

Legal Letters by Andrew Agatston: The Legal List

First in a Series: Jurors – The “Target Audience”

Fuller v. State

Georgia Court of Appeals

A11A1982

(Decided January 27, 2012)

Background: This case involves the reversal of criminal convictions of the Defendant due to juror misconduct. This is one of a number of “worst case scenarios” that occur when a case has to be retried, causing a young victim to again potentially face a traumatic trial process, reliving past occurrences.

I am using this case today as a launch point for a series of Legal Letters related to jurors.

Today’s case doesn’t just explain how a criminal conviction for child molestation and other crimes can be reversed on appeal, it also sheds light onto what jurors might be thinking when sitting on a case involving allegations of child molestation.

I have stressed often in the past that, as a SuperWitness, you need to understand that the jurors are the most important people in the courtroom, because they are the decision-makers. We want witnesses who think not of themselves, but instead about how the jurors are doing.

Defendant Charles Fuller was the brother of the victim’s stepfather, who, when the victim was 12 years old, sexually abused her, then held a knife to her neck, telling her not to tell anyone or he would kill her. The victim’s stepfather, James Fuller, also participated in the attack.

At trial, Charles Fuller was convicted for child molestation and aggravated child molestation. He appealed his conviction.

On appeal, the Georgia Court of Appeals wrote that *“the evidence outlined (in the case) sufficed*

to sustain Fuller’s conviction for child molestation and aggravated child molestation.”

The Court of Appeals then reversed the convictions. The reason: juror misconduct.

First, the ancient rule regarding the need to isolate the jury after its empanelment in a criminal case. (Your state, if not Georgia, almost certainly has a similar ancient case speaking to this rule’s importance.)

“The law contemplates that no outside influence shall be brought to bear on the minds of the jury, and that nothing shall occur outside of the trial which shall disturb their minds in any way; that the minds of the jury shall be entirely occupied with the consideration of the case which they are sworn to try.”

This language is from a Georgia case more than 120 years old. In that case, a Defendant’s conviction was reversed where the bailiff and jurors had attended an evening prayer meeting conducted by the prosecutor, even though there was no evidence that any discussion of the case ever took place.

Today’s case sets forth facts that triggered the ancient rule described, and caused the convictions to be reversed, with the specter of another trial involving this victim, now apparently 19 years old.

In today’s case, one of the jurors was seen by the prosecutor eating lunch with three other jurors at a cafe. The prosecutor saw the juror get up, approach the victim, and say something to her. A prosecutor approached the juror and told her that she was not allowed to speak to the victim. The trial judge was informed of this encounter, who then examined the juror outside the presence of the other jurors.

I am going to set forth the examination of the juror. While reading this, please think to yourself how jurors approach their duties while deciding a child molestation trial. What are their fears? What are their concerns? What goes through their minds when they hear about the underlying facts and evidence of a child molestation case?

Think further: What are jurors looking for in reaching their decision? How can you, as a witness, properly, professionally, ethically, credibly and truthfully provide evidence to assist them in reaching their informed decisions?

Do you think, for many jurors, it is excruciating sitting as a juror on a child molestation case?

Q (by judge): Do you remember who you spoke to?

A (by juror): I can't recall her name but I know her.

Q: Do you know what you said?

A: Oh yes.

Q: What did you say?

A: I said heh, honey, I said keep your head up, I said I'm so proud of you. . .

Q: Did you understand that you were not supposed to speak to anyone in this case?

A: Yes, I did.

Q: Why did you do that?

A: I don't know. My heart was kinda filled at that time for her. And I thought maybe she was ashamed, you know, and that's why I told her, hold your head up.

The trial judge then asked the juror whether she was prejudiced about the case. The juror said no.

The trial judge then asked whether she could reach a fair and impartial verdict. The juror said yes.

And finally, the trial judge asked whether she had “just been feeling for a child.” The juror responded, “Yes, yes, yes.”

After this questioning, the defense lawyer moved for a mistrial, which was denied.

The rule regarding juror misconduct can be expressed as follows:

“To upset a jury verdict, the (juror) misconduct must have been so prejudicial that the verdict is deemed inherently lacking in due process.”

Here, the Court of Appeals pointed out that the juror initiated a conversation with the victim in the case during a trial break, and, alone, had access to the victim’s reaction to the juror’s expressions of support.

Further, the trial court never asked the juror what the victim’s reaction or response was, and also failed to examine the other three jurors who had been sitting with the “wayward” juror. Thus, the trial court, and the record that it created, only contained one account, that of the wayward juror.

Finally, as if not to drive its point home, the Court of Appeals concluded that (1) the juror’s contact was *intentional* rather than *accidental*; (2) the juror established a *personal relationship* with the victim-witness; and (3) her statements to the victim could reasonably have been considered *expressions of her judgment* concerning the events at issue.

You could say that this juror cared so much that it hurt -- hurt the case, hurt the conviction, and most of all hurt the victim.

(As an aside, it is important to understand that there were mistakes all around, other than the juror misconduct, that will not be discussed for purposes of this Legal Letter.)

A case outlining juror misconduct rules. But for our purposes, to be SuperWitnesses, we need to examine what jurors, think, feel, believe, and fear. We will discuss these concepts in the upcoming Legal Letters.

Best regards.

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