

IN THE CIRCUIT COURT OF HINDS COUNTY, MISSISSIPPI

STATE OF MISSISSIPPI

PLAINTIFF

VS.

CAUSE NO.: 25CI1:16-cr-00836-LER

ROBERT SHULER SMITH

DEFENDANT

**DEFENDANT ROBERT SMITH'S MOTION FOR RELIEF BASED
UPON JUROR MISCONDUCT
AND UPON STATE EFFORTS TO PROVOKE MISTRIAL**

Defendant Robert Smith (hereinafter "Smith") respectfully moves this Court for appropriate relief for juror misconduct and for possible efforts to provoke a mistrial. In support of his motion, Smith shows the Court as follows:

1. This case was tried beginning on December 19, 2016, and ending on January 4, 2017.
2. During the trial, an Assistant Attorney General asked a State's witness, "Too Sweet" Henderson, whether he had passed a polygraph examination, and obtained an affirmative response. This question was one which the Assistant Attorney General knew was improper, and had no apparent purpose except to provoke a request for a mistrial.
3. During jury deliberations, the jury sent out the attached note, Exhibit "A," reading:

What do we do about a juror who has previous knowledge of Robert Smith and has a previously formed opinion of him and is basing her verdict on previous knowledge and opinion instead of current evidence?
4. Thereafter, the jury announced it could not reach a verdict, and the Court declared a mistrial.
5. After trial, the Attorney General issued a press release, Exhibit "B," which states:

"I am disappointed that the jury was deadlocked in this case, but a mistrial was the only appropriate result after learning that a juror sat silently during jury questioning before the trial, even though that juror knew the defendant. Unfortunately, we

learned after a 2-1/2 week trial that a juror talked during deliberations about having known the defendant. A juror takes an oath to answer questions posed to them by the Court and the lawyers. Consequently, this case will need to be presented to another Hinds County jury as soon as possible. Any inappropriate conduct will be appropriately addressed. Jury service is the responsibility for all of us as citizens, and justice in any jurisdiction depends upon the integrity, courage and honesty of the citizens who sit on juries.”

6. The Jackson *Clarion Ledger* published an article, Exhibit “C,” indicating that a juror may have intentionally interfered with proper jury deliberations. The article reads:

“We did not have a chance to deliberate the way it should have been because of that one juror,” said juror Anna Scott. “She tried to dominate the situation.”

...

Scott told the *Clarion-Ledger* that Sullivan made comments in deliberation about various prosecutable drug charges “disappearing” once they get to the district attorney’s office. Two jurors confirmed Sullivan said Smith was on the department’s “radar,” suggesting this supports his guilty.

“That didn’t come up during the trial. That was all previous knowledge of him,” Scott said.

...

Scott, who voted not guilty, said apart from Sullivan, the few jurors who were inclined to find Smith guilty seemed to have had an open mind and were willing to look back over the evidence. But Sullivan prevented any further discussion from happening,” Scott said.

“She wasn’t hostile at first but she started getting more aggressive, angry and bothered,” Scott said.

7. Throughout the trial, the Court had stressed to the jury to consider only the evidence produced in court. A juror’s urging on the jury matters outside the evidence presented in court may have been an attempt to intentionally cause an improper conviction of Smith or, at least, to cause a mistrial.

8. The juror at issue was an employee of the Jackson Police Department. The juror was, therefore, a “state actor,” just as would be a judge or prosecutor for purposes of applying the Fifth and Fourteenth Amendments to the United States Constitution. Thus, if the juror’s actions were intended either to obtain a conviction based upon improper practice or to provoke a mistrial, a new

trial should be barred under the double jeopardy provisions of U.S. Const. Amend. 5 and by Miss. Const. § 22. See *Oregon v. Kennedy*, 456 U.S. 667, 669 (1982) (“a defendant may invoke the bar of double jeopardy in a second effort to try him . . . [in] those cases in which the conduct giving rise to the successful motion for a mistrial was intended to provoke the defendant into moving for a mistrial”). Similarly, if the actions of the prosecutor in inquiring about the polygraph examination was intended to provoke Defendant into moving for a mistrial, then a new trial should be barred for the same reason. *Id.*

9. Smith requests an evidentiary hearing where the motives of the juror and the prosecutor may be explored and a determination made as to an appropriate sanction, if any.

10. In order to insure a fair determination of what occurred with the jurors, this Court should adhere to its post-trial ruling prohibiting the parties from questioning any juror outside of open court.

RESPECTFULLY SUBMITTED, this the 17th day of January, 2017.

ROBERT SMITH, Defendant

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ATTORNEYS FOR DEFENDANT

CERTIFICATE OF SERVICE

This will certify that undersigned counsel for Defendant has this day filed the above and foregoing with the Clerk of the Court, utilizing this Court's electronic case data filing system, which sent notification of such filing to the following:

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SO CERTIFIED, this the 17th day of January, 2017.

/s/ Jim Waide _____
JIM WAIDE