Federal Rule of Evidence 606(b) Bars Admission of Testimony About Juror Statements During Deliberations to Show Dishonesty During Voir Dire

On December 9, 2014, the Supreme Court of the United States issued its unanimous decision in *Warger v. Shauers*, holding that Federal Rule of Evidence 606(b) bars most testimony from jurors regarding statements made during deliberations when the testimony is offered in "an inquiry into the validity of a verdict or indictment."[1] While the Court recognized that there were some exceptions to the Rule, they found that Plaintiff failed to satisfy them.[2]

I. Background and procedural history

In 2006, while driving his motorcycle, the Plaintiff was involved in a vehicle accident with the Defendant. The accident resulted in the amputation of the Plaintiff's left leg. Plaintiff sued for negligence in Federal District Court. During jury selection, Plaintiff's counsel asked the potential jurors whether they "would be unable to award damages for pain and suffering or for future medical expenses, or whether [anyone] thought, 'I don't think I could be a fair and impartial juror on this kind of case.'"[3] One prospective juror, who was later empaneled on the jury and who served as foreperson, answered "no" to both questions. The jury later returned a verdict in favor of the Defendant.

Not long after the trial, a juror contacted the Plaintiff's counsel and told him that the juror who had served as foreperson had seemed biased in favor of the Defendant, and during deliberations had spoken about a fatal accident where her own daughter was at fault, and that "if her daughter had been sued, it would have ruined her life."[4] The juror provided a sworn affidavit, and the Plaintiff subsequently moved for a new trial based thereon. The District Court denied the motion, holding that the only evidence supporting the motion, the sworn affidavit about the foreperson's statements, was barred by Federal Rule of Evidence 606(b), which prohibits the use of juror testimony about "any statement made or incident that occurred during the jury's deliberations […] during an inquiry into the validity of a verdict or indictment."[5] The Eight Circuit affirmed.[6]

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[1] *Warger v. Shauers*, No. 13-517, slip op. 574 U.S. __ (Dec. 9, 2014), *available at* http://www.supremecourt.gov/opinions/14pdf/13-517_7l48.pdf.

[2] FED. R. EVID. 606(b)(1) *Prohibited Testimony or Other Evidence.* During an inquiry into the validity of a verdict or indictment, a juror may not testify about any statement made or incident that occurred during the jury's deliberations; the effect of anything on that juror's or another juror's vote; or any juror's mental processes concerning the verdict or indictment. The court may not receive a juror's affidavit or evidence of a juror's statement on these matters.

606(b)(2) *Exceptions*. A juror may testify about whether:

(A) extraneous prejudicial information was improperly brought to the jury's attention;

(B) an outside influence was improperly brought to bear on any juror; or

(C) a mistake was made in entering the verdict on the verdict form.

[3] Opinion at 2.

[4] *Id.* at 2.

[5] FED. R. EVID. 606(b)(1).

[6] *Warger v. Shauers*, 721 F.3d 606 (8th Cir. 2013).

II. The Court's examination of Rule 606(b)

The Supreme Court unanimously affirmed the Eight Circuit's decision. The Court first examined the language of Rule 606(b), and found that it "applies to juror testimony during a proceeding in which a party seeks to obtain a new trial because a juror lied during *voir dire*."[7] The Court noted that the plain language of the Rule explicitly states that it applies during an inquiry into the validity of a verdict, and found that a motion for a new trial entailed an inquiry into the validity of the verdict.[8]

The Court then examined the underlying common law rule on which Rule 606(b) was based, and indicated that their understanding of Rule 606(b) reflects the "federal approach," which was adopted by the majority of common law courts.[9] The "federal" approach prohibits "using evidence of jury deliberation unless it was offered to show that an 'extraneous matter' had influenced the jury."[10] The Court also noted that the language of the Rule adopted by Congress clearly reflects the "federal" approach: it prohibits the use of *any* evidence of juror deliberations, with exceptions for extraneous information and outside influences.[11]

Plaintiff had petitioned for writ of certiorari, raising four issues: (1) a motion for new trial based on dishonesty during *voir dire* does not involve an "inquiry into the validity of the verdict"; (2) excluding jury deliberations evidence showing that a juror lied during *voir dire* is unnecessary to fulfill Congress' apparent objectives of encouraging debate in the jury room; (3) not admitting the evidence would violate his constitutional right to an impartial jury; and (4) the foreperson's statement during deliberations about her daughter's accident was extraneous prejudicial information improperly brought to the jury's attention, a recognized exception to Rule 606(b).

