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October 15, 2024

SUPREME COURT OF NEW
JERSEY DOCKET NO. 089469

STATE OF NEW JERSEY,	:	<u>CRIMINAL ACTION</u>
Plaintiff-Respondent,	:	On Appeal From an Order in the
	:	Appellate Division of New Jersey.
v.	:	
	:	Indictment No.16-04-00718-I
GREGORY A. JEAN-BAPTISTE,	:	
Defendant-Petitioner.	:	Sat Below:
	:	Hon. Michael J. Haas, J.A.D.
	:	Hon. Greta Gooden Brown, J.A.D.
	:	

SUPPLEMENTAL BRIEF
ON BEHALF OF DEFENDANT-PETITIONER

DEFENDANT IS CONFINED

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PROCEDURAL HISTORY

Defendant relies upon and incorporates the Procedural History provided in his appellate merits brief and adds the following remarks.¹

¹Transcript designations:

1T-Motion, September 28, 2018;
2T-Motion, December 14, 2018;
3T-Motion, January 8, 2019;
4T-Motion, January 14, 2019;
5T-Trial, January 17, 2019;
6T-Trial, January 23, 2019;
7T-Trial, January 24, 2019;
8T-Trial, January 29, 2019;
9T-Trial, January 30, 2019;
10T-Trial, January 31, 2019;
11T-Trial, February 5, 2019;
12T-Trial, February 6, 2019;
13T-Trial, February 7, 2019;
14T-Trial, February 13, 2019;
15T-Trial, February 14, 2019;
16T-Trial, February 19, 2019;
17T-Trial, February 20, 2019;
18T-Trial, February 21, 2019;
19T-Trial, February 25, 2019;
20T-Trial, February 26, 2019;
21T-Trial, February 27, 2019;
22T-Trial, February 28, 2019;
23T-Trial, March 4, 2019;
24T-Trial, March 5, 2019;
25T-Trial, March 6, 2019, Vol. I, A.M.;
26T-Trial, March 6, 2019, Vol. II, P.M.;
27T-Trial, March 7, 2019;
28T-Trial/Verdict, March 12, 2019;
29T-Sentence, May 30, 2019;
30T-Reconstruction of Record, September 10, 2020.

On May 20, 2024, in an unpublished decision, the Appellate Division affirmed the judgment of conviction and the sentenced imposed. State v. Jean-Baptiste, A-1452-19 (App. Div. May 20, 2024).

On September 17, 2024, the New Jersey Supreme Court granted defendant's petition for certification, "limited to the challenge to the adequacy of the trial court's response to allegations that juror #8 conducted outside research on the case, texted defendant Byrd, and made statements about finding defendant guilty." (DSa1-Da2).

STATEMENT OF FACTS

Defendant relies upon and incorporates his Statement of Facts provided for in his appellate merits brief and appendix submitted to the Appellate Division.

LEGAL ARGUMENT

POINT I

THE TRIAL COURT'S FAILURE TO ADEQUATELY
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Defendant submits that the trial court prejudicially erred when it failed: (1) to adequately investigate allegations that a juror had conducted independent research of the case and had declared defendant guilty before deliberations had commenced;

(2) to undertake a proper and thorough voir dire of the subject juror; and (3) to undertake any voir dire of the remaining jurors to ensure that the alleged taint had not infected the remaining jury panel.

During trial, the court informed counsel that “information . . . has been brought to certainly the Court’s and counsel’s attention with regard to Juror 8.” (16T123-9 to 130-1). The information alluded to by the court was that Juror 8 had “been Googling the case, showing articles to and talking about it with other people and has already decided she’s going to find them all guilty and **going to burn their asses.**” (30T22-7 to 17, emphasis added). The nature of this information was only revealed when the trial judge read into the record the nature of Juror 8’s conduct at a transcript reconstruction hearing. (30T).² The Public Defender’s Office had received information from an individual named “Worthy” that Juror 8 had been Googling articles about the case and that she had predetermined defendants’ guilt. (30T20-20 to 22-17).

The trial court conducted a limited voir dire of Juror 8 where the trial judge inquired whether the juror’s original answers on the jury questionnaire had changed; if she had “been in contact” with “any posting or newspaper articles” about the case; and whether she could still remain impartial and fair. (16T125-19 to 126-20). The

² A remand to reconstruct the record had been ordered by the Appellate Division on co-defendant’s appeal. State v. Byrd, A-004941-18T1; (30T4-1 to 7).

juror answered negatively to the first two questions and said she could remain impartial. (16T125-19 to 126-20). The juror was never asked directly about the specific nature of the allegations and if she knew anyone known as “Worthy.”

Co-defendant’s counsel objected that the judge failed to conduct an individualized voir dire of the other jurors to determine whether Juror 8’s taint had infected the panel. (16T127-20 to 22). Defendant’s attorney joined in the motion to dismiss Juror 8 for cause. Defense counsel also joined in co-defendant’s subsequent motion to again excuse Juror 8 for cause. (16T200-6 to 7).

