TANNER ET AL. v. UNITED STATES

SUPREME COURT OF THE UNITED STATES

483 U.S. 107

June 22, 1987, Decided

JUSTICE O'CONNOR delivered the opinion of the Court.

Petitioners William Conover and Anthony Tanner were convicted of conspiring to defraud the United States in violation of 18 U. S. C. @ 371, and of committing mail fraud in violation of 18 U. S. C. @ 1341.

The day before petitioners were scheduled to be sentenced, Tanner filed a motion seeking permission to interview jurors, an evidentiary hearing, and a new trial. According to an affidavit accompanying the motion, Tanner's attorney had received an unsolicited telephone call from one of the trial jurors, Vera Asbul. Juror Asbul informed Tanner's attorney that several of the jurors consumed alcohol during the lunch breaks at various times throughout the trial, causing them to sleep through the afternoons. The District Court heard argument on the motion to interview jurors. The District Court concluded that juror testimony on intoxication was inadmissible under Federal Rule of Evidence 606(b) to impeach the jury's verdict. The District Court invited petitioners to call any nonjuror witnesses, such as courtroom personnel, in support of the motion for new trial. Tanner's counsel took the stand and testified that he had observed one of the jurors "in a sort of giggly mood" at one point during the trial but did not bring this to anyone's attention at the time.

Following the hearing the District Court filed an order stating that "on the basis of the admissible evidence offered I specifically find that the motions for leave to interview jurors or for an evidentiary hearing at which jurors would be witnesses is not required or appropriate." The District Court also denied the motion for new trial.

While the appeal of this case was pending before the Eleventh Circuit, petitioners filed another new trial motion based on additional evidence of jury misconduct. In another affidavit, Tanner's attorney stated that he received an unsolicited visit at his residence from a second juror, Daniel Hardy. Despite the fact that the District Court had denied petitioners' motion for leave to interview jurors, two days after Hardy's visit Tanner's attorney arranged for Hardy to be interviewed by two private investigators. The interview was transcribed, sworn to by the juror, and attached to the new trial motion. In the interview Hardy stated that he "felt like . . . the jury was on one big party." Hardy indicated that seven of the jurors drank alcohol during the noon recess. Four jurors, including Hardy, consumed between them "a pitcher to three pitchers" of beer during various recesses. Of the three other jurors who were alleged to have consumed alcohol, Hardy stated that on several occasions he observed two jurors having one or two mixed drinks during the lunch recess, and one other juror, who was also the foreperson, having a liter of wine on each of three occasions. Juror Hardy also stated that he and three other jurors smoked marijuana quite regularly during the trial. Moreover, Hardy stated that during the trial he observed one juror ingest cocaine five times and another juror ingest cocaine two or three times.

One juror sold a quarter pound of marijuana to another juror during the trial, and took marijuana, cocaine, and drug paraphernalia into the courthouse. Hardy noted that some of the jurors were falling asleep during the trial, and that one of the jurors described himself to Hardy as "flying." Hardy stated that before he visited Tanner's attorney at his residence, no one had contacted him concerning the jury's conduct, and Hardy had not been offered anything in return for his statement. Hardy said that he came forward "to clear my conscience" and "because I felt . . . that the people on the jury didn't have no business being on the jury. I felt . . . that Mr. Tanner should have a better opportunity to get somebody that would review the facts right."

The District Court, stating that the motions "contain supplemental allegations which differ quantitatively but not qualitatively from those in the April motions," denied petitioners' motion for a new trial.

Petitioners argue that the District Court erred in not ordering an additional evidentiary hearing at which jurors would testify concerning drug and alcohol use during the trial. Petitioners assert that, contrary to the holdings of the District Court and the Court of Appeals, juror testimony on ingestion of drugs or alcohol during the trial is not barred by Federal Rule of Evidence 606(b). Moreover, petitioners argue that whether or not authorized by Rule 606(b), an evidentiary hearing including juror testimony on drug and alcohol use is compelled by their Sixth Amendment right to trial by a competent jury.

By the beginning of this century, if not earlier, the near-universal and firmly established common-law rule in the United States flatly prohibited the admission of juror testimony to impeach a jury verdict. Exceptions to the common-law rule were recognized only in situations in which an "extraneous influence," was alleged to have affected the jury. In Mattox, this Court held admissible the testimony of jurors describing how they heard and read prejudicial information not admitted into evidence. The Court allowed juror testimony on influence by outsiders in Parker v. Gladden, 385 U.S. 363, 365 (1966) (bailiff's comments on defendant), and Remmer v. United States, 347 U.S. 227, 228-230 (1954) (bribe offered to juror). In situations that did not fall into this exception for external influence, however, the Court adhered to the common-law rule against admitting juror testimony to impeach a verdict.

