 So.2d at 389.[12] In *Gray*, the defendant met the *prima facie* standard merely by showing that multiple jurors were conversing about the case before the case was concluded. *Id.*

Second, if the defendant satisfies the initial showing, then "the burden will shift to the State to rebut the resulting presumption of prejudice." *Id*. at 338, citing *Ramirez*, 922 So.2d at 390. *Accord Johnson v. State*, 696 So.2d 317, 323 (Fla. 1997) (citation omitted), *cert. denied*, 522 U.S. 1120 (1998). In the context of premature deliberations, this means that "[i]f the trial court finds that premature deliberations took place, it must order a new trial, unless the State proves that the defendant was not prejudiced by the jurors misconduct." *Ibid.*

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[12] The *prima facie* standard appears to be slightly higher than the "reason to believe" standard set forth in Rule 4-3.5(d)(4) of the Rules Regulating the Florida Bar. *See Ramirez*, 922 So.2d at 389.

The State's burden is a heavy one. Under the Supreme Court of Florida's decision in *Wilding v. State of Florida*, 674 So.2d 114, 118 (Fla. 1996), "[the defendant] was entitled to a new trial unless the state could demonstrate that there was *no reasonable possibility* that the misconduct affected the verdict." 674 So.2d at 118 (emphasis added). Moreover, the State may not attempt to prove this negative by inquiring into the decision-making process the jurors. *Id.* at 117. "An inquiry into juror misconduct must be limited to objective demonstration of overt acts committed by or in the presence of the jury or jurors which reasonably could have affected the verdict." *Id.*

Juror No. 8's affidavit is more than sufficient to establish a *prima facie* case of jury misconduct for at least four reasons, discussed individually below. The motion is also timely. Although more than 10 days have elapsed, there is "good cause ... for the failure to make the motion within that time." Juror No. 8 did not initiate contact with counsel until after the 10 day period had lapsed and before then Mr. Goodman had no basis to invoke Rule 3.575. The Court's failure to disclose or respond to Juror No. 8's March telephone calls – which were both *within* the 10 day period – also prevented Mr. Goodman from learning about her accusations in time to seek relief within the 10 day period.[13]

B. <u>The Premature Deliberations</u>

Both the Florida and United States Constitutions guarantee that criminal defendants will be tried by impartial jurors. Defendants are also entitled to a presumption of innocence that can only be overcome by proof beyond a reasonable doubt. To ensure that jurors remain impartial and afford

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[13] This motion is also timely under Rule 3.850. Indeed, challenges to juror misconduct have been deemed to be cognizable under Rule 3.850 even if not discovered or raised for years after a verdict. *See, e.g., Marshall v. State*, 854 So.2d 1235 (Fla. 2003); *Kelley v. State*, 569 So.2d 754 (Fla. 1990). *See also United States v. Jackson*, 209 F.3d 1103 (9th Cir. 2000) (noting that the defendant did not learn of the factual predicate for his juror misconduct claim until three years after the trial).

defendants their right to a presumption of innocence until all of the evidence has been introduced and the jury has been properly instructed on the law, courts in virtually every jurisdiction – and as the Court did in this case – admonish jurors to refrain from engaging "in discussions about the case before they have heard both the evidence and the court's legal instruction and have begun formally deliberating as a collective body." *United States v. Resko*, 3 F.3d 684, 688 (3rd Cir. 1993) (collecting cases and treatises). Courts have emphasized four reasons for the prohibition against premature deliberations:

- Premature deliberations are overwhelmingly likely to be unfavorable to defendants, since the prosecution is allowed to present all its evidence before the defendant.
- Premature deliberations would allow a misbehaving juror (one who prematurely determines guilt) to unfairly influence other jurors.
- Once a juror has openly expressed his or her views in the presence of other jurors, that juror is likely to continue to adhere to that opinion and to pay greater attention to evidence presented that comports with that opinion.
- Premature deliberations undermine the goal of collective decision-making in the deliberative process that is a key component of the jury system.

See generally United States v. Dominguez, 226 F.3d 1235 (11th Cir. 2000), *cert. denied*, 532 U.S. 1039 (2001); *United States v. Yonn*., 702 F.2d 1341, 1345 n. 1 (11th Cir. 1983); *Resko*, 3 F.3d at 689-90; *State v. Cherry*, 341 Ark. 924, 927, 20 S.W.3d 354 (2000).

In violation of these principles and the Court's specific instructions, multiple jurors repeatedly engaged in discussions about the evidence – and Mr. DeMartin was seen doing so in open

court. Therefore, under *Gray*, *Williams* and *Ramirez*, the Court is now required to preside over jury interviews using the procedure set forth in Rule 3.575.

In *Gray*, the Fourth District held that the trial court abused its discretion in not conducting jury interviews where the defendant's showing was both far less detailed than Mr. Goodman's showing and not supported, as is Mr. Goodman's, with a juror's affidavit. In *Gray*, defense counsel moved for a post-trial interview of the jurors based on a conversation that he had with an alternate juror in the hallway after she was dismissed just before deliberations began. *See Gray*, 72 So.3d at 337. In this conversation, the alternate juror said the following: (1) that several members of the jury felt "'extremely strong" that the defendant was guilty; (2) that one juror shared with other jurors his focus on the fact that the defendant possessed a gun while walking around early in the morning; (3) and that other jurors shared their focus on the fact that there was a lack of physical evidence in the case. *See id.*[14] Given the timing of the conversation between the alternate juror and the defense attorney, simultaneous with the commencement of deliberations, the alternate juror obviously heard the jurors discussing aspects of the trial and the issue of the defendant's innocence or guilt before they were instructed to commence deliberations. Nonetheless, the trial court denied defense counsel's motion for post-trial interviews of jurors. *Id.* at 337.

In reversing, the Fourth District held that the defense showing amply met the *prima facie* standard, citing *Williams* and *Ramirez* with approval. The lesson that the *Gray* court derived from its analysis of Florida precedent was that any discussions amongst *multiple* jurors about trial proceedings that also include opinions regarding the defendant's guilt before official deliberations

[14] The lack of physical evidence, of course, could hardly be considered prejudicial to the defendant.

commence would raise the presumption of prejudice that the Sate must rebut. *See Gray*, 72 So.2d at 338.[15]

In *Williams*, the defendant filed a timely motion for post-conviction relief based on juror misconduct where he alleged that "two jurors had engaged in deliberations before hearing all the evidence." *Williams*, 793 So.2d at 1105. The trial court denied his request without a hearing but the appellate court reversed and remanded for further proceedings consistent with the holding that Williams had alleged a *prima facie* case of juror misconduct. In *Williams*, the affidavits supporting the allegation of juror misconduct described conduct similar to that described by Juror No. 8. For example, there were two jurors that did not want to serve because they felt that the trial was a waste of time and money because the defendant was obviously guilty. *Id.* at 1106. These sentiments were heard by the affiant and were made by the two jurors while the State was still putting on its case. *Id.* Further, the sentiments of these two jurors were indicative of the overall "atmosphere of the jury." *Id.* Thus, in *Williams*, premature deliberations rises to the level of juror misconduct where: (1) two jurors; (2) discuss trial proceedings before official deliberations commence; (3) in a manner that indicated that they had arrived at a decision regarding the defendant's guilt.

Juror No. 8's description of Mr. Goodman's jury was virtually the same as in *Williams.* She described a jury that had made up its mind about Mr. Goodman's guilt before jury deliberations commenced. And, just as the jury in *Williams*, where jurors expressed impatience to complete deliberations so they could get on with their personal lives, jurors in Mr. Goodman's case were insistent that deliberations would be concluded by Friday, March 23rd.

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[15] The *Gray* court distinguished *Reaves v. State*, 826 So.2d 932 (Fla. 2002), which involved only a *single* juror's *unsuccessful* attempt to discuss the defendant's guilt before deliberations.

In *Ramirez*, defense counsel moved for a new trial based on premature jury deliberations. *See Ramirez*, 922 So.2d at 387. Defense counsel alleged that an alternate juror told a bailiff in the courtroom that the jury "was split as to the defendant's guilt until after they heard his testimony." *Id.* at 388. Thus, in *Ramirez*, the alternate juror made a statement that implied that members of the jury were sharing opinions with each other as to the defendant's innocence or guilt before official deliberations commenced. The trial court denied the motion because, among other reasons, it claimed that any such allegation "inhere[s] in the verdict" and therefore cannot be a basis for a new trial. *See id.* However, the appellate court reversed to allow defense counsel the opportunity to pursue interviews of jurors and an evidentiary hearing in order to show that "[premature deliberations or conversations] were of such character as to raise a presumption of prejudice." *Id.* at 390 (citation omitted). In remanding the case to the trial court, the appellate court noted that "[d]eciding a case before hearing all of the evidence is antithetical to a fair trial." Id. at 390. Thus, *Ramirez*, like *Gray* and *Williams*, supports the proposition that any discussion by jurors as to the guilt of the defendant before deliberations commence is misconduct and triggers a shift in burden to the State which must "rebut the resulting presumption of prejudice." *Id.*

In the instant case, Juror No. 8 tried to inform the Court directly and has now filed an affidavit describing how *multiple* other jurors repeatedly discussed the facts of the case in violation of their oaths as jurors and the Court's explicit instructions. She also gave several specific examples of the evidence that they were discussing, all of which questioned the credibility of Mr. Goodman's defense. On these allegations alone, it is clear that *Gray*, *Williams* and Ramirez support a finding of juror misconduct and require a thorough investigation.

