SUPREME COURT OF NEW JERSEY
DOCKET NO. 089469
APPELLATE DIVISION DOCKET NOS:
A-4941-18T1; A-5095-18T5; A-0516-24T5
INDICTMENT NO. 16-04-000718-I

CRIMINAL ACTION

STATE OF NEW JERSEY, Plaintiff-Respondent, v. EBENEZER BYRD, Defendant-Appellant; JERRY J. SPRAULDING, Defendant-Appellant; GREGORY A. JEAN-BAPTISTE, Defendant-Appellant.	: : : : : :	On Certification Granted from a Final Judgment of the Superior Court of New Jersey, Appellate Division Sat Below: Hon. Michael J. Haas, J.A.D.; Hon. Greta Gooden Brown, J.A.D.

SUPPLEMENTAL BRIEF ON BEHALF OF THE STATE OF NEW JERSEY

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PRELIMINARY STATEMENT

What judges do every day in the trial courts across this state is the foundation of our judicial system. In other words, the deference afforded to trial judge's decisions in certain circumstances is a necessary ingredient to that foundation and is respected, not only by decisions from this Court, but also in the decisions of other state and federal courts alike. In cases of alleged juror misconduct, this Court has previously recognized that a trial court's discretion is of vital importance to a just outcome. In State v. R.D., this Court placed the determination of how to resolve allegations of juror taint squarely within the sound discretion of the trial court by announcing a two-part analysis. The first step is for the trial court to interrogate the juror in the presence of counsel to determine if there is in fact taint. If, after this initial inquiry the court determines there is taint, only then must the court expand the inquiry to determine if any of the other jurors have been tainted.

Yet, in the face of such clear guidance, defendants seek to jettison the first part of the analysis – the initial inquiry as to if there is in fact taint – in favor of a singular analysis whereby every allegation of juror taint is assumed to be true and requires an automatic voir dire of the entire jury panel, thereby eliminating any judicial discretion. However, the two-part analysis in R.D. works. In fact, when the allegation of juror taint in this case is placed in its proper context and analyzed in light of Judge Oxley's decision, it becomes apparent that the process this Court outlined in R.D. worked in this case. Indeed, Judge Oxley's experience and proper exercise of discretion is replete throughout this case and demonstrates why this Court should affirm the process outlined in R.D and reject defendants' covert attempt for application of

a per se requirement that every allegation of juror taint is assumed to be true and thus requires automatic voir dire of the entire panel. The valuable insight a trial court has in determining not only the validity of an allegation of juror taint, but also whether it impaired the ability of the juror to decide the case fairly and impartially, should not be eliminated because it is a decision that the trial court is in the best position to make in such circumstances.

Accordingly, the two-part analysis outlined in R.D. and the exercise of the trial court's discretion in this case, and in all subsequent cases where there is an allegation of juror taint, should remain intact.

COUNTERSTATEMENT OF PROCEDURAL HISTORY

The State respectfully refers this Court to the Counterstatement of Procedural History set forth in its appellate briefs, with the following additions:

Each defendant filed a timely Notice of Appeal to the Superior Court, Appellate Division. On June 10, 2020, appellate counsel for Ebenezer Byrd filed a Motion for Limited Remand in the Appellate Division, seeking to reconstruct the record to include the specific information regarding the claim of juror misconduct. On June 25, 2020, the motion was granted. (Pa 1). On September 10, 2020, the parties appeared before the Honorable Joseph W. Oxley, J.S.C. to recreate the record. (31T).

On May 20, 2024, the Appellate Division, in an unpublished opinion, consolidated all three defendants' cases and affirmed both Jean-Baptiste and Spraulding's convictions and sentences. As to Byrd, the court affirmed his conviction, but ordered a remand for resentencing. State v. Byrd, A-4941-18, A-5095-18, A-1452-19 (App. Div. May 20, 2024).

On September 20, 2024, this Court granted defendants' petition for certification, "limited to the challenge to the adequacy of the trial court's response to allegations that Juror No. 8 conducted outside research on the case, texted defendant Byrd, and made statements about finding defendant guilty." (Dsa 1-2).

COUNTERSTATEMENT OF FACTS

In the early morning hours of September 14, 2009, Jerry Spraulding (a.k.a. "B.Me."), Ebenezer Byrd (a.k.a. "EB" or "Storm") and Gregory Jean-Baptiste (a.k.a. "GU"), tortured and murdered Jonelle Melton, a beloved fifth-grade social studies teacher, after breaking into her apartment in the Brighton Arms Apartments in Neptune. As the State demonstrated at trial, defendants intended to steal a large sum of cash they believed was hidden in the Brighton Arms apartment of drug dealer David James (a.k.a. "Munch"), who lived in apartment 206-A. However, defendants broke into the wrong apartment – Apartment 208-A – the apartment of James' neighbor, Jonelle Melton, who lived alone. Wrongly assuming that she must be James' girlfriend, defendants tortured Jonelle for information about the money. When she could not provide said information, defendants' shot her in the back of the head, killing her. (6T:57-15 t 65-8; 7T:53-14 to 55-5; 9T:14-11 to 15-5).