On remand, the co-defendant Byrd’s attorney recalled that the allegation included the use of a racial slur, “N-word”, by the juror against defendants and made the promise that the jury was “going to teach those three [defendants] a lesson.” (30T10-16 to 21). The trial prosecutor agreed that the allegation was that the juror “has spoken with someone else about the case outside of . . . the courtroom” but did not recall any racial comments. (30T12-23 to 13-3). The trial court determined that there had been no racial slur made by the juror. (30T1702 to 5). The trial court further found that allegation of juror taint initiated from an email from “Rachel,” identified as co-defendant Byrd’s trial counsel’s secretary, to the trial judge’s secretary, “Melisa.” This email stated that Rachel had received a call from the Monmouth County Public Defender’s Office (OPD) informing her that “Stephanie” from the OPD had received a call from an unidentified woman that a juror in this case had

“been Googling and texting Ebenezer [Byrd] and all his friends.” (30T20-20 to 21-10). Text messages between the trial judge’s law clerk, “Cynthia,” and Melissa indicated that Cynthia had spoken to Stephanie. Cynthia was told that the OPD had received a call from a “Ms. Worthy,” who alleged that Juror 8, L.T., who worked for the Monmouth Medical Center with a friend of Ms. Worthy, “has been Googling the case, showing articles to and talking about it with other people, **and had already decided she’s going to find them all guilty and going to burn their asses.**” (30T22-7 to 17) (emphasis added). The trial court again stated that there was “absolutely nothing” to indicate racism by the juror. (30T22-22 to 23-7).³

The Appellate Division found “no abuse of discretion in the judge’s handling of the allegations pertaining to Juror 8.” Jean-Baptiste, slip op. at 100. The panel observed that the judge believed that the allegations “may have been fabricated.” Id. at 101. The judge found that it would not have been possible that Juror “was texting Ebenezer Byrd” which “couldn’t happen because Mr. Byrd ha[d] been in custody for quite some time.” Ibid.⁴ Citing foreign jurisdiction opinions, the Appellate Division held that “less credible allegations of juror misconduct necessitate a less extensive inquiry.” Ibid. Under the circumstances, the panel found that the trial judge

³ Initially Cynthia believed that L.T. was juror number 15. At the remand hearing the parties and the trial judge agreed that the allegation was against Juror 8 and not Juror 15. (30T22-12 to 13; 16T127-12 to 18).

⁴ Neither the trial judge nor the appellate court considered whether Juror 8 could have been communicating to Byrd through a third party.

decision “to not delve further into non-credible allegations,” was “a reasonable exercise of discretion.” Id. at 104.

“The Sixth Amendment of the United States Constitution and Article I, paragraph 10 of the New Jersey Constitution guarantee criminal defendants the right to . . . trial by an impartial jury. U.S. Const. amends. VI, XIV; N.J. Const. art. I, 10.” State v. R.D., 161 N.J. 551, 557 (2001); see also Sheppard v. Maxwell, 384 U.S. 333, 362-63 (1966) (stating that due process requires the accused receive trial by an impartial jury free from outside influence). Where juror taint has been raised, “the trial court is obliged to interrogate the juror, in the presence of counsel, to determine if there is a taint; if so, the inquiry must expand to determine whether any other jurors have been tainted thereby.” R.D., 161 N.J. at 558. The trial court then must decide whether the trial may proceed after excusing the tainted juror or whether a mistrial is necessary. Ibid.; see also State v. Bisaccia, 319 N.J. Super. 1, 13 (App. Div. 1999) (stating that if actual juror taint is possible, the trial court must voir dire the affected juror and, in appropriate circumstances, the remaining jurors). While the decision whether to grant a new trial on the ground of juror taint is left to the discretion of the trial court, that discretion is not unbounded. R.D., 161 N.J. at 558. The courts have instructed:

[i]f the irregular matter has that tendency on the face of it, a new trial should be granted without further inquiry as to its actual effect. The test is not whether the irregular matter actually influenced the result, but whether it had the capacity of doing so.

[Ibid. (quoting Panko v. Flintkoe Co., 7 N.J. 55, 80 (1951))].

In this case, Juror 8's alleged egregious conduct and comments about convicting defendants even before the deliberations had begun, clearly raised the question whether she was capable of comporting herself as an impartial and fair juror. Further it is reasonable to infer that she likely shared her antagonistic views with other jurors. The trial court's failure, therefore, to excuse Juror 8 for cause and to voir dire the remaining jurors certainly had "the capacity" to influence the result. R.D., 161 N.J. at 558. Equally troubling was that the trial court appeared to have questioned Juror 8 with vague and non-specific questions about her alleged conduct which later required reconstruction of the record. See R.D., 169 at 560-61 ("An Appropriate voir dire of a juror allegedly in possession of extraneous information mid-trial should inquire into the specific nature of the extraneous information, and whether the juror intentionally or inadvertently has imparted any of the information to other jurors."). The trial court's colloquy with Juror 8 seemed designed to find no taint. Further, contrary to the Appellate Division's instruction, the jury colloquy was conducted at side-bar in open court while the jury was present rather than in camera. See State v. Scherer, 301 N.J. Super. 363, 487 (App. Div.), certif. denied, 151 N.J. 466 (1997). The trial judge manifestly failed in his role as the "gatekeeper" to ensure juror impartiality and fairness. State v. Tyler, 176 N.J. 171, 181 (2003).

