

State of New York Court of Appeals

OPINION

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before publication in the New York Reports.

No. 71
The People &c.,
Appellant,
v.
M. Robert Neulander,
Respondent.

James P. Maxwell, for appellant.
Alexandra A. E. Shapiro, for respondent.
The New York Council of Defense Lawyers, amicus curiae.

WILSON, J.:

The issue before us is whether the undisputed juror misconduct in this case warrants a reversal of the judgment convicting Dr. Neulander of murder and evidence tampering. The Appellate Division concluded that the trial court abused its discretion by denying his

CPL 330.30 motion to set aside the verdict against him based on that juror misconduct. We agree that, on this record, he is entitled to a new trial. “Nothing is more basic to the criminal process than the right of an accused to a trial by an impartial jury” (People v Branch, 46 NY2d 645, 652 [1979]). We therefore affirm.

In April 2015, a jury convicted Dr. Neulander of murdering his wife and tampering with physical evidence. Throughout the trial, one of the jurors, Juror 12, sent and received hundreds of text messages about the case. Certain text messages sent and received by Juror 12 were troublesome and inconsistent with the trial court’s repeated instructions not to discuss the case with any person and to report any attempts by anyone to discuss the case with a juror. Juror 12 also accessed local media websites that were covering the trial extensively. In order to hide her misconduct, Juror 12 lied under oath to the court, deceived the People and the court by providing a false affidavit and tendering doctored text message exchanges in support of that affidavit, selectively deleted other text messages she deemed “problematic,” and deleted her now-irretrievable internet browsing history. The cumulative effect of Juror 12’s extreme deception and dishonesty compels us to conclude that her “improper conduct . . . may have affected a substantial right of defendant” (CPL 330.30[2]).

Defendant moved, pursuant to CPL 330.30, to set aside the verdict based on juror misconduct. Upon conclusion of a fact-finding hearing, the trial court determined that Juror 12 consciously engaged in misconduct and prevarication, but nonetheless believed her misconduct did not render the trial unfair. The Appellate Division, with two Justices dissenting, reversed the judgment and granted a new trial, with the majority observing that

“every defendant has a right to be tried by jurors who follow the court’s instructions, do not lie in sworn affidavits about their misconduct during the trial, and do not make substantial efforts to conceal and erase their misconduct when the court conducts an inquiry with respect thereto” (People v Neulander, 162 AD3d 1763, 1768 [4th Dept 2018]). We agree that the extensiveness and egregiousness of the disregard, deception, and dissembling occurring here leave no alternative but to reverse the judgment of conviction and remit for a new trial and compel us to affirm publicly the importance of juror honesty.

Under CPL 330.30, a verdict should be set aside if “improper conduct by a juror . . . may have affected a substantial right of the defendant and . . . was not known to the defendant prior to the rendition of the verdict.” Of course, “not every misstep by a juror rises to the inherently prejudicial level at which reversal is required automatically” (People v Brown, 48 NY2d 388, 394 [1979]); “[e]ach case must be examined on its unique facts” (People v Clark, 81 NY3d 913, 914 [1993]). Under the extraordinary circumstances of this case, we conclude that Juror 12’s behavior “may have affected a substantial right of defendant.” This is not a case of stray texts or inadvertent misstatements. The record plainly supports the findings of both lower courts that Juror 12’s conduct disregarded the court’s plentiful instructions as to outside communications and when such conduct was brought to light, the juror was deliberately and repetitively untruthful. During the third day of jury deliberations, when the court first examined Juror 12 as to whether she had violated the court’s instructions concerning outside communications, she insisted that she had not, which later proved to be false. When, after the jury had rendered its verdict, an alternate juror advised the court, by affidavit, that Juror 12 had engaged in improper conduct, Juror

12 secretly and selectively deleted numerous text messages which she believed to be “problematic,” and presented to the People the remaining portions of the text message exchanges as if they were complete recitations of the communications. Juror 12 thereby induced the People to submit to the court her exculpatory affidavit, attaching the fabricated versions of her conversations with no indication that she had doctored them.

When, at the CPL 330.30 hearing, she was examined about her selective deletions, which were uncovered through a forensic examination of her cell phone, Juror 12 gave several answers evidencing a continued lack of candor. Although she deleted her entire internet browsing history and could not explain why, when confronted with evidence that she had accessed a website providing daily trial coverage, she testified that she read nothing about the trial and probably accessed the site to read an article on cheerleading. The People and defense counsel stipulated, however, that no such article appeared on that site during the relevant time. She several times accessed a second news website providing trial coverage, as to which she offered no explanation.

In this case, a sworn juror, when examined by the court about the breadth of her outside communications was repeatedly and deliberately untruthful about the scope of that misconduct and affirmatively sought to conceal evidence of her misconduct. That extraordinary and dishonest behavior by a juror purposefully selected to be a fair and objective arbiter of the facts in the case causes irredeemable injury to the judicial system and the public’s confidence in it. “Jurors, of course, do not live in capsules” (Brown, 48 NY2d at 393) and cannot be isolated during their service from the outside world, including their friends and families. However, they must be expected, at the very minimum, to obey

the admonishments of the trial court, report attempts by others trying to influence their oath to be objective, and to be forthcoming during court inquiries into their conduct as a juror. Juror 12's blatant disregard for the court's instructions coupled with her purposeful dishonesty and deception when her actions and good faith as a juror came into question vitiate the premise that Juror 12 was fair and impartial and lead us to conclude that a new trial is required. On this record, the cumulative effect of Juror 12's misconduct, deceit, and destruction of evidence – conduct which obfuscated the full extent of her misconduct – compels us to agree with the Appellate Division that Juror 12's "improper conduct ... may have affected a substantial right of defendant" (CPL 330.30[2]), and, therefore, the trial court abused its discretion in declining to set aside the verdict.

The People contend that even if Juror 12 engaged in misconduct, "that misconduct is significantly outweighed by the substantial proof of guilt presented at trial." However, "[t]he right to a fair trial is self-standing and proof of guilt, however overwhelming, can never be permitted to negate this right" (People v Crimmins, 36 NY2d 230, 238 [1975]). The "public at large is entitled to the assurance that there shall be full observance and enforcement of the cardinal right of a defendant to a fair trial" (id.). Affirming a conviction where a juror engaged in dishonesty of this magnitude would not discharge our "overriding responsibility" to ensure the public's confidence in the fairness of trials (id.).

Accordingly, the order of the Appellate Division should be affirmed.

* * * * *

Order affirmed. Opinion by Judge Wilson. Chief Judge DiFiore and Judges Rivera, Stein, Fahey, Garcia and Feinman concur.

Decided October 22, 2019