Trial for all three defendants commenced before the Honorable Joseph W. Oxley, J.S.C., on January 17, 2019. About one month into trial, on February 19, 2019, the court received information via a telephone phone call to Judge Oxley's secretary. The trial court then received subsequent emails detailing alleged misconduct by a juror. (Pa 2-3). After the lunch break, Judge Oxley met with the parties in chambers to discuss the allegations.[1] (17T:123-19 to 22). More specifically, Rachel, the secretary for counsel for defendant Byrd, received a telephone call from Stephanie at the Public Defender's Office. Stephanie told Rachel that she received a call from "an unidentified woman" who said she had information about one of the jurors,

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[1] The discussion in chambers was part of the reconstructed record. (31T).

that she knew the juror's name, but would not disclose it. (Pa 3; 31T:20-20 to 21-5). The woman further stated that "this woman has been Googling and texting Ebenezer and all of his friends." The woman stated she would call back. (Pa 3; 31T:21-5 to 7).

Later that day, Judge Oxley's secretary, Melissa, called Stephanie at the Public Defender's Office to get "more detailed information." (Pa 3; 31T:21-7 to 10; 21-23 to 22-6). Melissa then sent an email to Cynthia, the court clerk. In her email, Melissa detailed what she had learned: that Stephanie received a call from a "Ms. Wurty,"[2] who stated "she doesn't want to get involved any further." (Pa 2). Ms. Wurty claimed she had a "friend who works at Monmouth Medical Center with L.T[3]" and identified L.T. as Juror No. 15. "Ms. Wurty" claimed that L.T. "has 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." (Pa 2; 31T:21-11 to 22-21; 31T:22-7 to 17).

Based on his notes from jury selection, counsel for defendant Spraulding, Mr. Robert Ward, Esq., indicated Juror No. 8 was the only juror who worked at Monmouth Medical Center as his notes indicated she was a nurse. (31T:19-20 to 25; see also, 17T:127-12 to 18) (confirming that Mr. Ward knew that Juror No. 8 was a nurse from her initial questioning). As such, Judge Oxley decided to question Juror No. 8 about the information the

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[2] The actual emails spelled the caller's name as "Ms. Wurty," while in the transcripts the caller's name was transcribed and spelled as "Ms. Worthy." (Pa 2; see generally, 31T).

[3] The State is using initials to protect the identity of the juror.

court had received. (31T:18-7 to 25). Judge Oxley told the parties he intended to call the jury in and then bring Juror No. 8 up to the bench and question her as to whether any of the answers she gave to her initial jury questions had changed, and where she worked. (17T:123-9 to 15; see also Pa 12-18 (Model Jury Selection Questions – Standard Jury Voir Dire - Criminal).[4] Counsel for Byrd wanted the court to also ask where she lived. Counsel for Spraulding wanted the court to inquire about the specific allegations and if she talked to any other jurors. (17T:123-6 to 124-12). Judge Oxley told counsel, "I will ask whether or not she did, but the fine line that I want to try to stay on is I don't want anything specific to any of your individual clients...and that's the way it came in, so I want to try to avoid that." (17T:124-14 to 19).

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[4] These questions included: (3) Do you know [name of defendants]; (5) I have already briefly described the case. Do you know anything about the case from any source other than what I just told you; (6) Are any of you familiar with the area or the address of the incident; (10) Would your verdict in this case be influenced in any way by any factors other than the evidence in the courtroom, such as friendships or family relationships or the type of work you do; (20) Would you have any difficulty following the principle that the defendant on trial is presumed to be innocent and must be found not guilty of that charge unless each and every essential element of an offense charges is proved beyond a reasonable doubt; (21) The indictment is not evidence of guilt. It is simply a charging document. Would the fact that the defendant has been arrested and indicted, and is here in court facing these charges, cause you to have preconceived opinions on the defendant's guilt or innocence; (25) Would you have any difficulty or reluctance in accepting the law as explained by the court and applying it to the facts regardless of your personal beliefs about what the law should be or is; (26) Is there anything about this case, based on what I've told you, that would interfere with your ability to be fair and impartial? (Pa 14-16).

Thus, the following colloquy occurred with Juror No. 8:

> [THE COURT] At the beginning of this process we asked you a series of questions and those questions were designed to find out whether or not you could be fair and impartial.
>
> Is there anything that has happened throughout the course of this trial that would affect your answers to those questions?
>
> [JUROR NO. 8] No.
>
> [THE COURT] Ma'am, where do you work?
>
> [JUROR NO. 8] At Monmouth Medical.
>
> [THE COURT] Where do you live?
>
> [JUROR NO. 8] In Red Bank.
>
> [THE COURT] Okay. And in terms of any posting or newspaper articles, is there anything outside of what's been in this courtroom that you have been in contact with?
>
> [JUROR NO. 8] No.
>
> [THE COURT] So is there anything that would change any of your other answers to those questions that we asked during voir dire?
>
> [JUROR NO. 8] No.
>
> [THE COURT] And you believe that you can listen to the evidence in this case, and as I have asked you certainly throughout the voir dire process, listen to the

> evidence, apply the law as I give it to you at the end of the case and render a fair and impartial verdict?
>
> [JUROR NO. 8] I can.
>
> [THE COURT] Okay.
>
> [JUROR NO. 8] Why do you ask?
>
> [THE COURT] Because that's my job.
>
> [JUROR NO. 8] Okay.
>
> [17T:125-19 to 126-20].