Lower courts used this external/internal distinction to identify those instances in which juror testimony impeaching a verdict would be admissible. The distinction was not based on whether the juror was literally inside or outside the jury room when the alleged irregularity took place; rather, the distinction was based on the nature of the allegation. Clearly a rigid distinction based only on whether the event took place inside or outside the jury room would have been quite unhelpful. For example, under a distinction based on location a juror could not testify concerning a newspaper read inside the jury room. Instead, of course, this has been considered an external influence about which juror testimony is admissible. Similarly, under a rigid locational distinction jurors could be regularly required to testify after the verdict as to whether they heard and comprehended the judge's instructions, since the charge to the jury takes place outside the jury room. Courts wisely have treated allegations of a juror's inability to hear or comprehend at trial as an internal matter.

Most significant for the present case, however, is the fact that lower federal courts treated allegations of the physical or mental incompetence of a juror as "internal" rather than "external" matters. In United States v. Dioguardi, 492 F.2d 70 (CA2 1974), the defendant Dioguardi received a letter from one of the jurors soon after the trial in which the juror explained that she had "eyes and ears that . . . see things before [they] happen," but that her eyes "are only partly

open" because "a curse was put upon them some years ago." Armed with this letter and the opinions of seven psychiatrists that the letter suggested that the juror was suffering from a psychological disorder, Dioguardi sought a new trial or in the alternative an evidentiary hearing on the juror's competence. The District Court denied the motion and the Court of Appeals affirmed. The Court of Appeals noted "the strong policy against any post-verdict inquiry into a juror's state of mind," and observed:

> "The quickness with which jury findings will be set aside when there is proof of tampering or external influence, . . . parallel the reluctance of courts to inquire into jury deliberations when a verdict is valid on its face. . . . Such exceptions support rather than undermine the rationale of the rule that possible internal abnormalities in a jury will not be inquired into except 'in the gravest and most important cases.'"

Substantial policy considerations support the common-law rule against the admission of jury testimony to impeach a verdict. As early as 1915 this Court explained the necessity of shielding jury deliberations from public scrutiny:

> "Let it once be established that verdicts solemnly made and publicly returned into court can be attacked and set aside on the testimony of those who took part in their publication and all verdicts could be, and many would be, followed by an inquiry in the hope of discovering something which might invalidate the finding. Jurors would be harassed and beset by the defeated party in an effort to secure from them evidence of facts which might establish misconduct sufficient to set aside a verdict. If evidence thus secured could be thus used, the result would be to make what was intended to be a private deliberation, the constant subject of public investigation -- to the destruction of all frankness and freedom of discussion and conference."

There is little doubt that postverdict investigation into juror misconduct would in some instances lead to the invalidation of verdicts reached after irresponsible or improper juror behavior. It is not at all clear, however, that the jury system could survive such efforts to perfect it. Allegations of juror misconduct, incompetency, or inattentiveness, raised for the first time days, weeks, or months after the verdict, seriously disrupt the finality of the process. Moreover, full and frank discussion in the jury room, jurors' willingness to return an unpopular verdict, and the community's trust in a system that relies on the decisions of laypeople would all be undermined by a barrage of postverdict scrutiny of juror conduct.

Federal Rule of Evidence 606(b) is grounded in the common-law rule against admission of jury testimony to impeach a verdict and the exception for juror testimony relating to extraneous influences.

Rule 606(b) states:

> "Upon an inquiry into the validity of a verdict or indictment, a juror may not testify as to any matter or statement occurring during the course of the jury's deliberations or to the effect of anything upon his or any other juror's mind or emotions as influencing him to assent to or dissent from the verdict or indictment or concerning his mental processes in connection therewith, except that a juror may testify on the question whether extraneous prejudicial information was improperly brought to the jury's attention or whether any outside influence was improperly brought to bear upon any juror. Nor may his affidavit or evidence of any statement by him concerning a matter about which he would be precluded from testifying be received for these purposes."