But there is more. Juror No. 8's affidavit also reveals that Mr. DeMartin's dismissive hand gesture and comment to Juror No. 5 where *not* about the button episode. In other words, both Mr. DeMartin and Juror No. 5 lied to the Court in order to conceal their misconduct in the courtroom. These troubling allegations cannot simply be swept under the rug. Indeed, Mr. DeMartin's alleged mendacity would, standing alone, be enough to warrant a new trial. *See Young v. State*, 720 So.2d 1101, 1103 (Fla. 1st DCA 1998) (reversing Circuit Court for refusing to conduct an inquiry into whether a juror lied during voir dire, holding that "[a]ny juror who conceals a material fact that is relevant to the controversy is guilty of misconduct," remanding for a hearing and holding that "[i]f the court finds that the juror did conceal this information, then appellate is entitled to a new trial").

C. The Biased Deliberations Due To Mr. Goodman's Wealth

Both the Florida and United States Constitutions guarantee a criminal defendant the right to a "fair trial by a panel of impartial, 'indifferent' jurors. The failure to accord an accused a fair hearing violates even the minimal standards of due process." *Irvin v. Dowd*, 366 U.S. 717, 722, 81 S. Ct. 1639, 6 L. Ed. 2d 751 (1961) (internal citations omitted). The touchstone of a fair trial is an impartial trier of fact – "'a jury capable and willing to decide the case solely on the evidence before it.'" *McDonough Power Equip., Inc. v. Greenwood*, 464 U.S. 548, 554, 104 S. Ct. 845, 78 L. Ed. 2d 663 (1984) (citation omitted). "The obvious difficulty with prejudice in a judicial context is that it prevents the impartial decision-making that both the Sixth Amendment and fundamental fair play require." *United States v. Heller*, 785 F.2d 1524, 1527 (11th Cir. 1986) (reversing jury verdict based on a voir dire of deliberating jurors where the "religious prejudice displayed by the jurors . . . is so shocking to the conscience and potentially so damaging to public confidence in the equity of our system of justice, that we must act decisively to correct any possible harmful effects on this

appellant"); *see also United States v. McClinton*, 135 F.3d 1178, 1185 (7th Cir. 1998) ("The Fifth and Sixth Amendments protect a criminal defendant from a jury's lynch mob mentality through the guarantees of due process of law and trial by an impartial jury.").

Mr. Goodman's motion for a change of venue thoroughly documented how the pretrial publicity in this case created a "lynch-mob mentality" against him primarily because of his wealth. In addition to documenting the dozens of media references to Mr. Goodman as a "millionaire," a "billionaire" and "polo mogul," the motion recounted numerous articles and hundreds of "blogger" comments revealing that the community believed Mr. Goodman would somehow use his wealth to evade justice. Typical of the prejudice displayed by these comments include: "Another rich a** hole believing the rules don't apply to him. This young man died for no reason and this guy wont even go to jail Money talks in this town...." and "The rich & famous seem to think they are above the law! Let's hope this guys [sic] money & connections don't let him get away with it!" *See* Motion For Change of Venue, at p. 59.

During *voir dire*, the jurors in this case were questioned about their potential bias because of Mr. Goodman's wealth. All assured the Court that they could be fair and impartial. *See, e.g.,* Draft Transcripts, March 8, 2012, Vol. 10, pp. 73-74 and Vol. 11, pp. 1-2. However, even the prosecutors knew better. Ass explained in Mr. Goodman's motion for new trial, they repeatedly played the "wealth card," correctly perceiving the impact of such a tactic on a media-primed jury. As the Eleventh Circuit commented under analogous circumstances, "[a] wolf in sheep's clothing is, despite clever disguise, still a wolf." *Heller*, 785 F.2d at 1527 (condemning the prosecutor's attempt to excuse the antisemitic statements of jurors as "teasing" or "jest[ing]"). The jurors' assurances of impartiality were false and it took very little from the prosecutors to remove their

"sheep's clothing" and trigger open discussions of Mr. Goodman's wealth in the jury room. Thus, according to Juror No. 8, "[o]n many occasions" the jurors talked about Mr. Goodman's wealth and "[m]ost of the conversations about money [were] in the context of Mr. Goodman probably being guilty but getting away with it because he has a lot of money." *See* **Exhibit 1**, at p. 3, ¶ 9.

While most statements by jurors during the course of deliberations inhere in the verdict and are not subject to exposure thereafter, comments displaying racial, religious or ethnic bias are not, at least under Florida law, immune. To the contrary, "[w]hen appeals to racial bias are made openly among the jurors, they constitute overt acts of misconduct." *Powell v. Allstate Insurance Co.*, 652 So.2d 354, 357-58 (Fla. 1995). Such conduct also violates "the guarantees of both the federal and state constitutions which ensure all litigants a fair and impartial jury and equal protection of the law." *Marshall v. State*, 854 So.2d 1235, 1241 n. 7 (Fla. 2003) (per curiam), citing *Powell*, 652 So.2d at 358. And, a trial court's failure or refusal to investigate juror bigotry when it comes to light is also reversible error, even when it is not discovered for many years.

For example, in *Marshall*, a prisoner sentenced to death for murder of another prisoner filed a motion for post-conviction relief several years after his conviction, based, in part, on jury misconduct. The motion recited a telephone call that Marshall's attorney received from an unidentified woman "who claimed" that she had been on Marshall's jury. 854 So.2d at 1239. The woman told the attorney that "(1) some jurors decided Marshall was guilty before the trial was over; (2) some jurors told racial jokes about Marshall; (3) some jurors announced during the guilt phase that they were going to vote for a guilty verdict and life sentence because they wanted Marshall to return to prison to kill more black inmates; and (4) some jurors, despite the trial judge's orders forbidding it, read and discussed articles concerning the trial." *Id.* Although the unidentified woman

caller did not supply an affidavit, 11 years after the conviction, the Supreme Court of Florida found the attorney's allegation sufficient to reverse the trial court's summary denial of post-conviction relief. *Accord Powell*, 652 So.2d at 358; *Wright v. CTL Distribution, Inc.*, 650 So.2d 641, 643 (Fla. 2d DCA 1995). *See also Turner v. Stime*, 153 Wn. App. 581, 222 P.3d 1243 (2009) (affirming new trial order where jurors reportedly made anti-Japanese comments about party's attorney); *State v. Santiago*, 245 Conn. 301, 715 A.2d 1, 22 (Conn. 1998) (requiring "an extensive inquiry" when reports of jurors making racial epithets are made); *Comm. v. Laguer*, 410 Mass. 89, 97, 571 N.E. 2d 371, 376 (1991) (requiring a hearing about ethnic slurs against Hispanics to determine whether the defendant received a trial by an impartial jury).[16]

While these cases involved juror prejudice based on race, religion or ethnicity, permitting a verdict to stand that is tainted by class or wealth bias is equally reprehensible – and unconstitutional. "[A]ppeals to class prejudice are highly improper and cannot be condoned *and trial courts should ever be alert to prevent them*." *United States v. Socony-Vacuum Oil Co.*, 310 U.S. 150, 239, 60 S.Ct. 811, 84 L.Ed. 1129 (1940) (emphasis added). If "such appeals ... have no place in a *courtroom*," *United States v. Stahl*, 616 F.2d 30, 33 (2d Cir. 1980) (emphasis added), they certainly have no place in the *jury room*. Since Mr. Goodman was not "'charged ... with being wealthy," his "station in life" should have had no bearing on his guilt or innocence. *Sizemore v. Fletcher*, 921 F.2d 667, 671 (6th Cir. 1990) (citation omitted). "Unfortunately, inherent in our system of trial by jury is always a danger the jury will be influenced by the wealth or power or one party or another or sympathy for

[16] Although the federal courts are split on the issue, several circuits adhere to the views of the Supreme Court of Florida in *Marshall* and *Powell*, requiring hearings into these types of allegations. *See United States v. Villar*, 586 F.3d 76, 87 (1st Cir. 2009); *United States v. Henley*, 238 F.3d 1111 (9th Cir. 2001); *Heller*, 785 F.2d at 1527; *Wright v. United States*, 559 F. Supp. 1139, 1151 (E.D.N.Y. 1983); *Tobias v. Smith*, 468 F. Supp. 1287, 1289-90 (W.D.N.Y. 1979). *Contra United States v. Benally*, 546 F.3d 1230, 1236-37 (10th Cir. 2008).

a party's weakness, poverty or misery.... It is essential to avoid this risk." *Batlemento v. Dove Fountain, Inc.*, 593 So.2d 234, 242 (Fla. 5th DCA 1991). The Court did not take adequate steps to "avoid this risk" before or during the trial.