Judge Oxley then instructed the juror not to discuss anything about the questioning with the other jurors. (17T:127-1 to 8).

Following the voir dire, Judge Oxley determined that no further inquiry was needed. He explained that he specifically asked Juror No. 8 whether or not she had obtained any outside information, to which she said no. (17T:127-23 to 25). Judge Oxley stated, "clearly [Juror No. 8] was puzzled why she would even be up here answering these questions." In Judge Oxley's opinion, she seemed very sincere and very straightforward with her answers. (17T:128-1 to 5). In fact, Judge Oxley noted that she was "about as candid and straightforward as she could be." (17T:129-8 to 10).

In addition. Judge Oxley also noted the unclear nature of the claim of taint. Judge Oxley stated:

> [T]his was an outside concern that was given originally to the Public Defender's Office, then brought to our attention. The person, as I understand the information from the Public Defender's Office, originally had indicated it was a different juror and then changed to Juror No. 8 and the information as I understood it had

originally started out that this juror was texting Ebenezer Byrd and her [sic] friends and clearly – and his friends and clearly that couldn't happen because Mr. Byrd has been in custody for quite some time at this point without access to computer or texting or Facebook or any of those other things, so I'm satisfied at this point we can proceed.

[17T:129-14 to 130-1].

On remand, Judge Oxley further explained his decision, stating:

Clearly I did not want to taint the rest of the jury with regards to something that may certainly have been all fabricated. We may never know who "Ms. Worthy" is. She was never part of this trial, never listed, as I understand it, on any of the witness lists, that name is foreign to me, had not heard it prior to haven't heard it since. And with that, I chose the course that I chose to question the only [sic] the individual juror.

[31T:23-17 to 23].

. . . .

There was some discussion about the way and manner it should have been done, whether or not she should have been called into my chambers, which throughout the course of my career I have never done and certainly did not want to start it with this case. I think juror number 8 was clear and unequivocal. She seemed to my recollection puzzled as to why she was there. She made it clear to this Court that she could be fair and impartial, and that she could listen to the testimony and apply the law as I gave it to her at the end of the case.

[31T:24-1 to 11].

. . . .

The allegation simply was that she had been texting and talking about the case, and I was satisfied based on her candid response to my questions that that had not happened.

[31T:24-15 to 18].

Counsel for defendant Spraulding asked that Juror No. 8 be excused for cause. (17T:128-6 to 20). Counsel for defendant Jean-Baptiste asked that the court further question Juror No. 8. Judge Oxley denied both requests. (17T:128- to 129-2). Neither defendant requested that any other specific juror be questioned. At the end of the testimony that day, counsel for Byrd and counsel for Spraulding both made another application to have Juror No. 8 removed for cause. This time, defense counsel was concerned that Juror No. 8 seemed "distressed over what happened." (17T:199-19 to 200-3). Judge Oxley responded:

> And I certainly, throughout the course of this trial, from my vantage point here, have been watching the jurors. They certainly seem intent, they seem focused, and clearly post-discussion at sidebar with regard to Juror No. 8, and I as I said before and I want to emphasize it again, I thought she was – her demeanor, she was very candid, she was straightforward when she answered the questions. If in fact, there is any distress, clearly speaking to a Superior Court judge is stressful enough, so to the extent there was stress beyond that, I did not notice that or pick up on that. So, having said that, I am comfortable at this point we have explored the issue. I was satisfied with her answers about her ability to be fair and impartial, and that the answer that she gave us throughout the course of what was a lengthy voir dire to select these jurors for this case and had indicated that her answers have not changed. So with that, I am satisfied at this point and I will deny that request.
>
> [17T:200-20 to 201-14].

On remand it was suggested by Bryd's counsel, Mr. Zager, that a racial slur had been used by Juror No. 8; however, Judge Oxley was certain that "nothing, nothing in this record and certainly nothing in my file, nothing in my recollection at all indicates that this had anything to do with anything racial,

that that was ever part of this case in any way, shape, or form in terms of the concern with juror number 8."

LEGAL ARGUMENT

POINT I

BECAUSE THE ALLEGATION OF JUROR TAINT WAS NOT, ON ITS FACE, INDEPENDENTLY ACCURATE, AND WHEN QUESTIONED, THE JUROR WAS CLEAR AND UNEQUIVOCAL THAT SHE WAS NOT IN CONTACT WITH ANY OUTSIDE INFORMATION AND COULD BE FAIR AND IMPARTIAL, THE TRIAL JUDGE'S QUESTIONING WAS ADEQUATE AND HE DID NOT ABUSE HIS DISCRETION IN NOT ASKING SPECIFIC QUESTIONS ABOUT THE ALLEGATION, REMOVING HER FROM THE JURY OR CONDUCTING A VIOR DIRE OF THE OTHER JURORS.