As for the first question, the Court held that an inquiry about jury deliberations as part of a proceeding during which the court would determine whether the verdict would stand was indeed an "inquiry into the validity of the verdict" within the meaning of Rule 606(b), drawing a distinction between inquiry into the validity of the verdict, and an inquiry into the verdict itself.[12]

The Court rejected Plaintiff's argument that excluding evidence about statements during jury deliberations is unnecessary to fulfill Congress' objectives of encouraging full and open debate in the jury room. The Court found that while the Plaintiff raised arguments against the Rule, he cannot escape its scope simply by asserting that the concerns that underlay the rule "were misplaced."[13]

The Court dismissed Plaintiff's constitutional argument, writing that the canon of constitutional avoidance was not applicable with regards to Rule 606(b), since the Court found no "competing plausible

[7] Opinion at 3-4.

[8] *Id.* at 3-4; FED. R. EVID. 606(b).

[9] The Court examined the two principal common law approaches used before the Federal Rules of Evidence: the "federal approach" and the "Iowa approach." Under the Iowa approach, juror testimony regarding statements made during deliberations was only excluded if it related to matters that "inhere[d] to the verdict." The Court concluded that it had opted for the federal approach in 1915, in *McDonald v. Pless*, in a decision holding that juror affidavits were not admissible to show that the jurors had entered a "quotient" verdict." 238 U.S. 264 (1915). Opinion at 5-6.

[10] *Id.* at 5.

[11] *Id*. at 7. Rule 606(b) was amended to add an exception for mistakes made in entering the verdict on the verdict form. FED. R. EVID. 606(b)(2)(C).

[12] *Id.* at 8-9.

[13] *Id.* at 9.

interpretations" of the Rule.[14] The Court further noted that its decision in *Tanner v. United States* barred any claim that Rule 606(b) is unconstitutional in situations involving incompetent jurors.[15]

Finally, the Court rejected Plaintiff's argument that the foreperson's story of her daughter's accident fell under Rule 606(b)(2)(A)'s exception for "extraneous prejudicial information" improperly brought to the jury's attention, noting that external matters include publicity and information related specifically to the case at hand, not a juror's experiences that she brings with her to the jury room, a proposition supported by *Tanner*.[16] As such, the foreperson's anecdote did not provide the jurors with any specific knowledge regarding the Defendant's collision with the Plaintiff, but rather expressed her general views about negligence liability.[17]

III. Conclusion

The Court's decision in *Warger* makes clear that Rule 606(b) applies to juror testimony during a proceeding in which a party seeks to secure a new trial on the ground that a juror lied during *voir dire*. Rule 606(b) does not explicitly bar juror testimony for the purposes of proving dishonesty by a potential juror during jury selection; however, the evidence is not allowable when it is based on statements made during the jury's deliberations.

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If you have any questions about the issues addressed in this memorandum or if you would like a copy of any of the materials mentioned, please do not hesitate to call or email Charles A. Gilman at 212.701.3403 or cgilman@cahill.com; Jon Mark at 212.701.3100 or jmark@cahill.com; or John Schuster at 212.701.3323 or jschuster@cahill.com.

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[14] *Id.* at 10.

[15] 483 U.S. 107 (1987). In *Tanner*, the Court rejected the argument that excluding evidence that jurors were intoxicated violated the defendant's Sixth Amendment rights to an impartial and competent jury.

[16] Opinion at 11; *Tanner*, 483 U.S. at 117.

[17] Opinion at 11.

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