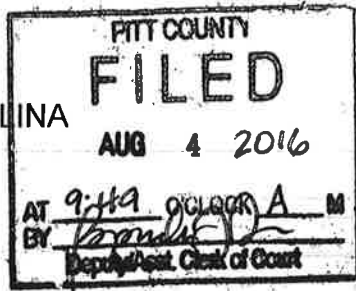


NORTH CAROLINA
PITT COUNTY



IN THE GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION
FILE NOS. 12 CRS 52712; 52713; 52715

STATE OF NORTH CAROLINA
v.
ANTWAN ANDRE ANTHONY,
Defendant

ORDER

THIS CAUSE came on to be heard before the undersigned Judge Presiding pursuant to a Motion for Appropriate Relief filed by counsel for the Defendant on April 14, 2016, in the office of the Pitt County Clerk of Superior Court. The undersigned Judge was the trial judge in this case. At this hearing the Defendant was represented by his attorneys, Terry W. Alford and Philip A. Lane. The State of North Carolina was represented by District Attorney Kimberly Robb, Assistant District Attorney W. Clark Everett and Assistant District Attorney Caroline H. Lawler. The Defense called the following witnesses: Juror # 5, Juror # 10, the Second Alternate Juror, Juror #2, Pitt County Deputy Sheriff Sgt. Shelton Davis, Juror # 4, Pitt County Sheriff's Detective Charles Mitchell, Pitt County Sheriff Neil Elks, Penny Warren, Pitt County Sheriff Captain Malcolm Carmichael II and Pitt County sheriff's Public Information Officer Christy Wallace and admitted into evidence a photograph of Christy Wallace as Defense Exhibit # 1 MAR.

Based on the evidence presented and documents in the court files the Court makes the following findings of fact beyond a reasonable doubt:

FINDINGS OF FACT:

1. The trial of the Defendant, Antwan Andre Anthony, began on February 8, 2016, and ended on April 5, 2016, in the Pitt County Criminal Superior Court.
2. On Monday, March 21, 2016, the jury found the Defendant, Antwan Andre Anthony, guilty of three counts of first degree murder and one count of robbery with a dangerous weapon.
3. On April 5, 2016, after a capital sentencing hearing, the jury recommended sentences of death in the three murder cases. On April 5, 2016, this Judge Presiding imposed the death sentence upon the unanimous recommendation of the jury on each of the murder convictions.
4. Judge Hobgood, throughout the trial instructed the jurors prior to every break and recess that they were not to discuss the case among themselves or with anyone else and if anyone spoke to them about the case they were to notify a bailiff.
5. The jury, at the sentencing proceeding received jury instructions from this Judge Presiding on Friday, April 1, 2016. The jury was given a 15 minute break the afternoon of Friday, April 1, 2016, and took that break outside the front of the courthouse.

