

STATE of Utah, Plaintiff and Respondent, v. Leland Thomas  
DeMILLE, Defendant and Appellant

Supreme Court of Utah

756 P.2d 81

May 26, 1988, Filed

A jury found appellant Leland Thomas DeMille guilty of second degree murder. After the verdict was returned, DeMille moved for a new trial. In support of this motion, he submitted an affidavit of a juror, arguing that it showed the verdict to be unsound because of juror bias and misconduct. The trial court refused to consider the affidavit and denied the motion for a new trial. On appeal, DeMille argues that the evidence is insufficient to support the conviction and that the juror's affidavit should have been admitted under Utah Rule of Evidence 606(b). We reject DeMille's contentions and affirm the conviction....

DeMille's second basis for arguing that the affidavit should have been admitted is that it shows the jury considered factors other than the evidence presented at trial. Most prominent among the alleged improprieties is one juror's telling others during deliberations that she had prayed for a sign during closing argument as to DeMille's guilt. She claimed to have received a revelation that if defense counsel did not make eye contact with her when he presented his argument, DeMille was guilty -- defense counsel did not make the requisite eye contact.

Under rule 606(b), our inquiry is limited to determining whether the proffered juror testimony tends to show that "extraneous prejudicial information was improperly brought to the jury's attention or whether any outside influence was improperly brought to bear upon any juror." Utah R. Evid. 606(b). Defendant argues that when the juror who reported to have received an answer to her prayer communicated that fact to the other jurors, an "outside influence was brought to bear on any juror," therefore making the affidavit admissible. We disagree.

If we were to accept defendant's argument that supposed responses to prayer are within the meaning of the term "outside influence" in rule 606(b), we would implicitly be holding that it is improper for a juror to rely upon prayer, or supposed responses to prayer, during deliberations. Such a conclusion could well infringe upon the religious liberties of the jurors by imposing a religious test for service on a jury. A juror is fit to serve if he or she can impartially weigh the evidence and apply the law to the facts as he or she finds them. Prayer is almost certainly a part of the personal decision-making process of many people, a process that is employed when

and reliance on prayer or supposed responses to prayer. So long as a juror is capable of fairly weighing the evidence and applying the law to the facts, one may not challenge that juror's decision on grounds that he or she may have reached it by aid of prayer or supposed responses to prayer. Therefore, we hold that under rule 606(b), prayer and supposed responses to prayer are not included within the meaning of the words "outside influence." Testimony that a juror has so acted is not admissible to challenge a verdict; the trial judge properly refused to consider the proffered affidavit.

DISSENT: STEWART, Justice: (Dissenting).

I respectfully dissent. I believe that this case should be remanded for a hearing and a determination as to whether one or more jurors based their vote in this case on what they thought was a divine indication of defendant's guilt.

A defendant is constitutionally entitled to a jury that determines guilt or innocence based on the evidence and the law presented to it. Verdicts decided on some other basis make the constitutionally guaranteed right to trial by jury a nullity. Indeed, a verdict that is rendered on the basis of supposed divine intervention is a throw-back to the primitive days of trial by ordeal where, for example, the manner of healing of a severe burn inflicted on a party was deemed to be an indication of God's judgment.

Sound reasons support the general policy against allowing impeachment of jury verdicts attacking the mental processes used by jurors to arrive at a verdict. As long as the jurors purport to act on the basis of the facts and the law, no challenge is permissible, even if jurors may have acted on the basis of some alleged error or misunderstanding. But certainly verdicts are not absolutely inviolate. Verdicts based on chance or bribery, for example, have long been subject to challenge, since they do not even purport to be based on the law and the evidence. Thus, if jurors were to agree that a verdict would be based on a "divine sign," a Ouija board answer, or some fortuitous event, such a verdict, in my judgment, would constitute a denial of due process and the right to trial by jury.