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Jury Misconduct

Carter v Rafferty 631 F Supp 533

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10-6-1978

## **Notice of Motion Seeking Hearing Regarding 1976 Trial Jurors and Related Brief**

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STATE OF NEW JERSEY,

-against-

RUBIN CARTER,

Defendant-Appellant.

: SUPERIOR COURT OF NEW JERSEY  
APPELLATE DIVISION  
: CRIMINAL INDICTMENT NO. 167-66  
: CARTER DOCKET NO. A-5166-76  
ARTIS DOCKET NO. A-5167-76  
:  
CRIMINAL ACTION

STATE OF NEW JERSEY,

-against-

JOHN ARTIS,

Defendant-Appellant.

: NOTICE OF MOTION SEEKING  
HEARING REGARDING 1976  
: TRIAL JURORS AND RELATED  
RELIEF


-----x  
TO: HON. BURRELL IVES HUMPHREYS  
Passaic County Prosecutor  
Passaic County Courthouse  
Paterson, New Jersey 07505

CLERK  
Superior Court of New Jersey  
Appellate Division


S I R S:

PLEASE TAKE NOTICE that the undersigned counsel for the defendants-appellants in the above entitled cause move before the Court for an Order directing an immediate hearing before this Court at which the Jurors who sat at the trial of this matter in 1976 shall be questioned about matters set forth in the attached papers and at which certain other persons referred to therein shall also be questioned about related issues. The undersigned shall rely on the attached certification and exhibit. The undersigned also seek from the Court such other and further relief as may be just and proper, including (without limitation) the vacation of the 1977 sentences and the setting aside of the 1976 verdicts.

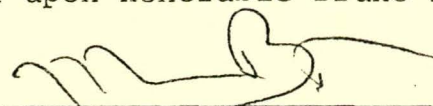
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By:   
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Attorney for John Artis

By:   
MYRON BELDOCK, ESQ.

I hereby certify that copies of the within pleadings have been served by mail on October 6, 1978 upon Burrell Ives Humphreys, Prosecutor of Passaic County, pursuant to the Rules of Court, and upon Honorable Bruno Leopizzi.

  
Myron Beldock, Esq.

Dated: October 6, 1978



SUPERIOR COURT OF NEW JERSEY  
APPELLATE DIVISION

-----X  
THE PEOPLE OF THE STATE OF NEW JERSEY, : CRIMINAL INDICTMENT NO.  
 : 167-66  
 : CARTER DOCKET NO.  
 Plaintiff, : A-5166-76  
 : ARTIS DOCKET NO.  
 -against- : A-5167-76  
 : CRIMINAL ACTION  
 RUBIN CARTER and JOHN ARTIS, : CERTIFICATION IN SUPPORT  
 : OF MOTION FOR A HEARING  
 Defendants-Appellants, : REGARDING 1976 TRIAL  
 : JURORS AND RELATED  
-----X RELIEF

MYRON BELDOCK and LEWIS STEEL certify as follows:

1. This certification is submitted in support of the annexed motion requesting that a hearing be held forthwith at which 1976 trial jurors and certain other persons should be directed to appear for inquiry and examination.

2. This application is based upon the attached transcript of an interview of alternate juror Adamo conducted by Hon. Bruno Leopizzi, the 1976 trial judge, on October 5, 1978. As may be readily seen from the attached exhibit, a number of jurors at the 1976 trial acted improperly in ways which rendered them unfit to sit as jurors and deprived the defendants of due process of law and fair trial.

3. At a hearing held on October 6, 1978 before Judge Leopizzi, counsel for both sides consented to the Judge causing an order to be served forthwith upon all of the trial jurors, directing them not to discuss anything in connection with their service as jurors in this matter until further order of the

Court. The trial court then granted an application made by defense counsel for a hearing, without objection from the Prosecution. The trial judge agreed that an inquiry would be appropriate and that it would initially proceed with the examination of the three jurors named in Mr. Adamo's statement. It was agreed that the hearing would be scheduled by the trial judge upon telephone consultation with counsel for both sides, provided that the Appellate Division did not advise him that the jurisdiction should be in the upper court. (The defense had raised the question as to whether jurisdiction lay in the Appellate Division or in the lower court.) Judge Leopizzi advised defense counsel by telephone that the Appellate Division had advised him that there was no lower court jurisdiction and that the application for a hearing should be made on papers directed to the Appellate Division.

4. The matters discussed in the enclosed transcript are obviously of great significance. It is respectfully submitted that as a matter of law the facts and circumstances disclosed by the alternate juror would automatically require that the verdict be set aside and that the sentences be vacated.