This Court in State v. R.D., 169 N.J. 551, 557-58 (2001), placed the determination of how to resolve allegations of juror taint squarely within the sound discretion of the trial court. "The trial court must use appropriate discretion to determine whether the individual juror, or jurors 'are capable of fulfilling their duty to judge the facts in an impartial and unbiased manner, based strictly on the evidence presented in court.'" Id. at 558 (quoting State v. Bey, 112 N.J. 45, 87 (1988) (Bey I). In fact, when a trial court is faced with the possible taint of a juror, this Court, in R.D., provided specific guidance for them to follow in making their determination. The first step is for the trial court to determine if there is in fact taint. To make this determination, "the court is obliged to interrogate *the juror*, in the presence of counsel, to determine *if there is taint*." Id. at 560-61 (citing to Pressler Current N.J. Court Rules, comment 2 on R. 1:16-1 (2000) (emphasis added). If, after this initial

inquiry, the trial court determines there is taint, only then must the "inquiry expand to determine whether any *other jurors* have been tainted thereby." Ibid. (emphasis added).

Yet, in the face of this clear two-part process, the defendants in this case argue for essentially jettisoning the first inquiry – a determination if there is, in fact, taint – in favor of assuming that every allegation of juror taint brought to the court's attention is, on its face and without more, automatically true and sufficient to require further inquiry. In other words, defendants seek a singular process whereby every allegation of juror taint is deemed truthful and valid, thus eliminating any judicial discretion and requiring an automatic voir dire of all remaining jurors.

However, defendants' proposed elimination of any judicial discretion in the potential jury taint analysis ignores that a determination of whether a jury has been tainted requires a fact specific consideration of the type and gravity of the misconduct, the demeanor or credibility of the jurors exposed to taint, "and the overall impact of the matter on the fairness of the proceedings." R.D., 169 N.J. at 559. Indeed, it is only a trial judge who can determine if "[a] juror [] has formed an unalterable opinion of the defendant's guilt or innocence [and] must be excused from service on the panel." Ibid. This determination can only be done following a judge's initial inquiry into the allegation and its validity. This important determination should not be deemed automatic for every allegation of jury taint, contrary to defendants' arguments. In fact, defendants' request to automatically deem an allegation valid and immediately interrogate all jurors finds no support in any jurisprudence, state or federal, on the specific issue of juror taint.

Respecting the trial court's unique perspective to determine these matters has always been consistent in our jurisprudence. As the United States Supreme Court in Smith v. Phillips, 455 U.S. 209, 217 (1982), explained:

> The safeguards of juror impartiality, such as voir dire and protective instructions from the trial judge, are not infallible; it is virtually impossible to shield jurors from every contact or influence that might theoretically affect their vote. Due process means a jury capable and willing to decide the case solely on the evidence before it, and a trial judge ever watchful to prevent prejudicial occurrences and to determine the effect of such occurrences when they happen.

In fact, the Court in Smith held that such determinations may be properly made at a hearing by the trial court, thus solidifying that the determination at the outset as to if there is taint rests squarely in the sound discretion of the trial judge. Ibid.

In Smith, the defendant was convicted of murder and attempted murder. He filed a motion to vacate his sentence based on the fact that a juror sitting in his case applied for employment as a major felonies' investigator with the district attorney's office. However, the juror was not contacted by the office regarding his application during the pendency of the trial. Id. at 212. When the prosecutors in the case were notified as to the juror's application, a decision was made amongst the prosecutors that they would not inform the defense or the court of the application based on the juror's answers to the extensive voir dire questioning during jury selection. More specifically, the juror had informed the parties that he "intended to pursue a career in law enforcement and that he had applied for employment with a federal drug enforcement agency." He also disclosed how his wife was also interested in

law enforcement and how this interest arose after an incident where she was assaulted and seriously injured. Importantly and despite these disclosures, the parties were convinced that the juror could still be fair and impartial because he was seated as a juror even though the defense had not yet exercised all of their preemptory challenges. Id. at 213, n. 4.

The Smith Court held that although it did not "condone" how the prosecutors handled the information, the trial judge handled the situation appropriately by commencing a hearing to investigate defendant's claim of bias as soon as it was alerted to an allegation of possible bias. The Court further held that the trial judge determined that that the juror was not biased. The Court made clear that the test was whether the juror's conduct in applying for a job with the district attorney's office impaired his ability to render an impartial verdict. Ultimately, the decision and discretion of the trial court was upheld, with the Court holding that a determination of juror bias cannot and should not be implied. Id. at 220.

