
Jury Misconduct

Carter v Rafferty 631 F Supp 533

4-1979

**State's Response to Defendants' Motion for An Order Vacating
and Setting Aside the Sentences and Judgments of Convictions**

Passaic County Prosecutor

SUPERIOR COURT OF NEW JERSEY
PASSAIC COUNTY - LAW DIVISION
(Criminal)

Indictment No. 1677-66

THE STATE OF NEW JERSEY)
)
) Plaintiff,)
))
) V.)
))
) RUBIN CARTER AND JOHN ARTIS,)
))
) Defendants.)

STATE'S RESPONSE TO DEFENDANTS' MOTION FOR AN ORDER
VACATING AND SETTING ASIDE THE SENTENCES AND
JUDGMENTS OF CONVICTIONS

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THERE HAS BEEN NO SHOWING NOR IS
THERE ANY REASON TO BELIEVE ACTS OF
MISCONDUCT WERE COMMITTED BY THE
JURORS OR THE GUARDS.

Allegations of improprieties on the part of the jurors and the jury guards came to light as a result of statements made by alternate juror, John Adamo. The defense brief in this matter is based on the assumption that these allegations are accurate, thereby conveniently hurdling the obvious preliminary, credibility questions which face the Court. It is now clear that Mr. Adamo is not believable.

Mr. Adamo lied to Judge Leopizzi on October 5, 1978, when he disclosed these allegations. At that time, he stated "I agreed with the verdict of the trial." (Page 4). In a tape recorded conversation between Mr. Adamo and Miss Barbara Hoekje, which was allegedly made over a year before, Mr. Adamo spoke with Judge Leopizzi, Mr. Adamo makes it quite clear that he did not agree with the verdict and that he felt strongly in favor of the defendants. On Page 33, lines 9 and 10, of Part 1 of the transcript of that taped conversation, Mr. Adamo states, "I think that Carter and Artis were definitely framed, with no question in my mind." On Page 34 of that same transcript, Mr. Adamo states, "I don't know how they [the prosecution] ever expected to convict anybody on this shit." On Page 20 of transcript, Part 2, of that taped conversation, Mr. Adamo states:

"I mean once after I heard the Judge give this charge to the Jury, it made it very clear to me that he's explained exactly what he means about reasonable doubt, and to me there is no doubt that there's more than reasonable doubt."

There is no question that Mr. Adamo in this regard misrepresented himself to Judge Leopizzi on October 5, 1978.

Mr. Adamo has also shown himself to be dishonest with regard to his explanation of what it was that brought him to make these disclosures to Judge Leopizzi. In his conversation with the Judge on October 5, 1978, Mr. Adamo indicated that he had given a taped interview to Barbara Hoekje in the Summer of 1977. He indicated that he had extracted a promise from her not to disclose the contents of the interview. Mr. Adamo stated that over a year later, he was shown certain documents from this case, and as a result of examining the information contained therein, he decided to make his disclosures to Judge Leopizzi. Mr. Adamo has contended that one of the acts of impropriety consisted of a statement to him from juror, Gaetano Alario made during the course of the trial, indicating that the defendant, Carter, had flunked a lie detector test. In his testimony of March 13, 1979, Mr. Adamo states that the documents which he examined a year after giving the tape, and which convinced him to make his disclosures to Judge Leopizzi, consisted of a report from Lieutenant DeSimone, indicating that in fact Carter had passed a lie detector test. (Pages 76-78; See also 3/12/79, Page 156). However, in the tape recorded interview with Barbara Hoekje, Mr. Adamo states that the information which the juror (Mr. Alario) conveyed to him regarding Carter failing the lie detector test was misinformation, in that the juror was not aware of "both lie detector tests and 'conflicting lie detector tests!'" (Taped interview, Part 1, Page 29). Consequently, it is clear that Mr. Adamo was aware of this conflict regarding lie detector tests at the time he gave the interview which he alleges occurred on August 30, 1977, and that this was not a revelation which he learned of

shortly before he made his disclosures to Judge Leopizzi and therefore could not have been, as he contends, the basis for his decision to come forward with his allegations.