5. We ask for a hearing as soon as possible because of our concern that the lapse of time will somehow affect the jurors and others who may be questioned in a manner adverse to proper inquiry. At the very least the jurors should not be left to speculate for any substantial period of time once served with



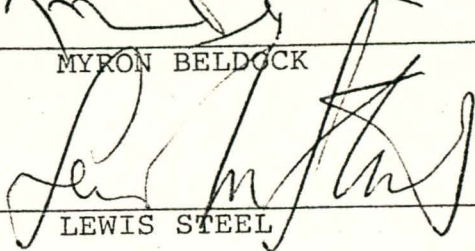
the order of the lower court judge. I understand service was to be accomplished today.

I certify that the foregoing statements made by me are true. I am aware that if any of the foregoing statements made by me are wilfully false, I am subject to punishment.

DATED: October 6, 1978

  
MYRON BELDOCK

DATED: October 6, 1978

  
LEWIS STEEL

COUNTY COURT OF NEW JERSEY  
LAW DIVISION - CRIMINAL

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RE: STATE v CARTER & ARTIS

In camera conference

Paterson, New Jersey  
October 5, 1978

B E F O R E: THE HONORABLE BRUNO LEOPIZZI, JCC

Barbara Dodd, C.S.R.  
Official Court Reporter

(The following was held in Judge Leopizzi's chambers at 4:30 p.m.)

THE COURT: This is Mr. Adamo.

Mr. Adamo was a juror who was in the Carter case. He participated in the entire trial but was an alternate and did not participate in deliberations and rendering of a verdict.

Now he called me Monday, wasn't it, Mr. Adamo --

MR. ADAMO: I believe so --

THE COURT: -- of this week and asked to see me. He told me that it was -- he indicated it was an important matter, but he did not indicate what it was.

Is that correct?

MR. ADAMO: Yes.

THE COURT: So we made an appointment for this afternoon, and he came in at about a quarter of four and he gave me some information as a result of which I consulted with the Criminal Assignment Judge Donatelli and the Assignment Judge J.elson, and as a result of what I told them in the presence of Mr. Adamo, they decided that he should place on the record what he has to say, and that's why we're here.

PENGAD CO., BAYONNE, N.J. 07002 - FORM 2046

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Now maybe you ought to tell her in your own words what you originally told me, and then we'll start from there after you get through.

All right, Mr. Adamo.

MR. ADAMO: Yes.

THE COURT: Tell us about the background, the background with Barbara Hoekja, whatever it is.

MR. ADAMO: Yeah.

Well, briefly I was interviewed by a lady named Barbara Hoekja who works for an organization called the Jury Project which is stationed in Manhattan on Union Square somewhere, and she told me that they were -- they did research on the jury process, ways to improve it and just generally inspection and analysis, I guess, and she wanted to know if she could speak to me about the Carter/Artis trial, and I after some reluctance I eventually spoke to her and allowed her to interview me on tape with the proviso that the tape be strictly for her use and to be used for the jury project. It was not to go beyond that, most specifically not to be given to the defense or anyone involved with the trial.

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1 This year, this summer -- did I mention  
2 she interviewed in the summer of '77?

3 The summer of '78 she spoke to me again,  
4 said she was disturbed about the contents of the  
5 tape and she wanted to give it to the defense;  
6 and I told her that she couldn't, and she wanted to  
7 know if I would make a statement. I said I  
8 wouldn't and then I told her that I was afraid  
9 that it would cause a mistrial. Since I  
10 agreed with the verdict of the trial and I  
11 didn't think they would get any more of a  
12 fair trial the second -- or the third time  
13 than the second time, I didn't want to do this.  
14 So -- but I told her if I felt differently  
15 about the verdict I might have, but I don't. So  
16 I asked her to see some documents from court, some  
17 transcripts from the two trials and from I think  
18 the Grand Jury too. Anyway, I saw some of the  
19 things, some of the evidence submitted and from  
20 that I agreed to speak with the Judge. I did  
21 not release her from her pledge not to play the  
22 tape for anyone, but I agreed to speak to the Judge  
23 about the matters discussed on the tape.

24 She indicated she felt she might be  
25 compelled for moral reasons to release the tape



1 to the defense if I didn't do something about it  
2 because she felt that -- she felt that her  
3 duty regarding the information in the tape was  
4 more compelling than her duty to me in her  
5 promise not to, you know, play the tape for  
6 anyone.

