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Criminal Law - Juries - Admissibility of Juror Affidavits to Impeach Verdicts

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CRIMINAL LAW — JURIES — ADMISSIBILITY OF JUROR AFFIDAVITS TO IMPEACH VERDICTS. — Defendant was charged with murder and filed application for a suspended sentence. The trial court in its charge, submitted to the jury the issue of suspension of the sentence in the event they found defendant guilty. The jury found the defendant guilty and the defendant sought a new trial on the ground of jury misconduct which motion he attempted to support by the affidavit of one of the jurors showing that the jury discussed provisions of the Adult Probation Law and an erroneous statement was made by one of the jurors that the judge could place the defendant on probation if he saw fit. The Court of Criminal Appeals of Texas, one justice dissenting, *held* that as a result of the foregoing the defendant did not receive such a fair and impartial trial as would allow the judgment of conviction to stand. New trial granted. *Farias v. State,* Tex. Crim. App., 322 S.W.2d 281 (1959).

Early in the English common law the courts freely admitted juror affidavits to show misbehavior or partiality in arriving at their verdicts.[1] It was not until 1785, in the case of *Vaise against Delaval,*[2] that the rule was established (through Chief Judge Mansfield) which, plainly stated, will not allow affidavits by jurors to impeach their verdicts. This has become the general rule and the courts of the United States have tenaciously applied it, though sometimes differing as to reason,[3] since its inception. The rule has been criticized[4] and modified on occasion,[5] but, in general, remains for the most part unchanged. The chief qualification of the rule seems to be that affidavits are not receivable when they would tend to show matters which essentially

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willful injury to the person or property of another, or violation of law, whether willful or negligent, are against the policy of the law."

N.D. Rev. Code § 8-0707 (1943) "A common carrier cannot be exonerated from liability for the negligence, fraud, or other wrongful act of himself or his servants by any agreement made in anticipation thereof.";

N.D. Rev. Code § 8-0706 (1943) "The obligation of a common carrier cannot be limited by general notice on his part but may be limited by special contract."

1. Norman v. Beamont, Willes 484, 125 Eng. Rep. 1281 (C.P. 1744); Dent v. Hertford, 2 Salk 645, 91 Eng. Rep. 546 (K.B. 1696).

2. 1 T.R. 11, 99 Eng. Rep. 944 (K.B. 1785).

3. Taylor v. State, 18 Ala. App. 466, 93 So. 78 (1922) (deliberations of jury must be kept secret because of public policy reasons); Saltzman v. Sunset Telephone & Telegraph Co., 125 Cal. 501, 58 Pac. 169 (1899) (court gave two reasons for the rule: "(1) that the jurors, who are practically the only witnesses in regard to the matter, may not be tampered with and verdicts by these means imperiled; and (2) to secure independence and freedom from improper restraint on the part of the jury"); State v. Kociolek, 20 N. J. 92, 118 A.2d 812 (1955) (the working of the mind of a juror is a personal thing and cannot be subjected to the test of other testimony, so such testimony should not be received to overthrow the verdict to which all assented), see Comment, 31 Notre Dame Law. 484 (1956) ". . .[W]hile other reasons sometimes support the exclusion of jurors' affidavits, the rule itself exists as a rule because of a desire of the courts to protect the jury system from what it deems an evil which will destroy its purpose and value."

4. Crawford v. State, 10 Tenn. (2 Yerg.) 54 (1821); see McDonald v. Press, 238 U.S. 264 (1915), wherein the court calls the rule of exclusion a matter of choosing the lesser of two evils.

5. Wright v. The Illinois & Mississippi Telegraph Co., 20 Iowa 195, 210 (1866); United States v. Dressler, 112 F.2d 972 (1940) (dictum).

