

Appellate Division Orders New Trial To Ensure Juror's Observation Did Not Affect Verdict

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In Tomikia Davis, by and through Charlene Davis, Limited Administrator of the Estate of Tomikia Davis v. Dr. Abbas Husain, A-4525-15T2, the Appellate Division ordered a new trial in a harassment case where the defendant doctor did not put his hand on the Bible before testifying and a juror commented about it.

The underlying case stems from a sexual harassment case which went to trial in 2011. The plaintiff was awarded \$12,500 in damages and the judge granted plaintiff's counsel \$102,962.63 in fees. After the verdict, the judge met with the jury alone and it came to light that a female juror commented upon the defendant's decision to not place his hand on the Bible.

Defense counsel demanded a new trial and the matter eventually went to the Supreme Court in 2014, where the Court strongly prohibited communication between the trial judge and jurors after the verdict. The Court also remanded the matter for a hearing in the Law Division to "consider afresh" the female juror's comment and to determine if it "affected others on the panel."

The Court attempted to contact four women who were on the jury panel, but only one appeared for questioning by the Law Division judge.

The juror stated that the juror who made the comment as "very passionate" about her observation, but did not think that "the rest of the jury really put too much stock into it." The Law Division Judge denied a motion for a new trial.

The Appellate Division disagreed with the Law Division and found that the juror's comment regarding the Bible "raises the specter of religious bigotry". It further held that the "exercise of a person's religion should not make him or her per se incredible". The court ordered that the only appropriate remedy was

a new trial to ensure that the outcome was untainted.