Within its decision in Smith, the Court cited to another implied bias case to stand for the same proposition. In Chandler v. Florida, 449 U.S. 560 (1981), the defendants argued that their partially televised trial created unusual publicity and a sensationalized courtroom atmosphere that influenced the jurors and affected the ability for a fair trial. The Court disagreed and held that simply making a claim of bias, without more, was not sufficient to set aside a conviction. The Court held that "because appellants did 'not attempt to show with any specificity that the presence of cameras impaired the ability of jurors to decide the case on only the evidence before them,' we refused to set aside their conviction." Id. at 216-217 (citing Chandler v. Florida, 499 U.S. at

581).

Compare Chandler with State v. Bey, 112 N.J. 45 (1988), a case defendants' in this case rely heavily upon, wherein this Court decided a similar issue regarding trial publicity. In Bey, a death penalty case, potentially prejudicial news articles were being published in local newspapers. Id. at 56. The defense filed motions seeking first the sequestration of the jury in anticipation of unfavorable press articles, which was denied. Then, after the close of trial testimony, the defense filed another motion for a mistrial, but this time in support of the motion, the defense produced six articles that had appeared in the local newspapers since the day of jury selection. These articles ranged from covering the trial to articles disclosing the fact that defendant had another pending trial for murder, along with his previous convictions for robbery and aggravated assault. Ibid. Without any inquiry, the trial court denied the motion based only on its assumption that the jurors had complied with the repeated instructions not to look at or read any publicity in the case. The judge also suggested that bringing up the existence of the articles would provoke curiosity and might cause the jurors to seek out and read the articles. Id. at 56-57.

In finding that the trial judge abused his discretion, this Court held that a defendant's "whose life and liberty are at stake might reasonably question the efficacy of repeated admonitions." Id. at 61. This Court went on to explain that "[c]ourts have agreed that publicity-related warnings may be inadequate when inherently prejudicial information had been released or published during a trial in such a manner as to render it likely that one or more of the jurors could have been exposed." Id. at 61-62. To ensure a fair process, this Court

adopted not a singular assumption or per se rule that any claim of pretrial publicity equals automatic prejudice. Instead, it instituted a two-part test to analyze a defendant's proffer of possible taint from trial publicity.

First, a trial court must "examine the information disseminated to determine if it has the capacity to prejudice the defendant." Id. at 84. "Where a trial court concludes there is a realistic possibility that information with the capacity to prejudice defendant's right to a fair trial may have reached members of the jury, it should conduct a voir dire to determine whether any exposure has occurred." Id. at 86 (emphasis added). "If there is any indication of such exposure or knowledge of extra-judicial information, the court should question those jurors individually in order to determine precisely what was learned, and establish whether they are capable of fulfilling their duty to judge the facts in an impartial and unbiased manner, based strictly on the evidence presented in court." Id. at 86-87 (emphasis added).

Indeed, "realistic" information and actual "knowledge" that the alleged events of juror taint are true and valid are necessary and should never be assumed in any given situation. As well, the determination of whether a juror who admits to being exposed to taint is still capable of fulfilling their duty in an impartial and unbiased manner is equally as important before any further inquiry of the remaining jurors is required. In State v. Loftin, 191 N.J. 172 (2007), during the guilt phase of a capital murder case, the trial court learned that a white juror had told two of his African-American co-workers that he was going to buy a rope to hang defendant, who was also African-American. The information came directly to the court via phone call to the judge from one of the co-workers to which the juror had made the racially motivated statement.

The call from the co-worker was then put on speaker phone with the judge and counsel in the room. While on the phone, another other co-worker was summoned to the phone to tell the judge of similar statements he had heard the juror make days earlier. Id. at 183-184.

Based on the information received, the judge, with counsel present, brought the juror into chambers and questioned him as to his statements to his co-workers. The juror admitted to making the statement, but claimed that he only did so because his co-workers thought he was "prejudiced" already and wanted them to stop harassing him. The juror denied he had formed any predisposition about the case. The judge ruled that he was satisfied with the juror's explanation and that his answers did not reveal any predisposition about the case. Thus, the judge decided to keep him on the jury. The judge opined, "not every racially insensitive remark is necessarily a racist remark nor did it reflect predisposition." The judge then determined, without objection from counsel, that the juror would be an alternate. Id. at 185.

This Court disagreed with the trial court's decision and reasoning. First, this Court focused on the statement itself and determined that the defendant "had sat through the trial with what appeared to be a 'hanging' juror deciding his fate." Id. at 188. To be sure, the juror did, in fact, admit to making the statement, regardless of his after-the-fact explanation.

> In light of this juror's admission to having uttered words to co-workers indicating that he had prejudged the case and had harbored a racial bias, it was not enough for the trial court to accept the juror's after-the-fact explanation that he could be fair...we do not find that that the explanation dissipated the serious doubts raised about the juror's impartiality. The juror's conduct alone undermined any trust that he could perform his

duties in accordance with his oath.

[Id. at 192].