Mr. Adamo very much wanted to be on the jury in this case and was obviously frustrated by his elimination from the deliberations. In the taped interview, he indicates on Pages 13 and 15 that he was looking forward to serving, and on Page 5, that he ~~felt~~ disappointed when he believed that he would be disqualified because of his arrest record. He recognized that the trial would be a major news event. (Taped interview, Part 1, Page 16). He indicates in the taped interview that he felt "very glad" to be on the jury and that afterwards he "felt pretty miserable." (Part 2, Page 31). Mr. Adamo indicates in the taped interview that he "felt really, really disgusted with the whole process" after having observed the trial and then had to "slip back unnoticed" without getting involved in the outcome. (Taped interview, Part 2, Page 31). (Emphasis added).

Whether as a result of being shunned from deliberations or perhaps his own pre-existing mentality, Mr. Adamo, at the very least, has a distorted view of his fellow jurors and of what transpired during this trial. At the most, he has deliberately been untruthful to the Court or has deliberately embellished and exaggerated what he has reported.

This man, who worked alone in a tower of a railroad yard, came to a trial which he recognized was a major news event which would receive great attention. (Taped interview, Part 1, Page 16). He saw himself as the most popular (Taped interview, Part 1, Page 22), most well-versed (Taped interview, Part 1, Page 26), and most capable (Taped interview, Part 1, Page 26) of the jury. In his mind, this case was so extraordinary that it would require a panel of 100,000 individuals in order to select people competent enough to hear this case. (Taped interview, Part 1, Page 23). Since he has no question of his own ability, he obviously places himself in this select group. Clearly, this is a man with a view of himself and his fellow jurors which does not comport with reality.

In the taped interview, Mr. Adamo, one by one, characterizes each of his fellow jurors and assesses their ability. In referring to his fellow juror, James Pryor, Mr. Adamo states that he is not sure if Mr. Pryor is a capable juror, but since "he came up with the same [not guilty] conclusion I did, so I think, I guess I can't question him too much." In Mr. Adamo's view, those who agree with him are good, and apparently, those who do not are bad. The jurors who deliberated in this case did not agree with Mr. Adamo's ultimate view of the matter.

In the taped interview, Mr. Adamo repeatedly commends the extraordinary competence of the trial judge. However, when asked by the same judge why the tape did not contain what he represented it contained, he became extremely upset, began to shout and pound upon the counsel table. (T. 3/13/79, Pages 7-11). In his letter to the Court of March 15, 1979, Mr. Adamo states, "I will not voluntarily answer any questions that I feel are for the purpose of determining my credibility, motivation, or veracity." Mr. Adamo appears to be unusually sensitive to anything which he feels is directed towards assessing his credibility or motivation.

Mr. Adamo stated in his taped interview that towards the end of the trial, he feared that he was going to be eliminated as a juror. (Part 2, Page 19). There is no rational explanation for why Mr. Adamo should have this feeling, or why he began to feel this way only toward the end of the case. Mr. Adamo claims on the tape to have learned that court clerks engage in palming during the selection of alternate jurors. However, he indicates that he did not gain this incredible information until after the trial. (Part 2, Page 16). Mr. Adamo is not a man with a hold on reality. We are dealing with the bizarre mentality of a man who says that his reaction to being chosen as a juror was "was kind of severe. It was about the same reaction I get when someone dies. I sort of smile." (Taped interview, Part 1, Pages 17-18).

There is no question that Mr. Adamo misinterpreted the attitude of his fellow jurors with regard to their feelings about the guilt or innocence of the defendants. In the taped interview he states, "There were some people that I felt sure were not going to vote guilty." (Part 1, Page 40). (See Page 13, lines 14-15 where Mr. Adamo states that he thought that juror James Biddle and Cecelia Sharpe were going to vote innocent). He was obviously wrong.

It is equally clear that Mr. Adamo's account of fellow jurors Gaetano Alario, George Demetriades, John Armellino and Edward Fischer is, at the very least, distorted. Mr. Fischer candidly and readily described an incident between himself and black juror, James Biddle, which occurred when Mr. Biddle unintentionally dumped some cigarette ashes in a box containing Mr. Fischer's sandwich. Mr. Fischer explained this happened while he and some other jurors were playing pinochle. Mr. Fischer indicated that he became annoyed and asked Mr. Biddle if he would want ashes on his sandwich. Mr. Fischer's appearance and account of this incident were entirely credible. Mr. Fischer indicated that he and Mr. Biddle were friendly before and after this incident.