Although the outcome in this case was, unfortunately, predictable, it is not too late for the Court to do something about it. The Court must now, as in *Marshall*, permit a thorough airing of this matter. If what Juror No. 8 reports is true, "the jury's verdict would be an affront to our system for the administration of justice. The people cannot be expected to respect their judicial system if its judges do not, first, do so." *Heller*, 785 F.2d at 1529.

D. The Jury's Disobedience About Avoiding the Media

Yet another strain of jury misconduct exposed by Juror No. 8 was the jury's apparent disobedience of the Court's repeated admonitions to avoid the media. The only plausible explanation for how the jurors all knew that Juror No. 8 was an alternate was that they were reading about the case in *The Palm Beach Post* and/or other media outlets.

As the Supreme Court of Florida established in *Marshall*, "an allegation that jurors read newspapers contrary to the court orders [does] not inhere in the verdict" but rather constitutes the "receipt by jurors of prejudicial nonrecord information" which "constitutes an overt act subject to judicial inquiry." *Marshall*, 854 So.2d at 1241-42, citing *Sentinel Communications Co. v. Watson*, 615 So.2d 768, 772 (Fla. 5th DCA 1993), and *Baptist Hosp. v. Maler*, 579 So.2d 97, 100-01 (Fla. 1991). *See also Simmons v. Blodgett*, 910 F. Supp. 1519 (W.D. Wash. 1996) (noting that state court had held an evidentiary hearing on juror misconduct based on a statement by a juror that she had read numerous newspaper articles about the case during the trial), *aff'd*, 110 F.3d 39 (9th Cir. 1997).

Accordingly, this proof of misconduct is an independent basis for the Court to conduct jury interviews.

E. Juror DeMartin's Concealed Conflict of Interest

The Sixth Amendment to the United States Constitution requires jurors to both impartial and "indifferent" about the outcome. *See* . *Irvin v. Dowd*, 366 U.S. 717, 722, 81 S. Ct. 1639, 6 L. Ed. 2d 751 (1961). For this reason, a juror's deliberate failure to disclose a potential source of bias is itself grounds for disqualification. *See McDonough Power Equip.*, 464 U.S. at 554; *United States v. Perkins*, 748 F.2d 1519, 1533 (11th Cir. 1984)(internal citations omitted). Although neither the prohibitions against juror bias nor the procedures designed to eliminate it are new, the form of bias exhibited by Mr. DeMartin is a recent phenomenon, and it has yet to spawn many precedents.[17] However, in the wake of highly publicized trials, including those of Rodney King, Amy Fisher, the Menendez brothers and O.J. Simpson, the problem of "juror journalism" has begun to attract the attention of commentators, *see* Marcy Strauss, *Juror Journalism*, 12 YALE L. & POLICY REV. 389 (1994) (hereinafter "STRAUSS"), and state legislatures.[18] As Strauss warns, "[t]he expanding practice

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[17] In *United States v. Abbell*, 271 F.3d 1286, 1301 (11th Cir. 2001), the court held that a juror's mere "plan" to write a book in the future was not an "outside influence" that constituted misconduct. And, in *State v. Smart*, 136 N.H. 639, 622 A.2d 1197, *cert. denied*, 510 U.S. 917 (1993), the defendant alleged that a juror had made audiotapes of her recollections of a trial for the purpose of selling them after trial for profit. Her claim was rejected after an evidentiary hearing revealed that the tapes "became the subject of possible sale only after offers *by the defendant's attorneys* to buy them." 622 A.2d at 1211 (emphasis added). Mr. DeMartin's conduct cannot be similarly excused.

[18] *See also* James Cady, *"Checkbook Journalism": A Balance Between the First and Sixth Amendments In Highprofile Criminal Cases*, 4 WM. & MARY BILL OF RTS. J. 671 (1995); Brent Ashby, *Juror Journalism: Are Profit Motives Replacing Civic Duty*, 16 PEPP. L. REV. 329 (1989); Kenneth Jost, *The Dawn of Big Bucks Juror Journalism*, LEGAL TIMES, July 20, 1987, at p. 15; Michael Freitag, *In the Right Case, Jury Duty Can Pay*, *New York Times*, Nov. 22, 1987, at pp. 4, 9; Marcia Chambers, *Little Room on Juries for Profit Motive*, NAT'L L. J., Jan. 25, 1988, at p. 13; Alex S. Jones, *Juror's Attempt to Sell Story Raises Ethics Issues*, *New York Times*, Dec. 24, 1987, at p. B3.

New York, New Jersey and California all now prohibit jurors from entering into contracts with the media to sell their stories about cases in which they have served for various periods of time after their service has concluded. *See* N.Y.

(continued...)

of cameras in courtrooms, the public's voracious appetite for crime stories and real-life dramas, the proliferation of talk shows encouraging jurors to reveal the inside details about sensational trials – all these operate to ensure an ever-expanding number of persons seeking to use their jury experience for personal gain." STRAUSS, 12 YALE L. & POL'Y REV. at 394 (footnotes omitted).

While counsel have found few reported decisions in which *a juror* sought to exploit his or her service for personal financial gain by writing a book or movie about the case in which he or she has served, in the analogous context of attorney conflicts, the law is settled. Courts,[19] scholars[20] and bar organizations[21] have uniformly denounced the execution of literary and media rights fee

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[18](...continued)
Penal Law § 215.28 (McKinney Supp. 1998); N.J. Stat. Ann. 2C:29-8.1 (West 1998); Cal. Pen. Code § 116.5 (1997).

[19] *See, e.g., United States v. Hearst*, 638 F.2d 1190, 1197-98 (9th Cir. 1980) ("all courts before which the issue has been raised have disapproved the practice of attorneys arranging to benefit from the publication of their clients"), *cert. denied*, 451 U.S. 938 (1981); *People v. Corona*, 80 Cal. App. 3d 684, 720, 145 Cal. Rptr. 894, 915 (Cal. Ct. App. 1978) (ordering retrial of mass murderer, where the "literary rights contract [resulted in] trial counsel [who] was devoted to two masters with conflicting interests – [the attorney] was forced to choose between his own pocketbook and the best interests of his client, the accused").

[20] *See, e.g.,* Mark R. McDonald, *Literary-Rights Fee Arrangements in California: Letting the Rabbit Guard the Carrot Patch of Sixth Amendment Protection and Attorney Ethics?*, 24 LOY. L.A. L. REV. 365 (1991); Note, *Publication Rights Agreements In Sensational Criminal Cases: A Response To the Problem*, 68 CORNELL L. REV. 686 (1983); Note, *Conflict of Interests When Attorneys Acquire Rights to the Client's Life Story*, 6 J. LEGAL PROF. 299, 306 (1981) (discussing several cases in which, with only one exception, courts have recognized the Code of Professional Responsibility's prohibition against publication rights agreements).

[21] For example, Rule 4-1.8(d) of the Rules Regulating the Florida Bar provides:

> **(d) Acquiring Literary or Media Rights**. Prior to the conclusion of representation of a client, a lawyer shall not make or negotiate an agreement giving the lawyer literary or media rights to a portrayal or account based in substantial part on information relating to the representation.

Accord American Bar Ass'n Standards for Criminal Justice, Standard 4-3.4 (2d ed. 1980); American Bar Ass'n, Model Code of Professional Responsibility, DR 5-104(B); American Bar Ass'n, Model Rules of Professional Conduct, Rule 1.8(d). The Texas Bar Association views media contracts as being so rife with conflict that even client consent will not cure a violation of the prohibition against them. Robert P. Schuwerk & John F. Sutton, Jr., *A Guide to the Texas Disciplinary Rules of Professional Conduct*, 27 HOUS. L. REV. 133, 134 (1990).

arrangements between attorneys and their clients during the pendency of the representation and even after the representation.[22]

Such agreements are "offensive" because they "encourage counsel to misuse the judicial process for the sale of his personal enrichment and publicity-seeking, and [they] necessarily trade[] on the misery of the victim and his family." *Beets v. Scott*, 65 F.3d 1258, 1273 (5th Cir. 1995) (en banc), *cert. denied*, 517 U.S. 1157 (1996). In other words, such agreements create "a conflict between the interests of the client and the personal interests of the lawyer." Comment, *Literary Rights*, Rule 4-1.8(d), Rules Regulating the Florida Bar, THE FLORIDA BAR JOURNAL, September 1998. *See also Beets v. Scott*, 65 F.3d at 1285-86 (King, J., dissenting) (citations omitted).