Petitioners have presented no argument that Rule 606(b) is inapplicable to the juror

affidavits and the further inquiry they sought in this case, and, in fact, there appears to be virtually no support for such a proposition. Rather, petitioners argue that substance abuse constitutes an improper "outside influence" about which jurors may testify under Rule 606(b). In our view the language of the Rule cannot easily be stretched to cover this circumstance. However severe their effect and improper their use, drugs or alcohol voluntarily ingested by a juror seems no more an "outside influence" than a virus, poorly prepared food, or a lack of sleep.

The House Judiciary Committee described the effect of the version of Rule 606(b) transmitted by the Court as follows:

> "As proposed by the Court, Rule 606(b) limited testimony by a juror in the course of an inquiry into the validity of a verdict or indictment. He could testify as to the influence of extraneous prejudicial information brought to the jury's attention (e. g. a radio newscast or a newspaper account) or an outside influence which improperly had been brought to bear upon a juror (e. g. a threat to the safety of a member of his family), but he could not testify as to other irregularities which occurred in the jury room. Under this formulation a quotient verdict could not be attacked through the testimony of juror, nor could a juror testify to the drunken condition of a fellow juror which so disabled him that he could not participate in the jury's deliberations. . . ."

Thus, the legislative history demonstrates with uncommon clarity that Congress specifically understood, considered, and rejected a version of Rule 606(b) that would have allowed jurors to testify on juror conduct during deliberations, including juror intoxication. This legislative history provides strong support for the most reasonable reading of the language of Rule 606(b) -- that juror intoxication is not an "outside influence" about which jurors may testify to impeach their verdict.

Petitioners also argue that the refusal to hold an additional evidentiary hearing at which jurors would testify as to their conduct "violates the sixth amendment's guarantee to a fair trial before an impartial and competent jury."

This Court has recognized that a defendant has a right to "a tribunal both impartial and mentally competent to afford a hearing." In this case the District Court held an evidentiary hearing in response to petitioners' first new trial motion at which the judge invited petitioners to introduce any admissible evidence in support of their allegations. At issue in this case is whether the Constitution compelled the District Court to hold an additional evidentiary hearing including one particular kind of evidence inadmissible under the Federal Rules.

As described above, long-recognized and very substantial concerns support the protection of jury deliberations from intrusive inquiry. Petitioners' Sixth Amendment interests in an unimpaired jury, on the other hand, are protected by several aspects of the trial process. The suitability of an individual for the responsibility of jury service, of course, is examined during voir dire. Moreover, during the trial the jury is observable by the court, by counsel, and by court personnel. Moreover, jurors are observable by each other, and may report inappropriate juror behavior to the court before they render a verdict. Finally, after the trial a party may seek to impeach the verdict by nonjuror evidence of misconduct. Indeed, in this case the District Court held an evidentiary hearing giving petitioners ample opportunity to produce nonjuror evidence supporting their allegations.

In light of these other sources of protection of petitioners' right to a competent jury, we conclude that the District Court did not err in deciding that an additional postverdict evidentiary hearing was unnecessary.

DISSENT: JUSTICE MARSHALL, with whom JUSTICE BRENNAN, JUSTICE BLACKMUN, and JUSTICE STEVENS join, concurring in part and dissenting in part.

Every criminal defendant has a constitutional right to be tried by competent jurors. This Court has long recognized that "due process implies a tribunal both impartial and mentally competent to afford a hearing." If, as is charged, members of petitioners' jury were intoxicated as a result of their use of drugs and alcohol to the point of sleeping through material portions of the trial, the verdict in this case must be set aside. In directing district courts to ignore sworn allegations that jurors engaged in gross and debilitating misconduct, this Court denigrates the precious right to a competent jury. Accordingly, I dissent from that part of the Court's opinion.

At the outset, it should be noted that petitioners have not asked this Court to decide whether there is sufficient evidence to impeach the jury's verdict. The question before us is only whether an evidentiary hearing is required to explore allegations of juror misconduct and incompetency.

The allegations of juror misconduct in this case are profoundly disturbing. A few weeks after the verdict was returned, one of the jurors, Vera Asbel, contacted defense counsel and told him she had something she wanted to get off her conscience. She stated that at the trial some of the male jurors were drinking every day and then "slept through the afternoons."

Several months later, Asbel's allegations were buttressed by a detailed report of rampant drug and alcohol abuse by jury members, volunteered by another juror, Daniel Hardy. n3 In a sworn statement, Hardy indicated that seven members of the jury, including himself, regularly consumed alcohol during the noon recess. He reported that four male jurors shared up to three pitchers of beer on a daily basis. Hardy himself "consumed alcohol all the time." Id., at 239. The female juror selected as foreperson was described as "an alcoholic" who would drink a liter of wine at lunch. Two other female jurors regularly consumed one or two mixed drinks at lunch.