Mr. Adamo's slanted view of this incident mushroomed it into racial prejudice on the part of Mr. Fischer. Mr. Fischer emphatically and very believably denied ever referring to Mr. Biddle as a "little Black bastard" and indicated that such a remark would be out of character for him, since he grew up with and socializes with black friends. It is noteworthy that while Mr. Adamo makes allegations of racial prejudice in the taped interview, in his statement of October 5, 1978, and in his testimony of March 12 and 13, 1979, it was not until his testimony of March 14, 1979, that he ever mentioned Mr. Fischer's remark about Mr. Biddle.

Both Mr. Fischer and Mr. Adamo were alternates. In assessing credibility regarding Mr. Adamo's allegation that Mr. Fischer made up his mind early, it is significant to contrast Mr. Fischer's statement that he never did decide guilt or innocence, since he wanted the benefit of his fellow jurors' views, with Mr. Adamo's position that he decided prior to the Court's charge to vote for an acquittal without the benefit of those views.

Similarly, Mr. Adamo's allegations about juror Armellino are not at all credible. Mr. Adamo alleges that Mr. Armellino engaged in making racial slurs against Black people by referring to Blacks as "milignans". In his conversation of October 5, 1978 with Judge Leopizzi Page 6 line 23), and in his testimony of March 12, 1979 (Page 172, line 22), Mr. Adamo claims that this was such a "regular occurrence" and happened so "frequently" that it became "routine". This account from Mr. Adamo is questionable on its face in light of the fact that two Blacks served on this jury. It is not likely that derogatory racial slurs against Blacks would routinely be expressed among a jury which contained Blacks. Furthermore, each of the other jurors questioned by Judge Leopizzi had no recollection of ever once hearing racial slurs directed against Black people.

Mr. Adamo states that he "vividly and specifically can remember" a conversation which occurred on the bus between Mr. Armellino and a jury guard, who were sitting six or eight rows apart, wherein the term milignan was used. (T. 10/5/78, Page 6, lines 23-24; T. 3/12/79, Page 172 lines 22-25). It is noteworthy that while Mr. Adamo claims a "vivid and specific" recollection of this incident on the bus, he also testified that he has "no idea" of where Mr. Armellino sat on the bus. (T. 3/12/79, Page 174, lines 15-16). Furthermore, while Mr. Adamo does remember that another juror, Mr. Alario, was probably sitting with him on the bus, Mr. Alario was one of the jurors who testified that he doesn't recall hearing the term "milignan" and that he so advised

Mr. Adamo. (T. 3/12/79, Pages 79-80).

In Mr. Adamo's conversation with Judge Leopizzi of October 5, 1978, he states that "milignan" is a "derogatory nickname for Black people." (Page 7, line 17). In his testimony of March 12, 1979, Mr. Adamo states that "milignan" may not be a derogatory term, but merely "a slang term for Black people." (Page 175, lines 9-10). Furthermore, Mr. Adamo goes on to say that the people who used this term and who were involved in hearing it, didn't mean anything by it. (T. 3/12/79, Pages 177-178). Mr. Adamo has himself thereby taken back his allegation that derogatory racial slurs were made against Blacks through the use of the term "milignan".

It clearly appears that the credible account in this regard was given by Mr. Armellino, who explained that he had worked with Blacks for many years, and in the course of joking back and forth in that association, he would innocuously use the term "milignan". (T. 3/12/79, Pages 110-114). Mr. Armellino testified in a very credible manner that if he did use the term milignan, it was not in a derogatory manner and certainly was not directed towards the defendants. It appears that, at the very least, Mr. Adamo's paranoid-type view of his fellow jurors has caused him to paint or embellish matters to accommodate his pre-dispositions.

Mr. Adamo's allegation that Mr. Armellino openly stated that he had his mind made up before the end of the case is unsubstantiated by any of the other jurors questioned. Beyond that, Mr. Adamo's contention (T. 3/12/79, Page 186) that Mr. Armellino may have made this remark as early on as the time of the attorneys' opening statements, is preposterous. Even if Mr. Armellino made up his mind that early (which from Mr. Armellino's demeanor would be extremely unlikely), it is not conceivable that he would express such a fact among a group of relative strangers.

