

IN THE CIRCUIT COURT OF THE
EIGHTEENTH JUDICIAL CIRCUIT
IN AND FOR BREVARD COUNTY,
FLORIDA.

CASE NO. 05-2014-CF-015443-AXXX

STATE OF FLORIDA,

Plaintiff,

v.

JOSEPH PALLANTE, III,

Defendant.

**ORDER DENYING DEFENDANT'S MOTION FOR NEW TRIAL AND
DENYING DEFENDANT'S MOTION FOR NEW TRIAL (OR IN THE
ALTERNATIVE MOTION FOR JURY INQUIRY)**

THIS CAUSE came before the Court on October 27, 2017, upon the Defendant's Motion for New Trial, and on November 1, 2017, and November 7, 2017, upon the Defendant's Motion for New Trial or in the Alternative Motion for Jury Inquiry. The Court has heard and considered the arguments of Counsel and has carefully reviewed the evidence and authorities presented. Based upon this review, and being otherwise fully advised in the premises, the Court makes the following findings of fact and conclusions of law:

A. After a jury trial, the Defendant was convicted of various offenses. The jury rendered its verdicts on Wednesday, October 11, 2017. On October 19, 2017, the Defendant timely filed a Motion for New Trial, alleging error in the rulings of the Court and newly discovered misconduct by

the State. On October 27, 2017, the Defendant filed his Motion for New Trial or in the Alternative Motion for Jury Inquiry.

B. The Defendant claims the Court erred in permitting the State to introduce collateral acts/wrongs which served no specific purpose other than to discredit and taint the jury's perception of the Defendant, that the collateral acts/wrongs evidence became a feature of the case, and that the Court erred in failing to grant various motions for mistrial based on the State's misuse of collateral acts/wrong evidence. The Court finds the collateral acts/wrongs evidence was properly admitted and properly limited, and it did not become a feature of the case. The Court finds no error in its denial of the motions for mistrial.

C. The Defendant claims the Court erred in denying his motions for Judgment of Acquittal. The Court finds the State presented sufficient evidence on each count to require submission to the jury.

D. The Defendant claims the State committed prosecutorial misconduct when it, in bad faith, charged "questionable" photos and/or videos as child pornography so the State could publish the photos to the jury and taint the jury's perception of the Defendant. The Court received testimony on this issue from Assistant Public Defender Colleen DeGraff, Assistant State Attorney Kathryn Speicher, and various employees from the State Attorney's Office. After considering the testimony and the evidence

presented at trial, the Court finds that the State proceeded based on sworn testimony, with a good faith belief that the charged counts represented child pornography. The Court finds no prosecutorial misconduct.

E. The Defendant's Motion for New Trial or in the Alternative Motion for Jury Inquiry alleges that during jury deliberations, the jurors spoke to a court deputy and requested that they recess, go home for the night, and continue deliberations the next day. According to the motion, Juror [REDACTED] indicated a court deputy told them that they must continue to deliberate. The Defendant claims this communication was never presented to the parties nor were the parties consulted. The Defendant claims this is per se reversible error, requiring a new trial, based on State v. Merricks, 831 So. 2d 156, 159 (Fla. 2002).

F. The Court received testimony from the deputy and Juror [REDACTED]. The deputy testified that he went to the jury room to retrieve questions from the jury. He would have told the jurors that he was taking the questions to the courtroom and they could keep deliberating until the deputy returned. If he had heard a comment about a juror wanting to go home, he had taken it as a joke and not as a question. The deputy does not recall exactly what was said, but can swear, without limitation, that he did not answer such a question, and that he has always told jurors to put their questions in writing for the judge.

G. Juror [REDACTED] testified that after a conversation with a friend who is an attorney, the friend suggested she contact the defense attorneys. She called the attorneys and left a message and they called her back the next day. She testified that she felt a little blindsided by the attorneys' phone call when they began asking her specific questions about whether the jury wanted to go home that night. The juror agreed that the attorneys told her she did not have to talk with them. The juror testified that she called as a favor for her friend, and she thought she would be asked her general opinion about the attorneys' trial presentation.

H. Juror [REDACTED] testified that when deliberations began that night, the jurors were conversing and decompressing about beginning deliberations at that time, making off the cuff comments. The conversation was the jurors talking amongst themselves, not a direct question directed to the deputy. The deputy told them to start deliberating, but he did not tell them that they had to deliberate that night and could not come back the next day. She testified that she recalled the instructions that if they had any questions they would have to put them in writing, and they did submit some questions in writing. The juror testified that if she would have decided she wanted to stop, she would have put her foot down and would have written her request in a note to the judge. When asked whether the deputy's comments had any effect on their deliberation, she replied, "Absolutely not."

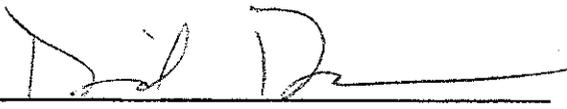
I. After considering the evidence presented, the Court finds that a new trial is not appropriate nor required, the facts being significantly different from those presented in Merricks. Any communication with the deputy was not a substantive request related to the case, nor was any comments by the Deputy a substantive response. In addition, the Court finds that the Defendant has failed to show any prejudice. Clearly, any communication had no effect whatsoever on the jury's verdict.

J. The State raised several procedural objections to the request for a juror interview. The Court finds good cause was shown to file the motion and the allegations were sufficient to inquire further. The Court makes no finding on the State's claim of ethical violations, but does find that exclusion would be too harsh a remedy in this case. Accordingly, it is

ORDERED AND ADJUDGED:

1. The Defendant's Motion for New Trial is **DENIED**.
2. The Defendant's Motion for New Trial or in the Alternative Motion for Jury Inquiry is **DENIED**.

DONE AND ORDERED at Moore Justice Center, Viera, Brevard County, Florida, this 9th day of November, 2017.



DAVID DUGAN
CIRCUIT JUDGE

CERTIFICATE OF SERVICE

I do certify that copies hereof have been furnished by e-filing to the Office of the State Attorney and to Greg Eisenmenger, Esq., this 9th day of November, 2017.

Monica Goldberg
Judicial Assistant