

**IN THE CIRCUIT COURT OF THE FIRST JUDICIAL DISTRICT
OF HINDS COUNTY, MISSISSIPPI**

STATE OF MISSISSIPPI

VS.

CAUSE NO.

16-836

ROBERT SHULER SMITH

DEFENDANT

**MOTION FOR LEAVE TO INTERVIEW JURORS OR, IN THE ALTERNATIVE,
MOTION TO RECONVENE PETIT JURY FOR INDIVIDUAL EXAMINATION**

COMES NOW, the State of Mississippi, by and through the Office of the Mississippi Attorney General and submits this its motion for leave to interview the petit jurors who heard this case but were unable to reach a verdict or, in the alternative, for the Court to reconvene the petit jury for individual examination by the Court and counsel. In support thereof the State of Mississippi would show the following:

- (1) On January 4, 2017, the petit jury in this case retired to begin its deliberations toward reaching a unanimous verdict in the case.
- (2) Approximately two hours after the petit jury began their deliberations, they sent out two separate notes to the Court. One of those notes read essentially as follows: “What do we do about a juror who has previous knowledge of Robert Smith and has a previously formed opinion about him and is basing her verdict on previous knowledge and opinion instead of current evidence?” In response to the note, the Court instructed the jurors to continue their deliberations, but approximately an hour later they indicated they could not reach a unanimous verdict. The Court returned the petit jury to the courtroom and polled them about whether they believed continued deliberations might result in a unanimous verdict. All the jurors indicated to the Court that they did not believe further deliberations would be productive. Thus, the Court declared a mistrial and later set this matter for retrial in June 2017.

(3) Subsequent to the release of the jury and the Court's declaration of a mistrial in this matter, it has been reported in news coverage that the juror with "previous knowledge of Robert Smith" was Juror No. 4. While her name has been reported in the media, counsel will not repeat that information in this pleading.

(4) Inquiry regarding the juror's place of employment reveals that her juror questionnaire reflected that she worked for "COJ" – and neither party was able to discern that "COJ" was apparently shorthand for "City of Jackson." Nor was either party able to discern that when Juror No. 4 reported that she was a "dispatcher" that she was, in fact, as media reports have suggested, a dispatcher for the Jackson Police Department. Both the State of Mississippi and the defense had equal access to and equal opportunity to pursue the juror's employment when she responded that she was a "dispatcher." The undersigned Special Assistant Attorney General's notes from the jury selection process reflect that Juror No. 4, who appeared in the venire as Juror No. 12 on Panel No. 1, responded that she had "read about the case" but that she could be fair and impartial as a juror. It does not appear that any further inquiry was made of Juror No. 4 regarding her employment, her involvement in law enforcement, or on any other issue of significance to this case by either the State of Mississippi or the defense. Although the Court and both parties inquired of the venire whether they had any involvement in law enforcement, it does not appear that Juror No. 4 responded directly to that inquiry or disclosed that she worked for the Jackson Police Department, if in fact she does. That is not reflected on her juror questionnaire, although it has been reported in the press as an established fact.

(5) There has been conjecture in media reports that Juror No. 4 was somehow "deliberately" or "improperly" allowed to sit on the petit jury in this case. Since most of the

reporting has been mere conjecture, no factual basis for the assumption that Juror No. 4 was “deliberately” or “improperly” allowed to sit as part of the petit jury exists at this point.

Speculation by the news media does not make it so.

(6) Juror misconduct is a serious matter, which should be dealt with seriously by the Court and by law enforcement authorities. Every member of a jury venire swears that the information on his/her questionnaire is true and correct; when the jury is being qualified, they take an oath to be truthful in their responses to the Court; and, when the venire is subjected to voir dire by the attorneys, they likewise take an oath to provide truthful answers to counsel. Once selected to serve as part of the petit jury, each juror again takes an oath to base his/her verdict solely on the evidence produced at trial, and not upon any extraneous information or any preconceived ideas or opinions about the case, about the parties, or about the defendant’s guilt or innocence. It appears that one of the jurors in this case may have violated her oath. At the very least, it appears that an inquiry, and possibly a full-blown investigation, is called for to determine whether a juror violated one or more of the oaths she took before begin empaneled as a part of the petit juror in this case.

(7) Since the petit jury in this case failed to reach a unanimous verdict on any of the three charges in the indictment, interviewing the petit jurors at this juncture would not violate the “general reluctance” to reconvene or question jurors after a verdict has been reached. *See Roach v. State of Mississippi*, 116 So.3d 126, 131 (Miss. 2013). Indeed, as the Supreme Court counseled in *Roach*, “[w]hen the trial court is made aware of potential juror misconduct or improper influence on the jury, the first step is to determine whether an investigation is

warranted.” *Id.* at 132 (*citing Gladney v. Clarksdale Beverage Co., Inc.*, 625 So.3d 407, 418 (Miss. 1993)). Plainly, there is good cause to conduct an investigation at this point.

(8) Because it appears that an investigation may be justified in this case, the State of Mississippi respectfully requests that investigators with the Mississippi Attorney General’s Office but not associated with the Public Integrity Division, which is prosecuting this case, be permitted to make contact with and to interview the petit jurors who retired to deliberate in this case. Alternatively, the State of Mississippi asserts that it has shown good cause to reconvene the petit jurors in this case. Thus, the State of Mississippi asks, in the alternative, that the petit jurors be recalled by the Court so that they may be individually examined by the Court and by counsel about all the issues touching on any alleged misconduct of Juror No. 4. These issues would include, but may not be limited to: (a) her apparent failure to make a full disclosure of her involvement in law enforcement, if that is the true state of the facts; (b) her apparent failure to provide truthful responses to questions put to her in voir direct examination about whether she had formed any opinions regarding the defendant’s guilt or innocence in this case, if that is the true state of the facts; and, (c) her apparent failure to follow the Court’s direct instruction that she base her verdict in this case solely on the evidence produced in open court at the trial of this matter, if she in fact ignored the Court’s instructions in this regard.

(9) Lack of candor from jurors in the jury selection process cannot be tolerated if juries are to serve their essential function in our criminal justice system. Nor can jurors be permitted to ignore the oath they have taken or the instructions they have been given by the Court regarding their duty to base their deliberations and their verdicts solely on the evidence produced in open court during the trial of a case.

(10) If a juror deliberately provided false information in the jury selection process, this might constitute a crime, up to and including perjury. At the juncture, there is insufficient information to determine one way or the other whether a juror violated the law. Without question, this is a matter which should be fully investigated by the Court and by appropriate law enforcement authorities.

Wherefore, premises considered, the State of Mississippi respectfully requests this honorable Court to issue an order granting investigators of the Mississippi Attorney General's Office not a part of the Public Integrity Division authority to contact and to interview the petit jurors in this case or, in the alternative, that the Court recall the petit jurors who retired to deliberate in this case and subject each of them to individual examination by both the Court and the parties on all issues touching on possible juror misconduct in this case.

THIS the 17th day of January, 2017.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I, Robert G. Anderson, hereby certify that I have this day filed the above and forgoing Motion via the Court's electronic case filing process, which caused a copy to be served upon Jim Waide, Attorney for the Defendant, Robert Shuler Smith, at his usual e-mail address of waide@waidelaw.com.

This the 17th day of January, 2017.

s/ *Robert G. Anderson*

Robert G. Anderson
Special Assistant Attorney General
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