"Juror journalism" threatens the criminal justice system in much the same way as "attorney journalism" does, and both are likely to occur only in criminal cases already exposed to intense publicity. *See* STRAUSS, 12 YALE L. & POL'Y REV. at 390 ("the cases where jurors are most likely to attempt to profit from their service are the most visible, and thus the ones most likely to influence the public's perception of the justice system"). However, *juror* journalism poses the greater danger, because of the secrecy surrounding the deliberative process. A defense lawyer's representation is open for all to see and evaluate;[23] a juror's conduct in fulfilling his or her obligations of service are hidden even from the Court. Moreover, a juror with a "hidden agenda" of profiting from the experience can disrupt the process in at least four insidious respects.

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[22] *See Neelley v. Nagle*, 138 F.3d 917, 926 (11th Cir. 1998) (attorney's plan to write a book about client's case during trial and execution of media contract three months after trial "represent a serious violation of Alabama's ethics rules"). *Cf. Zamora v. Dugger*, 834 F.2d 956, 961 n. 4 (11th Cir. 1987) (no violation where attorney did not negotiate book contract until one year after trial).

[23] For this reason, ineffective assistance claims based upon the conflict of interest presented by an attorney's media contract frequently fail on the merits due to an inability to show prejudice from the conflict. *See, e.g., Beets v. Scott*, 65 F.3d at 1266, 1273-74.

First, a juror desiring to serve on a particular jury "because he or she believes it may be financially profitable" may, when questioned during *voir dire*, be less than candid in an effort to maximize "his or her chances of being selected for the jury." STRAUSS, at 395. "Thus, the profit motive may cause potential jurors to evade or deceive to get onto a high profile jury." *Id.* at 396 (footnote omitted).

Second, a juror's profit motive may "distort the juror's perception of the testimony during the course of the trial." *Id.* at 399. Consciously or subconsciously, a juror may hear and remember testimony, not for its value in determining the defendant's guilt or innocence, but for its "dramatic" value. *Id.* "Instead of participating in the trial only as a juror sworn to fairly and unbiasedly listen to all sides," such a juror is "in the role of a journalist and profiteer, seeking the 'truth' that most effectively sells a story." *Id.* at 400. There is probably no method for objectively evaluating, in any particular case, how the existence of such conflicting motives warps a juror's ability to serve and, hence, should simply be presumed.[24]

Third, the juror journalist may "attempt, consciously or subconsciously, to manipulate the deliberations and the verdict to ensure an outcome most conducive to the selling of the story." *Id.* at 401. In cases involving sensational criminal cases, the most profitable verdict – the one most likely to appease the public, please the media, maximize potential profits and elevate the juror to "talk show" status – requires that the defendant be convicted, not acquitted. Columnist Art

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[24] In *Estes v. Texas*, 381 U.S. 532, 547 (1965), the Supreme Court denounced the use of televised trials for similar reasons:

> The impact upon a witness of the knowledge that he is being viewed by a vast audience is simply incalculable. Some may be demoralized and frightened, some cocky and given to overstatement.... Embarrassment may impede the search for truth, as may a natural tendency toward overdramatization.... There is little wonder that the defendant cannot "prove" the existence of such factors. Yet we all know from experience they exist.

Buchwald accurately captured this concept in his comical description of an attorney's conflict of interest due to a media contract:

> This fictitious conversation could take place in many states where a canon forbidding a defense lawyer from sharing in literary rights does not exit:
>
> "Lefty, as you know, we're in the second week of the trial, and I think I've made a pretty strong case for you."
>
> "I ain't complaining. You gave the D.A. a run for his money. I got a feeling the jury is going to come back with a not guilty verdict."
>
> "That's what my editor thinks, too, Lefty. Originally, when we worked out the outline of the book, we thought it would make a better story if I got you off at the end. But now that the press keeps referring to our case as the 'Crime of the Century,' we believe it would be better if you got the electric chair."
>
> "Are you crazy or something? Why would it be better if I got the chair?"
>
> "It's more dramatic if, after a great defense, the jury still finds you guilty. A 'Not Guilty' verdict makes the book anti-climatic and a big letdown, particularly if we're going for a 'Book-of-the-Month' deal."
>
> "Wait a minute. I don't mind you taking your fee out of the literary rights to my trial, but I don't want to fry for it."
>
> "Listen, Lefty, when you came to me, you didn't have a dime. You chose me because I was the best criminal lawyer in the country. But I'm not in this business for my health. I don't want you to go to the chair any more than you do. But if I don't make any money out of this book, I'll have wasted six months of my time."
>
> "Can't you figure out some other way of ending the book without me going to the chair?"
>
> "I could get you life, but every major Hollywood studio is interested in making a movie from the trial. We can't make a big deal unless you get capital punishment. My agent said the difference between you getting life and the chair is worth half a million bucks."
>
> "So what are you going to do?"
>
> "I've got to persuade the jury in my summing up that all our witnesses have been lying through their teeth, and society would be much better off if you paid the ultimate price for your heinous crime. But I have to be subtle about it. I don't want to hurt my reputation in the legal profession."

> "I think the whole thing stinks."
>
> "Look, Lefty, I'll even throw in an appeal to the Supreme Court for nothing for you. But my first obligation is to my publishers. After all, they're the ones who are paying me."
>
> "I could have done better with a public defender."
>
> "You know you don't honestly believe that, Lefty. Have you ever heard of a public defender who has won a Pulitzer Prize?"

Buchwald, *Defense for Dollars*, THE WASH. POST, April 14, 1981, at B1, col. 1.

We respectfully submit that the evidence suggests that Mr. DeMartin may have engaged in similarly cynical reasoning in this case. A verdict of "not guilty" would hardly have endeared Mr. DeMartin to the public or, more importantly, to Simon & Schuster. However, even if it might be hard to assess whether a "guilty" or "not guilty" verdict would be more profitable,[25] "it is fairly obvious ... that a hung jury would not be very saleable. Thus, a juror might decide to go along with one side or another simply to ensure that some resolution is reached for the sake of the story." STRAUSS, 12 YALE L. & POL'Y REV. at 402.

Fourth, a juror with a literary conflict poses the additional danger of spreading the taint to other members of the jury:

> Juror journalism risks not only the integrity of the juror seeking profit; it may also impose on the other jurors as well. Most significantly, the knowledge (or even belief) that a member of the jury is writing or planning to write about the trial may inhibit the frank and open exchange of ideas in deliberations. Jurors may be reluctant to express minority or unpopular views if they believe that such opinions will be aired to the public.

[25] Ultimately, the critical issue is "not whether the juror might correctly assess the most profitable verdict" but whether the juror "believes one [verdict] is more likely than the other to be profitable." STRAUSS, 12 YALE L. & POL'Y REV. at 402.

Id. at 402. *See generally Clark v. United States*, 289 U.S. 1, 13 (1933) ("freedom of debate might be stifled and independence of thought checked if jurors were made to feel that their arguments and ballots were to be freely published to the world").

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

Mr. DeMartin's conflict of interest, therefore, is an independent basis for granting a new trial. The Court should convene an evidentiary hearing concerning Mr. DeMartin's conduct prior to sentencing. *See Buenoano v. Singletary*, 963 F.2d 1433, 1438-39 (11th Cir. 1992) (remanding for evidentiary hearing in death penalty case on whether fee arrangement that gave first $250,000 of book and movie contract to the attorney created an actual conflict and an adverse effect); *Hearst*, 638 F.2d at 1193-94 (remanding for a hearing on whether F. Lee Bailey's book contract with Patty Hearst created an actual conflict of interest).[26]

[26] In *Buenoano*, the Eleventh Circuit actually remanded for a *second* evidentiary hearing, finding that the district court had improperly denied the defendant's ineffectiveness claim after an initial hearing where only the testimony of defense counsel was entertained. Counsel had testified that "he did not conceive of the contract idea until after the guilt phase of the trial and shortly before the penalty phase." *Buenoano*, 963 F.2d at 1439. Despite this testimony, the Eleventh Circuit held that "a full evidentiary hearing" was required. *Id.*

CONCLUSION

For the foregoing reasons, the Defendant respectfully requests that this Court convene a hearing to interview the jurors under Rule 3.575 and, thereafter, order a new trial.

Respectfully submitted,

BLACK, SREBNICK, KORNSPAN, & STUMPF, P.A.
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By:
ROY BLACK, ESQ.
Florida Bar No. 126088
MARK A.J. SHAPIRO, ESQ.
Florida Bar No. 897061
Counsel for John B. Goodman

AFFIDAVIT OF JOHN B. GOODMAN

I, John B. Goodman, being of sound mind, after being properly sworn, state that I have read the foregoing and, under penalty of perjury, I swear that the factual assertions contained therein are true and correct, that there has not yet been a direct appeal of my conviction, that there has not been any previous post-conviction motions filed – other than the motion for new trial that the Court recently denied and, for the reasons set forth in the instant motion, the claims presented herein could not have been raised in my original motion for new trial.