The four male jurors did not limit themselves to alcohol, however. They smoked marijuana "just about every day." In addition, two of them ingested "a couple lines" of cocaine on several occasions. At times two of the jurors used all three substances -- alcohol, cocaine, and marijuana. Hardy also maintained that the principal drug user, identified as "John," used cocaine during breaks in the trial. "I knew he had that little contraption and he was going to the bathroom and come back down sniffing . . . like he got . . . a cold." Hardy's statement supported Asbel's assessment of the impact of alcohol and drug consumption; he noted that "most, some of the jurors," were "falling asleep all the time during the trial." At least as to John, the effects of drugs and alcohol went beyond inability to stay awake at trial: "John just talked about how he was flying," which Hardy understood to mean that "he was messed up." Hardy admitted that on one day during the trial his reasoning ability was affected by his use of alcohol and marijuana. These allegations suggest that several of the jurors' senses were significantly dulled and distorted by drugs and alcohol. In view of these charges, Hardy's characterization of the jury as "one big party," is quite an understatement.

I readily acknowledge the important policy considerations supporting the common-law rule against admission of jury testimony to impeach a verdict, now embodied in Federal Rule of Evidence 606(b): freedom of deliberation, finality of verdicts, and protection of jurors against harassment by dissatisfied litigants. It has been simultaneously recognized, however, that "simply putting verdicts beyond effective reach can only promote irregularity and injustice." Ibid. If the above-referenced policy considerations seriously threaten the constitutional right to

trial by a fair and impartial jury, they must give way.

In this case, however, we are not faced with a conflict between the policy considerations underlying Rule 606(b) and petitioners' Sixth Amendment rights. Rule 606(b) is not applicable to juror testimony on matters unrelated to the jury's deliberations. By its terms, Rule 606(b) renders jurors incompetent to testify only as to three subjects: (i) any "matter or statement" occurring during deliberations; (ii) the "effect" of anything upon the "mind or emotions" of any juror as it relates to his or her "assent to or dissent from the verdict"; and (iii) the "mental processes" of the juror in connection with his "assent to or dissent from the verdict." Even as to matters involving deliberations, the bar is not absolute. It is undisputed that Rule 606(b) does not exclude juror testimony as to matters occurring before or after deliberations. Because petitioners' claim of juror misconduct and incompetency involves objectively verifiable conduct occurring prior to deliberations, juror testimony in support of the claims is admissible under Rule 606(b).

In this case, no invasion of the jury deliberations is contemplated. Permitting a limited postverdict inquiry into juror consumption of alcohol and drugs during trial would not "make what was intended to be a private deliberation, the constant subject of public investigation -- to the destruction of all frankness and freedom of discussion and conference." "Allowing [jurors] to testify as to matters other than their own inner reactions involves no particular hazard to the values sought to be protected."

Even if I agreed with the Court's expansive construction of Rule 606(b), I would nonetheless find the testimony of juror intoxication admissible under the Rule's "outside influence" exception. As a common-sense matter, drugs and alcohol are outside influences on jury members. Commentators have suggested that testimony as to drug and alcohol abuse, even during deliberations, falls within this exception. "The present exception paves the way for proof by the affidavit or testimony of a juror that one or more jurors became intoxicated during deliberations. . . . Of course the use of hallucinogenic or narcotic drugs during deliberations should similarly be provable." The Court suggests that, if these are outside influences, "a virus, poorly prepared food, or a lack of sleep" would also qualify. Ante, at 122. Distinguishing between a virus, for example, and a narcotic drug is a matter of line-drawing. Courts are asked to make these sorts of distinctions in numerous contexts; I have no doubt they would be capable of differentiating between the intoxicants involved in this case and minor indispositions not affecting juror competency.

The Court acknowledges that "postverdict investigation into juror misconduct would in some instances lead to the invalidation of verdicts reached after irresponsible or improper juror behavior," but maintains that "it is not at all clear . . . that the jury system could survive such efforts to perfect it." Petitioners are not asking for a perfect jury. They are seeking to determine whether the jury that heard their case behaved in a manner consonant with the minimum requirements of the Sixth Amendment. If we deny them this opportunity, the jury system may survive, but the constitutional guarantee on which it is based will become meaningless.

I dissent.