

## Verdict valid despite felon as jury member

By: Tom Egan ◉ March 29, 2017

The 1st U.S. Circuit Court of Appeals has upheld a verdict in a dispute over uninsured motorist benefits despite the fact that a convicted felon who should have been disqualified was allowed to serve on the jury.

The plaintiff policyholders claimed to be entitled to a new trial because the felon made a “concerted effort to conceal his criminal history.”

The 1st Circuit, however, affirmed a U.S. District Court judge’s decision to deny the plaintiffs’ motion for a new trial.

“The district court did not clearly err in its finding that [the felon]’s inclusion on the jury resulted in no prejudice to the [plaintiffs] and did not affect the jury’s impartiality,” Judge O. Rogeriee Thompson wrote for the unanimous 1st Circuit panel.

“The [plaintiffs] have failed to adequately explain how bias, if any, tainted their trial result,” Thompson added.

The 24-page decision is *Faria, et al. v. Harleysville Worcester Insurance Company*, Lawyers Weekly No. 01-069-17. The full text of the ruling can be found [here](#).

Pawtucket attorney John B. Harwood argued the appeal on behalf of the plaintiffs. The defendant insurer was represented by Kevin J. Holley of Warwick.

### Jury trial

In March 2012, plaintiff Brian Faria was injured in a car accident, which he claimed was caused by a reckless highway driver who cut him off.

Eventually, the plaintiff and his wife, Melissa, brought a lawsuit against their insurance carrier, defendant Harleysville Worcester Insurance Co., claiming that Harleysville had incorrectly denied coverage under the uninsured motorist provision of his automobile insurance policy.

A prospective juror by the name of John R. Rieger was randomly selected for jury service. When completing his juror qualification form, Rieger selected “Yes” in response to a question asking whether he had ever been convicted of a crime for which punishment could have been more than one year in prison.

Following the form’s instructions, he elaborated in the “Remarks” section that the date of the offense was “Feb. 1995,” the date of the conviction was “2000-2001,” and he served 18 months of the four-year sentence imposed. He also selected “Yes” in response to the question, “Were your civil rights restored?” and specifically wrote “Voting Rights.”

The jury’s unanimous verdict, announced by Rieger as foreperson, was for the defendant insurer.

Twelve days later, the plaintiffs filed a motion for a new trial after learning that Rieger had been convicted in state court of assault with a dangerous weapon in 1997 and had been sentenced to 15 years, with four years to serve, as well as an 11-year suspended sentence that would run concurrently with probation.

Due to his state court appeal, his sentence was not executed until March 23, 2001, meaning that he was on a suspended sentence and probation at the time he served on the jury.

The plaintiffs contended that Rieger was not qualified to serve on the jury under 28 U.S.C. §1865(b)(5).



Judge John J. McConnell Jr. found that following his conviction, Rieger’s civil rights had not been fully restored, and, therefore, he was not qualified to serve. McConnell nonetheless denied the new trial motion, concluding that the plaintiffs had not shown that Rieger’s “service deprived [them] of a fundamentally fair trial.”

### **Bias not shown**

The plaintiffs’ appeal was based on *McDonough Power Equip., Inc. v. Greenwood*, a 1984 case in which the Supreme the Court announced “a binary test” that the filer of a new-trial motion based on juror dishonesty must satisfy the following:

- (1) a party must first demonstrate that a juror failed to answer honestly a material question on voir dire; and
- (2) the party must then further show that a correct response would have provided a valid basis for a challenge for cause.

“As the Farias see it, Mr. Rieger is a man who made a ‘concerted effort to conceal his criminal history’ because he was bound and determined — for whatever reason — to sit on this jury, and he deceitfully lied in an effort to achieve that ambition,” Thompson wrote.

The plaintiffs argued that, had Rieger provided truthful responses to the questions he was asked, he clearly would have been excused if challenged because he was ineligible to serve.

“*McDonough* does not assist the Farias because they misconceive the core principle of its holding,” Thompson said, adding that “the binary test set forth in *McDonough* is not a be-all-end-all test to be viewed without context.”

Rather, Thompson said, “the fundamental purpose of the test is to answer the crucial, overarching trial inquiry: was the juror biased and, if so, did that bias affect the fairness of the trial?”

Under 1st Circuit precedent, a party seeking a new trial because of a juror’s nondisclosure “must do more than raise a speculative allegation that the juror’s possible bias may have influenced the outcome of the trial,” Thompson said. The requisite level of bias must be shown by a preponderance of the evidence.

“The Farias sweepingly state that Mr. Rieger’s dishonest answers ‘prejudiced Mr. Faria,’ but offer none of the requisite analysis of discernable bias or prejudice harbored by Mr. Rieger, or how that bias influenced the trial’s outcome,” Thompson wrote.

“Here, Mr. Rieger’s felon status, alone, does not necessarily imply bias, and accordingly his mere presence on the Farias’ jury does not, without more, demonstrate an unfair trial result,” Thompson stated.

The panel concluded that the statutory violation of allowing a convicted felon to serve did not implicate the fundamental fairness of the trial.

**CASE:** *Faria, et al. v. Harleysville Worcester Insurance Company*, Lawyers Weekly No. 01-069-17

**COURT:** 1st U.S. Circuit Court of Appeals

**ISSUE:** Did the inclusion of a convicted felon on a jury in a trial over uninsured motorist benefits entitle the policyholders to a new trial?

**DECISION:** No

Issue: APRIL 3 2017 ISSUE

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