JOHN B. GOODMAN

SWORN TO AND SUBSCRIBED before me this 15th day of April, 2012, ~~at Miami, Dade~~ Palm Beach County, Florida.

NOTARY PUBLIC, STATE OF FLORIDA

NOTARY PUBLIC-STATE OF FLORIDA
Guy P. Frenstin

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on April 16, 2012, my office hand-delivered a true copy of the foregoing to:

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

By: _____
Mark A.J. Shapiro, Esq.

EXHIBT 1

IN THE CIRCUIT COURT OF THE 15TH JUDICIAL CIRCUIT
OF FLORIDA, IN AND FOR PALM BEACH COUNTY

STATE OF FLORIDA, Plaintiff,	:	Case No. 2010CF005829AMB JUDGE JEFFREY COLBATH
v.	:	
JOHN GOODMAN, Defendant.	:	

AFFIDAVIT OF [redacted]

1) My name is [redacted] I was alternate juror number 8 in the case of State of Florida v. John Goodman.

2) Following my service from jury duty, I wanted to expose some things about specific jury conduct that I believe were wrong.

3) My first thought was to contact Judge Colbath's office. I made two attempts to speak with Judge Colbath by leaving a message, but to my knowledge, neither of my calls was returned. I did leave a message with a woman who answered the phone in his office on one of the two occasions.

4) On April 4, 2012, not having heard back from Judge Colbath's office, I contacted the attorneys for Mr. Goodman and left a message for them that I wanted to discuss what went on with the jury during the trial.

5) At approximately 11:30 a.m. on April 4th, I spoke with Mr. Joshua Dubin, one of Mr. Goodman's attorneys. I told Mr. Dubin the reason for my call. After discussing the details with Mr. Dubin, I told him that I could be reached later that evening if Mr. Black wanted to speak with me. Later that evening, I received a call from Mr. Black and Mr. Shapiro. I told them the details of what occurred during the trial.

6) Even though we were told not to discuss the case between ourselves until the end of the trial, the jury often discussed witness testimony and other evidence throughout the trial.

7) Specific issues in the trial were discussed openly prior to deliberations. For example, there were discussions about how anyone could have an accident and then go and drink. There were discussions about why Mr. Goodman did not first call 911, and questions about why he did not stop at the stop sign. There were also questions and comments about who took the videotape of the drive from the Players' Club and how Mr. Goodman could have passed his own driveway on 120th Avenue.

8) We all had things to say about the trial as it progressed each day. On one occasion I reminded the jury that we had been instructed by the Court not to discuss the case until the end. In reply, I was teased by being asked by another juror if I had a crush on Mr. Goodman.

9) On many occasions, members of the jury would make mention of Mr. Goodman's wealth. Some of the comments were in the context of having enough money to hire good lawyers. I do not remember specifics about other comments about Mr. Goodman's wealth, but his money was mentioned several times in discussions between jurors. Most of the conversations about money was in the context of Mr. Goodman probably being guilty but getting away with it because he has a lot of money. Although no one specifically used the word "guilty."

10) Before the end of the trial, some of the jurors were saying that they had to finish this case by Friday, March 23rd, because they did not want to return the following Monday. The jurors said that we were not going to go into the next week. One of the jurors said he had a boating trip planned for the weekend and had to be finished by Friday. Based on the negative talk about Mr. Goodman's wealth and the issues discussed about the case, it was clear to me that these jurors had already made up their minds before Thursday, March 22nd.

11) During the afternoon break on Thursday, March 22nd, juror number 6 (Dennis DeMartin) was called back into court while the rest of us were in the jury room. When he returned, he told all of us that he was asked about waving his hand during the testimony of the State's Bentley expert. He told us that he told the Court that he waived his hand because he found his button that he had lost the day before. Mr.

DeMartin told juror number 5 what he told the judge prior to her coming in and reporting the same thing after the break.

12) Mr. DeMartin's explanation to the Court was not true. Mr. DeMartin lost his button the previous morning and found it early the next day. He showed me his button when he found it. He found the button well in advance of his waiving gesture. Mr. DeMartin's waiving gesture had nothing to do with his button. I believe that Mr. DeMartin's gesture was an expression of his disdain for Mr. Goodman and the defense team.

13) Mr. DeMartin also told us that he was writing a book about the trial. He would frequently tell us that he wrote down what happened in court each day, and all the jurors knew about it.

14) I knew that the pre-deliberation discussions the jury was having about the trial, and Mr. DeMartin's story to the Court were wrong. I wanted to tell the Court but did not want to be the one to tell. We had an understanding that whatever we discussed in the jury room during the trial would remain between us.

15) I also did not come forward immediately because everyone on the jury was telling me that I was an alternate. As an alternate, I did not believe I had as much a right as the other jurors to bring this to the Court's attention.

16) After discussing the details given above with Mr. Black and Mr. Shapiro, they prepared this affidavit, and reviewed it with me for accuracy.

Further Affiant sayeth not.

I, [redacted] to swear that the foregoing statements are true and correct to the best of my knowledge and belief.

[redacted]

STATE OF FLORIDA)
)
COUNTY OF PALM BEACH)

BEFORE ME, the undersigned authority, did appear [redacted] who first being sworn did thereafter attest that the foregoing statements in this affidavit are true and correct to the best of her knowledge and belief.

Witness my hand and seal in the State and County aforesaid, this 11th day of April, 2012.

Wanda Gomez
Notary Public

My Commission Expires:

WANDA GOMEZ
MY COMMISSION # EE 115012
EXPIRES: November 22, 2015
Bonded Thru Budget Notary Services

___ Personally known
✓ Produced Identification D450 753 47 927 0

EXHIBT 2

The Palm Beach Post

Jurors seated in Goodman trial; possible defense strategy revealed

Reporter Daphne Duret's live updates from Day 3:

John Goodman trial - Day 3 (03/08/2012)

Thursday March 8, 2012

8:35  **Daphne Duret:** Back in court for day three of jury selection in the Goodman case. Defense has asked to question the 38 remaining jurors individually.

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8:37  **Daphne Duret:** "There is a circus atmosphere developing outside this courtroom," said attorney John Dubin. "It's difficult to avoid. And I don't think we're going to get to some of these latent biases until we go through the jurors one by one."

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8:39  **Daphne Duret:** CIrcuit Judge Jeffrey COlbath denies the request for now. "If it gets to the point where it becomes problematic I'll revisit your request," he said.

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8:42  **Daphne Duret:** Change in seating arrangement at the defense table. Attorney Roy Black is now at the head of the table Josh Dubin and Mark Shapiro are in the middle and GOodman is seated at the end of the table closest to the gallery. Attorney Guy Fronstin is still seated near the door leading to tthe court holding cell.

Share

8:42 **Comment From John**

is this because the potential Jurors are waiting outside the courtroom & anyone in the

COVER IT LIVE

See trial chat archives, more

By**DAPHNE DURET**

Palm Beach Post Staff Writer

Updated: 10:56 a.m. Friday, March 9, 2012
Posted: 7:23 p.m. Thursday, March 8, 2012

Wellington polo magnate John Goodman's Bentley convertible could have malfunctioned just before the crash that killed 23-year old Scott Wilson.

He could have suffered a concussion, other brain injury or amnesia that caused him to leave the scene of the crash and start drinking afterward to soothe his pain before he called 911 nearly an hour later.

These scenarios have surfaced as possible defenses his team will argue to the five men and one woman who on Tuesday will begin hearing testimony in Goodman's trial for DUI manslaughter and leaving the scene of an accident in Wilson's February 2010 death.

Prosecutors and Goodman's lawyers picked the panel - along with two female alternates - at the end of three days of jury selection Thursday in the trial of the Texas heir, who founded Wellington's International Polo Club. Questions to prospective jurors from Goodman's famed Miami attorney Roy Black provided a glimpse into his team's strategy.

[illegible] with the term 'sudden acceleration' in cars?" Black asked the prospective jurors Thursday.

"Do you think that the more expensive a car is, the less chance there could be for a malfunction?" he continued.

Prosecutor Sherri Collins objected. She and prosecutor Ellen Roberts joined Black, Goodman, and the rest of Goodman's legal team at Circuit Judge Jeffrey Colbath's bench to argue the issue. Colbath ultimately sided with prosecutors, and Black eventually abandoned the question.

Black continued by asking the jurors if they were familiar with the idea of someone having a few drinks to relieve pain. A few hands went up this time.

Collins continued to object to Black's questions, and in most cases Colbath agreed and told Black to move on.

By afternoon's end the lawyers had picked a jury panel that includes two construction managers, an electrician whose wife is a school principal, a South Florida Water Management District worker and two retirees – a former accountant who boasted he's only received three speeding tickets in more than 50 years as a driver and a retired biology teacher who also coached football.