6. Wright v. The Illinois Mississippi Telegraph Co. *supra* note 5. Some examples of matters which are said to inhere in the verdict and are therefore inadmissible are: that jurors concurred in the guilty verdict due to a mistaken belief as to maximum penalty to be imposed, Boyles v. People, 90 Colo. 32, 6 P.2d 7, 10 (1931); that the jury considered things which the court had instructed them not to consider, State v. Jester, 46 Idaho 561, 270 P. 417 (1928); that the jury misunderstood the instructions of the court, State v. Hill, 239 Iowa 675, 32 N.W.2d 398 (1948); that the jury did not understand the meaning of their verdict, State v. Kagi, 105 Kan. 536, 185 P. 62 (1919).

inhere in the verdict itself.[6] Conversely, affidavits are receivable when they contain matters which do not inhere in the verdict.[7]

In the instant case the affidavit was allowed to come in and as a result a new trial was granted because the statement made by a juror during deliberation was, to use the court's words, " . . . clearly a misstatement of law." This case seems to reject, without mention, an earlier Texas decision wherein the court held that the defendant was not entitled to a new trial even though there was evidence of similar misconduct on the part of the jury.[8] These two cases tend to indicate a Texas withdrawal from rigid adherence to the general rule. As a matter of fact, the court in the instant case ruled that an affidavit was admissible to show a misstatement of law during deliberation. This was directly contrary to the general rule.[9] Admitting an affidavit in such a situation is a clear case of allowing into evidence matters which inhere in the verdict.[10]

North Dakota aligns itself with the majority and will not allow a juror affidavit to impeach a verdict.[11] Provision for the use of such an affidavit is to be found in the Code, but then only where the verdict is determined by chance.[12] The statute is intended for use in civil cases and the North Dakota courts have not yet determined its applicability in criminal cases.[13]

To conclude, it would seem that the decision in the instant case, though out of line with the general rule, insured the defendant a fair and impartial trial. Courts faced with possible application of the exclusion rule in the future would do well to bear this in mind.

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JURY — WAIVER OF RIGHT — IN CRIMINAL CASES. — Defendant was convicted of making or causing to be made certain material false statements on behalf of a corporation to the state Commissioner of Securities for registration as a dealer. The district court denied the motion for a new trial and defendant appealed to the Supreme Court of North Dakota. Defendant alleged *inter alia*, that the district court erred in refusing to try the case without a jury when the defendant and the states attorney had waived a jury in open court pursuant to the terms of a statute.[1] The court, one justice dissenting, *held*

7. State v. Kociolek, 20 N.J. 92, 118 A.2d 812 (1955) "Where (the) jurors' testimony goes. . .merely to the existence of conditions or the occurence of events bearing on the verdict, that basis of policy does not exist, and this whether the condition happens or the event occurs in or outside of the jury room."; Perry v. Bailey, 12 Kan. 539, 545 (1876) Overt acts, that is, things which are open to the knowledge of all the jury, and not simply within the personal conciousness of one, are admissible.

8. Salcido v. State, Tex. Cr. App., 319 S.W.2d 329 (1959).

9. See note 3 *supra*.

10 Ruffalo v. State, 196 Wis. 446, 220 N.W. 190 (1928) (defendants attempted use of juror affidavits to show that he was convicted due to erroneous jury belief that a guilty verdict would result in leniency being shown toward him was excluded); Trimble v. State, 118 Neb. 267, 224 N.W. 274 (1929) (an affidavit stating that jury disregarded instructions and evidence would not be allowed) (dictum).

11. State v. Graber, 77 N.D. 645, 44 N.W.2d 798 (1950); State v. Forrester, 14 N.D. 335, 103 N.W. 625 (1905).

12. N. D. Rev. Code § 28-1902, (2) (1943).

13. State v. Graber, 77 N.D. 665, 44 N.W.2d 798 (1950) (dictum).

1. N.D. Rev. Code §29-1602 (1943) "In any case, whether a midemeanor or felony, a trial jury may be waived by the consent of the defendant and the state's attorney expressed in open court and entered on the minutes of the court. Otherwise, the issues of fact must be tried by the jury."