

BEFORE THE CIRCUIT COURT OF COLE COUNTY, MISSOURI

JOSEPH D. AMRINE,
Plaintiff,
vs.
JULIAN J. OSSMAN,
Defendant.

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Case No. 08AC-CC00340

ORDER GRANTING NEW TRIAL

The Court takes up the pending Motion for a New Trial.

On February 14, 2013, the Court held an evidentiary hearing regarding the allegations of a juror making racial biased statements during deliberations. Several jurors testified as well as other witnesses. Argument was made by counsel and the cause was submitted.

The Court had the opportunity to view the witnesses as they testified. The Court considered the appearance, attitude, and behavior of the witness, the inclination of the witness to speak truthfully or untruthfully, and the probability or improbability of the witness' statements.

The Court finds by clear and convincing evidence that Juror C.G made the statement that "I will not give that nigger anything." The Court further finds that Juror C.G was not credible in his denial. Finally, the Court considered the collateral evidence relating to Juror C.G.'s conduct outside the jury room and in the presence of other African-Americans, finding it not persuasive given the context (motorcycle club where 90% of the members are African-American or with an African-American co-worker). The Court also finds that the other jurors' testimony supporting Juror C.G.'s version of events was not credible.

To say that the use of the "n word" by caucasians such as Juror C.G. is racially charged is an understatement. To use it in jury deliberations, where 10 of the other 11 people are caesarian, a "safe" environment, demonstrates unrestrained racial bias.

A new trial is required. *Fleshner v. Pepose Vision Institute*, 304 S.W.3d 81 (Mo. banc

2010).

The Court has previously denied the request for a new trial based as argued in Point II and incorporates its order of February 1, 2013 herein.

The Court has considered the arguments made on Point III and finds that they are not well taken. It would be within the providence of the jury to believe the evidence of causation was insufficient to support a verdict, notwithstanding a finding of negligence.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED that Plaintiff's Motion for a New Trial on the basis of a lack of fair trial (Point I) is sustained. The Motion for a New Trial based upon other juror misconduct and notwithstanding the verdict is denied.

The cause is placed on the April 5, 2013 law day at 9:00 a.m. for trial setting. Counsel may arrange a telephone conference prior to that day and time at a time convenient for all parties.

SO ORDERED this 6th day of March, 2013.

A handwritten signature in cursive script, appearing to read "J. Carter", is written over a horizontal line.