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DISTRICT II

October 20, 2021

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You are hereby notified that the Court has entered the following opinion and order:

2020AP1810-CR State of Wisconsin v. Jordan J. Fields (L.C. #2018CF342)

Before Gundrum, P.J., Neubauer and Reilly, JJ.

Summary disposition orders may not be cited in any court of this state as precedent or authority, except for the limited purposes specified in WIS. STAT. RULE 809.23(3).

Jordan J. Fields appeals from a judgment of the circuit court convicting him of substantial battery and disorderly conduct following a jury trial. Fields contends that the court erred in denying his motion for a mistrial based on an affidavit from a juror which Fields argues demonstrates that the jurors received prejudicial extraneous information during their deliberations. Based upon our review of the briefs and record, we conclude at conference that

this case is appropriate for summary disposition. *See* WIS. STAT. RULE 809.21 (2019-20).[1] We affirm.

The parties do not dispute the facts pertinent to this appeal. A jury convicted Fields of substantial battery and disorderly conduct stemming from an incident at a party where he punched the victim in the face. After the verdicts were read, the jurors were individually polled in open court at the defense's request, and each of the twelve stated that they assented in the guilty verdicts, affirmatively responding to the court's question directed to each juror by name: "[W]ere these and are these your verdicts?"

After trial, Fields filed a motion for a mistrial, seeking a new trial on the basis of what he argued was extraneous prejudicial information brought to at least some members of the jury. The motion was accompanied by an affidavit from a juror who sat for Fields's trial, stating that she "wrote a note to the judge requesting leniency for Mr. Fields … because [she] believe[d he] acted in self-defense and is not guilty of substantial battery." The affidavit further reported that "[a]nother juror also wrote a note [to the trial judge] because she agreed"[2] with the affiant. The affiant went on to state:

[1] All references to the Wisconsin Statutes are to the 2019-20 version unless otherwise noted.

[2] The note from the affiant stated "final decision please give Jordan some leniency judge." The note from the other juror stated, "I voted Subst. Battery d/t Majority Vote however I feel Jordan defended himself despite size—football player—I feel flight + fright took event—and Jordan took self-defense action. Thank you sir!"

(continued)

> I voted guilty on substantial battery because most of the other jurors voted guilty and I was overruled. I felt I had no choice and did not understand that I could make my final vote not guilty when most of the jurors voted guilty. I did not understand that there could be a hung jury.

Finally, the juror averred that she "felt pressured by the other jurors and many of the jurors simply wanted to go home" and further explained that "[o]ne juror said she needed to leave soon because she had an appointment later in the afternoon." Fields did not present an affidavit from the other juror who wrote a note to the trial judge.

The circuit court held a hearing on the motion for mistrial at which the parties presented oral arguments to the court. The court denied the motion, holding that the juror's affidavit was not competent under WIS. STAT. § 906.06(2). The court found that there "wasn't any extraneous information at all" referenced in the affidavit, finding instead that the juror referenced "the internal mechanisms of deliberations." The court observed that the jury incompetency rule, codified at § 906.06, does not allow inquiry into jury deliberations or juror thought processes or emotions in reaching the verdict. "Given that strong rule," the court decided that it could not accept the juror's affidavit as competent evidence: "I can only accept that they reached their juror vote unanimously, that they said that in open court; that you polled them in open court, and

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The affiant also asserted that the notes were handed to the bailiff along with the verdict forms, before the verdict was announced and the jury was polled. Fields's mistrial motion stated that neither the attorneys nor the circuit court knew about the notes at the time of the verdict. At the hearing on Fields's motion, the circuit court rejected counsel's contention that the bailiff failed to give the notes to the court, stating unequivocally on the record that the "notes were not in with the verdict forms" and that "if there had been a question of unanimity, [the court] wouldn't have accepted those verdicts." The court further stated that "these notes were not made aware to the court until after the jury was gone and [the parties] had left the" courtroom. Fields does not challenge the court's statements on appeal or argue that the question of when the notes were given to the bailiff and the judge is relevant to his challenge on appeal. As such, we do not discuss the issue further.

all [twelve] of them said it was their vote." The court denied Fields's motion for mistrial without holding an evidentiary hearing on the motion. Fields appeals.