The two alternates are a woman who directs field trips for a preschool for low-income families and another woman who spends her time volunteering.

Black renewed his request for a change of venue after they picked the jury, but Colbath again denied the request.

During the two week trial the jury will hear testimony about how Goodman spent his time both before and after the crash. Prosecutors will likely say that Goodman partied with friends at the Players Club following a charity event at the White Horse Tavern, buying rounds of expensive tequila shots and other drinks he shared before he climbed into his Bentley.

The car eventually collided with Scott Wilson's Hyundai, flipping it into a canal where the University of Central Florida engineering grad died.

According to reports in the case, Goodman said he went to the barn of friend Kris Kampsen after the accident. Goodman's defense team could argue that he had drinks there after the crash to calm his nerves or to soothe the pain from a concussion or other injury. Among those on the defense witness list is a hand and wrist orthopedic surgeon from Miami.

Defense attorney Gregg Lerman, who was in the courtroom briefly during jury selection Thursday, said if the defense wants to prove that Goodman drank after the crash, they would have to show that he had been drinking quite a bit to explain his blood alcohol level being at .177 percent - twice the level at which a driver is legally presumed to be impaired - when his blood was drawn some three hours after the crash.

But Lerman pointed to Black's reputation as one of the best criminal defense attorneys in the country.

"If anyone can win this case, Roy Black can," he said.

Black and Roberts, a veteran homicide prosecutor who also was part of a team that faced off against Black in the 1990s rape trial of Kennedy cousin William Kennedy Smith, will deliver their opening statements to jurors on Tuesday.

The panel could decide the case in two weeks. If convicted, Goodman faces up to 30 years in prison. A trial in the wrongful death suit Wilson's parents filed against Goodman is expected to begin at the end of the month.

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8:42 Comment From John

See trial chat archives, more

Lannis Waters/Palm Beach Post

ENLARGE PHOTO

John Goodman listens to Judge Jeffrey Colbath speak to the jury selected to serve on the his DUI manslaughter trial on Thursday, March 8, 2012.

Lannis Waters/Palm Beach Post

ENLARGE PHOTO

Defense attorney Roy Black speaks to potential jurors during the third day of jury selection in John Goodman's DUI manslaughter trial onThursday, March 8, 2012

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Jurors find Goodman guilty of DUI manslaughter; Wellington polo mogul taken into custody

► Attorney's eloquence couldn't beat evidence in Goodman case

By**DAPHNE DURET**
Palm Beach Post Staff Writer

Updated: 10:56 a.m. Friday, March 9, 2012
Posted: 7:23 p.m. Thursday, March 8, 2012

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"Is anyone familiar with the term 'sudden acceleration' in cars?" Black asked the prospective jurors Thursday.

About nine hands went up.

"Do you think that the more expensive a car is, the less chance there could be for a malfunction?" he continued.

Prosecutor Sherri Collins objected. She and prosecutor Ellen Roberts joined Black, Goodman, and the rest of Goodman's legal team at Circuit Judge Jeffrey Colbath's bench to argue the issue. Colbath ultimately sided with prosecutors, and Black eventually abandoned the question.

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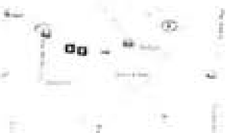

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Defense strategy previewed in selecting jury for Goodman manslaughter trial

March 08, 2012 | By Peter Franceschina, Sun Sentinel

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Prosecutors repeatedly objected to Black's line of questions. They objected to the car-crash questions and when Black asked if anyone had suffered a concussion and memory loss.

Black's questions also suggest one defense for Goodman may be that he suffered a concussion in the crash and did not have his wits about him afterward. Black also asked if jurors ever had suffered "temporary amnesia."

Palm Beach Circuit Judge Jeffrey Colbath cut off that line of questions after prosecution objections. The judge told Black he was improperly trying to "condition" jurors. "That's where I lose my patience," Colbath said.

By the end of the day, a jury was seated — five men and one woman, all middle-age or older. The two alternates are women. The judge has largely shielded their personal information because of heavy media coverage.

Opening statements are set for Tuesday morning, and prosecutors have said they expect their case to take up to five days. The defense plans to put on several days of testimony.

The focal point of the trial will be how much Goodman had to drink and when, with competing experts testifying to his blood-alcohol level at the time of the crash.

A wrongful-death suit filed against Goodman by Wilson's parents, William and Lili Wilson, is scheduled to begin in late March, after the conclusion of the criminal trial.

Several prospective jurors said they were familiar with media coverage of that case, including recent reports concerning Goodman's adoption of his 42-year-old girlfriend, making her a beneficiary of a $300 million trust for his two minor children.

pfranceschina@tribune.com, 561-243-6605 or Twitter @pfranceschina

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March 08, 2012 | By Peter Franceschina, Sun Sentinel

The first hint of polo mogul John Goodman's defense to a DUI-manslaughter charge emerged Thursday in the third and final day of jury selection.

Miami defense attorney Roy Black repeatedly quizzed prospective jurors on their attitudes about drinking and then driving immediately afterward, whether they had heard of a car malfunctioning while being driven and made reference to "sudden acceleration in cars."

Black also asked jurors about "temporary amnesia" and if they ever had suffered a concussion and, afterward, did not know what they were doing.

"What if you have a couple of drinks right before you drive and you're not impaired or above the lawful limit," Black asked one prospective juror.

A number of prospective jurors agreed that it was not illegal for them to drive after a few drinks if they were not impaired or above the legal blood-alcohol limit of .08 percent.

Black also asked if anyone would call a loved one after an emergency rather than call 911.

All of those questions reflected on aspects of the Goodman case.

Prosecutors say Goodman, 48, was driving his Bentley convertible at 63 mph south on 120th Avenue in Wellington and ran a stop sign at Lake Worth Road, smashing into a Hyundai driven by Scott Wilson, 23, who was on his way home from Orlando to visit family.

The crash happened around 1 a.m. Feb. 12, 2010. Prosecutors allege that in the hours before the crash Goodman — the founder of Polo Club International Palm Beach — had been drinking at two Wellington watering holes that cater to the polo community.

The impact flipped Wilson's car upside down into a canal and he drowned. Goodman was charged with DUI-manslaughter and vehicular homicide while failing to render aid. He faces up to 30 years in prison if convicted.

After the crash, Goodman left the scene. He ended up at a nearby trailer, where he used a woman's cell phone to call his girlfriend in Atlanta before calling 911, about an hour after a passerby first reported the crash, according to court records.

Three hours after the crash, Goodman's blood-alcohol level was measured at .177 percent, more than twice the legal limit to drive.

In his questions, Black suggested that Goodman may only have had a few drinks before the crash. The defense has a blood-alcohol expert who could testify that Goodman's blood-alcohol level was on the rise in the hours following the crash.

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pfranceschina@tribune.com, 561-243-6605 or Twitter @pfranceschina

Legal wrangling continues over polo mogul's wealth, adoption of girlfriend

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Jurors chosen for Houston millionaire's DUI trial

Jurors have been chosen for the Florida DUI manslaughter trial of Houston millionaire John Goodman, reports the SunSentinel.

During the last day of jury selection on Thursday, the polo mogul's defense team hinted at what might be used at his trial.

> Miami defense attorney Roy Black repeatedly quizzed prospective jurors on their attitudes about drinking and then driving immediately afterward, whether they had heard of a car malfunctioning while being driven and made reference to "sudden acceleration in cars."
>
> Black also asked jurors about "temporary amnesia" and if they ever had suffered a concussion and, afterward, did not know what they were doing.
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> "What if you have a couple of drinks right before you drive and you're not impaired or above the lawful limit," Black asked one prospective juror.

Goodman, who faces up to 30 years in prison if convicted, is accused of driving drunk in the early hours of Feb. 12, 2010, and crashing his Bentley into a Hyundai sedan after running a stop sign. The sedan was driven by 23-year-old Scott Wilson, who was headed back home after visiting family in Orlando.

The impact of the crash flipped Wilson's car upside down into a canal, where he drowned, still strapped to his seat.


Goodman

Goodman allegedly fled the scene to a nearby trailer and used a woman's cell phone to call his girlfriend before calling 911 nearly an hour after a witness reported the accident, the SunSentinel reported.

> Black's questions also suggest one defense for Goodman may be that he suffered a concussion in the crash and did not have his wits about him afterward.

Five men and one woman were selected as jurors. Two additional women will serve as alternates for the trial, which is

Deisy Enriquez
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EXHIBT 3

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

March 20, 2012

Judge Colbath,

I have been writing a book, "The Trials and Tribulations of a Senior Citizen getting a Date without a Car." for about a year and a half. I have been looking for a publisher to help me and suggest a shorter title as this one is too long and no one would read it except my family and close friends. I have asked many people for help and how to get with a publisher. I finally got someone to help me send emails to publishers.

