

COA Opinion: A nurse's statements to an investigator when she was aiding in an interview of the wounded witness did not amount to a second layer of hearsay because she was merely acting as a conduit of the witness's statements

5-19-2011 by Jason Byrne

In *People v. Jackson*, No. 285532, the Court of Appeals affirmed Defendant's conviction for first-degree premeditated murder, conspiracy to commit murder, assault with intent to commit murder, and possession of a firearm during the commission of a felony. The Court rejected Defendant's claims of insufficient evidence, discovery violations, juror misconduct, improper admission of hearsay, judicial bias, and ineffective assistance of counsel.

The charges arose out of a shooting incident that left one victim dead and another victim wounded. The wounded victim gave a statement to police, which implicated the Defendant in the shooting. The wounded victim told police that Defendant and his co-defendant convinced the two victims to join the Defendant in a robbery. The co-defendants then cornered the victims and shot them.

First, the Court rejected Defendant's claim that the evidence was insufficient to support his convictions. The Court held that the credibility of the victim's testimony was for the jury to decide, and viewed in a light most favorable to the prosecution, the testimony supported the inference that the co-defendants acted in concert to kill the victims.

Second, the Defendant argued that the prosecutor violated his constitutional right to discovery by failing to disclose a transcript of Defendant's prior statements pursuant to an investigative subpoena. The court noted that in a criminal case there is no general constitutional right to discovery, and due process was not violated because the transcript was excluded from the prosecutor's case in chief and Defendant did not suggest it contained exculpatory evidence.

Third, the Court rejected the Defendant's argument that a new trial was required because after a juror was dismissed for being emotionally unable to proceed, the trial court did not question the remaining jurors in order to ascertain whether the excused juror said or did anything to taint the remaining jurors. The trial court was not obligated to question the remaining jurors, and the court's decision to proceed without questioning the remaining jurors was not a plain error because the questioning of the dismissed juror did not reveal any information suggesting the remaining jurors had been tainted.

Fourth, the Court held that a nurse's statements to an investigator when she was aiding in an interview of the wounded witness did not amount to a second layer of hearsay because she was merely acting as a conduit of the witness's statements. During the interview, a sergeant asked the wounded witness questions, and the witness answered by squeezing the nurse's hand to indicate "yes," and not squeezing to indicate "no." The nurse relayed the witness's response to the sergeant, and the sergeant testified regarding the interview at trial. The Court compared the nurse to a translator, and held that she merely acted as a language conduit. The Defendant had a full

opportunity to cross examine the wounded witness at trial, and his Confrontation Clause rights were therefore satisfied.