

Latest Eggleston Twists

JUROR MISCONDUCT? JUDICIAL IMPROPRIETY? By Frank Driscoll

Anyone who thinks the guilty verdict rendered December 16 by the jury in Eggleston-III brought closure to the long-running murder case had better think again.

The lawyering got a bit more intense last week, as defense attorneys Monte Hester and Zenon Olbertz filed two jaw-dropping motions for their client, Brian Eggleston, who is either one of the most vicious, cold-blooded killers in recent memory or a semi-innocent victim of police boobery.

Once again, the lawyers alleged, the guilty verdict against Eggleston was tainted by juror misconduct.

It's a familiar theme, and it's an issue sure to make everyone involved in the case sit up and pay attention. Juror misconduct during Eggleston's second trial for aggravated murder in 1998 was one—but by no means all—of the reasons the Washington Court of Appeals reversed his second-degree murder and assault convictions. And that decision set

the stage for his *third* trial—the one that concluded December 16.

Beyond that, though, the lawyers filed a motion and affidavit for recusal, asking Superior Court Judge Stephanie Arend to step aside and allow another judge to hear the new trial motion. That's because Judge Arend failed to inform them of various communications she and her judicial assistant received from jurors during the course of the 8-week trial, they say.

Some Background

According to the Court of Appeals' September 2001 ruling, the jury in Brian Eggleston's second trial began its deliberations on May 14, 1998. The next day, Juror 6 wrote a note to inform the court—visiting Judge Leonard Kruse—that she'd seen Juror 9 reading the *Trib* in the jury room. The juror told Judge Kruse that she'd asked him to knock it off.

During deliberations, the same man “offered information regarding the case that (she) had not heard during the trial,” she»

» wrote, including the fact that Eggleston was serving a 20-year sentence for drug and assault convictions as a result of his *first* trial—held in 1997. In that trial, Eggleston had been found guilty of assault and four drug-related charges.

The defense said the court had to declare a mistrial in the circumstances, because jurors are not allowed to read newspaper accounts or talk about matters not in evidence. But the prosecution insisted a mistrial was unnecessary—that the court should simply inquire what jury members had heard and whether they could disregard “any extrinsic information.” Kruse agreed with the prosecution—which Judge Kruse was wont to do.

The defense wanted to ask jurors if they had heard about Eggleston’s assault and drug convictions, which—along with a hung jury on the aggravated murder count—were the result of his first trial. Judge Kruse denied the request and merely asked each juror if he or she could disregard any extraneous information they might have received. They all said they could.

Juror 9 was dismissed after being found “deceptive and not credible,” and Judge Kruse instructed the jury to begin its deliberations anew with an alternate member.

The panel found Eggleston guilty of second-degree murder on May 20, 1998. But in September 2001, the Washington Court of Appeals held that juror misconduct, among other things, supported a reversal of his murder conviction.

What’s Happening Now

According to declarations and affidavits filed in support of Eggleston’s motion for a new trial, jurors in the case have come forward with various allegations of juror misconduct since the verdict was announced. Among other things, they swore, members of the jury improperly discussed evidence, speculated about the veracity of witnesses, and didn’t tell Judge Arend about their connections to witnesses.

Thomas Burrows, for example, swore he was threatened by a stranger during the first few weeks of the trial, a mysterious man who told him he could “get” him and his family. The man shook his finger in Burrows’ face, and told him he’d better “do the right thing,” according to Burrows’ declaration.

Burrows said he reported the incident to courthouse security and told Judge Arend’s judicial assistant, Pamela Frank, about the threat but “never heard anything back from her or anyone else about that incident.”

Burrows said he also told Frank about his contacts with two people who turned out to be Peter Bortel and his wife. (Bortel once owned McGoo’s, the North End

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pub where Eggleston worked at the time of the ill-fated raid, and his wife worked with Burrows at the Frank Russell Company.) Still, Burrows was dismissed from the jury, supposedly because he hadn’t reported the contacts.

Juror Dean Lee swore that he heard Burrows tell Pamela Frank about his contacts with the Bortels, and added that juror Babette Daniels had “disclosed to the jury that she was aware of the prior trials and the outcomes.”

Another juror, Randall Kunkle, “told the other jurors that he and a friend used to, for recreation purposes, beat up drug dealers,” according to Lee’s declaration. He also said juror Nickol Atkinson told him and another juror, Karen Swanson, that she was a friend of Tiffany Patterson’s sister and had been at her house. (Tiffany Patterson, a witness in the case, was Brian Eggleston’s fiancée at the time of the raid.)

In her declaration, Atkinson swore that she’d heard other jurors “state that this case had been tried twice before and they wondered what had gone wrong to cause a third trial.”

What’s Next

Brian Eggleston will appear before Judge Arend tomorrow, January 3, for sentencing. But he can’t be sentenced until his motion for a new trial is heard and decided.

Motions for new trials are usually heard by the presiding judge, but the Eggleston case is nothing if not unusual. Judge Arend is pretty well snookered, because if she *didn’t* pass information about juror hanky-panky along to the defense that in itself is an issue that could require a new trial, and she can’t rule on it.

As the *Reporter* went to press, the prosecutor’s office had yet to file a written response to the defense’s motions, Pamela Frank was on vacation, and the Eggleston case was far from over. ♻️

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I so almost left town yesterday.

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