Two pages of my book are **attached** and the other pages deal with each girl in each chapter and the sometimes funny and sometimes sad story that I went through.

For the longest time, I did not receive any replies When I received the jury notice in the mail, I had no idea that I was going to be picked for the John Goodman trial, so after receiving the attached emails yesterday, I sent the responses attached back to them that I could not get back to them for 2 or 3 weeks because I was on jury duty.

When I got home, and checked my phone messages, there were also calls from these companies, but I DID NOT RETURN THEM.

You will also recall that I called family, friends from Highland Beach to ask if they recalled my giving a statement to police in 2001 regarding a motor cycle accident that I saw and forgot about. I DID tell them that I might be picked to be on the John Goodman trial and that the prosecutor's attorneys had found that out in checking on the prospective jurors. They confirmed that while walking in Highland Beach, we did see an accident which I forgot about over the years as I did not know the cyclist and as guess it was forgotten in my mind over the past 10 years.

They new of my stories regarding dating as some of them set me up on the dates. They asked me if I was still trying to get my book published and if I got on the jury, I could write another book. One of them told me that a friend of theirs at Church told them that a cousin of the friend worked in a

publishing company and the friend would give the cousin my name.

I told them that I would continue on my dating book and I would use the dating book as a leader to follow the process of getting it published. If I was successful, with that book, I would consider using the process to writing about the experience of being a juror.

I NEVER talked to anyone in person, but did tell the cousin in an email that I was on the jury for the John Goodman trial in hopes that it would give me a lead in for my dating book.

The jury is aware that I am writing my book on dating without a car as they tease me on breaks when I tell them the story on some of the girls.

I am writing you to let you know that I have now received messages on my phone, which I did not return yesterday and did send and receive emails from a few publishing companies for my dating book in case you feel that the prosecutors and defense attorneys should be aware of.

Sincerely,

Dennis DeMartin

Life is to short to be anything but
HAPPY-- So kiss slowly, Love Deeply,
Forget the past and'
Forgive Everything

I am compassionate
I am gracious
I am friendly
I am loving
I am courteous
I am considerate
I am cordial
I am good hearted
I am hospitable
I am merciful
I am polite
I am tender
I am sociable
I am kind
I am respectable
I am devoted
I am generous
I am giving
I am thoughtful
I am sympathetic
I am tolerant
I am understanding
I am congenial
However, I don't have a car

Searching for a new girlfriend that IS **Revised 3-1-12**
as loving as---------- WAS

Name	Age	1st Date	2nd Date	3rd Date	4th Date	5Th Date
j	52	Turned me down for a date			Said no you don't have a car	
K	64	Turned me down for a date			Said no you don't have a car	
D	53	Movies	Dinner	Dinner at my house	Double Dating	

Afectionate and Caring, but I can't communicate with her Spanish and my English

G	36	Dinner	Very loving, but I didn't know she was that young!			

Greencard--she is separated and husband says she will be deported if divorsed
She was looking for an American to marry her so she could divorce her husband and stay here

L	68	Dinner				

She looks more like 80 and likes to drink

R	63	Dinner and walk Atlantic Ave.			Dinner and walk green cave	

Loving, but she does not want to be with one person And she is rich and likes to gamble

K	57	Dinner and drinks	at irish Bar			

Very Loving and Very Caring, but she is married and smokes and can drink me under the table

K	50	Theater	Dinner	Dinner and show	Cocktail Party	

She is my ex boss--Just Friends, but I feel so at ease with her and enjoy being with her

L	48	Dinner	Stood me up the 2nd time because I asked her co nurse friend out			
S	53	Dinner at my house				

I was going to give up on her but 2 days later a card arrives saying what a good time she had

B	67	Church, Dinner at Lions Club installation, long walks on beach with her and her 3 dogs.				

She can be loving, But she is Bi-Polar and has to take a lot of medicine And mod changes can make heer mean
I know I may be sorry, but I feel needed by someone and
She is so loving and caring and she told me that everyday since we met, so thanks GOD
for me coming into her life.

M	58	She is 1st date that has never been divorced and her husband died 4 years ago				

I scared her when I asked her to come home to see my condo after dinner!
She also likes her Vodka--I don't think I will be seeing her again

************ My friends told me to stop comparing the girls to D
The girls I will keep for a date when I need one are:
D. R. S. and B

Mr. Chandler,

I will get back to you in 2 or 3 weeks. If you don't hear from me in 3 weeks, please call me again

Dennis DeMartin

From: Christine Chandler <cchandler@friesenpress.com>
To: dend3114@yahoo.com
Sent: Monday, March 19, 2012 6:04 PM
Subject: Thank you for contacting FriesenPress

Dear Dennis DeMartin,

Allow me to briefly introduce myself. My name is Christine Chandler and I am a Publishing Consultant. As I mentioned in my voice mail, I would appreciate the opportunity to talk with you in the near future about your book project. Is there a date and time that is good for you?

FriesenPress is a subsidiary of Friesens Corporation, an employee-owned printing company that has been in business for over 100 years. Books such as Harry Potter and the Oxford Dictionary have been on the printing presses at Friesens. We have built a tradition of integrity and trust in the publishing industry throughout the decades and hope to collaborate with you on your book project.

Please take a look at our Author's Guide, which will answer many of your questions. I am also available to answer any questions that you may have. My contact details are below. I look forward to hearing back from you!

Thank you for contacting FriesenPress. Please click on the following link:

http://friesenpress.com/downloads/documents/fp-authors-guide.pdf

to download more information about our publishing packages.

Best regards,

Christine Chandler
Publishing Consultant

FriesenPress
Tel: 1-888-378-6793 ext. 116
Fax: 1-888-376-7026
Email: cchandler@friesenpress.com
Web: www.friesenpress.com
Suite 300 - 852 Fort Street
Victoria, BC, V8W 1H8

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http://blog.friesenpress.com/

Mr. Farlow,

I will get back to you in 2 or 3 weeks. Please call me again in 3 weeks. Please call me again in 3 weeks if I have not contacted you.

Dennis DeMartin

From: Will Farlow <jfarlow@createspace.com>
To: "dend3114@yahoo.com" <dend3114@yahoo.com>
Sent: Monday, March 19, 2012 4:39 PM
Subject: Publishing with CreateSpace, a part of the Amazon.com Group of Companies

Hello Dennis,

Thank you for expressing interest in independent publishing with CreateSpace.

We partner with authors to help them create the books they envision. As one of the premier independent publishing companies in the industry, and the largest online retailers of books in the world, we offer high royalties and on-demand printing in-house.

Below I have included some introductory questions which help me to better assess your publishing needs. I kindly ask that you take a moment to answer them, as your responses help me to determine which publishing program is right for you.

1. Is your manuscript complete? If not, about how far along are you in the writing process?

2. What is the name of the software you used to type your manuscript into your computer (i.e. Microsoft Word, In Design, etc.)?

3. Will your book include photos, images, or graphs? If so, how many total?

4. Do you plan for your book's interior to be black and white or full-color?

5. Are you interested in having a professional editor review your work? If so, what is the word count of the manuscript?

6. What, if any, ideas do you have for your cover?

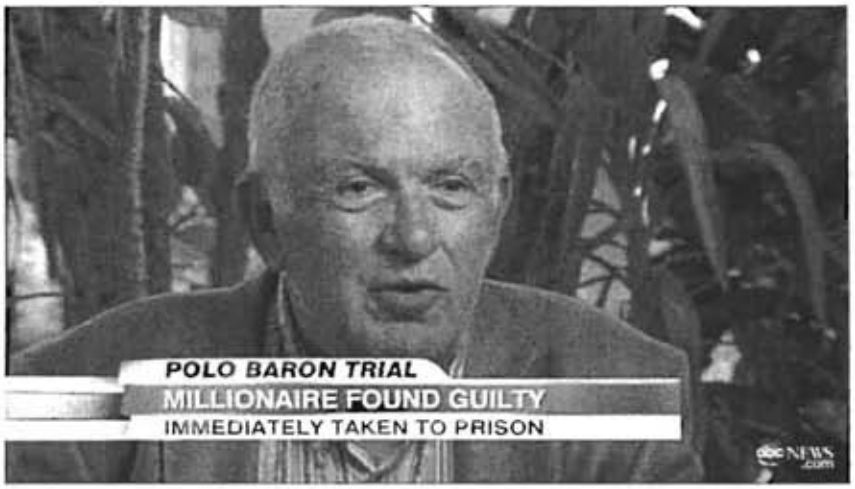
7. What kind of budget have you set aside to invest in the publishing of your book?
a) $499-$1,000
b) $1,000-$2,000
c) $2,000-$3,000
d) $3,000+

8. Are you 18 years old or older?

9. What is a good time for us to reach you for a phone consultation to discuss your project (please note [illegible] time, Monday-Friday)?