This appeal calls on us to review the circuit court's decision denying Fields's motion for a mistrial based on his contention "that jurors received extraneous prejudicial information during deliberations." An appellate court will affirm a circuit court's decision on a motion for a new trial based on extraneous information "when the record shows that the circuit court looked to and considered the facts of the case and arrived at a conclusion consistent with applicable law." ***State v. Eison***, 194 Wis. 2d 160, 171, 533 N.W.2d 738 (1995). Whether a juror's testimony is competent is a legal question that this court reviews de novo. ***Manke v. Physicians Ins. Co. of Wis.***, 2006 WI App 50, ¶19, 289 Wis. 2d 750, 712 N.W.2d 40.

When considering the impeachment of a verdict, the circuit court must consider (1) whether the evidence proffered is competent under WIS. STAT. § 906.06(2); (2) whether the evidence shows error, that is, are there substantial grounds sufficient to overturn the verdict; and (3) whether the conviction should be overturned because the error was prejudicial. ***After Hour Welding, Inc. v. Laneil Mgmt. Co.***, 108 Wis. 2d 734, 738, 324 N.W.2d 686 (1982). Because we conclude that the affidavit is not competent evidence, we do not reach the second and third steps of the analysis.

WISCONSIN STAT. § 906.06(2) governs the competency of jurors to testify in an inquiry into the validity of the verdict. It provides that

> a juror may not testify as to any matter or statement occurring during the course of the jury's deliberations or to the effect of anything upon the juror's or any other juror's mind or emotions as influencing the juror to assent to or dissent from the verdict or indictment or concerning the juror's mental processes in

> connection therewith, except that a juror may testify on the question whether extraneous prejudicial information was improperly brought to the jury's attention or whether any outside influence was improperly brought to bear upon any juror. Nor may the juror's affidavit or evidence of any statement by the juror concerning a matter about which the juror would be precluded from testifying be received.

Id. The reasons for the rule against impeachment of a jury verdict include "prevention of jury harassment, encouragement of free and open jury deliberations, promotion of finality of verdicts, and reduction of the incentive for jury tampering." ***After Hour Welding***, 108 Wis. 2d at 737 n.2. These considerations compete with the desire and duty of the legal system to avoid injustice and redress grievances of private litigants. ***Id.*** at 738.

Based on these considerations, "[t]he sole areas where jurors are competent to testify concerns extraneous information that was considered during the jury deliberations or outside influences." ***Anderson v. Burnett County***, 207 Wis. 2d 587, 593, 558 N.W.2d 636 (Ct. App. 1996). The juror affidavit presented by Fields with his motion for mistrial contains statements such as "I felt I had no choice," "I did not understand," and "I felt pressured." Evidence of this type is not competent evidence, as it fails to sufficiently establish "extraneous prejudicial information" contemplated by the statute. *See* ***id.*** at 595 (explaining that "[n]o matter how mistaken the perception of a juror may be, it is part of the human condition that all jurors bring to the jury deliberations" and it is not competent evidence under WIS. STAT. § 906.06(2)).

As we have explained, "[t]he purposes behind WIS. STAT. § 906.06(2) are so compelling that it applies even when it acts to exclude evidence showing that something went wrong in the jury process." ***Grice Eng'g, Inc. v. Szyjewski***, 2002 WI App 104, ¶12, 254 Wis. 2d 743, 648 N.W.2d 487. "The recognized general rule is 'that the statements of the jurors will not be received to establish their own misconduct or to impeach their verdict.'" ***Id.*** (citations omitted).

Thus, the circuit court correctly ruled that it could not accept the juror's affidavit here to impeach the verdict. Statements averring that the jurors reached a unanimous verdict because they wanted to go home and that one juror wanted to finish up so she could make an appointment are similarly not competent evidence. *See* ***State v. Shillcutt***, 119 Wis. 2d 788, 801, 350 N.W.2d 686 (1984) ("The rule against a juror's impeaching his own verdict has been applied to prohibit inquiry into an allegation … that a juror was coerced or pressured by other jurors."); ***Kink v. Combs***, 28 Wis. 2d 65, 77-78, 135 N.W.2d 789 (1965) (evidence that juror only agreed to verdict because of fatigue is not admissible); ***Anderson***, 207 Wis. 2d at 598-99 (holding that a juror is not competent "to testify as to the nature of the deliberations or the reasons why some or all of the jurors may have reached the results reflected in the verdict"). The evidentiary rule is clear: absent a showing of extraneous prejudicial information, a "juror may not testify as to *any matter or statement* occurring during the course of the jury's deliberations or to the *effect of anything* upon the juror's or any other juror's mind or emotions as influencing the juror to assent to or dissent from the verdict or indictment or concerning the juror's mental processes in connection therewith." Sec. 906.06(2) (emphasis added).

