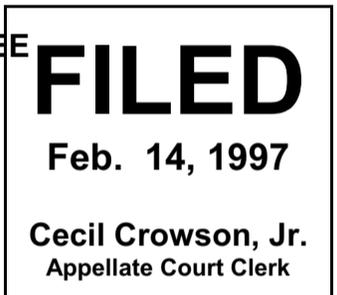


IN THE COURT OF CRIMINAL APPEALS OF TENNESSEE

AT JACKSON

SEPTEMBER SESSION, 1996

STATE OF TENNESSEE,)	C.C.A. NO. 02C01-9510-CC-00329
)	
Appellee,)	
)	
VS.)	OBION COUNTY
)	
ANGELA CAPRICE)	HON. WILLIAM B. ACREE
PARCHMAN, A/K/A Rosie)	JUDGE
)	
Appellant.)	(Sale of Drugs)



OPINION CONCURRING IN RESULTS

Regrettably, I must concur in the judgment of the majority opinion that this case be remanded for a new trial. However, I have reached this conclusion through a somewhat different rationale than that expressed by my colleagues.

The record in this case reflects clearly that one of the jurors had an improper conversation with the baliff regarding the jury's options. However, the record also reflects that the substance of the baliff's statement, i.e., that the jury could convict on one count of the indictment and acquit on the other, was not the information imparted to the other jurors. Indeed, this information is a correct statement of the law. Rather than report this information to the other jurors, the juror who spoke with the baliff told the other members of the panel that if no verdict was reached the judge would send them back into the jury room until

verdicts were obtained. Had the juror made this statement without speaking to anyone outside the jury concerning the jury's deliberations there would be no question the statement could not be used to question the result reached by the panel. See, Tenn. R. Evid. 606(b).

Thus, it is unfortunate that a lone juror saw fit to ask the baliff for assistance in its deliberations rather than the entire jury making inquiry of the trial judge, as would have been the proper procedure. It is even more unfortunate that the baliff saw fit to answer the questions asked of him. Because the baliff's statement never reached the other jurors, and because it is correct in its assessment of the jury's options, it is highly unlikely the statement effected the verdict even though one lone juror had heard it. Nevertheless, the integrity of the jury system demands that improper communication between jurors and non-jurors be avoided. I therefore am of the opinion that the misconduct of the juror and baliff in this case resulted in prejudice to the judicial process and requires a new trial even though the misconduct in all probability did not alter the results of the trial. See, Tenn. R. App. P. 36(b); State v. Perry, 740 S.W.2d 723 (Tenn. Crim. App. 1987).

For the reasons stated above I concur in the result reached by the majority.

JERRY L. SMITH, JUDGE