6. As observed by Juror # 5 and Juror #2, Christy Wallace, Public Information Officer for Pitt County Sheriff Neil Elks, during the break described in Findings of Fact Paragraph Number 5, walked up to and spoke to Juror # 4 who was sitting on the steps of the courthouse. During this same break Juror #10 and the Second Alternate Juror observed a white woman walk up to Juror #4 and speak to her but could not identify that woman other than she was a white female.
7. At this hearing, Juror # 4 identified the white female who had walked up to her and spoken to her during this break as Christy Wallace. Juror # 4 had known Christy Wallace, that she was friends with her cousin and that ten years prior one of Juror # 4's children and Christy Wallace's child were on the same swim team. Juror # 4 knew that Christy Wallace worked for the Sheriff of Pitt County.
8. Christy Wallace walked up to Juror # 4 and asked, "Are y'all about done?" Juror # 4 was startled and made no reply except "um." Juror # 4 then went to the restroom. When Juror # 4 returned from the restroom, Christy Wallace was standing with the group of jurors just inside the outside front doors of the courthouse. Christy Wallace followed the jurors up the stairs.
9. Juror # 4 did not learn anything about the case from Christy Wallace, Christy Wallace's conversation was less than a minute. Christy Wallace did not suggest any particular outcome for the case.
10. Thereafter, Juror # 4 told several other jurors that she had known the lady who spoke to her for several years because she (Juror # 4) recognized that Christy Wallace should not have approached her and spoken to her while Juror # 4 was actively sitting on a case. At all times during the trial when jurors were at the courthouse they wore prominent readily visible juror badges.
11. During the sentencing proceeding, on a Thursday or Friday afternoon, which would have been on March 31 or April 1, 2016, Detective Charles Mitchell and Lt. Chad Suggs were seated on the back row of the courtroom. Christy Wallace approached them and stated "Why is this taking so long?" She further stated that she had two friends on the jury and that she had asked them, "If we bought the jury pizza would they work late?" The Court specifically finds that Christy Wallace made these statements to Detective Charles Mitchell and Lt. Chad Suggs but did not actually make those statements to any juror. She apparently was trying to act important or humorous in the eyes of the officers. It shocked the officers. Lt. Suggs told Detective Mitchell that he would take care of it. Lt. Suggs immediately reported Christy Wallace's statement to Captain Carmichael who in turn within ten minutes notified Sheriff Neil Elks. Sheriff Elks did not notify this Judge Presiding of any of this.
12. Sheriff Elks, rather than taking any disciplinary action against Christy Wallace, instructed her that "You cannot talk to the jury." No one told Sheriff Elks about Christy Wallace approaching and speaking with Juror #4 outside the courthouse during a break. Sheriff Elks did not report this incident to the Judge.
13. Christy Wallace demonstrated a remarkable lack of knowledge of court procedure and general code of conduct for someone in the position of a Sheriff's Public Information Officer. This is demonstrated by her total disregard of or lack of understanding of the "no contact" Order issued by this Judge Presiding at the beginning of the trial. A juror with a 9th grade education as well as all other jurors

with higher educational backgrounds understood and followed the "no contact" Order.

Based on the foregoing findings of fact, the Court makes the following

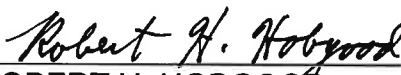
CONCLUSIONS OF LAW:

1. This Court has jurisdiction to hear this Motion for Appropriate Relief.
2. Christy Wallace made no contact with Juror # 4 during the guilt or innocence phase of this trial. Although Christy Wallace walked up to Juror # 4 during a break in the jury instruction phase of the sentencing proceeding and spoke to her as Juror # 4 sat on the front steps of the courthouse, Juror # 4 did not acknowledge her with any statement other than "Um." Christy Wallace made no statement to Juror # 4 about the Defendant or about what the result of the sentencing should be. Christy Wallace's statement to juror # 4 did not bear on a fact in issue in the case and did not violate the Confrontation Clause. *Robinson v. Polk*, 438 F.3d 350 (2006). This contact with Juror # 4 by Christy Wallace violated the Court's "no contact" Order but the Court finds beyond a reasonable doubt that this contact was harmless to the Defendant. *Mattox v. United States*, 146 U.S. 140, 148-150 cited in *Remmer v. U.S.*, 347 U.S. 227, 229 (1954).
3. All jurors in the case remained impartial and uninfluenced by outside persons during the entire trial including the guilt or innocence phase and the sentencing proceeding. There is no evidence to support the contention that any juror was exposed to improper facts or external opinions about what the result should be.
4. The facts found by the Court beyond a reasonable doubt establish that there was no prejudice or bias against the Defendant.
5. There has been no violation of the Defendant's fundamental right to an impartial jury, free from outside influences as guaranteed by due process, the confrontation clause and the Sixth Amendment to the United States Constitution, and the corresponding provisions of the North Carolina Constitution. U. S. Const. Amends. VI, XIV; N.C. Const. art. I, §§ 19, 23 and 24.
6. The Defendant is not entitled to a new trial or a new sentencing hearing.

WHEREFORE, IT IS ORDERED that the Motion for Appropriate Relief is denied and dismissed. The Defendant is to be returned to Central Prison in Raleigh, NC. The Court will leave it to the Sheriff of Pitt County to determine what personnel action is appropriate for Christy Wallace for violation of the Court's "no contact" Order.

The Court recognizes and commends Sgt. Shelton Davis for his dedication, skill and attention to duty as he handled the care and escort duties with the jury during the jury selection procedure, the guilt or innocence trial and the sentencing proceeding of this trial from February 8 through April 5, 2016.

This the 4th day of August, 2016.



ROBERT H. HOBGOOD
Judge Presiding