7 THE COURT: All right. Do you want to  
8 tell us what was in the tape that --

9 MR. ADAMO: All right. I assume that I -- if  
10 I do this I can't just say a juror, I have to name  
11 names. Is that the case or can I --

12 THE COURT: Well, I think you should tell us  
13 whatever you told her.

14 MR. ADAMO: I didn't tell her any names. I'm  
15 virtually positive. Like I said, it's over  
16 a year ago, but I'm pretty sure I didn't tell  
17 her any names.

18 THE COURT: Well, I would suggest you tell us  
19 everything. Well I'm not concerned about the  
20 tape as much as I'm concerned with what you have  
21 to say about what went on during this trial  
22 that has been disturbing you, and I think that  
23 should be placed on the record. If you remember  
24 the names I don't see any reason why you  
25 shouldn't name them.



1 MR. ADAMO: Okay, all right.

2 I guess this comes in two categories.

3 The first one is that one juror, Guy  
4 Alario, a fellow they called Guy, told me in  
5 the juryroom sometime very near the beginning  
6 of the trial, I'd say the first -- I'm sure  
7 within the first week, that his wife told him after  
8 he was picked for the jury, in other words,  
9 after voir dire, after he was picked -- we were  
10 not sequestered by the way, we were allowed  
11 to go home -- his wife told him that Rubin  
12 Carter failed a lie detector test about this murder  
13 thing on the night after or the night of the  
14 murder. That was the main thing I know that  
15 bothered me throughout the trial, and I guess  
16 might have influenced Guy.

17 The second thing is a conglomeration of I  
18 think misconduct of two -- maybe more than that --  
19 well at least one juror that I can remember the  
20 name of right now, John Armellino was making  
21 remarks on the bus -- this happened frequently  
22 enough that it was -- it was just part of  
23 the routine. But I can remember specifically  
24 one incident. We were riding on the bus to  
25 court one morning and he was making remarks  
to two of the jury guards back and forth. They

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were making jokes like this. I don't --  
I think one of the jury guards name was Joe, and  
that's all I remember. I do remember also  
they were not any of the original jury  
guards, there was none of the -- the  
original jury guards were very -- they were just  
perfect to the letter. They took their duties very  
seriously and were very careful not to, you know,  
disobey any of the rules or anything. But several  
of the later ones that we got sort of took  
a loose attitude about his. Any way, Armellino  
and two of the jury guards -- who I would  
remember by sight, I think -- were continually  
making "milignan" jokes -- which to  
you means nothing -- the Judge may know, it's an  
Italian word meaning eggplant , that is  
a derogatory nickname for black people, and  
they were constantly saying stuff  
like that back and forth, getting  
a kick out of it like they were ten years old  
kids, saying stuff out loud like, got any  
milignan up there, something like that.  
That's not a quote, but that was the nature of  
the thing which lead me to believe that -- well  
at least Mr. Armilino's impartiality may have been

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1 somewhat in question. Also Mr. Arwellino  
2 and I believe George Demetriades I think  
3 his name was, both of them somewhere in the second  
4 or third day of the trial, I think it was --  
5 maybe -- maybe--it was within the first week  
6 definitely -- I'm pretty sure it was the second  
7 or third day, both of them just said right out  
8 in the juryroom that, well, I have my mind  
9 made up -- or something to that effect; something  
10 like I don't need to listen any more. You know  
11 this was long before the defense gave their  
12 side of the case incidentally. I remember that.  
13 And one other thing I remember was that another one  
14 of the jury guards whose name I believe was  
15 Ted -- a heavy fellow, nice person -- I  
16 don't remember who was in the corner with me,  
17 we were sitting in the corner at the Holiday  
18 Inn by the window having dinner and we got into  
19 a discussion about, I believe it was a holdup  
20 or something in Paterson. It's very vague in  
21 my memory. I think he said something about  
22 the guys did it with shotguns or something,  
23 something about a holdup in Paterson  
24 that was not related to this case at all,  
25 except I also seem to have the impression it had  
to do with black people, that black people  
were supposed to have perpetrated the holdup. I



1 can't remember those words exactly, but my memory  
2 is so sure about it that there must have  
3 been something about it. He said  
4 something like -- something to the effect  
5 of due to some legal hole or flaw or process  
6 these guys got off, and I think he said --  
7 and this isn't an exact quote, but I'm pretty sure  
8 that these general words he said, something  
9 like probably the same with these bastards--  
10 referring to Carter and Artis. And I sort  
11 of thought that was improper. It was in earshot  
12 of me and whatever other jurors were down  
13 at this end of the table, but I can't  
14 remember who they were except that they were males.  
15 All the females sat up at the other end.