EXHIBT 4

Polo Tycoon's Story Wasn't Credible, Juror in DUI Manslaughter Case Says



Polo Tycoon Found Guilty of DUI Manslaughter

By YUNJI DeNIES and CHRISTINA NG (@ChristinaNg27)
March 24, 2012

A juror who helped convict Florida polo tycoon John Goodman of DUI manslaughter and vehicular homicide said the defendant's testimony, including the argument that he got drunk only after a fatal February 2010 crash, simply wasn't credible.

In fact, Dennis DeMartin, juror number five, told ABC News, Goodman's testimony was "pitiful."

"I really felt sorry for him," said DeMartin, a retired accountant who plans to write a book about the experience. "I didn't think they should have put him on up there. I think that was a mistake."

Goodman, 48, and his defense said he wasn't drunk at the time of the accident in Wellington, Fla., but that his $200,000 Bentley malfunctioned, slamming into Scott Wilson's Hyundai with fatal results, that he hit his head and didn't realize Wilson's car was sinking in the canal nearby.

Goodman's defense told jurors he wandered away, dazed and with a broken wrist, fractured chest and back injuries, and stumbled upon a barn with a second-floor office that was described during the trial as a "man cave," where he tried to call for help and found some alcohol.

"I grabbed a bottle of liquor, thinking it would help with my pain," Goodman testified.

Goodman's blood alcohol level was more than twice the legal limit when police tested him hours after the crash.

ABC News

John Goodman, left, adopted his longtime... View Full Size

Polo Tycoon John Goodman Found Guilty Watch Video

Polo Tycoon DUI Trial: John Goodman Testifies Watch Video

Polo Tycoon Testifies at His Murder Trial Watch Video

"They proved that he had a .177 alcohol in his system plus some drug, but it was prescribed by a doctor," DeMartin said. "So that was the proof he had been drinking."

DeMartin said jurors believed the story about drinking in the "man cave" was "unsubstantiated," and felt, "He must have been drunk [before the crash] because he went through a stop sign."

DeMartin believed Goodman must have run a stop sign near the crash site for the accident to have caused the damage it did.

"You can't start up and just take off and hit the car over there at 60 mph or 30 mph," DeMartin said. "He had to go right through [the stop sign] is what I thought."

Goodman could be given 30 years in prison when sentenced on April 30.

The judge Friday denied defense attorney Roy Black's request for Goodman to be released on bail and Goodman was taken into custody.

DeMartin said jurors had little trouble agreeing on the verdict although they did go back and review the 911 tapes.

"I wanted to be sure that Mr. Goodman admitted that he had a few drinks," DeMartin said. "And I wanted to be sure, because he said, at first, he stopped at the stop sign, looked and then went."

Goodman, the multi-millionaire founder of the International Polo Club Palm Beach, denied being drunk at the time of the crash that killed Wilson, although other testimony contradicted him.

"I think that justice was served. I think [jurors] were very careful," prosecutor Ellen Roberts said at a news conference Friday. "They went over a lot of evidence and I think they probably returned the only verdict they could."

Roberts said she would not know what sentence she planned to recommend to the judge until she spoke with the Wilson family.

Defense attorney Black issued a statement saying that Goodman will appeal the conviction.

"It is our belief that multiple errors were committed during and before the trial that, in effect, denied our client's ability to get a fair trial," Black said. "We intend to file an appeal so that our client can receive the just and fair proceeding to which he is entitled by law."

1 | 2 NEXT PAGE

Zulu5966
2:01 PM EDT
Mar 24, 2012

Oh, please, he got a fair trial they just don't like the verdict. Too bad. Maybe if the guy had stopped and rendered aid, he wouldn't be looking at 30 years in jail and a 23 year old wouldn't be dead.

NightLightsNY
1:35 PM EDT
Mar 24, 2012

This man is a self-absorbed idiot that took another life, and his defense attorneys are incompetent. Should have never been put on the stand, once he opened his mouth the fairytale didn't quite rhyme like Dr. Seuss. Thank you to this jury for giving the Wilson family some justice, and also for reminding us that the rich aren't always happier, smarter, or even out of jail.

John Goodman trial juror speaks out about experience, pivotal moment in finding polo mogul guilty

911 tapes and drinking important parts of verdict

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DeMartin was juror number six. He is a retiree doing part time work now at a funeral home. DeMartin said he and the other jurors wanted to focus on the facts.

Just hours before delivering their guilty verdicts, they listened for a second time to the 911 tapes from the night of the crash that claimed Scott Wilson's life. Goodman's actions after the crash played an important part in their deliberations.

"He called his employees first, then he called his girlfriend. And then the girl in the trailer finally talked him into calling 911. I thought (it was) there he evaded his responsibility," said DeMartin.

Goodman's lawyers said he became intoxicated only after the fatal accident. DeMartin said the jury was never convinced of that. It was a pivotal moment in the case.

"We knew he had been drinking, but there was no proof he did it after at this man cave because nobody could substantiate he was there," said DeMartin.

DeMartin said jurors concluded Goodman drank before getting behind the wheel of his Bentley that fateful night of February 12, 2010. It was a decision DeMartin and his fellow jurors said makes Goodman responsible for a Wilson's death and their verdict could put Goodman in prison for decades.

"So glad I don't have to worry about that. That's the judge's doing, he's got to worry about that," said DeMartin.

The juror said he was honored to serve as a juror and now relieved that the pressure of a long trial is behind him.

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Steavie Steavens
Good job!
Yea Buddy likes this.
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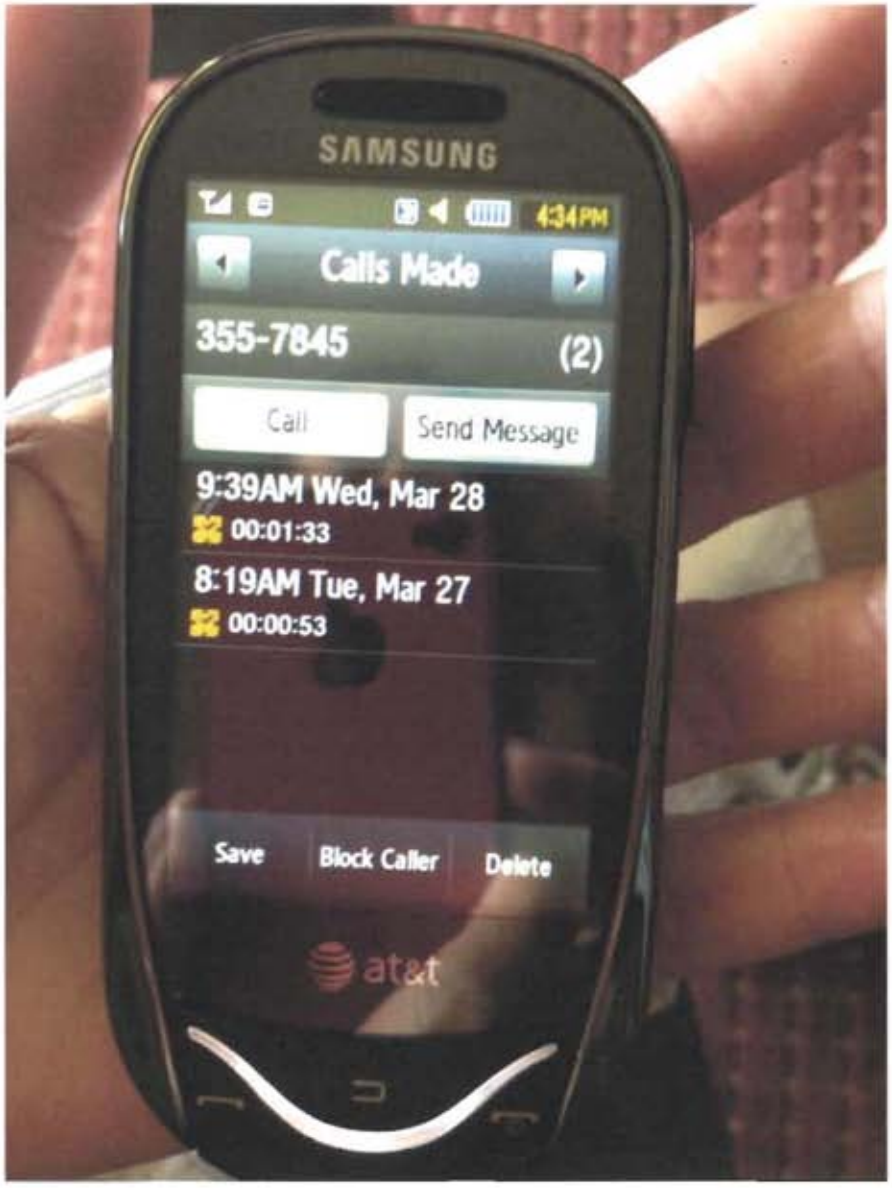
EXHIBT 5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