As is the case with each of Mr. Adamo's accusations of misconduct, his allegation that certain jury guards spoke to jurors regarding an unrelated robbery case is not substantiated by any of the jurors questioned. It is significant that this is so, even though those jurors were not being asked about misconduct on their part, but rather on the part of others. Mr. Adamo testified (T. 3/12/79, Pages 188-189) that Mr. Alario and Mr. Demetriades were probably present when the guard, Ted, made these statements concerning the unrelated robbery case. Both Mr. Alario (T. 3/14/79, Page 80) and Mr. Demetriades (T. 3/12/79, Page 138) testified that they had no recollection of any such statements by a jury guard.

Mr. Adamo's allegations follow a pattern of contending that the reported impropriety occurred early in the trial. In adhering to this pattern, Mr. Adamo contended that the improper statement by the guard, Ted, was made early in the trial and that he can pinpoint this because he believes Ted was part of the original crew of jury guards. (T. 3/12/79, Page 189). However, this latter statement of Mr. Adamo is in direct conflict with his previous statement of October 5, 1978, to Judge Leopizzi. In his conversation with the Judge, Mr. Adamo said that the original jury guards were "just perfect to the letter" and that "they took their duties very seriously and were very careful not to, you know, disobey any rules or anything." (Page 7, lines 6-9). When the Court asked Mr. Adamo about this obvious discrepancy, he admitted that he was deviating from his previous statement (T. 3/12/79, Page 189, lines 22-23), and after appearing somewhat shaken, attempted to recover by explaining that Ted was not part of the group of guards whom he thought of as the original crew.

Mr. Adamo alleges that Juror George Demetriades openly indicated within the first few days of the trial that he had made up his mind. This allegation has not in any

way been substantiated by Mr. Demetriades or by any of the other jurors who were questioned. As previously argued, it seems highly unlikely that such a statement would be expressed at that point in time, particularly in light of the Court's constant directions to the contrary.

Mr. Adamo contends that Mr. Demetriades told him that he (Mr. Demetriades) was prejudiced against blacks because of a crime committed against Mr. Demetriades's brother-in-law by blacks. Mr. Adamo testified (T. 3/12/79, Pages 217-218) that Mr. Demetriades also told him that he (Mr. Demetriades) had advised the Court of this prejudice at the voir dire. Mr. Adamo's accusation on its face is incredible. No sensible person would realistically believe or suggest that a potential juror who advised the Court of such a prejudice would be permitted to serve on a jury.

At the voir dire, Mr. Demetriades advised the Court of the incident regarding his brother-in-law and answered all questions concerning this matter as honestly as he could. During the selection process, all potential jurors were advised in advance of the demands which would be made upon them. They were told the trial would be lengthy and that they would be sequestered. A great personal sacrifice was thereby extracted from those who were selected. Certainly, each of them, except, as previously indicated, for Mr. Adamo, would have rather not had to make this sacrifice. Mr. Adamo states that Mr. Demetriades was incensed at Attorney Steel for causing Mr. Demetriades to have to serve as a juror. If as Mr. Adamo contends, Mr. Demetriades was so anxious to be excused, Mr. Demetriades could very easily have accomplished this. He had the obvious means available to him. He readily could have used the brother-in-law incident to gain his exclusion. According to Mr. Adamo, Mr. Demetriades was not untalkative: "He'll talk forever, just talk and talk and is completely insensitive to how bored you are." (Taped interview, Part 2, Page 24).

It should be noted that while Mr. Adamo was not present during the voir dire selection when the brother-in-law incident was disclosed, he did have contact with Barbara Hoekje, who was present. It also appears from the record that Mr. Adamo has not been completely honest in reporting the extent of his contact with Barbara Hoekje after he permitted her the taped interview. At one point in his testimony of March 13, 1979, Mr. Adamo stated that he had met with Miss Hoekje on only two occasions at her friend Corinne's house in New York and on one occasion at his house. (Page 67). However, at another point in his testimony, he indicated that he has spoken with Miss Hoekje "a lot of times after making the tape" and that he "spent all Summer with her and her friend, Corinne." (Page 41).

It appears that the allegations directed at Mr. Demetriades are the product of Mr. Adamo's slanted view of what transpired rather than any transgressions by Mr. Demetriades.