The allegations against Juror 8 were specific and detailed. The caller identified herself as “Ms. Worthy.” She stated that a friend worked at the Monmouth County Medical Center with Juror 8. Certainly the Monmouth County Prosecutor’s Office or the Monmouth County Sheriff’s Office had the necessary investigative resources to identify and find Ms. Worthy. For example, Ms. Worthy’s caller identification number may have been captured on the OPD phone system. None of these elementary investigative steps were considered by or undertaken by the trial court.

The Appellate Division found it significant that Byrd was in custody and, therefore, he could not have received text messages from Juror 8. This was a conclusory assumption. Byrd could have had access to an unauthorized cell phone while in custody or the information could have been communicated by text message by a third-party to Byrd. The use of illegal cell phones in New Jersey prisons and jails has long been recognized to the extent that the New Jersey Department of Corrections has invested in new technology to try to inhibit the use of unauthorized cell phones.⁵ Thus there is nothing far-fetched that Juror 8 could have communicated with Byrd or anyone else associated with the case. However, the trial court failed to make inquiries into this area and instead relied on vague and ambiguous questions during the voir dire of Juror 8. Further, and contrary to the Appellate Division’s

⁵ See, e.g., “NJ Goes High-Tech To Eliminate Prison Cell Phones,” CBS News New York, October 2, 2010, <https://www.cbsnews.com/newyork/news/nj-goes-high-tech-to-eliminate-prison-cell-phones/> (last visited October 12, 2024).

findings, the record shows that the trial court's law clerk found that the message from Ms. Worthy to Stephanie at the OPD said nothing about texting defendant or anyone else. (30T22-14 to 17). Thus, the Appellate Division's decision was based, in part, upon an erroneous interpretation of the record. The Appellate Division appeared to have ignored that the trial court did not fully grasp the extent of the possible taint in this case. At the remand hearing, the trial judge said: "The allegation simply was that [Juror 8] had been texting and taking about the case." (30T24-15 to 17). While that allegation alone was sufficient to justify excusal of the juror, the allegation was far more. Juror 8 was accused of stating that she had already determined that defendants were guilty and that she would "burn their asses." (30T22-7 to 17). The trial judge failed to confront Juror 8 with this specific allegation during voir dire.

Rather than "make a probing inquiry into the possible prejudice caused by jury irregularity," the trial court instead settled for a performative inquiry. See Scherer, 301 N.J. Super. at 487 (App. Div.). The trial judge predetermined that the allegations were not credible and were not worthy of serious investigation. The trial court's bias led it to further err when it failed to voir dire the remaining jury panel to determine whether the alleged taint had spread. Id. at 487 (the jury voir dire must be an "objective evaluation of the potential prejudice.") The allegation specifically stated that Juror 8 had expressed her opinions about defendants' guilt to other jurors

and shared her outside research with other members of the jury panel. Nothing about the procedures adopted by the trial judge in this case ensured that defendant had a fair and unbiased jury. See State v. Williams, 93 N.J. 39, 62-63 (1983) (stating that the trial court “has an independent duty to act swiftly and decisively to overcome” potential juror bias). The Appellate Division’s decision would tend to weaken the obligation of a trial court to undertake a meaningful investigation into jury taint, if the trial judge determines that the allegation is not credible. It is hard to square the decision in this case with this Court’s prior instructions and even with the Appellate Division’s own prior opinions about a trial court’s obligations as to how to handle allegations of jury bias or taint. See, e.g., R.D., 161 N.J. at 557; Williams, 93 N.J. at 62-63; Panko, 7 N.J. at 80, etc.

The allegations here were significant and serious. The trial court had an affirmative obligation to make a searching inquiry into the allegations. Given that defendant faced a life term if convicted, the stakes could not have been higher.⁶ The trial court failed in its basic constitutional duty to protect defendant’s due process rights to a fair trial, which includes the guarantee of an unbiased jury. Under the circumstances, the only constitutional remedy is to remand the matter for a new trial.

⁶ On May 30, 2019, the trial court sentenced defendant to an aggregate term of life in prison to be served consecutive to the sentences defendant is serving under Indictments Nos. 15-01-135-I and 14-03-457-I. (29T17-17 to 20-8; Da29-Da32). The judgment of conviction was entered on the same day. (Da31).

CONCLUSION

For the foregoing reasons, defendant respectfully asks this Court to vacate the judgment of conviction and remand the matter for a new trial.

Respectfully submitted,

/s/ Andrew R. Burroughs
Andrew R. Burroughs, Esq.

Electronically submitted,

October 15, 2024.