Second, as to prejudice to the defendant, this Court held that prejudice was presumed because of the juror's constant exposure to the jury "both before and after" he admitted he had made improper comments. As such, the only way to overcome such prejudice was for the trial court to dismiss the juror and then voir dire the remaining jurors "to ensure they have not been fatally tainted." Id. at 193-194. Importantly, the ultimate decision in Loftin stands for the proposition that when faced with a juror who admitted to making improper statements, a trial court commits error in not removing that juror as soon as it receives confirmation. Only after confirmation was the trial court to expand its inquiry to include the remaining jurors and act only if they were exposed to the comments and it altered their ability to decide the case fairly.

When faced with an allegation of juror misconduct, Judge Oxley immediately questioned Juror No. 8 in an effort to confirm or dispel the allegations. This inquiry revealed no admission and no taint. Juror No. 8 denied ever receiving any outside information and unequivocally stated she was and could remain fair and impartial. There was no evidence, other than the anonymous allegation, which was dubious at best, presented to Judge Oxley for him to question Juror No. 8's straightforward answers to the questioning. Therefore, this case is quite distinguishable from the admission of the juror in Bey confirming his racial and inappropriate statements and the determination that the remaining jurors were required to be questioned.

Accordingly, as this record and the Appellate Division's decision reflects, the two-part process outlined by this Court in R.D. worked. The trial

court properly followed this Court's instructions and, in doing so, exercised appropriate discretion in determining there was no juror taint. First, Judge Oxley discussed all of the allegations with the parties as soon as they came to the court's attention. He presented a plan to question Juror No. 8 in order to determine the accuracy and truthfulness of the allegations and asked counsel to weigh in. (17T:123-9 to 15).

Counsel for Byrd wanted the judge to ask her where she lived and also thought that she should be brought into the judge's chambers and questioned rather than doing it in open court. (17T:123-16 to 5). Not only did Judge Oxley explain that he did not bring the juror into his chambers because that was something he had never done in his career and he was not going to start with this case, but in reality, questioning the juror in chambers would have presented a problem for appellate review because it would not have been on the record. (31T:24-1 to 5). Indeed, the issue defendants' raise before this Court is that the inquiry into the allegations was not sufficient. Not having the exact conversation with Juror No. 8 on the record would have severely hindered this Court's review. Judge Oxley's foresight to have the conversation with the juror at sidebar and on the record was the correct one. In addition, counsel for Spraulding thought the judge should inquire as to the specifics of the allegations. Again, Judge Oxley had the foresight to prevent any possible prejudice – specifically against Byrd as he was the only defendant named – and cautioned against that specific inquiry stating, "[t]he fine line I want to try and stay on is I don't want anything specific to any of your individual clients ... And that's the way it came in, so I want to try to avoid that." (17T:124-10 to 19). Counsel for Jean-Baptiste and the State had nothing to add.

When Judge Oxley brought Juror No. 8 up to the bench, he asked her each of the questions counsel suggested, including asking her where she lived. As to her answers to the voir dire questions, Judge Oxley specifically asked her whether there was anything that had happened throughout the course of the trial that would affect her previously given answers to those questions. (See Pa 12-18). The juror said, "No." Although general in nature, this question flushed out whether or not the juror was texting with defendant Byrd. (See Pa 13 (listing question number 3 – "Do you know Mr. [name of defendant]"). Judge Oxley also asked her specifically if there was anything outside of what has presented in the courtroom that she had been in contact with. Again, she said, "No." This general question flushed out whether she was "Googling the case" and "showing articles to others." (Pa 2). Judge Oxley continued and asked if there was anything that would change any of her other answers to the questions asked during voir dire. Again, the juror answered, "No." Finally, Judge Oxley asked her if she could listen to the evidence in the case, as he asked her during the voir dire process, and apply the law as he gives to her at the end of the case and render a fair and impartial verdict. The juror answered, "I can." (17T:125-16 to 126-20). This question flushed out whether the juror had predetermined the case and intended on "burning their asses," as alleged. Her answer wholly denied that claim. (Pa 2).

As this record supports, Judge Oxley brought the juror up, in the presence of both parties, to satisfy the initial inquiry and question the juror to determine if there was, in fact, taint. And as the Appellate Division properly held, "the judge was understandably skeptical about the allegations." State v. Byrd, A-4941-18, A-5095-18, A-1452-19 (App. Div. May 20, 2024) (slip op at

103). The information the court received was hearsay three times removed. It came from a call to the judge's secretary from a secretary for Byrd's secretary who received a call from the Public Defender's office who received the call from a woman who stated a juror – possibly Juror No. 15 – was texting Ebenezer Byrd and his friends. The caller also initially did not want to give her name and stated she would call back. (See Pa 3).

As Judge Oxley correctly determined and the Appellate Division correctly held, this was a questionable report because Byrd had been incarcerated for quite some time and did not have access to a phone or any social media that would allow for communication with the outside world. Any claim that the 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" is pure speculation and an unpersuasive attempt add facts that were not communicated to the court. (See 3Db at 8; 1Db at 33, n. 4). The claim was that the juror was communicating via text with Byrd, not that she was communicating with Byrd through a third party. In fact, this was a situation that was not even contemplated by defense counsel because the issue of unauthorized phones and possible communication through third parties was never argued to Judge Oxley. Had it been, Judge Oxley would have necessarily addressed those concerns, as he did with each concern counsel articulated. As it stands, this argument is simply supposition after-the-fact that should be rejected because there is no support in the record.