16 Let me see if there's anything else  
17 I can think of off hand.

18 That's all. That's all I can think of

19 THE COURT: That's it?

20 MR. ADAMO: Yes.

21 THE COURT: Is this the substance of the tape  
22 as well?

23 MR. ADAMO: Yes, and -- although this was  
24 a year ago. I might have remembered some  
25 other smaller details, but that's the substance.

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I might have remembered some other small incidents or details.

THE COURT: In other words, this is what has been disturbing you, right?

MR. ADAMO: That's what's been disturbing me.

THE COURT: That's what's on the tape as to what went on during the trial?

MR. ADAMO: Right.

THE COURT: I think you said that there were two categories. Does that include both categories?

MR. ADAMO: The one category I considered roughly was those discussions with racial overtones by the juror and the guards, and the other one was the fact that Guy had heard from his wife after being picked as a juror about the lie detector test and about him telling me. I consider that the other category, so --

THE COURT: Now the jurors you mentioned were they in the deliberation --

MR. ADAMO: Yes --

THE COURT: -- process?

MR. ADAMO: Yes, yeah.



1 .I think they were. Let me think now. One  
2 of them had to be. Let's see. The alternates  
3 were myself, Mr. Prior -- oh yeah, Eddie  
4 Fischer and Archie . They were both in.

5 THE COURT: Did anybody remind any of  
6 these jurors that they weren't to discuss the  
7 case and were to keep an opened mind?

8 MR. ADAMO: As a matter of fact, Art  
9 Sieber quite frequently did that. Everyone --  
10 or virtually everyone did little minor infractions  
11 like, you know, we would say something like --  
12 things like -- we might make some kind of  
13 comments about the testimony, you know, something  
14 that happened in court that was more or less  
15 minor and including myself I must admit, and  
16 for the most part it was of a fairly neutral nature.  
17 I can't imagine it not happening in a juryroom,  
18 you know, or outside either. I just think that it's  
19 probably -- you can't -- you can't stop  
20 it and nor should you worry about it but  
21 to a small extent. I must admit Arthur Sieber  
22 was extremely conscientious about this. Whenever  
23 he heard anyone say anything, he took it very,  
24 very seriously and said you should ' be  
25 quiet and he probably said something at the time



1 of the remarks in the juryroom about them having  
2 made their decision or having their minds  
3 made up. But he -- I don't think he  
4 said something -- he couldn't have said anything  
5 about, you know, the racial remarks 'cause  
6 he's not Italian. I don't think he knows  
7 what a milignan means.

8 I just kept -- I was trying to keep my nose out  
9 of it.

10 THE COURT: Is there anything else you  
11 think you want to put on the record, Mr. Adamo?

12 MR. ADAMO: Not that I can think of offhand.  
13 I didn't even want to put this on.

14 THE COURT: All right, I know. Well, all right.  
15 If that's it, then I'm going to close the interview  
16 and take it up with the Assignment Judge as to  
17 what action I have to take on it now that  
18 I'm aware of this. It may very well be that  
19 I might have to take some steps.

20 All right. I want to thank you for  
21 coming forward with it. It's very important  
22 that you did.

23 MR. ADAMO: I really -- I feel bad in  
24 a way. It's -- it's kind of selfishness  
25 on my part that I didn't do it earlier. I don't want

1 to get involved with all of this nonsense.

2 But it's partially not selfishness. I said  
3 well I kind of have an idea what could happen from  
4 this, and I was trying to decide for myself  
5 whether this should happen or not. But it  
6 really -- believe it or not, whenever anybody  
7 brings it up it bothers me and it's  
8 two years later. I just want to -- at  
9 least you get paid to take care of this. I don't.  
10 I don't want to live with this any more.

11 THE COURT: Okay. Let me see. Where  
12 do you live now Mr. Adamo?

13 MR. ADAMO: 509 43rd Street, Union City.

14 THE COURT: And your telephone number?

15 MR. ADAMO: 348-4910.

16 THE COURT: You live alone?

17 MR. ADAMO: Yes.

18 THE COURT: Okay. So what hours do  
19 you work?

20 MR. ADAMO 6:15 a.m. to 2:45 p.m.

21 THE COURT: We could reach you within  
22 the area of four o'clock?

23 MR. ADAMO: Yes. I can give you my  
24 number at work. 379 -- I forget now --  
25 86 something. Let's see. 379-3284.



THE COURT: All right. Let me think about this and then I will get back to you as to what I have to do.

In the meantime I would suggest you sit tight on it.

REASSEMBLE

I, Barbara Dodd, C.S.R, Official Court Reporter, certify that the foregoing is a true and accurate transcript of my stenographic notes.

*Barbara Dodd C.S.R.*

BARBARA DODD, C.S.R.

10/5/78

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