Fields argues that the juror's statements that she did not understand that there could be a hung jury or the jury could deadlock are "neither of record, nor general knowledge or accumulated life experiences of a typical juror." He relies on ***State v. Broomfield***, which defines "extraneous information" as "information which a juror obtains from a non-evidentiary source, other than the 'general wisdom' we expect jurors to possess" to argue that the juror's affidavit in this case is competent under WIS. STAT. § 906.06(2). ***Broomfield***, 223 Wis. 2d 465, 478, 589 N.W.2d 225 (1999) (citation omitted). According to Fields, the information that the affiant here "received concerning hung juries was from a 'non-evidentiary' source and was not general

wisdom." However, Fields fails to acknowledge that the ***Broomfield*** extraneous information definition also includes the requirement that the allegedly prejudicial "information 'com[es] from the outside'" and that it "does not extend to statements which simply evince a juror's subjective mental process." ***Id.*** (citations omitted). Fields fails to develop any argument which would convince us that this juror was influenced by any outside information whatsoever.

Fields's argument also relies heavily on a nonbinding but persuasive unpublished case, ***State v. Mahajni***, No. 2017AP1184-CR, unpublished slip op. ¶¶21-34 (WI App June 27, 2019), in support of his position. Fields contends that this case is "[f]actually … very similar" to ***Mahajni***, where this court concluded that affidavits that jurors made indicating that a bailiff told them "during deliberations" that they "could not deadlock" were competent evidence sufficient to warrant an evidentiary hearing on the defendant's motion for a new trial. *See* ***id.***, ¶24. We disagree and conclude that ***Mahajni*** is readily distinguishable from the case here, where the juror affidavit indicates only that it was her own misperception that the jury could not deadlock—there is no evidence whatsoever that this misinformation came from any outside source such as a bailiff.

Unlike ***Mahajni***, we conclude that "[w]hile the juror's conclusions were wrong, they reflected the specific juror's mental processes and are not the result of extraneous information." *See* ***Anderson***, 207 Wis. 2d at 595. Our supreme court has observed that courts have rejected arguments similar to those Fields makes here in numerous situations, explaining:

> The rule against a juror's impeaching his own verdict has been applied to prohibit inquiry into an allegation that jurors misunderstood or intentionally misapplied the law, that the jurors misunderstood the charge for which the defendant was on trial, that a juror was coerced or pressured by other jurors, that jurors were

> upset or otherwise distracted, and that the verdict was arrived at by means of compromise or averaging of juror estimates of damages.

See ***Shillcutt***, 119 Wis. 2d at 801 (footnotes omitted; collecting cases). Fields provides us with no contrary authority that would lead us to conclude that the evidence here—that a juror misunderstood the law (thinking the jury could not deadlock), was pressured into reaching a verdict, or that another juror was distracted because the juror had an appointment that she did not want to miss—came from any extraneous information that was given to the jury from the outside, rather than statements and matters occurring during the deliberations, and a juror's beliefs, perceptions and thought processes in connection with deliberations. In sum, as the circuit court correctly observed, the jurors at Fields's trial "received no extraneous information on this case at all."

Finally, we also reject Fields's contention that "at a minimum," he was entitled to an evidentiary hearing on his motion for a new trial so that he could "prove that jurors received extraneous prejudicial information during deliberations." "[I]n order to obtain an evidentiary hearing at which jurors testify, the moving party must make a preliminary showing by affidavit or nonjuror evidence that the subject matter of the proposed hearing is within an exception in WIS. STAT. § 906.06(2) and must assert facts that, if true, would require a new trial." ***Manke***, 289 Wis. 2d 750, ¶25. As set forth above, we have rejected the argument that the juror affidavit Fields relies on is competent evidence under § 906.06(2); therefore, he is not entitled to an evidentiary hearing.

To conclude, we find no error in the court's conclusion that the juror affidavit was not competent evidence, its decision that no evidentiary hearing was necessary, and its denial of the motion for a new trial.

Upon the foregoing reasons,

IT IS ORDERED that the judgment of the circuit court is summarily affirmed pursuant to WIS. STAT. RULE 809.21.

IT IS FURTHER ORDERED that this summary disposition order will not be published.

Sheila T. Reiff
Clerk of Court of Appeals