Likewise, the allegation was hearsay on top of hearsay. Unlike the cases cited by defendant in support of their arguments to this Court, this case presents a factual scenario whereby Judge Oxley was faced only with the

"word" of a virtually anonymous caller. The only "verifiable" information provided was general information that anyone present in the court room during jury selection would know – her name, her (incorrect) juror number and where she was employed (one of the five hospitals in Monmouth County). Outside of that general information, there was not a shred of corroborating or verifiable information about the actual allegation, but plenty of errors in the tip.

Our courts have consistently held that reliance on an "anonymous tip" requires some type of corroboration first in order to be deemed reliable. Indeed, our case law mandates that law enforcement cannot rely on an anonymous tip, standing alone to establish suspicion of criminal activity. Our law requires that "to justify action based on an anonymous tip, the police in the typical case must verify that the tip is reliable by some independent corroborative effort." State v. Rodriguez, 172 N.J. 117, 127 (2002) (citing Illinois v. Gates, 462 U.S. 213, 237 (1983)). The reliance on an outside "tip" alleging juror misconduct should likewise require the same standard to determine reliability. Just like an "anonymous tip" given to law enforcement, the "tip" brought to a trial court's attention alleging juror misconduct came from several sources reiterating information from an original source named "Ms. Wurty (?)" who described herself as a "friend of a friend." As Judge Oxley correctly noted, "We may never know who 'Ms. Worthy' [or "Ms. Wurty"]' is." (31T:23-17 to 2). Based on this unverified person who relayed information of a communication with defendant Byrd that was not even plausible, the Appellate Division correctly reasoned and held:

> The judge's skepticism about the allegation was reasonable. The caller gave a name but did not identify herself in any way that

> would allow her identity to be confirmed. The source of the allegation, a co-worker of the juror, was not named and they could not be independently verified. The caller made two seemingly conflicting claims of misconduct, first that the juror was in communication with Byrd and his friends, which would suggest that the juror was aligned with defendants in some way, and then that she had pre-determined that defendants were guilty, had read articles online, and had discussed the case with others. The only verifiably accurate information the caller gave, the juror's name and place of work, was ascertainable by anyone sitting in the courtroom during jury selection. Under the circumstances, once the judge asked Juror 8 whether she had seen any media reports about the case, and found her denial and puzzlement sincere, it was a reasonable exercise of discretion to not delve further into non-credible allegation. We are satisfied the judge properly exercised his discretion by weighing the relevant factors and applying the proper balance between them.

[Byrd, (slip op at 105-106 (emphasis added)].

To be sure, a trial judge's credibility findings have always been given deference by our courts and are only overturned when not supported by sufficient and credible evidence in the record. See State v. Robinson, 228 N.J. 138, 147 (2017) (holding that a de novo standard of review allows the court to make its own findings of facts and conclusions of law, but gives deference to the municipal court's credibility findings."); State v. Locurto, 157 N.J. 463, 472 (1999) (reasoning that "[t]he Law Division's [de novo] review of the Municipal Court's implicit credibility findings require it to operate in the partial vacuum of the printed record," which contains neither the "substance" nor the "flavor" of live testimony); State v. Breslin, 392 N.J. Super. 584, 589 (App. Div.), certif. denied, 192 N.J. 477 (2007) (stating that a reviewing court will have "no warrant to reverse determinations of credibility or other findings of a trial court where they could reasonably have been reached on sufficient

credible evidence in the record"); State v. Ahmad, 246 N.J. 592, 609 (2021) (stating that the standard of review on a motion to suppress is deferential and that courts defer to those findings in recognition of the trial court's "opportunity to hear and see the witnesses and to have the 'feel' of the case, which a reviewing court cannot enjoy") (citing State v. Elders, 192 N.J. 244 (2007)).

Judge Oxley used proper discretion in assessing the juror's credibility by analyzing her answers to his questions and her puzzled inquiry back. In assessing her demeanor, he believed her denial that she had not obtained any outside information and solidification that her impartiality was firmly intact. As our case law has settled, Judge Oxley, and all trial judges, are better suited as the gatekeepers of a fair trial to make such determinations based on their presence in the courtroom and first-hand observations of the interrogated juror. As a result, Judge Oxley determined that no further inquiry was necessary and that the inquiry did not need to expand to determine whether any other jurors have been tainted. R.D., 169 N.J. at 558. This decision is on point with this Court's guidance outlined in R.D.:

> Depending on the juror's answers to searching questions by the court, the court must then determine whether it is necessary to voir dire individually other jurors to ensure the impartiality of the jury. That determination should be explained in the record to facilitate appellate review under the abuse of discretion standard. But the decision to voir dire individually the other members of the jury best remains a matter for the sound discretion of the trial court. No per se rule should obtain.