The clearest instance of Mr. Adamo's distortion of the facts reported by him appears with regard to his account of his conversations with Juror Gaetano Alario. Mr. Adamo contends that Mr. Alario told him during the first week of the trial that Mr. Alario's wife had told him that the defendant Carter failed a lie detector test. At the hearing, Mr. Alario testified that he did not know that the defendant Carter took a lie detector test (T. 3/12/79, Page 50, lines 5-7) and that "I don't know right now if Carter flunked or passed the lie detector test." (T. 3/12/79, Page 41).

Mr. Adamo states that, "the main thing I know that bothered me throughout the trial" was this information which Mr. Alario conveyed to him. (T. 10/78, Page 6, lines 14-15). Nevertheless, Mr. Adamo spoke and met with Mr. Alario on a number of

occasions after the trial and never mentioned this matter to Mr. Alario until just prior to coming to Judge Leopizzi in October, 1978. How could Mr. Adamo, who is uninhibited about expressing his feelings, have so much contact with Mr. Alario and not mention this matter which was causing him such great concern?

About a week before Mr. Adamo made his disclosures to Judge Leopizzi (and approximately two years after the trial), Mr. Adamo "as a courtesy" advised Mr. Alario of his allegations regarding the lie detector test. Mr. Adamo testified that he told Mr. Alario, "I don't want you to think I'm pulling this out of nowhere." (T. 3/12/79, Page 178, lines 5-8). Why should Mr. Adamo feel that Mr. Alario would think he was pulling something out of nowhere? It is clear from what has transpired in this matter that Mr. Adamo is not a neutral party. He is clearly partisan and as previously indicated, admittedly attempted to influence other jurors to his thinking prior to deliberations. It is also clear that Mr. Adamo did not contact Mr. Alario "as a courtesy." If his intention was to be courteous, he would not have waited over a year to mention to Mr. Alario the accusations he made against him in a recorded conversation with an individual (Miss Hoekje), whom Mr. Adamo knew was associated with the defense. It appears as Mr. Alario suggests (T. 3/12/79, Pages 93-94) that Mr. Adamo contacted him, hoping that Mr. Alario, lulled by their relationship, might say something which could be taken to compromise his position.

"Well, I [Mr. Alario] remember he [Mr. Adamo] said something about lie detector test. I think like he was hoping for me to say that I remembered, you know, knew what he was talking about. But I didn't know and he had to tell me." (T. 3/12/79, Page 93).

Mr. Alario testified (March 14, 1979) that at the aforesaid meeting with Mr. Adamo, he (Mr. Alario) talked about the fact that he had been involved in a postal strike which resulted in his being fired. (Page 36). He testified that he was angry about that. (Page 37). Mr. Alario stated, that prior to meeting Mr. Adamo he had had a few drinks (Page 54, lines 8-9), that they were "throwing the bull" (Page 37, line 19) and that he "said things about, you know, the establishment, it did me wrong, I should get back." (Page 37, lines 24-25). Mr. Alario testified that, "I might have said that, but not even really meaning it I thought it was a private conversation." (Page 39, lines 8-10).

Mr. Adamo's version of this conversation is that as a result of losing his job with the postal service, Mr. Alario wanted to "f--k the establishment" by throwing a wrench into the Carter-Artis case. (T. 3/13/79, Page 34).


It is difficult, to say the least, to accept Mr. Adamo's account of this conversation because it is hard to understand how Mr. Alario could expect to get even for the loss of his job, by disrupting the Carter-Artis case. But what is far more incredible, is the extraordinary coincidence which must be adopted if Mr. Adamo's version is to be accepted. Mr. Adamo suggests that, in spite of the long-standing pangs of conscience which this lie detector matter caused him, he did not take it up with Mr. Alario until a particular day, almost two years after the incident, when he disclosed his intention to go to the trial judge. Mr. Adamo asks us to further believe that on that very same day, for the first time, Mr. Alario, in advance of Mr. Adamo's disclosure, stated that he wanted to upset the Carter-Artis case. (T. 3/13/79, Page 34, lines 5-16). This is a coincidence of immense proportions. Mr. Adamo is simply not being truthful. Mr. Alario's testimony and demeanor is easily more credible.

Mr. Adamo's reports to the Court have been untruthful and distortive. His allegations of misconduct are unfounded and not believable. The State respectfully requests that the Court deny the defendants' motion to set aside the judgments of conviction in this matter.

Respectfully submitted,

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By:


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