Id. at 560-561 (emphasis added).

It is also important that an appellate court reviews a trial court's decision as to how to manage juror irregularity under the deferential abuse of discretion standard, keeping in mind:

> The courts own through inquiry of the juror should answer the question whether additional voir dire is necessary to assure that impermissible tainting of the other jurors did not occur. Within this standard, it is important to recognize that in some instances, the court may find that it would be more harmful to voir dire the remaining jurors because, in asking questions, inappropriate information could be imparted.

Id. at 559-61.

This standard is especially important in this case. Judge Oxley was cognizant with the fact that "Ms. Worthy" had only named Byrd in the allegation while also keeping in mind that this case already involved confirmed charges of witness tampering. In fact, "Ms. Worthy" chose to place her call not to the court, but only to Byrd's attorney. This, in and of itself, is suspect, at best. When asked by defense counsel to question the juror regarding the specifics of the allegation, Judge Oxley warned against revealing too much information. (17T:124-14 to 19). Necessarily, singling out Byrd to this juror and asking her if she was texting with Byrd, or asking the panel if Juror No. 8 had divulged that she was texting with Byrd, as defendants suggests, would be far more prejudicial than erring on the side of caution and asking general, but probing questions only to Juror No. 8 to see if such an unlikely scenario was even true. Contrary to defendants' arguments, singling out Byrd would have promoted taint of the jury, not prevented it.

To that end, this record makes clear that Judge Oxley's insight was correct. This jury deliberated for two days (29T:122-21 to 129-2). They asked

for the entire testimony of two witnesses (Elizabeth Pinto and Narika Scott) to be played back, which entailed over 300 pages of transcript. (28T:8-7 to 14; 11-11 to 12-6; see also 29T). Thus, to argue that Juror No. 8 had a predisposition and that she somehow infected the panel is simply negated by the actions of this jury. The length of time they devoted to hearing a play back of specific testimony and then their actual deliberations is inconsistent with defendants' arguments of inferred taint. What is more, the lack of complaint by any of the other jurors as to how the deliberations were conducted is likewise inconsistent with defendants' inferred claim of the wholesale taint of this jury. (See 3Db at 7, claiming "[i]t is reasonable to infer that she likely shared her antagonistic views with other jurors").

As the Appellate Division found in this case, Judge Oxley properly effectuated the court's role as gatekeeper in his questioning Juror No. 8 and did not abuse his discretion in deciding that based on the juror's candid responses, he was satisfied that what was alleged by way of conflicting, far-fetched anonymous tip did not happen and no further questioning was necessary. This case demonstrates that the two-step process outlined in R.D. to flush out mid-trial allegations of juror taint works and should be reaffirmed. The two-step process is consistent with settled jurisprudence in this State regarding judicial discretion and the standard for an appellate court's review. The two-step process is also consistent with similar decisions and guidance from other states and the federal courts. See United States v. Phillips, 455 U.S. 209, 220 (1982) (holding that a juror's application for employment to the prosecuting agency is not per se bias and did not, in and of itself, impair the juror's ability to render an impartial verdict); Remmer v. United States, 347

U.S. 227, 229 (1954) (holding that the remedy for allegations of juror partiality is a hearing in which the defendant has the opportunity to prove actual bias and for the trial judge to "determine the circumstances, the impact thereof upon the juror, and whether or not [they were] prejudicial...."); Chandler v. Florida, 449 U.S. 560, 581 (1981) (holding that the conviction would not be set aside because appellants "did not [attempt] to show with any specificity that the presence of cameras in the courtroom impaired the ability of the jurors to decide the case on only the evidence before them"); United States v. Zimny, 846 F.3d 458, 470 (1st Cir. 2017) (holding that a district court judge is not required to automatically undertake an inquiry every time an anonymous posting authored by someone claiming to be a juror surfaces); State v. Brown, 235 Conn. 502, 525-26 (Conn. 1995) (holding that "a trial court must conduct a preliminary inquiry, on the record, whenever it is presented with any allegations of jury misconduct in a criminal case." This preliminary inquiry must specifically address whether the allegations required an investigation or other response); State v. Taylor, 73 Ohio App.3d 827, 833, 598 N.E.2d 818 (4th Dist. 1991) (holding that an inquiry into alleged juror misconduct requires a two-pronged analysis: "First, the trial court must determine whether misconduct occurred. Then, if juror misconduct is found, the court must determine whether the misconduct materially affected the appellant's substantial rights").

Most importantly, the process this Court outlined in R.D. worked in the instant case. Judge Oxley's experience and proper exercise of discretion is replete throughout this case and demonstrates why this Court should affirm the process outlined in R.D. and reject defendants' covert attempt for an

application of a per se requirement that every allegation of juror taint is assumed to be true and require automatic voir dire of the entire panel, thus removing a trial court's discretion.

CONCLUSION

For the above-mentioned reasons and authorities cited in support thereof, the State respectfully submits defendant's conviction and sentence should be affirmed.

Respectfully submitted,

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